

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Fiaz M. Afzal, M.D.,
(O.I. File No.: H-14-41654-9),

Petitioner,

v.

The Inspector General.

Docket No. C-14-2013
Decision No. CR3911

Date: May 28, 2015

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Fiaz Afzal, M.D., from participating in Medicare and other federally funded health care programs for a minimum of five years.

I. Background

Petitioner requested a hearing to challenge the I.G.'s determination to exclude him. The I.G. filed a brief and five exhibits, identified as I.G. Ex. 1 – I.G. Ex. 5, in support of his determination to exclude. Petitioner filed two briefs, one on April 6, 2015, and the other on April 21, 2015. Petitioner filed three documents that he intended to be considered as exhibits. I identify those documents as P. Ex. 1, P. Ex. 2, and P. Ex. 3. I receive the parties' exhibits into the record. Neither party offered testimony.

II. Issues, Findings of Fact and Conclusions of Law

A. Issues

The issues are whether: the I.G. is authorized to exclude Petitioner; and the five-year minimum exclusion imposed by the I.G. is mandatory.

B. Findings of Fact and Conclusions of Law

The I.G. asserts that section 1128(a)(1) of the Social Security Act (Act) mandates Petitioner's exclusion. This section requires the exclusion of any individual who is convicted of a criminal offense related to the delivery of an item or service under Medicare or a State Medicaid program.

On October 24, 2013 Petitioner pled guilty in a Louisiana State Court to multiple counts of Medicaid fraud. I.G. Ex. 2. He admitted to billing the Louisiana Medicaid program for numerous tests, immunizations, and injections that he never administered. I.G. Exs. 3, 4, 5. These facts are on their face sufficient to prove that Petitioner was convicted of a crime within the meaning of section 1128(a)(1) of the Act. The offenses of which he was convicted were not only related to a State Medicaid program, they consisted of ostensible Medicaid items or services and the Louisiana State Medicaid program was the target of Petitioner's fraud.

Petitioner raises a number of arguments in opposition to the I.G.'s exclusion determination. First, he contends that he was convicted of only 18 counts of Medicaid fraud rather than the 35 counts alleged by the I.G. It is unnecessary that I resolve this fact issue because conviction of even one count of Medicaid fraud would be sufficient to implicate the requirements of section 1128(a)(1).

Second, Petitioner makes various due process and constitutional arguments. Some of these seem to be directed at what happened in a State disciplinary proceeding that is, at best, collateral to the criminal case against Petitioner. In any event, Petitioner's arguments – even if they might be meritorious in some other forum – are irrelevant here. The requirement that Petitioner be excluded derives from his conviction in State court. Petitioner does not deny that he was convicted of Medicaid fraud, and he has not contended that his conviction has been reversed or vacated.

Petitioner asserts also that the I.G. has used a wrong middle initial ("M") to identify him. Accepting that as true, it changes nothing because Petitioner does not deny that he is the Fiaz Afzal who was convicted of Medicaid fraud.

