

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Social Security Administration,  
Office of the Inspector General,

Petitioner

v.

Lynn Roth,

Respondent.

Docket No. C-11-363

Decision No. CR2425

Date: September 9, 2011

**DECISION**

The Inspector General (IG) for the Social Security Administration (SSA) charges that Respondent, Lynn Roth, violated section 1129 of the Social Security Act (Act), because he failed to report his mother's death and continued withdrawing her social security benefits from the joint account into which SSA had deposited them. The IG proposes imposing against Respondent Roth, an assessment in lieu of damages of \$45,289, and a civil money penalty (CMP) of \$20,000.

For the reasons set forth below, I agree that Respondent Roth deliberately failed to report his mother's death to SSA. SSA continued depositing benefits into a bank account jointly held by Respondent and his mother, and, knowing that he was not entitled to those funds, Respondent nevertheless continued to withdraw them. As he concedes, he is therefore liable for the \$45,289 assessment in lieu of damages. I also find \$20,000 a reasonable penalty.

## Background

Here, the parties agree that, following his mother's death, Respondent Roth took SSA money to which he was not entitled, and he must therefore pay the \$45,289 assessment in lieu of damages. Respondent Roth disputes the imposition of the \$20,000 CMP. Order Scheduling Submission of Briefs and Documents (Order) at 1, ¶ 2 (Apr. 13, 2011).

The parties also agree that an in-person hearing is not necessary, and the case may be decided based on their written submissions. Order at 2, ¶ 2. The parties have submitted their briefs (IG Br.; Resp. Br.). The IG submitted 17 exhibits (IG Exs. 1-17), and Respondent submitted 2 exhibits (Resp. Exs. 1-2).<sup>1</sup> In the absence of any objections, I admit into evidence IG Exs. 1-17 and Resp. Exs. 1 and 2.

## Issues

The issues before me are: 1) is there a basis for imposing a CMP and, 2) if so, is the proposed penalty – \$20,000 – reasonable?

## Discussion

- A. The IG has a basis for imposing a CMP because Respondent Roth knowingly withheld a material fact – his mother's death – from SSA, and, knowing that he was not entitled to them, he converted her benefits to his own use.***<sup>2</sup>

Section 1129(a)(1) of the Act subjects to penalty any person who: 1) knowingly misrepresents a material fact for SSA's use in determining a right to Social Security benefits or the amount of those benefits; or 2) makes such a statement with "knowing disregard of the truth." Amendments to the statute, effective November 28, 2006, expanded its scope, subjecting to penalty any person who knowingly omits or otherwise withholds a fact, which he knows or should know is material to SSA's determining eligibility for benefits or benefit amounts. PUB. L. 108-203 (Mar. 2, 2004). A fact that may be used "in evaluating whether an individual is entitled to benefits under Title II" of the Act is considered "material." Act § 1129(a)(2).

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 "any initial or continuing right to or amount of . . . monthly insurance

---

<sup>1</sup> Respondent marked his exhibits Exs. A and B. To conform to Civil Remedies Division procedures, we have re-marked them Resp. Exs. 1 and 2.

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

benefits under title II of the Social Security Act” 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, a material fact for use in determining any initial or continuing right to . . . benefits or payments, which the person knew or should have known was material for such use and that such omission or withholding was false or misleading.” 20 C.F.R. § 498.102(a).

The IG may also impose a penalty and assessment against any representative payee “who receives a payment under title II . . . for the use and benefit of another individual and who converts such payment, or any part thereof, to a use that such representative payee knew or should have known was other than for the use and benefit of such other individual.” 20 C.F.R. § 498.102(b).

For the most part, the facts here are not in dispute. Respondent Roth’s mother, Ruby Roth, received Social Security Widow’s benefits, pursuant to title II of the Act. On October 4, 2004, Respondent Roth became her representative payee. I.G. Ex. 1. At the time, Mrs. Roth’s monthly benefit was \$1,121.<sup>3</sup> As representative payee, Respondent Roth was required to ensure that the benefits were spent for his mother’s needs only, and he had to account for how he spent the money. I.G. Ex. 1.

SSA paid the benefits directly into a bank account jointly held by Respondent and his mother.

Mrs. Roth died on November 27, 2006. I see no evidence Respondent Roth notified the agency of her death. In a letter dated March 24, 2011, Respondent’s counsel suggests that both Respondent Roth and the funeral director notified the local SSA office that Mrs. Roth had died but offers no evidence, such as copies of letters, written declarations, or contemporaneous notes, to support the claim. In any event, it soon became obvious to Respondent Roth that SSA thought that his mother was still living. Not only did the benefits continue, but SSA sent him a series of letters asking him to verify that he was spending the money to meet her needs.

As representative payee, Respondent Roth was required to report periodically to SSA how he spent the benefits. In one report, dated March 23, 2007, he said that, between November 1, 2005 and October 31, 2006, he spent none of his mother’s benefit funds on his mother’s personal needs, and he saved none of the funds. IG Ex. 2 at 3-4. In a letter dated July 16, 2007, SSA noted that it would “normally expect that a higher amount [than \$0] would be spent” and asked for an explanation. IG Ex. 2 at 5. He responded on

---

<sup>3</sup> In 2009, the benefit increased to \$1,323 per month.

August 1, 2007, that his mother's personal needs were met from pension funds that she received. IG Ex. 2 at 2.

The following year, Respondent Roth submitted no accounting report for the period November 1, 2006 through October 31, 2007. In a letter dated July 1, 2008, SSA threatened that it would stop direct deposits and require him to pick up his mother's checks at the Social Security office, at which time he could also complete the required report. IG Ex. 3. He apparently did not respond.

Nor did Respondent Roth file an accounting report for the period November 1, 2007 through October 31, 2008. By letter dated July 20, 2009, SSA asked that he submit the necessary information. IG Ex. 4. He did not respond, and, on September 20, 2009, SSA sent another letter threatening to stop direct deposit and require him to pick up his mother's checks at the SSA offices. IG Ex. 5.

SSA eventually learned that Mrs. Roth had died, although the record is silent as to how it found out. By letter dated November 11, 2009, it notified Respondent Roth that, as of November 2006, his mother was not entitled to benefits, and SSA had paid \$45,290 more than it should have. IG Ex. 6.

Based on these facts, SSA plainly has a basis for imposing a CMP. Respondent Roth does not deny that he knowingly and repeatedly withheld material facts. He did not tell SSA that his mother had died and then withheld any accounting of the way he spent her benefits. In fact, he took the money for himself.

***B. The IG proposes a reasonable penalty, \$20,000.***

The statute authorizes imposition of a CMP of "not more than \$5,000 for each . . . receipt of . . . benefits or payments while withholding disclosure of [a material] fact." Act § 1129(a)(1); 20 C.F.R. §§ 498.103(a), 498.104.

Respondent Roth accepted monthly benefits payments for 36 months after his mother died. Potentially, the IG could have imposed a \$5,000 penalty for each of those months. Thus, given the sheer number of his omissions, the proposed penalty falls well below the statutory maximum (\$5,000 x 36 = \$180,000).

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 Roth has no history of prior offenses.

I find that his conduct in all of this was exceptionally egregious and that he is fully culpable. For three years, he took substantial amounts of money to which he knew he was not entitled, and he deliberately evaded SSA's requests that he account for it. He apparently has avoided criminal prosecution, which is remarkable. SSA may justifiably impose significant penalties for such conduct to preserve the already-fragile integrity of its retirement system. Without regard to the other factors, Respondent Roth's conduct would have justified the maximum penalty.

However, I must also consider the respondent's financial condition. Respondent Roth claims that his financial situation is grim, although he has provided little evidence to support his claims. Nevertheless, the IG has accepted, as do I, that he has not worked since 2006, and that his income is low – \$985 per month. He pays \$285 per month in rent, which includes utilities. He has no significant assets. IG Ex. 17 at 2; Resp. Ex. 2. He claims that his health is poor and that his living expenses, including food and rent, total \$800 per month. Because of his limited income and assets, the IG reduced his penalty, and, for the same reason, I am not inclined to increase the amount.

Nevertheless, given the seriousness of his offenses, I find that \$20,000 is the lowest CMP that is reasonable.

***C. I have no authority to waive the penalty and assessment.***

In his brief, Respondent argues, for the first time, that his assessment and penalty should be waived because of his inability to pay. An individual may ask that an overpayment be waived, if he is without fault in causing the overpayment. Act § 204(b); 20 C.F.R. § 404.502a. Here, Respondent Roth was obviously at fault. In any event, the process for requesting a waiver is described in 20 C.F.R. § 404.506 and is separate from these proceedings, which are governed by 20 C.F.R. Part 498. My jurisdiction here is limited to determining whether the IG had a basis for imposing a CMP and determining whether the penalty imposed is reasonable. *See* 20 C.F.R. §§ 498.202, 498.204, 498.220. Questions of waiver are therefore not properly before me.

**Conclusion**

Respondent Roth violated section 1129 of the Act when he did not tell SSA that his mother had died and continued to receive her title II benefits, converting them to his own use. I consider reasonable the imposition of a \$20,000 CMP.

/s/

---

Carolyn Cozad Hughes  
Administrative Law Judge