

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Lynda L. Hook,
(OI File No. H-12-42979-9),

Petitioner,

v.

The Inspector General.

Docket No. C-13-1326

ALJ Ruling No. 2014-17

Date: December 13, 2013

DISMISSAL

Petitioner, Lynda L. Hook, was a licensed practical nurse, working in New Hampshire. She pled guilty in state court to one count of theft by deception. Specifically, while employed at a doctor's office, she called in a false prescription, utilizing Medicaid insurance funds to cover its costs. I.G. Ex. 2 at 2-3. Pursuant to section 1128(a)(1) of the Social Security Act (Act), the Inspector General (I.G.) has excluded her from participating in Medicare, Medicaid, and all federal health care programs for a period of five years. Petitioner appeals, challenging the length of the exclusion.

The I.G. has moved to dismiss, arguing that Petitioner fails to raise an issue that may be properly addressed in a hearing. I agree and, for the reasons discussed below, grant the I.G.'s Motion to Dismiss.

Discussion

In a letter dated August 30, 2013, the I.G. advised Petitioner Hook that she was excluded from participation in Medicare, Medicaid, and all federal health care programs because she had been convicted of a criminal offense related to the delivery of an item or service

under Medicare or a state health care program. The letter explained that section 1128(a)(1) of the Act authorizes the exclusion. I.G. Ex. 1 at 1.

Petitioner concedes that she was convicted and is subject to exclusion under section 1128(a)(1), but argues that the period of exclusion is too severe, and that her character and other factors justify reducing the period of exclusion. P. Response; P. Request for Hearing (Sept. 4, 2013).¹

Section 1128(a)(1) of the Act mandates that the Secretary of Health and Human Services exclude from program participation any individual who has been convicted under federal or state law of a criminal offense related to the delivery of an item or service under the Medicare or a state health care program. *See also* 42 C.F.R. § 1001.101(a). The exclusion must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.102(a). Mitigating factors may be considered as bases for reducing the period of exclusion *only* if the exclusion period is longer than five years. 42 C.F.R. § 1001.102(c).

An excluded individual may challenge the basis for the exclusion and the length of the exclusion. 42 C.F.R. § 1001.2007(a)(1). However, where, as here, the I.G. imposes an exclusion of five years, the length of the exclusion is not reviewable. 42 C.F.R. § 1001.2007(a)(2). I am required to dismiss a request for hearing where that request fails to raise any issue that may properly be addressed in a hearing. 42 C.F.R. § 1005.2(e)(4). Because Petitioner's hearing request does not raise an issue that I am empowered to resolve, I grant the I.G.'s motion and dismiss Petitioner's appeal.

_____/s/
 Carolyn Cozad Hughes
 Administrative Law Judge

¹ The I.G. filed a motion to dismiss and supporting brief, along with two exhibits (I.G. Exs. 1-2). Petitioner filed a response, which included character references. The I.G. filed a reply.