

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Civil Remedies Division

_____)	
In the Case of:)	
Oscar Bracks, Jr.)	DATE: June 8, 1990
Petitioner,)	
- v. -)	Docket No. C-196
The Inspector General.)	DECISION CR 82
_____)	

DECISION

Petitioner requested a hearing on a November 16, 1989 determination by the Inspector General (I.G.) to exclude Petitioner from participation in the Medicare program and any State health care program, as defined in section 1128(h) of the Social Security Act (Act), for a period of five years.¹

During a February 27, 1990 prehearing conference, the I.G. moved for summary disposition of the hearing request and I set a schedule for submissions on this motion. The I.G. timely submitted a brief and exhibits setting out a legal and factual basis for the exclusion. Petitioner did not respond. When contacted, Petitioner explained that his attorney had ceased to represent him and that he was uncertain whether he would pursue the request for a hearing. In light of this circumstance, I issued an Order to show cause why I should not rule on the I.G.'s motion, permitting Petitioner an additional 10 days after

¹ "State health care program" is defined by section 1128(h) of the Social Security Act to cover three types of federally-assisted programs, including State plans approved under Title XIX (Medicaid) of the Act. I use the term "Medicaid" hereafter to represent all State health care programs from which Petitioner was excluded.

receiving the Order to submit a response to the I.G.'s motion.

Since Petitioner has not submitted a response to this date, I am granting the I.G.'s motion for summary disposition and I am affirming the exclusion based upon the following facts presented by the I.G. and uncontested by Petitioner, and conclusions of law which I have made based on those facts.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner is a podiatrist practicing in the State of Texas. I.G. Ex. 1.
2. On January 26, 1989, Petitioner was convicted by the United States District Court for the Northern District of Texas of the criminal offense of fraud against the Medicare program under section 1128B of the Social Security Act (Act) and was sentenced to make restitution and to serve five years of probation. I.G. Ex. 2.
3. The criminal offense consisted of false statements and false representations of a material fact in a claim for Medicare reimbursement. I.G. Ex. 2.
4. Under section 1128(a)(1) of the Act, the Secretary is required to exclude individuals or entities who are "convicted of a criminal offense related to the delivery of an item or service" under the Medicare program.
5. Petitioner was "convicted" of a criminal offense within the meaning of sections 1128(a)(1) and 1128(i) of the Act.
6. The criminal offense was by definition "related to the delivery of an item or service" under the Medicare program, within the meaning of section 1128(a)(1).
7. The I.G. properly excluded Petitioner for a minimum period of five years as required by section 1128(c)(3)(B) of the Act for exclusions under the authority of section 1128(a)(1).

CONCLUSION

Based on the evidence presented in this case by the I.G. and uncontested by Petitioner, and the applicable law, I affirm the I.G.'s exclusion of Petitioner from participation in the Medicare and Medicaid programs for a minimum of five years.

/s/

Steven T. Kessel
Administrative Law Judge