

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	)	
Cynthia M. Ramkelawan, D.D.S.,	)	DATE: March 25, 1996
Petitioner,	)	
- v. -	)	Docket No. C-95-088
The Inspector General.	)	Decision No. CR415

DECISION

By letter dated January 19, 1995, Cynthia M. Ramkelawan,<sup>1</sup> D.D.S. (Petitioner), was notified by the Inspector General (I.G.) of the Department of Health and Human Services (DHHS) that, as a result of her failure to repay her Health Education Assistance Loans (HEALs) or to enter into an agreement to repay her HEALs, with which she had financed her dental education, she was being excluded from participation in the Medicare program. The I.G. informed Petitioner that she was being excluded from participation in Medicare pursuant to section 1892 of the Social Security Act (Act).<sup>2</sup> The I.G. further informed Petitioner that she was being excluded from participation

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<sup>1</sup> Petitioner is known also as Cynthia Marie Williams Langford-Ramkelawan, D.D.S. See I.G. notice letter dated January 19, 1995.

<sup>2</sup> This decision does not address Petitioner's exclusion under section 1892 of the Act. It is not clear that I have the authority to review an exclusion imposed pursuant to section 1892. See I.G. Brief at 7; Mohammad H. Azarpira, D.D.S., DAB CR372 (1995); James F. Cleary, D.D.S., DAB CR252 (1993); Charles K. Angelo, Jr., M.D., DAB CR290 (1993); and Joseph Marcel-Saint Louis, M.D., DAB CR320 (1994). Moreover, for purposes of my decision in this case, the issue is moot, because I have found Petitioner's exclusion to be authorized under section 1128(b)(14) of the Act.

in Medicaid<sup>3</sup> pursuant to section 1128(b)(14) of the Act. The I.G. advised Petitioner that she would be excluded until her debt had been satisfied completely.

By letter dated February 28, 1995, Petitioner filed a timely request for a review of the I.G.'s action by an administrative law judge (ALJ). In her letter requesting a hearing, Petitioner does not dispute any specific issue or finding stated in the January 19, 1995 letter from the I.G. During the initial telephone prehearing conference call, I granted the parties a stay in order for them to negotiate settlement. By letter dated August 26, 1995, Petitioner indicated that she was unable to work out a financial settlement with the United States Attorney's Office. During a subsequent telephone prehearing conference call on September 20, 1995, the I.G. suggested that this case be decided by submission of written documentation and that an in-person hearing was not necessary. September 20, 1995 Order and Schedule for Filing Briefs and Documentary Evidence. Petitioner did not object to the I.G.'s request.

Upon careful consideration of the record before me, I find that there exist no facts of decisional significance genuinely in dispute and that the only matters to be decided are the legal implications of the undisputed material facts. I find that DHHS has taken all reasonable steps available to secure Petitioner's repayment of her HEALS. Thus, it was reasonable for the I.G. to exclude Petitioner from participation in Medicare and to direct her exclusion from participation in Medicaid. Act, section 1128(b)(14). I conclude that the term of the exclusion imposed pursuant to section 1128(b)(14) is reasonable based on the I.G.'s representation to me that, under the exclusion imposed pursuant to section 1128(b)(14), Petitioner will be eligible to apply for reinstatement to Medicare and Medicaid at such time as the Public Health Service (PHS) notifies the I.G. that Petitioner's HEAL default is cured or that Petitioner's indebtedness has been resolved to PHS' satisfaction. I.G. Brief at 2; 42 C.F.R. § 1001.1501(b).

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<sup>3</sup> "State health care program" is defined by section 1128(h) of the Act to cover three types of federally financed health care programs, including Medicaid. Unless the context indicates otherwise, I use the term "Medicaid" hereafter to represent all State health care programs from which Petitioner was excluded.

APPLICABLE LAW

Section 1128(b)(14) of the Act permits the Secretary of DHHS to exclude from participation in the Medicare and Medicaid programs "any individual who the Secretary determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans."

PETITIONER'S POSITION

Petitioner contends that she is unable to generate sufficient income to repay her debts. Furthermore she believes that excluding her would be counterproductive, inasmuch as such action would reduce her income further, making repayment less likely. She suggests that repayment is particularly difficult for her because she intentionally established her practice in a poor section of the community.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The facts are undisputed:

1. While studying dentistry, Petitioner applied for and received the following three HEALs through the Wisconsin Health Education Assistance Board (WHEAB):

\$15,000	October 1983	I.G. Exs. 1, 4 <sup>4</sup>
20,000	September 1984	I.G. Exs. 2, 5
20,000	September 1985	I.G. Exs. 3, 6

2. To provide additional financing for her dental education, Petitioner applied for and received the following two additional HEALs through the Student Loan Marketing Association (SLMA):

\$20,000	September 1986	I.G. Exs. 25, 27
5,000	September 1987	I.G. Exs. 26, 28

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<sup>4</sup> The I.G. submitted 34 exhibits (I.G. Exs. 1 - 34) with her motion and brief for summary disposition. Petitioner did not object to the I.G.'s exhibits. Petitioner did not submit any exhibits. Thus, I am admitting I.G. Exs. 1 - 34 into evidence.

3. Petitioner signed promissory notes for each of the five HEALs and she promised to make payments beginning on the first day of the tenth month she ceased being a full-time student at a HEAL-recognized school, or an intern, or resident in an approved program. I.G. Exs. 4 - 6, 27, 28.

4. By signing the promissory notes, Petitioner further agreed that, if she defaulted upon her repayments, the entire amount she owed would become immediately due and payable. I.G. Exs. 4 - 6, 27, 28.

5. Petitioner graduated from dental school in December 1988. I.G. Ex. 22 at 3.

6. Petitioner failed to repay principal or interest as provided in each of the five loan agreements. I.G. Exs. 7 - 9, 13 - 17.

7. As of February 19, 1992, Petitioner owed \$126,452.36 on the three loans that she received from WHEAB (including principal and interest). As of September 24, 1993, Petitioner owed \$44,835 (including principal and interest) on her two loans with SLMA. I.G. Exs. 22, 34. Findings 2, 3.

8. Petitioner was granted several deferments from her obligation to repay the HEALs by both WHEAB and SLMA. I.G. Exs. 7 - 9, 29, 30.

9. When Petitioner failed to repay her HEALs, WHEAB sent delinquency notices on April 15 and May 15, 1991. I.G. Exs. 13, 14.

10. WHEAB subsequently issued repayment schedules to Petitioner. I.G. Exs. 10 - 12.

11. On June 15, 1991, WHEAB advised Petitioner that if she did not repay her HEALs, her account would be filed as a default claim. I.G. Ex. 16.

12. On June 28, 1991, WHEAB filed a claim with PHS based on Petitioner's failure to repay her HEALs to WHEAB. I.G. Exs. 17, 18.

13. On January 7, 1992, a suit was filed against Petitioner in Wisconsin circuit court to collect the outstanding balance of Petitioner's HEALs with WHEAB.

3. Ex. 22.

The court entered judgment against Petitioner. I.G. 22.

15. On May 4, 1992, PHS agreed to pay WHEAB the amount of \$129,562 for unpaid principal and interest on Petitioner's HEALs. I.G. Ex. 19.
16. On May 20, 1992, PHS notified Petitioner that it had been authorized by the United States Government to collect the unpaid interest and principal on Petitioner's HEALs and demanded that Petitioner repay the loans. I.G. Ex. 20; Findings 12 - 15.
17. On May 20, 1993, Petitioner was offered a Medicare and Medicaid offset arrangement to repay her indebtedness for the loans initially with WHEAB. I.G. Ex. 21; Finding 1.
18. SLMA issued a repayment schedule to Petitioner. I.G. Ex. 31; see also Findings 3, 4, 6, 7.
19. On August 16, 1993, SLMA filed a claim with PHS based on Petitioner's failure to repay her HEALs. I.G. Ex. 32.
20. On September 8, 1993, PHS agreed to pay SLMA the amount of \$44,835 for unpaid principal and interest on Petitioner's HEALs. I.G. Ex. 33.
21. On September 29, 1993, PHS notified Petitioner that she had been placed in default by the previous loan holder (SLMA) and the HEAL debt had been assigned by SLMA to PHS. I.G. Ex. 34.
22. On January 19, 1995, the I.G. excluded Petitioner from participating in the Medicare and Medicaid programs.
23. As of January 19, 1995, Petitioner had not repaid her HEAL debts. Findings 1 - 22.
24. The I.G. had authority to impose and direct an exclusion pursuant to section 1128(b)(14) of the Act. Findings 1 - 23.
25. The Secretary has taken all reasonable steps available to secure repayment of Petitioner's HEALs. 42 C.F.R. § 1001.1501(a)(2); Finding 17.
26. An exclusion imposed pursuant to section 1128(b)(14) of the Act is reasonable if the excluded party is excluded until such time as PHS notifies the I.G. that the default has been cured or the debt has been resolved to PHS' satisfaction. 42 C.F.R. § 1001.1501(b).

27. The exclusion imposed against Petitioner pursuant to section 1128(b)(14) of the Act was intended by the I.G. to exclude Petitioner until such time as PHS notifies the I.G. that Petitioner's default of her HEAL debt has been cured or that her HEAL debt has been resolved to PHS' satisfaction. I.G. Brief at 2.

28. The exclusion which the I.G. imposed against Petitioner pursuant to section 1128(b)(14) of the Act is reasonable. Findings 1 - 27.

### ISSUES

1. Whether the I.G. had authority to exclude Petitioner from participation in the Medicare program pursuant to section 1128(b)(14) of the Act.
2. Whether the term of exclusion imposed pursuant to section 1128(b)(14) of the Act is reasonable.

### DISCUSSION

1. The I.G. had authority under section 1128(b)(14) of the Act to exclude Petitioner from participating in Medicare and Medicaid.

Section 1128(b)(14) of the Act provides that the Secretary (or her delegate, the I.G.) may exclude a party from participating in Medicare or Medicaid who:

. . . is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans . . .

There is no dispute that in this case Petitioner's HEAL debts arise from loans made "in connection with health professionals education." There is also no dispute that Petitioner defaulted on repayment of her HEALS. Thus, if I conclude that the Secretary took "all reasonable steps available" to secure repayment from Petitioner of her HEALS, I must find that the I.G. had authority to exclude Petitioner under section 1128(b)(14) of the Act.

The parties to this case do not disagree that Petitioner applied for and received five HEALS to pursue her education as a dentist. The parties do not disagree that

Petitioner defaulted on her HEALs. Petitioner does contend, however, that she is unable to generate sufficient income to repay her HEALs. Petitioner did not specifically assert that PHS failed to take all reasonable steps available to secure repayment from Petitioner of her HEAL debts. However, her assertion that she has been unable to repay even a part of her debt can be construed as an argument that PHS failed to take all reasonable steps to secure repayment. I do not accept Petitioner's argument. It is apparent, both from the law and from the undisputed material facts of this case, that the Secretary took "all reasonable steps available" to her to secure repayment from Petitioner of her HEAL debts prior to the I.G. excluding Petitioner under section 1128(b)(14).

The intent of Congress in enacting section 1128(b)(14) of the Act was, in part, to provide the Secretary with a mechanism by which she could assert some leverage over individuals who default on their HEALs. Thus, section 1128(b)(14) is, among other things, a debt collection tool by which the Secretary can collect a debt once voluntary persuasion has failed. In assuming Petitioner's HEAL debts, the Secretary acquired the right -- and the obligation -- to collect on that debt. Mohammad H. Azarpira, D.D.S., DAB CR372 at 8; Charles K. Angelo, Jr., M.D., DAB CR290 at 11 (1993).

Section 1128(b)(14) of the Act requires the Secretary only to take all reasonable steps available to secure repayment. I construe the term "all reasonable steps available" to mean all reasonable and legitimate means of debt collection. The relevant regulation states that all reasonable steps will have been taken to collect a HEAL debt if PHS offers a debtor a Medicare and Medicaid reimbursement offset arrangement as required by section 1892 of the Act prior to the I.G.'s imposing an exclusion. 42 C.F.R. § 1001.1501(a)(2).

Inasmuch as Petitioner herein borrowed the money needed for her dental education from a loan program established by the federal government to assist individuals seeking to enter the health care professions, it is evident that her loans are exactly the kind contemplated by section 1128(b)(14) and that, upon her default, DHHS was entitled to exclude her.

It is also apparent that, inasmuch as Petitioner (1) was granted a delay in repayment (forbearance); (2) was also given the opportunity to reduce her debt by surrendering a portion of payments she received from government programs; and (3) was given several warnings before being

declared delinquent, DHHS took reasonable measures to collect the indebtedness before deciding on this exclusion.

The Secretary reasonably could infer, from Petitioner's conduct, that Petitioner was unlikely to repay her debt voluntarily. The Secretary provided Petitioner with many opportunities to repay her debt and to enter into a repayment agreement. Petitioner was offered the opportunity to enter into a Medicare and Medicaid reimbursement offset agreement prior to her exclusion. Petitioner did not avail herself of any of these opportunities for repayment. I conclude that the Secretary did that which was necessary to establish conclusively that all reasonable steps available were taken to collect Petitioner's HEAL debts. 42 C.F.R. § 1001.1501(a)(2).

2. The exclusion which the I.G. imposed under section 1128(b)(14) of the Act is reasonable.

The notice of exclusion which the I.G. sent to Petitioner advised her that she would be excluded, both under sections 1128(b)(14) and 1892 of the Act, until her HEAL debt had been completely satisfied. However, the I.G. contends now that Petitioner's exclusion remains in effect until such time as PHS notifies the I.G. that the default has been cured or the obligations have been resolved to PHS' satisfaction. I.G. Brief at 2.

The I.G.'s clarification is consistent with the requirements of 42 C.F.R. § 1001.1501(b). I conclude that the exclusion which the I.G. imposed under section 1128(b)(14) is reasonable, and I sustain it. I find that the exclusion is reasonable because, on its face, it enables Petitioner to negotiate an agreement with PHS to repay her HEAL debt.

CONCLUSION

I conclude that the I.G. had authority to exclude Petitioner from participating in Medicare and Medicaid under section 1128(b)(14) of the Act. I conclude further that the exclusion which the I.G. imposed under section 1128(b)(14) is reasonable.

/s/

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Joseph K. Riotto  
Administrative Law Judge