

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Departmental Appeals Board

Civil Remedies Division

In the Case of:)	
Napoleon S. Maminta, M.D.,)	DATE: JUL 18, 1989
Petitioner,)	
- v. -)	Docket No. C-81
The Inspector General.)	DECISION CR 33
)	

ORDER ENTERING SUMMARY DECISION
IN FAVOR OF INSPECTOR GENERAL AND DISMISSING
PETITIONER'S REQUEST FOR HEARING AS TO ISSUE OF
REASONABLENESS OF LENGTH OF EXCLUSION

On October 26, 1988, the Inspector General (the I.G.) notified Petitioner that he was being excluded from participation in Medicare and State health care programs for ten years.¹ The I.G. told Petitioner that the exclusions were mandated by section 1128(a)(1) of the Social Security Act, 42 U.S.C. 1320a-7(a)(1), and resulted from Petitioner's conviction in federal court of a criminal offense related to the delivery of an item or service under the Medicare program. The I.G. stated that the law required exclusions of at least five years for those parties excluded pursuant to 42 U.S.C. 1320a-7(a). The I.G. advised Petitioner that, in light of circumstances enumerated in the notice, he was being excluded for ten years.

Petitioner timely requested a hearing. His request contested the I.G.'s determination that Petitioner's conviction was related to the delivery of an item or

¹ "State health care program" is defined by section 1128(h) of the Social Security Act, 42 U.S.C. 1320a-7(h), to include any State Plan approved under Title XIX of the Act (such as Medicaid).

service under the Medicare program. Petitioner also contested the length of the exclusions imposed on him.

The I.G. filed a motion, which among other things, requested that I rule in the I.G.'s favor on the issue of whether Petitioner was convicted of an offense related to the delivery of an item or service under the Medicare program, within the meaning of 42 U.S.C. 1320a-7(a)(1). This motion was opposed by Petitioner. On May 5, 1989, I issued a Ruling in this case which decided one of the issues in this case in favor of the I.G.² I ruled that, inasmuch as Petitioner had been convicted of an offense related to the delivery of an item or service under the Medicare program, the law mandated his exclusion from Medicare and State health care programs for a minimum of five years. I also ruled that, although the law required that Petitioner be excluded for a minimum of five years, Petitioner was entitled to a hearing on the issue of whether the ten-year exclusions imposed and directed against him by the I.G. are reasonable.

Shortly after issuing my Ruling, I conducted a prehearing conference to establish a schedule for holding a hearing on the issue of the reasonableness of the ten year exclusions imposed and directed by the I.G. Petitioner advised me at this conference that he might request a dismissal as to the issue of the reasonableness of the length of the exclusions imposed on him so that he could appeal as a final decision that portion of my May 5, 1989, Ruling which held that Petitioner had been convicted of an offense related to the delivery of an item or service under the Medicare program.³

On June 2, 1989, I issued a Prehearing Order which provided that if Petitioner requested a dismissal as to the issue of the reasonableness of the length of the exclusion, and I accepted that request, I would issue a final decision: making appropriate findings of fact and conclusions of law; incorporating my May 5 Ruling into

² The Ruling is attached to this Order.

³ I made it clear to Petitioner at this conference my view that if he dismissed his hearing request as to the reasonableness of the ten-year exclusions imposed on him, and I entered a decision in favor of the I.G. on the issue of whether Petitioner had been properly excluded pursuant to the mandatory exclusion provisions of 42 U.S.C. 1320a-7(a)(1), the only appealable issue would be the issue addressed in my decision.

the final decision; and entering an order summarily disposing of the issue of the reasonableness of the length of the exclusion on the basis that the Petitioner was no longer requesting a hearing on that issue.

On June 27, 1989, Petitioner filed a request that I issue an Order dismissing his request for hearing with regard to the issue of the reasonableness of the length of his Medicare exclusion. His attorney later clarified the request to apply to both exclusions. The I.G. has not opposed Petitioner's request.

In light of the foregoing, I enter the following Decision and Order:

A. I enter summary decision in favor of the I.G. on the issue of whether Petitioner was convicted of an offense related to the delivery of an item or service under the Medicare program. I conclude that 42 U.S.C. 1320a-7a(1) requires the I.G. to exclude Petitioner from participation in the Medicare program and direct that he be excluded from participation in State health care programs, for at least five years. In connection with this decision, I make the following Findings of Fact and Conclusions of Law:

1. Petitioner is a doctor of medicine. P.'s Memorandum at 7.⁴

2. Petitioner received an envelope in February, 1987, addressed to a laboratory he operated and sent by a Medicare carrier, which contained documents, including a Medicare reimbursement check. P. Ex. 1; I.G. Ex. 6; P.'s Memorandum at 7.

⁴ The parties' exhibits and memoranda submitted in connection with the I.G.'s motion for partial summary disposition will be cited as follows:

Petitioner's Exhibits	P. Ex. (number)
Inspector General's Exhibits	I.G. Ex. (number)
Inspector General's Memorandum	I.G.'s Memorandum at (page)
Petitioner's Memorandum	P.'s Memorandum at (page)
Inspector General's Response	I.G.'s Response at (page)
Petitioner's Rebuttal	P.'s Rebuttal at (page)

3. The reimbursement check, in the amount of \$8,495.92, was payable to a party other than Petitioner or an entity he operated, and was sent to him by mistake. I.G. Ex. 6; P.'s Memorandum at 7.

4. Petitioner endorsed the check with the name of the payee and his own name, and deposited the proceeds in his own bank account. I.G. Ex. 6; P.'s Memorandum at 7.

5. On May 20, 1988 Petitioner pleaded guilty to a charge of taking a check from an authorized depository for mail before it had been delivered to the addressee, in violation of 18 U.S.C. 1702.⁵ I.G. Ex. 4; P.'s Memorandum at 7. His sentence included three years' probation. I.G. Ex. 4.

6. The offense to which Petitioner pleaded guilty is a criminal offense related to the delivery of an item or service under the Medicare program. 42 U.S.C. 1320a-7(a)(1).

7. Petitioner's guilty plea is a conviction as defined by 42 U.S.C. 1320a-7(i).

8. The minimum mandatory exclusion period is five years for an individual who has been excluded based on conviction of a criminal offense related to the delivery of an item or service under Medicare. 42 U.S.C. 1320a-7(c)(3)(B).

9. The Secretary delegated to the I.G. the duty to exclude from participation in Medicare, and to direct the exclusion from participation in State health care programs, persons whose exclusion is required or permitted under 42 U.S.C. 1320a-7. 48 Fed. Reg. 21662 (May 13, 1983).

10. The I.G. excluded Petitioner from participation in the Medicare program, and directed that Petitioner be excluded from participation in State health care programs, for ten years.

⁵ The indictment charged Petitioner with additional offenses, and Petitioner's plea included a guilty plea to another count of the indictment. I.G. Ex. 4, 5. Neither party contends that this additional conviction is relevant to the issues addressed by the I.G.'s motion.

11. The law requires that Petitioner be excluded from participation in Medicare and State health care programs for at least five years. 42 U.S.C. 1320a-7a(1); (c)(3)(B).

I adopt as my rationale for this decision that part of my May 5, 1989 Ruling which addresses the merits of the I.G.'s motion for partial summary disposition (at pages 2-6).

B. I Order that Petitioner's request for hearing on the issue of the reasonableness of the ten-year exclusions from participation in Medicare and State health care programs imposed and directed against him be dismissed. The ten-year exclusions remain in effect.

/s/

Steven T. Kessel
Administrative Law Judge