

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Social Security Administration,
Office of the Inspector General,

Petitioner,

v.

Plinio Cruz, Jr.

Docket No. C-12-1274

Decision No. CR2814

Date: June 6, 2013

DECISION

The Inspector General (I.G.) for the Social Security Administration (SSA) charges that Respondent, Plinio Cruz, Jr., violated section 1129 of the Social Security Act (Act), because he received disability benefits while continuing to work. He did not report his work activity to SSA and, in fact, falsely told SSA staff that he had not worked since applying for benefits in 2006. SSA wants to impose against Respondent Cruz a \$43,000.00 penalty plus an \$89,262.10 assessment in lieu of damages, for a total civil money penalty (CMP) of \$132,262.10.

For the reasons set forth below, I agree that Respondent Cruz violated section 1129, because he collected disability insurance and Supplemental Security Income (SSI) benefits while he continued to perform work activities. He then knowingly withheld that material fact from SSA and, when asked, he falsely claimed that he had not performed any work activity. I find the proposed CMP reasonable.

I. Background

Section 1129 of the Act subjects to penalty any person 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 or benefits or payments under title . . . XVI, 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 or benefits or payments under title . . . 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

See also 20 C.F.R. § 498.102(a) (authorizing the I.G. 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 or Title XVI 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 . . . or eligible for benefits or payments under title XVI.” Act § 1129(a)(2).

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

In this case, the I.G. contends that, after he applied for Social Security disability insurance and/or SSI benefits, Respondent Cruz began a business and started working there. He deliberately concealed his work activity from SSA as he and his family collected benefit checks.

¹ Title II of the Act governs the Social Security disability program, and Title XVI governs the SSI program.

On July 17, 2012, the I.G. sent Respondent Cruz a letter advising of the I.G.'s determination and the proposed penalty. SSA Ex. 18. Respondent Cruz requested a hearing.

The parties have submitted briefs and proposed exhibits, including written declarations of witnesses. I issued orders directing the parties to indicate whether an in-person hearing is necessary and to identify which, if any, opposing witnesses should be produced for cross-examination. Order and Schedule for Filing (November 2, 2012); Order (March 19, 2013); Order (April 15, 2013). Neither party indicated that a hearing is necessary, and neither party asked that any witness be produced for cross-examination at an in-person hearing.

In the absence of any objections, I admit into evidence I.G. Exhibits 1-19 (SSA Exs. 1-19) and Respondent's Exhibits 1-5 (R. Exs. 1-5).

II. Issues

The issues before me are: 1) Has the I.G. a basis for imposing a CMP; and 2) if so, is the \$132,262.10 CMP reasonable?

III. Discussion

A. The I.G. may impose penalties because: 1) Respondent Cruz worked while collecting Social Security disability and SSI benefits; 2) he deliberately withheld that information from SSA; and, 3) when asked, he falsely told SSA representatives that he had not worked since applying for benefits.²

Regulations governing eligibility for Social Security disability insurance (Title II of the Act) are found at 20 C.F.R. Part 404, and regulations governing SSI eligibility (Title XVI of the Act) are found at 20 C.F.R. Part 416. Under each part, an individual is disabled if he is unable to perform any "substantial gainful activity" because of a "medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 20 C.F.R. §§ 404.1505(a), 416.905(a).

In assessing whether an individual is disabled, SSA first considers his work activity. An individual who engages in substantial gainful activity is not disabled, no matter how severe his physical or mental impairments. 20 C.F.R. § 404.1520(a)(4)(i). Work activity is considered "substantial" if it involves significant physical or mental activities, even if

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

performed on a part-time basis and even if the individual is paid less or has less responsibility than before. 20 C.F.R. § 404.1572(a). Work activity is considered “gainful” if it is “the kind of work usually done for pay or profit, whether or not a profit is realized.” 20 C.F.R. § 404.1572(b).

In this case, Respondent Cruz applied for disability insurance and SSI benefits in June 2006. In letters dated February 8 and 10, 2007, SSA advised him that he was awarded benefits beginning November 2006, with a disability onset date of May 2, 2006.³ SSA Exs. 1, 3. The February 8 letter warned that his SSI payment could change if his circumstances changed, so he was required to “report any change in your situation that may affect your SSI,” including any change “in income or resources for you or members of your household” and if “you go to work.” SSA Ex. 3 at 5. With the February 10 letter, SSA sent a pamphlet titled “What You Need to Know When You Get Disability Benefits.” SSA Ex. 2. The letter told him to “be sure to read the parts of the pamphlet which explain what to do if you go to work or if your health improves.” SSA Ex. 1 at 2. The pamphlet is explicit:

If you work while receiving disability payments

You should tell us if you take a job or become self-employed, no matter how little you earn. Please let us know how many hours you expect to work and when your work starts or stops.

SSA Ex. 2 at 12 (emphasis in original). Respondent Cruz has not denied that he well understood his obligations to report his work activities. *See, e.g.*, R. Ex. 3 (Cruz Decl.); SSA Ex. 7 at 3 (Montero Decl. ¶ 11); SSA Ex. 13 at 2 (Wilker Decl. ¶ 4).⁴

He began receiving benefit checks (including retroactive benefits) for himself and his family in February 2007, and those checks continued until May 2010. SSA Exs. 1, 3-5.

³ Under SSA rules, the claimant must be disabled for five full calendar months before he is entitled to benefits. 20 C.F.R. § 404.315(a)(4).

⁴ In Respondent’s brief, he maintains that he did not tell federal agents that he knew he could not work while collecting benefits, and he claims that he did not tell the agents that he chose not to inform SSA of his work activities. R. Br. at 3. But arguments, of course, are not evidence. Respondent cites no record support for his assertions, and, most significantly, he did not repeat these claims in his written declaration. R. Ex. 3 (Cruz Decl.). In any event, whether or not Respondent Cruz made the statements to the agents, he plainly knew, or should have known, that working could affect his eligibility for benefits and that he was required to report all work activities.

I.G. Surveillance. Acting on a complaint that Respondent Cruz was working and concealing that fact, the I.G. opened an investigation on June 8, 2009:

- On August 24, 2009, Special Agent Javier Montero, from the I.G.'s Office of Investigations, went to an auto-repair business called S&R Lube, at 27490 South Dixie Highway, Homestead, Florida. He observed Respondent Cruz behind the counter, dressed in an "auto-mechanic-type of uniform." Agent Montero told Respondent Cruz that he needed an oil change and asked if S&R Lube accepted the Wright Express credit card. Respondent Cruz told him that it did not and referred him to the nearby Jiffy Lube. SSA Ex. 7 at 2 (Montero Decl. ¶ 6).
- Special Agent Montero returned to S&R Lube on November 30, 2009, and set up surveillance. He observed Respondent Cruz, again dressed as a mechanic, "interacting with what appeared to be customers of S&R Lube." SSA Ex. 7 at 2 (Montero Decl. ¶ 8).
- On January 8, 2010, Special Agent Montero went back to S&R Lube. Again, he saw Respondent Cruz "interacting with what appeared to be customers and employees of S&R Lube." SSA Ex. 7 at 2 (Montero Decl. ¶ 9).
- The I.G. agents recorded some of their observations, and the I.G. provides a compact disc (CD) containing footage consistent with the I.G.'s claim that Respondent Cruz worked at S&R Lube. The footage shows Respondent Cruz dressed in a mechanic's uniform outside the offices of S&R Lube. He and two other men in mechanics' uniforms stand over the open hood of a car, examining the engine; they are engaged in conversation, gesturing toward the engine, and putting hands into the engine. One of the mechanics gets into the car and starts the engine. Respondent Cruz walks away and starts talking on his cell phone. SSA Ex. 10 (Title I, beginning at 4 min. 3 sec.). Any reasonable person observing this scene would surmise that three mechanics were looking at an engine in order to diagnose a mechanical problem.
- A second scene on the CD shows Respondent Cruz, wearing what appears to be a summertime mechanic's uniform (standard mechanic's shirt, name patch on breast pocket, shorts). He stands with two others, a woman and a man in a similar mechanic's uniform. They are talking and looking into the back of an open car (station wagon or SUV) with Florida plates. Respondent Cruz walks away into the open garage, talking on his cell phone. SSA Ex. 10 (Title 2). He is next seen speaking to someone next to a car. He returns to the shop. SSA Ex. 10 (Title 2, beginning at 1 min. 11 sec.).

- On January 28, 2010, Special Agent Andrea Corbo from the I.G.'s Office of Investigations, entered S&R Lube and saw Respondent Cruz behind a desk with a computer. He was dressed as a mechanic with the name "Henry LNU" on his shirt. Special Agent Corbo described him as "engrossed in his mobile device." He did not look up when she greeted him. She asked him about vehicle service, and he told her the business's hours of operation and pricing. He identified himself as the owner and gave her his business card, which identified him as Henry Cruz, "owner operator." SSA Ex. 14 at 2 (Corbo Decl. ¶ 3). A copy of that card is in the record as SSA Ex. 15.

S&R Lube. The record shows that S&R Lube came into existence about the time Respondent Cruz applied for benefits. On June 19, 2006, corporate records were filed with the Florida Department of State, Division of Corporations, naming Respondent Cruz's wife, Aurora Fernandez, as the owner and registered agent of S&R Lube, a business located at 27490 South Dixie Highway, Homestead, Florida. SSA Ex. 7 at 2 (Montero Decl. ¶ 5); SSA Ex. 9; R. Ex. 1 at 1.

Respondent Cruz has told varying stories about his involvement with the opening of S&R Lube, which does not enhance his credibility. In a telephone conversation with Agent Montero on March 9, 2010, he initially said that he owned the business, but he later recanted and said that his wife, Aurora Fernandez, owned the business. SSA Ex. 7 at 3 (Montero Decl. ¶ 10).

On the following day (March 10), Special Agents Montero and Erika Wilker, who is also from the I.G.'s Office of Investigations, interviewed Respondent Cruz. Initially, he said that his wife and brother-in-law opened the business in 2006, but they had a dispute and the brother-in-law left in December 2008. He said that his wife then came to him for help, and that he began working in the office and managing the business. He said that he supervised mechanics, met with customers, wrote estimates, and collected payments. SSA Ex. 7 at 4 (Montero Decl. ¶ 11). But, during the course of the interview, Respondent Cruz changed his story. He admitted that opening S&R Lube was his idea. According to the special agents, Respondent Cruz said that he and his wife registered the business in her name "for credit reasons." SSA Ex. 7 at 4 (Montero Decl. ¶ 11); SSA Ex. 13 at 2 (Wilker Decl. ¶ 4).⁵

⁵ Petitioner complains that the federal agents violated his Fifth Amendment rights on March 9, when, pursuant to a warrant, they searched S&R Lube and when they subsequently questioned him at the IG's offices on March 10. Specifically, he claims that he was coerced or tricked into waiving his "Miranda" rights. *See Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* applies to criminal proceedings, but is irrelevant to this civil administrative proceeding. Moreover, to the extent that Petitioner suggests that I should therefore disregard the statements he made to the agents, I note that he signed a document indicating that he understood his rights against self-incrimination and that he

Other evidence supports the finding that Respondent Cruz has been actively involved in establishing and running S&R Lube:

- Respondent Cruz told the agents that, from the business's inception, he has maintained a business banking account at the Bank of America, and he and his wife have signatory authority on the account. SSA Ex. 7 at 4 (Montero Decl. ¶ 11). In her written declaration, Aurora Fernandez confirms that Respondent's name is on the bank signature card for the business account and that "[t]his is for signing business checks[,] if necessary." R. Ex. 2 at 2 (Fernandez Decl. ¶ 6).
- Aurora Fernandez had no experience in the automotive repair business, and she limited her involvement to clerical and janitorial work. SSA Ex. 7 at 4 (Montero Decl. ¶ 11). In her own declaration, Aurora Fernandez admits telling the agent that "her exact job description includes cleaning." R. Ex. 2 at 2 (Fernandez Decl. ¶ 5).
- On June 30, 2010, the landlord for S&R Lube told Special Agent Montero that he rented the business's space to Aurora Fernandez. He remembered that, when the business opened, he would see Respondent Cruz, Respondent's brother-in-law, and Aurora Fernandez there. He saw Respondent Cruz, and, occasionally, Aurora Fernandez meeting with customers and working in the office, although he did not see Respondent Cruz physically working on cars. He said that he visited the location two to three times per week, and, in the three to four months prior to his interview with Special Agent Montero, he had seen only Respondent Cruz, not Aurora Fernandez, at the business. SSA Ex. 7 at 4-5 (Montero Decl. ¶ 12).
- Special Agent Montero, Special Agent Simone Thigpen from the United States Secret Service, and Special Agent Pedro Ocasio, from the U.S. Department of Labor Office of Inspector General, interviewed Aurora Fernandez on May 17, 2011. Special Agent Montero reports that she told them that, from June 2006 through November 2007, Respondent Cruz worked at S&R Lube two to three days a week. During that time, he was sick and required dialysis. He did not work on cars, but managed and directed the work of others. He had a kidney transplant in January 2008, and did not work for about four months thereafter.

waived them. The statement he signed is written in simple English and printed in bold letters. It is easily readable and understandable. SSA Ex. 12. Petitioner was not under arrest. To the contrary, he voluntarily presented himself to the IG offices and agreed to answer the agents' questions. SSA Ex. 13 at 2 (Wilker Decl. ¶ 4).

His health improved, and he returned to work in June 2008. SSA Ex. 7 at 5 (Montero Decl. ¶ 13).⁶

- On March 9, 2010, Special Agents Montero and Gregg Wiggs interviewed Respondent's brother, Geovanny Cruz. He admitted that he worked at S&R Lube and was paid in cash. He said that Aurora Fernandez was the registered owner of the business, but that Respondent Cruz operated it "and has done so for approximately two years." He said that Respondent Cruz "managed the offices, supervised employees, met with customers, and collected payments." Aurora Fernandez came to the business two or three times a week to clean bathrooms and do some accounting and clerical work. She did not supervise employees or meet with customers. Geovanny Cruz said that "a couple of years earlier" Respondent Cruz owned another mechanic shop in Homestead. SSA Ex. 7 at 3 (Montero Decl. ¶ 10). In his written declaration, Geovanny Cruz denies telling the agents that Respondent Cruz owned the business (which the agents have not alleged), but does not deny that Respondent Cruz manages and directs the work there. R. Ex. 4 (G. Cruz Decl.).
- Both Respondent Cruz and Aurora Fernandez told Agents Montero and Wilker that, when the business opened, Respondent Cruz was sick and could not work many hours. Although he "managed and directed the work," he was only able to work two to three hours per day, five days per week. Over time, however, he was able to contribute more, until September 2007, when he became too ill. He then turned the business over to his brother-in-law, although he continued to manage the finances. In January 2008, Respondent Cruz had a kidney transplant, and his health improved, so he returned to work in May or June 2008 and has not stopped since. SSA Ex. 7 at 4-5 (Montero Decl. ¶¶ 11, 13); SSA Ex. 13 at 2 (Wilker Decl. ¶ 4).
- Although Aurora Fernandez denies that Respondent Cruz was ever the owner or manager of S&R Lube, she does not claim to manage the business herself nor identify any other manager. R. Ex. 2 at 1 (Fernandez Decl. ¶ 3). Neither she, Respondent Cruz, nor any other witness explains Respondent's holding himself out to the public as the business's "owner operator." SSA Ex. 14 at 2 (Corbo Decl. ¶ 3); SSA Ex. 15.
- Aurora Fernandez admits that Respondent Cruz helps her out at the shop "by volunteering his time and expertise." She says that he does not repair vehicles

⁶ In his brief, Respondent Cruz denies that Aurora Fernandez told agents that her husband worked two to three days a week. R. Br. at 3. Again, arguments of counsel are not evidence, and, in her declaration, Aurora Fernandez does not deny making that statement. R. Ex. 2.

and “is unable to do the material and substantial portions of a mechanic’s duties,” but concedes that he “sometimes orders parts and answers the phone.” R. Ex. 2 at 1 (Fernandez Decl. ¶ 3).

For his part, Respondent Cruz has not exactly denied engaging in the activities described by the special agents. He nevertheless argues that he continues to be disabled because he is “unable to do any physical work aspect of a mechanic”; he is not paid for his work; no one else would hire him; and his medical condition has not improved since he was awarded benefits. He claims that the time he dedicates to helping his wife “does not even amount to part-time work, as the little effort I do is insufficient to be qualified as work.” R. Br. at 4-5; R. Ex. 3 at 2 (Cruz Decl. ¶ 5). According to Aurora Fernandez, he is, in fact, “a liability to have around the shop.” R. Ex. 2 at 2 (Fernandez Decl. ¶ 5).

I do not find credible Respondent’s claims that his activities at S&R Lube were so minimal that he justifiably failed to report them. Respondent and his wife are hardly impartial observers; they obviously have considerable interest in down-playing his activities, and I find that aspect of their testimony exaggerated, self-serving, and not supported by other evidence in the record. First, the CD of Respondent Cruz’s activities does not show a person whose contribution is so limited that he is “a liability to have around the shop.” To the contrary, it shows an individual who is actively engaged in his work. Second, Respondent Cruz held himself out to the public as the “owner operator” of S&R Lube. SSA Ex. 14 at 2 (Corbo Decl. ¶ 3); SSA Ex. 15. Third, Geovanny Cruz worked at S&R Lube for more than two years and was in a position to describe Respondent Cruz’s activities. He has not denied telling federal agents that Respondent managed the business, supervised employees, met with customers, and collected payments. Moreover, his written declaration is conspicuously silent regarding Respondent’s work activities. R. Ex. 4 (G. Cruz Decl.).

Only one witness, Respondent’s brother-in-law, Eduardo Llanso, claims that Respondent “did not do any work.” R. Ex. 5 (Llanso Decl.). At best, this assertion must be considered a gross exaggeration. No other witness, not even Respondent himself, claims that he did no work at all. Moreover, Eduardo Llanso claims to have started the business in June 2008 and worked there for approximately one year. R. Ex. 5 at 1 (Llanso Decl. ¶¶ 1, 2). But the incontrovertible evidence establishes that the business opened in 2006, not 2008. Further, Eduardo Llanso was never listed as a business owner, and his name was not on the business’s bank signature card, so he had no authority to sign checks. SSA Ex. 9; SSA Ex. 7 at 4 (Montero Decl. ¶ 11); R. Ex. 2 at 2 (Fernandez Decl. ¶ 6). He may well have been working as a mechanic, but, if he was not able to pay bills, he could not have been performing “all of the work” as he claims.

Finally, I see no reason to doubt the veracity of the agents’ declarations, which are consistent with the other evidence in the record – the CD footage, the corporate filings, and Respondent Cruz’s business card.

Based on all of the evidence, I conclude that Respondent Cruz was involved with and worked at S&R Lube from its inception, which means that he was involved with S&R Lube throughout the time he and his family collected benefit checks.⁷ The I.G. has established that he dressed as a mechanic and spent significant time there. He spoke to customers, answered phones, looked at car engines, conferred with mechanics, and provided “technical advice.” He held himself out to the public as the business’s “owner operator.”

Whether Respondent Cruz’s work activity would have disqualified him from eligibility for disability benefits is irrelevant to the question of whether he falsely reported his work activities. A disability claimant must describe accurately any activities performed, and SSA then determines whether those activities constitute the type of work that would preclude a finding of disability. A claimant is not free to determine on his own whether his activities are disqualifying, reporting only his conclusion to SSA. As the Departmental Appeals Board noted in a similar context:

Had Respondent cooperated with SSA’s inquiries by providing accurate information about his work activities, then SSA would have been able to determine whether or not those activities demonstrated a capacity for gainful employment. By concealing the extent of his work . . . Respondent deprived SSA of the ability to evaluate those facts along with medical evidence [if necessary] to make that determination.

SSA v. Koutsogiannis, Recommended Decision App. Div. Docket No. A-07-81 (June 20, 2007) at 17; *accord*, *SSA v. Deliece L. White and Joseph R. O’Lone*, DAB CR1298 at 13 (2005), Recommended Decision Declining Review, App. Div. Docket No. A-05-89 (Sept. 9, 2005).

Misrepresentations to SSA. The parties agree that Respondent Cruz failed to report any work activities to SSA, an omission that itself violates section 1129 and 42 C.F.R. § 498.102(a).

But Respondent Cruz also deliberately lied to SSA. On November 20, 2009, SSA Claims Representative Veronica Gonzalez interviewed him as part of a continuing disability review. Special Agent Montero, who had personally observed him performing work

⁷ Accepting his and Aurora Fernandez’s claims that he was too acutely ill to work during the period immediately before and following his surgery (September 2007 until May 2008) would not have qualified him for benefits. An individual is disabled only if he is unable to perform (and does not perform) substantial gainful activity “for a continuous period of not less than 12 months.” 20 C.F.R. §§ 404.1505(a), 416.905(a).

activity at S&R Lube, sat nearby and monitored the interview. Respondent Cruz denied engaging in any work activity since June 2006, when he filed for benefits. He said that he was not physically able to work. SSA Ex. 6 at 3 (Gonzalez Decl. ¶ 6); SSA Ex. 7 at 2 (Montero Decl. ¶ 7).

Special Agent Montero also reports that, during his March 10 interview with the I.G. agents, Respondent Cruz admitted making this false statement. Respondent Cruz explained that he did not disclose his work activity, because he knew that he would lose his disability and Medicare benefits if he did. SSA Ex. 7 at 4 (Montero Decl. ¶ 11).

Based on this evidence, I find that Respondent Cruz engaged in work activities while collecting disability insurance benefits and SSI. He deliberately withheld that information, which is material to determining his ongoing eligibility for those benefits. When asked directly, he falsely told SSA representatives that he had not worked since he filed his application. He therefore violated section 1129 of the Act, and the I.G. may impose penalties against him.

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

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) and (b).

As discussed above, Respondent Cruz continued to perform work activities throughout the time he and his family received benefits to which they were not entitled. Respondent Cruz alone received and cashed 42 such benefit checks. SSA Ex. 4. In addition, he falsely told Claims Representative Gonzalez that he had not engaged in any work activity. SSA Ex. 6 at 3 (Gonzalez Decl. ¶ 6); SSA Ex. 7 at 2 (Montero Decl. ¶ 7).

SSA's proposed penalty, \$43,000, thus represents a fraction of Respondent's potential liability (well over \$200,000).

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.

Respondent Cruz was not entitled to any of the benefits he and his family received, which totaled \$89,262.10 (Respondent Cruz was overpaid \$59,799.10; Aurora Fernandez was overpaid \$3,694.00; and Respondent's children were overpaid \$11,652.50, \$1,972.00, and \$12,144.50). SSA Ex. 4; SSA Ex. 5; SSA Ex. 6 at 4-5 (Gonzalez Decl. ¶¶ 12, 13).

Under the statute, SSA was therefore authorized to assess up to \$178,524.20. SSA's proposed assessment in lieu of damages, \$89,262.10, is half the maximum allowable.

Regulatory criteria. 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 I.G. 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 that Respondent has a history of prior offenses. SSA Ex. 18 at 2.

The record here is virtually silent on Respondent's financial condition. It alludes to the existence of at least one or more financial disclosure forms, but neither party submitted any specific financial information. *See* SSA Ex. 18 at 2 (IG letter referring to a financial disclosure form that Respondent completed and returned to the I.G.); SSA Ex. 19 at 2 (alleging, as an affirmative defense, that agents "coerced" Respondent into completing a financial disclosure form).

With respect to the other factors, Respondent Cruz engaged in a scheme of deception that lasted from the time he applied for benefits in June 2006 through the date he was finally caught and his benefits checks ceased, in May 2010. Over a four-year period, he knowingly withheld material information from SSA, and, when directly questioned about his work activities, he lied. His degree of culpability in all of this is substantial and would justify a CMP even greater than that imposed here.

I nevertheless decline to increase the CMP, recognizing that Respondent has suffered from a serious medical condition.

Finally, I note that the integrity of the disability system depends on each claimant accurately describing his work activities, so that SSA can determine whether he qualifies for benefits. Where, as here, a claimant deliberately misrepresents his work-related activities, he undermines the integrity of that system.

IV. Conclusion

Respondent Cruz violated section 1129 of the Act, because he and his family collected disability insurance and SSI benefits while he continued to perform work activities; then, he knowingly withheld and misrepresented that material fact. I consider the \$132,262.10 CMP reasonable.

_____/s/_____
Carolyn Cozad Hughes
Administrative Law Judge