Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	
Joseph Marcel-Saint Louis, M.D.,	DATE: June 7, 1994
Petitioner,	Docket No. C-94-016
- v. -	Decision No. CR320
The Inspector General.	

DECISION

The Inspector General (I.G.) of the United States Department of Health and Human Services (DHHS) notified Petitioner by letter dated October 27, 1993 (Notice) that, until he repaid his Health Education Assistance Loans (HEAL loans), he was being excluded from participation in the Medicare program and State health care programs as defined in section 1128(h) of the Social Security Act (Act).[1] The Notice informed Petitioner that his exclusion from Medicare was authorized by section 1892 of the Act and that his exclusion from Medicaid was authorized by section 1128(b)(14) of the Act. The Notice stated that his exclusion resulted from his failure to repay his HEAL loans or to enter into an agreement to repay the loans.

By letter dated November 22, 1993, Petitioner timely requested a hearing before an administrative law judge (ALJ) and the case was assigned to me for a hearing and a decision. Following several telephone prehearing conferences, I conducted an in-person hearing in Boston, Massachusetts, on March 29, 1994.

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[1] Section 1128(h) of the Act enumerates three types of State health care programs that receive federal funds, including the Medicaid program. Unless indicated otherwise, I use the term "Medicaid" to represent all State health care programs from which Petitioner was excluded.

During the in-person hearing, Petitioner admitted that he failed to file a written request for deferment of his HEAL loans beyond June 30, 1990, the date his last written deferment expired.

I have considered the evidence of record, the parties' arguments, and the applicable law in this case. I find and conclude that Petitioner's indefinite exclusion is reasonable. The evidence in this case clearly establishes that Petitioner failed to repay his HEAL loans, that Petitioner is in default, and that Petitioner has consistently refused to enter into an agreement to repay since his deferment expired on June 30, 1990.

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)[2]:

1. While attending medical school at the University of Minnesota, Petitioner applied for, and, on October 26, 1983 was granted, a Health Education Assistance Loan (HEAL) in the amount of $5,388.00. I.G. Exs. 1 and 2.[3]

2. On October 3, 1984, September 4, 1985, and July 24, 1986, Petitioner applied for and received additional HEAL loans in the amounts of $13,384.00, $7,141.00 and $16,147.00, respectively. I.G. Exs. 1, 3-5.

3. Petitioner executed a promissory note for each HEAL loan in which he promised to repay the HEAL beginning on

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[2] I cite to the parties' exhibits, briefs, my FFCL, and the transcript of the hearing as follows:

Petitioner's Exhibit	P. Ex. (number)
I.G.'s Exhibit	I.G. Ex. (number)
Transcript	Tr. at (page)
Petitioner's post-hearing brief . .	P. Br. at (page)
I.G.'s post-hearing brief . . .	I.G. Br. at (page)
FFCL	FFCL (number)

[3] At the hearing, the I.G. offered 25 exhibits into evidence. Petitioner did not object to any of the I.G.'s exhibits, and I admitted all 25 of them into evidence. Tr. at 20. Petitioner offered two exhibits into evidence. I admitted both of Petitioner's exhibits into evidence over the objection of the I.G. Tr. at 28.

the first day of the tenth month after the month in which he ceased being a full-time student at a HEAL school. I.G. Exs. 6-9.

4. Petitioner promised also to promptly notify the lender of any change of name, address, or school enrollment status, or of any other change which would affect his eligibility to receive a deferment on his obligation to repay. I.G. Exs. 6-9.

5. The Student Loan Marketing Association (SLMA) purchased Petitioner's four HEAL loans and received assignments of the lender's rights. I.G. Ex. 1.

6. Petitioner graduated from medical school in December 1987. Tr. at 42.

7. Petitioner requested a deferment of his obligation to repay his four HEAL loans while in an internship program at Cambridge Hospital in Cambridge, Massachusetts. I.G. Ex. 10; Tr. at 42-44.

8. Petitioner attended Tufts University Fletcher School of Law and Diplomacy during the 1988-1989 academic year and did not file a written request for a deferment. Tr. at 44-45.

9. Petitioner requested a deferment for the period of the fall semester of 1989 through June 30, 1990 while he was enrolled in a residency program at Carney Hospital in Boston, Massachusetts. I.G. Ex. 11.

10. Petitioner did not file a written request for a deferment from his obligation to repay his four HEAL loans beyond June 30, 1990. I.G. Ex. 1; Tr. at 23-25, 30-32, 36, 39-40, 45.

11. On May 18, 1990, SLMA notified Petitioner of his obligation to begin to repay his four HEAL loans and that Petitioner was obligated to begin monthly payments on his four HEAL loans on July 24, 1990. I.G. Exs. 24-25.

12. Petitioner failed to begin repayment of his four HEAL loans on July 24, 1990 and has consistently avoided his obligations and promises to repay. I.G. Exs. 1-12; Tr. at 47-57.

13. SLMA sent Petitioner a demand letter on November 27, 1990 instructing Petitioner to remit payment in full of his four HEAL loans or his account would be filed as a default. I.G. Ex. 1.

14. Because of Petitioner's failure to repay his four HEAL loans as promised, SLMA filed an insurance claim with the United States Public Health Service (PHS) on June 8, 1991. I.G. Exs. 1, 12.

15. On July 3, 1991, PHS paid the insurance claim in the amount of $76,524.00 and received an assignment of Petitioner's four unpaid HEAL loans from SLMA. I.G. Exs. 1, 13-14.

16. PHS notified Petitioner that he had been placed on default status for failure to repay his four HEAL loans as promised and instructed him to remit the total amount due within 30 days or submit a proposal for a repayment arrangement. I.G. Ex. 1, 15.

17. PHS notified Petitioner on August 22, 1991 that it would refer his debt to the Internal Revenue Service for offset of any tax refunds and advised him that repayment in full would terminate such offset proceedings.

18. PHS notified Petitioner that his failure to repay his four HEAL loans as promised resulted in PHS referring his obligations to Payco American Corporation, a collection agency. I.G. Ex. 1.

19. On September 22, 1992, PHS again instructed Petitioner to enter into a repayment arrangement to correct the failure of Petitioner to repay his four HEAL loans as promised. I.G. Ex. 1.

20. PHS notified Petitioner on February 4, 1993 that he could agree to have amounts due him under Medicare or Medicaid offset against his unpaid HEAL loans. I.G. Ex. 1, 19.

21. Petitioner admitted that he received the notices sent to him by SLMA and PHS and that he failed to respond in writing to them. Tr. at 54-57; I.G. Ex. 1.

22. Petitioner is in default on his obligations and his promises to repay his four HEAL loans. FFCL 1-21.

23. The Secretary of DHHS has taken all reasonable steps available to her to secure repayment from Petitioner of his four HEAL loans. FFCL 1-21.

24. Petitioner owes the PHS $91,613.44 as a result of his default on his HEAL obligations. I.G. Ex. 1; Tr. at 58.

25. The I.G. had authority to exclude Petitioner from Medicare and Medicaid under section 1128(b)(14) and section 1892 of the Act. FFCL 1-24.

26. The exclusion imposed against Petitioner by the I.G. in this case is reasonable. FFCL 1-25.

27. Petitioner misled this ALJ by stating throughout the prehearing process that he had a written deferment from his obligation to repay his four HEAL loans for periods after June 30, 1990 and that he would produce documentary evidence of such deferment. February 24, 1994 Prehearing Order and Notice of Hearing, page 2; Tr. at 7-9, 16, 23-24, 30-31, 36-39, 50.

28. At the hearing, Petitioner admitted that he did not have a written deferment after June 30, 1990 and that he was now seeking a "retroactive" deferment from me. Tr. at 30-32, 50.

29. Petitioner has refused to enter into a repayment agreement, has refused to repay his four HEAL loans as promised, and is in default. Tr. at 1-61; FFCLs 1-28.

30. Petitioner maintained throughout these proceedings that his default status on his HEAL obligations was an error, when, despite his contentions, he knew that he was in default on his HEAL obligations. Tr. at 9-14, 17-20, 23-61; FFCLs 1-29.

31. Petitioner fabricated the concepts of "oral deferment" and "retroactive deferment" in an attempt to rationalize his failure to properly repay his HEAL obligations. Tr. at 1-61; FFCLs 1-30.

32. Petitioner is not a credible witness as to any matter at issue in this case; he is credible only when he gives an account of minor factual details (such as when he graduated from medical school, when he enrolled in graduate school, when and where he served his residency, and other facts of that nature) and when he makes a declaration against his own interest. Tr. at 1-61; FFCLs 28-31.

DISCUSSION

I. By reason of federal law and regulations, Petitioner must be excluded indefinitely from Medicare and Medicaid until he repays his four HEAL loans as promised.

Section 1128(b)(14) of the Act authorizes the Secretary to exclude from Medicare and to direct the exclusion from

Medicaid of any individual who is in default on a HEAL and with respect to whom the Secretary has taken all reasonable steps to secure repayment of the HEAL. Because the I.G. proved that Petitioner has had an obligation to repay his four HEAL loans from the period following the expiration of his deferment on June 30, 1990, and that Petitioner has failed to do so, despite numerous attempts by PHS to get Petitioner to enter into a repayment agreement, I find and conclude that Petitioner should be excluded until such time as he satisfies the debt.[4]

Petitioner admitted, and the I.G. proved, that Petitioner now owes PHS $91,613.44.

Petitioner became obligated to begin repaying his four HEAL loans shortly following the expiration of his deferment on June 30, 1990. Petitioner admitted at the evidentiary hearing in this case that he has not had a written deferment from repaying his four HEAL loans since his deferment expired on June 30, 1990.

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[4] It is unnecessary for me to decide whether Petitioner is entitled to a hearing pursuant to section 1892 of the Act, because section 1128(b)(14) authorizes exclusion from both Medicare and Medicaid. Section 1128(b) provides: "The Secretary may exclude the following individuals and entities from participation in any program under title XVIII and may direct that the following individuals and entities be excluded from participation in any State health care program." Title XVIII is the Medicare program and the term "State health care program" encompasses Medicaid. See n. 1. Section 1128(b)(14) makes the permissive exclusion provisions of section 1128(b) applicable to individuals whom the Secretary determines are in default on HEAL loans or scholarship obligations. Therefore, the issue of Petitioner's exclusion from Medicare under section 1892 is mooted by the fact that his exclusion from Medicare is authorized also by section 1128(b)(14) of the Act.

While, for the reasons just stated, I make no findings and conclusions regarding whether the I.G. properly excluded Petitioner pursuant to section 1892 of the Act, I do agree with the preliminary analysis of the appellate panel in Charles K. Angelo, Jr., M.D., C-92-130 (January 24, 1994) to the extent that it suggests the possibility that there is a right to an administrative hearing on an exclusion imposed pursuant to section 1892.

However, Petitioner states in his posthearing brief that because he has lofty goals and is pursuing a career in international public health, he should be placed in a very special category of future leaders and be exempt from the ordinary obligations placed upon him by reason of federal law and his promises to repay. He states that he should be indefinitely deferred from his obligation to pay back his four Heal loans and that, if his income allows, he should be allowed to begin repayment some time in 1995. P. Br. at 2-6. Petitioner admitted at the hearing that he did not ever make a written request for a deferment from the period June 30, 1990 to date. However, even if Petitioner had made a written request for a deferment, his studies, including his current studies, do not qualify him for a deferment.

At the in-person hearing in this case, Petitioner acknowledged receipt of the numerous attempts made by PHS or its designated agents and collection agencies to collect the debt owed by Petitioner since July 1990. Petitioner chose to ignore all collection efforts made by PHS, including efforts made up to the date of the hearing, to get Petitioner to enter into a repayment agreement.

In summary, Petitioner has been in default for almost four years and should be excluded from Medicare and Medicaid until he repays his four HEAL loans.

II. Petitioner misled this ALJ.

It seems that Petitioner will resort to almost any means to avoid his obligations to repay, including misleading this ALJ. Petitioner told me for months, and especially during the February 18, 1994 prehearing conference, that he had a deferment and was never in default. Petitioner further stated that, at the hearing, he would produce written evidence of his deferment. February 24, 1994 Prehearing Order And Notice Of Hearing, page 2. Then, at the hearing and while under oath, Petitioner admitted that he did not have a written deferment. FFCLs 28-29.

I have concluded that Petitioner is very intelligent and that he has known all along that he has not been eligible for a deferment since June 30, 1990. But, since Petitioner wanted to pursue studies that did not qualify him for a deferment, he attempted to manipulate the system to his advantage and avoid repayment until he was ready to repay. However, Petitioner went too far by knowingly and repeatedly misrepresenting to the I.G. and to me that he had a written deferment and by claiming

that he had written proof that he had been granted a deferment on his HEAL obligations. During the months before the hearing, at several prehearing conferences, Petitioner persisted in this deceitful claim of having a written deferment and further stated that he would produce written proof of that deferment at the hearing. Then, at the hearing and while under oath, Petitioner admitted that he did not ever have a written deferment after June 30, 1990. Instead of attempting to explain his statements concerning his claims of having a written deferment, he ignored his previous statements, changed his story, and then brazenly requested a retroactive deferment. There is no provision in the law or federal regulations which entitles Petitioner to a retroactive deferment.[3]

Petitioner's testimony inadvertently supports the I.G.'s allegation that he never obtained a written deferment on his HEAL obligations. He testified that he felt it was not necessary to have a written deferment because PHS personnel told him to use the telephone to update them. Tr. at 9-11. Petitioner cannot be believed; he is not a credible witness. The only part of Petitioner's testimony that I find to be credible, other than minor factual matters, are his statements against his own interest. Moreover, even if Petitioner could be believed, there is no provision in the law for oral deferments or retroactive deferments. Most importantly, the forms provided to HEAL borrowers at the time they incur their obligation notify them that they must make deferment requests in writing. It is apparent that Petitioner has created the fictions of retroactive deferment and oral deferment as a means to obtain a deferment to which he is not entitled in fact or by law.

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[3] In his posthearing brief dated April 15, 1994, Petitioner again asks for a retroactive deferment and offers a token payment of $200 per month while he studies in Paris, France until July 1995.

CONCLUSION

Based on the law and the evidence, I conclude that Petitioner's indefinite exclusion is reasonable and must stand.

It is so Ordered.

/s/

Charles E. Stratton
Administrative Law Judge