

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Margaret Louise Yohannes
a/k/a Margaret L. Hereford
a/k/a Margaret L. Christine
(OI File No. H-11-4-3064-9),

Petitioner,

v.

The Inspector General.

Docket No. C-14-475

Decision No. CR3285

Date: July 8, 2014

DECISION

The Inspector General (I.G.) of the United States Department of Health and Human Services excluded Petitioner, Margaret L. Christine,¹ for five years from participation in Medicare, Medicaid, and all other federal health care programs pursuant to 42 U.S.C. § 1320a-7(a)(4), effective December 20, 2012. Petitioner requested a hearing before an administrative law judge to dispute the exclusion. For the reasons stated below, I conclude that the I.G. has a basis for excluding Petitioner because Petitioner was convicted of a felony offense related to the unlawful distribution of a controlled substance as defined under state law. Further, I affirm the length of the exclusion because five years is the minimum mandated by law.

¹ Petitioner has been known by three names throughout the events surrounding this case. The I.G. originally excluded her as “Margaret Louise Yohannes a.k.a. Margaret L. Hereford.” I.G. Exhibit 1, at 1. Petitioner appealed the I.G.’s exclusion using her present name, “Margaret L. Christine.” Request for Hearing at 1. I will refer to her as “Petitioner” hereafter.

I. Background

By letter dated November 30, 2012, the I.G. notified Petitioner that she was being excluded from Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. § 1320a-7(a)(4) for the statutory minimum period of five years. I.G. Exhibit (Ex.) 1, at 1. The I.G. advised Petitioner that she was being excluded because she had been convicted of a felony “in the Montana Thirteenth Judicial District Court, Yellowstone County, Montana, of a criminal offense related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance as defined under Federal or State law.” I.G. Ex. 1, at 1.

According to a November 20, 2013 letter from Charles Grant, Exclusions Director, Office of Investigations, Office of the Inspector General, Petitioner did not receive the I.G.’s exclusion letter in a timely fashion. As a result, the I.G. gave Petitioner 60 days from the date of Mr. Grant’s letter in which to appeal the I.G.’s exclusion. *See* Request for Hearing, Supporting Documents (DAB E-File Doc. No. 1b).

Petitioner timely filed her request for hearing with the Civil Remedies Division (CRD) and the CRD Director administratively assigned this case to me for hearing and decision. On February 5, 2014, I convened a prehearing conference by telephone, the substance of which is summarized in my Order and Schedule for Filing Briefs and Documentary Evidence (Order) of February 7, 2014. *See* 42 C.F.R. § 1005.6. Pursuant to the Order, the I.G. submitted the I.G.’s brief (I.G. Br.) together with ten exhibits (I.G. Exs. 1-10). Petitioner submitted a response brief (P. Br.). The I.G. then submitted a Reply brief.

II. Decision on the Record

Petitioner did not object to any of the I.G.’s proposed exhibits. Therefore, I admit I.G. Exs. 1-10 into the record.

Neither the Petitioner nor the I.G. indicated that a hearing was necessary. P. Br. at 2; I.G. Br. at 9. Therefore, I issue this decision on the basis of the written record.

III. Issue

The sole issue before me is whether the I.G. has a basis for excluding Petitioner for five years from participating in Medicare, Medicaid, and all other federal health care programs pursuant to 42 U.S.C. § 1320a-7(a)(4).

IV. Jurisdiction

I have jurisdiction to decide this issue. 42 C.F.R. §§ 1001.2007(a)(1), 1005.2(a); *see also* 42 U.S.C. § 1320a-7(f).

V. Findings of Fact, Conclusions of Law, and Analysis²

A. The I.G. has proven each of the required elements under 42 U.S.C. § 1320a-7(a)(4); therefore, there is a basis for Petitioner's exclusion.

The I.G. cites 42 U.S.C. § 1320a-7(a)(4) as the basis for Petitioner's mandatory exclusion. I.G. 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):

* * * *

(4) Felony conviction relating to controlled substance

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

Thus, the elements the I.G. must prove to sustain Petitioner's exclusion pursuant to section 1320a-7(a)(4) in this case are: (1) Petitioner was convicted of a felony criminal offense that occurred after August 21, 1996, under Federal or State law, and (2) Petitioner's offense was related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

1. Petitioner pled guilty to one count of Criminal Distribution of Dangerous Drugs, a felony violation under Montana law, and a Montana state court accepted her plea and entered judgment against her.

On June 2, 2009, the Yellowstone County, Montana, County Attorney's office filed a three-count criminal Information against Petitioner. I.G. Ex. 6. Count I of the Information, entitled Criminal Distribution of Dangerous Drugs (Felony), alleged that Petitioner "gave away, clonazepam, a Schedule IV dangerous drug . . . to [an individual] when [Petitioner] was not exempt from prosecution for possession," a felony offense under Mont. Code Ann. § 45-9-101. I.G. Ex. 6, at 1-2. On May 3, 2010, Petitioner

² My findings of fact and conclusions of law are set forth in italics and bold font.

entered a guilty plea in the Thirteenth Judicial District Court (District Court), Yellowstone County, Montana, to Count I of the Information. I.G. Ex. 7. The factual basis for Petitioner’s plea, as admitted in the agreement, was that “[i]n approximately October 2008,” Petitioner “gave [an individual] . . . a few tablets of clonazepam, a Schedule IV Dangerous Drug, knowing it was illegal to do so.” I.G. Ex. 7, at 2.

On August 13, 2010, the District Court entered judgment against Petitioner for a single felony count of Criminal Distribution of Dangerous Drugs. I.G. Ex. 8, at 1. The court dismissed the remaining counts against the Petitioner, delayed imposing a sentence for five years, imposed a \$750.00 fine, and placed her on probation. I.G. Ex. 8, at 1-2.

2. *Petitioner must be excluded under 42 U.S.C. § 1320a-7(a)(4) because she was convicted of a criminal offense related to the unlawful distribution of a controlled substance.*

The I.G. must exclude an individual from participation in all Federal health care programs if the individual has been (1) convicted of a felony criminal offense (2) relating to the unlawful distribution of a controlled substance. 42 U.S.C. § 1320a-7(a)(4).

For purposes of exclusion, Petitioner was “convicted” of a felony offense. An individual is “convicted” of a criminal offense “when a judgment of conviction has been entered against the individual . . . by a Federal, State, or local court” *Id.* § 1320a-7(i)(1). Further, an individual is also “convicted” of a criminal offense when “a plea of guilty . . . by the individual . . . has been accepted by a Federal, State, or local court.” *Id.* § 1320a-7(i)(3). As previously discussed, Petitioner pled guilty to a felony offense under Montana law, and a Montana state court accepted her plea and issued a judgment of conviction. *See* I.G. Exs. 7-8. Based on the the evidence of record and on the fact that Petitioner does not contest that she was convicted of a felony (P. Br. at 1), I conclude that the first element under 42 U.S.C. § 1320a-7(a)(4) has been satisfied.

I must next determine if Petitioner’s conviction was related to the unlawful distribution of a controlled substance. In cases, such as the present one, where the excluded individual was convicted under state law, the term “controlled substance” is “defined under . . . State law.” 42 C.F.R. § 1001.101(d).

Petitioner pled guilty to a violation under Montana law of Mont. Code Ann. § 45-9-101, Criminal Distribution of Dangerous Drugs. *See* I.G. Exs. 7-8. Title 45 does not define “controlled substance.” Elsewhere, however, Montana law defines a “controlled substance” as “any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.” *See* Mont. Code Ann. §§ 44-12-101, 37-18-602; *see also* Mont. Code Ann. § 45-2-101(32) (defining an “intoxicating substance,” in part, as “a controlled substance, as defined in Title 50, chapter 32”). Title 50, chapter 32 of the Montana Code Annotated, which defines “dangerous drugs” and identifies clonazepam as a “dangerous

drug,” is entitled “Controlled Substances.” Clonazepam has been designated a “dangerous drug” under Montana law, Mont. Code Ann. § 50-32-229(2)(i), therefore it is a “controlled substance” under Montana law. In pleading guilty, Petitioner admitted that she “gave [an individual] . . . a few tablets of clonazepam, a Schedule IV Dangerous Drug, knowing it illegal to do so.” I.G. Ex. 7, at 2. Further, Petitioner concedes that her conviction was “related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.” P. Br. at 2. Therefore, Petitioner pled guilty to unlawfully distributing a controlled substance and I conclude that the second element under 42 U.S.C. § 1320a-7(a)(4) is satisfied.

B. Petitioner must be excluded for a minimum of five years.

I have concluded that a basis exists to exclude Petitioner pursuant to 42 U.S.C. § 1320a-7(a)(4), therefore, Petitioner must be excluded for a minimum of five years. 42 U.S.C. § 1320a-7(c)(3)(B).

Petitioner asks that I “consider making an exception to this rule for [her].” P. Br. at 4. She details her efforts to adhere to the terms of her probation, acknowledges the “charges brought against [her],” and asks for “a fresh start on life with [her] career.” P. Br. at 4. While Petitioner’s efforts are laudable and I have considered her arguments, I do not have the authority to make an exception for her in this case. *See* 42 C.F.R. §§ 1001.102(a), 1001.2007(a)(1)-(2).

VI. Conclusion

For the foregoing reasons, I affirm the I.G.’s determination to exclude Petitioner for five years from participating in Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. § 1320a-7(a)(4).

/s/
Scott Anderson
Administrative Law Judge