

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

The Inspector General of the Social Security Administration,

Petitioner,

v.

Denisse Del Pilar Bonilla,

Respondent.

Docket No. C-14-1678

Decision No. CR4435

Date: November 17, 2015

DECISION

Respondent, Denisse Del Pilar Bonilla, was awarded Social Security disability insurance benefits in April 2008. In July 2013, she responded to a series of questions the Social Security Administration (SSA) posed about her impairments and her abilities. The Inspector General (IG) for SSA now charges that she violated section 1129 of the Social Security Act (Act) because, in her responses, she knowingly made false statements and misrepresentations of material fact regarding her alleged disability, functional abilities, and activities. SSA proposes imposing against her a \$20,000 civil money penalty (CMP).

For the reasons set forth below, I agree that Respondent Denisse Bonilla knowingly misrepresented material facts to SSA for its use in determining her continuing eligibility for disability insurance benefits, and I consider \$20,000 a reasonable penalty.

Background

Section 1129(a)(1) of the Act subjects to penalty any person (including an organization, agency, or other entity) 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 title II . . . that the person knows or should know is false or misleading,¹

(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 monthly insurance benefits under title II . . . 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 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 as one that “the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under title II” Act § 1129(a)(2); 20 C.F.R. § 498.101.

The Commissioner of Social Security has delegated to the IG the authority to impose penalties under section 1129. *See* 20 C.F.R. § 498.102.

In this case, the IG contends that, in responding to the continuing-disability-review questions posed by SSA, Respondent Denisse Bonilla and her husband, Javier, deliberately and repeatedly misrepresented her functional abilities so that she could continue receiving Social Security disability insurance benefits.² By letter dated June 5, 2014, the IG advised Respondent Denisse Bonilla of his determination and the proposed penalty. SSA Ex. 8. Respondent requested a hearing.

¹ Title II of the Act governs the Social Security disability insurance program.

² Javier Bonilla’s appeal, docketed as C-14-1677, was heard in tandem with this case.

On April 28, 2015, I heard jointly this appeal and the related appeal of Javier Bonilla (C-14-1677). Ms. Erin Justice appeared, representing the SSA IG. Respondent Denisse Bonilla and her husband, Javier, represented themselves. We convened via video teleconference from the offices of the Departmental Appeals Board in Washington, D.C. Ms. Justice, the parties, and their witnesses appeared from Tampa, Florida.

The parties have filed pre-hearing briefs (SSA Br.; R. Br.) and post-hearing briefs (SSA Post-hrg. Br.; R. Post-hrg. Br.). I have admitted into evidence SSA Exhibits (SSA Exs.) 1-19 and Respondent's Exhibits (R. Exs.) 1-3. Order Following Prehearing Conference at 2 (March 20, 2015); Transcript (Tr.) at 6.

Issues

The issues before me are:

1. Did Respondent Denisse Bonilla make, or cause to be made, to SSA a statement or representation of a material fact that she knew or should have known was false or misleading, for SSA's use in determining her right to Social Security Disability Insurance benefits (title II) and/or the amount of those benefits, or did she omit a material fact or make such a statement with knowing disregard for the truth; and
2. if so, is the \$20,000 proposed penalty reasonable?

Discussion

1. Respondent Denisse Bonilla violated section 1129 of the Act because she knowingly made false statements and representations to SSA for its use in determining her ongoing eligibility for Social Security disability insurance benefits.³

To satisfy the basic definition of "disability," an individual must have a severe medically determinable physical or mental impairment that makes her unable to perform her past relevant work or any other substantial gainful work. 20 C.F.R. § 404.1505.

In April 2008, Respondent Denisse Bonilla was awarded disability insurance benefits, effective April 2006. SSA Ex. 2.

³ My findings of fact/conclusions of law are set forth, in italics and bold, in the discussion captions of this decision.

After finding someone disabled, SSA must occasionally reevaluate the individual's impairments to determine if she is still eligible for benefits, a process referred to as a "continuing disability review." If medical or other evidence establishes that the recipient is no longer disabled, her benefits will end. 20 C.F.R. §§ 404.1589, 404.1590. In this case, on July 10, 2013, SSA sent Denisse Bonilla two forms: a Continuing Disability Review Report and a Function Report. SSA Exs. 3, 4. The agency directed her to complete the documents and return them to SSA, which she did, completing the forms on July 9 and August 26, 2013. SSA Ex. 3 at 12; SSA Ex. 4 at 1. Among her representations were the following:

- She claimed that she could not concentrate and was afraid of the outside world. SSA Ex. 4 at 1.
- **She said that, from the time she woke up until she went to bed, she stayed home.** SSA Ex. 4 at 2.⁴
- **She claimed that she was afraid to go outside because she had panic attacks and that she went out only once or twice a month.** SSA Ex. 4 at 4.
- **Although she initially checked that she could drive, she scratched out that response and indicated that she did not walk, drive, or take public transportation, but could only ride in a car.** SSA Ex. 4 at 4.
- She said that she shopped by computer with the assistance of her husband. SSA Ex. 4 at 4.
- She said that her ability to handle money had changed because she could not "go out to do what most people do." She went to the doctor when necessary but had to be accompanied. SSA Ex. 4 at 5.
- She said: "I can't go out in public where [too] many people [are] around" because "[I] get panic attack[s]." SSA Ex. 4 at 6. She stated that she suffered unusual "fears of going out of [her] house, [e]specially of tall buildings." SSA Ex. 4 at 7.

SSA's Disability Determination Services was obviously skeptical about her claims because it investigated and determined that Respondent Denisse Bonilla was not disabled. SSA Ex. 6. SSA notified Respondent Denisse Bonilla that her benefits would end as of January 2014. Respondent appealed. In her request for reconsideration, she checked that her condition had changed since she last completed a disability report and described those

⁴ Although Respondent Denisse Bonilla made numerous false statements, the IG bases the CMP on just four of them. *See* I.G. Br. at 8. I highlight in bold those statements that the IG specifically points to as false and relies on to justify the CMP.

changes as “panic attacks, anxiety.” SSA Ex. 5 at 1. She wrote that she didn’t shower because of her depression and “can’t function.” **She said that she could not leave the house due to panic attacks.** SSA Ex. 5 at 5.

Overwhelming evidence gives lie to Respondent Denisse Bonilla’s claims that her anxiety and panic attacks made her almost totally incapacitated.

Respondent’s school involvement. Investigators spoke to the principal and teacher of the school that Respondent Denisse Bonilla’s children attended during the 2012-2013 academic year.

In a written statement, the (then) school principal confirmed that, from August 2012 through June 2013, Respondent’s children attended her school. During that time, she observed Ms. Bonilla. SSA Ex. 17. The principal “regularly did the car line” and observed Respondent there. She also saw her as a “walk-in” (walking her child into the classroom). Tr. 11. According to the principal, Respondent Denisse Bonilla also attended parent-teacher conferences and communicated effectively in English. She was “friendly, sociable and her behavior appeared appropriate.” She dressed appropriately and maintained good hygiene. SSA Ex. 17; SSA Ex. 13 at 2-3 (Montgomery Decl. ¶¶ 11, 12, 13, 14, 15); Tr. 10, 12.

One of the teachers at the school told investigators that the Bonillas’ son was in her class and that she saw Denisse Bonilla weekly from October 2012 through June 2013. Respondent Denisse Bonilla dropped her child off at school “most mornings.” She was not accompanied by her husband or anyone else (other than her child). The two women engaged in conversation about once or twice a month. Those conversations were in English. (The teacher does not speak Spanish). The teacher agreed that Ms. Bonilla appeared to be “a socially interactive person,” and their interactions were “normal.” SSA Ex. 13 at 2 (Montgomery Decl. ¶¶ 7, 8, 9, 10); Tr. 15-19.

Respondent’s automobile. As noted above, the school principal observed Respondent Denisse Bonilla “in the car line.” Other compelling evidence undercuts Respondent Denisse Bonilla’s claim that she was unable to drive.

Throughout the time she claimed to be disabled by panic attacks, Respondent Denisse Bonilla had a Florida driver’s license, which was originally issued in January 2004 (SSA Ex. 10 at 7) and renewed in November 2009 (SSA Ex. 10 at 2, 6). In obtaining the license, she denied that she suffered from any mental disorder or disease and declared that she had no physical or mental disabilities that would affect her driving. SSA Ex. 10 at 8. No evidence in her state driving records suggests that she ever reported to the State Department of Motor Vehicles any such disability. SSA Ex. 10. In renewing her license, she would have been required to affirm that she had no disabilities that would affect her driving. SSA Ex. 6 at 4; *see* SSA Ex. 10 at 6.

On July 23, 2013, Respondent Denisse Bonilla purchased a white 2013 Kia Optima. SSA Ex. 11. According to the Bonillas, she made the purchase because Javier Bonilla's poor credit rating precluded him from obtaining financing. Her credit was better. Tr. 25. The dealership sales manager told Tom Montgomery, financial crime investigator for the Florida Cooperative Disability Investigative Unit, that Respondent Denisse Bonilla was the sole purchaser; she completed and signed all necessary financial and sales documents, which were written in English. He agreed that she was a "socially interactive" person. She and her husband drove the car away, although the sales manager was not certain who was driving. SSA Ex. 13 at 1-2 (Montgomery Decl. ¶¶ 2, 3, 4, 5, 6); *see* SSA Ex. 11; Tr. 21-25.

Investigator Montgomery testified, credibly, that, on September 25, 2013, he observed Respondent Denisse Bonilla driving a white 2013 Kia Optima, which was registered in her name. He saw her drive to her residence and park the car in her driveway. She then left the car and entered her home. SSA Ex. 13 at 3 (Montgomery Decl. ¶¶ 16, 17); SSA Ex. 6 at 5 (offering a more detailed description of the investigator's observations); SSA Ex. 18 (video surveillance of Respondent Denisse Bonilla, taken September 25, 2013); *see* SSA Ex. 10 at 4, 11 (indicating vehicle registration).

Travel. During this time that Respondent Denisse Bonilla was claiming to be disabled because her anxiety and panic attacks confined her to her home, she was vacationing at Disney Quest, Busch Gardens, and in New York City, as well as other locations, and posting pictures from these excursions on the Bonilla's personal Facebook account. SSA Ex. 12. The pictures show an active and engaged woman vacationing with her family.

Respondent's statements to examining psychologist. At SSA's direction, on September 3, 2013, Respondent Denisse Bonilla was examined by a psychologist to determine her ongoing eligibility for benefits. She told the examiner that she had only an 8th grade education and that her English was limited, so much so that her husband acted as a translator.⁵ SSA Ex. 19 at 1, 2. She claimed that she had suffered from anxiety and panic attacks since "9-11," when she witnessed a plane hitting the twin towers in New York. She complained of flashbacks and auditory hallucinations of airplanes. SSA Ex. 19.

These statements were inconsistent with statements she earlier gave to SSA. In her initial application for benefits, filed in 2005, she admitted that she speaks and understands English. SSA Ex. 19 at 1. In that initial application, she also said that she had completed two years of college and trained as a dental assistant. SSA Ex. 19 at 10. At that time, she claimed that she was disabled by breast cancer. SSA Ex. 19 at 5. As recently as July

⁵ An individual's education and proficiency in English can affect her eligibility for disability benefits. *See* 20 C.F.R. Part 404, subpart P, Appendix 2.

2013, on the Continuing Disability Review Report, she admitted that she spoke and understood English. SSA Ex. 3 at 1.

She completed all of her SSA forms and her automobile purchase documents in English. The family's Facebook postings and frequent interactions with school teachers were all in English. Respondent's participation in this hearing was coherent and in English.

Respondent Denisse Bonilla's explanations. Respondent Denisse Bonilla offers inconsistent defenses to the overwhelming evidence against her. On the one hand, she claims that she did not intentionally make the false representations. On the other hand, she claims that those representations are correct.

With respect to the misrepresentations upon which this CMP is based, she claims that she misunderstood SSA's questions: "I answered the questions according to the way the Social Security advised They advised that I answer the questions according to the way I felt on that day."; "I answered the question as it was asked."; "[F]or me 'go out' means to dress up and go somewhere. . . . Reason why I answered the way that I did." But at the same time, she reiterates that she is unable to drive and doesn't leave the house due to her panic attacks, which shows that she fully intended to convey that information to SSA. R. Br.

She does the same with regard to her proficiency in English. She denies telling the psychologist that she spoke limited English but also claims that Javier translates for her because she speaks limited English. But then she says "We never claimed that Denisse didn't speak English" and admits that her SSA doctor's appointments and this hearing were conducted in English. R. Post-hrg. Br. at 1.

With respect to the pictures posted on Facebook, Respondent Denisse Bonilla was evasive about when she went to the various vacation spots (Disney Quest, Busch Gardens), only insisting that her children were "small . . . not school age yet." Tr. 50, 52, 55. She conceded that the Bonillas posted the pictures on July 26, 2011, but maintained that they were taken prior to 2005. Tr. 43. But this was not credible because the smaller of the two children in those pictures was born in 2005 and the children in the pictures are not infants. SSA Ex. 12 at 7-11; Tr. 56;⁶ see SSA Ex. 16 at 1 (Young Decl. ¶ 1)

One of the photographs shows Respondent Denisse Bonilla standing with her family next to the subway sign for the Times Square/42nd Street subway station. This is hardly a place one would expect to find someone who is afraid to be in public. SSA Ex. 12 at 11. That picture was, in fact, taken sometime in or after July 2011. In the picture's background is a billboard advertising the movie, *Cowboys and Aliens*, which was

⁶ Respondent Denisse Bonilla testified that her younger child was born in 2008, but she later amended that to say that she was born in 2005. Tr. 44, 56.

released in July 2011. SSA Ex. 12 at 11; May 18, 2015 Post-hearing Order. Respondent Denisse Bonilla holds a shopping bag and admitted that she had been shopping that day. Tr. 57. This is also surprising for someone who is only able to shop on-line with the assistance of her husband.

Finally, although Respondent tacitly acknowledges that SSA witnesses observed and spoke to her and detected no signs of mental illness or other abnormal behavior, she points out that they are not physicians and not qualified to determine whether she suffered from a disabling mental impairment. R. Post-hrg. Br. But the issue here is not her medical diagnosis; the issue is whether she misrepresented her daily activities and abilities. The credible testimony of these witnesses establishes that she did. She could not have stayed home all day if she regularly took her child to school. She was not having panic attacks when she went outside if she regularly took her child to school, engaged the teacher in normal conversation, participated normally in the purchase of a car, and went on trips and vacations, including to amusement parks and even New York City. Someone who is afraid of crowds would not be shopping in and around Times Square. Further someone who is afraid of crowds would not select frequent vacations to amusement parks (at least 6 trips since the onset of her disability) and New York City nor attend stadium events. Tr. 51, 53, 54; SSA Ex. 12. Additionally, her vacation in Manhattan is a surprising choice for someone with a debilitating fear of “tall buildings.” SSA Ex. 12 at 7, 8, 9, 11, 19.

Compelling evidence thus establishes that Respondent Denisse Bonilla made false statements and representations to SSA for its use in determining her ongoing eligibility for Social Security disability benefits.

2. The IG proposes a reasonable penalty, \$20,000, against Respondent Denisse Bonilla.

The IG may impose a CMP of not more than \$5,000 for each false statement or misrepresentation. Act § 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 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.

I note that Respondent Denisse Bonilla has no history of prior offenses.

With respect to her financial condition, the respondent bears the burden of establishing that her financial condition prevents her 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 Denisse Bonilla initially failed to return to the IG a financial disclosure form for its use in determining her ability to pay a penalty. *See SSA Ex. 7*. The hearing request that she and her husband filed jointly includes Javier’s financial disclosure form, which attributes no income or assets to Respondent Denisse Bonilla – even the house is purportedly owned individually by Javier. On the other hand, the form also lists the 2013 Kia, which we know Denisse Bonilla owns. Respondent Denisse Bonilla failed to submit reliable and comprehensive evidence of her financial condition. However, even accepting that her income and assets are limited, weighing this against the other factors, I affirm the amount of the CMP.

With respect to the other factors, I find that her dissembling has been substantial and repeated, continuing up through the time of her hearing and beyond. She has made substantially more than four false statements to SSA. As listed above, in her August 26, 2013 function report, she made eight false statements. *SSA Ex. 4* at 1- 2, 4, 5-7. In her request for reconsideration, she made at least three. *SSA Ex. 5* at 1, 5. And she has misrepresented her abilities in other respects, particularly with respect to her level of education and fluency in English.

She has offered no evidence to mitigate her offenses, but persists in claiming that she made no false statements. Her degree of culpability is substantial and would justify a CMP greater than that imposed here.

Finally, I note that the integrity of the disability system depends on each claimant accurately describing her functional abilities, so that SSA can determine whether she qualifies for benefits. Where, as here, a claimant deliberately misrepresents her functional capacity, she undermines the integrity of that system.

Conclusion

Respondent Denisse Bonilla violated section 1129 of the Act when she knowingly misrepresented material facts to SSA for its use in determining her eligibility for Social Security disability insurance benefits. I consider the \$20,000 CMP reasonable.

/s/
Carolyn Cozad Hughes
Administrative Law Judge