

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Virginia Prewitt
(OI File No.: H-12-42546-9),

Petitioner,

v.

The Inspector General,
U.S. Department of Health and Human Services.

Docket No. C-13-656

Decision No. CR2821

Date: June 12, 2013

DECISION

The request for hearing of Petitioner, Virginia Prewitt, is dismissed pursuant to 42 C.F.R. § 1005.2(e)(4),¹ for failure to raise any issue that may properly be addressed in a hearing.

I. Background

The Inspector General for the Department of Health and Human Services (I.G.) notified Petitioner by letter dated March 29, 2013, that she was being excluded from participation in Medicare, Medicaid, and all federal health care programs for the minimum statutory period of five years pursuant to section 1128(a)(2) of the Social Security Act (the Act) (42 U.S.C. § 1320a-7(a)(2)), effective 20 days from the date of the letter. The basis cited for Petitioner's exclusion was her conviction in the Norwich City Court, Chenango County, New York, of a criminal offense related to neglect or abuse of patients in connection with the delivery of a health care item or service. Act § 1128(a)(2); 42 C.F.R. § 1001.101(a). Petitioner requested a hearing pursuant to 42 C.F.R. § 1005.2, by letter

¹ References are to the 2012 revision of the Code of Federal Regulations (C.F.R.) in effect at the time of the agency action, unless otherwise stated.

dated April 13, 2013, but filed on April 14, 2013. The case was assigned to me for hearing and decision on April 19, 2013.

On April 29, 2013, the I.G. filed a motion to dismiss Petitioner's request for hearing with I.G. Exhibit (I.G. Ex. 1), a copy of the March 29, 2013 letter advising Petitioner of her exclusion. The I.G. moved to dismiss pursuant to 42 C.F.R. § 1005.2(e)(4), alleging that Petitioner request for hearing failed to raise an appealable issue. On May 6, 2013, Petitioner filed a response to the I.G. motion to dismiss.

On May 13, 2013, I convened a telephonic prehearing conference the substance of which is memorialized in my Prehearing Conference Order and Schedule for Filing Briefs and Documentary Evidence dated May 14, 2013. During the conference, Petitioner was advised of her right to counsel. The I.G.'s motion to dismiss was also discussed with Petitioner during the conference and she conceded that she was convicted of a criminal offense related to neglect or abuse of patients in connection with the delivery of a health care item or service. Petitioner was granted until May 24, 2013, to file any additional response to the I.G. motion to dismiss, and she was advised that if she failed to file a supplemental response, I would decide the motion on the record before me. No additional response has been received from Petitioner. Petitioner has not objected to my consideration of I.G. Ex. 1 and the document is admitted as evidence.

II. Findings of Fact, Conclusions of Law, and Analysis

My conclusions of law are set forth in bold, followed by the pertinent facts and analysis.

1. Petitioner has raised no issue that I may decide.

2. Petitioner's request for hearing must be dismissed pursuant to 42 C.F.R. § 1005.2(e)(4).

Pursuant to 42 C.F.R. § 1001.2007(a)(1), an individual excluded by the I.G. may request review by an administrative law judge on the issues of whether: (1) there is a basis for exclusion; and (2) the period of exclusion is reasonable. However, when the I.G. imposes on the minimum period of exclusion, the regulation provides that there is no issue of the reasonableness of the period of exclusion. 42 C.F.R. § 1001.2007(a)(2). Pursuant to 42 C.F.R. § 1005.2(e)(4), I must dismiss a request for hearing that does not raise an issue that may be properly addressed in a hearing. I am bound to comply with the regulations. 42 C.F.R. § 1005.4(c)(1).

The I.G. notified Petitioner by letter dated March 29, 2013, that she was being excluded pursuant to section 1128(a)(2) of the Act based upon her conviction in New York of a criminal offense related to neglect or abuse of patients in connection with the delivery of a health care item or service. The I.G. also notified Petitioner that she was being

excluded for five years, which is the minimum period authorized by section 1128(c)(3)(B) of the Act.

Petitioner admits in her April 13, 2013 request for hearing, as she did during the prehearing conference, that she was convicted in New York of a criminal offense related to the neglect or abuse of patients in connection with the delivery of a health care item or service. Petitioner states in her request for hearing that she requests review only as to the length of the period of exclusion imposed by the I.G. Petitioner also requests in her response to the I.G. motion to dismiss, that I allow her “to have full privileges to practice as a nurse,” which I construe to be a request that I reinstate her in Medicare.

Congress mandated the exclusion of one who has been convicted under federal or state law of a criminal offense related to neglect or abuse of a patient in connection with the delivery of a health care item or service. Act § 1128(a)(2). Petitioner admits that she has such a conviction. Therefore, the I.G. has no choice but to exclude Petitioner and there is no issue for me to decide of whether or not there is a basis for exclusion. Further, the I.G. imposed exclusion for five years, the minimum period authorized by Congress. Therefore, pursuant to 42 C.F.R. § 1001.2007(a)(2), whether or not the period of exclusion is reasonable is not an issue for which review may be requested or granted.

Accordingly, I conclude that Petitioner has raised no issue that may be properly reviewed and dismissal is required by 42 C.F.R. § 1005.2(e)(4).

III. Conclusion

For the foregoing reasons, Petitioner’s request for hearing must be dismissed.

/s/
Keith W. Sickendick
Administrative Law Judge