

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Rosetta Sawyer,)	DATE: November 12, 1991
)	
Petitioner,)	
)	
- v. -)	Docket No. C-419
)	Decision No. CR164
)	
The Inspector General.)	
)	

DECISION

By letter dated March 22, 1991, the Inspector General (I.G.), U.S. Department of Health & Human Services (HHS), notified Petitioner that, because of her conviction of a criminal offense related to the delivery of an item or service under Medicare, within the meaning of section 1128(a)(1) of the Social Security Act (the Act), she was subject to a five-year exclusion from participation in the Medicare and Medicaid programs.¹

Petitioner requested a hearing before an administrative law judge, contending (a) that she was not involved in Medicare billing for the ambulance company that employed her -- she only supervised the billing of commercial insurance carriers and private payors; (b) that her guilty plea was coerced by the F.B.I. and prosecutors, who harassed her and promised to go easier on her husband; (c) that she did not "truly commit" the crime she pled to; and (d) that barring her from working for Medicare providers would make it impossible for her to earn a living.

The I.G. moved for summary disposition.

I have carefully considered the parties' arguments. I conclude that summary disposition is appropriate. There is no need for an in-person hearing, inasmuch as there

¹ In this decision, "Medicaid" means those health care programs enumerated in section 1128(h) of the Act.

are no material and relevant matters in dispute. I further determine that a five-year exclusion is mandated by law and, accordingly, enter summary disposition in favor of the I.G.

ISSUE

Was Petitioner convicted of a criminal offense related to the delivery of an item or service under Medicare, within the meaning of section 1128(a)(1) of the Act, thus requiring her exclusion from the Medicare and Medicaid programs?

APPLICABLE LAW

Sections 1128(a)(1) and (c) of the Act (42 U.S.C. 1320a-7(a)(1) and (c) (1988)) make it mandatory for HHS to exclude from participation in the Medicare and Medicaid programs, for a minimum period of five years, "any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under title XVIII or under any State health care program."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the instant case, Petitioner was the office manager of Michigan Ambulance, Inc. I.G. Ex. 5/10 and 6; P. Reply.²
2. During 1986 and 1987, Michigan Ambulance billed Medicare for ambulance services in excess of those actually rendered. As a result of these fraudulent claims, Michigan Ambulance received excessive payments from the government, which personally benefitted Petitioner and her husband. I.G. Ex. 1 and 5/10-15.
3. In November of 1989, in the U.S. District Court for the Eastern District of Michigan, Petitioner pled guilty

² The I.G. introduced eight exhibits, which were all admitted. They are cited here as "I.G. Ex. 1/(page)" through "I.G. Ex. 8/(page)." The I.G.'s brief in support of the motion for summary disposition is cited as "I.G. Brief." Petitioner's memorandum responding to the I.G. is cited as "P. Reply."

to theft of government funds. She was given a suspended sentence, placed on probation for two years, ordered to reside at a women's residence for 120 days, and fined \$1,000.00. I.G. Ex. 5 and 3.

4. Petitioner was represented by counsel at her sentencing and told the magistrate that she expressly declined to have a trial, that she understood the nature of her plea and acknowledged that her conduct had been wrongful, and that the plea was uncoerced and voluntary. I.G. Ex. 5/5-13.

5. Petitioner's plea herein satisfies the statutory requirement that there has been a conviction of a criminal offense related to the delivery of an item or service under Medicare or under a State health care program.

6. The Secretary of HHS delegated to the I.G. the authority to impose exclusions pursuant to section 1128 of the Act. 48 Fed. Reg. 21662 (May 13, 1983).

7. Petitioner's conviction of a criminal offense related to the delivery of an item or service under Medicare mandates her five-year exclusion from participation in the Medicare and Medicaid programs.

DISCUSSION

Pursuant to section 1128(i)(3) of the Act, a guilty plea such as that entered by Petitioner herein satisfies the statutory requirement that there has been a conviction of a criminal offense.

There is also explicit precedent holding that a criminal conviction for making fraudulent claims upon Medicaid or Medicare constitutes conviction ". . . of a criminal offense related to the delivery of an item or service under title XVIII or under any State health care program" as required by the statute. Kenneth Krulevitz, M.D., DAB CR24 (1989) (Docketed as C-75).

Petitioner's present contentions that she was not involved in Medicare billing, that her guilty plea was coerced, that she did not commit the crime she pled to, and that excluding her would make it impossible for her to earn a living are, essentially, legally immaterial. It is well established that the HHS appeal process may not be utilized to collaterally attack a prior criminal conviction or to now deny what was previously admitted.

Richard G. Philips, D.P.M., DAB CR133 (1991) (docketed as C-347). I would note, though, that Petitioner's assertions herein are wholly inconsistent with her prior admissions to the U.S. magistrate, and that preponderant evidence shows that she acknowledged her guilt and did so freely, intentionally, and with the assistance of counsel.

Lastly, there is no legal basis for considering mitigation or hardship inasmuch as an administrative law judge has no authority to waive or reduce the statutory five-year minimum exclusionary period which must follow an appropriate conviction. See Durrell A. Chappell, DAB CR108 (1990) (docketed as C-241) and district court cases cited therein.

CONCLUSION

The I.G. properly excluded Petitioner from the Medicare and Medicaid programs pursuant to section 1128(a)(1) of the Act. The five-year minimum period of exclusion is mandated by statute. Summary disposition in favor of the I.G. is appropriate.

/s/

Joseph K. Riotto
Administrative Law Judge