

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Kelly Gene Svedberg,  
(O.I. File No. 4-08-40374-9)

Petitioner,

v.

The Inspector General.

Docket No. C-13-507

ALJ Ruling No. 2013-14

Date: July 12, 2013

**DISMISSAL**

Petitioner, Kelly Gene Svedberg, was a physician's assistant, licensed to practice in North Carolina. He pled guilty in federal district court to one count of conspiracy to commit health care fraud. Pursuant to section 1128(a)(1) of the Social Security Act (Act), the Inspector General (I.G.) has excluded him 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 January 31, 2013, the I.G. advised Petitioner Svedberg that he was excluded from participation in Medicare, Medicaid, and all federal health care programs because he 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 he was convicted and is subject to exclusion under section 1128(a)(1), but argues that mitigating factors justify reducing the period of his exclusion. P. Brief at 1-2; Order and Schedule for Filing Briefs and Documentary Evidence at 2 (April 5, 2013); *see* OIG Appeal for Hearing (March 7, 2013); I.G. Ex. 2 at 1; I.G. Ex. 4.<sup>1</sup>

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.

Regulations governing these procedures afford no further appeal rights. 42 C.F.R. § 1005.20; 42 C.F.R. § 1005.21(a), (d); *Departmental Appeals Board, Guidelines -- In Cases to which Procedures in 42 C.F.R. Part 1005 Apply*; *see also* 57 Fed. Reg. 3,298, 3,327 (Jan. 29, 1992) (stating that administrative appeals of administrative law judge decisions have been limited by regulation). There is no administrative appeal from a dismissal of a hearing request. 55 Fed. Reg. 12,205, 12,213 (Apr. 2 1990) ("If [a] party fails to file a timely request for a hearing, or thereafter withdraws or abandons his or her request for a hearing, the [administrative law judge] is required to dismiss the hearing request. In such a case, the CMP or exclusion would *become final with no further appeal permitted*) (emphasis added); *see also* 57 Fed. Reg. 3,298, 3,325 (Jan. 29, 1992) (adding as a ground for dismissal in 42 C.F.R. § 1005.2(e) a party's failure to raise any issue that may properly be addressed in a hearing).

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/s/  
Carolyn Cozad Hughes  
Administrative Law Judge

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<sup>1</sup> The I.G. filed a motion to dismiss and supporting brief (I.G. Brief), along with four exhibits (I.G. Exs. 1-4). In addition to his March 7, 2013 appeal, Petitioner filed a brief (P. Brief) and assorted "supporting documents/exhibits."