

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Jeffrey N. Fadel, M.D.,)	Date: March 13, 2009
)	
Petitioner,)	
)	
- v. -)	Docket No. C-09-125
)	Decision No. CR1925
The Inspector General.)	

DECISION

Jeffrey N. Fadel, M.D. (Petitioner) appeals the decision of the Inspector General (I.G.), made pursuant to section 1128(a)(4) of the Social Security Act (Act), to exclude him from participation in Medicare, Medicaid, and all federal health care programs for a period of five years. For the reasons discussed below, I find that the I.G. is authorized to exclude Petitioner, and that the statute mandates a minimum five-year exclusion.

I. Background

The I.G. has excluded Petitioner from program participation for five years because Petitioner was convicted of a felony offense relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. I.G. Exhibit (I.G. Ex.) 1. Petitioner timely requested review. The parties agree that an in-person hearing is not required and that the matter may be resolved based on written submissions. I.G. Br. at 4; P. Br. at 2. The I.G. has submitted his brief with six exhibits attached (I.G. Exs. 1 - 6). Petitioner filed his brief (P. Br.) with three exhibits (P. Exs. 1-3). The I.G. filed a reply brief. In the absence of any objections, I admit into evidence I.G. Exs. 1-6, and P. Exs. 1-3.

II. Issue

The sole issue before me is whether the I.G. had a basis for excluding Petitioner from participation in the Medicare, Medicaid, and all federal health care programs. Because an exclusion under section 1128(a)(4) must be for a minimum period of five years, the reasonableness of the length of the exclusion is not an issue.

III. Discussion

A. Petitioner was convicted of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance, within the meaning of section 1128(a)(4) of the Act.¹

Section 1128(a)(4) of the Act requires that any individual or entity convicted of a felony criminal offense that occurred after the date of the enactment of the Health Insurance Portability and Accountability Act (August 21, 1996) “relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance” be excluded from all federal health care programs.²

On August 29, 2006, Petitioner pled guilty in a Kentucky criminal court to sixteen counts of obtaining a controlled substance by fraud or deceit, in violation of Kentucky Revised Statutes section 218A.140, Uniform Offense Reporting Code (UOR) 25013. I.G. Exs. 2, 3, 6. The court accepted his plea and sentenced him to three years in the penitentiary, but withheld rendition of that judgment, and placed him on probation for five years. I.G. Exs. 4, 5.

Petitioner concedes that he was convicted of a felony, and does not dispute that his crime was related to the unlawful distribution, prescription, or dispensing of a controlled substance. He complains, however, that the I.G. delayed implementing the exclusion for twenty-five months, and that the exclusion should run from the date he entered his guilty plea (August 29, 2006) or, at the latest, the date the criminal court issued its judgment of conviction (February 14, 2007). Petitioner also points out that since the time of his conviction, he has complied with all the terms of his probation, voluntarily agreed not to practice medicine until the Kentucky Board of Medical Licensure reinstated his license, was permitted to resume practice on August 11, 2007, and “fully addressed the root problem that led to the licensure and criminal actions.” P. Br. at 4.

It is well-settled that an administrative law judge is without authority to change the effective date of an exclusion, no matter how inexplicable and unfair the delay. As a matter of law, an exclusion becomes effective 20 days after the date of the I.G.’s notice of exclusion. 42 C.F.R. § 1001.2002. An administrative law judge has no authority to review the timing of the I.G.’s determination to impose an exclusion or to alter

¹ My findings of fact and conclusions of law are set forth, in italics and bold, in the discussion captions of this decision.

² “Federal health care program” is defined in section 1128B(f) of the Act as any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government, or any State health care program.

retroactively the date of the imposition of the exclusion. *Tanya A. Chuoke, R.N.*, DAB No. 1721 (2000); *Samuel W. Chang, M.D.*, DAB No. 1198 (1990); *Susan Malady, R.N.*, DAB CR835 (2001), *aff'd on other grounds*, DAB No. 1816 (2002); *Larry B. Shuster, R.Ph.*, DAB CR872 (2002); *Kathleen E. Talbot, M.D.*, DAB CR772 (2001); *see also* 42 C.F.R. § 1005.4(c)(1) (ALJ has no authority to find invalid or refuse to follow federal statutes or regulations).

B. The statute mandates a five-year minimum period of exclusion, and mitigating factors may not be considered to reduce that period of exclusion.

An exclusion under section 1128(a)(4) must be for a minimum mandatory period of five years. As set forth in section 1128(c)(3)(B) of the Act:

Subject to subparagraph (G), in the case of an exclusion under subsection (a), the minimum period of exclusion shall be not less than five years

When the I.G. imposes an exclusion for the minimum mandatory five-year period, the reasonableness of the length of the exclusion is not an issue. 42 C.F.R. § 1001.2007(a)(2).

IV. Conclusion

For these reasons, I conclude that the I.G. properly excluded Petitioner from participation in Medicare, Medicaid, and all other federal health care programs, and I sustain the five-year exclusion.

/s/
Carolyn Cozad Hughes
Administrative Law Judge