

**Department of Health and Human Services  
DEPARTMENTAL APPEALS BOARD  
Appellate Division**

Rosa Velia Serrano  
Docket No. A-19-2  
Decision No. 2923  
January 25, 2019

**FINAL DECISION ON REVIEW OF  
ADMINISTRATIVE LAW JUDGE DECISION**

Rosa Velia Serrano (Petitioner), appearing *pro se*, appeals the August 24, 2018 decision of an Administrative Law Judge (ALJ), *Rosa Velia Serrano*, DAB CR5170 (2018) (ALJ Decision). The ALJ sustained the Inspector General's (I.G.'s) decision to exclude Petitioner from participating in Medicare, Medicaid, and all federal health care programs for at least 25 years under section 1128(a)(1) of the Social Security Act (Act).<sup>1</sup> The ALJ determined that the I.G. was required to exclude Petitioner pursuant to section 1128(a)(1) based on her State court conviction, under Texas law, for Medicaid fraud. The ALJ further determined that the 25-year length of the exclusion was reasonable due to: (1) the duration of Petitioner's criminal conduct (more than four years); and (2) her sentence to incarceration (11 years). *See* 42 C.F.R. § 1001.102(b)(2), (b)(5).

For the reasons discussed below, we affirm the ALJ Decision.

**Legal Background**

Section 1128(a)(1) of the Act requires the Secretary of the Department of Health and Human Services to exclude an individual from participation in all federal health care programs if that individual "has been convicted of a criminal offense related to the delivery of an item or service under [Medicare] or under any State health care program." *Accord* 42 C.F.R. § 1001.101. Five years is the minimum period of exclusion for exclusions based on section 1128(a)(1). Act § 1128(c)(3)(B); 42 C.F.R. § 1001.102(a).

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<sup>1</sup> The current version of the Act can be found at [http://www.socialsecurity.gov/OP\\_Home/ssact/ssact-toc.htm](http://www.socialsecurity.gov/OP_Home/ssact/ssact-toc.htm). Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Cross-reference tables for the Act and the United States Code can be found at [http://uscode.house.gov/table3/1935\\_531.htm](http://uscode.house.gov/table3/1935_531.htm) and [https://www.ssa.gov/OP\\_Home/comp2/G-APP-H.html](https://www.ssa.gov/OP_Home/comp2/G-APP-H.html).

The I.G. may extend the mandatory minimum five-year exclusion period based on the application of the aggravating factors in 42 C.F.R. § 1001.102(b). In this case, the I.G. found two of the aggravating factors set out in section 1001.102(b): “[t]he acts that resulted in the conviction, or similar acts, were committed over a period of one year or more”; and “[t]he sentence imposed by the court included incarceration.” *Id.* § 1001.102(b)(2), (b)(5). If an exclusion period is extended based on the application of one or more aggravating factors, any of the mitigating factors set forth in section 1001.102(c) (and only those mitigating factors) may be considered and applied to reduce the length of the exclusion period to no less than the mandatory minimum five years. *Id.* § 1001.102(c).

An excluded individual may request a hearing before an ALJ, but only on the issues of whether the I.G. had a basis for the exclusion and whether any period of exclusion longer than the mandatory minimum is unreasonable. 42 C.F.R. §§ 1001.2007(a)(1), (2), 1005.2(a).

The ALJ will issue an initial decision and any party may appeal that decision to the Departmental Appeals Board (Board). 42 C.F.R. §§ 1005.20, 1005.21. The Board “may decline to review the case, or may affirm, increase, reduce, reverse or remand any penalty, assessment or exclusion determined by the ALJ.” *Id.* § 1005.21(g).

## **Case Background<sup>2</sup>**

Petitioner was indicted on January 26, 2017 in a State proceeding under Texas law with one count of Medicaid fraud and one count of theft, both in the aggregated amount of between \$20,000 and \$100,000. I.G. Ex. 2; I.G. Ex. 4, at 9. The State charged Petitioner with engaging in criminal conduct over a period of more than four years, from on or about January 10, 2012, until on or about February 19, 2016. I.G. Ex. 2. Petitioner was subsequently tried and found guilty of Medicaid fraud, a third degree felony, by a jury and sentenced by the court to incarceration for 11 years. I.G. Ex. 3.<sup>3</sup>

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<sup>2</sup> The facts contained in this section are drawn from the ALJ Decision and the record and are presented to provide context for the discussion of the issues raised in this appeal. Nothing in this section is intended to replace, modify, or supplement the ALJ’s findings of fact.

<sup>3</sup> Petitioner’s brief on appeal of her Texas felony conviction to the Eighth Court of Appeals of Texas states that the jury found Petitioner guilty of both crimes for which she was indicted. I.G. Ex. 4, at 9. This does not appear to be consistent with the trial court’s conviction and sentencing order, which shows a conviction only for Medicaid fraud. I.G. Ex. 3, at 1. Moreover, Petitioner has repeatedly stated in her submissions in this proceeding that she was not convicted for theft.

The I.G. notified Petitioner, in a December 29, 2017 letter, that she was excluded from participation in Medicare, Medicaid, and all federal health care programs for a minimum period of 25 years under section 1128(a)(1) of the Act. I.G. Ex. 1, at 1. The notice stated that the exclusion was due to Petitioner's conviction, as defined in section 1128(i) of the Act, "in the 243rd District Court, El Paso County, Texas, of a criminal offense related to the delivery of an item or service under the Medicare or a State health care program[.]" *Id.* The notice stated that the minimum period of exclusion is five years under section 1128(c)(3)(B) of the Act, and that her exclusion was longer because: (1) the acts that resulted in her conviction occurred over a period of one year or more, from about January 2012 to about February 2016; and (2) the sentence imposed by the court included incarceration for 11 years. I.G. Ex. 1, at 1-2.

Petitioner requested an ALJ hearing to contest the I.G.'s determination.

### ***1. ALJ Proceedings and Decision***

Before the ALJ, Petitioner represented that she had appealed her conviction to state court and to federal court. Request for Hearing. She twice asked the ALJ to extend the deadline to file her reply brief because her appeals were pending. First, Petitioner asked for an extension on the ground that she anticipated being released from custody and could better prepare a reply. May 7, 2018 Letter. Second, Petitioner asked for an extension on the ground that a reversal of her conviction would make her reply brief unnecessary. July 23, 2018 Motion. The ALJ denied both requests. June 5, 2018 Order; ALJ Decision at 2. While Petitioner was "awaiting a decision that she hopes will be favorable to her," the ALJ stated, she did not show good cause why he "should delay adjudicating this case pending the outcome of her appeal." ALJ Decision at 2.

On review of the evidence and the parties' written arguments, the ALJ sustained the I.G.'s decision. The ALJ determined that the evidence of Petitioner's conviction "plainly establishes a basis for the I.G. to exclude Petitioner pursuant to the requirements of section 1128(a)(1)" of the Act. ALJ Decision at 2. Section 1128(a)(1) "mandates the exclusion of anyone who is convicted of a criminal offense related to the delivery of an item or service [under] Medicare or a state Medicaid program," the ALJ said. *Id.* In this case, the ALJ determined, Petitioner was convicted of "fraud against Texas' Medicaid program," which "is not only related to Medicaid items or services but it directly implicates those items or services." *Id.*

The ALJ next addressed Petitioner's arguments that her conviction was invalid. The ALJ stated that Petitioner represented that she had appealed her conviction to a Texas appellate court and "[e]vidently . . . also has filed a complaint in a federal court alleging that Texas has no jurisdiction over possible crimes committed against that state's

Medicaid program.” ALJ Decision at 2. But neither appeal had been “decided in Petitioner’s favor,” the ALJ stated, “and until and unless she receives a favorable outcome she remains convicted under Texas law of Medicaid fraud.” *Id.* The ALJ further stated that the I.G.’s authority to impose an exclusion based on a conviction is not affected by the pendency of an appeal of the conviction. *Id.* at 3 (citing Act § 1128(i)(1) (defining “convicted” to mean “when a judgment of conviction has been entered against the individual or entity by a Federal, State, or local court, regardless of whether there is an appeal pending. . . .”)).

The ALJ sustained the duration of Petitioner’s exclusion, explaining that the remedial purpose of section 1128 of the Act “is to protect Medicare and other federally funded health care programs and their beneficiaries and recipients from untrustworthy individuals.” ALJ Decision at 3. The ALJ determined that the 25-year exclusion imposed against Petitioner was warranted “both by the protracted period of Petitioner’s criminal conduct - a little over four years - and by the very lengthy prison sentence that she received.” *Id.*

## ***2. Board Proceedings***

Petitioner filed a document with the Board titled “Motion to Extend” within the 30-day period to appeal the ALJ Decision permitted under 42 C.F.R. § 1005.21(a). Petitioner argued that her conviction was void due to error by the trial court and alleged that the case had been removed to, and was awaiting a ruling by, a federal court. She asked the Board to direct the ALJ to “rule upon [her] plea to the jurisdiction prior to deciding on any other issue.” Motion at 5. Alternatively, Petitioner asked the Board to “abate[ ]” the exclusion proceedings pending the federal court’s ruling on her appeal. *Id.*

In response, the Board notified Petitioner of the Board’s authority to review the ALJ Decision and granted Petitioner an extension of 30 days for her appeal and accompanying brief. The Board explained that it was authorized under 42 C.F.R. § 1005.21(a) to extend the deadline for petitioner’s appeal by no more than 30 days for good cause shown. The Board also stated that Petitioner’s brief should specify each finding of fact and/or conclusion of law in the ALJ decision with which she disagreed, and her basis for contending that each such finding or conclusion was unsupported or incorrect, pursuant to 42 C.F.R. § 1005.21(c). The Board told the parties that an extension of time to make any additional submission would be granted only for good cause shown.

Petitioner thereafter submitted a document titled “Motion to Supplement the Evidence for Review and Motion to Extend to File Brief” (Motion to Supplement). Petitioner repeated arguments that her conviction was invalid, asked the Board to issue an order to obtain the transcript of her State sentencing hearing, and asked for an extension of 30 days from the submission of the sentencing transcript in which to file her brief.

The I.G. submitted a response brief, arguing that the Board should affirm the ALJ Decision.

Petitioner submitted a reply in which she contested the validity of her conviction and the duration of her exclusion. Petitioner also asked that the record be supplemented to include the transcript of her State sentencing hearing and requested an extension of proceedings for the Board to review the transcript.

### **Standard of Review**

The Board reviews a disputed issue of fact as to whether the ALJ “decision is supported by substantial evidence on the whole record.” 42 C.F.R. § 1005.21(h). The Board reviews a disputed issue of law as to whether the ALJ decision “is erroneous.” *Id.*

### **Analysis**

#### ***1. We deny Petitioner’s request to supplement the record and related extension request.***

Petitioner asks the Board to issue an order to obtain the transcript of her State court sentencing hearing and to add that transcript to the record in this appeal. Motion to Supplement at 1-2. She states that the transcript “would show that the prosecuting attorney sought a high sentence not for the severity of the crime” of Medicaid fraud, for which Petitioner was tried and found guilty, “but for sentencing on two indictments,” Medicaid fraud and theft. Reply at 3; *see also id.* at 5 (“The prosecuting attorney declared that depending on the severity of the sentence it would dismiss the other indictment, since Petitioner would serve on both indictments.”); Motion to Supplement at 2. Petitioner states that she “is and was innocent of the other indictment.” Reply at 5. Therefore, Petitioner asserts, the transcript would show that the trial court violated her constitutional right to due process and imposed an excessive and invalid sentence. As a consequence, she asserts, her conviction is void. Petitioner further argues that the “record is required when a constitutional violation exists.” *Id.* at 4. Petitioner also asks for an extension of these proceedings for the Board to review the transcript from her sentencing hearing. *Id.* at 7.

The admission of evidence in this case is limited by regulation. In general, a party that appeals an exclusion must present its evidence to the ALJ, who is authorized to rule on its admissibility. 42 C.F.R. §§ 1005.8, 1005.15, 1005.16, 1005.17. Section 1005.21(f) addresses the circumstance in which a party asks the Board to consider evidence that was not presented at the hearing level. Section 1005.21(f) provides that if a party demonstrates to the satisfaction of the Board that the additional evidence is relevant and

material and that there were reasonable grounds for the failure to produce it during the ALJ proceedings, the Board may remand the matter to the ALJ for consideration of the additional evidence. The governing regulations do not authorize the Board to issue orders or subpoenas to obtain evidence on behalf of a party or to enter new evidence into the record and review it de novo.

Furthermore, the purposes for which Petitioner seeks to introduce the transcript of her sentencing hearing – to show that her sentence was excessive and invalid and, consequently, voided her conviction – amount to collateral attacks on her conviction. That is, Petitioner asks for the transcript to indirectly challenge the validity of the conviction and sentence underlying her exclusion. As discussed more fully below, 42 C.F.R. § 1001.2007(d) provides that when an exclusion is based on the existence of a criminal conviction by a state court, as in this case, “the basis for the underlying conviction . . . is not reviewable and the individual or entity may not collaterally attack it either on substantive or procedural grounds in this appeal.” Therefore, the transcript would not be relevant or material in these proceedings.

We also note that Petitioner points to the *prosecuting attorney’s* alleged arguments at the sentencing hearing as grounds for establishing that her punishment to incarceration was excessive and invalid; however, it was the *court* that made the ultimate and independent decision to sentence Petitioner. And, as reflected in the Texas court’s “Judgment of Conviction by Jury,” the violation that formed the basis for Petitioner’s punishment to 11 years’ incarceration was her Medicaid fraud conviction. I.G. Ex. 3, at 1 (“Judgment of Conviction by Jury” listing “Offense for which Defendant Convicted: MEDICAID FRAUD >= \$20k < \$100k”; “Punished Assessed by: COURT”; “Punishment and Place of Confinement: ELEVEN (11) YEARS Texas Department of Criminal Justice”).

Accordingly, we deny Petitioner’s motion to supplement the record and related request for an extension of proceedings.

***2. The ALJ’s determination that the I.G. had a basis to exclude Petitioner under section 1128(a)(1) is based on substantial evidence and is not erroneous.***

As noted, section 1128(a)(1) of the Act provides that any individual convicted of a crime related to the delivery of an item or service under Medicare or any state health care program must be excluded from participation in any federal health care program. The ALJ determined that “Petitioner was charged with, and convicted of, fraud against Texas’ Medicaid program.” ALJ Decision at 2. “That crime,” the ALJ determined, “is not only related to Medicaid items or services but it directly implicates those items or services.” *Id.*

On appeal, Petitioner does not dispute that the criminal offense underlying her conviction related to the delivery of items or services under a state health care program, and we find no error in the ALJ's characterization of the evidence or legal conclusion. The undisputed record evidence demonstrates that Petitioner was convicted by a jury for Medicaid fraud under the Texas penal code for knowingly making or causing to be made false statements or misrepresentations of material fact to permit a person to receive a benefit or payment under the Medicaid program that was not authorized. I.G. Exs. 2, 3. Specifically, Petitioner's brief before the Eighth Court of Appeals of Texas appealing her conviction states, Petitioner owned and operated a prescription eyeglass business (The Lens Factory), and her conviction stemmed from fraudulently billing the Texas Medicaid program for eyeglasses. I.G. Ex. 4, at 11-15. "False billing for items or services has been repeatedly held to be an offense related to the delivery of an item or service within the meaning of section 1128(a)(1)." *Joann Fletcher Cash*, DAB No. 1725, at 3 (2000) (citing *Travers v. Shalala*, 20 F.3d 993, at 998 (9th Cir. 1994); *Greene v. Sullivan*, 731 F.Supp. 835, at 838 (E.D. Tenn. 1990); *Manocchio v. Kusserow*, 961 F.2d 1539, at 1540 (11th Cir. 1992); *Patel v. Shalala*, 17 F. Supp. 2d 662, at 664 (W.D. Ky. 1998); *Kahn v. Inspector General of U.S. Dep't of Health and Human Servs.*, 848 F.Supp. 432, at 434 (S.D.N.Y. 1994)). Accordingly, we conclude that the ALJ correctly determined that Petitioner's conviction related to the delivery of items under a state health care program and required Petitioner's mandatory exclusion under section 1128(a)(1).

As before the ALJ, Petitioner instead contests the validity of her conviction. Petitioner contends that the conviction is invalid because the Texas trial court imposed a sentence of incarceration for Medicaid fraud and theft, though she was only tried and convicted for Medicaid fraud. Petitioner also argues that the 11-year sentence imposed by the court exceeds the Texas penal code's maximum sentence for the crime for which she was tried and convicted (Medicaid fraud, third degree felony). Reply at 1-2. Consequently, she argues, the sentence was invalid and voided her conviction. *Id.* Petitioner also argues that "[t]he jury did not address the issue it simply found Petitioner guilty because it did not prepare for trial"; the trial testimony was incomplete; "the burden of proof was not met to convict Petitioner"; and "[t]he state failed to carry its burden of proof that the claim was invalid and the purpose was for fraud." Reply at 4, 5, 6.

These arguments, too, constitute collateral attacks on the validity of Petitioner's criminal conviction, which the Board is not permitted to review pursuant to section 1001.2007(d). "When the exclusion is based on the existence of a criminal conviction," the regulation provides, "the basis for the underlying conviction . . . **is not reviewable and the individual or entity may not collaterally attack it either on substantive or procedural grounds in this appeal.**" 42 C.F.R. § 1001.2007(d) (emphasis added). The purpose of the provision "is to prevent excluded individuals from relitigating the validity of their convictions." *Joann Fletcher Cash*, DAB No. 1725, at 6. The Board has explained that

“[t]he regulation’s prohibition on collateral attacks recognizes that it is ‘the fact of the conviction which causes the exclusion. The law does not permit the Secretary to look behind the conviction.’” *Michael D. Miran, Esta Miran, & Michael D. Miran, Ph.D. Psychologist P.C.*, DAB No. 2469, at 4 (2012) (quoting *Peter J. Edmonson*, DAB No. 1330, at 4 (1992)). The ALJ therefore properly exercised jurisdiction over Petitioner’s appeal of her exclusion and relied on Petitioner’s conviction for Medicaid fraud to support her exclusion. Petitioner’s collateral attacks do not provide any basis to disturb the ALJ’s determination that the I.G. was required by section 1128(a)(1) of the Act to exclude Petitioner based on her criminal conviction.

Petitioner also appears to argue that the ALJ erred in affirming Petitioner’s exclusion because she had appealed her conviction. Reply at 6. As the ALJ correctly explained, section 1128(i)(1) of the Act provides that where a judgment of conviction has been entered against an individual by a federal, state, or local court, as in this case, the individual is “convicted” within the meaning of the Act “regardless of whether there is an appeal pending.” ALJ Decision at 2-3. Furthermore, we note, if the criminal conviction underlying an individual’s exclusion is overturned, the excluded individual “will be reinstated into Medicare, Medicaid and other Federal health care programs retroactive to the effective date of the exclusion when such exclusion is based on . . . [a] conviction that is reversed or vacated on appeal[.]” 42 C.F.R. § 1001.3005(a)(1). The Board has stated that “there would be no need for” section 1001.3005(a)(1) if an “exclusion could be stayed pending a federal court appeal.” *Emmanuel Adebayo Ayodele*, DAB No. 2602, at 5 (2014) (citing *Miran*, DAB No. 2469, at 4-5). Consequently, Petitioner may be entitled to reinstatement should she prevail on her appeal of her conviction, if the appeal results in her no longer being convicted for purposes of the exclusions statute, but she is not entitled to have the Board reverse or stay her exclusion while her appeal is pending. *See generally* 42 C.F.R. Part 1001, subpart F.

**3. *The ALJ’s determination that a 25-year exclusion is within a reasonable range is based on substantial evidence in the record and free from error.***

An ALJ “reviews the length of an exclusion de novo to determine whether it falls within a reasonable range, given the aggravating and mitigating factors and the circumstances underlying them.” *Sushil Aniruddh Sheth, M.D.*, DAB No. 2491, at 5 (2012) (citations omitted), *appeal dismissed, in part, summarily affirmed, in part, Sheth v. Sebelius*, No. 13-cv-0448, 2014 WL 11813597 (D.D.C. Jan. 10, 2014), *appeal dismissed, Sheth v. Burwell*, No. 14–5179, 2015 WL 3372286 (D.C. Cir. May 7, 2015). In reviewing whether the length of exclusion is unreasonable, “the ALJ may not substitute his or her judgment for that of the I.G. or determine what period of exclusion would be better.” *Richard E. Bohner*, DAB No. 2638, at 2 (2015) (citations and internal quotation marks omitted), *aff’d, Bohner v. Burwell*, No. 15-cv-4088, 2016 WL 8716339 (E.D. Pa. Dec. 2, 2016). “Instead, the ALJ’s role is limited to considering whether the period of exclusion imposed by the I.G. was within a reasonable range, based on demonstrated criteria.”



*Craig Richard Wilder*, DAB No. 2416, at 8 (2011); *see also* 57 Fed. Reg. 3298, 3321 (Jan. 29, 1992) (deference to I.G.’s “broad discretion” in setting the length of an exclusion “is appropriate, given the [I.G.’s] vast experience in implementing exclusions”).

As reflected in the notice of Petitioner’s exclusion, the I.G. added 20 years to the minimum five-year exclusion period mandated under the Act. I.G. Ex. 1; Act §§ 1128(c)(3)(B), 1128(a)(1). The I.G. considered the factors set forth in 42 C.F.R. § 1001.102(b) and found evidence in the record of the aggravating factors listed in sections 1001.102(b)(2) and (b)(5). The ALJ determined that the 20 years added by the I.G. to the statutory minimum exclusion period in this case was not unreasonable in view of the aggravating factors established on the record, and in the absence of any mitigating factors.

With respect to the aggravating factor in section 1001.102(b)(2), Petitioner does not deny that the acts that resulted in her conviction took place over more than four years, from on or about January 10, 2012, through on or about February 19, 2016. *See* I.G. Ex. 2. We agree with the ALJ that this was a protracted period of criminal conduct, and this duration is substantially longer than the one-year threshold for extending an exclusion beyond the five-year minimum. As the Board stated in *Vinod Chandrashekar Patwardhan, M.D.*, DAB No. 2454, at 7 (2012) (quoting *Donald A. Burstein, Ph.D.*, DAB No. 1865, at 8 (2003)), “the purpose of this aggravating factor ‘is to distinguish . . . petitioners whose lapse in integrity is short-lived from those who evidence a lack of such integrity over a longer period . . . .’” We conclude that the duration of Petitioner’s misdeeds shows that she is extremely untrustworthy.

With respect to the aggravating factor in section 1001.102(b)(5), Petitioner does not deny that she was sentenced to 11 years’ incarceration. She argues, however, that the I.G. erred in relying on the duration of her sentence as a basis for extending her exclusion to 25 years because the sentence was intended to punish Petitioner in part for a crime (theft) unrelated to Medicaid fraud and for which she was not tried or convicted. As discussed above, the record evidence establishes that the court assessed Petitioner’s punishment to 11 years’ incarceration based on her felony conviction for Medicaid fraud, and Petitioner’s arguments that the sentence was invalid or intended to punish her in part for a crime for which she was indicted but innocent amount to impermissible collateral attacks on her conviction and sentence.

In light of the significant period of incarceration of 11 years for Medicaid fraud, we see no basis to reverse the ALJ’s conclusion that the 25-year exclusion imposed by the I.G. was within a reasonable range. We note, moreover, that the Board has stated with respect to the aggravating factor of incarceration that a period of incarceration for 54 months is “unquestionably a significant period.” *Spyros N. Panos, M.D.*, DAB No. 2709, at 12 (2016) (citing *Eugene Goldman, M.D., a/k/a Yevgeniy Goldman, M.D.*, DAB No. 2635, at

5 (2015) (51 months' incarceration "is a significant period"); *Jason Hollady, M.D., a/k/a Jason Lynn Hollady*, DAB No. 1855, at 12 (2002) (characterizing a nine-month incarceration, which included a period of work release, as "more than a token incarceration and, in that sense, relatively substantial"). Petitioner's 11-year sentence was thus unquestionably quite a significant period.

Lastly, Petitioner asserted that the I.G. "regards Petitioner as [a] great danger to Medicaid [but] no previous criminal history is shown." Reply at 3. As stated above, if an exclusion period is extended based on the application of one or more aggravating factors, any of the three mitigating factors set forth in section 1001.102(c) (and only those three mitigating factors) may be applied to reduce the length of the exclusion period to no less than the mandatory minimum five years. 42 C.F.R. § 1001.102(c). Whether or not Petitioner had a previous criminal history is not one of the mitigating factors listed in section 1001.102(c) and, thus, is immaterial to the ALJ's decision that 25 years was not an unreasonable exclusion period.

Given the substantial nature of the aggravating factors present here and the absence of any mitigating factor recognized in the regulations, we conclude that the ALJ did not err in finding that an exclusion of 25 years was within a reasonable range of what was appropriate to protect federal health care programs from Petitioner.

### **Conclusion**

For the reasons explained above, we affirm the ALJ Decision affirming the I.G.'s exclusion of Petitioner from participating in Medicare, Medicaid, and all federal health care programs for a period of 25 years, pursuant to section 1128(a)(1) of the Act.

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/s/

Leslie A. Sussan

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/s/

Constance B. Tobias

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/s/

Susan S. Yim  
Presiding Board Member