

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Dora O. Uwudia
(O.I. File No. H-15-43574-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-551

Decision No. CR4756

Date: December 8, 2016

DECISION

The Inspector General (IG) of the United States Department of Health and Human Services excluded Dora O. Uwudia (Ms. Uwudia or Petitioner) for five years from participation in Medicare, Medicaid, and all other federal health care programs based on her criminal conviction of an offense related to the delivery of an item or service under Medicare or a state health care program. Petitioner sought review of the exclusion. For the reasons stated below, I affirm the IG's determination to exclude Petitioner for five years. 42 U.S.C. § 1320a-7(a)(1), (c)(3)(B).

I. Background

By letter dated April 29, 2016, the IG notified Ms. Uwudia that she was being excluded, effective 20 days from the date on the letter, from participation in Medicare, Medicaid, and all federal health care programs under 42 U.S.C. § 1320a-7(a)(1) for the minimum statutory period of five years. The IG stated that he was taking this action based on Ms. Uwudia's conviction in the District Court of Oklahoma County, State of Oklahoma, of a

criminal offense related to the delivery of an item or service under Medicare or a state health care program, including the performance of management or administrative services relating to the delivery of items or services, under any such program. IG Exhibit (Ex.) 1.

On May 12, 2016, Petitioner timely requested a hearing before an administrative law judge. Subsequently, Petitioner filed additional documents. Petitioner argued that she was not convicted of a criminal offense and disputed that her conviction was program-related. Petitioner argued further that her conviction was obtained through a “forced plea.”

On July 13, 2016, I held a pre-hearing telephone conference, the substance of which is summarized in my July 22, 2016 Order and Schedule for Filing Briefs and Documentary Evidence (Order). *See* 42 C.F.R. § 1005.8.

In accordance with the Order, the IG filed a brief (IG Br.) and seven exhibits (IG Exs. 1-7). Petitioner filed a response brief (P. Br.) with seven exhibits (P. Exs. 1-7). The IG waived his right to file a reply brief.

II. Decision on the Record

Neither party objected to any of the proposed exhibits; therefore, I admit them all into the record. Order ¶ 3; 42 C.F.R. § 1005.8(c); Civil Remedies Division Procedures § 14(e).

At the prehearing conference, I ordered the parties to complete and submit short-form briefs with their prehearing exchanges. Order ¶ 1. I provided a copy of Petitioner’s short-form brief with my Order. Order ¶ 1. The short-form brief requires, in relevant part, that each party indicate whether a hearing is necessary and whether the party would like to provide any testimony at the hearing. If a party answers those questions in the affirmative, the party must provide the names of the proposed witnesses, a description of the testimony expected from the proposed witnesses, and an explanation as to how the proposed testimony will not duplicate information contained in the documentary exhibits. I also expressly included these requirements in my Order. Order ¶ 4.

The IG indicated on its short-form brief that a hearing was unnecessary. IG Br. at 5. In its brief, the IG addressed the possibility that Petitioner might request an in-person hearing to prove that her guilty plea was the result of a conspiracy, and stated that such an argument would be an impermissible collateral attack on her conviction and irrelevant to the legal sufficiency of Petitioner’s exclusion. IG Br. at 6.

Petitioner indicated on her short-form brief that a hearing was necessary and that there was testimony she wanted to offer at the hearing. P. Br. at 3. She listed four witnesses whose testimony she wished to offer: the lawyer who represented her during her criminal

proceedings, and three individuals purported to be assistant attorneys general with the State of Oklahoma. Instead of providing a description of each witness' proposed testimony as instructed by the short-form brief, Petitioner merely cited several of her exhibits (P. Exs. 1-5), which, by her description, all appear to pertain to the state criminal proceedings. P. Br. at 3. I note that P. Ex. 1 is an undated written statement titled "Response to Complaint," and in it, Petitioner sets forth the circumstances surrounding her criminal conviction, claiming that she did not commit Medicaid fraud and that her lawyer and the prosecutors conspired to force her to plead guilty to the charges. P. Ex. 1. I note further that P. Exs. 2-5, as described by Petitioner in her short-form brief, do not correspond to the actual exhibits she filed as P. Exs. 2-5 in DAB E-File. Regardless of this discrepancy, it is evident that the testimony of Petitioner's proposed witnesses would relate to her main objective of undercutting her criminal conviction and attempting to prove her plea resulted from a conspiracy against her.

The purported testimony of Petitioner's witnesses would constitute a collateral attack on her criminal conviction, and is thus inadmissible. The applicable regulation explicitly precludes any collateral attack on a predicate conviction:

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 . . . may not collaterally attack it either on substantive or procedural grounds in this appeal.

42 C.F.R. § 1001.2007(d). Therefore, I must exclude Petitioner's witnesses as irrelevant and immaterial (*see* 42 C.F.R. § 1005.17(c)) and deny Petitioner's request for an in-person hearing. Instead, because there are no relevant witnesses, I decide this case on the basis of the written record.

III. Issue

Whether the IG had a basis to excluded Petitioner from participating in Medicare, Medicaid, and all other federal health care programs for five years pursuant to 42 U.S.C. § 1320a-7(a)(1). 42 C.F.R. § 1001.2007(a)(1)-(2).

IV. Jurisdiction

I have jurisdiction to adjudicate this case. 42 U.S.C. § 1320a-7(f)(1); 42 C.F.R. § 1005.2.

V. Findings of Fact, Conclusions of Law, and Analysis

My findings of fact and conclusions of law are set forth in italics and bold font.

The IG indicated that 42 U.S.C. § 1320a-7(a)(1) was the basis for Ms. Uwudia's mandatory exclusion. IG Ex. 1. The statute provides:

(a) Mandatory exclusion.

The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a-7b(f) of this title):

(1) Conviction of program-related crimes

Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII of this chapter or under any State health care program.

Thus, the elements the IG must prove to sustain Ms. Uwudia's exclusion pursuant to section 1320a-7(a)(1) in this case are: (1) Petitioner was convicted of a criminal offense, and (2) Petitioner's offense was related to the delivery of an item or service under Medicare or a State health care program.

A. Petitioner pled guilty to seven counts of Medicaid fraud, and the District Court of Oklahoma County accepted the plea, deferred sentencing for 10 years, and ordered Petitioner to pay the following amounts to the Oklahoma Attorney General's Office, Medicaid Fraud Control Unit: \$91,000 in restitution, a \$91,000 fine, and \$30,000 in investigation costs.

Ms. Uwudia is a licensed counselor who owned a company that contracted with the Oklahoma Health Care Authority to provide counseling services to Medicaid recipients. IG Exs. 6, 7. The Oklahoma Health Care Authority is the state agency in Oklahoma responsible for administering Medicaid funds to providers of health care services. IG Exs. 6, 7. On June 27, 2012, the Attorney General of Oklahoma filed an Information with the District Court of Oklahoma County, State of Oklahoma, charging Ms. Uwudia with three counts of Medicaid fraud, in violation of 56 O.S. § 1005(A)(1). Under Count 1, the Information alleged that Ms. Uwudia willfully and knowingly submitted false claims to the Oklahoma Medicaid Program, through its fiscal agent, "for payment in the aggregate amount of more than \$2,500.00 for Medicaid services not provided to" three individuals. Under Counts 2 and 3, the criminal conduct alleged was similar as under Count 1, except that the false claims submitted to the Oklahoma Medicaid Program for payment were "in the aggregate amount of less than \$2,500.00 for Medicaid services not provided to" two individuals. IG Ex. 4.

On May 14, 2013, the Attorney General of Oklahoma filed an Amended Information in the state court, charging Petitioner with four counts of Medicaid fraud, in violation of 56 O.S. § 1005(A)(1), (A)(6), and (A)(7). Under Counts 1 and 3, the Information alleged that Ms. Uwudia willfully and knowingly submitted false claims to the Oklahoma Medicaid Program, through its fiscal agent “for payment in the aggregate amount of more than \$2,500.00 for Medicaid services not provided to” seven individuals, in violation of 56 O.S. § 1005(A)(1). Under Count 2, the Information alleged that Ms. Uwudia willfully and knowingly failed to maintain records for seventeen individuals in connection with her submission of claims or receipt of payment from the Oklahoma Medicaid program, in violation of 56 O.S. § 1005(A)(7). Under Count 4, the Information alleged that Ms. Uwudia “willfully and knowingly solicit[ed] a pecuniary benefit in connection with services claimed to be payable by the Oklahoma Medicaid Program, to wit: paying utility bills and/or rent” for five individuals, in violation of 56 O.S. § 1005(A)(6). IG Ex. 5.

On October 20, 2015, Ms. Uwudia signed a plea agreement in which she agreed to plead guilty to the three counts of Medicaid fraud charged in the Information filed on June 27, 2012, and the four counts of Medicaid fraud charged in the Amended Information filed on May 14, 2013. IG Ex. 2 at 1-9. The plea agreement stated that Ms. Uwudia pled guilty of her own free will and without any coercion or compulsion of any kind. I.G. Ex. 2 at 6. Ms. Uwudia agreed to the following statement of the factual basis for her guilty plea:

On or about October, 2010 to May 2011; I committed Medicaid fraud by overbilling Oklahoma Medicaid by an amount greater than \$2500 in Counts 1-3.

On or about August 20, 2010 to March 14, 2012, I committed Medicaid fraud by overbilling Oklahoma Medicaid by an amount greater than \$2500 in Counts 1-4 all occurring [sic] in Okla. Co.

I.G. Ex. 2 at 7. As part of the plea agreement, Ms. Uwudia agreed to pay the following to the Oklahoma Attorney General’s Office, Medicaid Fraud Control Unit: \$91,000 in restitution, a \$91,000 fine, and \$30,000 in investigation costs. Ms. Uwudia also agreed to pay a \$180 assessment. IG Ex. 2 at 5. On October 20, 2015, the state court accepted Ms. Uwudia’s guilty plea, adjudged her guilty, and sentenced her to a 10-year deferred sentence. IG Ex. 2 at 9-11.

B. Petitioner was convicted of a criminal offense under 42 U.S.C. § 1320a-7(a)(1).

Under 42 U.S.C. § 1320a-7(a)(1), Petitioner must be “convicted of a criminal offense” before she can be excluded. An individual is considered “convicted” when a judgment of conviction has been entered by a federal, state, or local court, or a plea of guilty or no contest has been accepted in a federal, state, or local court. 42 U.S.C. § 1320a-7(i)(1), (3). As previously discussed, Petitioner pled guilty to violating 56 O.S. §§ 1005(A)(1), (A)(6), and (A)(7), and the state court accepted her plea and issued a judgment of conviction. I.G. Exs. 2, 3. Based on these facts, I conclude that, for purposes of exclusion, Ms. Uwudia was “convicted” of a criminal offense.

Petitioner nevertheless argues that she has not been convicted of a criminal offense. Petitioner contends, among other things, that her attorney and the prosecutors engaged in a conspiracy against her; her plea agreement was a product of coercion; and she did not receive all documentation relating to her plea. To further prove these theories, Petitioner also offered the testimony of witnesses. However, Petitioner’s claims are contradicted by her own responses to the questions contained in the plea agreement. In response to the question “Have you been forced, abused, mistreated, or promised anything by anyone to have you enter your plea(s)?” Petitioner circled “No.” In response to the question “Do you plead guilty of your own free will and without any coercion or compulsion of any kind?” Petitioner circled “Yes.” Petitioner acknowledged further that her attorney had completed the form and “[they] have gone over the form and I understand its contents and agree with the answers.” IG Ex. 2 at 6.

In any event, all of Petitioner’s arguments amount to an impermissible collateral attack on her guilty plea and the resulting conviction. As I discussed above, the regulations explicitly prohibit Petitioner from re-litigating her conviction. 42 C.F.R. § 1001.2007(d); *see also Travers v. Shalala*, 20 F.3d 993, 998 (9th Cir. 1994). The circumstances alleged by Petitioner surrounding her plea agreement and conviction are not reviewable in these proceedings. The fact of her conviction is established by the court records, and I conclude that Petitioner was convicted of an offense within the meaning of 42 U.S.C. § 1320a-7(a)(1).

C. Petitioner’s criminal conviction for Medicaid fraud is an offense related to the delivery of an item or service under a state health care program (i.e., Medicaid).

An individual must be excluded from participation in any federal health care program if the individual was 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 U.S.C. § 1320a-7(a)(1); 42 C.F.R. § 1001.101(a). A state health care program includes a state’s Medicaid program. 42 C.F.R. § 1001.2 (definition of *State health care program*).

It is significant that the term “related to” simply means that there must be a nexus or common sense connection. *See Quayum v. U.S. Dep’t of Health & Human Servs.*, 34 F. Supp. 2d 141, 143 (E.D.N.Y. 1998); *see also Friedman v. Sebelius*, 686 F.3d 813, 820 (D.C. Cir. 2012) (describing the phrase “relating to” in another part of section 1320a-7 as “deliberately expansive words,” “the ordinary meaning of [which] is a broad one” and one that is not subject to “crabbed and formalistic interpretation”) (internal quotes omitted).

Although Petitioner argues that her conviction was not program-related, the record shows that she was convicted of seven counts of Medicaid fraud. Five of the seven counts of which Petitioner was convicted alleged that Petitioner willfully and knowingly submitted false claims to the Oklahoma Medicaid program for payment for Medicaid services that had not been provided. The other counts alleged that Petitioner failed to maintain proper documentation in connection with her submission of claims or receipt of payment from Medicaid, and that Petitioner improperly solicited a pecuniary benefit by paying certain utility bills or rents that are payable by Medicaid. IG Exs. 4, 5. As part of her plea agreement, Petitioner admitted that she “committed Medicaid fraud by overbilling Oklahoma Medicaid by an amount greater than \$2500.” IG Ex. 2 at 7.

Thus, based on the factual recitations in the Information and Amended Information, there can be no dispute that Petitioner’s criminal conduct, involving filing false claims with the Oklahoma Medicaid program, was “related to” the delivery of an item or service under a state health care program. *Jack W. Greene*, DAB No. 1078 (1989), *aff’d*, *Greene v. Sullivan*, 731 F. Supp. 835 (E.D. Tenn. 1990); *Michael Travers, M.D.*, DAB No. 1237 (1991), *aff’d*, *Travers v. Sullivan*, 791 F. Supp. 1471, 1481 (E.D. Wash. 1992), *aff’d*, *Travers v. Shalala*, 20 F.3d 993 (9th Cir. 1994).

Further, the fact that the state court ordered Petitioner to pay \$91,000 in restitution to the Oklahoma Attorney General’s Office, Medicaid Fraud Control Unit is evidence of a nexus between Petitioner’s criminal conduct and the Oklahoma Medicaid program. Where an individual is convicted of a crime, “proof that any sentence based on that conviction included the payment of restitution to a protected program creates a rebuttable presumption of a nexus or common-sense connection between the conviction and the delivery of an item or service under [that] program.” *Johnnelle Johnson Bing*, DAB CR1938 at 6 (2009) (citing *Alexander Nepomuceno Jamias*, DAB CR1480 (2006)), *aff’d*, *Johnnelle Johnson Bing*, DAB No. 2251 (2009). Similar to the present case, the petitioner in the *Bing* case had been ordered to pay restitution to a state Medicaid program. *Id.* The restitution Petitioner was ordered to pay Oklahoma’s Medicaid program strongly supports the conclusion that there is a nexus between Petitioner’s criminal conduct and the delivery of items or services involving the Oklahoma Medicaid program.

D. Petitioner must be excluded for the statutory minimum of five years under 42 U.S.C. § 1320a-7(c)(3)(B).

Because I have concluded that a basis exists to exclude Petitioner under 42 U.S.C. § 1320a-7(a)(1), Petitioner must be excluded for a minimum period of five years. 42 U.S.C. § 1320a-7(c)(3)(B); 42 C.F.R. §§ 1001.102(a), 1001.2007(a)(2).

VI. Conclusion

For the foregoing reasons, I affirm the IG's determination to exclude Petitioner from participating in Medicare, Medicaid, and all other federal health care programs for the statutory five-year minimum period under 42 U.S.C. § 1320a-7(a)(1), (c)(3)(B).

/s/
Scott Anderson
Administrative Law Judge