

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Jeanette Sovereign
(OI File No. 2-09-40152-9),

Petitioner,

v.

The Inspector General.

Docket No. C-10-172

Decision No. CR2085

Date: March 08, 2010

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Jeanette Sovereign, from participating in Medicare and other federally funded health care programs for a minimum period of five years. Exclusion is mandated in this case because Petitioner was convicted of a criminal offense that is related to neglect or abuse of patients in connection with the delivery of a health care item or service.

I. Background

Petitioner is a nurse. The I.G. determined to exclude her from participation in Medicare and other federally funded health care programs for a minimum of five years because he concluded that Petitioner had been convicted of a criminal offense 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 that is related to neglect or abuse of patients 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. Each party submitted a brief and proposed exhibits. The I.G. submitted four exhibits which are identified as I.G. Ex. 1 – I.G. Ex. 4. Petitioner submitted a single proposed exhibit which is identified as P. Ex. 1. I receive all of these exhibits into evidence.

Neither party requested an in-person hearing of the case.

II. Issues, findings of fact and conclusions of law

A. Issue

The issue in this case is whether Petitioner was convicted of a criminal offense as described at section 1128(a)(2) of the Act.

B. Findings of fact and conclusions of law

I make the following findings of fact and conclusions of law (Findings).

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

The evidence offered by the I.G. establishes that, on June 25, 2009, Petitioner was convicted in a New York court of a single misdemeanor offense of falsifying patient records. I.G. Ex. 2; I.G. Ex. 3; I.G. Ex. 4. Petitioner was convicted of failing to report an allegation of resident abuse at a nursing home which employed her. The conviction was based on allegations that Petitioner had been apprised of an alleged act of mistreatment of a resident by another employee at the nursing home but had failed to report or make a record of what had been told to her. I.G. Ex. 2.

The evidence offered by the I.G. plainly establishes that Petitioner was convicted of a criminal offense as is described by section 1128(a)(2). It was clearly a conviction related to abuse against a patient (a nursing home resident) committed in connection with the delivery of health care items or services to that resident. Petitioner's conviction was related to neglect or abuse of a patient because the alleged victim is a resident at the nursing home that employed Petitioner. Her conviction of falsifying patient records emanates directly from allegations that she failed to make a written report of abuse allegations that had been communicated to her. There would have been no need for Petitioner to create a record, and no reason to falsify one, had allegations of resident abuse not been communicated to her. The alleged abuse of the resident was in connection with the delivery of a health care item or service in that it involved actions by another employee of the nursing home perpetrated during the course of his providing health care items or services to residents who included the victim of the alleged abuse.

Petitioner does not deny the facts that I have just cited. She asserts however, that she lacked reasonable cause to believe that a resident at the nursing home where she worked had been abused. That argument, essentially, reduces to the contention that Petitioner was not convicted of an offense as is described at section 1128(a)(2) because she is not, in fact, guilty of having committed a crime.

This assertion establishes no defense. I may not look behind Petitioner's conviction in order to decide whether she is actually guilty. The authority to exclude pursuant to section 1128(a)(2) derives from a conviction in a court and not from the underlying acts or omissions on which the criminal charges leading to the conviction are based. Here, Petitioner plainly was convicted of an offense as described in section 1128(a)(2) and the I.G.'s authority to exclude Petitioner derives from that conviction. The allegations that led to the charges against Petitioner and her ultimate conviction of those charges were explicit. I.G. Ex. 2.

Petitioner also argues that her conviction was not of an offense described in section 1128(a)(2). According to her, she was convicted solely of the record keeping offense of failing to make an entry in a medical log.

However, this argument avoids the fact that Petitioner was charged with, and convicted of, failing to make a record of an allegation of resident abuse committed in the context of the delivery of health care items or services to the victim. That nexus is all that is necessary to establish a basis to exclude pursuant to section 1128(a)(2).

2. Petitioner's five-year exclusion is mandatory.

Section 1128(a)(2) of the Act mandates the I.G. to exclude any individual who is convicted of an offense that falls within the reach of that section. The I.G. had no choice but to exclude Petitioner as a consequence of her conviction. Section 1128(c)(3)(B) of the Act requires that the minimum period of any mandatory exclusion be for five years.

Here, the I.G. imposed the statutory minimum exclusion period against Petitioner. The reasonableness of the exclusion is therefore not at issue.

/s/
Steven T. Kessel
Administrative Law Judge