

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

The Inspector General of the Social Security Administration,

v.

Gregory F. Antone,

Respondent.

Docket No. C-15-652

Decision No. CR4051

Date: July 20, 2015

DECISION

I impose civil money penalties against Respondent, Gregory F. Antone, totaling \$31,000 plus an assessment of \$87,414.07. The penalties and assessments, in combination, are but a fraction of the maximum allowed by law and I find them to be reasonable under the circumstances of this case.

I. Background

This is an action brought by the Inspector General of the Social Security Administration (SSA I.G.), Petitioner, to impose penalties and an assessment against Respondent based on his false reporting of information to SSA concerning his eligibility for Supplemental Security Income (SSI). On April 21, 2015, I entered a ruling in favor of the SSA I.G. granting it partial summary judgment on the issue of liability. Ruling Granting in Part the SSA-OIG's Motion for Summary Judgment and Directing Respondent to Comply With Discovery Request (Ruling). I held in my Ruling that undisputed facts established that, over a period of 62 months, Respondent had knowingly made or perpetrated false statements to SSA concerning his resources. More specifically, I held that Respondent had failed deliberately to disclose that he was residing with his spouse in a home that they owned jointly.

I reserved judgment on the issue of remedy. I noted in my ruling that the SSA I.G. had not briefed the remedy issue in its motion and that Respondent had not had the opportunity to defend against any arguments that the SSA I.G. might make. I ordered the parties to complete their pre-hearing exchanges on the remedy issue.

The SSA I.G. subsequently filed a brief addressing the issue of remedy plus supporting exhibits that augment the exhibits that the SSA I.G. filed previously. In total, the exhibits filed by the SSA I.G. are identified as P. Ex. 1 – P. Ex. 9. P. Ex. 6 – P. Ex. 9 address the remedy issue. Respondent filed a total of 23 exhibits. With his response to the SSA I.G.’s motion for summary judgment, Respondent filed exhibits that are identified as R. Ex. 1 – R. Ex. 16 plus a declaration from his wife that I identify as R. Ex. 17. In response to the SSA I.G.’s discovery request, Petitioner submitted documents consisting of his tax returns and information relating to his vehicles. I identify these documents as R. Ex. 18. With his response to the SSA I.G.’s brief addressing the issue of remedy, Respondent filed various attachments, and I identify them as R. Ex. 19 – R. Ex. 23. I receive all of the parties’ exhibits into the record.

Neither party provided testimony on the issue of remedy. I conclude that there is no basis for me to convene an in-person hearing in this case given that there is no testimony addressing the remedy issue and that I have previously entered partial summary judgment on the issue of liability. Therefore, I decide the remaining issue in this case based on the parties’ written filings including the parties’ exhibits.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The sole remaining issue in this case is the reasonableness of civil money penalties and an assessment as remedies for Respondent’s willfully false statements.

B. Findings of Fact and Conclusions of Law

The SSA I.G. brought this case pursuant to the provisions of section 1129 of the Social Security Act (Act). In relevant part, that section allows for the imposition of civil money penalties and assessments against an individual who knowingly makes a false statement (or omits a material fact) to SSA concerning his eligibility for Social Security benefits or for SSI. The section allows for the imposition of civil money penalties of up to \$5000 for each false statement or representation and the imposition of an assessment in lieu of damages of up to double the amount of

funds obtained by virtue of false statements or materially omitted facts. Act § 1129(a)(1); 20 C.F.R. §§ 498.103, 498.104. The Act provides that each month during which a claimant or beneficiary fails to notify SSA of a material fact constitutes a violation. Act § 1129(a)(1).

The evidence offered by the SSA I.G. and not rebutted by Respondent establishes that, for a period of 62 months, Respondent knowingly concealed the fact that he and his wife lived together in a home that they owned jointly.¹ P. Ex. 2; P. Ex. 3. I note that the SSA I.G. contends that Respondent knowingly concealed his home ownership for a period of 67 months and the SSA I.G.'s civil money penalty determination and assessment is based on penalties of \$500 per month for each month of this 67-month period.² However, the fact is that because Respondent admitted to SSA that he and his wife jointly owned a home in November 2013, the total period of concealment is 62 and not 67 months. P. Ex. 3. Thus, I base civil money penalties on the 62-month period and sustain penalties totaling \$31,000 as opposed to the \$33,500 sought by the SSA I.G.

The concealed facts are material because had they been disclosed, Respondent would have been ineligible to receive SSI during the entire period. The total amount of SSI paid to Respondent during this period is about \$40,000. P. Ex. 9.

The Act and regulations allow for maximum civil money penalties in this case of more than \$300,000. I sustain penalties totaling \$31,000 or only about ten percent of the maximum allowable amount. That is a tiny fraction of what Respondent potentially could have been held liable for. I find these penalties to be entirely reasonable given his culpability. Respondent has never offered a legitimate defense for his knowingly false statements. There is nothing in the record of this case that mitigates the fact that he willfully misstated his resources in an evident attempt to obtain something – SSI – to which he plainly was not entitled. That level of culpability more than justifies the penalty amount.

The SSA I.G. also determined to impose an assessment of \$94,463.60. It constitutes – as liquidated damages – double the amount of SSI benefits that Respondent obtained during the 67-month period for which the SSA I.G. seeks to

¹ Respondent's misrepresentations actually extend back to March 1999, when he first applied for SSI. However, the six-year statute of limitations precludes imposing remedies for a period that is greater than the period for which the SSA I.G. seeks to impose them.

² The SSA I.G. determined to impose civil money penalties totaling \$33,500.00 (\$500 x 67 months of allegedly false statements) plus an assessment of \$94,463.60 (based on SSI payments made over a 67-month period).

impose a remedy. An assessment of double the payments made to Respondent is a reasonable recompense to SSA for the injury to the program caused by Respondent and for the efforts necessitated to rectify that injury. However, the assessment must cover a 62-month period rather than 67 months inasmuch as the period of concealment is actually 62, and not 67 months, as contended by the I.G. I impose an assessment of \$87,414.07, which is 62/67 of that which the I.G. seeks.

I gave Respondent ample opportunity to provide evidence to establish that the penalties and assessment are unreasonable. Respondent failed to provide any material facts showing that his financial condition precludes him from paying the penalties and assessment. He has not challenged the evidence filed by the SSA I.G. Furthermore, the SSA I.G. filed evidence proving that Respondent's income and resources are, in fact, considerable. He jointly owns a home with his wife. His jointly filed income tax returns for the years 2009 – 2013 show that in none of these years was the income that he and his spouse earned less than \$44,000. Moreover, Respondent and his spouse have owned four automobiles during the period. *See* Petitioner's Brief in Support of the Inspector General's Decision to Impose a Civil Monetary Penalty of \$127,963.60 at 8 nn.3-4.

Respondent filed various documents which I have identified as exhibits and made part of the record of this case. None of them prove that Respondent lacks the wherewithal to pay the penalties and assessment that I determine to be reasonable. To the contrary, those documents, consisting in the main of copies of Respondent's tax returns and information pertaining to his motor vehicles, confirm that Respondent is capable of paying the penalties and assessment.

/s/

Steven T. Kessel
Administrative Law Judge