

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Ali Abdul-Karim Elhorr, M.D.
(OI File No. 5-10-40778-9)

Petitioner,

v.

The Inspector General.

Docket No. C-17-503

Decision No. CR4906

Date: August 3, 2017

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Ali Abdul-Karim Elhorr, M.D., from participating in Medicare, Medicaid, and other federally funded health care programs for a minimum of 15 years.

I. Background

Petitioner, a medical doctor, requested a hearing in order to challenge the I.G.'s exclusion determination. Pursuant to my pre-hearing order the I.G. filed a brief plus four proposed exhibits that are identified as I.G. Ex. 1-I.G. Ex. 4. Petitioner filed a brief plus an exhibit that is identified as P. Ex. 1. The I.G. declined to file a reply brief. Petitioner stated in his short-form brief that an in-person hearing was not necessary, and the I.G. did not request an in-person hearing. I receive the parties' exhibits into the record.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

Petitioner concedes his conviction of a crime – conspiracy to commit health care fraud by

submitting false Medicare claims – falls within the purview of section 1128(a)(1) of the Social Security Act (Act) and for which exclusion of at least five years is mandatory. Act, §§ 1128(a)(1); (c)(3)(B). The sole remaining issue is whether exclusion of at least 15 years is reasonable.

B. Findings of Fact and Conclusions of Law

In November 2013 a federal grand jury issued an indictment charging Petitioner, along with several relatives and another individual, with conspiring to execute a scheme and artifice to defraud the Medicare program. I.G. Ex. 2 at 6-7, 16. Specifically, Count 1 of the indictment alleged that Petitioner and his co-conspirators intended to submit false and fraudulent claims for Medicare reimbursement of physician home visits and services. *Id.* at 7.

Petitioner signed a plea agreement in April 2016 in which he agreed to plead guilty to Count 1. I.G. Ex. 3. He admitted that he willfully conspired with others to commit health care fraud against Medicare beginning in about September 2009 and continuing through about September 2012. *Id.* at 2. He acknowledged that as part of the conspiracy he posed as a supervising physician for individuals who were not licensed to practice medicine but who nonetheless held themselves out as physicians and who purported to conduct physician home visits to Medicare beneficiaries. He admitted that he signed documentation prepared by these “physicians” stating his approval of the services that they purportedly provided. *Id.* at 3. The conspirators filed reimbursement claims to Medicare for these false and fraudulent services based on Petitioner’s approval of them. *Id.* at 4. Petitioner admitted that the fraudulent claims that he submitted or caused to be submitted totaled about \$2.4 million of which Medicare paid over \$1.3 million. *Id.*

The federal district court that accepted Petitioner’s plea sentenced him to 18 months’ incarceration and ordered him to pay \$1,303,342 in restitution to Medicare. I.G. Ex. 4 at 1-2, 5.

Regulations governing the length of exclusions permit the I.G. to impose exclusions for more than the minimum mandatory term of five years in the case of a Medicare fraud conviction based on evidence that qualifies as aggravating and that is not offset by mitigating evidence. The relevant factors that may be aggravating or mitigating are set forth at 42 C.F.R. §§ 1001.102(b) and (c). Aggravating factors may include among other factors: criminal conduct causing financial loss of \$5000 or more to Medicare; a program-related crime having a duration of more than one year; and a sentence that includes a period of incarceration. 42 C.F.R. §§ 1001.102(b)(1), (2), and (5). Evidence relating to all of the enumerated factors is present here. Petitioner pled guilty to participating in a conspiracy that caused Medicare to pay out more than \$1.3 million for his false and fraudulent claims, his crimes endured for about three years, and he was sentenced to 18 months’ imprisonment.

The factors enumerated at 42 C.F.R. §§ 1001.102(b) and (c) operate essentially as rules of evidence in deciding whether the length of exclusion is reasonable. They do not direct a particular outcome in any case. All that they do is define what evidence is relevant in deciding whether an exclusion period is reasonable. Ultimately, my role is to weigh the evidence, if any, that relates to the regulatory factors and to decide whether the exclusion determined by the I.G. falls within a reasonable range of exclusions.

The evidence in this case pertaining to aggravation provides ample support for the I.G.'s determination to exclude Petitioner for a period of at least 15 years. The evidence establishes Petitioner to be manifestly untrustworthy, an individual who engaged in a protracted, highly organized, massive, and, for a time, very successful conspiracy to defraud the Medicare program.

Petitioner offered no evidence that falls within any of the mitigating factors set forth at 42 C.F.R. § 1001.102(c). He did not, for example, assert that his cooperation with prosecuting officials led to the conviction or exclusion of others or that the judge who sentenced him acknowledged that he suffered from a mental condition that affected his culpability. *See* 42 C.F.R. §§ 1001.102(c)(2) and (3).

Rather, Petitioner argues that he is not actually culpable for the crime to which he pled guilty. He asserts that he was misled and/or manipulated by his brother into engaging in criminal conduct. He contends that he did not really profit from his criminal behavior. He argues that he acted in good faith all along, that his crime was one of naivety rather than a conscious and willful effort on his part to defraud Medicare. Petitioner's brief at 4-6. These arguments, as I have stated, do not conform to any of the regulatory mitigating factors and they are irrelevant for that reason. Moreover, they are belied by the fact that Petitioner freely acknowledged not just his guilt but also his culpability in pleading guilty to criminal conspiracy to defraud Medicare. In pleading guilty he freely admitted his precise role in the conspiracy, including knowingly falsifying documentation for fraudulent physicians' services that defrauded Medicare of more than \$1.3 million. Denying culpability for those crimes at this point is not only irrelevant, it is obviously self-serving.

/s/

Steven T. Kessel
Administrative Law Judge