

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Anna Zaichik,
(OI File No. 2-08-4-0513-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-378

Decision No. CR4649

Date: June 28, 2016

DECISION

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

I. Background

Petitioner requested a hearing to challenge the I.G.'s exclusion determination. The I.G. filed a brief and a reply brief in support of his determination along with six proposed exhibits that are identified as I.G. Ex. 1-I.G. Ex. 6. Petitioner filed a brief along with four proposed exhibits that are identified as P. Ex. 1-P. Ex. 4. I receive the parties' exhibits into the record.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether the I.G. was mandated to exclude Petitioner for at least five years pursuant to section 1128(a)(1) of the Social Security Act (Act).

B. Findings of Fact and Conclusions of Law

Section 1128(a)(1) of the Act mandates the exclusion of any individual who is convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. The evidence unequivocally establishes that Petitioner was convicted of a crime that falls within the reach of section 1128(a)(1).

On June 13, 2013, Petitioner pled guilty to and was convicted of a count of racketeering conspiracy. I.G. Ex. 3-I.G. Ex. 5. The conspiracy was aimed directly at the Medicare program. It involved defrauding the program by stealing the identities of doctors, setting up fake medical clinics in their names, stealing the names of patients, and billing Medicare for millions of dollars of fictitious medical treatments. I.G. Ex. 2 at 8. Petitioner's role in the conspiracy was to open bank accounts associated with the fake medical clinics thereby allowing the fake clinics to register with Medicare and receive reimbursement from that program for fictitious medical treatments. I.G. Ex. 2 at 8; I.G. Ex. 6 at 4-5. Petitioner's role was therefore a small but instrumental part of a scheme to defraud the Medicare program. Her crime was related to Medicare items or services precisely because it was a necessary element in a scheme to defraud the Medicare program.

Petitioner argues that her crime does not fall within the reach of section 1128(a)(1) because her conduct had "nothing to do with medical billing." Petitioner's brief at 2. She asserts that all she did was to assist a friend in opening some bank accounts and she claims that she was not aware of the accounts' intended purpose until six or seven months after she opened them. *Id.* In some respects Petitioner's argument appears to be an assertion that she is not really guilty of the crime of which she was convicted. That is an impermissible collateral attack on the substance of her conviction. 42 C.F.R. § 1001.2007. Moreover, her argument – even if true – does not take her conviction out of the reach of section 1128(a)(1). Section 1128(a)(1) does not require evidence of a specific intent to defraud the Medicare program nor does it require that an individual be convicted of filing false claims. Here the statutory nexus is satisfied by Petitioner's participation in a scheme to defraud Medicare. Her participation in that scheme is sufficient to bring her conviction within the reach of section 1128(a)(1) even if she did not directly claim reimbursement from Medicare for fictitious medical services.

Petitioner also makes a variety of equitable arguments concerning her rehabilitation and service to her community. While these efforts may be laudable they are not relevant to the issues in this case. She may not avoid the statute's mandate on equitable grounds.

The I.G. excluded Petitioner for a period of at least five years. That is the minimum that is required by law for an exclusion imposed pursuant to section 1128(a)(1) of the Act.

Act § 1128(c)(3)(B). I may not reduce the exclusion below the five-year minimum period.

/s/
Steven T. Kessel
Administrative Law Judge