

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Social Security Administration,

v.

Latoshia Walker-Mays,

Respondent.

Docket No. C-10-44

Decision No. CR2243

Date: September 17, 2010

**DECISION**

I sustain the determination of the Social Security Administration Inspector General (SSA I.G.) to impose a civil money penalty of \$61,000 against Respondent, Latoshia Walker-Mays. The SSA I.G. proved with overwhelming evidence that Respondent knowingly made at least 13 false statements, along with numerous deliberate and material omissions of fact, to the Social Security Administration to support her claim that her daughter was eligible to receive Supplemental Security Income (SSI) benefits. Respondent engaged in a pattern of false statements and deception over a period of more than four years, resulting in SSI payments of more than \$20,000 on behalf of her daughter to which she was not entitled. The egregiousness of Respondent's conduct, coupled with the complete absence of mitigating evidence, more than justifies the substantial civil money penalty that I impose.

**I. Background**

This case was assigned to me for a hearing and a decision after the SSA I.G. notified Respondent of his determination to impose the civil money penalty that I describe in the opening paragraph of this decision, and Respondent requested a hearing to challenge that determination. I held an in-person hearing by telephone on July 12, 2010. At the

hearing, I received exhibits from the SSA I.G. that I identified as OIG Ex. 1 – OIG Ex. 25. I received exhibits from Respondent that I identified as R. Ex. 1 – R. Ex. 2. I afforded the parties the opportunity to file post-hearing briefs. Each party filed a brief.

## **II. Issues, Findings of Fact, and Conclusions of Law**

### **A. Issues**

The issues in this case are whether:

1. Respondent knowingly made materially false statements or omissions of fact to the Social Security Administration to obtain SSI benefits for her daughter.
2. A civil money penalty of \$61,000 is reasonable.

### **B. Findings of Fact and Conclusions of Law**

I make the following findings of fact and conclusions of law (Findings).

- 1. Respondent knowingly made materially false statements or omissions of fact to the Social Security Administration to obtain SSI benefits for her daughter.*

The SSA I.G. brought this case against Respondent pursuant to section 1129 of the Social Security Act (Act). This section of the Act, and implementing regulations, authorize the imposition of a civil money penalty against any person who:

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 title II [Social Security] or benefits or payments under title VIII or XVI [SSI], that the person knows or should know is false or misleading . . . 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 payments under title VIII or 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.

Act § 1129(a)(1); *see* 20 C.F.R. § 498.102

A material fact is any fact that the Commissioner of Social Security may consider as relevant in evaluating whether an individual is entitled to Social Security benefits or eligible for SSI payments. Act § 1129(a)(2); 20 C.F.R. § 498.101.

SSI is a program that gives payments to eligible individuals. Payments may include payments that are made on behalf of a child who is medically disabled. Eligibility for such payments depends on very strict income and resource requirements being met. A child whose family does not meet these strict requirements is not eligible for SSI payments even if he or she meets the medical disability criteria.

The SSA I.G. presented compelling evidence proving that Respondent consistently and materially misrepresented the truth about her and her daughter's living arrangements to show income and resources that satisfied SSI eligibility criteria. For a more than four year period, beginning in 2003 and continuing into 2008, Respondent repeatedly misrepresented where she and her daughter lived and the composition of their household. Respondent repeatedly stated on forms that the Social Security Administration used to determine eligibility for SSI payments that she and her daughter, Stefiana, resided exclusively with Stefiana's siblings at Respondent's parents' residence in Trenton, Tennessee. Respondent consistently failed to reveal that she maintained another residence, a three-bedroom two-bath apartment in Milan, Tennessee, which she and her husband shared along with Respondent's three children. These misrepresentations were material, because they greatly understated the income and resources available to Respondent. The Social Security Administration failed to count this income and resources in calculating Stefiana's eligibility for SSI, and, as a result, she received payments for which she was not eligible.

The documentary evidence that supports the I.G.'s case includes the following:

- *Statements for Determining Continuing SSI Eligibility signed by or attested to by Respondent.* OIG Ex. 1 – OIG Ex. 5; see OIG Ex. 22 at 3. These documents contain statements or attestations concerning Stefiana's living arrangements. In each of these documents Respondent certified that Stefiana resided at 9 Arthur Hopper Road in Trenton, Tennessee with Respondent and Stefiana's siblings. In each of these documents Respondent also listed the names of individuals who were purportedly living together at the Trenton domicile. Respondent consistently asserted that Stefiana lived with her at her parents' Trenton residence (9 Arthur Hopper Road), with the exception of the period running between March 2001 and February 2002 during which Respondent asserted that Stefiana lived at another address in Trenton. In all of these documents, Respondent failed to inform the Social Security Administration that she and her family maintained an apartment in Milan, Tennessee, another community located miles away from the Arthur Hopper Road residence in Trenton, and that she spent much of her time living at the Milan residence with her family.

- *Documents relating to Respondent's residence in Milan, Tennessee.* These documents include apartment applications and associated leases for a three-bedroom, two-bath apartment known as the Meadows of Milan, 4051 Reasons Boulevard, Unit 305, Milan, Tennessee. OIG Ex. 6; OIG Ex. 9; OIG Ex. 11; OIG Ex. 13. Each application and lease listed who would be living at the apartment. These residents included Respondent, her husband Jerel Mays, Stefiana, and Stefiana's siblings. These documents included household income certification forms showing the family's total combined income. OIG Ex. 6 at 3; OIG Ex. 9 at 5; OIG Ex. 11 at 3; OIG Ex. 13 at 4.

Even a cursory examination of these documents establishes a gross disparity between what Respondent told the Social Security Administration about her living arrangements and her family structure and her actual living arrangements and family structure. Based on the lease applications and leases that Respondent completed and signed, Respondent did not, as she asserted, live exclusively with her daughter at her parents' residence. Rather, she, her children, and her husband maintained another residence consisting of a rental apartment in a different community that is miles away from the residence that she told the Social Security Administration that she lived in exclusively.

Closer examination of the foregoing documents establishes that Respondent uttered a series of falsehoods to the Social Security Administration. In her Statements for Continuing Disability, Respondent made the following statements:

- In her January 13, 2005 statement, Respondent stated that, as of July 29, 2004, Stefiana lived at 9 Arthur Hopper Road in Trenton, Tennessee. OIG Ex. 3 at 1, 2.
- In the same document, Respondent attested that the household in which Stefiana lived included her mother (Respondent), her grandparents, and three siblings. *Id.* at 2-3.
- In the same document, Respondent stated that the address of her own residence was 9 Arthur Hopper Road. *Id.* at 1-2.
- In her November 1, 2005 statement, Respondent again attested that, as of July 29, 2004, Stefiana lived at the Arthur Hopper Road address in Trenton. OIG Ex. 4 at 2.
- In this same document, Respondent attested that the household in which Stefiana lived included Stefiana's mother (Respondent), her grandparents, and three siblings. *Id.* at 2-3.

- In the same document, Respondent stated that, as of September 2, 2005, Stefiana continued to reside at the Arthur Hopper Road address in Trenton. *Id.*
- In the same document, Respondent stated falsely that she lived at the Arthur Hopper Road address in Trenton. *Id.* at 4-5.
- In her October 31, 2007 statement, Respondent again stated that Stefiana, as of September 2, 2005, continued to live at the Arthur Hopper Road address. OIG Ex. 5 at 2.
- In the same document, Respondent stated that the household in which Stefiana lived included Stefiana's mother (Respondent), her grandparents, and her three siblings. *Id.* at 2-3.
- In the same document, Respondent attested that, as of November 1, 2007, Stefiana continued to reside at the Arthur Hopper Road address. *Id.* at 2-3.
- In the same document, Respondent again attested that the household in which Stefiana lived included her mother (Respondent), her grandparents, and her three siblings. *Id.* at 2-3.
- In the same document, Respondent stated that her home address was the Arthur Hopper Road address. *Id.* at 4.

Each of these documents contained a statement in which Respondent avowed that what she said was true:

You declared under penalty of perjury that all of the information on this summary is true and correct to the best of your knowledge. Anyone who knowingly gives a false or misleading statement about a material fact in a redetermination, or causes someone else to do so, commits a crime and may be sent to prison or may face other penalties, or both.

*See, e.g.,* OIG Ex. 5 at 5.

The disparity between what Respondent told the Social Security Administration to qualify her daughter for SSI payments and what she said in other documents is striking. In 2003, 2005, 2006, and 2007, Respondent and her husband completed and signed applications to rent an apartment in Milan, Tennessee. OIG Ex. 6; OIG Ex. 9; OIG Ex. 11; OIG Ex. 13. On each of these applications Respondent and her husband listed themselves along with their children, including Stefiana, as residents of the apartment. *Id.* They listed the Arthur Hopper Road address on the 2003 and 2007 applications as an

emergency contact address. On the 2003 application, Respondent stated that she paid her mother \$200 per month for childcare expenses. OIG Ex. 6 at 2.

Respondent and her husband completed Tennessee Housing Development Household Income Certification forms, apparently to qualify for subsidized rent. On each of these forms, Respondent and her husband listed themselves along with their children, including Stefiana, as residents of the Milan address. OIG Ex. 6 at 1, 3; OIG Ex. 9 at 1, 3, 5; OIG Ex. 11 at 1, 3; OIG Ex. 13 at 1, 2, 4.

Respondent and her husband signed leases for the Milan address covering the years between 2003 and 2008. In the leases, they listed themselves along with their children, including Stefiana, as residents of the Milan address. OIG Ex. 7; OIG Ex. 10; OIG Ex. 12; OIG Ex. 14; *see* OIG Ex. 8. The lease Respondent and her husband signed in September 2003 contained the following statement, which Respondent and her husband acknowledged by signing the lease:

The Resident(s) must live in the unit and the unit must be the Resident(s) only place of residence. The Resident(s) shall use the premises only as a private dwelling for himself/herself and the individuals listed below.

OIG Ex. 7 at 1. On each lease, the “individuals listed below” included Respondent, her husband, and their children, including Stefiana. OIG Ex. 7; OIG Ex. 10; OIG Ex. 12; OIG Ex. 14; *see* OIG Ex. 8.

Testimony strongly corroborates the documentary evidence. Among the witnesses that the SSA I.G. called was Ms. Pat Long, the former property manager of the Meadows of Milan during 2007 and 2008. Ms. Long testified that she inspected the apartment that Respondent and her husband leased on at least 20 occasions during 2007 and 2008. OIG Ex. 24. Ms. Long saw both Respondent and her husband at the apartment along with their children, although she did not recall seeing Stefiana there. Transcript (Tr.) at 15. However, Ms. Long recalled seeing a wheelchair in the apartment, which would have been consistent with Stefiana’s presence at the address at least part of the time. Tr. at 21.

The SSA I.G. also produced the testimony of Ms. Jennifer Simer, the current property manager of the apartment complex in Milan, Tennessee. OIG Ex. 23. Ms. Simer testified that the facility’s records show that Respondent and her husband resided there between 2003 and 2008. Tr. at 27.

Finally, the SSA I.G. called Ms. Pamela Mabry, an SSI technical expert with the Social Security Administration. OIG Ex. 22. Ms. Mabry testified that Respondent had claimed during three SSI reviews of her case that were conducted on January 13, 2005, November 1, 2005, and October 31, 2007, that she and her children lived at the Arthur Hopper Road address in Trenton, Tennessee. *Id.* at 3. Ms. Mabry testified that, in March 2008, she

discovered that Respondent and her husband shared the Milan address. *Id.* at 3-4. She determined that employer's records for both Respondent and her husband showed them living at the Milan address. *Id.*

I find the testimony of all three of these witnesses to be highly credible. None of these witnesses had any interest in telling anything other than the truth.

The evidence and arguments that Respondent presented to counter the SSA I.G.'s case are not persuasive. Respondent contends that she apprised the Social Security Administration that she maintained dual residences. It is unclear what Respondent is referring to, because she has provided no proof of any communication between her and the Social Security Administration about her household status other than that which the SSA I.G. offered as evidence. Ms. Mabry testified that it was not until January 15, 2008 that Respondent acknowledged to the Social Security Administration that she maintained two households. OIG Ex. 22 at 3. The fact that Respondent may have acknowledged her dual residences after years of concealing that information is of no benefit to Respondent.

Respondent argues also that she did not live with Jerel Mays, her husband, in a marital relationship and that they maintained the Milan apartment only as a convenience. I find this assertion not to be credible, because Respondent has offered no explanation why such an arrangement would benefit anyone. Respondent's assertion provides no answer to the following questions. Why would Respondent agree to pay rent on an apartment that she did not use? Conversely, why would her husband agree to pay rent on an apartment for himself, his wife, and their children, if the wife and children were not going to reside there? Furthermore, Respondent did not explain how this allegedly unorthodox living relationship would have relieved her of the obligation to be truthful to the Social Security Administration when she provided it with information about her place of residence, her income, and the resources that were available to her.

Significantly, Respondent admitted that she signed a lease for the Milan address. She did not deny that she lived there at least part of the time, or that her husband's income and resources were available to her family. Respondent did not offer any explanation as to why she failed to provide information to the Social Security Administration about her alleged dual residence when she was asked directly about her living arrangements.

Respondent argues that her apartment in Milan was on the third floor, thereby precluding Stefiana from living there. But, she has presented no evidence showing that Stefiana is incapable of climbing to the third floor. Moreover, the fact that a wheelchair was present in the Milan apartment is strong evidence that Stefiana lived there at least part of the time. Tr. at 21.

Respondent presented the testimony of Ms. Wendy Gilliam, an individual who resided at the Arthur Hopper Road home as a foster child between 2003 and 2005. Ms. Gilliam's

testimony hurt Respondent's case more than it helped it, because it corroborated the SSA I.G.'s assertions that Respondent resided at the Milan apartment. Ms. Gilliam admitted that she stayed in the Milan apartment with Respondent during the week. Ms. Gilliam acknowledged that she babysat for Respondent and her children at the Milan apartment. Tr. at 43-44.

Ms. Gilliam averred that Stefiana generally did not reside at the Milan apartment, although she acknowledged that Stefiana came there from time to time. Tr. at 44. This assertion does not benefit Respondent, assuming that it is true, because the fact that Respondent may have lived separately from Stefiana much of the time does not justify Respondent's concealing the Milan apartment and her relationship with her husband from the Social Security Administration.

Respondent asserts also that Stefiana attended school in Trenton, Tennessee, near the Arthur Hopper Road address. That fact is not inconsistent, however, with the evidence showing that Respondent maintained an apartment in Milan, nor is it inconsistent with evidence showing that Stefiana spent at least part of the time there.

Finally, Respondent claims that she is the victim of retaliation by the Social Security Administration – provoked by Ms. Mabry – in retaliation for a complaint that she made about Ms. Mabry in the past. There is simply no evidence to support this claim.

Considered in its entirety, the evidence supports the conclusion that Respondent repeatedly misrepresented and uttered falsehoods about her living arrangements, as well as those of her daughter Stefiana. It may be that Stefiana spent part of the time – or even the majority of it – living with her grandparents at the Arthur Hopper Road address. But, that does not detract from the overwhelming proof that Respondent maintained two residences, spent time living at both of them, had access to the income and resources of her husband, and failed to report any of this information to the Social Security Administration.

The misrepresentations made by Respondent in her statements concerning continued SSI eligibility were material in two respects. First, in stating that she lived with her children at the Trenton address, Respondent told the Social Security Administration that she was a single parent who lived without the benefit of the support of a husband. These statements were a series of falsehoods that created an image of Respondent's material circumstances that differed greatly from reality and which greatly understated the resources that were available to her and her family. Second, in omitting to tell the Social Security Administration about her true residence and family situation, Respondent concealed facts showing the actual extent of her family's income and resources.



***2. A civil money penalty of \$61,000 is reasonable.***

The overwhelming evidence in this case is that Respondent repeatedly and egregiously falsely represented to the Social Security Administration her living arrangements and her resources to qualify her daughter for SSI payments. During the more than four year period that is at issue here, Respondent received SSI payments of more than \$20,000 on her daughter's behalf, money that she would not have been eligible to receive had Respondent stated truthfully her places of residence and her resources. I have itemized 13 false statements that Respondent made to the Social Security Administration during the period. That represents only an element of Respondent's misrepresentation, because, during the entire period that is at issue, Respondent continually omitted to inform the Social Security Administration of the true nature of her living arrangements and resources.

The Act authorizes a civil money penalty of \$5,000 for each willful misrepresentation or false statement that an individual makes to the Social Security Administration in connection with an application for, or continuation of, Social Security benefits or SSI. Act § 1129(a)(1). The civil money penalty that the SSA I.G. seeks in this case is considerably less than the maximum money damages that the law permits. The 13 separate false statements uttered by Respondent and proven by the SSA I.G. would, by themselves, justify a civil money penalty of up to \$65,000. Respondent's material omissions would justify the imposition of a civil money penalty substantially in excess of \$65,000. The law also permits an assessment of double the amount of benefits or payments made as a consequence of an individual's materially false statements or omissions. In this case, that amount would be more than \$40,000. Consequently, the total amount of penalty and assessment that the SSA I.G. might have proposed would be well over \$100,000.

However, even the reduced penalty amount that the SSA I.G. proposes is substantial. In deciding whether this penalty amount is reasonable, I must consider factors that include: (1) the nature of Respondent's false statements or misrepresentations and the circumstances under which they were made; (2) the degree of her culpability, her history of prior offenses, and her financial condition; and (3) such other matters as justice may require.

I conclude that the penalty is reasonable here for the following reasons. First, Respondent clearly intentionally uttered her false statements and omitted critical information to deceive the Social Security Administration. It is evident that Respondent intended to conceal a living arrangement and access to resources that she knew would have rendered her daughter ineligible for SSI benefits, had the information been truthfully reported. Indeed, Respondent has offered no plausible honest explanation – or even an explanation at all – for concealing her living arrangement and her relationship with her husband that would undercut my conclusion that she misstated this arrangement

and relationship deliberately. Second, Respondent uttered her falsehoods over a period of more than four years. The persistence with which Respondent deceived the Social Security Administration, and the obviously intentional quality of her false statements, is persuasive evidence of a very high degree of culpability.

Respondent argues that her financial condition precludes her from paying the penalty. However, the evidence proves otherwise. She has purchased a home in Medina, Tennessee. She is presently employed with a salary of \$32,000 per year. She presently receives child support from her husband and receives financial support from Stefiana's father as well. Respondent has offered no evidence proving that she lacks the financial wherewithal to pay the penalty amount. She has not offered any proof as to the degree of her indebtedness.

/s/

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Steven T. Kessel  
Administrative Law Judge