

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Michele A. Wickham
(O.I. Number: 9-09-40373-9),

Petitioner

v.

The Inspector General.

Docket No. C-10-890

Decision No. CR2283

Date: November 19, 2010

DECISION

Petitioner, Michele A. Wickham, asks review of the Inspector General's (I.G.'s) determination to exclude her for five years from participation in the Medicare, Medicaid, and all federal health care programs under section 1128(a)(1) of the Social Security Act (Act). For the reasons discussed below, I find that the I.G. is authorized to exclude Petitioner and that the statute mandates a minimum five-year exclusion.

Discussion

The sole issue before me is whether the I.G. has a basis for excluding Petitioner from program participation. Because an exclusion under section 1128(a)(1) must be for a minimum period of five years, the reasonableness of the length of the exclusion is not an issue. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

The parties agree that an in-person hearing is not required and that the matter may be resolved based on written submissions. I.G. Br. at 5; P. Br. at 2. The parties have submitted briefs. The I.G. submitted eight exhibits (I.G. Exs. 1-8). In the absence of any objections, I admit into evidence I.G. Exs. 1-8.

Petitioner must be excluded for five years, because she was convicted of a criminal offense related to the delivery of an item or service under the Medicare or a state health program, within the meaning of section 1128(a)(1) of the Social Security Act.¹

Petitioner worked as a nurse providing in-home care to a Medicaid-eligible patient. She submitted time cards to her employer claiming to have provided services that she did not provide. She also falsified nurses' notes in the patient chart, indicating that she provided services that she did not provide. I.G. Ex. 2. She was indicted on eight misdemeanor counts of grand theft and altering or modifying medical records and, on June 18, 2009, pled no contest in California State Court to one count of each. I.G. Exs. 3, 4. The court accepted the plea, sentenced her to one year probation, and ordered her to pay \$1,698 in fines and restitution. I.G. Ex. 4.

In a letter dated July 30, 2010, the I.G. advised Petitioner that, because she had been convicted of a criminal offense related to the delivery of an item or service under the Medicare or a state health care program, the I.G. was excluding her from participation in Medicare, Medicaid, and all federal health care programs for a period of five years. CMS Ex. 1. Section 1128(a)(1) of the Act authorizes such exclusion. I.G. Ex. 1.

Section 1128(a)(1) of the Act requires that the Secretary of Health and Human Services exclude an individual who has been convicted under federal or state law of a criminal offense related to the delivery of an item or service under Medicare or a state health care program.² 42 C.F.R. § 1001.101. Petitioner concedes that she was convicted of a criminal offense and does not dispute that her crimes were related to the state Medicaid program. She is therefore subject to a minimum five-year exclusion. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

Petitioner argues that she should nevertheless not be excluded, because: 1) she has been punished enough; and 2) she has an otherwise clean record and plans to have her conviction expunged. These are not bases for overturning a mandatory exclusion. Her perception as to the degree of her punishment is simply irrelevant. The regulations explicitly provide that "conviction" means that a judgment of conviction has been entered "regardless of whether . . . the judgment of conviction . . . has been expunged." 42 C.F.R. § 1001.2; *Henry L. Guppton*, DAB No. 2058 at 8 (2007).

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

² The term "state health care program" includes a state's Medicaid program. Section 1128(h)(1) of the Act; 42 C.F.R. § 1001.2.

