

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Shandirhia S. Webster a.k.a Shandirhia S. Winsley,  
(O.I File No. H-15-40822-9),

Petitioner,

v.

The Inspector General,  
Department of Health and Human Services.

Docket No. C-15-3880  
Decision No. CR4497

Date: December 30, 2015

**DECISION**

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Shandirhia S. Webster a/k/a Shandirhia S. Winsley, from participating in Medicare, State Medicaid programs and other federally funded health care programs until her exclusion from the Nebraska Medical Assistance Program (Nebraska Medicaid) ends. Exclusion is authorized in this case by section 1128(b)(5) of the Social Security Act (Act).

**I. Background**

Petitioner requested a hearing to challenge the I.G.'s exclusion determination. The I.G. filed a brief in support of its determination and filed four supporting exhibits that are identified as I.G. Ex. 1 – I.G. Ex. 4. Petitioner filed a brief replying to the I.G.'s brief. Petitioner filed no exhibits. The I.G. filed a reply brief. I receive I.G. Ex. 1 – I.G. Ex. 4 into the record.

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

**A. Issues**

The issues are whether the I.G. has authority under section 1128(b)(5) of the Act to exclude Petitioner, and whether the exclusion imposed by the I.G. – coterminous with Petitioner’s exclusion by Nebraska Medicaid – is authorized.

### **B. Findings of Fact and Conclusions of Law**

As a preliminary matter I note that the I.G. styled his brief as a motion for summary judgment. It is unnecessary for me to decide whether summary judgment is appropriate in this case – i.e., whether all issues of material fact are undisputed. The I.G. offered no witness testimony. Petitioner proffered the testimony of three individuals who, she contends, “wrote statements that were never reviewed.” Petitioner’s Informal Brief at 2. However, Petitioner offered no explanation as to what these witnesses might say at an in-person hearing that would be relevant.

The thrust of Petitioner’s argument appears to be that the State proceeding that resulted in revocation of her Medicaid provider status was unfair in that there was possibly exculpatory evidence that was either ignored or not received. In short, Petitioner seeks to re-litigate her State Medicaid revocation before me. The testimony that she seeks to present would seem to address the merits of the revocation determination and Petitioner apparently would offer it in order to prove that the revocation determination was unfair.

I have no authority to consider these arguments. The I.G.’s authority to exclude Petitioner in this case derives from the final action taken by the State of Nebraska to revoke Petitioner’s Medicaid participation. Section 1128(b)(5) of the Act authorizes the exclusion of any individual who has been excluded by a State health care program (any State Medicaid program) for reasons bearing on that individual’s professional competence, professional performance, or financial integrity. Act, section 1128(b)(5)(B). In this case my review is limited to determining: whether Petitioner’s provider status was revoked or suspended in Nebraska; and whether the reasons for that revocation, if revocation occurred, relate to the criteria expressed in section 1128(b)(5)(B).

Petitioner’s proffered testimony is irrelevant. She may not re-litigate the revocation of her provider status before me. 42 C.F.R. § 1001.2007(d). Therefore, there is no basis for me to convene an in-person hearing inasmuch as there are no witnesses who would provide relevant testimony. I am deciding this case based on the parties’ written exchanges. I do not need to decide whether the criteria for summary judgment are met here because there is no evidence, beyond that which has been proffered in writing that I might receive at an in-person hearing.

