

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Melanie K. Walker,
(OI File No. H-16-40597-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-660

Decision No. CR4729

Date: November 8, 2016

DECISION

Petitioner, Melanie K. Walker, was licensed as a registered nurse in Pennsylvania. The State Board of Nursing suspended her license for a minimum of three years after she tested positive for cocaine. Thereafter, pursuant to section 1128(b)(4) of the Social Security Act, the Inspector General (IG) excluded her from participating in Medicare, Medicaid, and all federal health care programs at least until she regained her license. Petitioner appeals the IG exclusion.

For the reasons discussed below, I sustain the IG's determination.

Background

In a letter dated May 30, 2016, the IG advised Petitioner Walker that, because the Pennsylvania State Board of Nursing suspended her license to provide healthcare as a registered nurse "for reasons bearing on [her] professional competence, professional

performance, or financial integrity,” the IG was excluding her from participating in Medicare, Medicaid, and all federal health care programs. She would not be eligible for reinstatement until she regained her nursing license. The letter explained that section 1128(b)(4) of the Act authorizes the exclusion. IG Ex. 1; P. Ex. 1.

Petitioner timely requested review.

The parties have submitted written arguments (IG Br.; P. Br.). With his brief, the IG submitted three exhibits (IG Exs. 1-3). With her brief, Petitioner submitted four exhibits (P. Exs. 1-4). In the absence of any objections, I admit into evidence IG Exs. 1-3 and P. Exs. 1-4.

The parties agree that an in-person hearing is not necessary in order to decide this case. IG Br. at 5; P. Br. at 3.

Discussion

*Because the Pennsylvania nursing board suspended Petitioner Walker’s license to provide health care as a registered nurse for reasons bearing on her professional competence or performance, the IG may appropriately exclude her from participating in Medicare, Medicaid, and other federal health care programs.*¹

The Act authorizes the Secretary of Health and Human Services to exclude from program participation an individual who surrenders her license to provide health care while a formal disciplinary proceeding concerning her professional competence, professional performance, or financial integrity is pending before any state licensing authority. Act § 1128(b)(4); *accord* 42 C.F.R. § 1001.501(a).

In a final order, dated January 22, 2016, the Pennsylvania State Board of Nursing actively suspended, for no less than a three year period, Petitioner Walker’s license to practice professional nursing. The Board made the suspension retroactive to December 7, 2015. IG Ex. 3 at 1. The Board found that Petitioner Walker was “unable to practice professional nursing with reasonable skill and safety by reason of mental or physical illness or condition or dependence upon alcohol, hallucinogenic or narcotic drugs or other drugs [that] tend to impair judgment or coordination.” IG Ex. 2 at 4.

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

The parties agree that the Board suspended Petitioner Walker's license for reasons bearing on her professional competence or performance. IG Br. at 3-4; P. Br. at 2. Petitioner concedes that she failed a pre-employment drug screen, and subsequently did not follow-up on her option to enroll in a voluntary recovery program. She explains that a family emergency precluded her from continuing the program. P. Exs. 1, 3. She was given a second opportunity, but could not continue the program due to health and financial problems. P. Ex. 4. As a result of her failure to participate in the program, her license was suspended. P. Br. at 2.

Petitioner Walker has no defense. She indicates that she is appealing the length of the exclusion so that she can continue to care for her disabled brother as a personal care aide. P. Ex. 1 at 3. This is not a basis for shortening the length of her exclusion. The statute requires that her period of exclusion "shall not be less than the period during which the individual's . . . license . . . is revoked, suspended, or surrendered . . ." Act § 1128(c)(3)(E); 42 C.F.R. § 1001.501(b).

Conclusion

The IG is authorized to exclude Petitioner from participating in Medicare, Medicaid, and other federal health care programs for as long as her state nursing license is surrendered.

/s/
Carolyn Cozad Hughes
Administrative Law Judge