Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Sharon Denise Parker,
(OI File No. H-17-40144-9),

Petitioner,

v.

The Inspector General.

Docket No. C-17-762

Decision No. CR4964

Date: November 1, 2017

DECISION

Petitioner, Sharon Denise Parker, was a "direct service worker" in Baton Rouge, Louisiana, working for a company that provided Medicaid services to beneficiaries. She was charged with two counts of felony Medicaid fraud and pled guilty to misdemeanor theft. Based on this, the Inspector General (IG) 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 IG properly excluded Petitioner Parker and that the statute mandates a minimum five-year exclusion.

Background

In a letter dated March 31, 2017, the IG 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 had been convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. The letter explained that section 1128(a)(1) of the Act authorizes the exclusion. IG Exhibit (Ex.) 1.

Petitioner timely requested review.

The IG submitted a written argument (IG Br.) and four exhibits (IG Exs. 1-4). Petitioner responded to the IG's brief (P. Br.).

In the absence of any objections, I admit into evidence IG Exs. 1-4.

The parties agree that in-person hearing is not necessary. IG Br. at 5; P. Br. at 2.

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 a state health care program. Act § 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 worked for a company that contracted with the Louisiana Department of Health and Hospitals to provide direct care services to Medicaid beneficiaries. IG Exs. 3, 4. She submitted false claims to the Medicaid agency; specifically, on 88 occasions, she (through her employer) billed for services she could not have provided because she was working at another job. IG Exs. 3, 4. On March 1, 2016, Petitioner pled guilty to a misdemeanor charge of theft. IG Ex. 2 at 3. The court accepted her plea but deferred sentencing, placing Petitioner on one-year probation with special conditions (that she pay a fine; remain arrest and conviction-free; remain alcohol and drug-free; and provide 20 hours of community service). IG Ex. 2 at 3.

In her hearing request, Petitioner pointed out that her conviction was dismissed, and, from this, she argued that the IG had no legal basis for imposing an exclusion. Hearing Request (May 31, 2017). However, in her submissions here, she admits that she was convicted of a criminal offense for which exclusion is required. P. Br. at 2.

In fact, Petitioner was "convicted" within the meaning of section 1128(a)(1). The statute and regulations provide that 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

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

participate in "deferred adjudication, or other arrangement or program where judgment of 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).

Petitioner also maintains that her actions were not purposeful; she simply followed her employer's instructions. P. Br. at 3. Federal regulations preclude such a collateral attack on Petitioner's underlying convictions:

> When the exclusion is based on the existence of a . . . determination by another Government agency, or any other prior determination where the facts were adjudicated and a final decision was made, the basis for the underlying . . . determination 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); *Marvin L. Gibbs, Jr., M.D.*, DAB No. 2279 at 8-10 (2009); *Roy Cosby Stark*, DAB No. 1746 (2000).

Petitioner's conviction thus falls squarely within the statutory and regulatory definition of "conviction," and, because her crime was related to the delivery of services under a state health care program, she is subject to exclusion. An exclusion brought under section 1128(a)(1) must be for a minimum period of five years. Act § 1129(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

Conclusion

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

/s/
Carolyn Cozad Hughes
Administrative Law Judge