

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Jason Lee Frazier,
(O.I. File No. H-15-40960-9),

Petitioner,

v.

The Inspector General.

Docket No. C-15-3557

Decision No. CR4527

Date: February 9, 2016

DECISION

Petitioner, Jason Lee Frazier, was a licensed professional counselor in the State of Oklahoma. He pled guilty to felony counts of Medicaid fraud and identity theft. Based on this, the Inspector General (I.G.) has excluded him for five years from participating in Medicare, Medicaid, and all federal health care programs, as authorized by section 1128(a)(1) of the Social Security Act (Act). Petitioner appeals the exclusion. For the reasons discussed below, I find that the I.G. properly excluded Petitioner Frazier and that the statute mandates a minimum five-year exclusion.

Background

In a letter dated May 29, 2015, the I.G. notified Petitioner that he was excluded from participating in Medicare, Medicaid, and all federal health care programs for a period of five years because he had been convicted of a criminal offense related to the delivery of an item or service under the Medicare or state health care program. The letter explained that section 1128(a)(1) of the Act authorizes the exclusion. I.G. Ex. 1. Petitioner requested review.

Each party submitted a written argument (I.G. Br.; P. Br.). The I.G. submitted six exhibits (I.G. Exs. 1-6). In the absence of any objection, I admit into evidence I.G. Exs. 1-6.

The parties agree that an in-person hearing is not necessary. I.G. Br. at 10; P. Br. at 2.

Discussion

*Petitioner must be excluded from program participation for a minimum of five years, because he was convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program, within the meaning of section 1128(a)(1).*¹

Under section 1128(a)(1) of the Act, the Secretary of Health and Human Services must 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. 42 C.F.R. § 1001.101(a).

Here Petitioner Frazier was a professional counselor, working under contract with the Oklahoma Medicaid agency. He provided psychotherapy services to children who were Medicaid beneficiaries. The state Medicaid agency required him to meet face-to-face with the children and their families. I.G. Ex. 3. He moved to Hawaii and continued billing the Oklahoma Medicaid program for counseling services. According to Petitioner Frazier, he communicated with his clients by means of telephone, text-messaging, and Skype. I.G. Ex. 3. He admitted that he also fraudulently used the identities of others in submitting claims. I.G. Ex. 5 at 6.

On April 11, 2014, Petitioner Frazier was charged with state felony counts of Medicaid fraud and identity theft. I.G. Ex. 4. He pled guilty to both charges, and, on January 12, 2015, the state court accepted his plea. I.G. Exs. 5, 6. The court granted him a deferred sentence, placed him on three years unsupervised probation, and ordered him to pay \$23,145.66 in restitution and \$16,854.34 in fines and investigative fees. I.G. Ex. 6. The court also ordered that he not submit any claims to the Oklahoma Medicaid program during his probationary period. I.G. Ex. 6.

Petitioner admits that he was convicted of a crime for which exclusion is required, but complains about the length of his exclusion. He maintains that he paid all the ordered restitution and has not practiced therapy for almost two years. P. Br. at 3. But the statute mandates exclusion for a *minimum* period of five years and provides me no discretion to alter that period. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.102(a).

¹ I make this one finding of fact/conclusion of law.

