Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	
Zenaida P. Doiranlis, M.D.,	DATE: May 27, 1993
Petitioner,	Docket No. C-93-039
- v. -	Decision No. CR267
The Inspector General.	

DECISION

All proceedings in this exclusion case are governed by section 1128 of the Social Security Act (Act), its implementing regulations, and certain delegations of authority issued by the Secretary of the United States Department of Health and Human Services (DHHS).[1]

Background

Zenaida P. Doiranlis (Petitioner) requested a hearing before an Administrative Law Judge to contest the November 16, 1992 letter (Notice) sent to her by the Inspector General (I.G.) of DHHS, which notified Petitioner that she was excluded from participation in Medicare and federally funded State health care programs for a period of five years.[2]

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[1] Section 1128 of the Act is codified at 42 U.S.C. § 1320a-7. The implementing regulations are codified at 42 C.F.R. §§ 1001.1 to 1001.3005 and 1005.1 to 1005.23. Pertinent delegations of authority are cited later in this decision.

[2] "State health care program" is defined by section 1128(h) of the Act to include three types of federally assisted health care programs, including Medicaid. I use the term "Medicaid" in this decision to represent all State health care programs from which Petitioner is excluded. 42 U.S.C. § 1320a-7(h).

After I conducted a prehearing conference in this case on January 26, 1993, the I.G. filed a motion for summary disposition, along with a supporting brief and eight exhibits. Petitioner filed a response, along with 32 exhibits. There were no objections to the exhibits submitted, and I hereby admit these exhibits into the record as evidence.

Arguments of the parties

The I.G. argues that Petitioner is subject to a five-year exclusion on the grounds that Petitioner was convicted in the Bronx County Supreme Court (State Court) of four counts of offering a false instrument for filing in the second degree and alleges that the conviction related to the Medicaid program. The I.G. argues further that the exclusion of Petitioner from the Medicare and Medicaid programs for a minimum period of five years is mandated by sections 1128(a)(1) and 1128(c)(3)(B) of the Act.

Petitioner alleges that she was unjustly charged by the State of New York with crimes she did not commit and that she had no intent to defraud the State of New York. She argues that her conviction is unjust, her conviction should be overturned, and that her five-year exclusion by the I.G. should be lifted. In effect, Petitioner argues also that the many affidavits and letters attesting to the quality of her character require a lifting of or a reduction in this federal exclusion.

Summary of this Decision

I have considered the evidence of record, the parties' arguments, and the applicable law. I conclude that there are no material questions of fact in dispute, that this case can be decided on the basis of the documentary evidence already submitted by the parties (in lieu of an in-person hearing), and that the five-year exclusion imposed and directed by the I.G. against Petitioner is mandated by federal law. I do not have authority to overturn Petitioner's State Court conviction and this section 1128(a) exclusion cannot be waived or reduced by the I.G. or me in this case. Accordingly, I enter summary disposition in favor of the I.G.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having considered the entire record, the arguments, and the submissions of the parties, and being advised fully, I make the following Findings of Fact and Conclusions of Law (FFCL):

1. Petitioner is a physician, who, at the times relevant to this case, was enrolled as a provider in the New York State Medicaid program. I.G. Ex. 1, at 4.

2. On March 23, 1990, the New York State Office of the Deputy Assistant Attorney General for Medicaid Fraud Control filed in the Supreme Court, Bronx County, New York (State Court), an indictment charging Petitioner with one count of grand larceny in the third degree and 52 counts of offering a false instrument for filing in the first degree. I.G. Ex. 1.

3. On November 26, 1991, Petitioner pled guilty to counts 2, 3, 9, and 42 of the indictment, which were to the lesser included offenses of offering a false instrument for filing in the second degree. I.G. Ex. 3, at 6.

4. At her plea allocution on November 26, 1991, Petitioner admitted to Judge Steven Lloyd Barrett of the State Court -- as to counts 2, 3, 9, and 42 -- that she had caused claims for Medicaid reimbursement which contained false information to be filed with Computer Science Corporation, a fiscal agent for the New York State Medicaid program. I.G. Ex. 3.

5. The State Court "accepted" Petitioner's guilty plea, within the meaning of section 1128(i) of the Act. I.G. Ex. 3.

6. Petitioner was "convicted" of a criminal offense, within the meaning of sections 1128(i) and 1128(a)(1) of the Act. FFCL 3, 5.

7. The criminal offense of which Petitioner was convicted "related to the delivery of an item or service" under the Medicaid program, within the meaning of section 1128 (a)(1) of the Act. FFCL 1 - 6.

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

9. Sections 1128(a)(1) and 1128(c)(3)(B) of the Act require the I.G. to impose and direct an exclusion for a minimum period of five years against any petitioner who has been "convicted" of a criminal offense "related to the delivery of an item or service" under the Medicare or Medicaid program, within the meaning of those sections of the Act.

10. The I.G. was required to impose and direct this federal exclusion against Petitioner for at least the minimum period of five years because she was "convicted" of a criminal offense "related to the delivery of an item or service" under the Medicaid program, within the meaning of sections 1128(a)(1) and 1128(c)(3)(B) of the Act.

11. If the I.G. had imposed and directed an exclusion for a period greater than five years in this case, I would have authority to determine whether the period beyond the five year minimum was reasonable or excessive under the facts of the case.

12. I have no authority to overturn Petitioner's State Court conviction; this is not the proper forum for attacking her conviction.

13. This five-year exclusion imposed and directed by the I.G. against Petitioner is appropriate and federal law and regulations provide that the exclusion cannot be waived or reduced by the I.G. or by me, under the established facts. FFCL 1 - 12; Act, sections 1128(a)(1) and 1128(c)(3)(B).

DISCUSSION

I. Summary disposition is appropriate in this case.

Summary disposition is appropriate where there are no material facts in issue. See Fed. R. Civ. P. 56. Section 1128 requires the I.G. to prove by a preponderance of the evidence the material facts needed to establish a federal exclusion. In order to impose and direct an exclusion under section 1128(a)(1) of the Act, the I.G. must prove that there was (1) a "conviction" and (2) that the conviction was "related to the delivery of an item or service" under Medicare or Medicaid.

Here, the I.G. proved the material facts required by section 1128(a)(1) of the Act through the documentary evidence submitted in support of his motion for summary disposition. Moreover, while Petitioner alleges that she

was not guilty as charged, she did not dispute the documentary evidence which establishes the material facts in this case.

Accordingly, an in-person hearing is not required and summary disposition is appropriate.

II. By reason of federal law and regulations, Petitioner must be excluded for a minimum period of five years.

Sections 1128(a)(1) and 1128(c)(3)(B) of the Act mandate that a petitioner be excluded from the Medicare and Medicaid programs for a minimum period of five years if the I.G. proves that such petitioner was (1) "convicted" of a criminal offense which was (2) "related to the delivery of an item or service" under Medicare or Medicaid.

A. Petitioner was "convicted."

In this case, Petitioner, a medical doctor, was charged by New York State with filing false Medicaid claims. FFCL 1 - 4. Petitioner pled guilty to "offering a false instrument for filing" in the second degree in the Bronx Supreme Court. FFCL 3. Judge Steven Lloyd Barrett of the State Court accepted her guilty plea and she was sentenced to restitution and conditionally discharged. FFCL 5; I.G. Exs. 2 - 5; P. Exs. 11, 17, 18, 26 - 32.

Section 1128(i)(3) of the Act defines "convicted" to include a plea of guilty to a criminal charge which has been accepted by a court. When the State Court accepted her guilty plea, Petitioner became "convicted," within the meaning of sections 1128(i) and 1128(a)(1) of the Act.

B. Petitioner was convicted of a criminal offense "related to the delivery of an item or service" under the Medicaid program.

Petitioner asserts that she did not commit a crime related to the delivery of an item or service under Medicaid because "there was no crime." P. Brief, at 2. However, Petitioner's assertions are contrary to the evidence in the record in this case. The I.G. has proven that Petitioner pled guilty to submitting claims to Medicaid for services which she did not perform. FFCL 1 - 7. She acknowledged at her plea allocution that she had billed for either a muscle or range of motion test, or a comprehensive examination, when she knew that she had not provided such services. I.G. Ex. 3, at 22 - 35.

In sum, Petitioner admitted in the State court that she knowingly filed Medicaid claims for services not performed as claimed. Id.

The criminal offense of filing false Medicaid claims is directly related to the delivery of an item or service under Medicaid. Jack W. Greene, DAB 1078, at 7 (1989), aff'd sub nom., Greene v. Sullivan, 731 F. Supp. 835 (E.D. Tenn. 1990). Thus, Petitioner's conviction was "related to the delivery of an item or service" under Medicaid, within the meaning of section 1128(a)(1) of the Act. Charles W. Wheeler, DAB 1123 (1990); David S. Muransky, D.C., DAB 1227 (1991). See, also, Thelma Walley, DAB 1367, at 9 (1992).

C. Under the established facts in this case, federal law will not allow a waiver or reduction of the five-year exclusion imposed by the I.G.

Many people, including Petitioner's fellow medical doctors, have attested to her character, ability, and compassion. They ask that Petitioner be given a second chance and her exclusion be terminated by me because she is innocent of the charges made against her. Petitioner argues that she was not guilty and that her good character requires a lifting, waiver, or reduction in the federal exclusion imposed by the I.G.

Section 1128 does not allow me or the I.G. to reduce or waive a five-year exclusion imposed by the I.G. under section 1128(a)(1) of the Act. DeWayne Franzen, DAB 1165 (1990).[3,4]

Petitioner argues also that her conviction should be overturned because she was pressured into pleading guilty

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[3] Section 1128(c)(3)(B) of the Act provides for a waiver upon the request of a State where a petitioner is the "sole community physician" or "sole source of specialized services in a community." There has been no request for a waiver by a State in this case.

[4] It should be noted that the I.G. has taken the position in other cases that while a federal exclusion prevents a Petitioner from submitting claims for reimbursement to Medicare and Medicaid, a Petitioner may continue to treat Medicare and Medicaid patients free of charge (so long as the federal exclusion is disclosed to the patients, the Petitioner is duly licensed in that State, and the conviction did not relate to patient abuse or neglect).

when, in fact, she was not guilty. P. Brief, at 6. The transcript of her plea allocution indicates that she confessed her guilt to Judge Barrett freely and knowingly. I.G. Ex. 3. Even if she did not, this is not the forum for resolving her guilt or innocence to criminal charges. I am not authorized to consider whether she should have been convicted.

The evidence of record in this case establishes Petitioner's guilt. There is no persuasive evidence that Petitioner was not guilty. Even if there was persuasive evidence that Petitioner was not guilty, this is not the proper forum for attacking the State Court conviction. I have no authority to overturn Petitioner's conviction. Douglas Schram, R.Ph., DAB CR215 (1992), aff'd, DAB 1372 (1992); Thelma Walley, DAB 1367, at 8, n.7 (1992); Peter J. Edmonson, DAB 1330 (1992).

CONCLUSION

Based on the law and the evidence, I conclude that the five-year exclusion imposed and directed against Petitioner by the I.G. was required by federal law and regulations and cannot be lifted, waived, or reduced.

/s/

Charles E. Stratton
Administrative Law Judge