

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Llisel Hiraldo,
(OI File No. H-17-40551-9),
Petitioner,

v.

The Inspector General.

Docket No. C-17-974

Decision No. CR4981

Date: December 7, 2017

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Llisel Hiraldo, from participating in Medicare, Medicaid, and other federally funded health care programs at least until such time as her license to practice as a pharmacy technician in the State of Massachusetts is reinstated by that State's licensing board.

I. Background

The I.G. filed a brief, a reply brief, and 12 exhibits, identified as I.G. Ex. 1-I.G. Ex. 12, in support of his determination to exclude Petitioner. Petitioner filed a brief in opposition. She filed eight exhibits, five of which are identified as P. Ex. 1-P. Ex. 5. Petitioner did not identify her remaining exhibits. I identify them as follows: P. Ex. 6 – PTCB reinstatement application – approval; P. Ex. 7 – certificate; P. Ex. 8 – wallet card. I receive the parties' exhibits into the record.

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

A. Issue

The issue is whether the I.G. may exclude Petitioner on the authority conferred by section 1128(b)(4) of the Social Security Act (Act).¹

B. Findings of Fact and Conclusions of Law

Section 1128(b)(4)(B) of the Act authorizes exclusion of any individual who surrenders a license to provide health care while a formal disciplinary proceeding was pending against that individual before a State licensing authority and where the proceeding concerned that individual's professional competence, professional performance, or financial integrity.

The evidence – not disputed by Petitioner – proves that Petitioner voluntarily surrendered her license to practice in Massachusetts as a pharmacy technician during the pendency of an adversary State licensing proceeding. I.G. Ex. 4.

Nor is there any question that this proceeding concerned Petitioner's professional competence and financial integrity. The subject of the proceeding and the basis for revocation of Petitioner's license by the Massachusetts Board of Registration in Pharmacy was Petitioner's unlawful diversion, while employed as a pharmacy technician, of substantial quantities of controlled substances consisting of alprazolam tablets and promethazine-codeine. *Id.* at 2.² The proceeding addressed Petitioner's professional competence because she had been charged with diverting potentially dangerous controlled substances to non-authorized use, in violation of her responsibilities as a

¹ I note that in the I.G.'s opening brief the I.G. asserts that Petitioner's exclusion will remain in effect until she "regains her license to practice as a Licensed Practical Nurse in the State of Massachusetts and has been reinstated by the I.G." Informal Brief of Inspector General at 2. This appears to be a typographical error inasmuch as the notice of exclusion that was sent to Petitioner specifically refers to her loss of license in Massachusetts as a pharmacy technician and makes the term of the exclusion contingent on her reinstatement to that profession. I.G. Ex. 1. Also, and inexplicably, the I.G. sent a subsequent notice to Petitioner informing her that she was excluded for a minimum mandatory period of five years. I.G. Ex. 3. That exclusion period is inapplicable to this case inasmuch as Petitioner's exclusion derives from the permissive exclusion authority conferred by section 1128(b)(4).

² Criminal charges were also filed against Petitioner based on the same conduct. I.G. Ex. 8-I.G. Ex. 11.

pharmacy technician. It addressed her financial integrity because diversion of these substances amounted to theft that caused a financial loss to her employer.

Petitioner's sole argument is that she is reinstated and that, therefore, there no longer is a basis to exclude her. As alleged proof of her reinstatement, Petitioner produced documentation showing that Massachusetts' Pharmacy Technician Certification Board (PTCB) reinstated her certification as a pharmacy technician. P. Ex. 6-P.Ex. 8.

It is evident, however, that Petitioner seeks to mix apples and oranges. Certification by the PTCB is verification that Petitioner has the technical skills and training necessary to work as a pharmacy technician. It is *not* a license to work as a technician but rather, a necessary prerequisite to attaining that license. I.G. Ex. 12. Although Petitioner has been certified by the PTCB as meeting the technical skills and training requirements for licensure, her license remains revoked. Consequently, the I.G. retains the authority to exclude her.

_____/s/_____
Steven T. Kessel
Administrative Law Judge