

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

The Inspector General of the Social Security Administration

v.

Jose Crespo,

Respondent.

Docket No. C-13-1155

Decision No. CR3144

Date: March 6, 2014

DECISION

The Inspector General (IG) for the Social Security Administration (SSA) charges that Respondent, Jose Crespo, violated section 1129 of the Social Security Act (Act), because, while acting as his mother's representative payee, he withheld facts material to his mother's right to Supplemental Security Income (SSI) payments. He repeatedly told SSA that his mother lived with him in the United States, when, in fact, she was living in Puerto Rico. The IG proposes imposing against Respondent Crespo a \$114,956 civil money penalty (CMP).

For the reasons discussed below, I agree that Respondent Crespo deliberately misled SSA about his mother's residence, so that she would continue receiving SSI benefits. In light of his deliberate, long-standing deception, I consider \$114,956 a reasonable penalty.

I. Background

SSI Rules. The SSI program (Title XVI of the Act) pays benefits to individuals who are aged, blind, or disabled, and have limited income and resources. *See also* 20 C.F.R. §§ 416.202; 416.1100. An individual is not eligible for SSI for any month during which she resides outside the United States; the "United States" is defined as one of the 50

states, the District of Columbia, and the Northern Mariana Islands. Act § 1611(f)(1); 20 C.F.R. §§ 416.202(b); 416.702; 416.1600; 416.1603(b) and (c).

Representative Payees. If SSA determines that a beneficiary is not able to manage her benefits because she is legally incompetent or mentally or physically incapable, it will pay those benefits to a representative payee (rep payee). 20 C.F.R. § 416.610. Among other requirements, the rep payee must notify SSA of any event or change affecting the beneficiary's right to benefits, the amount of benefits, or how the beneficiary receives them. 20 C.F.R. § 416.635(d). He must also notify SSA if the SSI recipient leaves the United States for 30 or more consecutive days or for a full calendar month, whether or not the recipient intends to abandon her residence in the United States. 20 C.F.R. §§ 416.704; 416.708(m) and (n).

Section 1129 Sanctions. Section 1129(a)(1) of the Act subjects to penalty any person (including an organization, agency, or other entity) who: 1) knowingly misrepresents a material fact for SSA's use in determining a right to SSI benefits or the amount of those benefits; 2) makes such a statement with "knowing disregard of the truth"; or 3) knowingly omits or otherwise withholds a fact that he knows or should know is material to SSA's determining eligibility for benefits or benefit amounts. A fact is "material" if it may be considered in evaluating whether an individual is eligible for SSI benefits or payments. Act § 1129(a)(2); 20 C.F.R. § 498.101.

Similarly, Social Security regulations authorize the IG to impose a penalty against any person who "[h]as made . . . a statement or representation of a material fact" that is used to determine the person's eligibility for SSI benefits or the amount of those benefits or payments, where the person "knew, or should have known, that the statement or representation was false or misleading," made the statement "with knowing disregard of the truth," or where the person omitted, "or otherwise withheld disclosure of" the material fact. 20 C.F.R. § 498.102(a).

Factual/Procedural Background. In this case, SSA designated Respondent Crespo as representative payee for his mother, a recipient of SSI benefits. The IG contends that Respondent Crespo deliberately withheld information and affirmatively misled SSA about his mother's place of residence. Specifically, according to the IG, for at least 19 months, Respondent Crespo concealed the fact that his mother lived in Puerto Rico while collecting SSI benefits.¹ By letter dated June 3, 2013, the IG advised Respondent Crespo that he proposed imposing against him a CMP of \$195,544 (a \$95,000 penalty plus a \$100,544 assessment in lieu of damages). SSA Ex. 17. The IG has subsequently reduced

¹ Although Respondent Crespo received benefits on his mother's behalf for almost three years (from November 2009 through August 2012), the IG bases its case on just 19-months-worth of erroneous payments (from February 2011 through August 2012). SSA Ex. 17.

the CMP to \$114,956 (a \$95,000 penalty plus a \$19,956 assessment in lieu of damages). SSA Ex. 18 at 3 (Bungard Decl. ¶¶ 9-12). Respondent Crespo requested a hearing to contest the penalty. SSA Ex. 19.

In an order dated September 6, 2013, I directed the parties to submit written briefs and proposed exhibits, including the written direct testimony of proposed witnesses. I directed them to indicate whether an in-person hearing is necessary, and, if so, to explain why. Neither party indicated that an in-person hearing is necessary. IG Br. at 18; Resp. Br. Respondent Crespo has not asked to cross-examine any of the IG's witnesses and has submitted no written declarations of his own.

The IG submitted a brief (IG Br.) and 20 exhibits (IG Exs. 1-20). In the absence of any objection, I admit into evidence IG Exs. 1-20. Respondent Crespo submitted a brief but no additional exhibits. (Resp. Br.).

II. Issues

The issues before me are: 1) Did Respondent Crespo make, or cause to be made, to SSA, a statement or representation of a material fact, which he knew or should have known was false and misleading, for SSA's use in determining his mother's right to SSI benefits and/or the amount of those benefits, or did he omit a material fact or make such a statement with knowing disregard for the truth; and, 2) if so, is the proposed penalty – \$114,956 – reasonable?

III. Discussion

A. Respondent Crespo violated section 1129 of the Act, because he deliberately withheld material facts and made false statements to SSA for its use in determining his mother's right to SSI benefits.²

In a request dated November 9, 2009, Respondent Crespo asked to be appointed rep payee for his supposedly mentally-impaired mother, Minerva Quinones Sostre. SSA Ex. 1. He told SSA that his mother lived with him in Elmwood Park, Illinois, and he agreed to notify SSA if her living arrangements changed. For its part, SSA emphasized that, as rep payee, he had to notify the administration "promptly" if (among other listed events) his mother moved outside the United States (the 50 states, District of Columbia and Northern Mariana Islands). SSA Ex. 1 at 3, 5. SSA also told him that, periodically, he would be asked to help in redetermining his mother's eligibility for SSI benefits and

² My findings of fact/conclusions of law are set forth, in italics and bold, in the discussion captions of this decision.

needed to keep evidence, such as evidence of income and living arrangements, to help with the redetermination. SSA Ex. 1 at 6.

SSA subsequently sent to Respondent Crespo, at the Elmwood Park address, a paper copy of his request, explaining that the information he provided had been stored electronically, so SSA would not retain its own paper copy. SSA reminded Respondent Crespo that he had declared, under penalty of perjury, that the information in the request was true and correct. SSA Ex. 1 at 8. Respondent Crespo did not then deny making any of those representations.

Three rep payee reports, covering the periods from May 1, 2008 through April 30, 2011, are signed by Respondent Crespo, and in them he reported that his mother continued to reside in the United States. In a report signed August 30, 2009 (covering the period from May 1, 2008 through April 30, 2009), he wrote that his mother resided with him in Elmwood Park. SSA Ex. 11 at 1-2.³ In the report he filed the following year (covering the period from May 1, 2009 through April 30, 2010), which he signed on May 26, 2010, he reported no change in the living arrangements. SSA Ex. 11 at 5-6. In the report he signed on June 15, 2011 (covering the period May 1, 2010 through April 30, 2011), he indicated that his mother continued to live with him, but at a Chicago address. SSA Ex. 11 at 3-4.

On August 27, 2012, Respondent Crespo's sister called the SSA hotline to report that her mother lived in Puerto Rico while collecting SSI benefits. SSA Ex. 2; SSA Ex. 12 at 4 (Hernandez Decl. ¶ 16); *see* SSA Ex. 3 at 2.

SSA submits compelling evidence establishing that, in fact, Minerva Quinones Sostre resided in Puerto Rico during the time she and Respondent Crespo claimed that she lived in Illinois:

- Rep payee reports, dated May 2, 2008 and November 7, 2008, are signed by Respondent's mother, Minerva Quinones. She is identified as the daughter of and rep payee for SSA Title II beneficiary, Esperanza Sostre. The reports show that Minerva Quinones resided in Manati, Puerto Rico. SSA Ex. 8; *see* SSA Ex. 12 at 5 (Hernandez Decl. ¶ 23).⁴

³ Neither party explains why this rep payee report – which plainly designates Respondent as his mother's rep payee – pre-dates his request to be selected as her rep payee. *Compare* SSA Ex. 1 *with* SSA Ex. 11 at 1-2. It appears that his tenure as his mother's rep payee began at least as early as May 1, 2008, because he submitted a rep payee report for the benefits he received on her behalf beginning at that time.

⁴ That Minerva Quinones acted as rep payee for her own mother gives lie to the claim that she was mentally impaired and unable to manage her own benefits. Having her son

- Monthly Social Security benefit checks confirm that Minerva Quinones Sostre served as rep payee for her mother, who resided in Puerto Rico. SSA submits monthly checks, dated from September 2010 through November 2011, that were mailed to Minerva Quinones in Manati, Puerto Rico. She endorsed the checks and deposited them in the Banco Popular in Puerto Rico. SSA Ex. 9; *see* SSA Ex. 12 at 5 (Hernandez Decl. ¶ 24).

Respondent Crespo has offered numerous and conflicting statements and defenses:

- After learning of the sister's allegation, SSA Service Representative Margie Hernandez scheduled a meeting with Respondent Crespo and his mother, which took place at the SSA district office on August 29, 2012. Airline records establish that Minerva Quinones flew from San Juan to Chicago the day before the meeting – August 28, 2012. SSA Ex. 13. Service Representative Hernandez warned Respondent Crespo that he could be charged a penalty for every lie he told SSA. He insisted that he was not lying, that his mother lived with him in Illinois, and that she had never lived in Puerto Rico. SSA Ex. 4; SSA Ex. 12 at 4 (Hernandez Decl. ¶¶ 17, 18).
- In a written statement, which he mis-dated August 28, 2012, but completed and signed following the August 29 meeting, Respondent Crespo said that his mother lived with him in Skokie, Illinois, but left the United States on February 15, 2012, and returned on February 20th or 21st. He said that he paid for her ticket and, while in Puerto Rico, she stayed at his grandmother's house. SSA Ex. 5; SSA Ex. 12 at 4 (Hernandez Decl. ¶ 19). This claim is belied by the airline records, which show that Minerva Quinones was in Puerto Rico until August 28. SSA Ex. 13.
- On August 31, however, Respondent Crespo returned to the district office and made and signed another statement, asserting that his mother had “always” been travelling between Chicago and Puerto Rico. Most recently, he claimed, she stayed there longer than usual because his grandmother died; she went to Puerto Rico in February 2012 and returned on August 27, 2012. He also claimed that he had misunderstood his duties as a rep payee. SSA Ex. 6; SSA Ex. 12 at 4 (Hernandez Decl. ¶ 20).

named as rep payee helped obscure the fact that she was residing in Puerto Rico, because her benefits and other correspondence could be sent to the Illinois address. As rep payee, Respondent had access to those funds and could forward them to her. He could also respond to SSA's queries. It appears that Minerva Quinones actively participated in the fraud and was its primary beneficiary. However, for reasons not explained, it does not appear that SSA is holding her accountable.

Respondent's mother told a different story. She went to an SSA district office on September 10, 2012, and signed a written statement claiming that she went to Puerto Rico on about February 15, 2012, and returned to Illinois two weeks later. She claimed that she went back to Puerto Rico on September 9, 2012, and planned to stay there permanently. SSA Ex. 7; *see* SSA Ex. 3 at 2.⁵ Her statement is also belied by the airline records showing that she was in Puerto Rico in August, returning to Chicago in time for the August 29 meeting with SSA. SSA Ex. 13.

Special Agent Dominick Stokes reported that he and State Investigator Bridgette Gant interviewed Respondent Crespo on October 11, 2012. SSA Ex. 3 at 3-4; SSA Ex. 20 (Stokes Decl.). During that interview, Respondent Crespo said the following:

- His mother's SSI benefits were deposited into an account at JP Morgan Chase Bank. He would withdraw the funds from the account and mail them to her in Puerto Rico. SSA Ex. 3 at 3-4.
- He told the investigators that his mother was currently living in Puerto Rico, but that she had travelled back and forth between Illinois and Puerto Rico. SSA Ex. 3 at 4.
- He admitted that he had not reported to SSA that his mother was residing in Puerto Rico but claimed that he did not know that he was required to do so. SSA Ex. 3 at 4.
- At the same time, he claimed that his mother lived in Illinois through 2011. Investigator Stokes showed him copies of his grandmother's SSI benefit checks from January through November 2011, which his mother signed and deposited in the Puerto Rican bank. The investigator asked Respondent Crespo how his mother could have signed those checks if she were living in Illinois; Respondent Crespo suggested that his grandmother signed his mother's name – although he had already identified the signatures as his mother's. SSA Ex. 3 at 4; *see* SSA Ex. 9.
- Respondent Crespo admitted receiving mail from SSA, denied completing any forms on his mother's behalf, and told the investigators that it was a "coincidence" that his mother always "happened" to be in Illinois whenever SSA needed to correspond with her. SSA Ex. 3 at 4.

⁵ Minerva Quinones' statement contains a typographical error. It says "I pretend to stay living in Puerto Rico." It should say "I intend to stay in Puerto Rico." SSA Ex. 3 at 2.

- In a written statement, executed at the time of the interview, Respondent Crespo swore that he delivered to his mother all of the funds SSA deposited into her account; that he never used any of that money for himself; and that he was not aware that his mother was not supposed to leave the United States mainland to go to Puerto Rico. SSA Ex. 14.

In a letter dated May 5, 2013, Respondent Crespo “clarified” that he did not apply for benefits in his mother’s name, nor use any of the money she received. At his mother’s request, he became an “accommodator in order for her to receive her money by direct deposit.” He helped his mother fill out forms, which was a mistake, but “an innocent mistake without any illegal intention.”⁶ With respect to “some papers signed in Puerto Rico at the same time [he] was signing for [his mother] here in Chicago[,]” he claimed no knowledge of what was happening in Puerto Rico, because he was living here. He also claimed, “if [his] mind [did] not betray [him],” that his mother was always present when he filled out a form. SSA Ex. 16.

Respondent Crespo submits no evidence – not even his own written declaration – to counter SSA’s compelling documentation. His assertions of fact are thus not supported by any evidence or testimony, and the largely un rebutted evidence establishes that: 1) Minerva Quinones resided in Puerto Rico during the 19 months SSA claims Respondent Crespo erroneously received her SSI payments; and 2) Respondent Crespo repeatedly misled SSA as to his mother’s place of residence.

Respondent Crespo no longer argues that his mother was living with him in Illinois, and admits that she “did leave Chicago on more than one occasion and did . . . stay for more than 30 days.” Resp. Br. at 2. He admits that he “regularly sent money orders and checks to his mother in Puerto Rico.” Resp. Br. at 7. Absent any other explanation, I can reasonably infer that he sent the money to his mother in Puerto Rico, because she was living there.

Respondent claims, however, that he “did not reasonably know” that his mother had to reside in the United States and could not reside in Puerto Rico in order to be eligible for SSI benefits. Resp. Br. at 2. According to Respondent, he first learned of this rule when contacted by SSA in 2012. Resp. Br. at 5. I do not find this credible. His application to become his mother’s rep payee explicitly advised him that he *must* notify SSA promptly if the claimant “LEAVES THE U.S. (the 50 states, the District of Columbia, and the Northern Mariana Islands) for 30 consecutive days or more” SSA Ex. 1 at 5. (emphasis in original).

⁶ To the contrary, helping his mother fill out forms should not have been a mistake. Responding to SSA’s queries is one of a rep payee’s responsibilities. Providing false information, however, is a serious mistake.

But Respondent asserts – again without providing a written declaration – that he was not provided a copy of the application, “did not complete any residency documents or any other documents,” and did not know that he was required to complete such documents. Resp. Br. at 2, 4. He even denies making any representations regarding his mother’s health or mental conditions, and he denies making any representations affecting SSA’s decisions regarding his mother’s eligibility for SSI benefits. Resp. Br. at 4-5.

I note first that these claims are assertions of counsel, not testimony, and therefore not evidence, so are not entitled to any weight. But even if Respondent had sworn to these assertions, I would not find them credible.

Second, as the above discussion shows, Respondent’s statements in this matter have consisted of half-truths, claims that defy credulity, and verifiable falsehoods.

Third, the uncontroverted evidence establishes that SSA staff repeatedly told Respondent that his mother had to reside in the U.S. in order to be eligible for SSI benefits. To be named rep payee for his mother, Respondent Crespo had to have filed a standard form application, a copy of which is in the record as SSA Ex. 1. He would not have physically completed and signed the application. Applications are no longer signed, because they are stored electronically. SSA Ex. 12 at 4 (Hernandez Decl. ¶ 15). SSA practices call for a face-to-face interview with an SSA field office employee. The employee asks a series of questions, including where the beneficiary lives. The field office employee explains the rep payee’s duties, reporting responsibilities, and liability for failing to report or otherwise not complying with SSA rules. The employee also gives the applicant a written copy of these instructions. SSA Ex. 12 at 2, 3 (Hernandez Decl. ¶ 4, 11). Had he not provided appropriate answers to SSA’s questions, Respondent Crespo could not have been named his mother’s rep payee.

Finally, even if I accepted Respondent’s claims of ignorance regarding his obligations (which I do not), he plainly knew, or should have known, that SSA wanted to know where his mother lived, because it repeatedly asked him for her address and living arrangements. Respondent now claims that he “did not complete any residency documents or any other documents.” The evidence establishes otherwise. As discussed above, he submitted three rep payee reports covering the period beginning May 1, 2008 and ending April 30, 2011 – all signed by him – in which he falsely claimed that his mother had resided with him in Illinois throughout that time. If, in fact, he truly believed that his mother’s place of residence did not matter, he made a lot of pointless misrepresentations. That he made these misrepresentations supports finding that he well knew the significance of the misinformation he was providing.

The un rebutted evidence thus establishes that, while acting as her rep payee, Respondent Crespo deliberately deceived SSA about his mother’s place of residence, so that she

could continue receiving SSI payments. He therefore violated section 1129 of the Act, and the IG may impose penalties against him.

B. The I.G. proposes reasonable penalties against Respondent Crespo.

Penalty. The statute allows SSA to impose a penalty of not more than \$5,000 for each false statement or misrepresentation and \$5,000 for each receipt of benefits or payments while withholding disclosure of material facts. Act, §1129(a)(1); 20 C.F.R. §§ 498.103(a).

While rep payee for his mother, Respondent Crespo collected on her behalf at least nineteen benefit checks to which she was not entitled, which, by itself, justifies the \$95,000 penalty. ($\$5,000 \times 19 = \$95,000$).

Moreover, in setting this penalty, the IG did not consider Respondent Crespo's multiple false statements. Even disregarding his half-truths and claims that defied credulity, he verifiably misled SSA on multiple occasions:

- when he applied to be his mother's rep payee and told the agency that his mother resided with him in Illinois (SSA Ex. 1);
- on the three rep payee reports, when he reiterated that she continued to reside with him (SSA Ex. 11);
- during the August 29, 2012 meeting with SSA Service Representative Hernandez, when he claimed that his mother had never lived in Puerto Rico (SSA Ex. 4);
- in the written statement he completed following the August 29 meeting, when he claimed that his mother lived with him and had only visited Puerto Rico for a week in February 2012 (SSA Ex. 5);
- in the October 11, 2012 meeting with Special Agent Stokes, when he said that his mother lived in Illinois through 2011 (SSA Ex. 3 at 4).

The amount of the proposed penalty imposed is thus less than the maximum authorized by the statute and regulations.

Assessment in lieu of damages. SSA may also impose an assessment in lieu of damages of not more than twice the amount of benefits or payments paid as a result of the false statements or misrepresentations or the withholding of disclosure. Act § 1129(a)(1); 20 C.F.R. § 498.104.

The IG proposes an assessment in lieu of damages of \$19,956, which represents twice the amount of benefits paid while Respondent Crespo acted as his mother's rep payee. SSA Ex. 12 at 5 (Hernandez Decl. ¶¶ 25, 27); SSA Ex. 18 at 3 (Bungard Decl. ¶¶ 10, 11).

The proposed assessment in lieu of damages is within the statutory and regulatory limits.

Regulatory criteria. I now apply 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 consider: 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.

SSA does not contend that Respondent has a history of prior offenses. SSA Ex. at 17 at 2.

With respect to his financial condition, Respondent bears the burden of establishing that his financial condition prevents him from paying the penalty. *SSA v Clara Sloan*, DAB CR1081 (2003); *Recommended Decision to Decline Review*, App. Div. Dkt. No. A-04-03 at 2 (Feb. 9, 2004) (finding "no basis to disturb the ALJ's . . . legal conclusions."). Respondent Crespo is apparently employed as a supervisor at the Illinois Department of Employment Security. SSA Ex. 3 at 3. He claims to be a "lower middle class individual," but provides no actual evidence of his financial status. Resp. Br. at 7. He has not established that his financial condition prevents him from paying the penalty.

As to the other factors, Respondent Crespo engaged in deception that lasted for a significant amount of time, longer than the 19-months for which the IG is holding him accountable. During that time, he knowingly withheld material information from SSA, and, when directly questioned about his mother's place of residence, he lied. When SSA discovered the deception, he continued to dissemble, giving the agency conflicting and ultimately false information. His degree of culpability is substantial and justifies the CMP imposed here.

Finally, I note that the integrity of the SSI program depends on each beneficiary, or her representative payee, accurately reporting material information, so that SSA can determine whether the beneficiary qualifies and, if so, the accurate amount of her benefits. Where, as here, the beneficiary and her rep payee actively misrepresent material facts, they undermine the integrity of that system.

