

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Syed Riazul Hassan,

Petitioner,

v.

The Inspector General.

Docket No. C-14-91

Decision No. CR3131

Date: February 28, 2014

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Sayed Riazul Hassan, from participating in Medicare, State Medicaid programs, and all federally funded health care programs for a minimum of five years.

I. Background

The I.G. determined to exclude Petitioner for a minimum period of five years, asserting that Petitioner was convicted of a criminal offense as is defined by section 1128(a)(1) of the Social Security Act (Act). This section mandates the exclusion of any individual who is convicted of a criminal offense related to the delivery of an item or service under a federally funded health care program.

Petitioner requested a hearing and the case was assigned to me. I set a briefing schedule for the parties. The I.G. filed a brief and four proposed exhibits that are identified as I.G. Ex. 1 – I.G. Ex. 4. Petitioner filed a brief and two proposed exhibits that are identified as P. Ex. 1 and P. Ex. 2. The I.G. did not file a reply brief. I receive the parties' exhibits into the record.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether Petitioner was convicted of a crime that mandates his exclusion for a minimum of five years.

B. Findings of Fact and Conclusions of Law

Section 1128(a)(1) of the Act is a mandatory exclusion section. The I.G. must exclude any individual who is convicted of a crime that falls within the purview of section 1128(a)(1). The minimum period of exclusion is five years. Act, section 1128(c)(3)(B).

The undisputed facts of this case establish that Petitioner was convicted of a crime within the meaning of section 1128(a)(1). On April 12, 2011, Petitioner pled guilty to the federal crime of health care fraud. I.G. Ex. 3 at 1, 6-7. In pleading guilty Petitioner admitted that he was a participant in a scheme to defraud Medicare. I.G. Ex. 2 at 3-12; I.G. Ex. 3 at 2-6. Petitioner was a participant in a conspiracy to perform fraudulent and medically unnecessary clinical tests on Medicare beneficiaries. *Id.*

These facts unequivocally establish that Petitioner was convicted of a crime within the meaning of section 1128(a)(1). The I.G. is mandated to exclude him. The length of his exclusion, at least five years, is the statutory minimum exclusion period.

Petitioner argues that there are extenuating circumstances that render his exclusion unreasonable. Essentially, Petitioner contends that he was already effectively excluded from all federally funded health care programs beginning on May 13, 2010, the date of his arraignment. He asserts that it is unreasonable for the I.G. to now exclude him for five years with a beginning date of July 31, 2013, because that effectively adds more than three years to the total length of his exclusion.

I have no authority to question the I.G.'s determination as to when to begin implementing an exclusion. That is an act of discretion that is left entirely up to the I.G. 42 C.F.R. § 1005.4(c)(5). Consequently, I may not adjust the start date of Petitioner's exclusion.

_____/s/
 Steven T. Kessel
 Administrative Law Judge