

Department of Health And Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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In the Case of:	)	
	)	
Cheryl K. Edlin,	)	Date: March 21, 2007
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-06-634
	)	Decision No. CR1580
The Inspector General.	)	
_____	)	

**DECISION**

This case is before me pursuant to a request for hearing dated August 14, 2006, by Cheryl K. Edlin, Petitioner.

**I. BACKGROUND**

By letter dated June 30, 2006, the Inspector General (I.G.) notified Petitioner that she was being excluded from participation in the Medicare, Medicaid, and all federal health care programs as defined in section 1128B(f) of the Social Security Act (Act) for a period of five years. The I.G. informed Petitioner that her exclusion was imposed under section 1128(a)(1) of the Act, due to her conviction in the Superior Court of Washington, County of Spokane, of a criminal offense (as defined in section 1128(i) of the Act) related to the delivery of an item or service under the Medicare or a State health care program, including the performance of management or administrative services relating to the delivery of items or services, under any such program.

On October 2, 2006, I convened a telephone prehearing conference during which Petitioner stated that her goal was to obtain a certification as a nurse aide (CNA) and that she wished to pursue an appeal of her CNA license denial with the State of Washington.

She added that, as a consequence, she would be filing a withdrawal of her request for hearing in this matter. However, Petitioner sent a letter dated October 5, 2006, stating that she would not withdraw her request for hearing.

Inasmuch as there are no material issues of fact in controversy in this case, and the matter may be resolved through summary disposition without an in-person hearing, on October 11, 2006, I issued an Order establishing briefing deadlines. Pursuant to that Order, on November 9, 2006, the I.G. filed a brief, accompanied by six proposed exhibits. On January 23, 2007, Petitioner submitted four exhibits labeled 24 through 27, but provided no brief in response. In the absence of objection, I admit into evidence I.G. exhibits (I.G. Exs.) 1-6, and Petitioner exhibits (P. Exs.) 24-27.

It is my decision to sustain the determination of the I.G. to exclude Petitioner from participation in the Medicare, Medicaid, and all federal health care programs, for a period of five years. I base my decision on the documentary evidence, applicable law, regulations, and the arguments of the parties. It is my finding that Petitioner was convicted of a criminal offense related to the delivery of an item or service under a State health care program.

## **II. ISSUE**

The only issue in this case is whether the I.G. has a basis upon which to exclude Petitioner from participation in Medicare, Medicaid, and all federal health care programs pursuant to section 1128(a)(1) of the Act.

## **III. APPLICABLE LAW AND REGULATIONS**

Section 1128(a)(1) of the Act authorizes the Secretary of Health and Human Services (Secretary) to exclude from participation in any federal health care program (as defined in section 1128B(f) of the Act), any individual convicted of a criminal offense relating to the delivery of a health care item or service.

An exclusion under section 1128(a)(1) of the Act must be for a minimum period of five years. Act § 1128(c)(3)(B).

Pursuant to 42 C.F.R. § 1001.2007, an individual or entity excluded under section 1128(a)(1) of the Act may file a request for a hearing before an administrative law judge.

#### IV. FINDINGS AND DISCUSSION

The findings of fact and conclusions of law (Findings) noted below, in bold face, are followed by a discussion of each Finding.

**A. Petitioner's conviction of a criminal offense related to the delivery of an item or service under the Medicaid program justifies her exclusion by the I.G. from participation in the Medicare, Medicaid, and all other federal health care programs.**

On March 4, 2004, Patricia Allen an investigator with the Medicaid Fraud Control Unit (MFCU), Office of the Attorney General, State of Washington, filed a report of an investigation into the operations of Inland Empire Denture/Dental Clinic (IEDC) and A New You Denture Clinic (ANYDC). I.G. Ex. 3. She determined that Petitioner provided denturist procedures to Medicaid beneficiaries at IEDC although she was not licensed to perform such procedures and subsequently submitted claims for those procedures to the Washington Department of Social Health Services (DSHS). The DSHS is the agency in the State of Washington that runs the Medicaid Program. *Id.* at 3.

On March 8, 2004, a criminal information was filed against Petitioner in the Superior Court of Washington, County of Spokane, for four counts of Theft in the First Degree, two counts of Theft in the Second Degree, and three counts of Medicaid False Statements. I.G. Ex. 2. She was also charged as an accomplice to the above mentioned offenses. *Id.*

On August 24, 2005, a jury found Petitioner guilty of all three Medicaid False Statement counts. I. G. Ex. 5. These counts alleged that during the period from approximately August 1, 1999 to November 30, 2001, Petitioner knowingly made or caused to be made false statements of material fact in applications for payment for services allegedly provided to Medicaid beneficiaries, in violation of Washington's Medicaid False Statement law (WASH. REV. CODE § 74.09.230 (1979), a class C felony). I.G. Ex. 2, at 5-7.

The Superior Court of Washington, County of Spokane, entered a felony judgment against Petitioner and sentenced her on October 10, 2005. I.G. Ex. 6. Among other things, the court sentenced Petitioner to 90 days partial confinement and 12 months of community custody. I.G. Ex. 6. at 7-8. The court also ordered Petitioner to pay a fine in the amount of \$ 3,000. *Id.* at 5.

Petitioner does not dispute that she has been convicted of a criminal offense related to the delivery of an item or service under the Medicaid program. The voluminous documentation that she submitted (Exs. 24-27) has no bearing on the issue of whether the I.G. had a basis to exclude her from participation in the Medicare, Medicaid, and all other federal health care programs. Additionally, the vague arguments of violation of her constitutional due process and equal protection rights, and the right to have access to documents pursuant to the Freedom of Information Act are matters beyond the scope of my jurisdiction.

Petitioner also appears to be challenging her conviction in the Washington State Superior court. However, the exclusion regulations provide that when an exclusion is based on the existence of an underlying conviction from a state or federal court, the conviction is not reviewable, and the excluded individual may not collaterally attack the conviction in the administrative proceedings before the administrative law judge. 42 C.F.R. § 1001.2007(d).

The threshold question to be decided is whether Petitioner was convicted of a criminal offense (as defined in section 1128(i) of the Act) related to the delivery of an item or service under the Medicaid program.

The Act provides that, for purposes of an exclusion under section 1128(a)(1), an individual is considered “convicted” of a criminal offense –

- (1) 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 or whether the judgment or conviction or other record relating to criminal conduct has been expunged;
- (2) when there has been a finding of guilt against the individual or entity by a Federal, State, or local court;
- (3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court; or
- (4) when the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

Act § 1128(i).

In this case, Petitioner entered a plea of not guilty, and a jury returned a verdict of guilty as to three felony counts of Medicaid False Statements. I.G. Ex. 6, at 1. She does not dispute that she has been convicted of a criminal offense; rather, she fails to accept her conviction. Thus, it is unequivocal that the I.G. has a basis to exclude her from participation in the Medicare, Medicaid, and all other federal health care programs.

**B. Petitioner's exclusion for a period of five years is the mandatory minimum period as a matter of law.**

An exclusion under section 1128(a)(1) of the Act must be for a minimum mandatory period of five years. Act § 1128(c)(3)(B). When the I.G. imposes an exclusion for the mandatory five-year period, the reasonableness of the length of the exclusion is not an issue. 42 C.F.R. § 1001.2007(a)(2).

**V. CONCLUSION**

Sections 1128(a)(1) and 1128(c)(3)(B) of the Act mandate that Petitioner be excluded from the Medicare, Medicaid, and all other federal health care programs for a period of at least five years, because of her conviction of a criminal offense related to the delivery of an item or service under Medicaid, a State health care program.

/s/

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Jose A. Anglada  
Administrative Law Judge