Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	)	
	)	
Michael J. Rosen, M.D.,	)	Date: February 22, 2007
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-06-571
	)	Decision No. CR 1566
The Inspector General.	)	
	)	

DECISION

This matter is before me on the Inspector General's (I.G.'s) Motion for Summary Affirmance of the I.G.'s determination to exclude Petitioner *pro se*, Michael J. Rosen, M.D., from participation in Medicare, Medicaid, and all other federal health care programs because he was in default of his Health Education Assistance Loan (HEAL) debt. If granted, the Motion would affirm the I.G.'s exclusion of Petitioner from July 20 until his default was apparently cured in late January 2007. The I.G.'s Motion is based on the authority set out in section 1128(b)(14) of the Social Security Act (Act), 42 U.S.C. § 1320a-7(b)(14). Because no material facts remain in dispute, and because the undisputed material facts fully support the I.G.'s position, I grant the I.G.'s Motion.

I. Procedural Background

Petitioner *pro se* Michael J. Rosen, M.D., began borrowing money to finance his medical education in 1985, when he obtained a HEAL of $3000.00. In 1986 he borrowed another $5000.00 from the HEAL program; in 1988 he borrowed $6395.00 more from HEAL; in 1989 he borrowed an additional $3750.00 from HEAL; and in 1990 Petitioner borrowed the further sum of $14,776.00 from HEAL. These loans and the interest accrued on them, and the debt thus created, were consolidated on August 10, 1994 into a sixth HEAL in the total sum of $47,140.19.

By September 1997 Petitioner had defaulted on his obligation to repay his Health Education Assistance Loans. The unpaid principal and interest were reduced to a state-court judgment of approximately $57,000.00 plus interest until satisfied; this judgment was taken by default against Petitioner on September 11, 1997. The state-court judgment was assigned to the Secretary and the United States on October 1, 1997, and was registered in the United States District Court for the District of Arizona in November 2005. Beginning in December 1997 and continuing until early 2006, efforts by the Secretary and the United States Department of Justice to collect the judgment were unsuccessful: Petitioner made payments totaling approximately $6473.53, but accrued interest alone on his debt over the same period exceeded by four times the sum of those payments. The last explicit calculation of Petitioner's debt based on the judgment and accrued interest in this record set Petitioner's total debt at $78,361.77 on July 20, 2006. I.G. Ex. 13, at 3.

On June 30, 2006, the I.G. notified Petitioner that he was to be excluded from Medicare, Medicaid, and all federal health care programs as a result of his failure to repay or otherwise discharge his indebtedness incurred through that series of Health Education Assistance Loans. The exclusion was to take effect 20 days from the date of the I.G.'s letter, and was to remain in effect until Petitioner's debt "has been completely satisfied." The I.G.'s letter relied on the terms of sections 1128(b)(14) and 1892 of the Act, 42 U.S.C. §§ 1320a-7(b)(14) and 1395ccc.

Petitioner timely sought review of the I.G.'s action by his *pro se* letter of July 10, 2006. On August 30, 2006, I held a telephone conference with the parties to discuss the issues presented by the case and to establish procedures for addressing them. Petitioner explicitly conceded that he had borrowed from the HEAL program as the I.G. had asserted, and that he was in default of his obligation to repay the amounts borrowed. The details of this conference, including Petitioner's admissions and the procedures established for addressing the issues in this case, appear in the Order of September 5, 2006.

The briefing schedule established in that Order has been amended twice. The first amendment was on the I.G.'s November 7, 2006 Motion: early in the cycle of briefing, Petitioner asserted that he had "made a settlement offer" to the United States Department of Justice. P. Mot. Rev., at 5. The briefing schedule was amended to permit the I.G. to verify that a repayment agreement had been reached, but the I.G. was unable to do so. I.G. Reply Br. at 2-3, n. 2. The second amendment was on the I.G.'s Motion filed January 3, 2007. This latter Motion, which was opposed by Petitioner in a counter-motion filed January 4, 2007, sought leave to respond to a number of arguments Petitioner raised for the first time in his Reply Brief filed December 28, 2006. I convened a conference

with the parties by telephone on January 18, 2007 to discuss the pending Motion and other matters related to the status of the case. My Order of January 19, 2007 summarizes those discussions and their results: the I.G. was permitted to respond to Petitioner's newly-raised arguments in a Closing Brief to be filed by February 2, 2007. The parties were made aware that the record in this case would close upon the filing of the I.G.'s Closing Brief, and this case would thereafter stand submitted for decision pursuant to 42 C.F.R § 1005.20(c). Although my Order of January 19, 2007 did not authorize the filing of additional pleadings, Petitioner filed a "Motion to Compel the Inspector General and the Department of Health and Human Services to Show Cause As to Why the Exclusion Sanction Should Not Be Rescinded or Vacated" on February 1, 2007. I denied that Motion by Order of February 12, 2007, but received as Petitioner's Exhibit 9 the document thereto attached.

The evidentiary record on which I decide this case contains 24 exhibits. The I.G. has proffered I.G.'s Exhibits 1-15 (I.G. Exs. 1-15), and Petitioner has proffered Petitioner's Exhibits 1-9 (P. Exs. 1-9). All are admitted as designated. As provided in my Orders of January 18, 2007 and February12, 2007, the evidentiary record in this case closed on February 2, 2007.

II. Issues

The issues before me are limited to those noted at 42 C.F.R. § 1001.2007(a)(1). In the specific context of this record, they are:

1. Whether the I.G. has a basis for excluding Petitioner from participating in Medicare, Medicaid, and all other federal health care programs pursuant to section 1128(b)(14) of the Act; and

2. Whether the length of the exclusion is unreasonable.

The controlling authorities resolve these issues in favor of the I.G.'s position. Section 1128(b)(14) of the Act supports Petitioner's exclusion from all federal health care programs, for he was in default on his HEAL obligation on June 30, 2006, and the Secretary had then taken all reasonable and available steps to secure repayment of that obligation. Petitioner's exclusion until such time as the Public Health Service notifies the Office of Inspector General that the default has been cured, or that there is no longer an outstanding debt, is the minimum period established by 42 C.F.R. § 1001.1501(b), and is therefore reasonable as a matter of law.

III. Controlling Statutes and Regulations

Section 1128(b)(14) of the Act, 42 U.S.C. § 1320a-7(b)(14), authorizes the exclusion from participation in Medicare, Medicaid, and all other federal health care programs of "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 . . . ." The terms of section 1128(b)(14) are restated in similar regulatory language at 42 C.F.R. § 1001.1501(a)(1).

An exclusion based on section 1128(b)(14) of the Act is discretionary. If the I.G. determines that a valid predicate exists for the exclusion, and that the exclusion is warranted, he must send written notice of his final decision to exclude to the affected individual, and must in that notice provide information about the appeal rights of the excluded party. 42 C.F.R. § 1001.2002. *See also* Act, section 1128(c), 42 U.S.C. § 1320a-7(c).

If the I.G. exercises his discretion to proceed with the sanction, then the mandatory minimum period of exclusion to be imposed under section 1128(b)(14) of the Act will extend "until such time as PHS (Public Health Service) notifies the OIG (Office of Inspector General) that the default has been cured or that there is no longer an outstanding debt. Upon such notice, the OIG will inform the individual of his or her right to apply for reinstatement." 42 C.F.R. § 1001.1501(b).

The I.G.'s notice letter of June 30, 2006 also cited section 1892 of the Act, 42 U.S.C. 1395ccc, as a source of his authority to exclude Petitioner. In general, section 1892 of the Act mandates that the Secretary or his delegate must exclude a health care practitioner who "owes a past-due obligation to the United States" and who fails or refuses to establish certain payment offset arrangements specified in section 1892(a)(2) of the Act, or who fails or refuses to fulfill those arrangements. The I.G. does not rely on section 1892 in these proceedings as an additional basis for Petitioner's exclusion. As I shall explain below, this Decision does not address Petitioner's exclusion under section 1892 of the Act.

IV. Findings and Conclusions

I find and conclude as follows:

1. On September 28, 1985 Petitioner *pro se* Michael G. Rosen, M.D., obtained a loan from the HEAL program in the principal sum of $3000.00. I.G. Ex. 1.

2. On May 23, 1986 Petitioner obtained a loan from the HEAL program in the principal sum of $5000.00. I.G. Ex. 1.

3. On May 25, 1988 Petitioner obtained a loan from the HEAL program in the principal sum of $6395.00. I.G. Ex. 1.

4. On December 15, 1989 Petitioner obtained a loan from the HEAL program in the principal sum of $3750.00. I.G. Ex. 1.

5. On October 11, 1990 Petitioner obtained a loan from the HEAL program in the principal sum of $14,776.00. I.G. Ex. 1.

6. Petitioner consolidated those loans and the accrued interest on them on August 10, 1994 into a new loan from the HEAL program in the principal sum of $47,140.19. I.G. Ex. 1.

7. The HEAL loans described above in Findings 1-6 were loans made to Petitioner in connection with his health profession education and were secured by the Secretary. I.G. Exs. 1, 3.

8. On June 30, 2006 Petitioner was in default of his obligation to repay the HEAL loans described above, and had been in default since at least September 11, 1997. I.G. Exs. 2-9.

9. Petitioner's HEAL debt including accrued interest totaled $78,361.77 on July 20, 2006. I.G. Ex. 13, at 3.

10. By June 30, 2006, the Secretary had taken all reasonable and available steps to secure Petitioner's repayment of those HEAL loans. I.G. Exs. 4-9, 13.

11. On June 30, 2006, the I.G. notified Petitioner that he was to be excluded from participation in Medicare, Medicaid, and all other federal health care programs until his HEAL debt "has been completely satisfied," based on the authority set out in sections 1128(b)(14) and 1892 of the Act. I.G. Ex. 10.

12. On July 10, 2006, Petitioner perfected his appeal from the I.G.'s action by filing a *pro se* hearing request.

13. Because Petitioner was in default on repayments of the HEAL loans described above in Findings 1-9, and because the Secretary had taken all reasonable and available steps to secure Petitioner's repayment of those HEAL loans, the I.G. was authorized to exclude Petitioner from Medicare, Medicaid, and all other federal health care programs. Sections 1128(b)(14) of the Act; 42 C.F.R. § 1001.1501(a).

14. The I.G.'s exclusion of Petitioner until such time as PHS notifies the OIG that Petitioner's default has been cured or that there is no longer an outstanding debt is the mandatory minimum established by 42 C.F.R. § 1001.1501(b), and is therefore reasonable as a matter of law.

15. There are no disputed issues of material fact and summary affirmance is appropriate in this matter. *Tanya A. Chuoke, R.N.*, DAB No. 1721 (2000); *accord, Thelma Walley*, DAB No. 1367 (1992); 42 C.F.R. § 1005.4(b)(12).

V. Discussion

There are two essential elements necessary to support an exclusion based on section 1128(b)(14) of the Act. First, the I.G. must prove that the individual to be excluded 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 of Health and Human Services. Second, the I.G. must prove that the Secretary has taken all reasonable and available steps to secure repayment of such obligations or loans from that individual. In the factual context of this case, both essential elements must be shown to have been present on the date the I.G. imposed the exclusion, June 30, 2006.

Petitioner has repeatedly conceded that the first essential element is present. His first concession was oral, during the prehearing conference summarized in the Order of September 5, 2006. His written concessions have been just as plain and every bit as binding:

> The Petitioner concedes that he defaulted on the HEAL as noted by the letter dated December 2, 1997, the Debt Management branch, Division of Fiscal Services, Health Resources and Services Administration (HRSA). I.G. Ex. 4. The date of the default is noted in the upper right hand corner as November 28, 1997. The letter was signed by William M. Darracott.

P. Mot. Rev., at 2.

Beyond Petitioner's admission of default, however, lies ample objective proof of his default. The I.G.'s exhibits show the creation of Petitioner's debt through the HEAL note of August 10, 1994 (I.G. Ex. 1), the state-court judgment on the HEAL note on September 11, 1997 (I.G. Ex. 2), the assignment of that judgment to the Secretary and the United States on October 1, 1997 (I.G. Ex. 3), and correspondence over nearly eight years in a fruitless effort to collect that judgment in a meaningful way (I.G. Exs. 4-9). The state-court judgment was registered in the United States District Court for the District of Arizona in November 2005, just one month short of the eighth anniversary of the Secretary's first written attempt to collect the state-court judgment. I.G. Exs. 2, 8. When this record closed on February 2, 2007, a repayment agreement had apparently been reached and consummated barely a week earlier. I.G. Exs. 14, 15. The first essential element has been conclusively proven: Petitioner was in default on June 30, 2006.

This record leaves no doubt that the Secretary had, as of June 30, 2006, taken all reasonable and available steps to secure Petitioner's repayment of his obligation. Those steps may be seen as early as December 2, 1997, when the total amount of Petitioner's debt was only $57,574.00. The Secretary wrote a demand letter which offered Petitioner the option of negotiating a repayment plan. I.G. Ex. 4. Between that time and the Secretary's final minatory effort on March 6, 2006 (I.G. Ex. 9), at least three other letters demanded that Petitioner pay his debt or reach a payment agreement. I.G. Exs. 5, 6, 7. The Secretary's letter of March 6, 2006 contained this additional language:

> **You must submit in writing a Repayment Proposal along with a Good Faith Payment to the DOJ. An alternative is to establish an offset agreement with your carrier/provider.** If you elect to do this, please contact your carrier/provider and instruct them to establish procedures to forward your Medicare/Medicaid claim reimbursements directly to the DOJ.

I.G. Ex. 9, at 1.

Petitioner not only refused to negotiate a repayment agreement and refused to make significant payments on his debt: there is nothing in this record to suggest that he ever responded to any of the Secretary's correspondence until July 10, 2006.[1] Similar histories of correspondence with unresponsive defaulters have been uniformly held to constitute "all reasonable and available steps" toward collection. *Aloysius C. Maduford, M.D., aka Aloysius C. Maduforo*, DAB CR905 (2002); *Michael D. Lawton, M.D.*, DAB CR771 (2001); *Georgia Goldfarb, M.D.*, DAB CR670 (2000); *Yolanda Crespo Capo Fernandez,*

---

[1] Without intending to justify Petitioner's eight-year unwillingness to respond to collection letters, it may be possible to deduce an explanation of that unwillingness. Petitioner asserted in his unsworn July 10, 2006 letter to the Department of Justice that he had earned only a modest income for the past six years. I.G. Ex. 11. Petitioner made similar unsworn and unsupported representations about his financial situation here. P. Mot. Rev., at 6; P. Reply Br., at 16; P. Ex. 5. The United States Attorney's response on July 27, 2006 insisted that "Before any kind of settlement can be entered into, we need to obtain from you a completed financial statement and the past two years income tax returns for review." I.G. Ex. 12. Financial statements had been requested from Petitioner before. I.G. Ex. 8. As far as this record shows, until a few weeks ago Petitioner was never willing to back his unsworn assertions by the relatively-simple act of submitting complete tax returns or sworn financial statements for audit and review.

The partial tax returns Petitioner submitted as P. Ex. 5 bear more than a passing resemblance to a fan-dance: they conceal far more information than they pretend to convey, and they raise far more questions than they put to rest. At first blush, the copies of Petitioner's Forms 1040 for 2004 and 2005 might appear to support his claim of only modest personal income. P. Ex. 5, at 1-4. But in each 1040 the claimed capital losses by which Petitioner reduced his taxable personal income are unsupported by detailed schedules or explanations. Petitioner provided no Forms W-2 or 1099 to support his assertions of salary or interest received. Sketchy as this information is, its value is further eroded by Petitioner's inclusion of partial Forms 1120 for his professional business entity, Scottsdale Urgent Care, Inc., for 2003 and 2004. Significantly, 2004 is the only year for which P. Ex. 5 included both a 1040 and an 1120. For 2003 and 2004 the business reported substantial gross receipts, but claimed deductions for salaries, wages, officers' compensation, and "other deductions" that reduced the reported amounts by well over half. P. Ex. 5, at 5-6. Petitioner did not include schedules or other documentation of these deductions in P. Ex. 5. Nor did he include schedules that would allow verification of the amounts claimed by the business in 2004 as salaries or compensation of its officers, of which business Petitioner is President. According to the Forms 1120, the business operated at a loss in 2003 and 2004, but support for the major items constituting the losses was simply omitted from the Exhibit as Petitioner submitted it. *See* note 2, *infra*.

D.O., DAB CR606 (1999); *Mohammad H. Azarpira, D.D.S.*, DAB CR372 (1995). Moreover, the language quoted above from I.G. Ex. 9 offering Petitioner the alternative of repaying his debt through an offset of his Medicare and Medicaid claim reimbursements has been held "conclusive proof that all reasonable steps have been taken by the Secretary." *George E. Smith, M.D., M.Ed.*, DAB CR885 (2002); *Michael D. Lawton, M.D.*, DAB CR771; *Georgia Goldfarb, M.D.*, DAB CR670; *Yolanda Crespo Capo Fernandez, D.O.*, DAB CR606; *Charles K. Angelo, Jr., M.D.*, DAB CR290 (1993). Those cases and others pronounce no more than the regulations provide at 42 C.F.R. § 1001.1501(a)(2). The I.G. has proven the second essential element. By June 30, 2006, the Secretary had taken and exhausted all reasonable and available steps to secure repayment of Petitioner's loan.

Petitioner disagrees that the Secretary has acted reasonably, and in that context my analysis of Petitioner's repayment history since the state-court judgment was entered is revealing. It shows that between May 1998 and July 2006 Petitioner paid the sum of $6473.53 toward his debt, most of it in the "post-dated" fifty-dollar monthly increments he describes. P. Exs. 1, 2; I.G. Ex. 13. All of his payments were applied to the interest that had accrued on his debt. But those fifty-dollar payments were entirely insufficient even to offset or limit materially that interest as it accrued: by the end of 1998, the interest on Petitioner's debt was accruing at well more than $200.00 every month. It is true that an adjustable interest rate brought the monthly interest accrual to a low of $104.08 in October 2002, and it is true that Petitioner paid $1433.53 in November 1998 and $1040.00 in early 2005, but at no time did his payments substantially offset or slow the accrual of interest on his debt, which by July 20, 2006 had *exceeded his payments by the margin of* $21,628.49. The stark truth is that Petitioner's total debt was larger — by more than a third — in July 2006 than it had been when reduced to judgment in 1997. I.G. Exs. 2, 13.

To suggest, as Petitioner does repeatedly (P. Mot. to Rev., at 2-5; P. Reply Br., at 15-17), that his pattern of payments represented a real, substantial, and *bona fide* repayment arrangement is absurd. His curious practice of sending a year's worth of "post-dated" checks for $50.00 each was transparently an effort to manipulate the record-keeping on his debt and to stave off collection efforts while avoiding any real responsibility for the debt. P. Ex. 3. The analysis set out in the paragraph immediate above reveals exactly how egregious Petitioner's behavior was: on average, each fifty-dollar monthly payment was approximately one-fifth the amount of interest accrued in the same month on the overall debt. It hardly needs more emphasis to make the point plain: Petitioner's pattern of payment would never have paid off his debt. Instead, the debt grew each month, with the principal sum remaining unreduced and the sum of accrued interest not only unreduced but growing larger.

The Secretary was hardly unreasonable in refusing to be satisfied by Petitioner's unilaterally-created "repayment plan." The standard of reasonableness embedded in section 1128(b)(14) does not require, and it may very well forbid, the Secretary's acceptance of collection arrangements that cannot accomplish the fundamental goal of debt repayment. *George E. Smith, M.D., M.Ed.*, DAB CR885; *Yolanda Crespo Capo Fernandez, D.O.*, DAB CR606; *James F. Cleary, D.D.S.*, DAB CR252 (1993). The Secretary's rejection of a "repayment plan" insufficient to offset the accrual of interest on a HEAL debt has been specifically held to be reasonable. *Rikantar (Rik) Majauskas, D.O.*, DAB CR441 (1996).

Petitioner correctly notes that the statutory basis of the proposed exclusion is entitled a "PERMISSIVE EXCLUSION," and just as correctly points out that section 1128(b)(14) of the Act provides that the Secretary "may exclude" individuals in default of HEAL obligations. P. Reply Br., at 1-2. However, he then argues incorrectly that the I.G.'s decision to exclude him amounts to an abuse of that statutorily-conveyed discretion. P. Reply Br. at 2-8. Petitioner's objection is chiefly that:

> There is simply no evidence in the record that discretion was in fact exercised. The I.G. has not provided a discussion, explanation or reason of why the facts support her (*sic*) decision to impose the exclusion sanction upon the Petitioner . . . the mere finding that the substantive predicates of the statute have been met, without a discussion as to why the findings support the most severe remedial sanction, cannot serve as a rationale for the I.G.'s exercise of discretion. The decision to impose the most severe sanction is arbitrary and the failure of the I.G. to exercise its discretion constitutes an abuse of discretion,

P. Reply Br., at 5.

Petitioner supports this argument with authorities irrelevant to this situation, since those cited authorities all arose in the context of state-court decisions based on state statutes and regulatory schemes. P. Reply Br., at 2-6. Petitioner then offers the veiled hint that some more invidious motive may have animated the I.G.'s decision:

> Indeed, if the I.G.'s decision to impose the sanction of exclusion upon any individual is based upon the color of their skin, their religion, or their political affiliation, this would not be in harmony with other statutory and constitutional law. The unlawfulness of this example would be obvious to even the least sophisticated person.

P. Reply Br., at 7.

If I were authorized to address the merits of that very specific argument, I would reject it as contrary to the evidence before me, and would find instead that Petitioner's disingenuous attempts to manipulate the HEAL program would amply justify the I.G.'s exercise of discretion. But once I have found that there is a nexus of fact and law by which Petitioner became subject to exclusion, I am without jurisdiction to evaluate on any basis whatsoever the propriety of the I.G.'s exercise of discretion in deciding to proceed with imposition of the exclusion. *Keith Michael Everman, D.C.*, DAB No. 1880 (2003); *Tracey Gates, R.N.*, DAB No. 1768 (2001); *Wayne E. Imber, M.D.*, DAB CR661 (2000), *aff'd*, DAB No. 1740 (2000); *see also* 42 C.F.R. §§ 1001.2007(a)(1) and 1005.4(c)(5).

Insofar as Petitioner's position is an attack on the timing of the I.G.'s determination to exclude (P. Mot. to Rev., at 3-4; P. Reply Br., at 15-17), it is unavailing: the I.G. is invested with discretion as to when, as well as to whether, to undertake an exclusion; I lack authority to review his decision as to when to proceed against Petitioner. *Thomas Edward Musial*, DAB No. 1991 (2005); *Douglas Schram, R.Ph.*, DAB No. 1372 (1992); *David D. DeFries, D.C.*, DAB No. 1317 (1992); *Richard G. Philips, D.P.M.*, DAB No. 1279 (1991); *Samuel W. Chang, M.D.*, DAB No. 1198 (1990).

Insofar as Petitioner's plea of potential professional and financial hardship based on the likely effect of the proposed exclusion (P. Reply Br., at 13-14) is to be understood as an argument that it ought not be imposed, that plea is unavailing, too. *Chander Kachoria, R. Ph.*, DAB No. 1380 (1993); *Mark D. Perrault, M.D.*, DAB CR1471 (2006); *George E. Smith, M.D., M.Ed.*, DAB CR885; *Gregory D. Wells, M.D.*, DAB CR723 (2000); *Farhad Mohebban, M.D.*, DAB CR686 (2000); *Paul W. Wilson, D.O.*, DAB CR628 (1999); *Arlene Elizabeth Hunter*, DAB CR505 (1997).

Insofar as Petitioner invokes certain broad principles of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (P. Reply Br., at 10-13), it may well be remembered that he has sought no relief under that Code, and in particular has neither sought nor been granted protection against the collection of this debt.[2]

---

[2] A debtor seeking relief in United States Bankruptcy Court is required to file detailed schedules disclosing the debtor's assets, liabilities, income, and expenditures, and to do so under oath. 11 U.S.C. § 523. Petitioner's reasons for not seeking bankruptcy relief are, of course, his own; nevertheless, by staying out of Bankruptcy Court he has avoided the obligation to file such sworn schedules and disclosures. *See* note 1, *supra*.

And insofar as Petitioner asserts that the proposed exclusion is "contrary to constitutional right, power, or immunity," (P. Reply Br., at 19), he makes that argument in the wrong forum. Constitutional questions are beyond the scope of this litigation in particular and this forum in general, *Keith Michael Everman, D.C.*, DAB No. 1880, and in any case Petitioner has no constitutionally-protected property interest in participation in the Medicare and Medicaid programs. *Kahn v. Inspector General,* 848 F. Supp. 432 (S.D.N.Y. 1994); *Hillman Rehabilitation Center*, DAB No. 1611 (1997); *Edmund B. Eisnaugle, D.O.*, DAB CR1010 (2003); *Morton Markoff, D.O.*, DAB CR538 (1998).

Petitioner's last argument is perhaps his most ambitious. He begins correctly enough by pointing out that the general rationale of most exclusions authorized by the Act is the protection of federally-funded health care programs and program beneficiaries from abuse by untrustworthy participants. P. Reply Br., at 8-10. Then he declares that his 12-year history of evasion, manipulation, defiance, and default of a federally-backed and publicly-funded program intended to help educate health-care providers raises no inference of his own untrustworthiness. P. Reply Br., at 10-12.

The record before me gives the lie to that declaration, and I would so find without hesitation if such a finding were necessary. But Petitioner's underlying premise is simply wrong: untrustworthiness *per se* is not the touchstone of an exclusion based on section 1128(b)(14) of the Act. The specific rationale behind that exclusion remedy seeks not to bar the untrustworthy, but to coerce the recalcitrant. It is a debt-collection tool. The ALJs of this forum have repeatedly observed that Congress' intent in enacting section 1128(b)(14) was to provide the Secretary and the I.G. with a means of collecting debts such as Petitioner's when less drastic measures and reasonable efforts at persuading hold-out debtors to voluntary cooperation have failed. *George E. Smith, M.D., M.Ed.*, DAB CR885; *George P. Bahadue, D.O.*, DAB CR575 (1999); *Cynthia A. Ramkelawan, D.D.S.*, DAB CR415 (1996); *Mohammad H. Azarpira, D.D.S.*, DAB CR372; *Charles K. Angelo, Jr., M.D.*, DAB CR290. This case — in which the Secretary's reasonable efforts to win Petitioner's voluntary repayment of his HEAL debt have until very recently been thwarted by Petitioner's dogged refusal to cooperate — is squarely within Congress' intent in authorizing the exclusion sanction in section 1128(b)(14). The effectiveness of the sanction in this particular case may be gauged by the fact that Petitioner took no real steps toward repayment until the briefing cycle and evidentiary record in this case had nearly closed.

My Decision in this case does not address the I.G.'s authority to exclude Petitioner under the mandatory provisions of section 1892 of the Act, 42 U.S.C. 1395ccc. I have three reasons for not doing so. The first reason is that although the I.G.'s notice letter cited section 1892, the I.G. has conspicuously avoided reliance on it in these proceedings.

Next, because I sustain the exclusion based on section 1128(b)(14) of the Act, it is unnecessary to consider the application of section 1892. The most significant reason, however, is that a long series of decisions on this point suggests that Administrative Law Judges (ALJs) are without authority to review exclusions based on section 1892 of the Act. *Aloysius C. Maduford, M.D., aka Aloysius C. Maduforo*, DAB CR905; *George E. Smith, M.D., M.Ed.*, DAB CR885; *Cynthia Iraci, D.C.*, DAB CR629 (1999); *Yolanda Crespo Capo Fernandez, D.O.*, DAB CR606; *George P. Bahadue, D.O.*, DAB CR575; *Cynthia M. Ramkelawan, D.D.S.*, DAB CR415; and cases cited therein. Based on that line of decisions, I decline to do so here.

My inquiry into the length of the period of exclusion proposed here is a very limited one: I must ask only whether the term of exclusion imposed is reasonable. 42 C.F.R. § 1001.2007(a)(1)(ii). That period is *ipso jure* reasonable if it is consonant with the regulatory standard established for situations such as this. In this case the I.G.'s notice letter employs the language "[t]hese exclusions are effective 20 days from the date of this letter and will remain in effect until your debt has been completely satisfied." I. G. Ex. 10, at 1. The regulatory standard is different, and that difference has been pointed out by ALJs several times.

The language of 42 C.F.R. § 1001.1501(b) provides that exclusions shall last "until such time as PHS notifies the OIG that the default has been cured or that there is no longer an outstanding debt." While there may be little practical difference between the language of the notice letter and the regulation, there is nevertheless a variance, and that variance has been called to the I.G.'s attention many times. Here, the I.G.'s position as enunciated in the briefing is that the term of exclusion is based on PHS's satisfaction. I.G. Br., at 2, 8. The I.G.'s position as thus clarified is in conformity with the terms of the regulation. I find and conclude that the term of exclusion is reasonable as a matter of law.

It now appears that Petitioner has reached an agreement with the Department of Justice by which his HEAL debt has been satisfied. On January 24, 2007, he paid the sum of $44,570.47, and the HEAL program wrote off a loss of $28,653.21. I.G. Ex. 15. He has been informed by the United States Attorney that he may now request that the I.G. take steps to reinstate him to participation in the Medicare and Medicaid programs. I.G. Ex. 14; P. Ex. 9. Once PHS notifies the OIG that Petitioner's default has been cured or that there is no longer an outstanding debt — and thus completes the final, literal, and unambiguous requirement for Petitioner's reinstatement — the exclusion imposed on Petitioner will end.

Summary disposition in an exclusion case like this one is appropriate when there are no disputed issues of material fact and when the undisputed facts, clear and not subject to conflicting interpretation, demonstrate that one party is entitled to judgment as a matter of law. *Tanya A. Chuoke, R.N.*, DAB No. 1721. Summary disposition is explicitly authorized by the terms of 42 C.F.R. § 1005.4(b)(12), and this forum looks to FED. R. CIV. P. 56 for guidance in applying that regulation. *Robert C. Greenwood*, DAB No. 1423 (1993); *Thelma Walley*, DAB No. 1367; *John W. Foderick, M.D.*, DAB No. 1125 (1990). When the undisputed material facts of a case support summary disposition, there is no right to a full evidentiary hearing. *Surabhan Ratanasen, M.D.*, DAB No. 1138 (1990); *John W. Foderick, M.D.*, DAB No. 1125. The material facts in this case are undisputed, clear, and unambiguous. They support summary disposition as a matter of law. This Decision is entered accordingly.

VI. Conclusion

For the reasons set out above, the I.G.'s Motion for Summary Affirmance should be, and it is, GRANTED. The I.G.'s exclusion of Petitioner Michael J. Rosen, M.D., from participation in Medicare, Medicaid, and all other federal health care programs is SUSTAINED, pursuant to the terms of section 1128(b)(14) of the Act, 42 U.S.C. § 1320a-7(b)(14). That exclusion remains in effect, by operation of 42 C.F.R. § 1001.1501(b), until such time as the Public Health Service notifies the I.G. that Petitioner's default has been cured or that there is no longer an outstanding debt.

/s/
Richard J. Smith
Administrative Law Judge