

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Sharon Brown
Docket No. A-17-7
Decision No. 2761
January 12, 2017

**DETERMINATION TO DECLINE REVIEW OF
ADMINISTRATIVE LAW JUDGE DECISION**

After reviewing the record to evaluate the issues presented by Sharon Brown's exceptions to the decision of the administrative law judge in *Sharon Brown*, Decision No. CR4717 (2016), we have determined that we need not render a separate decision. We therefore decline review of and summarily affirm the administrative law judge's decision.* Thus, that decision becomes final and binding 60 days from the date of service of this determination to decline review. *See* 42 C.F.R. § 1005.21(j).

* To the extent Petitioner intended to argue that she should have been excluded under the permissive exclusion provisions at section 1128(b) of the Social Security Act (Act) instead of under the mandatory exclusion provision at section 1128(a)(2) of the Act, that argument has no merit. The Board and courts have repeatedly held that where there is a basis for a mandatory exclusion, the I.G. is required to impose a mandatory exclusion even if an individual's conduct also falls within the scope of a permissive exclusion provision. *See, e.g., Gregory J. Salko, M.D.*, DAB No. 2437, at 4-5 (2012) (citing cases), *aff'd, Salko v. Sebelius*, No. 3:12cv515, 2013 WL 618779 (M.D. Pa. Feb. 19, 2013).

Judicial review is available in an appropriate United States district court if a civil action is filed within 60 days after service of this determination to decline review. *See* sections 1128(f)(1) and 205(g) of the Social Security Act and 42 C.F.R. § 1005.21(k)(1).

_____/s/
Constance B. Tobias

_____/s/
Susan S. Yim

_____/s/
Sheila Ann Hegy
Presiding Board Member