Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	)	
	)	
Mohammad H. Azarpira, D.D.S.,	)	DATE: April 28, 1995
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-93-085
	)	Decision No. CR372
The Inspector General.	)	
	)	

DECISION

By letter dated April 23, 1993, the Inspector General (I.G.) of the United States Department of Health and Human Services (DHHS) notified Petitioner Mohammad H. Azarpira[1] that, as a result of his failure to repay his Health Education Assistance Loans (HEALs) or to enter into an agreement to repay his HEALs, he was being excluded under sections 1128(b)(14) [42 U.S.C. § 1320a-7(b)(14)] and 1892 [42 U.S.C. § 1395ccc] of the Social Security Act (Act)[2] from participation in Medicare and in

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[1] Petitioner is known also as M. Hassan Azarpira and Hassan Azarpira. Petitioner's brief (P. Br.) at page 10; Petitioner's exhibit (P. Ex.) 5.

[2] This Decision does not address Petitioner's exclusion under section 1892 of the Act, for two reasons. First, it is not clear that I have the authority to review an exclusion imposed pursuant to section 1892. See I.G.'s brief (I.G. Br.) at page 3; James F. Cleary, D.D.S., DAB CR252 (1993); Charles K. Angelo, Jr., M.D., DAB CR290 (1993); and Joseph Marcel-Saint Louis, M.D., DAB CR320 (1994). Second, for purposes of my decision in this case, the issue is moot, because I have found Petitioner's exclusion to be authorized under section 1128(b)(14) of the Act.

the State health care programs enumerated in section 1128(h) of the Act [42 U.S.C. § 1320a-7(h)].[3]

By letter dated June 18, 1993, Petitioner timely requested a hearing before an administrative law judge (ALJ).[4] During a telephone prehearing conference held on July 28, 1993, Petitioner stipulated that: 1) he had received a HEAL; 2) he had not repaid his HEAL; and 3) he was in default on his HEAL. August 2, 1993 Prehearing Order. Petitioner requested, however, that Judge Leahy hear the issue of whether, prior to his exclusion, Petitioner was given all reasonable administrative opportunities to repay his HEAL. Id. During this conference also, the parties agreed the case could be heard via an exchange of written briefs and documentary evidence in lieu of an in-person hearing.[5] Id.

Upon careful consideration of the record before me, I find that there exist no facts of decisional significance genuinely in dispute and that the only matters to be decided are the legal implications of the undisputed material facts. I find that DHHS has taken all reasonable steps available to secure Petitioner's repayment of his HEALs. Consequently, it was reasonable for the I.G. to exclude Petitioner from participation in

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[3] The State health care programs from which Petitioner has been excluded include Medicaid, the Maternal and Child Health Services Block Grant under Title V of the Act, and the Block Grants to States for Social Services under Title XX of the Act. Unless otherwise indicated, hereafter I refer to the State health care programs from which Petitioner has been excluded as "Medicaid."

[4] This case was assigned originally to Administrative Law Judge Mimi Hwang Leahy. The case was reassigned to me on April 14, 1995.

[5] In this Decision, I cite the I.G.'s motion for summary disposition and accompanying brief as I.G. Br. at (page). I cite Petitioner's response as P. Br. at (page). I cite the I.G.'s reply to Petitioner's response as I.G. R. Br. at (page).

The I.G. submitted 28 exhibits (I.G. Exs. 1-28) with her motion for summary disposition. Petitioner submitted seven exhibits (P. Exs. 1-7) with his opposition. The parties did not object to the admission of each other's proposed exhibits. Thus, I am admitting I.G. Exs. 1-28 and P. Exs. 1-7 into evidence.

Medicare and to direct his exclusion from participation in Medicaid. Social Security Act, section 1128(b)(14) [42 U.S.C. § 1320a-7(b)(14)]. Further, I conclude that the period of exclusion directed and imposed against Petitioner by the I.G. is reasonable. 42 C.F.R. § 1001.1501.

APPLICABLE LAW

Section 1128(b)(14) of the Act [42 U.S.C. § 1320a-7(b)(14)] provides in pertinent part as follows:

(b) PERMISSIVE EXCLUSION.-The Secretary [of DHHS] may exclude the following individuals and entities from participation in any program under title XVIII [Medicare] and may direct that the following individuals and entities be excluded from participation in any State health care program [defined in subsection (h) of this section as including, but not limited to, Medicaid]:

> (14) DEFAULT ON HEALTH EDUCATION LOAN OR SCHOLARSHIP OBLIGATIONS.-Any individual who the Secretary determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans . . .

Social Security Act, section 1128(b)(14) [42 U.S.C. § 1320a-7(b)(14)].

ISSUES

The only issue in this case is whether, prior to his exclusion, Petitioner was given all reasonable administrative opportunities to repay his HEALs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. While studying dentistry, Petitioner applied for and received the following HEALs:

$10,000.00	1984/February	I.G. Exs. 3, 25
3,000.00	1984/April	I.G. Exs. 4, 25
2,500.00	1985/January	I.G. Exs. 5, 6, 25
8,865.00	1985/March	I.G. Exs. 7, 8, 25
4,000.00	1985/June	I.G. Exs. 9, 10, 25

11,750.00	1985/November	I.G. Exs. 11, 12, 25
15,000.00	1986/June	I.G. Exs. 13, 14, 25

2. HEALs are insured by the United States Government. I.G. Ex. 25.

3. Due to Petitioner's failure to repay his seven HEAL notes as promised, judgment in the amount of $90,039.93 was entered against him in favor of the Student Loan Marketing Association (SLMA), which had purchased his notes. The judgment was entered on October 2, 1990, in the United States District Court, Northern District of Illinois, Eastern Division, Case No. 90 C 3248. I.G. Exs. 17, 18.

4. SLMA assigned its judgment to the United States Government and submitted a claim to the Health Resources and Services Administration (HRSA) of the Public Health Service (PHS) of DHHS for the amount due. I.G. Exs. 20, 21, 25, 26.

5. By letter dated January 30, 1991, Petitioner was notified by HRSA that $92,023.00 was due in payment of his HEALs as of January 18, 1991. HRSA instructed Petitioner on how, if he was unable to remit the total due within 30 days, he could request entry into a repayment agreement. I.G. Ex. 22.

6. Petitioner failed to make any payment in response and failed to respond to the instructions on how to enter into a repayment agreement. I.G. Ex. 25.

7. By letter dated April 4, 1991, Petitioner was notified by HRSA that $93,453.42 was due in payment of his HEALs as of March 31, 1991. Petitioner was advised that his case would be referred to the United States Attorney for enforced collection if he failed to indicate within 15 days how he intended to resolve his delinquent indebtedness. I.G. Ex. 23.

8. Petitioner failed to make any payment in response and failed to respond in writing to this letter. I.G. Ex. 25.

9. By letter dated July 17, 1991, Petitioner was notified by HRSA that $95,261.31 was due in payment of his HEALs as of July 17, 1991. Petitioner was advised again that his case would be referred to the United States Attorney for enforced collection if he failed to indicate within 15 days how he intended to resolve his delinquent indebtedness. I.G. Ex. 24.

10. Petitioner failed to make any payment in response and failed to respond in writing to this letter. I.G. Ex. 25.

11. Petitioner was notified by HRSA, in a document dated November 10, 1992 and entitled Certificate of Indebtedness, that he owed $105,050.22 in payment of his HEALs as of October 31, 1992. HRSA noted that Petitioner had failed to make any payments and had failed to respond to any of the instructions on how to enter into a repayment agreement. As a result, HRSA notified Petitioner that his debt had been referred to the Department of Justice for enforcement of the judgment entered against him. I.G. Ex. 25.

12. Petitioner failed to make any payment in response to HRSA's notice and failed to respond to the instructions on how to enter into a repayment agreement. I.G. Br. at 7.

13. By letter dated December 14, 1992, HRSA again sent Petitioner instructions on how to establish a repayment agreement. HRSA advised Petitioner that, as an alternative, Petitioner could establish an offset agreement by which his Medicare and/or Medicaid reimbursements would be applied to his account. HRSA further advised Petitioner as follows:

> If you are unwilling or unable to negotiate an offset or repayment agreement within 60 days, we will immediately refer your case to the Office of the Inspector General (OIG) for initiation of an exclusion from participation in the Medicare program . . . [and] any State health care program, including Medicaid . . . until your entire debt has been repaid.

I.G. Ex. 27.

14. Petitioner failed to make any payment in response, failed to respond to the instructions on how to enter into a repayment agreement, and failed to provide the information and signed statement necessary to establish an offset agreement. I.G. Br. at 8.

15. Petitioner failed to make any payment on his HEALs until June 1993, after his exclusion had become effective. On June 30, 1993, Petitioner made a $50.00 payment through the U.S. Attorney's office. P. Ex. 4.

16. The repayment agreement Petitioner entered into with the U.S. Attorney's office in the summer of 1993, after

his exclusion had become effective, does not pay even the interest that accrues each month on his HEALs. I.G. Br. at 9, footnote 4; I.G. R. Br. at 1-2; P. Ex. 4.

17. Petitioner remains in default on repayment of his HEALs, and he now owes a balance in excess of $112,000.00. I.G. R. Br. at 2.

18. The Secretary has taken all reasonable steps available to secure repayment of Petitioner's HEALs. 42 C.F.R. § 1001.1501(a)(2); Finding 13.

19. The Secretary has delegated to the I.G. the authority to exclude individuals and entities from participation in Medicare and to direct exclusion from participation in Medicaid. 53 Fed. Reg. 12993 (1988); see also 1987 U.S.C.C.A.N. 682, 695.

20. The period of exclusion which the I.G. imposed and directed against Petitioner is reasonable. 42 C.F.R. § 1001.1501.

DISCUSSION

I. The I.G. has the authority to exclude Petitioner from participating in Medicare and to direct that Petitioner be excluded from participating in Medicaid.

Section 1128(b)(14) of the Act [42 U.S.C. § 1320a-7(b)(14)] provides that the Secretary (or her delegate, the I.G.) may exclude a party from participating in Medicare and Medicaid who:

> is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans . . .

There is no dispute that Petitioner's HEAL obligations arise from loans made "in connection with health professions education." There is also no dispute that Petitioner defaulted on repayment of his HEALs. Therefore, if I conclude that the Secretary took "all reasonable steps available" to secure repayment from Petitioner of his HEALs, I must find that the I.G. had authority to exclude Petitioner under section 1128(b)(14) of the Act [42 U.S.C. § 1320a-7(b)(14)].

The efforts made by HRSA to obtain Petitioner's repayment of his HEAL debt included sending notices to Petitioner over a nearly two-year period. Specifically, notices were sent to Petitioner on January 30, 1991 (I.G. Ex. 22); April 4, 1991 (I.G. Ex. 23); July 17, 1991 (I.G. Ex. 24); November 10, 1992 (I.G. Ex. 25); and December 14, 1992 (I.G. Ex. 27). Petitioner never followed HRSA's instructions for establishing a repayment agreement, nor did he send any payment in response.

In the last notice, sent to Petitioner on December 14, 1992, Petitioner was advised that an alternative method of repayment would be for him to enter into an offset agreement. Under an offset agreement, Petitioner's Medicare and Medicaid reimbursements would be applied to his HEALs. Petitioner did not provide the information and signed statement necessary to establish an offset agreement.

Petitioner asserts that these efforts do not constitute "all reasonable steps available" on the part of the Secretary to secure repayment of Petitioner's HEALs. Petitioner argues that "[s]ending me a letter with financial statement forms every now and then does not resolve anything." P. Br. at 8.

The record reflects, however, that Petitioner was sent numerous demands to repay his HEALs. Petitioner knew he was in default. Yet, notwithstanding this knowledge, Petitioner made no payment from October 1, 1989, when his payments were to have begun (I.G. Ex. 25), until June 1993, after his exclusion had become effective. P. Ex. 4.

Petitioner alleges that his income was not high enough to support much repayment during the years through 1992 and that he could not afford the monthly payments demanded in negotiations with DHHS. However, even assuming this is true, Petitioner's refusal to complete the financial statements necessary to enter into a repayment agreement prevented HRSA from knowing what Petitioner could afford.

Petitioner's negotiations with the U.S. Attorney's office and his repayment "agreement with the U.S. Justice Dept.," have resulted in his making some payments on his HEALs. P. Br. at 3-4; I.G. Br. at 8-9. Any payments made, however, were made after his exclusion had become effective. Further, Petitioner's payments have been too small to pay even the interest that accrues on his HEALs. Specifically, PHS reports that interest of $700.00 per month accrues on Petitioner's HEAL debt. I.G. Br. at 9, footnote 4.

PHS is unwilling to stay Petitioner's exclusion for a repayment schedule that would fail to reduce Petitioner's HEAL debt. I do not construe the statutory phrase "[a]ll reasonable steps available" to mean that the Secretary must excuse individuals' repayment obligations based on their financial status. Nor do I construe it to mean that the Secretary should accept repayment arrangements which do not accomplish the objective of repayment, or which require the Secretary to enter into agreements that are not in the public interest. See James F. Cleary, D.D.S., DAB CR252 at 12-13 (1993).

The intent of Congress in enacting section 1128(b)(14) of the Act was, in part, to provide the Secretary with a mechanism by which she could assert some leverage over individuals who default on their HEALs. Thus, section 1128(b)(14) is, among other things, a debt collection tool by which the Secretary can collect a debt once voluntary persuasion has failed. In assuming Petitioner's HEAL debt, the Secretary acquired the right -- and the obligation -- to collect on that debt. See Charles K. Angelo, Jr., M.D., DAB CR290 at 11 (1993).

Section 1128(b)(14) of the Act requires the Secretary only to take all reasonable steps available to secure repayment. I construe the term "all reasonable steps available" to mean all reasonable and legitimate means of debt collection. The relevant regulation states that all reasonable steps will have been taken to collect a HEAL debt if PHS offers a debtor a Medicare and Medicaid reimbursement offset arrangement as required by section 1892 of the Act prior to the I.G.'s imposing an exclusion. 42 C.F.R. § 1001.1501(a)(2).

The Secretary reasonably could infer, from Petitioner's conduct, that Petitioner was unlikely to repay his debt voluntarily. The Secretary provided Petitioner with many opportunities to repay his debt and to enter into a repayment agreement. Petitioner was offered the opportunity to enter into a Medicare and Medicaid reimbursement offset agreement prior to his exclusion. Petitioner did not avail himself of any of these opportunities for repayment. I conclude that the Secretary did that which was necessary to establish conclusively that all reasonable steps available were taken to collect Petitioner's HEAL debt. 42 C.F.R. § 1001.1501(a)(2).

I have found that the Secretary took all reasonable steps to collect Petitioner's HEAL debt prior to excluding him. Consequently, I find that the I.G. had the authority to exclude Petitioner from participating in Medicare and to

direct that Petitioner be excluded from participating in Medicaid. Social Security Act, section 1128(b)(14) [42 U.S.C. § 1320a-7(b)(14)]; 42 C.F.R. § 1001.1501.

II. The period of exclusion imposed and directed against Petitioner by the I.G. under section 1128(b)(14) of the Act is reasonable.

The notice of exclusion which the I.G. sent to Petitioner advised him that his exclusion would remain in effect until his debt was completely satisfied. Thus, in this case, only when Petitioner's HEALs are fully repaid, will Petitioner's HEAL debt have been resolved to the satisfaction of the Secretary. 42 C.F.R. § 1001.1501;[6] I.G. Br. at 12-15.

Under the circumstances of this case, in which Petitioner:

(1) failed to respond to instructions on how to enter into a repayment agreement;

(2) failed to provide the information and signed statement necessary to establish an offset agreement;

(3) made his first payment only after his exclusion had become effective; and

(4) has never made payments large enough to pay even the interest that accrues on his HEALs;

exclusion until Petitioner's HEALs are fully repaid is a reasonable course of action.

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[6] I note, however, that under 42 C.F.R. § 1001.1501(b), if Petitioner's obligations are otherwise resolved to PHS' satisfaction, Petitioner may be eligible for reinstatement prior to having fully repaid his HEALs. However, this does not detract from my finding that it is reasonable here that Petitioner remain excluded until his HEALs have been fully repaid.

CONCLUSION

The Secretary has taken all reasonable steps available to secure Petitioner's repayment. Consequently, it is reasonable for the I.G. to exclude Petitioner from participating in Medicare and to direct that he be excluded from participating in Medicaid. Furthermore, the period of exclusion imposed by the I.G. is reasonable.

/s/

Jill S. Clifton
Administrative Law Judge