

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Tina G. Caron a/k/a Tina G. Ehlenbach a/k/a Tina G. Henthorne,  
(OI File No. H-15-42395-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-330

Decision No. CR4679

Date: August 12, 2016

**DECISION**

Petitioner, Tina G. Caron, a/k/a Tina G. Ehlenbach a/k/a Tina G. Henthorne, was a certified nursing assistant working in Maine. The state agency responsible for licensing and regulatory affairs terminated her participation in state medical assistance programs after she was convicted of theft and forgery, and her actions were reported to state and national nurse aide registries. Thereafter, as authorized by section 1128(b)(5) of the Social Security Act (Act), the Inspector General (IG) has excluded her from participating in Medicare, Medicaid, and all federal health care programs until the state agency reinstates her participation. Petitioner appeals the IG exclusion.

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

**Background**

By letter December 31, 2015, the IG advised Petitioner Caron that, because she had been "suspended, excluded or otherwise sanctioned by the Maine Department of Health and Human Services . . . 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 until the state agency reinstated her. The letter explained that section 1128(b)(5) of the Act authorizes the exclusion. December 31, 2015 Notice Letter.

Petitioner timely requested review.

The parties have submitted written arguments (IG Br.; P. Br.). With his brief, the IG submitted seven exhibits (IG Exs. 1-7). In the absence of any objections, I admit into evidence IG Exs. 1-7.

I directed the parties to indicate in their briefs whether a hearing would be necessary, and, if so, to list proposed witnesses. I directed the parties to explain why the witness' testimony would be relevant. Order and Schedule for Filing Briefs and Documentary Evidence at 5. The IG responded that an in-person hearing is not necessary. IG Br. at 6. Petitioner did not request an in-person hearing. P. Br.

## Discussion

***Because a state regulatory authority terminated Petitioner's participation in and reimbursement from all state medical assistance programs, the IG may exclude her from federal program participation.***<sup>1</sup>

Section 1128(b)(5) of the Act authorizes the Secretary of Health and Human Services to exclude from participation in any federal health care program an individual who has been suspended, excluded, or otherwise sanctioned under a state health care program for reasons bearing on the individual's professional competence, professional performance, or financial integrity. *See* 42 C.F.R. § 1001.601.

Here, Petitioner Caron worked as a certified nursing assistant in a nursing home in Caribou, Maine. IG Ex. 7. On December 4, 2014, she was convicted of theft and forgery, having stolen checks from a nursing home resident and then cashed them. IG Exs. 6, 7.

In a letter dated December 17, 2014, the Division of Licensing and Regulatory Services of the Maine Department of Health and Human Services advised Petitioner Caron that, based on its investigation, it found that she had misappropriated the property of a nursing home resident. Those findings would be recorded on the Maine Registry of Certified Nursing Assistants and reported to the National Provider Data Bank. IG Exs. 2, 3.

Thereafter, based on the licensing board's actions, the Maine Department of Health and Human Services terminated Petitioner Caron's participation in and reimbursement from

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

all medical assistance programs administered by the department, which include the Medicaid program. IG Ex. 4.

Petitioner concedes that the state has excluded her but protests her innocence, maintaining that she was “set up.” P. Br. at 2. Federal regulations preclude such a collateral attack:

When the exclusion is based on the existence of . . . a determination by another Government agency, or any other prior determination where the facts were adjudicated and a final decision was made, the basis for the . . . determination is not reviewable and the individual or entity may not collaterally attack it, either on substantive or procedural grounds, in this appeal.

42 C.F.R. § 1001.2007(d); *Marvin L. Gibbs, Jr., M.D.*, DAB No. 2279 at 8-10 (2009); *Roy Cosby Stark*, DAB No. 1746 (2000).

Petitioner was thus excluded from the state health care programs for reasons bearing on her professional performance and financial integrity – she stole from a resident of the nursing home where she worked. The IG may therefore exclude her from program participation under section 1128(b)(5). Her period of exclusion may not be less than the period during which she is excluded by the state. 42 C.F.R. § 1001.601(b)(1).

### **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 exclusion continues.

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/s/  
Carolyn Cozad Hughes  
Administrative Law Judge