

**Department of Health and Human Services  
DEPARTMENTAL APPEALS BOARD  
Appellate Division**

Delores L. Knight  
Request for Reconsideration of Decision No. 2945  
Ruling No. 2019-4  
August 8, 2019

**RULING ON REQUEST FOR RECONSIDERATION**

Petitioner Delores L. Knight, appearing *pro se*, asks the Board to reconsider its decision in the case of *Delores L. Knight*, DAB No. 2945 (2019). The Board affirmed an Administrative Law Judge's (ALJ's) decision upholding the Inspector General's (I.G.'s) exclusion of Petitioner from participating in Medicare, Medicaid, and all federal health care programs for 50 years. *Delores L. Knight*, DAB CR5227 (2019). The I.G. excluded Petitioner based on her federal court conviction for conspiracy to commit health care fraud, health care fraud, and money laundering. Petitioner argues that she has appealed the trial court's judgment and, consequently, there is no conviction to support her exclusion.

The Board may reopen and reconsider a decision for the purpose of correcting a clear error of law or fact. As discussed below, Petitioner's motion does not identify any such error. Accordingly, we deny Petitioner's request and affirm DAB No. 2945.

**Background**

Section 1128(a)(1) of the Social Security Act (Act)<sup>1</sup> requires the I.G. to exclude an individual from participating in all federal health care programs if that individual has been convicted of a criminal offense related to the delivery of an item or service under Medicare or under any state health care program.

In DAB No. 2945, the Board sustained the I.G.'s decision to exclude Petitioner pursuant to section 1128(a)(1) of the Act. The Board determined that the undisputed material facts established that Petitioner was indicted, tried, and convicted in a federal district court in Ohio of conspiracy to commit health care fraud and health care fraud in connection with

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<sup>1</sup> The current version of the Social Security Act can be found at [http://www.socialsecurity.gov/OP\\_Home/ssact/ssact.htm](http://www.socialsecurity.gov/OP_Home/ssact/ssact.htm). Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Also, a cross-reference table for the Act and the United States Code can be found at [https://www.ssa.gov/OP\\_Home/comp2/G-APP-H.html](https://www.ssa.gov/OP_Home/comp2/G-APP-H.html).

“a scheme in which claims were submitted to Medicare, Ohio Medicaid, and PASSPORT (a health care program administered by the State of Ohio) for services that were not furnished or were furnished by unqualified or unauthorized persons.” DAB No. 2945, at 10 (citing I.G. Ex. 4, at 6; I.G. Ex. 3, at 1, 5-7). In addition, “Petitioner was ordered to pay restitution to Medicare and ‘Medicaid/PASSPORT.’” *Id.* Thus, the Board determined, the nature of the criminal offenses for which Petitioner was convicted and the government entities to which she was ordered to pay restitution established “the required nexus or common sense connection between Petitioner’s conviction and the delivery of items or services under Medicare and state health care programs.” *Id.*

The Board also concluded that the 50-year period of Petitioner’s exclusion was not unreasonable based on: The loss of more than \$7 million to government health care programs caused by Petitioner’s crimes; the seven-year duration of her criminal activities; and the lengthy, 10-year term of her incarceration. DAB No. 2945, at 10-12.

### **Petitioner’s Request and I.G.’s Response**

In her request for reconsideration, Petitioner says that the Board erred when it based its decision on her federal court conviction because she has appealed the trial court’s judgment. The judgment of the trial court is thus suspended, Petitioner argues, and there is no conviction on which to base her exclusion. Petitioner included with her reconsideration request a letter addressed to her from the United States Court of Appeals for the Sixth Circuit advising Petitioner of her opportunity to file a brief in her appeal.

The I.G. submitted a motion for leave to respond to Petitioner’s reconsideration request and a brief opposing Petitioner’s request. We grant the I.G.’s motion and enter the I.G.’s response into the record.

The I.G. states that, for purposes of an exclusion based on section 1128(a)(1) of the Act, an individual is convicted of a criminal offense when a federal, state or local court has entered a judgment of conviction against the individual, regardless of whether there is an appeal pending. I.G. Response at 1 (citing 42 U.S.C. § 1320a-7(i)(1), Act § 1128(i)(1)). The I.G. also states that an individual excluded pursuant to section 1128(a)(1) may apply for reinstatement into federal health care programs when the individual’s conviction has been reversed or vacated on appeal. *Id.* (citing 42 C.F.R. § 1001.3005(a)(1)).

## Discussion

The Board may reopen and reconsider a decision involving an individual's exclusion from federal health care programs when a party promptly alleges a clear error of fact or law in the decision. See *Charles Brian Griffin*, Ruling Denying Request for Reconsideration of DAB No. 2733,<sup>2</sup> DAB Ruling No. 2017-3, at 2-3 (May 10, 2017) (42 C.F.R. Part 1005 does not expressly authorize the Board to reopen and reconsider a decision to exclude an individual from federal health care programs, but the Board has inherent authority to do so and applies the standard in 45 C.F.R. § 16.13) (citing *Mark B. Kabins, M.D.*, Ruling Denying Request for Reconsideration of DAB No. 2410,<sup>3</sup> DAB Ruling No. 2012-1, at 2-3 (Oct. 14, 2011)).<sup>4</sup>

Reopening a decision “is not a routine step” in the Board’s adjudication process. DAB Ruling No. 2012-1, at 3 (citation omitted). Rather, “it is the means for the parties and the Board to point out and correct any errors that make the decision clearly wrong.” *Id.* (citation omitted). A “motion for reconsideration is not a vehicle for an aggrieved party to repeat arguments already made and rejected.” *Id.* (citation and internal quotation marks omitted). In addition, “arguments, representations, and evidence that an appellant could have submitted with its appeal (but did not) are not considered allegations of errors of fact or law justifying reconsideration of a decision.” *Econ. Opportunity Comm’n of Nassau Cnty., Inc.*, Ruling Denying Request for Reconsideration of DAB No. 2731, DAB Ruling No. 2017-1, at 1 (Jan. 26, 2017).

Here, Petitioner’s request does not identify any clear error of law or fact in DAB No. 2945. Instead, Petitioner raises the new and legally erroneous argument that the federal court conviction underlying her exclusion is void because she has appealed the federal trial court’s judgment. Section 1128(i)(1) of the Act expressly provides, however, that an individual is considered “convicted” within the meaning of section 1128(a) “when a judgment of conviction has been entered against the individual or entity by a Federal, State, or local court, **regardless of whether there is an appeal pending[.]**” (Emphasis added.) Implementing the Act, the regulation governing Petitioner’s exclusion defines “convicted” to mean, among other things, a “judgment of conviction has been entered

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<sup>2</sup> *Charles Brian Griffin*, DAB No. 2733 (2016), *appeal dismissed*, *Griffin v. Office of the Inspector General*, No. 2:17-CV-00272, 2018 WL 1183214 (W.D. Pa. Mar. 7, 2018).

<sup>3</sup> *Mark B. Kabins, M.D.*, DAB No. 2410 (2011), *rev’d on other grounds*, *Kabins v. Sebelius*, No. 2:11-CV-01742, 2012 WL 4498295 (D. Nev. Sept. 28, 2012).

<sup>4</sup> Available at <https://www.hhs.gov/sites/default/files/board-rul-2017-3.pdf> and <https://www.hhs.gov/sites/default/files/static/dab/decisions/board-decisions/2011/rul2012-1.pdf>.

against an individual or entity by a Federal, State or local court, regardless of whether . . . [t]here is a post-trial motion or an appeal pending[.]” 42 C.F.R. § 1001.2. In sum, the fact that Petitioner has filed an appeal of the trial court’s judgment has no bearing on her exclusion.

Furthermore, 42 C.F.R. § 1001.3005(a)(1) provides that if the criminal conviction underlying an individual’s exclusion is overturned, the excluded individual “will be reinstated into Medicare, Medicaid and other Federal health care programs retroactive to the effective date of the exclusion when such exclusion is based on . . . [a] conviction that is reversed or vacated on appeal[.]” The Board has explained that “there would be no need for section 1001.3005(a)(1) if an exclusion could be stayed pending a federal court appeal.” *Rosa Velia Serrano*, DAB No. 2923, at 8 (2019) (citations and internal quotation marks omitted). Petitioner may therefore apply for “reinstatement should she prevail on her appeal of her conviction, if the appeal results in her no longer being convicted for purposes of the exclusions statute, but she is not entitled to have the Board reverse or stay her exclusion while her appeal is pending.” *Id.* (citing 42 C.F.R. Part 1001, subpart F).

## Conclusion

For the reasons explained above, we deny Petitioner’s request for reconsideration.

\_\_\_\_\_/s/  
Christopher S. Randolph

\_\_\_\_\_/s/  
Constance B. Tobias

\_\_\_\_\_/s/  
Leslie A. Sussan  
Presiding Board Member