

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Ron Loflin, O.D.  
(O.I. File H-14-4-2910-9),

Petitioner,

v.

The Inspector General.

Docket No. C-15-3606

Decision No. CR4549

Date: March 18, 2016

**DECISION**

The Inspector General (IG) of the United States Department of Health and Human Services notified Ron Loflin, O.D. (Dr. Loflin or Petitioner), that he was being excluded from participation in Medicare, Medicaid, and all other federal health care programs until he is reinstated as a provider in the Illinois Medical Assistance Program. Petitioner requested a hearing before an administrative law judge (ALJ) to dispute the exclusion. The IG subsequently moved for summary judgment.

The undisputed facts in this case show that the Illinois Department of Financial and Professional Regulation indefinitely suspended Dr. Loflin's optometrist license because Dr. Loflin held himself out to the public as an optometrist while his optometry license was suspended and falsely stated on an employment application for an optometrist position that he had not been previously reprimanded. The Illinois Department of Healthcare and Family Services then terminated Dr. Loflin's participation in the Illinois Medical Assistance Program based on this indefinite suspension. Based on these undisputed facts, I conclude that summary judgment is appropriate and affirm the IG's exclusion of Dr. Loflin because he was sanctioned by a state health care program for reasons bearing on his professional competence or professional performance.

## **I. Background**

By letter dated May 29, 2015, the IG notified Dr. Loflin that he was being excluded from Medicare, Medicaid, and all federal health care programs. IG Ex. 1. The notice provided the following reason for the exclusion:

This action is being taken under section 1128(b)(5) of the [Social Security] Act because [Dr. Loflin has] been suspended, excluded or otherwise sanctioned by the Illinois Department of Healthcare and Family Service[s], a Federal program involving the provision of health care or a State health care program, for reasons bearing on your professional competence, professional performance or financial integrity. See 42 U.S.C. 1320a-7(b), 42 C.F.R. 1001.601.

The exclusion is effective 20 days from the date of this letter and will remain in effect until [Dr. Loflin has] been reinstated to the health care program which originally took the action against [him].”

IG Ex. 1 at 1.

Dr. Loflin timely requested a hearing to dispute the exclusion. On October 14, 2015, I held a pre-hearing telephone conference, the substance of which is summarized in my October 15, 2015 Order and Schedule for Filing Briefs and Documentary Evidence. In response to the October 15 Order, the IG submitted a brief, a motion for summary judgment, and seven exhibits (IG Exs. 1-7). Petitioner submitted a response brief (P. Br.) with sixteen exhibits (P. Exs. 1-16). The IG submitted a reply brief.

## **II. Issues**

1. Whether summary judgment is appropriate;
2. Whether the IG has a basis to exclude Petitioner under 42 U.S.C. § 1320a-7(b)(5).
3. Whether the length of exclusion is unreasonable.

## **III. Jurisdiction**

I have jurisdiction to adjudicate this case. 42 U.S.C. § 1320a-7(f)(1); 42 C.F.R. §§ 1001.2007, 1005.2.

## IV. Findings of Fact, Conclusions of Law, and Analysis<sup>1</sup>

### *1. Summary Judgment is appropriate.*

The IG moved for summary judgment asserting that there is no issue of material fact in dispute. IG Brief at 2. Petitioner opposes summary judgment contending that there are material facts in dispute related to the Illinois administrative proceedings leading to the suspension of his optometry license. P. Br. at 4-5. Petitioner also sought to provide testimony at a hearing. P. Br. at 6.

At the request of a party, an ALJ may decide an exclusion case by summary judgment “where there is no disputed issue of material fact.” 42 C.F.R. § 1005.4(b)(12). “Matters presented to the ALJ for summary judgment will follow Rule 56 of the Federal Rules of Civil Procedure and federal case law . . . .” Civil Remedies Division Procedures § 19(a). As stated by the United States Supreme Court:

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment ‘shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’ By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.”

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original).

There are no genuine issues of material fact in dispute in this case. This case presents a narrow issue: whether Petitioner was suspended or excluded from a state health care program for reasons bearing on his professional competence or professional performance. 42 U.S.C. § 1320a-7(b)(5); 42 C.F.R. § 1001.601(a). Petitioner does not dispute that Illinois administrative agencies issued final decisions indefinitely suspending him from the practice of optometry in Illinois and terminating his participation in the Illinois Medical Assistance Program. Although Petitioner disputes the underlying factual basis for these actions, he does not dispute that the final decision to indefinitely suspend his Illinois optometry license was based on a finding that he practiced optometry while his license was suspended and that he falsely stated on an employment application that he

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<sup>1</sup> My findings of fact and conclusions of law are set forth in italics and bold font.

had not been reprimanded as an optometrist, when Petitioner had previously been reprimanded. *See* Hearing Request at 1-2; P. Br. at 2-5. Accordingly, summary judgment is appropriate.

***2. The Illinois Department of Financial and Professional Regulation indefinitely suspended Petitioner from practicing optometry because Petitioner practiced optometry without a valid license and falsely stated on an employment application that he had not been reprimanded when he been reprimanded in the past, and the Illinois Department of Healthcare and Family Services terminated Petitioner's participation in the Illinois Medical Assistance Program based on the suspension of Petitioner's optometry license.***

In 2004, the Illinois Department of Financial and Professional Regulation licensed Petitioner as an optometrist. P. Ex. 8. On March 30, 2011, the Illinois Department of Financial and Professional Regulation charged Petitioner with practicing optometry while his license was suspended and falsely stating on an employment application for an optometry position that he had never been reprimanded as an optometrist when he was previously reprimanded. IG Ex. 4 at 1. An Illinois ALJ held a hearing on October 3, 2012; however, Petitioner failed to appear for the hearing. IG Ex. 4 at 2. In his Report and Recommendation, the ALJ concluded by clear and convincing evidence that Petitioner held himself out to the public as an individual eligible to practice optometry from March 31, 2010, to May 7, 2010, when his license during that timeframe was suspended. IG Ex. 4 at 5. The ALJ also concluded that in 2010, while his license was suspended, Petitioner applied for an optometry position and responded in the negative to a query as to whether he had ever been reprimanded, even though Petitioner had been reprimanded in 2009. IG Ex. 4 at 5. The ALJ concluded that Petitioner's "attempt to hide his discipline clearly illustrates that [he] engaged in dishonorable, unethical, unprofessional conduct of a character likely to deceive, defraud or harm the public." IG Ex. 4 at 5. The ALJ recommended imposing a reprimand and a \$2,500 fine.

On November 15, 2012, the Illinois Optometric Licensing and Disciplinary Board adopted the ALJ's findings of fact and conclusions of law, but recommended indefinite suspension and a \$15,000 fine. IG Ex. 6. On February 22, 2013, the Illinois Department of Financial and Professional Regulation adopted the Disciplinary Board's findings, conclusions, and penalty recommendation, and indefinitely suspended Petitioner from practicing as an optometrist and imposed a \$15,000 fine. IG Ex. 3.

In March 2014, the Illinois Department of Healthcare and Family Services notified Petitioner that it was terminating his participation in the Illinois Medical Assistance Program based on the indefinite suspension of his optometrist license. IG Ex. 5 at 4-5. The notice stated that Petitioner had the right to dispute the termination at a hearing scheduled for April 16, 2014. IG Ex. 5 at 1. Petitioner failed to appear for the scheduled

hearing. IG Ex. 7 at 1-2. On April 28, 2014, an Illinois ALJ issued a recommended decision upholding the April 1, 2014 termination of Petitioner's participation in the Illinois Medical Assistance Program. IG Ex. 7 at 3. On June 20, 2014, the Illinois Department of Healthcare and Family Services issued a final and binding decision adopting the ALJ's recommended decision. IG Ex. 2.

**3. *The IG had a basis under 42 U.S.C. § 1320a-7(b)(5) to exclude Petitioner because Petitioner was sanctioned by a state health care program for reasons bearing on his professional competence and performance.***

The IG may exclude from participation in Medicare, Medicaid, and all other federal health care programs any individual who has been suspended or excluded from participation in, or otherwise sanctioned under, any federal program involving the provision of health care or any state health care program, for reasons bearing on the individual's professional competence, professional performance or financial integrity. 42 U.S.C. § 1320a-7(b)(5); 42 C.F.R. §1001.601(a).

**a. *The Illinois Medical Assistance Program is a state health care program.***

"Illinois participates in the Medicaid program, a cooperative federal-state program established by the [Social Security] Act under which federal funds are provided to states to furnish medical assistance (including hospital inpatient and outpatient services) to persons 'whose income and resources are insufficient to meet the costs of necessary medical services'" *Ill. Hosp. Ass'n v. Ill. Dep't of Pub. Aid*, 576 F. Supp. 360, 361-62 (N.D. Ill. 1983); *see also* 305 Ill. Comp. Stat. Ann. 5/5-2a; *Ill. Dep't of Pub. Aid*, DAB No. 2022 (2006). The Illinois Medical Assistance Program includes Medicaid. *See* Ill. Admin. Code tit. 89, § 101.30; *see also* 42 U.S.C. § 1396a. For purposes of exclusions under 42 U.S.C. § 1320a-7, the Medicaid program is a state health care program. 42 U.S.C. § 1320a-7(h)(1); 42 C.F.R. § 1001.2 (definition of State health care program). Therefore, the Illinois Medical Assistance Program is a state health care program.

**b. *Petitioner's termination from participation in the Illinois Medical Assistance Program means he was "otherwise sanctioned."***

Based on the undisputed facts in this case, the Illinois Department of Healthcare and Family Services terminated Petitioner's participation in the Illinois Medical Assistance Program. The effect of a termination is that Petitioner cannot provide goods or services under the Illinois Medical Assistance Program, or own or be employed by an entity that does. IG Ex. 5 at 2-3. Therefore, Petitioner was "otherwise sanctioned" under 42 U.S.C. § 1320a-7(b)(5) because that phrase "is intended to cover all actions that limit the ability of a person to participate in the program at issue regardless of what such an action is called." 42 C.F.R. § 1001.601(a)(2).

***c. Petitioner's termination was for reasons bearing on his professional competence or professional performance.***

The Department of Healthcare and Family Services' termination of Petitioner's participation in the Illinois Medical Assistance Program was directly based on the Illinois Department of Financial and Professional Regulation's indefinite suspension of Petitioner's optometry license. IG Ex. 5 at 5; *see also* IG Ex. 2; IG Ex. 7 at 3. The Illinois Department of Financial and Professional Regulation's ALJ concluded that Petitioner's "attempt to hide his discipline clearly illustrates that Respondent engaged in dishonorable, unethical, unprofessional conduct of a character likely to deceive, defraud or harm the public." IG Ex. 4 at 5. The final decision indefinitely suspending Petitioner from practice adopted the ALJ's findings and conclusions. IG Exs. 3, 6. The ALJ's conclusion is sufficient to show that Petitioner's termination was for reasons bearing on professional competence or professional performance. *See Gursheel S. Dhillon, M.D.*, DAB No. CR2633, at 4 (2012).

***4. The length of Petitioner's exclusion is reasonable as a matter of law.***

Petitioner asserts that the length of the IG's exclusion is unreasonable. Hearing Request at 1. The IG's exclusion notice stated that the exclusion would last until Petitioner was reinstated to the Illinois Medical Assistance Program. IG Ex. 1 at 1. However, the IG imposed the minimum length of exclusion permitted by law. 42 U.S.C. § 1320a-7(c)(3)(E); 42 C.F.R. § 1001.601(b)(1). Although an excluded individual can generally dispute the reasonableness an exclusion's duration (42 C.F.R. § 1001.2007(a)(1)), the length of exclusion imposed in this case is reasonable as a matter of law.

***5. I do not have jurisdiction to review the scope of Petitioner's exclusion.***

Petitioner asserted in his hearing request that the scope of the IG's exclusion was unreasonable. Hearing Request at 1. The exclusion notice provided Petitioner with a summary of the limitations on his ability to work in the medical field. IG Ex. 1 at 3. This summary is consistent with the regulations. *See* 42 C.F.R. § 1001.1901(b). Further, I do not have jurisdiction to review the scope and effect of the exclusion. 42 C.F.R. § 1005.4(c)(5)-(6).

***6. I cannot consider Petitioner's collateral attacks on the decision of the Illinois Department of Financial and Professional Regulation to suspend him.***

Petitioner's arguments in this case are primarily directed at the legitimacy of the Illinois Department of Financial and Professional Regulation's decision to indefinitely suspend his optometry license. Petitioner argues that: he did not know that his optometry license was suspended when he worked as an optometrist from March 2010 to May 2010, and immediately remedied the situation as soon as he learned of his suspension; the

suspension in 2010 was based on nonpayment of a \$1,000 fine, which could have been partially collected through unclaimed funds held by Illinois that were owed to Petitioner at the time; the Illinois Department of Financial and Professional Regulation hearing violated the Illinois Administrative Procedure Act and the ALJ who presided at that hearing failed to consider all of Petitioner's evidence; after the ALJ hearing, Petitioner obtained new exculpatory evidence that the Illinois Department of Financial and Professional Regulation would not consider without a court order; the Missouri Optometric Board did not impose discipline on Petitioner even though the Illinois Department of Financial and Professional Regulation informed that Boards of Petitioner's discipline; and "[t]hroughout 17 years of practicing optometry, [Petitioner has] never sustained a malpractice claim nor been accused of misbilling or financial fraud." Hearing Request at 1-2; P. Br. at 1-5; P. Exs. 1-16.

I do not know whether Petitioner's factual and legal positions concerning his indefinite suspension have merit. However, I cannot consider these arguments. As stated in the regulations:

When the exclusion is based on . . . 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); *see also Travers v. Shalala*, 20 F.3d 993, 998 (9th Cir. 1994); *Anderson v. Thompson*, 311 F. Supp. 2d at 1128 (D. Kan. 2004).

## **V. Conclusion**

For the foregoing reasons, I affirm the IG's exclusion of Petitioner.

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/s/  
Scott Anderson  
Administrative Law Judge