

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Bridgie Anna Gibson-Miller,
a.k.a Bridgett A. Finley
Bridgie A. Miller
(OI File No. H-14-43269-9),

Petitioner,

v.

The Inspector General

Docket No. C-15-4201

Decision No. CR4543

Date: March 9, 2016

DECISION

Petitioner, Bridgie Anna Gibson-Miller, was a personal care attendant, working in St. Louis County, Missouri. She pled guilty to one felony count of Medicaid fraud. Based on this, the Inspector General (I.G.) has excluded her for five years from participating in Medicare, Medicaid, and all federal health care programs, as authorized by section 1128(a)(1) of the Social Security Act (Act). Petitioner appeals the exclusion. For the reasons discussed below, I find that the I.G. properly excluded Petitioner Gibson-Miller and that the statute mandates a minimum five-year exclusion.

Background

In a letter dated May 29, 2015, the I.G. notified Petitioner that she was excluded from participating in Medicare, Medicaid, and all federal health care programs for a period of five years because she was convicted of a criminal offense related to the delivery of an

item or service under the Medicare or state health care program. The letter explained that section 1128(a)(1) of the Act authorizes the exclusion. I.G. Ex. 1. Although the letter was initially returned to the I.G., that office sent it out again, and Petitioner timely requested review.

Each party submitted a written argument (I.G. Br.; P. Br.). The I.G. submitted four exhibits (I.G. Exs. 1-4). In the absence of any objection, I admit into evidence I.G. Exs. 1-4.

The parties agree that an in-person hearing is not necessary. I.G. Br. at 12; P. Br. at 3.

Discussion

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

Under section 1128(a)(1) of the Act, the Secretary of Health and Human Services must 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. 42 C.F.R. § 1001.101(a).

Here Petitioner Gibson-Miller provided in-home personal care services to Medicaid beneficiaries in the State of Missouri. I.G. Ex. 2. She submitted claims to the state Medicaid program for services she did not provide, and, on September 22, 2014, pled guilty in state court to a felony charge of Medicaid fraud. I.G. Ex. 3. The court accepted her plea, ordered her to pay restitution, and imposed five years probation. I.G. Ex. 4.

Petitioner points out that the court's action, characterized as a "suspended imposition of sentence," is not a final judgment and, under Missouri law, not a conviction, unless she violates her probation. P. Br. at 1-2; Letter Attached to Hearing Request (July 6, 2015).

Under the Act and regulations, a person is "convicted" when "a judgment of conviction has been entered" regardless of whether that judgment has been (or could be) expunged or otherwise removed. Act § 1128(i)(1); 42 C.F.R. § 1001.2(a)(2). Individuals who participate in "deferred adjudication, or other arrangement or program where judgment of

¹ I make this one finding of fact/conclusion of law.

conviction has been withheld” are also “convicted” within the meaning of the statute. Act § 1128(i)(4); 42 C.F.R. § 1001.2(d). Based on these provisions, the Departmental Appeals Board (Board) characterizes as “well established” the principle that a “conviction” includes “diverted, deferred and expunged convictions regardless of whether state law treats such actions as a conviction.” *Henry L. Gupton*, DAB No. 2058 at 8 (2007), *aff’d sub nom. Gupton v. Leavitt*, 575 F. Supp. 2d 874 (E.D. Tenn. 2008).

The Board explained why, in these I.G. proceedings, the federal definition of “conviction” must apply. That definition differs from many state criminal law definitions. For exclusion purposes, Congress deliberately defined “conviction” broadly to ensure that exclusions would not hinge on the state criminal justice policies. Quoting the legislative history, the Board explained:

The rationale for the different meanings of “conviction” for state criminal law versus federal exclusion law purposes follows from the distinct goals involved. The goals of criminal law generally involve punishment and rehabilitation of the offender, possibly deterrence of future misconduct by the same or other persons, and various public policy goals. [footnote omitted] Exclusions imposed by the I.G., by contrast, are civil sanctions, designed to protect the beneficiaries of health care programs and the federal fisc, and are thus remedial in nature rather than primarily punitive or deterrent. . . . In the effort to protect both beneficiaries and funds, Congress could logically conclude that it was better to exclude providers whose involvement in the criminal system raised serious concerns about their integrity and trustworthiness, even if they were not subjected to criminal sanctions for reasons of state policy.

Gupton at 7-8.

Petitioner’s conviction falls squarely within the statutory and regulatory definition of “conviction,” and her conviction for Medicaid fraud is obviously related to the delivery of services under a state health care program. She is therefore subject to exclusion. An exclusion brought under section 1128(a)(1) must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

