

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Maryland Department of Human Resources
Docket No. A-06-65
Decision No. 2150

DATE: January 28, 2008

DECISION

The Maryland Department of Human Resources (Maryland) appealed a determination by the Administration for Children and Families (ACF) that Maryland is subject to a financial penalty that would reduce its funding for the Temporary Assistance for Needy Families (TANF) program under title IV-A of the Social Security Act (Act). ACF determined that a penalty was authorized because Maryland's child support enforcement program under title IV-D of the Act failed to submit complete and reliable data needed to determine its performance at establishing paternity during federal fiscal years (FFYs) 2003 and 2004. The amount of the penalty is \$1,573,037, or 1% of Maryland's adjusted TANF funding for FFY 2003. As discussed below, we uphold ACF's determination.

Case history

This appeal was stayed at the request of the parties pending resolution of the appeal in federal court of Alabama Dept. of Human Resources, et al., DAB No. 1989 (2005), in which the Board sustained ACF's imposition of earlier penalties on nine other States for failure to achieve required IV-D performance levels during FFYs 2001 and 2002 and/or to submit complete and reliable data needed to calculate performance during those years. The parties requested the stay on the basis that this appeal raises the same issues that were raised in Alabama. On March 22, 2007, the Federal District Court for the District of Columbia affirmed the Board's decision in Alabama Dep't of Human Resources, et al. v. U.S. Dep't of Health and Human Services, 478 F.Supp.2d 85 (D.D.C. 2007), and the States did not appeal the court's decision.

In this appeal, Maryland argues that it received neither the notice set forth in ACF's regulations nor the corrective action

year embodied in the penalty provisions in the statute and applicable regulations. These are the same arguments that the nine States made jointly and the Board rejected in Alabama, which was affirmed by the district court. See also Nevada Dept. of Human Resources, DAB No. 1995 (2005), aff'd, Nevada v. Leavitt, No. 05-00697-HDM-VPC (D. Nev. Dec. 28, 2006); Indiana Family and Social Services Administration, DAB No. 2001 (2005), aff'd, Alabama Dep't of Human Resources, et al.; Puerto Rico Dept. of the Family, DAB No. 1993 (2005), appeal pending; and Virgin Islands Dept. of Justice, DAB No. 2003 (2005) (addressing and finding in ACF's favor on the notice and corrective action year issues, as well as on other issues). Maryland's brief "incorporated substantial portions of the [nine States'] Joint Submission" in Alabama and repeated some parts of the Joint Submission verbatim, in order "to preserve the arguments for appeal pending disposition of the judicial review proceedings arising out of DAB Decision No. 1989." Maryland Brief (Br.) at 2-3.

In an order dated December 7, 2007, the Board instructed Maryland to show cause why the Board should not issue a decision in this appeal based on the Board's previous decisions and the related court decisions, cited above. By letter dated December 26, 2007, Maryland stated that it did not intend to file any additional submissions at that time and expected that the Board would proceed to a decision.

Analysis

Maryland does not assert that the Board's analysis in Alabama of the common issues relating to notice and the corrective action year was incorrect. Thus, we adopt that analysis and incorporate it by reference, addressing here only issues unique to Maryland.

Maryland provided information to support its position that it was prejudiced by lack of timely notice from ACF regarding the nature of Maryland's data errors. Maryland asserts that it had only three months of FFY 2004 left for corrective action after receiving official notice of the errors that caused it to fail to meet the 95 percent standard for data reliability for FFY 2003. Specifically, Maryland provided an affidavit to show that-

- Because of the short period for correction, Maryland needed to focus its efforts on correcting errors caused by duplicate reporting of IV-D cases (which accounted for nine out of the 10 errors ACF auditors had identified in a sample of 50 cases from FFY 2003).

- The other identified error in Maryland's FFY 2003 data was in reporting that paternity of a child had been established in that year, when in fact paternity had not been established.
- Only three of the eight errors identified in ACF's audit of 50 cases for FFY 2004 involved Maryland again erroneously reporting that paternity had been established, and the other five errors were of a different type not present in the data for FFY 2003; there was not sufficient time to take comprehensive corrective action to correct the conditions that gave rise to those other errors.
- If it had not been for those three repeated errors, Maryland would have met the 95 percent data reliability standard for FFY 2004.

Maryland Ex. 8. Maryland also argues that because it corrected the conditions giving rise to most of the errors cited in the audit of the reliability of its FFY 2003 data, "it cannot be said that Maryland 'failed to correct the deficiency cited in the notice during the corrective action year' within the meaning of 45 C.F.R. § 305.66." Maryland Br. at 3.

We reject these arguments, for the following reasons:

- Maryland does not cite to anything in the applicable statute or regulations indicating that the type of data error matters in determining whether the data reliability standard is met. The "deficiency" that Maryland was required to correct was its failure to submit reliable data for FFY 2003. The regulations subject states to penalties for failure to submit reliable data (and/or meet the required IV-D performance levels) for two consecutive years, without regard to the type of data error that caused the unreliability. 45 C.F.R. § 305.61. Maryland's failure to submit reliable data meant that Maryland did not show that it met the required level of performance at establishing paternity for FFYs 2003 and 2004.
- Maryland acknowledges that it was informed, in June 2004, of the type of errors found in ACF's audit of the reliability of Maryland's FFY 2003 data. Maryland Ex. 8; see Maryland Exs. 5, 7 (draft and final audit reports, both issued in June 2004). Maryland's data submission for FFY 2004 was not due until December 31, 2004. 45 C.F.R. § 305.32(f). Thus, Maryland in fact had more than three months to take

corrective action to assure that the data it submitted for FFY 2004 were reliable.

- All of the errors identified in the FFY 2004 data could be viewed as incorrect entry of data related to establishing paternity. In addition to the three cases erroneously reported as having had paternity established when it had not been established, four others were reported as having had paternity established in 2004, when it had been established in 2003, and the other case had been reported as a child born out of wedlock when the child was born in wedlock. Maryland Ex. 10, FFY 2004 data reliability audit report at 4. Also, Maryland knew at the very least that it had a problem with reporting paternity in the correct year, since the audit of FFY 2003 data had found that some children for whom paternity was established in FFY 2002 were also reported as children for whom paternity was established in FFY 2003. Maryland Ex. 7, FFY 2003 data reliability audit report at 5.
- Maryland does not provide any information that would indicate that it needed to take different steps to correct errors in entering data, depending on the type of data being entered. The data reliability audit report for FFY 2003 described the error in reporting whether paternity had been established as a "data input error." Id. In response to the draft audit report setting out that finding, Maryland agreed generally to take steps "to ensure that data is correctly entered" into its system. Maryland Ex. 5, Maryland response at 2. That Maryland focused its efforts on systemic errors may be understandable, but Maryland cannot reasonably attribute its failure to submit reliable data for FFY 2004 to lack of notice of the specific types of data entry errors that would be made in that year.

Accordingly, we see no reason to reach a different result in this case based on the additional argument and information Maryland provided. We therefore sustain ACF's determination that Maryland is subject to a penalty.

Conclusion

For the reasons stated above or incorporated by reference, we uphold ACF's determination imposing a penalty on Maryland of \$1,573,037 for failure to submit complete and reliable data needed to determine its performance at establishing paternity during FFYs 2003 and 2004.

_____/s/
Sheila Ann Hegy

_____/s/
Constance B. Tobias

_____/s/
Judith A. Ballard
Presiding Board Member