

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Candia Alea Tolbert,
(OI File No. H-16-41867-9),

Petitioner,

v.

The Inspector General.

Docket No. C-17-61

Decision No. CR4809

Date: March 22, 2017

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Candia Alea Tolbert, from participating in Medicare, State Medicaid programs, and all other federally funded health care programs for a minimum of five years.

I. Background

The I.G. determined to exclude Petitioner pursuant to the authority of section 1128(a)(1) of the Social Security Act (Act). This section mandates the exclusion of any individual who is convicted of a criminal offense relating to the delivery of an item or service under Medicare or a State health care program (State Medicaid program). The I.G. excluded Petitioner for a minimum of five years. That is the minimum exclusion period mandated for exclusions imposed pursuant to section 1128(a)(1). Act § 1128(c)(3)(B).

The I.G. filed a brief, a reply brief, and seven proposed exhibits, identified as I.G. Ex. 1-I.G. Ex. 7, in support of his determination to exclude Petitioner. Petitioner filed a brief and six proposed exhibits, identified as P. Ex. 1-P. Ex. 6. Petitioner filed an additional document, identified as a “CMS billing form.” I designate that document as P. Ex. 7. I receive all of the parties’ proposed exhibits into the record.

II. Issues, Findings of Fact and Conclusions of Law

A. Issue

The only issue is whether Petitioner was convicted of a criminal offense as is defined by section 1128(a)(1) of the Act.

B. Findings of Fact and Conclusions of Law

The undisputed facts establish that on March 10, 2016, Petitioner pled no contest in a Nevada State court to a charge of intentionally failing to maintain adequate records. I.G. Ex. 5 at 2; I.G. Ex. 6. Specifically, Petitioner pled that she:

submitted claims to and/or received payments for goods or services from the State Plan for Medicaid on behalf of Medicaid Recipients, and failed to maintain accurate documentation, including but not limited to progress notes, concerning the services actually provided to Medicaid Recipients . . . knowing such services were not provided or did not disclose fully the claims and/or good[s] or services and/or payments received and/or income and expenditures of rates, for a period of 5 years after the [sic] each date the payments were received

I.G. Ex. 5 at 2. The court accepted Petitioner's plea and entered a judgment against her. I.G. Ex. 7.

A "no contest" plea that is accepted by a court is an adjudication of guilt under the Act. Act § 1128(i)(3). Therefore, Petitioner was convicted of a criminal offense.

Essentially, Petitioner's crime consists of a criminal failure to maintain records sufficient to support claims for items or services allegedly provided to Medicaid. It plainly relates to the delivery of Medicaid items or services because the crime could not have occurred but for the claimed items or services. Petitioner's crime of failing to maintain adequate records is inextricably bound up with and linked to Medicaid items or services.

Petitioner argues that she never directly delivered Medicaid items or services as a health care provider. That is not a legitimate defense. Section 1128(a)(1) is not limited to crimes committed by individuals who actually provide Medicare or State Medicaid items or services. The section is much broader in its reach, applying to any individual who commits a crime that *relates to* the delivery of Medicare or Medicaid items or services. Petitioner's crime plainly was such an offense.

Petitioner also asserts that if crimes occurred, other individuals committed them, suggesting that the true perpetrators were staff members and a contractor. This argument fails for two reasons. First, Petitioner – and not others – was convicted of the crime that is the basis for the I.G.'s exclusion determination. Second, in asserting that others may have been responsible for the crime, Petitioner is effectively asserting that she is not guilty of a criminal offense. She is, in other words, attempting to litigate here, and to attack collaterally, the basis for her conviction. That is not a legitimate defense to the I.G.'s exclusion determination. 42 C.F.R. § 1001.2007(d).

/s/

Steven T. Kessel
Administrative Law Judge