

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

_____)	
In the Case of:)	
)	
Ioni Sisodia,)	Date: September 30, 2008
)	
Petitioner,)	
)	
- v. -)	Docket No. C-08-486
)	Decision No. CR1850
The Inspector General.)	
_____)	

DECISION

Here, Petitioner, Ioni Sisodia, M.D., asks review of the Inspector General's (I.G.'s) determination to exclude her for five years from participation in Medicare, Medicaid and all federal health care programs under section 1128(a)(1) of the Social Security Act. For the reasons discussed below, I find that the I.G. is authorized to exclude Petitioner, and that the statute mandates a minimum five-year exclusion.

I. Background

On June 7, 2007, Petitioner pled guilty in New York State Court to one count of petty larceny, a violation of section 155.25 of the New York State penal code. I.G. Exs. 4, 5.

Thereafter, in a letter dated March 31, 2008, the I.G. advised Petitioner that, because she had been convicted of a criminal offense related to the delivery of an item or service under the Medicare or state health care program, the I.G. was excluding her from participation in Medicare, Medicaid, and all other federal health care programs for a minimum period of five years. Section 1128(a)(1) of the Social Security Act (Act) authorizes such exclusion. Petitioner requested review, and the matter has been assigned to me for resolution.

The parties have submitted their briefs. Attached to the I.G.'s brief are I.G. Exhibits 1-8 (I.G. Exs. 1-8). Attached to Petitioner's brief is a one-page personal statement from Petitioner, which we have marked P. Ex. 1. In the absence of any objections, I admit into evidence I.G. Exs. 1-8 and P. Ex. 1.

II. Issues

The sole issue before me is whether the I.G. has a basis for excluding him from program participation. Because an exclusion under section 1128(a)(1) must be for a minimum period of five years, the reasonableness of the length of the exclusion is not an issue.

III. Discussion

*A. Petitioner must be excluded for five years because she was convicted of a criminal offense related to the delivery of an item or service under a state health care program, within the meaning of section 1128(a)(1) of the Social Security Act.*¹

Petitioner has not disputed any of the facts critical to the I.G.'s case. Section 1128(a)(1) of the Act requires that the Secretary of Health and Human Services (Secretary) 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.² 42 C.F.R. § 1001.101. Individuals excluded under section 1128(a)(1) of the Act must be excluded for a period of not less than five years. Act, section 1128(c)(3)(B).

In a Complaint filed November 21, 2006,³ Petitioner, a psychiatrist licensed to practice in New York, was charged with one count of petty larceny and one count of offering a false instrument for filing, both misdemeanors. Specifically, the complaint charged that she submitted "up-coded" claims to the state Medicaid program, that is, she billed Medicaid for a higher level of service than she actually provided. I.G. Ex. 2. On June 7, 2007, she

¹ My findings of fact/conclusions of law are set forth, in italics, in the discussion headings of this decision.

² The term "state health care program" includes a state's Medicaid program. Act, section 1128(h)(1).

³ I could not find any date on the actual document. However, the I.G. maintains Petitioner was charged on November 21, 2006, and Petitioner has concurred. I.G. Br. at 2; P. Br. at 1.

pled guilty to the petty larceny count, and agreed to pay more than \$75,000 in restitution to the Medicaid program. I.G. Ex. 8. Thus, there is no dispute that her crime falls within the ambit of section 1128(a)(1) of the Act, so the I.G. has a basis for the exclusion.

B. The statute mandates a five year mandatory minimum exclusion, and mitigating factors may not be considered to reduce that period of exclusion.

An exclusion under section 1128(a)(1) of the Act must be for a minimum mandatory period of five years. As set forth in section 1128(c)(3)(B) of the Act:

Subject to subparagraph (G), in the case of an exclusion under subsection (a), the minimum period of exclusion shall be not less than five years

When the I.G. imposes an exclusion for the mandatory five-year period, the reasonableness of the length of the exclusion is not an issue. 42 C.F.R. § 1001.2007(a)(2).

IV. Conclusion

For these reasons, I conclude that the I.G. properly excluded Petitioner from participation in Medicare, Medicaid, and all other federal health care programs, and I sustain the five-year exclusion.

/s/

Carolyn Cozad Hughes
Administrative Law Judge