

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Donna J. Mann,
(OI File No. 7-00-40811-9),

Petitioner,

v.

The Inspector General.

Docket No. C-13-1177

Decision No. CR3089

Date: January 17, 2014

DECISION

Petitioner, Donna J. Mann, was a licensed practical nurse (LPN), with licenses in Utah and Montana, until the Utah Division of Occupational and Professional Licensing revoked her Utah license. Pursuant to section 1128(b)(4) of the Social Security Act (Act), the Inspector General (I.G.) has excluded her from participation in Medicare, Medicaid, and all federal health care programs until she regains her Utah license. Petitioner now appeals the exclusion.

For the reasons set forth below, I find that the Utah licensing authority revoked Petitioner's nursing license for reasons bearing on her professional competence and performance, so the I.G. has appropriately excluded her from program participation.

Background

In a letter dated January 31, 2001, the I.G. advised Petitioner Mann that she was excluded from participation in Medicare, Medicaid, and all federal health care programs because her license to provide health care in the State of Utah was revoked, suspended, or

otherwise lost or was surrendered while a formal disciplinary proceeding, bearing on her professional competence, professional performance, or financial integrity, was pending before the state licensing authority. The letter explained that section 1128(b)(4) authorizes the exclusion. I.G. Ex. 1. Petitioner Mann requested review.¹

The I.G. submitted his brief (I.G. Br.) and seven exhibits (I.G. Exs. 1-7). Petitioner filed a brief (P. Br.) with no exhibits. In the absence of any objection, I admit into evidence I.G. Exs. 1-7.

I directed the parties to indicate in their briefs whether an in-person hearing would be necessary, and, if so, to “describe the testimony” it wishes to present, the names of the witnesses it would call, and a summary of each witness’ proposed testimony.² Neither party indicates that an in-person hearing is necessary, and, in any event, neither party has listed any witnesses.

Discussion

*Because Utah’s licensing authority revoked Petitioner Mann’s nursing license for reasons bearing on her professional competence or performance, the I.G. may appropriately exclude her from participation in Medicare, Medicaid, and other federal health care programs.*³

The Act authorizes the Secretary of Health and Human Services to exclude from program participation an individual whose license to provide health care “has been revoked or suspended by any State licensing authority” for reasons bearing on the individual’s “professional competence, professional performance, or financial integrity.” Act § 1128(b)(4)(A); *see also* 42 C.F.R. § 1001.501.

In Montana, the state licensing authority placed her on probation due to her substance abuse and a domestic abuse conviction. Thereafter, she applied for a nursing license in Utah. Utah granted her a license but, because of her history, placed conditions on that license: that she submit to random drug screening; that she participate in a professional support group and 12-step program; that she submit quarterly therapy reports; and that

¹ Initially, the notice letter was returned to the I.G. as undeliverable, and the I.G. concedes that Petitioner did not receive it, so even though she did not file her hearing request until August 7, 2013, the parties agree that her appeal was filed timely.

² These instructions are included in the “short form brief,” which I directed the parties to complete and submit. Order and Schedule for Filing Briefs and Documentary Evidence (September 16, 2013).

³ I make this one finding of fact/conclusion of law.

she meet with the licensing authority on a quarterly basis. Petitioner Mann did not comply with these requirements. I.G. Ex. 4 at 3-4.

As a result, in an order dated May 23, 2000, the Utah licensing authority revoked Petitioner Mann's nursing license, effective June 22, 2000, finding that she engaged in "unprofessional conduct." I.G. Ex. 4 at 4-6; I.G. Ex. 7. Specifically, the Utah licensing authority adopted the findings of its administrative law judge (ALJ), who concluded that, under state law, Petitioner Mann's failure to comply with the conditions placed on her license constituted unprofessional conduct and justified license revocation. I.G. Ex. 4 at 4-6. Thus, the licensing authority's documents establish that Petitioner's license was revoked because of her professional competence or performance, and the I.G. may appropriately exclude her from program participation under section 1128(b)(4) of the Act. Where the facts have been adjudicated and a final decision issued by another government agency, the basis for that determination is not reviewable. 42 C.F.R. § 1001.2007(d); *see Donna Rogers*, DAB No. 2381 at 4-5 (2011).

Petitioner does not seem to question the reasons that her license was revoked but complains that, although licensed in Utah, she has not worked as a nurse in that state. She argues that she was never charged with taking drugs from patients, being under the influence of drugs or alcohol while at work, or abusing or endangering the life and welfare of patients. Hearing Request at 1. I find these arguments irrelevant.

Petitioner also maintains that she does not plan to return to nursing and complains that the exclusion will preclude her from working in a hospital or nursing home in any capacity. But I may not reverse a section 1128(b)(4) exclusion on the ground that the person might suffer personal or professional hardships as a result. *Donna Rogers*, DAB No. 2381 at 6.

The statute requires that Petitioner Mann's period of exclusion "shall not be less than the period during which [her] . . . license. . . is . . . revoked." Act § 1128(c)(3)(E); *see also* 42 C.F.R. § 1001.501(b)(1).

Conclusion

For the above reasons, I conclude that the I.G. properly excluded Petitioner Mann from participation in Medicare, Medicaid, and all other federal health care programs for so long as her nursing license is revoked.

/s/
Carolyn Cozad Hughes
Administrative Law Judge