

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
Thomas J. DePietro, R.Ph.,)	DATE: February 14, 1991
Petitioner,)	
- v. -)	Docket No. C-282
The Inspector General.)	Decision No. CR117

DECISION

By letter dated June 13, 1990, the Inspector General (I.G.) notified Thomas J. DePietro (Petitioner) that he would be excluded from participation in the Medicare program and any federally-assisted State health care program (such as Medicaid), as defined in section 1128(h) of the Social Security Act (Act), for a period of five years.¹ The I.G. further advised Petitioner that his exclusion was due to his conviction in the Lackawanna County Court of Common Pleas, Scranton, Pennsylvania, of a criminal offense related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. Petitioner was informed that exclusions from Medicare and Medicaid programs after such a conviction are authorized by section 1128(b)(3) of the Act.

Petitioner timely requested a hearing before an Administrative Law Judge (ALJ) to contest his exclusion. I held a prehearing conference in this case on September 26, 1990. During the conference, the parties agreed to have this case decided on the basis of submitted exhibits, in lieu of an in-person hearing. Based on the evidence in the record and the applicable law, I conclude

¹ "State health care program" is defined by section 1128(h) of the Social Security Act to cover three types of federally-assisted programs, including State plans approved under Title XIX (Medicaid) of the Act. I use the term "Medicaid" hereafter to represent all State health care programs from which Petitioner was excluded.

that an exclusion of five years is reasonable and appropriate.

APPLICABLE STATUTES AND REGULATIONS

I. The Federal Statute.

Section 1128 of the Act is codified at 42 U.S.C. 1320a-7 (West U.S.C.A., 1989 Supp.). Section 1128(a) of the Act provides for the exclusion from Medicare and Medicaid of those individuals or entities "convicted" of a criminal offense "related to the delivery of an item or service" under the Medicare or Medicaid programs. Section 1128(c)(3)(B) provides for a five-year minimum period of exclusion for those excluded under section 1128(a)(1). Section 1128(b) of the Act provides for permissive exclusions after convictions relating to fraud, license revocations, failure to supply payment information, or, as in this case, conviction for a criminal offense related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance under section 1128(b)(3).

II. The Federal Regulations.

The governing federal regulations are codified in 42 C.F.R. Parts 498, 1001, and 1002 (1989). Part 498 governs the procedural aspects of this exclusion case; parts 1001 and 1002 govern the substantive aspects.

ADMISSIONS

Petitioner has admitted that he pled guilty to the offense for which he was excluded, and that his conviction falls within the meaning of section 1128(b)(3). P. Br. 5, 6.

ISSUE

The issue in this case is whether the length of the exclusion imposed and directed against Petitioner is reasonable and appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW²

1. At all times relevant to this case, Petitioner was a licensed pharmacist in the Commonwealth of Pennsylvania and the owner and operator of DePietro's Pharmacy, Peckville, Pennsylvania. I.G. Ex. 1, 4, 7.³

2. On June 6, 1988, Petitioner was charged with 12 counts of violating Pennsylvania's Controlled Substance, Drug, Device and Cosmetic Act, 35 Pa. Cons. Stat. Ann. section 780-113a (Purdon 1990), (Controlled Substance Act). I.G. Ex. 1.

3. On June 29, 1989, Petitioner pleaded guilty to three of the 12 counts with which he was charged: one count of unlawful, knowing and intentional delivery of controlled substances; one count of sale and dispensing of controlled substances without an oral or written prescription; and one count of sale of controlled substances by a pharmacy without a label. I.G. Ex. 2, 3.

4. The three counts to which Petitioner pleaded guilty involved the January 29, 1988 sale by Petitioner of 20 Valium Tablets and 20 Tylenol Number 3 with Codeine Pills, for \$63, to Detective Catherine Marrone, a member of the Lackawanna County District Attorney's Office. I.G. Ex. 1, 2, 3.

5. At the time of his arrest, Petitioner was addicted to the prescription drugs Valium and Xanax. I.G. Ex. 10/1 - 11.

² Some of my statements in the sections preceding these formal findings and conclusions are also findings of fact and conclusions of law. To the extent that they are not repeated here, they were not in controversy.

³ Citations to the record in this Decision are as follows:

Petitioner's Brief	P. Br. (page)
I.G.'s Brief	I.G. Br. (page)
I.G.'s Exhibits	I.G. Ex. (number)/(page)
Findings of Fact and Conclusions of Law	FFCL (number)

6. The sentencing court judge accepted Petitioner's application for probation without verdict under Section 17 of the Controlled Substance Act. Proof of drug use is a prerequisite for sentencing under this section. Upon fulfillment of Petitioner's terms and conditions of probation, the court will discharge Petitioner and dismiss the proceedings against him. I.G. Ex. 10/3, 19; I.G. Br. 3; P. Br. 1, 2.

7. Petitioner was sentenced to three years probation, fined \$1,000.00, ordered to pay \$100.00 in restitution to the Attorney General's Office, and assessed the costs of prosecution. I.G. Ex. 2, 10/19.

8. If Petitioner had not been sentenced under Section 17, Petitioner would have been liable on all three counts for a maximum of 5 years imprisonment and fines of \$20,000.00. I.G. Ex. 3; I.G. Br. 11.

9. Petitioner's license to practice pharmacy in Pennsylvania was temporarily suspended on September 14, 1988, and was automatically suspended for ten years on May 12, 1989. I.G. Ex. 4, 5, 6, 7; P. Br. 9; I.G. Br. 4.

10. Petitioner's license to prescribe controlled substances was revoked. I.G. Ex. 10/6.

11. On March 29, 1989, Petitioner went to a physician in order to overcome an addiction to the controlled substances Valium and Xanax. Petitioner also saw this physician on April 5, 1989 and April 26, 1989. Petitioner was placed on the drug Buspar for the purpose of detoxification. Petitioner's physician could not say on the date of Petitioner's sentencing that Petitioner was cured. I.G. Ex. 10/ 5 - 6, 9 - 11.

12. Petitioner was "convicted" of a criminal offense relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance, within the meaning of section 1128(b)(3) of the Act. FFCL 2, 3, 4.

13. Pursuant to section 1128(b)(3) of the Act, the Secretary of the Department of Health and Human Services (Secretary) has authority to impose and direct an exclusion against Petitioner from participating in Medicare and Medicaid.

14. The Secretary delegated to the I.G. the duty to impose and direct exclusions pursuant to section 1128 of the Act. 48 Fed. Reg. 21662 (May 13, 1983).

15. On June 13, 1990, the I.G. advised Petitioner that he was excluding him from participating in the Medicare and Medicaid programs for five years, pursuant to section 1128(b)(3) of the Act.

16. A purpose of section 1128(b)(3) of the Act is to protect beneficiaries and program funds by excluding individuals or entities who by conduct have demonstrated a risk that they may engage in fraud, substandard services, abuse, or unsafe practices in connection with controlled substances until such time as those excluded can demonstrate that such risk no longer exists. S. Rep. No. 109, 100th Cong. 1st Sess. 2, reprinted in 1987 U.S. Code Cong. & Admin. News 682.

17. There is no length or period of exclusion mandated by statute for section 1128(b)(3) exclusions. The exclusion provisions of section 1128 of the Act do not establish a minimum or maximum period of exclusion to be imposed and directed in cases where the I.G. has discretion to impose and direct exclusions. Act, section 1128(b)(1)-(14).

18. There are substantial reasons for a lengthy exclusion: 1) Petitioner abused his position of trust as a pharmacist authorized to sell and dispense controlled substances when he unlawfully, intentionally and knowingly sold controlled substances (FFCL 3,4); 2) the conduct engaged in by Petitioner could have endangered the health and safety of those to whom he unlawfully sold controlled substances; 3) Petitioner himself abused controlled substances to relieve his stress, although as a pharmacist he knew how dangerous and addictive prescription drugs could be, and only sought help for his addiction after he was charged with criminal activity (FFCL 5, 6, 11); 4) Petitioner was placed on three years probation (FFCL 7); and 5) Petitioner's license to practice pharmacy and his D.E.A. license were both revoked (FFCL 9, 10).

19. Petitioner and his physician, utilizing evidence submitted by the I.G. (I.G. Ex. 10/4 - 6, 9 - 11), established that Petitioner was addicted to the controlled substances Valium and Xanax due to stress. Petitioner also proved that: 1) prior to his arrest Petitioner had no criminal record, and has not been involved in further difficulties with the police (P.Br. 3); 2) Petitioner's actions did not relate to the Medicare or Medicaid programs (P. Br. 6); 3) Petitioner's addiction is now in treatment (P. Br. 3); 4) Petitioner recognizes his mistake and has expressed remorse (P. Br. 3 - 4); and 5) Petitioner's sentencing court took into

account that: a) Petitioner was not dealing in street drugs; b) it was Petitioner's first offense; c) Petitioner expressed remorse; and d) Petitioner's license was suspended and he would not be getting it back in the near future. I.G. Ex. 10/17. While I have considered this evidence, it does not establish that the I.G.'s determination concerning the appropriate length of exclusion to impose on Petitioner is unreasonable.

20. Petitioner has not proven that an exclusion of five years is unreasonable.

21. The I.G.'s determination to exclude Petitioner from participation in the Medicare or Medicaid programs for five years is reasonable. FFCL 1 - 20; See 42 C.F.R. 1001.125(b)(1) - (7).

DISCUSSION

I. Petitioner Was "Convicted" Of A Criminal Offense "Relating To The Unlawful Manufacture, Distribution, Prescription, Or Dispensing Of A Controlled Substance", Within The Meaning Of Section 1128(b)(3) Of The Act.

Section 1128(b)(3) of the Act authorizes the I.G. to exclude from participation in the Medicare and Medicaid programs individuals who have been "convicted" of criminal offenses "relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance". On June 29, 1989, Petitioner pled guilty to knowingly and intentionally delivering controlled substances, as well as to selling and dispensing controlled substances without a prescription and selling controlled substances without labels. FFCL 3. Petitioner admits, and I find and conclude that he was "convicted" within the meaning of section 1128(i) and that his conviction falls within the purview of criminal offenses enumerated in section 1128(b)(3) of the Act. FFCL 2, 3, 4, 12, 13, 14.

II A Five-Year Exclusion Is Appropriate And Reasonable In This Case.

Since Petitioner has admitted, and I have concluded, that Petitioner was "convicted" of a criminal offense for which the I.G. may impose an exclusion, pursuant to section 1128(b)(3) of the Act, the remaining issue is whether the five-year exclusion is appropriate and reasonable. For the reasons set out below, I conclude that a five-year exclusion is reasonable.

As I stated in Falah R. Garmo, R.Ph., DAB Civ. Rem C-222 (1990) (citing Victor M. Janze, M.D., DAB Civ Rem. C-212 (1990) and Charles J. Burks, M.D., DAB Civ. Rem. C-111 (1989)), in making a determination regarding the length of an exclusion, I am guided by the purpose behind the exclusion law. Congress enacted section 1128 of the Act to protect the Medicare and Medicaid programs from fraud and abuse and to protect the beneficiaries and recipients of those programs from impaired and incompetent practitioners and inappropriate or inadequate care. S. Rep. No. 109, 100th Cong., 1st Sess. 1; reprinted in 1987 U.S. Code Cong. & Admin. News 682, 708. The key term is "protection," the prevention of harm. See Websters II New Riverside University Dictionary 946 (1984). As a means of protecting the Medicare and Medicaid programs and their beneficiaries and recipients, Congress chose to mandate, and in other instances to permit, the exclusion of individuals and entities. Through the exclusion law, individuals and entities who have caused harm, or may cause harm, to the program or its beneficiaries or recipients are no longer permitted to receive reimbursement for items or services which they provided to Medicare beneficiaries or Medicaid recipients. Thus, individuals are removed from a position which provides a potential avenue for causing harm to the programs. An exclusion also serves as a deterrent to other individuals and entities against errant or deviant behavior which may result in harm to the Medicare and Medicaid programs or their beneficiaries and recipients.

No statutory minimum mandatory exclusion period exists for section 1128(b)(3) exclusions. The determination of when an individual should be trusted and allowed to reapply for participation as a provider in the Medicare and Medicaid programs is a difficult issue and is one which is subject to discretion; there is no mechanical formula. The federal regulations provide some guidance which may be followed in making this determination. The regulations provide that the length of Petitioner's exclusion may be determined by reviewing: 1) the number and nature of the offenses; 2) the nature and extent of any adverse impact the violations have had on beneficiaries; 3) the amount of the damages incurred by the Medicare, Medicaid, and social services programs; 4) the existence of mitigating circumstances; 5) the length of sentence imposed by the court; 6) any other facts bearing on the nature and seriousness of the violations; and 7) the previous sanction record of Petitioner. See 42 C.F.R. 1001.125(b). These regulations were adopted by the Secretary (and his delegate, the I.G.) to implement the Act prior to the 1987 Amendment. The regulations specifically apply only to exclusions for "program

related" offenses. To the extent that they have not been repealed, however, they embody the Secretary's intent that they continue to apply, at least as broad guidelines, to the cases in which discretionary exclusions are imposed. See Garmo, supra at 10; Leonard N. Schwartz, R.Ph., DAB Civ. Rem. C-62 at p. 12 (1989). In addition to the factors listed above, given Congressional intent to exclude untrustworthy individuals from participation in Medicare and Medicaid programs, I also consider those circumstances which indicate the extent of an individual's or entity's trustworthiness.

By not mandating that exclusions from participation in the Medicare and Medicaid program be permanent, Congress has allowed the I.G. the opportunity to give individuals a "second chance." The placement of a limit on the period of exclusion allows an excluded individual or entity the opportunity to demonstrate that he or she can and should be trusted to participate in the Medicare and Medicaid programs as a provider of items and services to beneficiaries and recipients. A determination of an individual's current and future trustworthiness thus necessitates an appraisal of the crime for which that individual was convicted, the circumstances surrounding it, whether and when that individual sought help to correct the behavior which led to the criminal conviction, and how far that individual has come towards rehabilitation.

Petitioner is arguing in this case that a five year exclusion is unreasonable and that he will be trustworthy to provide goods and services to the Medicare and Medicaid programs in a much shorter period of time. Petitioner has not, however, introduced any exhibits or other evidence to substantiate his contention that a five year exclusion is unreasonable. Instead, Petitioner has utilized the exhibits placed into evidence by the I.G. in support of his conclusion that a shorter exclusion would be reasonable.

Petitioner offers the following circumstances surrounding his conviction as indicators of his current and future trustworthiness: 1) prior to his arrest Petitioner had no criminal record, and has not been involved in further difficulties with the police since that time; 2) Petitioner's actions did not relate to the Medicare or Medicaid programs; 3) Petitioner was under stress due to the pressure of his work and became addicted to Valium and Xanax, and was a drug abuser at the time of the actions which led to his conviction, which addiction is now in treatment; 4) Petitioner recognizes that he has

made a mistake and has expressed remorse for his actions and the effect it has had on his family; and, finally, 5) that the sentencing court took into account that: a) Petitioner was not dealing in street drugs; b) that it was Petitioner's first offense; c) that he expressed remorse; and d) that his license was suspended and that Petitioner would not be getting it back in the near future. FFCL 19.

Neither the absence of prior offenses by Petitioner or the fact that Petitioner's actions do not relate to the Medicaid or Medicare programs mitigate against a lengthy exclusion. Rather, their presence would be factors that might justify an increased sanction. See Lakshmi N. Murty Achalla, M.D., DAB Civ. Rem. C-146 (1990). Petitioner's mental state, both at the time he engaged in his criminal conduct and now, and his conduct subsequent to his conviction, are relevant to determining his trustworthiness.

Petitioner argues that his addiction, which he claims was caused by stress, was responsible for the actions resulting in his conviction. However, while it may be true that Petitioner was mentally stressed and addicted at the time of the unlawful activity for which he was convicted, even the judge who sentenced him was unable to say what caused Petitioner to sell those controlled substances. That judge stated during Petitioner's sentencing hearing, with reference to what caused Petitioner to sell the controlled substances: "whether it was for greed, to make additional money or because of your drug abuse that maybe clouded your judgment, I don't know what it was." I.G. Ex. 10/18. That Petitioner may have succumbed to stress, become addicted to drugs, and for whatever reason unlawfully sold controlled substances, certainly does not persuade me of Petitioner's trustworthiness. See Garmo at 11.

Petitioner did seek help to end his addiction, but he only did so after he was charged with selling controlled substances. Petitioner asserts that his addiction occurred because of the easy availability of drugs in a pharmacy and the stress of starting his own business (I.G. Ex. 10/4 - 5), but he has presented no evidence to show that he has made any attempt to learn to deal with his stress in more constructive ways. Evidence submitted by the I.G. does show that Petitioner sought treatment from one physician in order to overcome his drug dependency. The physician prescribed the drug Buspar. At Petitioner's sentencing hearing, the physician testified that the drug Buspar is used to detoxify patients who are on other types of sedative

tranquilizers. The physician also indicated that some psychological follow-up was necessary. I.G. Ex. 10/10. The physician, whose residency was in internal medicine (I.G. Ex. 10/9), saw Petitioner only three times, although he also testified that during the course of treatment he adjusted Petitioner's dosage of Buspar by telephone. At Petitioner's sentencing hearing, the physician could say only that at the time of the sentencing hearing on June 29, 1989 he "assume(s) he (Petitioner)(is) using the Buspar at this time and (is) under fair control". I.G. Ex. 10/11. There is no evidence in the record to show that Petitioner has overcome the conditions which led him into his drug dependency or taken further steps to address those problems, such as by seeing a mental health professional, or attending any programs which specialize in treating drug dependency. Although the transcript of Petitioner's sentencing hearing does show that he has a supportive family and that he feels remorse for what he has done to them, apparently he had that same support when he became addicted to controlled substances and when he unlawfully sold those controlled substances to others. Thus, there is nothing in Petitioner's mental state or in the fact of his drug use that can mitigate against Petitioner's period of exclusion. Petitioner has not come far enough along the road to recovery, at least in the evidence presented to me, to show Petitioner is a person trustworthy enough to participate in the Medicare and Medicaid programs as a provider of goods and services.

Petitioner, has argued that two previous cases support his position that the length of his exclusion is unreasonable: Victor M. Janze, M.D., DAB Civ. Rem. C-212 (1990); and James E. Keil, M.D., DAB Civ. Rem C-154 (1990). I do not agree. In Janze, the petitioner pleaded guilty to unlawfully dispensing, distributing, and causing to be distributed a controlled substance. The I.G. excluded the petitioner for seven years. The petitioner challenged the reasonableness of the length of his exclusion. The I.G. stated as one reason for imposing a seven year exclusion, that the petitioner's conduct had gone on for a lengthy period. The petitioner in Janze, however, pleaded guilty to actions taking place on only one date. The I.G. in Janze failed to prove that the petitioner was engaged in a continuing course of illegal conduct. That failure of proof meant that a continuing course of conduct could not be used as a factor in determining the length of the Petitioner's exclusion. That, coupled with the petitioner's steps toward rehabilitation after the events leading up to his conviction, led to the holding that a six year exclusion was reasonable, rather than the seven year exclusion

imposed by the I.G. In this case, Petitioner appears to believe that a continuing course of illegal conduct is being used as a factor in determining the length of his exclusion as it was in Janze. Evidence as to a continuing course of conduct as a factor increasing the length of Petitioner's exclusion in this case, however, has not been considered. The unlawful conduct pleaded to in this case took place on only one date. However, this does not mitigate the seriousness of Petitioner's actions, and does not affect my decision as to Petitioner's trustworthiness to participate in the Medicare and Medicaid programs. If the conduct had taken place for a longer period of time, it might have been considered as a factor to increase the period of exclusion.

In Keil, the petitioner's exclusion was reduced from five years to one. The petitioner had been convicted of one count of unlawfully dispensing a controlled substance. In Keil, unlike in the instant case, there was no unlawful sale of controlled substances involved. The petitioner in Keil was himself addicted and the drug he prescribed was for himself. The petitioner in Keil also sought help before his indictment and demonstrated to the ALJ that he had faithfully adhered to his treatment regimen and was drug free. The instant case is very different. Here Petitioner, although he was addicted to drugs, sold drugs to a third party, opening up the possibility of serious harm to people whom, as a pharmacist, it was Petitioner's highest duty to protect. Also, while there is evidence that Petitioner has made some steps to overcome his addiction, Petitioner has offered no evidence as to how far his recovery has progressed. Thus, I do not find authority in either Janze or Keil for Petitioner's contention that the length of his exclusion is unreasonable.

Petitioner also contends that, under the circumstances of his case, it is appropriate that a three year exclusion be imposed and that it run concurrent with his probation as mandated by the Court of Common Pleas of Lackawanna County, Pennsylvania. P. Br. 9. While the court that sentenced Petitioner in his criminal proceeding took many of the circumstances argued by Petitioner in this case into consideration in determining Petitioner's probationary period, that court was looking into Petitioner's danger to the community as a whole. One of the reasons they found to recommend probation was that, since his license had been suspended, the court was not concerned about Petitioner's getting back into the activity underlying his criminal conviction in the near future. I.G. Ex. 10/20. In this case, Petitioner is

seeking a shorter exclusion precisely in order to again serve people as a pharmacist. He is seeking to participate as a provider of goods and services to beneficiaries and recipients of the Medicare and Medicaid programs. The sentencing court concluded that it would take three years of supervision before it trusted Petitioner to interact unsupervised with the public in general. I do not find that a five year exclusion period is unreasonable in order for the Medicare and Medicaid programs to ascertain Petitioner's trustworthiness to serve the beneficiaries and recipients of these funds.

In this case, I find substantial reasons for a lengthy exclusion: 1) When Petitioner was authorized to sell and dispense controlled substances, he was put in a position of great trust. Petitioner abused that trust when he unlawfully, intentionally, and knowingly sold controlled substances to Detective Marrone. 2) Petitioner sold these controlled substances even though their illicit use might have potentially serious consequences for anyone receiving them. Thus, Petitioner put at risk those people for whom he, as a pharmacist, had the highest duty to protect. 3) As a pharmacist, Petitioner also knew how dangerous and addictive prescription drugs could be. Yet, he himself abused prescription drugs in order to relieve his stress and only sought help for his addiction after he was charged with criminal activity. 4) The sentencing court recognized how serious Petitioner's conduct was by placing him on probation for three years. FFCL 7. 5) Petitioner's license to practice pharmacy and his D.E.A. license were both revoked due to the gravity of his behavior. FFCL 18.⁴

⁴ On June 15 1989, Petitioner sold DePietro's Pharmacy to his wife for a nominal consideration. The I.G. has alleged that the sale of Petitioner's pharmacy to his wife was, in effect, a sham, and that Petitioner still effectively runs the pharmacy. The I.G. points out an inconsistency between what Petitioner told his sentencing court and his assertion in this proceeding that he is not involved in running the pharmacy. Petitioner denies this. I have not considered this evidence in reaching my decision. The I.G. has also argued that Petitioner sold the controlled substances in question at a price in excess of the market price. There is no evidence in the record that the controlled substances which Petitioner unlawfully sold in the January 29, 1988 transaction for which he pleaded guilty were sold in excess of market price. I have not considered this argument in making my decision. I.G. Ex. 1/2, 4 - 5.

None of the circumstances relied upon by Petitioner derogate from my conclusion that, in light of Petitioner's behavior and offense, he is an individual who should not be trusted to participate in the Medicare or Medicaid programs. The circumstances cited by Petitioner address elements of his case which show he is a relatively sympathetic individual with a strong family background of support and a great deal of remorse for what he has done to his family. While these factors had a bearing on the extent to which Petitioner was punished for his crime, they have little to do with the question of whether Petitioner can now or in the near future be trusted to dispense controlled substances to program beneficiaries. In the instant case, the period of exclusion imposed by the I.G. is necessary in order to protect the Medicare and Medicaid programs and to give Petitioner the time to show that he can again be trusted to provide items and services to program beneficiaries and recipients.

Petitioner requested that I change the beginning date of the exclusion so that it would run concurrent with Petitioner's probation period, as ordered by his sentencing court. However, an ALJ has no power to change the beginning date of the exclusion. See Samuel W. Chang, M.D., DAB App. 1198 at 9; Falah R. Garmo, DAB Civ. Rem. C-222 at 12 (1990).

CONCLUSION

Based on the evidence in this case and the law, I conclude that the I.G.'s determination to exclude Petitioner from participation in the Medicare and Medicaid programs for five years is reasonable and appropriate. Therefore, I am entering a decision in favor of the I.G. in this case.

IT IS SO ORDERED

/s/

Charles E. Stratton
Administrative Law Judge