Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	
James F. Cleary, D.D.S.,	DATE: March 3, 1993
Petitioner,	Docket No. C-92-107
- v. -	Decision No. CR252
The Inspector General.	

DECISION

On May 11, 1992, the Inspector General (I.G.) notified Petitioner that he was being excluded from participation in the Medicare and State health care programs.[1] The I.G. told Petitioner that he was being excluded from participation in Medicare pursuant to sections 1128(b)(14) and 1892 of the Social Security Act (Act). The I.G. informed Petitioner that he was being excluded from participation in Medicaid pursuant to section 1128(b)(14) of the Act. The I.G. further informed Petitioner that he was being excluded because he had failed to repay his Health Education Assistance Loans (HEALs) or to enter into an agreement to repay the loans. The I.G. advised Petitioner that he would be excluded until his debt had been satisfied completely.

Petitioner requested a hearing, and the case was assigned to me for a hearing and a decision. Shortly after the case was assigned to me, Petitioner informed me that he was attempting to negotiate a settlement of the case, and requested that the proceeding be stayed. In my Order of August 17, 1992, I stayed the proceeding until further

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[1] "State health care program" is defined by section 1128(h) of the Social Security Act to cover three types of federally financed health care programs, including Medicaid. Unless the context indicates otherwise, I use the term "Medicaid" hereafter to represent all State health care programs from which Petitioner was excluded.

notice and gave the parties until September 31, 1992 to report any developments to me. However, Petitioner eventually advised me that he had been unable to negotiate a settlement, and requested that the case be set for a hearing. I conducted a prehearing conference on October 30, 1992 at which time I scheduled an in-person hearing in this case for February 23, 1993.

At the prehearing conference, counsel for the I.G. argued that this case was appropriate for summary disposition. Accordingly, in my Order and Notice of Hearing dated November 21, 1992, I set out the schedule that the parties had agreed to for summary disposition. My November 21 Order also established discovery deadlines, exchange dates for exhibit and witness lists and proposed exhibits, and a hearing date, in the event that I decided there were disputed issues of material fact.

The I.G. filed his motion for summary disposition on November 6, 1992. Petitioner filed a statement in response to the I.G.'s motion. On January 11, 1993, I conducted an oral argument on the motion, by telephone. The parties advised me at that time that their presentations were complete and that neither of them desired an in-person hearing. On January 27, 1993, on the basis of those representations and the parties' submissions, I ruled that there did not exist disputed issues of material fact and that the case could be decided without an in-person hearing. In my January 27, 1993 ruling, I admitted into evidence Petitioner's response and the attachments to the I.G.'s motion for summary disposition.[2]

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[2] In my January 27, 1993 ruling, I admitted into evidence Petitioner's November 20, 1992 response to the I.G.'s motion for summary disposition as Petitioner Exhibit (P. Ex) 1. I also admitted into evidence the 40 attachments to the I.G.'s motion for summary disposition, as I.G. Exhibits (I.G. Ex.) 1 through 40.

In a letter dated January 12, 1993, the I.G. presented some additional information concerning some recent payments by Petitioner of part of his HEAL debt, evidently in response to a collection suit by the Department of Justice. I have marked this letter as I.G. Ex. 41, but I do not admit it into evidence. I consider proposed I.G. Ex. 41 to be irrelevant to this case, inasmuch as it relates neither to the I.G.'s authority to exclude Petitioner under section 1128(b)(14) of the Act, nor to the reasonableness of the exclusion imposed by the I.G.

Subsequent to my January 27, 1993 ruling, I received notice that the Secretary had amended the regulations. The amendment, found at 58 Fed. Reg. 5617 - 18, was effective as of its January 22, 1993 date of publication, and established, in relevant part, that the criteria used by the I.G. in determining to impose and direct exclusions pursuant to section 1128(b)(14) of the Act are to be applied as a standard of review of exclusion determinations at administrative hearings. On February 1, 1993, I sent a letter to the parties. In that letter, I established a briefing schedule that allowed the parties the opportunity to address the issues of the applicability and effect of the regulations. Both parties agreed that I should apply the criteria in reaching my decision in this case.

I have carefully considered the evidence that the parties submitted, their arguments, and the applicable law and regulations. I conclude that I lack authority to adjudicate the I.G.'s exclusion of Petitioner from participating in Medicare which the I.G. imposed pursuant to section 1892 of the Act. I conclude further that the I.G. had authority pursuant to section 1128(b)(14) of the Act to exclude Petitioner from participating in Medicare and Medicaid. Finally, I conclude that the term of the exclusion imposed pursuant to section 1128(b)(14) is reasonable. However, I premise my conclusion that the term of the exclusion imposed pursuant to section 1128(b)(14) is reasonable on the I.G.'s representation to me that, under the exclusion imposed pursuant to section 1128(b)(14), Petitioner will be eligible to apply for reinstatement to Medicare and Medicaid at such time as the Public Health Service (PHS) notifies the I.G. that either Petitioner's HEAL default is cured or that Petitioner's indebtedness has been resolved to the PHS' satisfaction. 42 C.F.R. § 1001.1501(b) (1992).

ISSUES

The issues in this case are whether:

1. I have authority to adjudicate the exclusion which the I.G. imposed pursuant to section 1892 of the Act.

2. The I.G. had authority to exclude Petitioner pursuant to section 1128(b)(14) of the Act.

3. The term of the exclusion imposed pursuant to section 1128(b)(14) of the Act is reasonable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On December 30, 1983, Petitioner applied for a HEAL in the amount of $7,500 to enable him to pursue an education in dentistry. I.G. Ex. 4.

2. On February 24, 1984, Petitioner received approval for a HEAL in the amount of $6,609. I.G. Ex. 4.

3. On March 4, 1984, Petitioner executed a promissory note in which he promised to repay the HEAL. I.G. Ex. 5.

4. In promising to repay the HEAL, Petitioner agreed to make payments beginning on the first day of the tenth month after he ceased being a full-time student at a HEAL-recognized school, or an intern or resident in an approved program. I.G. Ex. 5.

5. In promising to repay the HEAL, Petitioner agreed that he would be required to repay it in not less than 10 years, or more than 25 years, and that he would make annual payments of at least the annual interest on the unpaid balance of the HEAL. I.G. Ex. 5.

6. In promising to repay the HEAL, Petitioner agreed that, in the event of his default, the entire unpaid loan, including interest due and accrued, would, at the option of the holder, become immediately due and payable. I.G. Ex. 5.

7. In 1985, Petitioner applied for and received a second HEAL in the amount of $7,000. I.G. Ex. 6

8. Petitioner promised to repay the second HEAL on terms and conditions identical to those on which his original HEAL was conditioned. I.G. Ex. 7; Findings 4 - 6.

9. In 1986, Petitioner received a third HEAL in the amount of $3,689. I.G. Ex. 8, 9.

10. Petitioner promised to repay the third HEAL on terms and conditions identical to those on which his first two HEALs were conditioned. I.G. Ex. 9; Findings 4 - 6, 8.

11. The Student Loan Marketing Association (SLMA) purchased Petitioner's promissory notes for the three HEALs and received an assignment of the lenders' rights under these notes. I.G. Ex. 12, 40.

12. Petitioner was granted a deferment until July 1, 1987 from his obligation to repay his HEALs, based on his

representation that he would be participating in a dentistry internship until that date. I.G. Ex. 10.

13. In November 1987, Petitioner was provided with a repayment schedule for his HEALs, and was told that his repayment obligation would commence on February 6, 1988. I.G. Ex. 40.

14. Petitioner made no repayments pursuant to this repayment schedule. I.G. Ex. 11, 12, 40.

15. On January 26, 1988, Petitioner filed a voluntary bankruptcy petition. I.G. Ex. 11.

16. On February 16, 1988, SLMA assigned to PHS its claim against Petitioner for nonpayment of the three HEALS. I.G. Ex. 13.

17. On April 27, 1988, the bankruptcy court entered an order which discharged Petitioner from bankruptcy, but which did not discharge Petitioner from his obligation to repay the three HEALs. I.G. Ex. 12, 14.

18. On March 11, 1988, PHS advised Petitioner that SLMA had assigned to PHS its rights to repayment of the three HEALs. I.G. Ex. 15.

19. On March 11, 1988 PHS solicited financial information from Petitioner. I.G. Ex. 15.

20. In an undated letter, Petitioner responded to PHS by advising it that he was unable to repay the HEALs, and inquiring as to whether it was possible for him to repay his debt by providing health care to the needy. I.G. Ex. 16.

21. On May 11, 1989, PHS advised Petitioner that funds did not exist to employ him as a dentist. PHS offered to negotiate repayment terms of Petitioner's HEALs with Petitioner. I.G. Ex. 18.

22. On June 20, 1989, PHS offered Petitioner an agreement to repay his HEAL indebtedness at the rate of $313 per month. I.G. Ex. 20.

23. PHS based its June 20, 1989 offer to Petitioner on its calculation that Petitioner's total indebtedness on his HEALs as of June 30, 1989 (including unpaid principal and interest) would be $27,587.96. I.G. Ex. 20.

24. In an undated letter, Petitioner responded to PHS by advising it that he would not be able to meet his

subsistence expenses if he accepted the terms of the repayment offer. I.G. Ex. 21.

25. In responding to PHS' offer to establish a payment schedule for repayment of the HEALs, Petitioner did not deny that he was indebted to PHS in the amount which PHS had calculated as the unpaid principal and interest on the HEALs. I.G. Ex. 21.

26. On January 29, 1990, PHS advised Petitioner that his total indebtedness on the HEALs was $29,200.87. I.G. Ex. 23.

27. Petitioner responded to PHS on February 20, 1990, advising it that he had been unable to produce sufficient income to repay his HEAL indebtedness. I.G. Ex. 24.

28. On February 20, 1990, Petitioner advised PHS that he would be interested in entering into a repayment agreement with PHS. I.G. Ex. 24.

29. On April 4, 1990, PHS advised Petitioner that his HEAL indebtedness as of April 6, 1990 would total $29,947.02. I.G. Ex. 27.

30. On September 27, 1990, PHS informed Petitioner that his debt would be referred to the Internal Revenue Service for collection. It advised Petitioner, that, as of that date, the total amount of Petitioner's HEAL indebtedness was $31,162.44. I.G. Ex. 29.

31. On November 1, 1990, Petitioner told PHS that he was unable to repay his HEAL indebtedness. He offered to repay the indebtedness by providing services to the United States Government. I.G. Ex. 30.

32. On November 23, 1990, PHS offered Petitioner the opportunity to repay his HEAL indebtedness pursuant to a minimum payment schedule of $350 per month. I.G. Ex. 32.

33. PHS advised Petitioner that, as of November 23, 1990, his HEAL indebtedness totalled $32,071.94. I.G. Ex. 33.

34. Petitioner did not respond to PHS' November 23, 1990 offer to enter into a loan repayment agreement.[3]

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[3] The I.G. averred at pages 7 and 8 of his brief in support of his motion for summary disposition that Petitioner had not responded to PHS's November 23, 1990 letter offering him an opportunity to enter into a

35. On June 20, 1991, PHS notified Petitioner that it had referred his HEAL indebtedness for collection. I.G. Ex. 34.

36. On July 2, 1991, Petitioner advised the collection agency that his income was insufficient to meet his expenses. I.G. Ex. 35.

37. On July 2, 1991, Petitioner sent PHS a copy of his July 2, 1991 letter to the collection agency. He offered again to repay his outstanding indebtedness through federal service as a dentist. I.G. Ex. 35, 36.

38. On August 22, 1991, PHS again advised Petitioner that his HEAL indebtedness would be referred to the Internal Revenue Service for collection. I.G. Ex. 37.

39. PHS advised Petitioner, that, as of August 22, 1991, his HEAL indebtedness totalled $34,317.75. I.G. Ex. 37.

40. On December 12, 1991, PHS advised Petitioner that his indebtedness had increased to $35,197.55. I.G. Ex. 38.

41. On December 12, 1991, PHS advised Petitioner that he could repay the outstanding indebtedness by negotiating a repayment agreement or by having his Medicare and/or Medicaid reimbursements directly forwarded to PHS to be applied to his indebtedness. I.G. Ex. 38.

42. On December 12, 1991, PHS advised Petitioner that if he failed to enter into a repayment agreement, or failed to agree to having his Medicare and/or Medicaid reimbursements forwarded to PHS, the matter would be referred to the I.G. for possible exclusion of Petitioner from participating in Medicare and Medicaid. I.G. Ex. 38.

43. Petitioner did not respond to PHS' December 12, 1991 communication to Petitioner. See footnote 4, infra.

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repayment agreement. The I.G. averred also on page 8 of his brief that on Dec. 12, 1991, PHS made a further communication to which Petitioner did not respond. See Findings 42 and 43. The I.G. offered no evidence to support these averments. However, Petitioner did not dispute them at any time during these proceedings. In the absence of dispute from Petitioner, I accept these averments of the I.G. as undisputed material facts.

44. On May 11, 1992, the I.G. excluded Petitioner from participating in Medicare and directed that he be excluded from participating in Medicaid. I.G. Ex. 1.

45. As of May 11, 1992, Petitioner had not made payments on his HEAL debt nor had he entered into an agreement with PHS to repay his HEAL debt. I.G. Ex. 1, 40.

46. The I.G. excluded Petitioner from participating in Medicare pursuant to sections 1128(b)(14) and 1892 of the Act. I.G. Ex. 1.

47. The Secretary of the United States Department of Health and Human Services (Secretary) has not delegated to administrative law judges of the Departmental Appeals Board (DAB) the authority to hear and decide requests for hearings concerning exclusions imposed pursuant to section 1892 of the Act.

48. I do not have authority to hear and decide Petitioner's request for a hearing concerning his exclusion from participating in Medicare which the I.G. imposed pursuant to section 1892 of the Act.

49. Petitioner's HEAL debt is an indebtedness on loans in connection with health professions education which have been secured by the Secretary. Findings 1 - 48; Social Security Act, section 1128(b)(14).

50. The Secretary has taken all reasonable steps available to her to secure repayment from Petitioner of his HEAL debt. Findings 19 - 48; Social Security Act section 1128(b)(14).

51. The Secretary delegated to the I.G. the authority to determine, impose, and direct exclusions pursuant to section 1128 of the Act. 48 Fed. Reg. 21,662 (1983).

52. The I.G. had authority to impose and direct an exclusion pursuant to section 1128(b)(14) of the Act. Findings 19 - 49.

53. Regulations published on January 29, 1992 establish criteria to be employed by the I.G. in determining to impose and direct exclusions pursuant to section 1128(b)(14) of the Act. 42 C.F.R. Part 1001 (1992).

54. A January 22, 1993 amendment to the regulations provides that the criteria to be employed by the I.G. in determining to impose and direct exclusions pursuant to section 1128(b)(14) of the Act apply also as a standard

for review of exclusion determinations at the level of the administrative hearing.

55. The parties have agreed that the criteria for me to use in determining the reasonableness of the exclusion imposed and directed by the I.G. should be that found in 42 C.F.R. § 1001.1501, and that is the criteria I have used.

56. An exclusion imposed pursuant to section 1128(b)(14) of the Act is reasonable if the excluded party is excluded until such time as PHS notifies the I.G. that the default has been cured or the obligations have been resolved to the PHS' satisfaction. 42 C.F.R. § 1001.1501(b) (1992).

57. The exclusion imposed against Petitioner pursuant to section 1128(b)(14) of the Act was intended by the I.G. to exclude Petitioner until such time as PHS notifies the I.G. that Petitioner's default of his HEAL debt has been cured or that his HEAL debt has been resolved to the PHS' satisfaction.

58. The exclusion which the I.G. imposed against Petitioner pursuant to section 1128(b)(14) of the Act is reasonable. Findings 1 - 57.

ANALYSIS

Petitioner applied for and received three HEALs while he was a dentistry student. He graduated from dental school in 1986, but received a deferment of his obligation to begin repaying his HEAL debt until July 1, 1987 so that he could continue his dentistry studies. Beginning in July 1987 the holder of Petitioner's promissory notes made unsuccessful efforts to secure repayment from Petitioner. Eventually, the loans were assigned to PHS. PHS unsuccessfully attempted to obtain repayment from Petitioner. On two occasions, PHS offered to enter into repayment agreements with Petitioner, and Petitioner either rejected the proposed agreements or failed to respond to PHS' offer. On more than one occasion, Petitioner offered to work off his HEAL debt by providing dental services on behalf of the United States Government. However, PHS was unable to employ Petitioner as a government dentist and did not accept Petitioner's offer. Also, PHS offered Petitioner the opportunity to repay his HEAL debt by assigning Medicare and Medicaid reimbursement claims to PHS. This offer was not accepted by Petitioner.

The impasse continued until May 1992, when the I.G. excluded Petitioner under sections 1128(b)(14) and 1892 of the Act. Petitioner never denied the existence of or the amount of his HEAL debt, which continued to increase as unpaid interest accrued. However, at no time from July 1, 1987 until the date of his exclusion did Petitioner repay any of his HEAL debt. Despite many communications between PHS and Petitioner, PHS was unable to secure a repayment agreement from Petitioner which would have resolved, or reduced, his debt.

Petitioner does not dispute these facts. He contends, however, that at no time between July 1987 and the date of his exclusion was he able to make repayment of even a part of his HEAL debt. In his many communications with PHS, Petitioner asserted consistently that his income and expenses have been insufficient to permit him to repay his debt. Petitioner contends now that the effect of an exclusion will be to deprive him of the opportunity to earn income which could be used to repay his HEAL debt. Petitioner continues to assert that his debt can be resolved only by some form of government employment under which his services could be credited towards repayment of his HEAL obligation.

1. I do not have authority to decide whether the I.G. can exclude Petitioner under section 1892 of the Act, or to decide whether an exclusion imposed under section 1892 is reasonable.

A threshold issue in this case is whether I have jurisdiction over the I.G.'s exclusion of Petitioner from the Medicare program pursuant to section 1892 of the Act. I conclude that I do not have authority delegated to me by the Secretary to hear and decide cases involving exclusions imposed under section 1892. Therefore, I make no findings as to whether the I.G. was authorized to impose an exclusion against Petitioner under section 1892, or whether the exclusion which the I.G. imposed is reasonable.

Section 1892(a)(1)(A) of the Act directs the Secretary to enter into a repayment agreement with any individual who, by reason of a breach of a contract entered into with entities including the HEAL program, owes a past-due obligation to the United States. Section 1892(a)(3)(B) of the Act provides that if such an individual refuses to enter into a repayment agreement or breaches any provision of a repayment agreement, the Secretary shall immediately exclude such individual from participating in Medicare.

There is no language in section 1892 which confers administrative hearing rights on individuals and entities who are excluded pursuant to section 1892(a)(3)(B), nor do there exist regulations which confer such rights. I am unaware of any delegation of authority by the Secretary to the Departmental Appeals Board (DAB) or to administrative law judges to provide hearings to individuals excluded pursuant to section 1892(a)(3)(B). Nor have the parties agreed to be bound by a decision of mine on the exclusion under section 1892 of the Act. In the absence of such authority, I cannot hear cases involving exclusions imposed pursuant to this section.

2. The I.G. had authority under section 1128(b)(14) of the Act to exclude Petitioner from participating in Medicare and Medicaid.

Section 1128(b)(14) of the Act provides that the Secretary (or her delegate, the I.G.) may exclude a party from participating in Medicare or Medicare who:

> is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans, . . .

There is no dispute in this case that Petitioner's HEAL debt arises from loans made "in connection with health professions education." Nor is there any dispute that Petitioner defaulted on repayment of his HEAL debt. Therefore, I must find that the I.G. had authority to exclude Petitioner under section 1128(b)(14) of the Act, if I conclude that the Secretary (or her delegate, PHS) took "all reasonable steps available" to secure repayment from Petitioner of his HEAL debt.[4]

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[4] Section 1128(b)(14) provides that the Secretary shall not exclude "a physician" who is:

> the sole community physician or sole source of essential specialized services in a community if a State requests that the physician not be excluded, and . . . the Secretary shall take into account, in determining whether to exclude any other physician pursuant to . . . [section 1128(b)(14)] access of beneficiaries to physician services for which payment may be made under . . . (Medicare or Medicaid).

Petitioner did not specifically assert that PHS failed to take all reasonable steps available to secure repayment from Petitioner of his HEAL debt. However, his assertion that he has been unable to repay even a part of his debt can be construed as an argument that PHS failed to take all reasonable steps to secure repayment. I do not accept Petitioner's argument. It is apparent, both from the law and from the undisputed material facts of this case, that the Secretary took "all reasonable steps available" to her to secure repayment from Petitioner of his HEAL debt, prior to the I.G. excluding him under section 1128(b)(14).

The statutory term "all reasonable steps available" is not defined in the Act. However, the meaning of the term is evident, given its context and Congress' purpose in enacting section 1128(b)(14). Furthermore, the Secretary has made explicit her interpretation of this section. 42 C.F.R. § 1001.1501(a)(2) (1992).[5]

The intent of Congress in enacting section 1128(b)(14) was in part to provide the Secretary with a mechanism by which she could assert some leverage over parties who have defaulted on HEAL debts.[6] In assuming Petitioner's HEAL debt, the Secretary acquired the right -- and the obligation -- also to collect on that debt. Therefore, section 1128(b)(14) is a debt collection tool, among other things. The term "all reasonable steps available" means all reasonable and legitimate means of debt collection. In attempting to collect a debt, the Secretary must be "reasonable" only in the sense that

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Petitioner has not contended that he is a "physician" within the meaning of this language. Nor has Petitioner contended that, as a "physician," he qualifies for the exception from exclusion provided by section 1128(b)(14). Finally, Petitioner has not contended that the I.G. failed to take into account beneficiaries' access to physician services, in determining whether to exclude Petitioner.

[5] By regulation published on January 22, 1993, the Secretary decreed that the regulations contained in 42 C.F.R. Part 1001 were binding on administrative law judges and federal judges as well as the I.G. 42 C.F.R. § 1001.1(b); 58 Fed. Reg. 5617 - 18 (1993).

[6] Another purpose of section 1128(b)(14) is to protect the integrity of federally funded health care programs from providers who demonstrate that they cannot be trusted to deal with public funds.

she should not insist on repayment arrangements which palpably are unfair. "All reasonable steps available" does not mean, as is suggested by Petitioner's argument, that the Secretary must excuse individuals from all repayment obligations based on their asserted financial status. Nor does it mean that the Secretary must accept repayment arrangements which do not accomplish the objective of repayment, or which require the Secretary to enter into relationships that are not in the public interest.

The Secretary has interpreted section 1128(b)(14) by regulation. The regulations enacted on January 29, 1992 provide that "all reasonable steps available" to secure repayment of a HEAL debt will have been achieved where PHS offers the debtor a Medicare offset arrangement as required by section 1892 of the Act. 42 C.F.R. § 1001.1501(a)(2) (1992). Section 1892(a)(2) states in part that agreements to collect HEAL debts shall provide that:

> (A) deductions shall be made from the amounts otherwise payable to the individual under . . . [Medicare], in accordance with a formula and schedule agreed to by the Secretary and the individual, until such past-due obligation (and accrued interest) have been repaid.

The several offers of repayment agreements which PHS made to Petitioner in this case are consistent with the requirements of the Act and with the Secretary's duty as defined by regulation. PHS twice offered Petitioner repayment arrangements which would have extinguished his debt through monthly installment payments. The monthly payments required by those proposed arrangements were the amounts minimally necessary to repay the principal and interest on the HEALs. The offers were "reasonable" in that they would have enabled the Secretary to meet her responsibility to collect Petitioner's debt in a manner which would have been minimally onerous to Petitioner. Petitioner's assertion that he could not have repaid the HEALs pursuant to these schedules and met his other obligations (which I accept as true for purposes of deciding the I.G.'s motion for summary disposition) does not make the offers unreasonable, because it does not derogate from the fact that these offers embodied the <u>minimum</u> monthly payments required to achieve repayment of the principal and accruing interest on the HEALs. Furthermore, PHS offered to Petitioner the opportunity to repay his HEAL debt through a Medicare and Medicaid offset arrangement, which Petitioner did not accept. Either of these offers would have discharged the

Secretary's obligation to Petitioner as is defined by 42 C.F.R. § 1001.1501(a)(2).

Petitioner has argued that PHS should have accepted from Petitioner, as an alternative to its various repayment offers, an arrangement whereby Petitioner "worked off" his HEAL debt through federal employment. Petitioner never specified the details of his proposal, and the evidence does not establish that federal jobs exist which would have enabled Petitioner to be employed in such a manner or position that would allow him to provide services that could have been applied to reduce his HEAL indebtedness. In any event, PHS advised Petitioner that funds did not exist with which to employ him. I conclude that PHS was not obligated to offer Petitioner federal employment as a basis for repayment of his debt. Such an arrangement is not contemplated by the Act or by regulations. Furthermore, PHS would under no circumstance be obligated to accept an arrangement which was not, from its standpoint, feasible.

3. The exclusion which the I.G. imposed under section 1128(b)(14) of the Act is reasonable.

The notice of exclusion which the I.G. sent to Petitioner advised him that he would be excluded, both under sections 1128(b)(14) and 1892 of the Act, until his HEAL debt had been completely satisfied. However, the I.G. subsequently stated at a telephone conference on January 11, 1993, that he intended the exclusion under section 1128(b)(14) to be effective until PHS notifies the I.G. that Petitioner's default has been cured or that Petitioner's debt has been resolved to PHS' satisfaction.

The I.G.'s clarification is consistent with the requirements of 42 C.F.R. § 1001.1501(b). I therefore conclude that the exclusion which the I.G. imposed under section 1128(b)(14) is reasonable, and I sustain it. Furthermore, the exclusion is on its face reasonable because it enables Petitioner to negotiate an agreement with PHS to repay his HEAL debt.[7]

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[7] My conclusion that the exclusion which the I.G. imposed pursuant to section 1128(b)(14) is reasonable is independent from and has no bearing upon, the issue of whether the exclusion the I.G. imposed pursuant to section 1892 is reasonable.

CONCLUSION

I conclude that the I.G. had authority to exclude Petitioner from participating in Medicare and Medicaid pursuant to section 1128(b)(14) of the Act. I conclude further that the exclusion which the I.G. imposed pursuant to section 1128(b)(14) is reasonable. I make no findings or conclusions as to whether the I.G. had the authority to exclude Petitioner pursuant to section 1892, or whether the exclusion which the I.G. imposed pursuant to section 1892 is reasonable.

/s/

Steven T. Kessel
Administrative Law Judge