

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Catherine Gaddy,)	Date: February 12, 2009
)	
Petitioner,)	
)	
- v. -)	Docket No. C-09-117
)	Decision No. CR1901
The Inspector General.)	

DECISION

I uphold the exclusion of Petitioner, Catherine Gaddy, from participation in Medicare, Medicaid, and all federal health care programs for five years. I find a basis for the exclusion, and the five-year exclusion is the mandatory minimum period as a matter of law.

I. Background

Petitioner was excluded by the Inspector General (I.G.) pursuant to section 1128(a)(1) of the Social Security Act (Act) because she was convicted of misdemeanor larceny for fraudulently obtaining payment from the Medicaid program, by means of false, or fraudulent claims. Specifically, Petitioner knowingly submitted as a provider of medical assistance time sheets to her employer that indicated that she had provided personal care services to Medicaid recipients when in fact she had not provided the services and when she knew the time sheets would be used to bill the Medicaid program. I.G. Exhibits (Exs.) 3, 4, and 5. Section 1128(a)(1) requires the Secretary of Health and Human Services to exclude a person convicted of a criminal offense related to the delivery of an item or service under any State health care program.¹

¹ "State health care program" is defined in section 1128(h) of the Act and includes
(continued...)

Petitioner argues that she was wrongfully accused. Nevertheless, Petitioner does not dispute that she was convicted of a crime for which exclusion is required.

Petitioner's request for a hearing is dated November 9, 2008, and it stems from the I.G.'s notice letter, dated September 30, 2008, which notified Petitioner that she was excluded and informed her of her right to a hearing. In accordance with my initial order, the parties timely submitted their informal briefs. Petitioner did not submit any exhibits. The I.G. submitted four exhibits, I.G. Exs. 1-4. I thereafter convened a prehearing telephone conference on January 22, 2009, at which the parties agreed that this case may be decided based on the written record without an oral hearing. I established an additional briefing schedule to submit written briefs and any additional documents by February 6, 2009, although Petitioner indicated that she had submitted everything and would not be filing a supplement. The Inspector General submitted a supplemental brief together with the sworn declaration of the prosecutor in Petitioner's criminal case, which is marked as I.G. Ex. 5. Petitioner did not object to these exhibits, so I admit I.G. Exs. 1-5.

The essential facts of this case are undisputed. Petitioner was a provider of medical assistance who provided personal care services to Medicaid recipients. The Grand Jury Indictment dated March 9, 2006 originally charged Petitioner with one count of Medicaid Fraud by Provider, a felony, finding that Petitioner unlawfully, willfully and feloniously knowingly submitted false statements or representations on her time sheet which she knew would be used as the basis for billing the Medicaid program. The time sheets indicated she provided services to Medicaid recipients when in fact she had not. I.G. Exs. 4, 5. The North Carolina Attorney General's Office later offered Petitioner a plea agreement based on the same facts, but to the lesser charge of misdemeanor larceny provided she pay restitution to her employers.² I.G. Exs. 3, 5. Petitioner accepted the plea agreement and, on July 26, 2006, the guilty plea was accepted. I.G. Ex. 2. Petitioner was sentenced to 45 days suspended incarceration, 18 months supervised probation and was ordered to pay restitution plus other fees. I.G. Ex. 2.

¹(...continued)
the Medicaid program (Title XIX).

² The declaration of the Assistant Attorney General indicates that the \$2,240.46 in restitution that Petitioner was ordered to pay represents a portion of the amount that was fraudulently billed to the Medicaid Program based on Petitioner's submission of false time sheets. I.G. Ex. 5.

II. Issues

- (1) Whether the I.G. had a basis upon which to exclude Petitioner from participation in the Medicare, Medicaid, and all federal health care programs.
- (2) Whether I have the authority to review the length of the period of exclusion.

III. Discussion³

(1) Petitioner's conviction of misdemeanor larceny for making false statements or representations on her time sheets that she provided services to Medicaid recipients which she did not provide is an appropriate basis for her exclusion from Medicare, Medicaid, and all other federal health care programs.

Section 1128(a)(1) of the Act requires the Secretary of Health and Human Services to exclude from participation in any federal health care program, as defined in section 1128B(f) of the Act, any individual convicted of a criminal offense relating to the delivery of a health care item or service. The statute is unambiguous that this is not a discretionary provision-- the exclusion is *mandatory*. Convictions, including misdemeanors, that fall under the mandatory exclusion provision of section 1128(a)(1) require the I.G. to enforce an exclusion.

Here the facts are undisputed that Petitioner was convicted of a crime and that the crime was related to her delivery of services under the Medicaid program. Her crime was knowingly making false statements on her time sheets that she provided services to Medicaid recipients which she did not provide knowing that those time sheets would be used to bill Medicaid for payment for those services.

Petitioner admits that she was convicted and that her conviction was for a crime for which exclusion is required. While Petitioner contends that she was wrongfully accused, she nevertheless plead guilty to the offense and I cannot review the basis for the underlying conviction nor can I review Petitioner's collateral attacks of that conviction. 42 C.F. R. 1001.2007(d). Thus, I am bound to apply the mandatory exclusion to convictions covered by section 1128(a)(1).

³ I set forth my findings of fact and conclusions of law as separately numbered headings.

I find, therefore, that Petitioner's conviction provides a basis for the Secretary of Health and Human Services to exclude her pursuant to section 1128(a)(1) of the Act.

(2) Petitioners' exclusion for a period of 5 years is the mandatory minimum period as a matter of law.

Once a basis for a mandatory exclusion exists, I do not have the authority to determine a lesser length of exclusion than the minimum mandatory period.

An exclusion under section 1128(a)(1) of the Act must be for a minimum mandatory period of five years. As set forth in section 1128(c)(3)(B) of the Act:

Subject to subparagraph (G), in the case of an exclusion under subsection (a), the minimum period of exclusion shall be not less than five years

Specified aggravating factors can serve as a basis for lengthening the period of exclusion. 42 C.F.R. § 1001.102(b). And, if aggravating factors justify an exclusion longer than five years, specified mitigating factors may be considered as a basis for reducing the period of exclusion to no less than five years. 42 C.F.R. § 1001.102(c). But, when the I.G. imposes an exclusion for the mandatory five-year period, the reasonableness of the length of the exclusion is not an issue. 42 C.F.R. § 1001.2007(a)(2).

IV. Conclusion

For the reasons discussed above, I conclude that the I.G. properly excluded Petitioner from participation in Medicare, Medicaid, and all other federal health care programs, and I uphold the five-year exclusion.

/s/

José A. Anglada
Administrative Law Judge