

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Ivette Hernandez-Ramirez, M.D.  
(OI File No.: H-2-07-40418-9),

Petitioner,

v.

The Inspector General.

Docket No. C-13-75

ALJ Ruling No. 2013-8

Date: April 25, 2013

**ORDER OF DISMISSAL**

I dismiss Petitioner's request for hearing because it fails to raise an issue which may properly be addressed in a hearing. 42 C.F.R. § 1005.2(e)(4).

**I. Background**

By letter dated August 31, 2012, the Office of the Inspector General (I.G.) for the Department of Health and Human Services notified Petitioner that she was being excluded from participation in the Medicare and Medicaid programs, as well as other federal health care programs defined in 42 U.S.C. § 1320a-7b(f) for the minimum statutory period of five years. The exclusion notice stated that the exclusion was due to her conviction "in the United States District Court, District of Puerto Rico, 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, including the performance of management or administrative services relating to the delivery of such items or services, or with respect to any act or omission in a health care program (other than Medicare and a State health care program) operated or financed in whole or in part, by any Federal, State or local Government agency." Petitioner Exhibit

(P. Ex.) 1. The exclusion notice further stated that the exclusion would become effective 20 days from the date of the letter.

On November 1, 2012, Petitioner filed a request for hearing (RFH) and P. Exs. 1-7 with the Civil Remedies Division. In her RFH, Petitioner acknowledged that she pled guilty to a criminal offense and that the conviction warrants exclusion under 42 U.S.C. § 1320a-7(a)(3); however, Petitioner objected to the timing of the imposition of the exclusion. RFH at 2. On December 12, 2012, I held a telephone prehearing conference, the substance of which is summarized in my Order and Schedule for Filing Briefs and Documentary Evidence (Order). Pursuant to the Order, the I.G. filed a brief (I.G. Br.) on January 17, 2013, with I.G. Exs. 1 and 2. Petitioner filed a brief (P. Br.), on February 21, 2013. Petitioner again stated that she was convicted of a criminal offense and that the conviction warrants exclusion, but objected to the late effective date of the exclusion. The I.G. filed a reply brief (I.G. Reply Br.) on March 5, 2013. Absent objection, I admit P. Exs. 1-7 and I.G. Exs. 1 - 2 into the record.

## II. Discussion

The issue before me is whether Petitioner's hearing request raises an issue that is within my jurisdiction to adjudicate. I only have jurisdiction to consider whether there is a basis for the I.G. to exclude an individual and whether the length of the exclusion is reasonable. 42 C.F.R. § 1001.2007(a)(1). However, when the I.G. imposes a five-year exclusion under 42 C.F.R. § 1001.102(a), I only have jurisdiction to review the basis for the exclusion. 42 C.F.R. § 1001.2007(a)(2),

An individual must be excluded from participation in any federal health care program if the individual was convicted under federal or state law of a criminal offense related to fraud or other financial misconduct in connection with the delivery of a health care item or service. 42 U.S.C. § 1320a-7(a)(3); 42 C.F.R. § 1001.101(c). In this matter, Petitioner admits that she "committed and pleaded guilty (t[h]rough a Plea Agreement, Exhibit 2) to a US Code criminal offense violation in connection with the delivery of health care services in September, 2007 . . . ." RFH at 2; P. Br. at 5. The record confirms the Petitioner's admissions. *See* I.G. Ex. 1 (Indictment); P. Ex. 2 (Plea and Cooperation Agreement); P. Ex. 3 (Conviction Notification); P. Ex. 5 (Judgment in a Criminal Case). Moreover, because the length of the exclusion period is for the minimum required under 42 C.F.R. § 1001.102(a), Petitioner cannot and does not challenge the length of the exclusion period. 42 C.F.R. § 1001.2007(a)(2).

Petitioner's only dispute is with the timing of the I.G.'s imposition of the exclusion. However, as the I.G. states, I have no jurisdiction to change the effective date of the exclusion. I.G. Reply Br. at 2 (*citing Kailash C. Singhvi, M.D.*, DAB No. 2138 (2007)). The regulations indicate that an exclusion is effective 20 days from the date of the exclusion notice, 42 C.F.R. § 1001.2002(b); however, the regulations do not specify *when*

the I.G. must issue an exclusion notice. *Seide v. Shalala*, 31 F.Supp.2d 466, 469 (E.D. Pa. 1998). It is well-settled that neither administrative law judges nor the Board has “the authority to review the timing of the I.G.’s decision to impose an exclusion where the I.G. has a legal basis to exclude.” *Kris Durschmidt*, DAB No. 2345, at 3 (2010) (*citing Singhvi*, DAB No. 2138). Further, administrative law judges do not have the authority to alter the effective date of the exclusion by retroactively applying the beginning date of an exclusion. *Lisa Alice Gantt*, DAB No. 2065, at 2-3 (2007). *See also* 57 Fed. Reg. 3,298, 3,325 (Jan. 29, 1992) (stating that an administrative law judge is not authorized to modify the date of the commencement of the exclusion identified in the notice of exclusion). The regulations are binding on me and I must follow them. 42 C.F.R. §§ 1001.1(b), 1005.4(c)(1).

### III. Conclusion

Because Petitioner expressly concedes that there is a basis for the imposition of an exclusion (RFH at 2, 3; P. Br. at 2, 3, 5), is unable to dispute the length of the exclusion, and has only objected to effective date of the exclusion (an issue over which I have no jurisdiction), I must dismiss Petitioner’s hearing request because “it fails to raise any issue which may properly be addressed in a hearing.” 42 C.F.R. § 1005.2(e)(4).

This dismissal is final and not subject to further administrative appeal.<sup>1</sup>

It is so ordered.

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/s/  
Scott Anderson  
Administrative Law Judge

<sup>1</sup> Parties may only appeal an administrative law judge’s initial decision (42 C.F.R. § 1005.20), and the I.G. may appeal an interlocutory ruling that a hearing request was timely. 42 C.F.R. § 1005.21(a), (d); *Departmental Appeals Board, Guidelines -- In Cases to which Procedures in 42 C.F.R. Part 1005 Apply*; *see also* 57 Fed. Reg. 3,298, 3,327 (Jan. 29, 1992) (stating that administrative appeals of administrative law judge decisions have been limited by regulation). There is no administrative appeal from a dismissal of a hearing request. 55 Fed. Reg. 12,205, 12,213 (Apr. 2 1990) (“If [a] party fails to file a timely request for a hearing, or thereafter withdraws or abandons his or her request for a hearing, the [administrative law judge] is required to dismiss the hearing request. In such a case, the CMP or exclusion would *become final with no further appeal permitted*) (emphasis added); *see also* 57 Fed. Reg. 3,298, 3,325 (Jan. 29, 1992) (adding as a ground for dismissal in 42 C.F.R. § 1005.2(e) a party’s failure to raise any issue that may properly be addressed in a hearing).