

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Evelyn A. Kadia,
(OI File No.: 5-09-40361-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-529

Decision No. CR4686

Date: August 18, 2016

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Evelyn A. Kadia, from participating in Medicare, State Medicaid, and other federally funded health care programs for a minimum of five years.

I. Background

Petitioner requested a hearing to challenge the I.G.'s exclusion determination. The I.G. filed a brief and seven exhibits, identified as I.G. Exhibit (Ex.) 1-I.G. Ex. 7, in support of his determination. The I.G. also filed a reply brief. Petitioner filed a brief and seven exhibits in opposition, identified as P. Ex. 1-P. Ex. 7.

Petitioner requested an in-person hearing to hear the testimony of three individuals. The I.G. argues that these individuals' proposed testimony is irrelevant. I find no basis for an in-person hearing. In my pre-hearing order of May 18, 2016, I instructed the parties to reduce all proposed testimony to written statements made under oath. Petitioner did so for only one individual (Patrick J. Knight, P. Ex. 1) and provided no explanation for her

failure to obtain written statements from the other two proposed witnesses. As for Mr. Knight's testimony, I find it to be irrelevant for two reasons. First, although it attempts to explain Petitioner's conviction of criminal offenses, it states nothing that detracts from my conclusion that Petitioner was convicted of crimes relating to the delivery of items or services under a State Medicaid program. Second, it is excludable as an effort to re-litigate the basis for Petitioner's conviction of such crimes. I discuss my analysis in greater detail, below.

I receive into evidence I.G. Ex. 1-I.G. Ex. 7. I also receive into evidence P. Ex. 2-P Ex. 7. I exclude P. Ex. 1 for the reasons I have just stated.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether Petitioner was convicted of a crime as is defined by section 1128(a)(1) of the Social Security Act (Act), thereby mandating that she be excluded for a period of at least five years.

B. Findings of Fact and Conclusions of Law

Section 1128(a)(1) of the Act mandates the exclusion of any individual who is convicted of a crime relating the delivery of an item or service under Medicare or a State Medicaid program. Any exclusion imposed pursuant to section 1128(a)(1) must be for a period of at least five years. Act § 1128(c)(3)(B).

Petitioner was convicted of crimes within the meaning of section 1128(a)(1). She generated false medical records for the purpose of defrauding a State Medicaid program. I.G. Ex. 4; I.G. Ex. 5; I.G. Ex. 6. The evidence establishes unequivocally that the records that Petitioner falsified were to be used as supporting documents for false claims made under the Wisconsin Medicaid program. I.G. Ex. 2. Complex analysis is unnecessary here to establish that Petitioner's crimes were related to the delivery of Medicaid items or services. The essence of her crimes was to facilitate defrauding Medicaid with false claims for patient reimbursement for Medicaid items or services.

Petitioner argues that there was an original criminal complaint filed against her for Medicaid fraud that was "dismissed as factually unsupported, and was not the factual basis for . . . [Petitioner's] misdemeanor convictions." Petitioner's informal brief at 1. But, whether or not that is true, it doesn't derogate an iota from the fact that Petitioner was convicted of facilitating Medicaid fraud by falsifying patient records. That plainly is enough to establish a conviction within the meaning of section 1128(a)(1).

Petitioner argues also that “it was mistakenly believed that . . . [she] knowingly participated in . . . false billing and that she willingly submitted false claims to the Wisconsin Medicaid program.” Petitioner’s informal brief at 2. She elaborates on her argument to contend that her “only misconduct was acceding to her sister’s request that she sign several patient charts for days where she had not provided the charted patient care.” *Id.* at 3.

Petitioner seems to be arguing that she was unaware of the purpose of her creating false patient records and that she was practically an innocent bystander to the Medicaid fraud perpetrated by another individual (her sister). In one sense, she seems to be attempting to argue that, although she stands technically convicted of crimes, she is not really guilty of one, and certainly not guilty of assisting in the commission of fraud against the Medicaid program. That, in effect, amounts to an attempt to re-litigate her conviction and to argue her fundamental innocence. That argument is impermissible. 42 C.F.R. § 1001.2007(d).

But, more importantly, Petitioner’s argument is irrelevant. It does not matter that Petitioner did not personally file false or fraudulent claims or that she did not stand to benefit financially from them. She stands convicted of acts that abetted the filing of false claims. Her acts were a necessary element of a scheme to defraud the Wisconsin Medicaid program. That is enough to prove that she committed a crime related to the delivery of Medicaid items or services.

/s/

Steven T. Kessel
Administrative Law Judge