

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Caren Battaglia,
(OI File No. 6-12-40428-9),

Petitioner,

v.

The Inspector General.

Docket No. C-18-68

Decision No. CR5011

Date: January 24, 2018

DECISION

Petitioner, Caren Battaglia, was a licensed practical nurse (LPN) who worked for a home health agency in the State of Louisiana. She pled guilty to one felony count of misprision of a felony. Based on this conviction, the Inspector General (IG) has excluded her for five years from participating in Medicare, Medicaid, and all federal health care programs, as authorized by section 1128(a)(1) of the Social Security Act (Act). Petitioner appeals the exclusion. For the reasons discussed below, I find that the IG properly excluded Petitioner Battaglia and that the statute mandates a minimum five-year exclusion.

Background

In a letter dated September 29, 2017, the IG notified Petitioner that she was excluded from participating in Medicare, Medicaid, and all federal health care programs for a period of five years because she had been convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. The letter explained that section 1128(a)(1) of the Act authorizes the exclusion. IG Exhibit (Ex.) 1.

Petitioner timely requested review.

The IG submitted a written argument (IG Br.) and five exhibits (IG Exs. 1-5). Petitioner responded to the IG's brief (P. Br.), and the IG submitted a reply (IG Reply).

In the absence of any objections, I admit into evidence IG Exs. 1-5.

The parties agree that an in-person hearing is not necessary. IG Br. at 5; P. Br. at 4.

Discussion

*Petitioner must be excluded from program participation for a minimum of five years because she was convicted of a criminal offense related to the delivery of an item or service under Medicare. Act § 1128(a)(1).*¹

Under section 1128(a)(1) of the Act, the Secretary of Health and Human Services must exclude an individual who has been convicted under federal or state law of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. 42 C.F.R. § 1001.101(a).

On September 7, 2016, Petitioner Battaglia signed a plea agreement with the U.S. Attorney for the Eastern District of Louisiana. Under its terms, she agreed to plead guilty to one count of misprision of a felony. IG Ex. 2. On the same day, the U.S. Attorney presented a bill of information charging her with that crime. Specifically, the information charged that:

- Petitioner's employer, Abide Home Care Services, participated in the Medicare program as a home health agency;
- Medicare rules required Petitioner Battaglia, as the home health nurse, to document the hands-on personal care she provided to Medicare beneficiaries;
- Between January 1, 2013, and June 25, 2014, Petitioner knew, but willfully concealed, that her employer was committing health care fraud by creating false documentation in order to bill the Medicare program fraudulently;
- Between September 16, 2013, and November 14, 2013, Petitioner Battaglia documented that she made skilled nursing visits to a patient referred to as JeJo;
- Petitioner knew that her employer had fraudulently classified JeJo as "homebound" and had assigned him a false diagnosis (arthropathy); yet she

¹ I make this one finding of fact/conclusion of law.

concealed the fraud by documenting that she had taught “on the disease process” (for a disease that he did not have) and noting that his “homebound status [was] evident,” even though she knew that he left home each day for a day program and for other reasons.

IG Ex. 4; *see* IG Ex. 5.

On August 23, 2017, Petitioner Battaglia pled guilty to the felony charge. IG Ex. 3. The court accepted the plea, imposed a \$2,000 fine plus \$100 assessment, and ordered her to pay \$1,427.04 in restitution to the Medicare program. IG Ex. 3 at 2.

Here, Petitioner concedes that she helped conceal her employer’s fraud by documenting that she taught JeJo “on the disease process” and falsely reporting that he was homebound. Nevertheless, she argues that the offense of misprision “is not sufficiently related to the delivery of a service to support a mandatory exclusion under [s]ection 1128(a)(1).” P. Br. at 2-3. While she acknowledges that failing to report healthcare fraud may be related to the delivery of an item or service under Medicare, she argues that such a connection is not automatic; it depends on the circumstances of the offender’s involvement. Her crime, she maintains, was not against the healthcare system, but against the justice system, so was not related to the delivery of services under Medicare.

I cannot think of any circumstance in which a conviction for misprision of Medicare fraud would not be “related to” the delivery of an item or service under that program. *See Lyle Kai, R. Ph.*, DAB No. 1979 at 5 (2005), *aff’d*, *Kai v. Leavitt*, No. 05-00514 BMK (D. Haw. July 17, 2006) (holding that an offense is “related to” the delivery of a healthcare item or service, if there is “a nexus or common-sense connection” between the conduct giving rise to the offense and the delivery of a healthcare item or service); *Berton Siegel, D.O.*, DAB No 1467 at 5 (1994); *Carolyn Westin*, DAB No. 1381 (1993), *aff’d sub nom. Westin v. Shalala*, 845 F. Supp. 1446 (D. Kan. 1994). But I need not reach that issue here. Based on the plain language of her conviction, Petitioner Battaglia not only failed to report her employer’s Medicare fraud, she actively facilitated it by documenting misleading and false information.

Further, the court ordered Petitioner to pay restitution to the Medicare program. This, by itself, confirms the direct connection between her crime and Medicare. Thus, Petitioner Battaglia was “convicted” within the meaning of section 1128(a)(1) and she is subject to exclusion.

An exclusion brought under section 1128(a)(1) must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. § 1001.2007(a)(2).

