

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Social Security Administration,)	Date: November 14, 2007
Office of the Inspector General,)	
)	
- v. -)	Docket No. C-07-410
)	Decision No. CR1690
Rebecca Harn Walther,)	
)	
Respondent.)	

DECISION

In applying for benefits under the Social Security program, Respondent Rebecca Harn Walther claimed that disabilities prevented her from employment. After the Social Security Administration (SSA) determined that she was eligible for benefits, Respondent continued to sign SSA forms declaring that she was unemployed and unable to work. An investigation revealed, however, that Respondent was the owner and operator of her own business. The Inspector General (IG) for SSA now charges that Respondent misrepresented her employment status on two SSA forms in violation of section 1129 of the Social Security Act (Act). SSA proposes imposing against Respondent a \$10,000 civil money penalty (CMP) and an assessment of \$52,393, representing the amount of benefits Respondent allegedly improperly received.

For the reasons set forth below, I agree that Respondent knowingly misrepresented material facts to SSA for its use in determining her eligibility for benefits, and, accordingly I sustain against Respondent the CMP of \$10,000 and assessment of \$52,393.

I. Background

I hear and decide this case pursuant to section 1129 of the Social Security Act (Act). Section 1129(a)(1) of the Act authorizes the I.G. to impose civil money penalties and an assessment against any person who:

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under [Social Security] or benefits under [other programs including Medicare], that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of . . . benefits or payments under title . . . XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading

See also 20 C.F.R. § 498.102(a) (authorizing the IG to impose a penalty against any person who has made a statement or representation of a material fact for use in determining any initial or continuing right to or amount of Title II or Title XVI benefits, and who knew, or should have known, that the statement or representation was false or misleading, *or* who omitted a material fact, *or* who made such a statement with “knowing disregard for the truth.”)

The Act defines a “material fact” to be a fact that the Commissioner of Social Security may consider in evaluating whether a person is eligible for Social Security or other benefits. Act, section 1129(a)(2).

The Commissioner of Social Security has delegated to the IG the authority to impose civil money penalties of not more than \$5,000 for each statement or representation that contravenes section 1129(a)(1) and, in addition, an assessment in lieu of money damages of not more than twice the amount of benefits paid as a consequence of such statement or statements. Act, section 1129(a)(1).

On March 5, 2007, the IG notified Respondent of his intent to impose a CMP of \$10,000 and an assessment of \$52,393 against her based on false statements made by Respondent relating to her work activity while receiving Social Security disability benefits. Respondent requested a hearing and the case was assigned to me for a hearing and a

decision. On May 30, 2007, I held a pre-hearing conference at which I set a briefing schedule for the parties. The IG subsequently submitted a brief with 15 exhibits which are identified as SSA Ex. 1 - SSA Ex. 15. Respondent, acting *pro se*,¹ responded with a submission primarily centering on her inability to repay any funds to SSA.²

In her hearing request Respondent suggested that, because of her health, she would prefer not to leave her house to attend an in-person hearing. At the pre-hearing conference, I advised the parties that I would review their submissions to determine whether an in-person hearing was necessary. May 31, 2007 Order. After reviewing the parties' submissions, I determine that an in-person hearing is not necessary to decide this case.

II. Issues

The issues in this case are:

1. Did Respondent deliberately make false or misleading statements, as are described at section 1129(a)(1) of the Act, concerning her eligibility for Social Security disability benefits, and
2. If she made such statements, are the proposed penalty and assessment reasonable?

III. Discussion

A. Respondent deliberately made false or misleading statements concerning her eligibility for disability benefits.³

At issue in this case are two statements made by Respondent to SSA concerning her work activity. I find that these statements are deliberately false and misleading as to material facts. In making these statements Respondent concealed from SSA work or work-related

¹ I advised Respondent that she had a right to counsel to represent her in this matter and afforded her ample time to engage an attorney. Respondent asked that this office provide her an attorney free of charge, but I have no authority to do so.

² Respondent made her submission by electronic mail on October 17, 2007. In that submission Respondent stated that she would be sending additional material by mail. As of the date of this decision, however, I have received nothing further from Respondent.

³ I make findings of fact and conclusions of law (findings) to support my decision in this case. I set forth each finding, in italics, as a separate heading.

activity that she performed during the period when she received Social Security disability benefits thereby depriving SSA of information that it needed in order to evaluate whether she was eligible to receive such benefits.

On February 24, 1999, Respondent applied for Social Security disability benefits, completing the SSA form, *Application for Disability Insurance Benefits*. SSA Ex. 2. SSA, using this form, approved Respondent for benefits beginning June 1999. Also on February 24, 1999, Respondent completed the SSA form, *Disability Report - Adult*, in which she listed her work activity as an advertising agent and stated that she had stopped working on August 15, 1997, due to the advancement of her liver disease. SSA Ex. 3, at 2. On April 18, 2001, Respondent executed another SSA form, *Report of Continuing Disability Interview*, in which she stated that she was unable to return to work. SSA Ex. 5. On April 12, 2002, Respondent executed another SSA form, *Reconsideration Report for Disability Cessation*, in which Respondent repeated that she was unable to return to work. SSA Ex. 6.

Yet at the time Respondent was executing the above SSA forms certifying that she was not working and was unable to work, she was the owner and operator of Rebecca Advertising & Public Relations in Savannah, Georgia. SSA Ex. 8, at 2. Respondent acknowledged that she profited at least \$2,100 a month from January 1999 to May 2002 from her company. SSA Ex. 1. As stated above, Respondent began receiving benefits in June 1999.

The two false statements for which SSA is imposing the \$10,000 CMP are the statements Respondent made on SSA forms in April 2001 and April 2002. The proposed assessment of \$52,393 represents the amount of the overpayments of benefits that Respondent owes SSA.

In her October 17, 2007 submission by electronic mail, Respondent has equivocated as to her liability for the funds sought by SSA, stating –

My memory and recollection of events relating to my company's business that took place shortly before and for several years after my liver transplant in April 1999 are very poor, making it impossible for me to admit liability or the truth of the contents in [SSA's March 5, 2007 notice letter], particularly the allegation that I engaged in substantial gainful activity within the meaning of the law after April 1999.

Yet some four years earlier in June 2003, when the events in question were relatively recent and her memory of the events was presumably better, Respondent acknowledged liability in that she admitted to SSA investigators that she had received income from her company during the period she was certifying to SSA that she was unable to work:

I, Rebecca Harn, profited at least \$2,100 per month from 1/99 to 5/02 from my company. I knew I was supposed to tell SSA about this work activity, but I did not. I made false statements to SSA from 2/99 to 5/03 so that SSA would not find out about my work activity.

SSA Ex. 1.

Thus, in *all* the statements Respondent made to SSA since her application for benefits in February 1999, not just the two cited by SSA as the basis for the CMP, Respondent was untruthful. Accordingly, I have no difficulty in finding that Respondent made false or misleading statements concerning her eligibility for SSA benefits. Additionally, I find that the misrepresentations were of a material fact within the meaning of section 1129(a)(1) of the Act, in that Respondent's income, if accurately reported by Respondent, would certainly have affected her eligibility to receive or continue to receive the benefits she claimed from SSA.

B. The IG proposes a reasonable penalty against Respondent.

The statute authorizes imposition of a CMP of "not more than \$5,000 for each such statement or representation," and an "assessment, in lieu of damages . . . of not more than twice the amount of benefits or payments paid as a result of such a statement or representation." Act, section 1129(a)(1); 20 C.F.R. §§ 498.103(a), 498.104.

I now apply the regulatory criteria to assess the appropriateness of the penalty. I am specifically authorized to affirm, deny, increase, or reduce the penalties proposed by the IG. 20 C.F.R. § 498.220. In determining the appropriateness of the penalty, I must take into account: 1) the nature of the statements and representations and the circumstances under which they occurred; 2) the degree of culpability of the person committing the offense; 3) the history of prior offenses of the person committing the offense; 4) the financial condition of the person committing the offense; and 5) such other matters as justice may require. 20 C.F.R. § 498.106.

Under the first three criteria, Respondent deliberately made false statements to obtain Social Security benefits and continued to make false statements over a period of years in order to keep receiving these benefits. The penalties SSA proposes are unquestionably appropriate under these circumstances.

In imposing a \$10,000 CMP, I am, however, troubled by Respondent's financial condition. In her hearing request, Respondent claimed that her monthly expenses exceeded her monthly income by \$537. She claims that she currently has no funds with which to pay the CMP. But Respondent has the burden of proving by a preponderance of the evidence that her financial condition prevents her from being able to the pay the

penalties she is facing here. *Clara Stone*, DAB CR1081, at 28 (2003). Respondent has offered mere assertions about her financial condition, listing her monthly expenses. Her statements allude to some assets (dividends from stocks, monthly payment to 401K account, a house, cars), but, aside from claiming these assets are insufficient and subject to liens by other entities, Respondent does not describe them with any specificity. Respondent's hearing request, first attachment. She did not provide any financial records, such as bills or tax returns, to support her claims of financial hardship. Mere assertions, without complete information concerning Respondent's total resources, are insufficient to provide me a basis for finding that Respondent is unable to pay the penalties SSA is proposing. *See Anthony Koutsogiannis*, DAB CR1569, at 12 (2007).

Even accepting Respondent's unsupported claims as to her financial condition, I would have to justify the penalty. Over a period of years, Respondent deliberately deceived SSA. Such repeated conduct merits a significant penalty. Moreover, SSA questioned Respondent's veracity about her financial condition, arguing that Respondent deliberately overstated the cost of her prescription drugs on a financial disclosure form completed shortly before SSA proposed the penalty at issue here. SSA Ex. 12, at 5 - 7.

In addition, SSA acknowledges that Respondent is a likely candidate to receive Social Security benefits in the future. SSA Brief at 15. Presumably any benefits that Respondent is entitled to receive could be offset by the CMP and the assessment.

Finally, inasmuch as SSA is seeking an assessment of only an amount equal to the amount of the benefits Respondent improperly received, I find no basis for lowering the amount of either the CMP or the assessment.

IV. Conclusion

Respondent violated section 1129 of the Act when she knowingly misrepresented material facts to SSA for its use in determining her eligibility for Title XVI benefits. I consider reasonable the imposition of a \$10,000 CMP and an assessment of \$52,393.

/s/
Carolyn Cozad Hughes
Administrative Law Judge