Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Twin Cities Care Services, LLC
(OI File No. H-17-40622-9),

Petitioner,

v.

The Inspector General.

Docket No. C-17-976

Decision No. CR5027

Date: February 16, 2018

DECISION

Petitioner, Twin Cities Care Services, LLC (Twin Cities), was enrolled as a Personal Care Provider Organization (PCPO) in the Minnesota Medicaid program. Twin Cities was convicted on four felony counts of theft of public funds by false representation. Based on this, the Inspector General (I.G.) has excluded Twin Cities 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). Twin Cities appeals the exclusion. For the reasons discussed below, I find that the I.G. properly excluded Twin Cities and that the statute mandates a minimum five-year exclusion.

Background

In a letter dated May 31, 2017, the I.G. notified Twin Cities that it was excluded from participating in Medicare, Medicaid, and all federal health care programs for a period of five years because it had been convicted of a criminal offense related to the delivery of an item or service under 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. I.G. Ex. 1. The letter explained that section 1128(a)(1) of the Act authorizes the exclusion. *Id.* Twin Cities timely requested review. I convened a

telephone prehearing conference and issued an Order and Schedule for Filing Briefs and Documentary Evidence.

Pursuant to that order, the I.G. submitted a written argument (I.G. Br.) and four proposed exhibits (I.G. Exs. 1-4). Twin Cities filed a response (P. Br.) and three proposed exhibits (P. Exs. 1-3). The I.G. filed a reply to Twin Cities' response (I.G. Reply). Neither party objected to the proposed exhibits offered by the opposing party. Therefore, in the absence of objection, I admit into evidence I.G. Exs. 1-4 and P. Exs. 1-3.

The parties agree that this case may be resolved without an in-person hearing. I.G. Br. at 4; P. Br. at 2; *see also* Order and Schedule for Filing Briefs and Documentary Evidence ¶ 6. I therefore decide this case based on the written record.

Discussion

1. Twin Cities is subject to a mandatory exclusion from program participation for a minimum period of five years because it 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) of the Act.[1]

Under section 1128(a)(1) of the Act, the Secretary of Health and Human Services must exclude an individual or entity that 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).

As a PCPO, Twin Cities coordinated the provision of personal care attendant services to Medicaid beneficiaries. I.G. Ex. 2. Twin Cities overbilled the Minnesota Medicaid program by claiming reimbursement for the number of hours of service beneficiaries were entitled to receive, rather than billing for the number of hours its employees actually provided. I.G. Ex. 2 at 4-5. Following a bench trial, Twin Cities was found guilty of four felony counts of Theft by False Representation (Public Funds) in violation of Minn. Stat. § 609.52. I.G. Ex. 2 at 9.

The I.G. argues that these facts establish that Twin Cities was "convicted" of a criminal offense as that term is defined in section 1128(i) of the Act, and that the conviction was related to the delivery of items or services under the Minnesota Medicaid program within the meaning of section 1128(a)(1) of the Act. I.G. Br. at 2-3. Twin Cities does not dispute that it was convicted and that its conviction is program-related. P. Br. at 1. I therefore conclude that Twin Cities was convicted of a program-related crime for which section 1128(a)(1) mandates exclusion. An exclusion brought under section 1128(a)(1)

[1] My findings of fact/conclusions of law appear as numbered headings in bold italic type.

must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

While it acknowledges that it was convicted of a crime for which exclusion is required, Twin Cities nevertheless argues that I should overturn the exclusion because Twin Cities was no longer a functioning corporate entity at the time the exclusion was imposed. As I explain in the following section of this decision, Twin Cities' argument is without merit.

2. Twin Cities' status as a dissolved corporation is not a bar to exclusion.

Twin Cities argues that it cannot be excluded because it has been dissolved. P. Br. at 3. I take Twin Cities' argument to be that, because it is dissolved, it is no longer an "entity" subject to exclusion under section 1128(a)(1) of the Act. Twin Cities cites to *Oklahoma Natural Gas Co. v. Oklahoma*, 273 U.S. 257 (1927), among other cases, for the proposition that dissolution of a corporation is analogous to the death of a natural person and, for that reason, "the dissolution of a corporation abates all litigation in which the corporation is appearing either as plaintiff or defendant." P. Br. at 3, citing 273 U.S. at 259. Twin Cities' argument is based on an incomplete reading of the *Oklahoma Natural Gas Co.* decision.

In arguing that, as a dissolved corporation, it cannot sue or be sued, Twin Cities overlooks the Supreme Court's explanation that, while common law held that a dissolved corporation ceased to exist, the question before the Court turned on the law of the state of incorporation. *Oklahoma Natural Gas Co.*, 273 U.S. at 260. Significantly, the Court refused to permit a successor corporation to appear as a substitute party for the dissolved corporation. *Id.* Rather, the Court reasoned that, under Oklahoma law, the dissolved corporation "is still in being, and continues to be a party before this Court." *Id.*

Thus, as the I.G. argues in his reply, it is appropriate to look to the law of Minnesota, under which Twin Cities was incorporated, to determine whether Twin Cities completely ceased to exist once it was dissolved as a corporation. *See* I.G. Reply at 2. The I.G. cites Minn. Stat. § 322B.866 for the proposition that Minnesota law permits a dissolved corporation to "assert or defend any claim by or against" the company. I.G. Reply at 2. However, as the I.G. indicates, section 322B.866 has been repealed. *Id.* n.1. Nevertheless, what appears to be the statute currently in force, at Minn. Stat. § 322C.0702, contains substantially similar provisions.[2] Section 322C.0702 provides that a limited liability company continues after dissolution "only for the purposes of winding

[2] The I.G. argues that Minn. Stat. § 322B.866 is applicable in this case, because the provision was still in force on the date Twin Cities was excluded. I.G. Reply at 2 n.1. It appears that Minn. Stat. § 322C.0702 was effective August 15, 2015. *See* 2014 Minn. Laws ch. 157, *available at* https://www.revisor.mn.gov/laws/?id=157&year=2014&type=0. Therefore, it seems likely that section 322C.702 controls. However, I need not decide this issue, as the result is the same under either statute.

up." Minn. Stat. § 322C.0702, Subdivision 1. The statute goes on to specify actions a dissolved company must and may take as part of the winding up process. Minn. Stat. § 322C.0702, Subdivision 2. Under this subdivision, a dissolved limited liability company may "prosecute and defend actions and proceedings, whether civil, criminal, or administrative" among other permitted winding up activities. *Id.* Therefore, under Minnesota law, Twin Cities' corporate identity continues after dissolution to the extent necessary to defend administrative actions against it. As such, dissolution does not serve to insulate Twin Cities from the exclusion provisions of section 1128(a) of the Act.

Nor does Twin Cities' argument regarding the I.G.'s treatment of other dissolved corporations provide a basis for disturbing Twin Cities' exclusion. To the contrary, I find irrelevant Twin Cities' attempt to cast doubt on its exclusion by suggesting that the I.G. has refrained from excluding other entities based on their status as dissolved corporations. *See* P. Br. at 4-7. Whatever actions the I.G. may have taken or not taken with regard to other entities, those actions are not factors I may consider in deciding whether or not the I.G. properly excluded Twin Cities. Even if the I.G. decided, in some other set of circumstances, not to exclude a particular entity that was a dissolved corporation, that fact has no bearing on this case. The facts of other cases involving other entities are not before me.

The issue I must decide is expressly limited by 42 C.F.R. § 1001.2007(a) to whether the I.G. has a basis for excluding Twin Cities. As I have explained in the previous section of this decision, Twin Cities agrees that it was convicted of a criminal offense for which section 1128(a)(1) mandates exclusion. Therefore, the I.G. had a legal basis to exclude Twin Cities.

Conclusion

For the reasons explained above, I conclude that the I.G. properly excluded Twin Cities from participation in Medicare, Medicaid, and all federal health care programs, and I sustain the five-year exclusion.

/s/
Leslie A. Weyn
Administrative Law Judge