Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	)	
	)	
Rikantas (Rik) Majauskas, D.O.,	)	DATE: October 22, 1996
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-96-061
	)	Decision No. CR441
The Inspector General.	)	
	)	

DECISION

This case is before me on Petitioner's December 30, 1995 request for a hearing on his exclusion[1] and on the subsequent briefing on summary disposition regarding Petitioner's Health Education Assistance Loan (HEAL) indebtedness. I find that there is no dispute as to any material fact that requires an in-person hearing. I find that the I.G. properly excluded Petitioner under section 1128(b)(14) of the Act.[2] I do not decide whether the I.G. properly excluded Petitioner under section 1892 of the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW (Findings)

1. In July 1981, August 1982, July 1983, January 1984, and June 1984, while he was a student at the University of Health Sciences in Kansas City, Missouri, Petitioner applied for and received five Health Education Assistance Loans (HEALs) in amounts of

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[1] By letter dated October 27, 1995, Petitioner was notified by the I.G. that he was being excluded from participation in the Medicare and State health care programs, as defined in section 1128(h) of the Social Security Act ("the Act"). He was further advised that his exclusion was based on sections 1128(b)(14) and 1892 of the Act. His exclusion was to remain in effect until his debt had been satisfied completely.

[2] The parties submitted briefs and exhibits in accordance with the instructions contained in my April 29, 1996 Order. I admit all of the parties' exhibits into evidence (I.G. Exs. 1 - 37 and P. Exs. 1 - 11).

$15,000; $20,000; $15,000; $5000; and $20,000, respectively. I.G. Exs. 2, 4, 5, 6.

2. HEALs are insured by the Secretary of Health and Human Services (Secretary). 42 U.S.C. § 292-292p.

3. Petitioner signed promissory notes in which he agreed to repay each of his HEALs by making payments on the first day of the tenth month after he ceased being a full-time student at a HEAL recognized school or an intern or resident in an accredited program. I.G. Exs. 3, 8, 9, 10, 11.

4. Under the terms contained in the promissory notes in all five of Petitioner's HEALs, Petitioner was obligated to repay his HEALs in not less than ten and no more than 25 years, and to make a minimum annual payment of at least $600 or an amount equal to the annual interest on the unpaid principal balance, whichever is greater. I.G. Exs. 3, 8, 9, 10, 11.

5. Petitioner graduated from the University of Health Sciences in Kansas City, Missouri, in May 1985. I.G. Ex. 21.

6. On November 7, 1985, Petitioner was sent a repayment schedule which informed him that he was to begin monthly repayments of his HEALs beginning February 16, 1986, in the amount of $783.64. I.G. Ex. 36.

7. Petitioner was granted a deferment on his repayments from July 1, 1985 through June 30, 1986. I.G. Ex. 12.

8. From May 21, 1987 through December 7, 1987, Petitioner made six payments on his HEALs. The payments totalled $6224.39. I.G. Ex. 13.

9. Petitioner requested and received three forbearances -- the first from December 1, 1987 through May 31, 1988; the second from August 1, 1988 through January 31, 1989; and the third from February 1, 1989 through April 30, 1989. I.G. Exs. 14, 15, 16.

10. During Petitioner's forbearances, no payments were required, but interest continued to accrue on the principal. I.G. Exs. 14, 15, 16.

11. During his forbearances, Petitioner did make several payments which served to extend his repayment date on his HEALs. I.G. Exs. 13 - 16.

12. On August 14, 1989, Petitioner made an additional payment of $688.16 and did not make any other payments on his HEALs. I.G. Ex. 13.

13. All of Petitioner's HEALs were eventually purchased by the Student Loan Marketing Association (SLMA). I.G. Ex. 13.

14. SLMA declared Petitioner in default on his HEALs and, on March 4, 1991, filed a complaint in the Circuit Court for the 15th Judicial Circuit in and for Palm Beach, Florida, requesting judgment in the amount of $141,011.47. I.G. Exs. 17, 18.

15. On April 3, 1991, in the Circuit Court for the 15th Judicial Circuit in and for Palm Beach, Florida, SLMA was awarded a judgment against Petitioner for default on his HEALs in the amount of $161,548.93 ($141,011.47 plus interest and court costs). I.G. Ex. 18.

16. In a letter dated July 23, 1992, SLMA notified Petitioner that: 1) it had been awarded judgment against Petitioner in the amount of $161,548.93; 2) Petitioner was responsible for any interest on the judgment accruing after the judgment date; and 3) it was requesting that Petitioner pay the amount due. I.G. Ex. 19.

17. Petitioner did not respond to SLMA's July 23, 1992 letter.

18. On July 23, 1992, SLMA assigned the judgment against Petitioner to the Public Health Service. I.G. Ex. 20.

19. SLMA filed an insurance claim on Petitioner's HEALs with the Department of Health and Human Services (HHS), which HHS paid in the amount of $172,714.36. I.G. Exs. 21 - 25.

20. In a letter dated September 30, 1992, PHS 1) notified Petitioner that his HEALs had been assigned to the United States Government; 2) asked for full repayment; 3) informed Petitioner how to enter into a repayment agreement if Petitioner was unable to make full payment on his HEAL debt; and 4) informed Petitioner that his account would be referred to the Department of Justice for enforced collection and to the I.G. for initiation of an exclusion from participation as a provider in the Medicare program. I.G. Ex. 26.

21. Petitioner did not respond to PHS's September 30, 1992 letter nor did he offer repayment.

22. In a letter dated December 31, 1992, PHS informed Petitioner that it had referred Petitioner's HEALs to the PHS collection agency and that if Petitioner did not enter into a repayment agreement or pay the debt in full, his account would be referred to the Department of Justice for collection. I.G. Ex. 27.

23. Petitioner did not respond to PHS's December 31, 1992 letter.

24. Nothing in the record indicates any collection activity occurred regarding Petitioner's HEAL debt from December 31, 1992 until October 5, 1993.

25. In a letter dated October 5, 1993, PHS again requested Petitioner repay his HEAL debt or enter into a repayment agreement. I.G. Ex. 28.

26. Petitioner did not respond to PHS's October 5, 1993 letter.

27. In a letter dated November 16, 1993, PHS advised Petitioner that he could repay the outstanding balance on his HEALs by negotiating a repayment agreement or by having his Medicare or Medicaid reimbursements directly forwarded to PHS to be applied to his indebtedness. I.G. Ex. 29.

28. Contained in the November 16, 1993 letter were instructions on how Petitioner could establish a repayment agreement. I.G. Exs. 29, 30.

29. The November 16, 1993 letter informed Petitioner that, if he were unable or unwilling to negotiate an offset or repayment agreement within 60 days, PHS would immediately refer the case to the I.G., who would then impose an exclusion against Petitioner from participation in the Medicare program and direct that Petitioner be excluded from State health care programs such as Medicaid. I.G. Exs. 29, 30.

30. The November 16, 1993 letter informed Petitioner that an exclusion would result in him receiving no payment for any item or service furnished, ordered or prescribed by Petitioner, including payment to Petitioner's employer. I.G. Exs. 29, 30.

31. Petitioner did not respond to PHS's November 16, 1993 letter.

32. On May 16, 1995, PHS again sent a letter to Petitioner informing him that he had 60 days to resolve his delinquent HEALs and that failure to respond would result in his case being referred to the U.S. Attorney for enforced collection, and that, if he did not enter into an offset or repayment agreement within 60 days, PHS would immediately refer his case to the I.G. for initiation of an exclusion from the Medicare program. I.G. Ex. 31.

33. Petitioner did not respond to PHS's May 16, 1995 letter.

34. On July 20, 1995, PHS referred Petitioner's HEAL debt to the Department of Justice for enforcement of the judgment that had been obtained against Petitioner. I.G. Ex. 32.

35. On August 21, 1995, to enforce the State court judgment that SLMA had obtained in Florida, the U.S. Attorney in Hawaii filed in the U.S. District Court, District of Hawaii, the State court judgment in the case of Student Loan Marketing Association v. Petitioner. I.G. Ex. 37; Finding 5.

36. On October 27, 1995, the I.G. informed Petitioner that, as a result of his failure to repay his HEAL debt or to enter into an agreement to repay the debt, he would be excluded, effective November 16, 1995, from participation in the Medicare program pursuant to section 1892 of the Act and from participation in Medicare and State health care programs pursuant to section 1128(b)(14) of the Act. I.G. Ex. 1.

37. As of the date of this Decision, Petitioner is in default on his HEAL debt, has not repaid his HEAL debt, and has not entered into an agreement acceptable to PHS to repay his HEAL debt.

38. On August 28, 1995, Petitioner entered into an agreement with the U.S. Attorney's Office for the District of Hawaii to make repayments of $100 per month on the balance due (as of August 29, 1995) of $246,906.10. I.G. Ex. 33.

39. The August 28 agreement between Petitioner and the U.S. Attorney's Office in Hawaii was not acceptable to the I.G. I.G. Exs. 33, 34; P. Ex. 6.

40. Petitioner was specifically informed that the I.G. required payments of $650 monthly until March of 1995, then subsequent payments of $1500 per month. P. Ex. 6.

41. In agreeing to accept $100 payments from Petitioner, the U.S. Attorney's Office was not acting on behalf of the I.G. P. Exs. 6, 7.

42. On November 15, 1995, Petitioner offered to repay $75,000 of his HEAL debt over a period of 120 months (10 years). P. Ex. 7.

43. In February 1996, the U.S. Attorney's Office in Hawaii rejected Petitioner's November 15, 1995 offer and counteroffered to accept $826 per month in repayments from Petitioner for a one year period and reevaluate after that time. P. Ex. 7.

44. The August 28, 1995 agreement whereby Petitioner was permitted to make payments in the amount of $100 per month was an interim agreement and was not intended nor did Petitioner interpret it as a full and final resolution of Petitioner's HEAL debt. Findings 37 - 43.

45. The Secretary may exclude any individual whom PHS determines has defaulted on repayments of scholarships or loans made or secured in part by HHS. Act, section 1128(b)(14).

46. Petitioner's HEALs were made or secured by PHS on behalf of HHS. I.G. Exs. 1 - 37; Findings 1 - 6.

47. Petitioner is in default of his HEAL obligations. I.G. Ex. 1 - 37; Findings 1 - 6.

48. The I.G. may exclude a party from participating in Medicare or Medicaid who:

> is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans . . .

Section 1128(b)(14) of the Act.

49. An exclusion imposed pursuant to section 1128(b)(14) of the Act is reasonable if the excluded party is excluded until such time as PHS notifies the I.G. that the party's default has been cured or the obligations have been resolved to PHS's satisfaction. 42 C.F.R. § 1001.1501(b).

50. At no time was Petitioner informed that his HEAL debt had been cured or that his HEAL debt had been resolved to PHS's satisfaction. I.G. Exs. 1 - 37; P. Exs. 1 - 11.

51. At no time was Petitioner told that the agreement that he had reached with the U.S. Attorney's Office in Hawaii to repay $100 per month had been agreed to by PHS, nor was Petitioner informed that this agreement would stay the effect of his exclusion. I.G. Exs. 1 - 37; P. Exs. 1 - 11.

52. The interest accruing on Petitioner's HEAL debt is approximately $2466 per month. I.G. Ex. 34.

53. A repayment of $100 per month on Petitioner's HEAL debt would not suffice to pay the monthly interest accruing on the debt. I.G. Exs. Finding 52.

54. A repayment of $100 per month would not satisfy Petitioner's HEAL debt.

55. The I.G. has the authority to exclude any individual that PHS determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured in whole or in part by the Secretary. 42 C.F.R. § 1001.1501.

56. All reasonable steps available to secure repayment of a HEAL debt will have been achieved where PHS offers the debtor a Medicare offset arrangement as required by section 1892 of the Act. 42 C.F.R. § 1001.1501(a)(2).

57. Section 1892(a)(2) states in part that agreements to collect HEAL debts shall provide that:

> (A) deductions shall be made from the amounts otherwise payable to the individual under . . . [Medicare], in accordance with a formula and schedule agreed to by the Secretary and the individual, until such past-due obligation (and accrued interest) have been repaid.

58. PHS offered to enter into a Medicare offset agreement with Petitioner as a means to allow Petitioner to satisfy his HEAL debt. I.G. Ex. 29, 31.

59. Petitioner did not accept PHS's offer of a Medicare offset agreement to satisfy Petitioner's HEAL debt.

60. Petitioner has failed to take any meaningful steps to satisfy his HEAL debt. I.G. Exs. 1 - 37; P. Exs. 1 - 11.

61. The I.G. properly excluded Petitioner from participating as a provider in Medicare and properly directed that Petitioner be excluded from Medicaid and other State health care programs. Findings 1 - 60.

62. Petitioner's exclusion until such time as PHS notifies the I.G. 1) that Petitioner's HEAL default is cured or 2) that Petitioner's HEAL debt has been resolved to PHS's satisfaction is appropriate and reasonable. Findings 1 - 61.

DISCUSSION

The basic facts of this case are not in dispute. Petitioner admits that he borrowed a total of $75,000 under the HEAL program. Under the terms of these loans, after his graduation from the University of Health Sciences in Kansas City, Missouri in May 1985, Petitioner was to begin repayment on his HEAL loan. Petitioner received three forbearances on his repayments, under which, with the exception of some minor payments, extended the time he was to begin repayment to May of 1989. Finding 9.

However, subsequent to his deferments, Petitioner failed to make repayments in accordance with any type of regular repayment schedule and was declared in default on his HEAL obligations in April of 1991. It was not until July 23, 1992 that SLMA sent a letter to Petitioner informing him that the judgment had been entered against him, that he was responsible for any interest

accruing after the judgment date, and requesting Petitioner pay the amount he owed. Petitioner did not respond to this letter, nor did he initiate any type of repayment. I.G. Ex. 19.

Additional letters were sent to Petitioner over a period of several years, each demanding repayment on his HEAL debt. Several of these letters included instructions on how to enter into a repayment agreement and at least one offered to permit Petitioner to repay his HEAL debt via a Medicare offset agreement, whereby Petitioner would assign his Medicare billings to PHS for repayment on his HEAL debt. Petitioner did not respond to these letters and did not take any steps to repay his HEAL debt with PHS. Accordingly, there is no dispute in this case that Petitioner is in default on his HEAL obligations.[3]

The only issue that Petitioner has raised involves his agreement with the U.S. Attorney's Office in Hawaii to repay $100 per month on his HEAL debt. Petitioner contends that the Department of Justice has acted as an agent for HHS in collecting Petitioner's HEAL debt. Petitioner contends that an August 28, 1995 letter from the U.S. Attorney's Office in Hawaii established payment terms through which Petitioner would make payments on his HEAL debt. According to Petitioner, these payment terms of $100 per month are binding upon HHS, as the Department of Justice has acted as agent for HHS in settling this matter.

Examination of the facts of this case leads me to conclude that it is disingenuous for Petitioner to argue in this case that this agreement with the U.S. Attorney's Office in Hawaii satisfies his HEAL loan such that he should not be excluded. Petitioner failed to make repayments on his HEAL obligations after borrowing the money under terms which clearly required repayment within one year of his graduation from the University of Health Sciences in May 1985. Subsequent to his graduation, Petitioner requested and received three separate deferments for repaying his HEAL obligations, during which time he made de minimis payments when

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[3] My April 29, 1996 prehearing order included among the issues whether Petitioner timely filed his request for hearing. The notice letter was dated October 27, 1995, and Petitioner's letter requesting a hearing was mailed December 30, 1995. If Petitioner had received the notice prior to November 1, his request for hearing would have been filed untimely. However, the regulations provide that the request for hearing must be filed, that is mailed, within 60 days from receipt of the notice. 42 C.F.R. § 1005.2(c). Since receipt is presumed to be five days after the notice is mailed, the presumption is that Petitioner did not receive the notice until November 1, thus making his request for hearing timely. The I.G. has chosen not to argue that Petitioner's request for hearing was not timely filed. Accordingly, there is no timeliness issue in this case.

viewed against his entire debt. However, through a combination of making de minimis payments and obtaining deferments, Petitioner was able legitimately to defer the repayment date of his HEALs.

With the exception of one payment in August 1989, the evidence indicates that Petitioner then simply ignored all of the subsequent attempts to obtain repayments on his HEAL obligations and made no further payments. Even after being declared in default and having a judgment entered against him, Petitioner still chose to ignore his HEAL obligations. While at that time Petitioner may have thought that he could not repay his debt, the debt became larger and continued to grow to its present rate because of Petitioner's steadfast refusal to enter into any type of repayment agreement. Admittedly, PHS took a number of years to bring the case to the point of excluding Petitioner and the record before me is devoid of any enforcement actions between November 13, 1993 to May 16, 1995. Petitioner did not specifically make this argument, but his brief seems to imply that until he received an August 14, 1995 letter from the U.S. Attorney's Office in Hawaii, he was lulled into believing that he would not be subject to meaningful enforcement actions to obtain repayment on his HEAL obligations.

However, now Petitioner cites the acceptance by the Department of Justice of the $100 per month payment schedule as support for his position that such repayment should bar the I.G. from excluding him. Such argument is without merit.

The evidence contradicts Petitioner's contention that the U.S. Attorney's Office in Hawaii has established and represented itself as an agent for HHS. The letter Petitioner cites in support of this contention (P. Ex. 2) is nothing more than a memorialization of an agreement between Petitioner and the Department of Justice.[4] The letter does not mention or implicate HHS. Nothing in that letter indicates that HHS has agreed to this level of repayment as satisfactory.

It is not necessary or appropriate for me to speculate about why the Department of Justice accepted a $100 per month payment from Petitioner when Petitioner owed over $160,000 on his HEAL obligations. However, it is unequivocal that the agreement Petitioner entered into with the Department of Justice was not done with the consent of any official of HHS, nor was it done

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[4] Petitioner's specific argument is that the Department of Justice, acting through the United States Attorney for Hawaii, was the agent whose actions bound HHS. For purposes of Petitioner's argument and throughout this Decision, the terms United States Attorney for Hawaii, Department of Justice, and United States (U.S.) Attorney all stand for the same entity.

with the Department of Justice acting as the agent for HHS. Petitioner did not offer proof to the contrary.

Indeed, the record contradicts Petitioner's assertion and indicates that the $100 per month payment schedule was made in response to a collection action taken by the Department of Justice. I.G. Ex. 37. A careful examination of the record reveals that the $100 per month repayment agreement Petitioner reached with the U.S. Attorney on August 28, 1995 (P. Ex. 2) does not even mention Petitioner's HEAL debt. The agreement merely acts to stay the U.S. Attorney from taking further legal action pending submission of further documentation by Petitioner. The fact that, on February 16, 1996, the U.S. Attorney rejected Petitioner's settlement offer and instead offered to settle the matter if Petitioner would agree to submit monthly payments of $826 unequivocally supports that the $100 per month payments Petitioner agreed to were not viewed as satisfaction of his HEAL debt. P. Ex. 7.

Moreover, the record reflects that a Medicare exclusion can be stayed only if the HEAL debtor agrees to a formal settlement agreement which must be approved by the U.S. Attorney, PHS and the I.G. I.G. Ex. 34. Nothing in the record even remotely supports that HHS agreed to accept Petitioner's payment of $100 per month as satisfaction of Petitioner's HEAL debt.

It is not credible that Petitioner formed a belief that payments of $100 per month on a debt of over $160,000 would satisfy PHS. As the I.G. points out in her brief, at $100 per month, such repayments would actually result in Petitioner's HEAL debt increasing by $30,000 per year. Therefore, not only is there no evidence in the record to support Petitioner's contention that the Department of Justice was acting as the agent of HHS or PHS when it compelled him to repay $100 per month, it would be both subjectively and objectively unreasonable for anyone to believe this.

Such a belief is unreasonable given that $100 per month is not a significant amount of repayment when compared to Petitioner's indebtedness. Indeed, the record provides ample evidence that even Petitioner did not believe that the $100 per month payments were a full and final resolution of his HEAL default.

Specifically, after Petitioner and the U.S. Attorney in Hawaii had signed off on the $100 per month agreement to begin repayment of Petitioner's HEAL default, Petitioner was informed that such terms were not acceptable to the I.G. P. Ex. 6. Petitioner concedes that he was informed that the I.G. required payments of $650 monthly until March of 1995, then subsequent payments of $1500 per month. P. Ex. 6. Although Petitioner claims that he could not have met such repayment terms, this communication disproves Petitioner's contention that he believed the U.S.

Attorney to be acting as agent for PHS and the I.G. when it agreed to the $100 per month payment schedule.

Furthermore, despite Petitioner's contentions, the evidence establishes that the $100 per month payments which Petitioner agreed to with the U.S. Attorney were nothing more than an interim agreement pending final resolution of Petitioner's repayment terms. On November 15, 1995, Petitioner offered to repay $75,000 of his HEAL debt over a 120 month period. In February 1996, the U.S. Attorney in Hawaii rejected Petitioner's November 15, 1995 offer and counteroffered to accept $826 per month in repayments from Petitioner for a one-year period and reevaluate after that time. P. Ex. 7. Although Petitioner rejected these terms, this settlement offer establishes that the $100 per month payments Petitioner was permitted to make at that time were not to be any type of permanent payment schedule through which Petitioner would be permitted to satisfy his HEAL debt. Additionally, the evidence on this sequence of events establishes that Petitioner knew that the $100 per month repayment schedule was an interim agreement only and was not going to be the full and final settlement through which he would be permitted to repay his HEAL obligations.

In summary, Petitioner cannot credibly claim that the $100 per month payments were a permanent arrangement through which he would be permitted to repay the HEAL obligations upon which he had defaulted, nor can Petitioner seriously contend that he believed that the I.G. would accept or had accepted $100 per month in payments on behalf of PHS.

The regulations provide PHS with discretion to allow an individual who has defaulted on his HEAL obligations to participate as a Medicare provider while making less than full repayments, as long as the excluded individual has resolved his obligations to PHS's satisfaction. Petitioner can point to nothing in the record which indicates that PHS or HHS was satisfied with Petitioner's repayment of $100 per month on his HEAL debt. As I stated above, the record directly contradicts Petitioner's assertions. Petitioner's only proffer of evidence in this area is an unsigned statement alleging facts which would support that the U.S. Attorney was acting as an agent for DHHS in obtaining a $100 per month repayment on Petitioner's HEAL debt. This "affidavit" is merely a typewritten letter by Petitioner with a signature line that is blank. As such, it does nothing more than restate Petitioner's position. Even if believed, it is of no probative value because it is directly contradicted by much stronger, credible evidence as described above.

Section 1128(b)(14) permits the exclusion of an individual for default on HEAL debt repayment, provided that the Secretary has taken all reasonable steps to secure repayment of those HEAL obligations. There is no dispute that Petitioner is in default

on his HEAL obligations. The regulations provide that all reasonable steps will have been taken to collect a HEAL debt if, prior to imposing an exclusion, PHS offers the individual who is in default a Medicare offset agreement. 42 C.F.R. § 1001.1501(a)(2). Despite Petitioner's assertions to the contrary, this offer was made to him on two separate occasions. Findings 29, 32; I.G. Exs. 29, 30, and 31. I find that the offer of an offset agreement on just one occasion would satisfy the requirement that the Secretary take all reasonable steps to secure repayment of Petitioner's HEAL obligations. In this case, the offer was made twice and, as such, more than satisfies the regulatory requirement.

Additionally, I do not construe the term "all reasonable steps" to mean that the Secretary should accept repayment agreements which do not accomplish the objective of repayment, or which require the Secretary to enter into agreements that are not in the public interest. Mohammad H. Azarpira, D.D.S., DAB CR372 (1995). Clearly, a $100 per month repayment agreement which would cause Petitioner's debt to grow by $30,000 per year would not accomplish the objective of repayment and could be viewed as being not in the public interest. At a minimum, Petitioner could be expected to make payments sufficient to cover the interest on the debt and keep it from accruing.

Petitioner's contentions that PHS's demands of repayment are unfair given his financial status are irrelevant where 1) PHS offered Petitioner the opportunity to enter into a Medicare offset agreement and 2) Petitioner ignored requests for repayment of his HEAL debt such that he allowed it to accumulate to its present level, thus making his potential payments more onerous. Petitioner never made an offer to repay his HEAL obligations at a rate which would keep the interest from accruing, and PHS would not necessarily be obligated to accept such an agreement if Petitioner offered it. However, primarily because Petitioner has avoided his HEAL obligations for so long, Petitioner contends that the debt has accrued to such a level that a repayment schedule that would simply keep the interest from accruing would be too burdensome financially.

Neither the I.G. nor PHS is under any obligation to accept settlement terms which do not serve the public interest or which do not attain the goal of repayment of Petitioner's HEAL debt. A repayment of $100 per month would neither serve the public interest nor attain repayment of Petitioner's HEAL debt. Additionally, Petitioner has explicitly rejected the viable alternative of a Medicare offset agreement. Accordingly, Petitioner was properly excluded by the I.G. pursuant to section 1128(b)(14) of the Act.

Regarding Petitioner's exclusion under section 1892, it is unclear whether I have the authority to review an exclusion

imposed pursuant to this section. Azarpira at 1, James F. Cleary, D.D.S., DAB CR252 (1993); Charles K. Angelo, Jr. M.D., DAB CR290 (1993); Joseph Marcel-Saint Louis, M.D., DAB CR320 (1994). The Secretary has provided me with no explicit regulations or delegation of authority to conduct such hearings, although a preliminary analysis issued by an appellate panel of the DAB seems to indicate the appellate panel's position that exclusion pursuant to section 1892 provides implicitly authority to conduct a hearing. See Appellate Panel's Preliminary Analysis in Charles K. Angelo, Docket No. C-92-130. However, since I find that Petitioner is properly excluded under section 1128(b)(14) of the Act, I find no need to reach the issue of whether he was properly excluded under section 1892 of the Act. Were I to reach this issue, I would find that the facts and rationale contained in this Decision which supports Petitioner's exclusion under section 1128(b)(14) would also support Petitioner's exclusion under section 1892.

In summary, I conclude that the term of exclusion directed and imposed by the I.G. pursuant to section 1128(b)(14) is reasonable, given that 1) Petitioner failed to respond to numerous letters and offers to resolve his HEAL debt; 2) failed to respond to PHS's offer of a Medicare offset agreement; 3) questionably views his $100 per month temporary agreement with the U.S. Attorney as satisfaction of his HEAL debt despite the fact HHS has never indicated that such payments would satisfy Petitioner's HEAL debt. Petitioner has never given any indication that he will ever satisfy his HEAL debt, and the I.G. is correct to exclude him until such time as PHS, as the lawful delegate of the Secretary, is satisfied that he will. I find that Petitioner's exclusion until such time is reasonable and appropriate.

CONCLUSION

I find that Petitioner was properly excluded pursuant to section 1128(b)(14) of the Act until such time as Petitioner repays his HEAL debt or such time as Petitioner has resolved his HEAL debt to PHS's satisfaction.

/s/

Edward D. Steinman
Administrative Law Judge