

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Sonia Marie Rivera
(O.I. File No.: 9-09-40520-9),

Petitioner

v.

The Inspector General.

Docket No. C-11-747

Decision No. CR2486

Date: January 9, 2012

DECISION

Petitioner, Sonia Marie Rivera, asks review of the Inspector General's (I.G.'s) determination to exclude her for five years from participation in the Medicare, Medicaid, and all federal health care programs under section 1128(a)(1) of the Social Security Act (Act). 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.

Discussion

The sole issue before me is whether the I.G. has a basis for excluding Petitioner from program participation. Because an exclusion under section 1128(a)(1) of the Act must be for a minimum period of five years, the reasonableness of the length of the exclusion is not an issue. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

The parties have submitted written arguments,¹ and the I.G. filed a reply. With his brief, the I.G. submitted three exhibits (I.G. Exs. 1-3). Petitioner submitted fifteen exhibits (P. Exs. 1-15). In the absence of any objections, I admit into evidence I.G. Exs. 1-3 and P. Exs. 1-15.

The parties agree that this case can be resolved without an in-person hearing. I.G. Br. at 5; P. Submission 2 at 3.

Petitioner must be excluded for five years because she was convicted of a criminal offense related to the delivery of an item or service under the Medicare or a state health program, within the meaning of section 1128(a)(1) of the Social Security Act.²

Under certain circumstances, the California Medicaid program (Medi-Cal) pays for personal care services for elderly and disabled persons. Petitioner was enrolled in that program as care-provider for her father. From 2006 through 2009, she billed the program for hours that she could not have worked because she was incarcerated. I.G. Ex. 3. In a criminal complaint dated July 15, 2009, the State of California charged her with grand theft and presenting false claims to the State of California. I.G. Ex. 2. On October 16, 2009, Petitioner pled guilty in a California State Court to the felony count of grand theft, and the court accepted the plea. She was sentenced to 16 months in jail and ordered to pay \$2,276.97 in restitution to the State of California. I.G. Ex. 1.

¹ The I.G. filed a brief (I.G. Br.). Petitioner's written arguments are contained in the following submissions: 1) an untitled document dated November 27, 2011 that begins "The facts that support Petitioner's exhibits are as follows;" 2) a document titled "Petitioner's Informal Exhibit List," which includes Petitioner's responses to some of the questions posed by the short form brief I instructed her to file (September 21, 2011 Order and schedule for Filing Briefs and Documentary Evidence); 3) a document titled "Attachment List" followed by Attachment A, with a "notice of entry of appearance," Attachment B, with another "notice of entry of appearance," and Attachment C; 4) a two-page document titled "Statement of Issues;" and 5) a one-page document titled "Motion to Quash Exclusion." I note that the "appearances" are not statements from potential representatives but are short witness-like statements from individuals who make additional statements in the attachments. We have marked the submissions, using the numbers designated above, and I refer to them as P. Submissions 1-5.

² I make this one finding of fact/conclusion of law.

In a letter dated June 30, 2010, the I.G. advised Petitioner that, because she had been convicted of a criminal offense related to the delivery of an item or service under the Medicare or a state health care program, the I.G. was excluding her from participation in Medicare, Medicaid, and all federal health care programs for a period of five years.

Section 1128(a)(1) of the Act requires that the Secretary of Health and Human Services exclude an individual who 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.³ 42 C.F.R. § 1001.101.

An offense is related to the delivery of an item or service under Medicare or a state health care program if there is “a nexus or common-sense connection” between the conduct giving rise to the offense and the delivery of the item or service. *Lyle Kai, R.Ph.*, DAB No. 1979 (2005); *Berton Siegel, D.O.*, DAB No. 1467 (1994). Here, the court documents establish the necessary connection between Petitioner’s crime and a state healthcare program. As the criminal complaint makes clear, the grand theft charge, to which she pled guilty, was related to her presenting fraudulent claims to the Medi-Cal program. I.G. Ex. 2.

Petitioner was therefore convicted of a crime related to the delivery of an item under the Medicaid program, and is subject to a minimum five-year exclusion. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

Petitioner answers yes when asked if she was convicted of a criminal offense. But then she says that she does not “agree” that she was convicted of a criminal offense. She explains that she pled no contest to the charges that were filed. P. Submission 2 at 1. The regulations provide that a no contest plea, accepted by the court, is a conviction. 42 C.F.R. § 1001.2.

Petitioner complains that no one assisted her with her defense. P. Submission 1; P. Submission 4. She admits submitting the time sheets to the State of California but cites “discrepancies” in state program’s reimbursement to her and says that, when unable to care for her father, she hired and paid a third party to provide the service. She claims that the state knew about the situation. P. Submission 3 at 2, 4; P. Submission 4; P. Submission 5. Based on these assertions, she denies committing any unlawful act. P. Submission 5.

The regulations explicitly preclude such a collateral attack on a conviction.

³ The term “state health care program” included a state’s Medicaid program. Section 1128(h)(1) of the Act; 42 C.F.R. § 1320a-7(h)(1).

When the exclusion is based on the existence of a criminal conviction . . . where the facts were adjudicated and a final decision was made, the basis for the underlying conviction . . . is not reviewable and the individual or entity may not collaterally attack it, either on substantive or procedural grounds, in this appeal.

42 C.F.R. § 1001.2007(d); *Joann Fletcher Cash*, DAB No. 1725 (2000); *Chander Kachoria, R.Ph.*, DAB No. 1380, at 8 (1993) (“There is no reason to ‘unnecessarily encumber the exclusion process’ with efforts to reexamine the fairness of state convictions.”); *Young Moon, M.D.*, DAB CR1572 (2007).

Conclusion

The I.G. therefore properly excluded Petitioner from participation in Medicare, Medicaid and the statute mandates a five-year minimum period of exclusion.

/s/

Carolyn Cozad Hughes
Administrative Law Judge