

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Chukwudi M. Ajumobi
(OI File Number 3-10-40115-9),

Petitioner

v.

The Inspector General.

Docket No. C-11-1

Decision No. CR2309

Date: January 10, 2011

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Chukwudi M. Ajumobi, from participating in Medicare and other federally funded health care programs for a period of at least five years.

I. Background

On July 30, 2010, the I.G. notified Petitioner that he would be excluded for a minimum of five years from participating in Medicare and other federally funded health care programs. The I.G. alleged as the basis for the exclusion that Petitioner had been convicted of a crime as is described at section 1128(a)(2) of the Social Security Act (Act). This section mandates the exclusion of any individual who is convicted of a criminal offense relating to abuse or neglect of a patient in connection with the delivery of a health care item or service.

Petitioner requested a hearing, and the case was assigned to me for a hearing and a decision. I ordered the parties to exchange briefs and proposed exhibits, and they have complied with my order. The I.G. filed a brief and three proposed exhibits that are

identified as I.G. Ex. 1 – I.G. Ex. 3. Petitioner filed a brief and two proposed exhibits. Petitioner did not affix exhibit numbers to his proposed exhibits. I identify them as follows: P. Ex. 1, Memorandum from Robin Lewis, Government of the District of Columbia Department on Disability Services, July 24, 2008; and P. Ex. 2, National Children’s Center Serious Reportable Incident Investigation Final Report. I receive into evidence I.G. Ex. 1 – I.G. Ex. 3 and P. Ex. 1 – P. Ex. 2.

II. Issues, Findings of Fact, and Conclusions of Law

A. Issues

The issues are whether:

1. Petitioner was convicted of a crime as is described at section 1128(a)(2) of the Act; and
2. An exclusion of at least five years is reasonable as a matter of law.

B. Findings of Fact and Conclusions of Law

1. Petitioner was convicted of a crime as is described at section 1128(a)(2) of the Act.

The necessary elements of a conviction that is described at section 1128(a)(2) of the Act are that: (1) the excluded individual must be convicted of a crime in a State or a federal court; (2) the crime must relate to abuse or neglect; and (3) the abuse or neglect must be of a patient and in connection with the delivery of a health care item or service. All three of those elements are met here.

First, it is undisputed that Petitioner was convicted of a crime. Petitioner admits his conviction. Petitioner was convicted in the Superior Court of the District of Columbia of the crime of criminal abuse of a vulnerable adult, and a final judgment of conviction was entered against him on September 17, 2009. I.G. Ex. 2 at 1.

Second, Petitioner’s crime related to abuse. The offense of which he was convicted – criminal abuse of a vulnerable adult – is on its face a crime of abuse. That is also made evident by the facts that are the basis for Petitioner’s conviction. Petitioner was convicted of physically abusing an individual on May 20, 2008, by slapping him on the side of his face with the back of his opened hand. I.G. Ex. 3 at 1-2.

Petitioner argues that there was no abuse because the victim of his crime suffered no physical harm. Petitioner’s argument is, essentially, that he did not actually abuse the victim of his assault notwithstanding that he was convicted of abuse. That is an argument

that I may not consider because Petitioner's conviction for abuse assumes that Petitioner harmed or attempted to harm his victim. I may not now retry Petitioner's criminal case, given Petitioner's intent to commit harm was an element of his crime and given further that the authority to exclude pursuant to section 1128(a)(2) derives from Petitioner's conviction.

Third, the abuse perpetrated by Petitioner was against a patient and was in connection with the delivery of a health care item or service. It is undisputed that Petitioner was employed by the National Children's Center in Washington, D.C. and was assigned as a caregiver of his victim, a patient at that facility. He struck his patient in the course of providing care to him. I.G. Ex. 3 at 1, 2.

2. An exclusion of at least five years is reasonable as a matter of law.

The Act mandates an exclusion of at least five years of any individual who is convicted of a crime as is described at section 1128(a)(2). Act § 1128(c)(3)(B). The five-year minimum exclusion that the I.G. imposed against Petitioner is thus reasonable as a matter of law.

/s/
Steven T. Kessel
Administrative Law Judge