

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

Derilyn Serrano-Bernacet
Docket No. A-16-52
Decision No. 2701
May 19, 2016

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

After reviewing the record to evaluate the issues presented in Petitioner, Derilyn Serrano-Bernacet's, appeal of the Administrative Law Judge (ALJ) decision in *Derilyn Serrano-Bernacet*, CR4517 (February 1, 2016), we have determined that we need not render a separate decision. We therefore decline review of and summarily affirm the ALJ's conclusions that the exclusion from participation in Medicare, Medicaid, and all federal health care programs pursuant to section 1128(a)(3) of the Social Security Act (Act) was authorized and that the length of the exclusion (five years) is reasonable under the statute, the regulations, and Board precedent.*

* Petitioner pled guilty to, and was convicted of, misbranding and adulterating prescription medications with the intent to mislead and defraud in violation of 21 U.S.C. §§ 331(k), 333(a)(2), 351(a)(2)(A) and (B), and 352(a), (b), and (o). We note that the penalty for a violation of 21 U.S.C. § 331 "with the intent to defraud or mislead" is imprisonment for not more than three years or a fine not more than \$10,000, or both. 21 U.S.C. § 333(a)(2). Under the federal sentencing classification of offenses in 18 U.S.C. § 3559(a), an offense that carries an imprisonment penalty of a maximum of less than five years but more than one year is considered a Class E felony. Before the Board, Petitioner does not dispute that she was convicted of a felony that forms the basis for her exclusion pursuant to section 1128(a)(3) of the Act.

Thus, the ALJ 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). 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* Act §§ 1128(f)(1) and 205(g); 42 C.F.R. § 1005.21(k)(1).

/s/

Sheila Ann Hegy

/s/

Christopher S. Randolph

/s/

Susan S. Yim
Presiding Board Member