

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Joseph Peet,
(OI File No. H-15-43099-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-243

Decision No. CR4684

Date: August 16, 2016

DECISION

Petitioner, Joseph Peet, was a personal care provider, working in Montgomery County, Maryland. He was convicted on one felony count of Medicaid fraud. Based on this, the Inspector General (IG) has excluded him for five years from participating in Medicare, Medicaid, and all federal health care programs, as authorized by section 1128(a)(1) of the Social Security Act (Act). Petitioner appeals the exclusion. For the reasons discussed below, I find that the IG properly excluded Petitioner Peet and that the statute mandates a minimum five-year exclusion.

Background

In a letter dated December 31, 2015, the I.G. notified Petitioner that he was excluded from participating in Medicare, Medicaid, and all federal health care programs for a period of five years because he was convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. The letter explained that section 1128(a)(1) of the Act authorizes the exclusion. I.G. Ex. 1. Petitioner timely requested review.

The IG submitted a written argument (IG Br.) and five exhibits (IG Exs. 1-5). Petitioner did not respond to the IG's brief. Instead, responding to my order to show cause, Petitioner asked that I postpone this matter indefinitely while he attempts to appeal his conviction and otherwise get his life in order. The IG objected, and I deny Petitioner's request.

In the absence of any other objections, I admit into evidence IG Exs. 1-5.

Neither party indicates that an in-person hearing is necessary. IG Br. at 4.

Discussion

*Petitioner must be excluded from program participation for a minimum of five years because he was convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program, within the meaning of section 1128(a)(1) of the Act.*¹

Under section 1128(a)(1) of the Act, the Secretary of Health and Human Services must exclude an individual who has been convicted under federal or state law of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. 42 C.F.R. § 1001.101(a).

Here Petitioner provided in-home services to a Medicaid beneficiary who resided in his home. IG Ex. 4. When she moved out, he continued to bill the state Medicaid program for services that he no longer provided. On September 21, 2015, he was convicted on one felony charge of Medicaid fraud. I.G. Exs. 3, 4, 5. The court sentenced Petitioner to five years' probation and ordered him to pay restitution of \$17,603.35. I.G. Ex. 5.

Petitioner complains that the five-year exclusion is excessive and blames his "deceitful" previous client for not returning to his home, which ultimately led to his conviction. Hearing request. The regulations explicitly preclude such a collateral attack on an underlying conviction.

When the exclusion is based on the existence of a criminal conviction . . . where the facts were adjudicated and a final decision was made, the basis for the underlying conviction . . . is not reviewable and the individual or entity may not collaterally attack it either on substantive or procedural grounds in this appeal.

¹ I make this one finding of fact/conclusion of law.

42 C.F.R. § 1001.2007(d); *Donna Rogers*, DAB No. 2381 at 4-5 (2011); *Joann Fletcher Cash*, DAB No. 1725 (2000); *Chander Kachoria, R.Ph.*, DAB No. 1380 at 8 (1993) (“There is no reason to ‘unnecessarily encumber the exclusion process’ with efforts to reexamine the fairness of state convictions.”); *Young Moon, M.D.*, DAB CR1572 (2007).

Petitioner’s conviction thus falls squarely within the statutory and regulatory definition of “conviction,” and his conviction for Medicaid fraud is obviously related to the delivery of services under a state health care program. He is therefore subject to exclusion. An exclusion brought under section 1128(a)(1) must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

Conclusion

For these reasons, I conclude that the IG properly excluded Petitioner from participation in Medicare, Medicaid, and all federal health care programs, and I sustain the five-year exclusion.

/s/
Carolyn Cozad Hughes
Administrative Law Judge