Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Christopher George Collins,
(O.I. File No.: 5-08-40684-9),

Petitioner,

v.

The Inspector General.

Docket No. C-11-685

Decision No. CR2515

Date: May 16, 2012

DECISION

This case poses the question: what is a reasonable period of program exclusion for one of Detroit's most successful Medicare beneficiary "recruiters?"

Petitioner, Christopher George Collins, was once a registered nurse licensed to practice in the State of Michigan. He willfully participated in a massive scheme to defraud the Medicare program. He pled guilty in United States District Court to conspiracy to commit health care fraud, a felony. Based on his conviction, the Inspector General (I.G.) has excluded him from participation in Medicare, Medicaid and all federal health care programs for a period of 50 years, under section 1128(a)(1) of the Social Security Act (Act). Here, Petitioner concedes that he must be excluded, but he challenges the length of that exclusion.

For the reasons set forth below, I find the 50-year exclusion reasonable.

I. Background

Petitioner was a Michigan nurse who, in late spring/early summer 2007, went to work for Patient Choice Home Healthcare, Inc. (Patient Choice), which purported to be a home health agency providing physical and occupational therapy services to Medicare beneficiaries in Oak Park, Michigan, a Detroit suburb. After working there for about a month, he proposed becoming a "beneficiary recruiter" for the agency. In that capacity, he would solicit Medicare beneficiaries for Patient Choice, offering cash and drugs in exchange for Medicare patient information. His employer, Muhammad Shahab, agreed to the scheme, and Petitioner Collins became the agency's top Medicare beneficiary recruiter, paying Medicare beneficiaries for their Medicare information, which Patient Care then used to bill the Medicare program for unnecessary and fictitious services. I.G. Ex. 3 at 2-3; I.G. Ex. 4 at 1-2. The beneficiaries he recruited were neither homebound nor in need of physical/occupational therapy services, as Petitioner Collins well knew. In fact, they were destitute and addicted to drugs. Petitioner Collins gave them cash and narcotics in exchange for their Medicare information and their signatures on medical documents that the conspirators would use to conceal their fraud. I.G. Ex. 4 at 2.

In June 2008, Mr. Shahab and others purchased another "home health agency," All American Home Care (All American). Petitioner Collins became that agency's principal beneficiary recruiter, operating a network of recruiters whom he paid for patient referrals. Like Patient Choice, All American paid beneficiaries kickbacks in exchange for their Medicare information and signatures on blank medical documents; it billed the program for physical therapy services that either were not provided or were not medically necessary. Eventually, Petitioner Collins owned the agency. In about June 2009, he obtained signature authority over all of All American's accounts and began writing himself checks for what he believed should have been his portion of the profits from the fraud. I.G. Ex. 3 at 3-4; I.G. Ex. 4 at 3-4.

On January 12, 2010, Petitioner Collins was charged with felony conspiracy to commit health care fraud (18 U.S.C. § 1349), and, on May 13, 2010, he pled guilty to the charge in federal district court. I.G. Ex. 3; I.G. Ex. 4 at 1; I.G. Ex. 5. The Court accepted his plea, sentenced him to 63 months in prison, and ordered him to pay a whopping $6,967,500 in restitution to the Medicare Trust Fund. I.G. Ex. 6.

In a letter dated June 30, 2011, the I.G. advised Petitioner that, because of his convictions, he was excluded from participation in Medicare, Medicaid, and all federal health care programs for a minimum period of 50 years. I.G. Ex. 1. The letter explained that section 1128(a)(1) of the Act authorizes the exclusion. Petitioner timely requested a hearing to challenge his exclusion.

In compliance with my orders the I.G. has submitted an initial brief (I.G. Br.) and a reply brief (I.G. Reply). The I.G. also submitted seven exhibits (I.G. Exs. 1-7), which, in the absence of any objection, I admit into evidence.

Petitioner presents his case through two documents: one titled Motion Requesting Relief (P. Motion) and a brief (P. Br.).

The parties agree that this case can be resolved without an in-person hearing. I.G. Br. at 9; P. Br. at 8.

II. Issue

The sole issue before me is whether the length of the exclusion (50 years) is reasonable.

III. Discussion

Based on the aggravating factors in this case and the absence of any mitigating factor, the 50-year exclusion falls within a reasonable range.[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. 42 C.F.R. § 1001.101.

An exclusion brought under section 1128(a)(1) must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. §§ 1001.102(a); 1001.2007(a)(2). Federal regulations set forth criteria for lengthening exclusions beyond the five-year minimum. 42 C.F.R. § 1001.102(b). Evidence that does not pertain to one of the aggravating or mitigating factors listed in the regulation may not be used to decide whether an exclusion of a particular length is reasonable.

Among the factors that may serve as a basis for lengthening the period of exclusion are the three that the I.G. relies on in this case: 1) the acts resulting in the conviction, or similar acts, caused a government program or another entity financial losses of $5,000 or more; 2) the acts that resulted in the conviction, or similar acts, were committed over a period of one year or more; and 3) the sentence imposed by the court included incarceration. 42 C.F.R. § 1001.102(b). The presence of an aggravating factor or factors, not offset by any mitigating factor or factors, justifies lengthening the mandatory period of exclusion.

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

Petitioner concedes that these aggravating factors apply here, but argues that they do not justify a ten-fold increase in his period of exclusion. P. Br. at 1.

Program financial loss (42 C.F.R. § 1001.102(b)(1)): As noted above, the district court ordered Petitioner to pay the Medicare program $6,967,500 in restitution. I.G. Ex. 6 at 5. Restitution has long been considered a reasonable measure of program losses. *See Jason Hollady, M.D.*, DAB No. 1855 (2002). Here, Petitioner's crimes cost the Medicare program financial losses that were almost *1,400 times greater* than the $5,000 threshold for aggravation. The Departmental Appeals Board (Board) has characterized amounts substantially greater than the statutory standard as an "exceptionally aggravating factor" that is entitled to significant weight. *Jeremy Robinson*, DAB No. 1905 (2004); *Donald A. Burstein, PhD.*, DAB No. 1865 (2003). I agree and consider that the substantial program loss more than justifies a significant increase in the period of exclusion.

Petitioner complains that this number is exaggerated, that he received only a fraction of that amount, and that his more culpable co-defendants probably took the bulk of the money. P. Motion at 2; P. Br. at 2. First, the question is not how much the petitioner profited, but how much the program lost. As the federal prosecutors told the sentencing court:

> Every dollar that Collins helped divert from this program – and into the pockets of himself and his co-conspirators – is a dollar that could have been used to provide valuable services to Medicare beneficiaries.

I.G. Ex. 4 at 8.

In fact, according to court documents, the two ostensible home health agencies with which Petitioner Collins was associated amassed $14.5 million in Medicare claims in just two years. I.G. Ex. 4 at 6; I.G. Ex. 5 at 9. Petitioner Collins "played a critical role" and was "one of the principal reasons" for the conspiracy's generating that much money. He personally was responsible – either directly as a recruiter or as an owner – for almost half of the resulting program losses. I.G. Ex. 4 at 6.

In any event, Petitioner Collins admitted and the district court conclusively determined that he "was responsible for submitting or causing the submission of approximately $6,967,500 in false or fraudulent claims . . . ." I.G. Ex. 3 at 4. Federal regulations preclude Petitioner from collaterally attacking the court's judgment.

> When the exclusion is based on the existence of a criminal conviction . . . where the facts were adjudicated and a final decision was made, the basis for the underlying conviction . . . 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); *Joann Fletcher Cash*, DAB No. 1725 (2000); *Chander Kachoria, R.Ph.*, DAB No. 1380, at 8 (1993) ("There is no reason to 'unnecessarily encumber the exclusion process' with efforts to reexamine the fairness of state convictions."); *Young Moon, M.D.*, DAB CR1572 (2007).

I consider the enormity of the program's financial losses here an exceptionally aggravating factor that compels a period of exclusion many times longer than the five-year minimum.

Length of criminal conduct (42 C.F.R. § 1001.102(b)(2)). According to the court documents, Petitioner's criminal activity began in approximately August 2007 and continued through October 2009. I.G. Ex. 3 at 2, 4; I.G. Ex. 4 at 1, 3-5. Thus, the acts that resulted in Petitioner's conviction and similar acts were committed over a period of 26 to 27 months, more than double the time necessary to constitute an aggravating factor.

Incarceration (42 C.F.R. § 1001.102(b)(5). The sentence imposed by the criminal court included incarceration. The district court sentenced Petitioner Collins to more than five years (63 months) in prison. I consider this significant jail time, which underscores the seriousness of his crimes. I.G. Ex. 6 at 2

No mitigating factors. The regulations consider mitigating just three factors: 1) a petitioner was convicted of three or fewer misdemeanor offenses and the resulting financial loss to the program was less than $1,500; 2) the record in the criminal proceedings demonstrates that a petitioner had a mental, physical, or emotional condition that reduced his culpability; and 3) a petitioner's cooperation with federal or state officials resulted in others being convicted or excluded, or additional cases being investigated, or a civil money penalty being imposed. 42 C.F.R. § 1001.102(c). Characterizing a mitigating factor as "in the nature of an affirmative defense," the Board has ruled that Petitioner has the burden of proving any mitigating factor by a preponderance of the evidence. *Barry D. Garfinkel*, M.D., DAB No. 1572 at 8 (1996).

Obviously, because Petitioner's felony conviction involved program financial losses many times greater than $1,500, the first factor does not apply here. Nor does Petitioner claim any mental, physical, or emotional condition that reduced his culpability.

Petitioner claims, however, that he cooperated fully with the FBI and federal prosecutors "by answering all queries truthfully and to the best of his knowledge," and points out that others were indicted in the months following his meetings with government officials. He speculates that the government must have used the information he provided. P. Br. 6.

Answering questions posed by investigators does not satisfy the regulatory requirement for mitigation. "It is entirely Petitioner's burden" to show that his cooperation resulted in others being convicted or excluded, or additional cases being investigated, or a civil money penalty being imposed. *Stacey R. Gale*, DAB No. 1941 at 15 (2004). Petitioner Collins has not shown that his "cooperation" led to any specific conviction, exclusion, or the imposition of additional penalties.

Thus, no mitigating factor offsets the significant aggravating factors present in this case.

IV. Conclusion

I recognize that 50 years is a substantial period of exclusion and should be imposed on those posing a grave threat to program integrity. Petitioner Collins poses such a threat. The federal prosecutors characterized him as "one of the largest recruiters in Detroit." I.G. Ex. 4 at 10. This puts him squarely in the "big leagues" of program fraud and justifies keeping him out of vulnerable health care programs for the maximum period of time. As the Board has noted, the I.G. may reasonably determine that increasingly longer periods of exclusion are necessary not only to protect federal funds, but "to staunch an increasing amount of health care fraud." *Jeremy Robinson*, DAB No. 1905 at 6, fn. 8 (2004). Prosecutors in Petitioner Collins's criminal case cited some sobering statistics:

> The National Health Care Anti-Fraud Association, an organization composed of both public and private health insurers and regulators, conservatively estimates that 3% of all health care spending in the United States is lost due to fraud. If such an estimate is accurate, health care fraud cost our economy a staggering $68 billion in 2007, the most recent year for which figures are available.

I.G. Ex. 4 at 7. I find heartening the I.G.'s willingness to act aggressively in excluding proven fraudsters and thus protecting these programs.

I therefore find that a 50-year exclusion falls within a reasonable range.

/s/
Carolyn Cozad Hughes
Administrative Law Judge