

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Georgina A. Molina, a/k/a Julia Ann Marie Mejia
(OI File No. H-14-40951-9),

Petitioner,

v.

The Inspector General.

Docket No. C-14-1671

Decision No. CR3632

Date: February 6, 2015

DECISION

Petitioner, Georgina A. Molina, a/k/a Julia Ann Marie Mejia, was a licensed practical nurse, employed by an Arizona nursing home.¹ She has a significant history of felony convictions. In 2005, the Arizona State Board of Nursing learned of her felonious past and revoked her nursing license. Because her license was revoked for reasons bearing on her professional competence, performance, or financial integrity, the Inspector General (I.G.) subsequently excluded her from participation in Medicare, Medicaid, and all other federal health care programs pursuant to section 1128(b)(4) of the Social Security Act (Act). That exclusion became effective on June 8, 2009, and continues.

In 2014, the I.G. learned that, in 2011, Petitioner Molina had been convicted of yet another felony. While working as a “caregiver,” she was convicted of fraud in connection with access devices. Based on this conviction and her earlier exclusion, the I.G. has now excluded her from program participation for 20 years, pursuant to section 1128(a)(3) of the Act, concurrent with her section 1128(b)(4) exclusion. Petitioner

¹ Petitioner Molina has used the names: Georgina Ann Molina, Georgina Ann Mullins, and Julia Ann Marie Mejia. *See* I.G. Ex. 12.

concedes that she must be excluded for ten years, but challenges the length of the exclusion beyond that.

I find that the I.G. properly excluded Petitioner Molina and that the 20-year exclusion falls within a reasonable range.

Background

In November 2004, the Pima County Superior Court charged Petitioner Molina with felony forgery and felony theft because she stole and misused her colleague's wallet, credit card, and checkbook. I.G. Ex. 20 at 2, ¶¶ 5, 6, 7. When the Arizona State Board of Nursing learned of the charges, it launched an investigation and discovered that Petitioner Molina had at least three previous felony convictions:

- On December 30, 2003, she was convicted in Maricopa County Superior Court of felony theft. She had stolen a credit card. The court sentenced her to one-year supervised probation and 50 hours of community service, and ordered her to pay \$308.54 in restitution.
- On the same day, the court convicted her of felony attempted theft of a credit card/obtaining a credit card by fraud. She had taken a second individual's credit card. The court sentenced her to one-year probation, concurrent with her other sentence.
- On March 11, 2004, the court convicted her of felony forgery because she had purchased a \$900 gift card using a check written on someone else's account.²

I.G. Ex. 20 at 3, ¶ 8; *see* I.G. Exs. 14, 15.

Based on these convictions, the Nursing Board issued an order, dated November 16, 2005, revoking Petitioner Molina's nursing license for a minimum period of five years. I.G. Ex. 20 at 4-5.

By letter dated May 29, 2009, the I.G. advised Petitioner Molina that, because the Arizona State Board of Nursing revoked her license to provide health care as a practical nurse for reasons bearing on her professional competence, performance, or financial integrity, she was excluded from program participation. The letter explained that section 1128(b)(4) of the Act authorized the exclusion and that she would not be eligible for reinstatement until she regained her license. I.G. Ex. 11 at 1.

² In these cases, Petitioner Molina was convicted under the name, Georgina Ann Mullins.

This case stems from a later conviction. In June 2011, Petitioner Molina pled guilty to felony fraud in connection with access devices. I.G. Ex. 3. By letter dated July 31, 2014, the I.G. notified Petitioner Molina that, pursuant to section 1128(a)(3) of the Act, she was excluded from program participation for a period of 20 years because she had been convicted of a criminal offense related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care item or service. I.G. Ex. 1. Petitioner now appeals.

The I.G. submitted a written brief (I.G. Br.) and Petitioner submitted a letter in response (P. Ltr.). With its brief, the I.G. submitted 20 exhibits (I.G. Exs. 1-20). Petitioner submitted three exhibits (P. Exs. 1-3). The I.G. filed a reply. In the absence of any objections, I admit into evidence I.G. Exs. 1-20 and P. Exs. 1-3.

I directed the parties to indicate in their briefs whether an in-person hearing would be necessary, and, if so, to “describe the testimony it wishes to present, the names of the witnesses it would call, and a summary of each witnesses’ proposed testimony.” I specifically directed the parties to explain why the testimony would be relevant. Order and Schedule at 2, ¶ 2, Attachment 1 (Informal Brief of Petitioner ¶ III), Attachment 2 (Informal Brief of I.G. ¶ III) (September 17, 2014). The I.G. indicates that an in-person hearing is not necessary. Although Petitioner does not directly respond to the question, she does not contend that an in-person hearing is necessary and lists no potential witnesses. I therefore conclude that an in-person hearing is not required.

Issue

Petitioner concedes that the I.G. has a basis for excluding her under section 1128(a)(3) and that she is subject to a minimum exclusion of ten years. The sole issue before me is whether the length of the exclusion beyond the ten-year mandatory minimum is reasonable.

Discussion

Section 1128(a)(3) of the Act mandates that an individual or entity convicted of felony fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care item or service be excluded from participation in federal health care programs. *See also* 42 C.F.R. § 1001.101(c).

From June through May 2010, Petitioner – who then called herself Julia Ann Marie Mejia – was employed as a caregiver for a man who was terminally ill. Her job gave her access to his credit card, so that she could make purchases for him. Without his knowledge or consent, she used the card to buy herself more than \$1,000 worth of merchandise. I.G. Ex. 3 at 6. She was charged in federal district court with fraud in connection with access

devices, in violation of 18 U.S.C. § 1029(a)(2). I.G. Ex. 2. In June 2011, she pled guilty. I.G. Ex. 3. In December 2011, the court accepted her plea agreement and entered judgment against her. The court sentenced her to 23 months in prison, followed by three years of supervised release, and ordered her to pay \$27,497.32 in restitution plus a \$100 special assessment. I.G. Ex. 4 at 6; I.G. Ex. 5 at 1. Based on this conviction, the I.G. has excluded her from program participation.

Based on the aggravating factors and the absence of any mitigating factors, the 20-year exclusion falls within a reasonable range.³

Individuals excluded under section 1128(a)(3) generally must be excluded for at least five years. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.102(a). However, if the individual has previously been convicted of an offense for which an exclusion could be imposed, she must be excluded for at least ten years. Act § 1128(c)(3)(G)(i); 42 C.F.R. § 1001.102(d)(1).⁴

The regulations set forth criteria for lengthening exclusions beyond the ten-year minimum. 42 C.F.R. § 1001.102(b), 1001.102(d)(1). Evidence that does not pertain to one of the aggravating or mitigating factors listed in the regulations may not be used to decide whether an exclusion of a particular length is reasonable.

Among the factors that may serve as bases for lengthening the period of exclusion are the four that the I.G. cites to justify the period of exclusion in this case: 1) the acts resulting in the conviction, or similar acts, had a significant adverse physical, mental, or financial impact on one or more individuals; 2) the sentence imposed by the court included incarceration; 3) the convicted individual has a prior criminal, civil, or administrative sanction record; and 4) the individual has previously been convicted of a criminal offense involving the same or similar circumstances. 42 C.F.R. § 1001.102(b)(3), (5), (6), (8). The presence of an aggravating factor or factors not offset by any mitigating factor or factors justifies lengthening the mandatory period of exclusion.

Adverse impact. Petitioner was the caregiver for a man with a terminal illness. She betrayed his trust and misused his credit card, incurring significant unauthorized expenses. The court ordered her to pay \$27,497.32 in restitution. Although the restitution order was directed primarily to the bank, the credit card company, and other entities, the principal victim here was an individual, who had apparently been

³ I make this one finding of fact/conclusion of law.

⁴ If, on *two or more* previous occasions, the individual has been convicted of an offense for which she could be excluded, the exclusion must be *permanent*. Act § 1128(c)(3)(G)(ii); 42 C.F.R. § 1001.102(d)(2) (emphasis added).

indemnified by these institutions. I.G. Ex. 3 at 6 (referring to the individual as “the victim”); I.G. Ex. 6 at 1. I am therefore satisfied that Petitioner’s crimes had a significant adverse impact on individuals, as anyone who has been the victim of such theft would understand.⁵

Moreover, the record is replete with examples of “similar acts” that had an adverse impact, including financial impact, on individuals: as noted above, in June 2003, she stole and used credit cards from two individuals; in March 2004, she forged a check on an individual’s account and bought herself a \$900 gift card. I.G. Ex. 20 at 3. In November 2004, she stole a co-worker’s wallet, credit cards, and checkbook, writing 8 checks on that account, for a total of \$761.86. I.G. Ex. 20. See discussion below of previous criminal convictions.

Incarceration. Petitioner was sentenced to 23 months incarceration for her crime. Any period of incarceration justifies increasing the period of exclusion. *See Jeremy Robinson*, DAB No. 1905 at 12 (2004) (characterizing a nine-month incarceration as “relatively substantial.”); *Stacy Ann Battle, DDS*, DAB No. 1843 (2002) (finding that four months in a halfway house, followed by four months home confinement justifies lengthening the period of exclusion).

Prior criminal, civil, or administrative sanction record. As discussed above, Petitioner’s nursing license was revoked in 2005 and she was excluded from program participation in 2009. As discussed below, she also has an impressive record of criminal convictions involving the same or similar circumstances.

Previous criminal convictions. The record includes a dizzying and confusing list of the Petitioner’s felony convictions. She has been a brazen thief, stealing from her vulnerable patient, her colleagues, and others. Repeated convictions, loss of her nursing license, even incarceration, have not deterred her from continuing her criminal behavior. More than any other factor, Petitioner’s criminal record establishes that she poses a significant threat to program beneficiaries and program integrity.

Among her convictions:

- Two 2003 felony convictions for theft and attempted theft of a credit card/obtaining a credit card by fraudulent means (discussed above). I.G. Exs. 14, 15, 20;
- A 2004 felony conviction for forgery (also discussed above). I.G. Ex. 20;

⁵ That the criminal acts caused losses of \$5,000 or more to one or more entities is also considered an aggravating factor. 42 C.F.R. § 1001.102(b)(1).

- She was convicted of felony theft in 2004 (under the name Georgina Ann Mullins) and placed on probation for six months, although the record here does not include the particulars of that conviction. I.G. Exs. 16, 17 (indicating Case # CR2004-37218-001);
- In 2007, under the name Julia Ann Marie Mejia aka Georgina Ann Molina, Gina Molina, Georgina Ann Mullins, she was charged with bank fraud and identity theft and pled guilty to bank fraud. I.G. Exs. 6, 8. Using someone else's credit card, obtained through fraud, she withdrew funds from an ATM. I.G. Ex. 8 at 6. The court sentenced her to fifteen months in prison followed by three years of supervised release, and ordered her to pay \$9,449.97 in restitution plus a \$100 special assessment. I.G. Ex. 10 at 1;
- In October 2010, under the name Julia Ann Marie Mejia, she was convicted of attempted theft of a credit card. I.G. Ex. 18.

Petitioner complains that some of these convictions should not count because they were reduced to misdemeanors and eventually dismissed. I.G. Ex. 19 at 1. It appears that, when she was discharged from probation for the 2003 felonies, the court reduced the offenses to misdemeanors. I.G. Ex. 19 at 4, 5.⁶ Another order, dated January 31, 2005, discharged her from probation and reduced to a misdemeanor her 2004 conviction for felony theft (Case # CR2004-37218-001). I.G. Ex. 19 at 6. In an order dated November 13, 2013, the court expunged this theft conviction. I.G. Ex. 19 at 7. Thus, according to the documents before me, of her seven felony convictions (including the one that forms the basis for this exclusion), two have been reduced to misdemeanors and one has been expunged. Of course, that still leaves her with a significant criminal record of four felonies and two misdemeanors.

In any event, for exclusion purposes, these later court actions are irrelevant. The regulations provide that "convicted" means that a judgment of conviction has been entered *regardless* of whether the judgment was ultimately expunged or otherwise removed. 42 C.F.R. § 1001.2; *see Henry L. Gupton*, DAB No. 2058 at 7-8 (2007), *aff'd sub nom. Gupton v. Leavitt*, 575 F. Supp. 2d 874 (E.D. Tenn. 2008) (explaining that, for exclusion purposes, Congress deliberately defined "conviction" broadly to ensure that exclusions would not hinge on state criminal justice practices).

Without regard to the other aggravating factors in this case, Petitioner's criminal record justifies an exclusion of at least 20 years.

⁶ One of the court orders (relating to her conviction on the attempted theft of a credit card/obtaining a credit card by fraud) is confusing because it indicates a probation start date of October 30, 2003, which is before the date she was convicted or sentenced. I.G. Ex. 19 at 4.

No mitigating factors. The regulations consider mitigating just three factors: 1) a petitioner was convicted of three or fewer misdemeanor offenses and the resulting financial loss to the program was less than \$1,500; 2) the record in the criminal proceedings demonstrates that a petitioner had a mental, physical, or emotional condition that reduced her culpability; and 3) a petitioner's cooperation with federal or state officials resulted in others being convicted or excluded, or additional cases being investigated, or a civil money penalty being imposed. 42 C.F.R. § 1001.102(c).

Obviously, because Petitioner's *felony* conviction involved financial losses greater than \$5,000, the first factor does not apply here. Nor does Petitioner claim to have cooperated with law enforcement.

Petitioner cites "mandatory counseling for severe depression" as a mitigating factor. P. Ltr. at 2. It seems that, as a condition of her supervised release, the sentencing court ordered her to participate in a mental health program as directed by her probation officer. P. Ex. 2; I.G. Ex. 5 at 3. According to a written statement from her counselling service, she has been receiving individual monthly counselling since September 2013. I.G. Ex. 19 at 2. But nothing in her criminal record suggests that Petitioner's mental, physical, or emotional condition reduced her culpability.

Petitioner also claims that her 2011 conviction was "taken out of context." She alleges that her patient was not terminally ill, that she and he "were in a close relationship," and that she was in the process of moving into his home until his estranged wife intervened. P. Ltr. at 1. She submits a disturbing note, dated December 9, 2009, from the victim, asking her to move in and telling her that "however long I'm granted to live, I'd like to spend with you." P. Ex. 3. If anything, this evidence seems to bolster the notion that she took advantage of a vulnerable patient who trusted her. In any event, her criminal conviction precludes her from arguing that her conduct was anything but criminal. The relevant facts were adjudicated during the criminal proceedings and are not reviewable here. 42 C.F.R. § 1001.2007(d); *Joanne Fletcher Cash*, DAB No. 1725 (2000); *Chander Kachoria, R.Ph.*, DAB No. 1380 at 8 (1993) (*citing Olufemi Okonuren, M.D.*, DAB No. 1319 (1992) ("There is no reason to 'unnecessarily encumber the exclusion process' with efforts to reexamine the fairness of state convictions.")).

So long as the period of exclusion is within a reasonable range, based on demonstrated criteria, I have no authority to change it. *Jeremy Robinson*, DAB No. 1905 at 5; *Joann Fletcher Cash*, DAB No. 1725 at 7, *citing* 57 Fed. Reg. 3298, 3321 (1992). Here, Petitioner has persistently engaged in felonious conduct. She lost her nursing license and served two significant prison sentences. Yet, she refuses to admit responsibility for her actions, claiming, "I have been in the medical field since 1997 without ANY misconduct of any sort." (emphasis in original). P. Ltr. at 1. She presents as grave a risk to the

integrity of health care programs and to program beneficiaries as anyone I have encountered. I therefore sustain the 20-year exclusion.

Conclusion

The I.G. properly excluded Petitioner from participation in Medicare, Medicaid, and all federal health care programs, and I sustain as reasonable the 20-year period of exclusion.

 /s/

Carolyn Cozad Hughes
Administrative Law Judge