

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Sandra Ellen Miller
(OI File No. H-16-42599-9),

Petitioner,

v.

The Inspector General.

Docket No. C-17-380

Decision No. CR4909

Date: August 3, 2017

DECISION

Petitioner, Sandra Ellen Miller, was a registered nurse, licensed in the State of New York, who worked in a nursing facility. She intercepted and kept morphine that was prescribed for one of the facility's Medicaid beneficiaries. Petitioner Miller was caught and pled guilty to one count of "petit" larceny. Based on this, the Inspector General (IG) has excluded her for five years from participating in Medicare, Medicaid, and all federal health care programs, as authorized by section 1128(a)(1) of the Social Security Act (Act). Petitioner appeals the exclusion. For the reasons discussed below, I find that the IG properly excluded Petitioner Miller and that the statute mandates a minimum five-year exclusion.

Background

In a letter dated December 30, 2016, the IG notified Petitioner that she was excluded from participating in Medicare, Medicaid, and all federal health care programs for a period of five years because she was convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. The letter

explained that section 1128(a)(1) of the Act authorizes the exclusion. IG Exhibit (Ex.) 1. Petitioner timely requested review.

Each party submitted a written argument (IG Br.; P. Br.), and the IG submitted a reply. The IG submitted seven proposed exhibits (IG Exs. 1-7). Petitioner submitted twenty proposed exhibits (P. Exs. 1-20). In the absence of any objections, I admit into evidence IG Exs. 1-7 and P. Exs. 1-20.

The parties agree that an in-person hearing is not necessary. IG Br. at 7; P. Br. at 5.

Discussion

Petitioner must be excluded from program participation for a minimum of five years because she was convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program, within the meaning of section 1128(a)(1).¹

Under section 1128(a)(1) of the Act, the Secretary of Health and Human Services must exclude an individual who has been convicted under federal or state law of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. 42 C.F.R. § 1001.101(a).

The facts here are not in dispute. *See* P. Br. at 2. Petitioner Miller was a registered nurse working at a New York nursing facility. IG Ex. 2 at 1; IG Ex. 3 at 4 (Plea agreement ¶ 16); IG Ex. 7 (Kaganoff Decl. ¶ 3a). When a 300 milliliter bottle of liquid morphine sulfate was delivered to the facility, she accepted and signed for it. IG Ex. 2 at 2; IG Ex. 6 at 1 (Zablonski Decl. ¶ 3a). The drug had been prescribed for a facility resident who was a Medicaid beneficiary and was paid for by the New York Medicaid program. IG Ex. 6 at 2 (Zablonski Decl. ¶ 3b); IG Ex. 7 (Kaganoff Decl. ¶ 3c). Petitioner Miller stole the morphine, pouring some of it into a cup for herself. She refilled the bottle with water. IG Ex. 2 at 2; IG Ex. 3 at 4 (Plea agreement ¶ 16); IG Ex. 6 at 2 (Zablonski Decl. ¶¶ 3c, 3d).

The facility discovered the theft (and noticed that Petitioner Miller had, over time, received an additional 649 vials of morphine that were missing from the facility). Petitioner was charged with one felony count of criminal possession of a controlled substance and one misdemeanor count of petit larceny. IG Ex. 2. On April 28, 2015, she signed an agreement, pleading guilty to the misdemeanor charge. IG Ex. 3. On June 23,

¹ I make this one finding of fact/conclusion of law.

