

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Social Security Administration, Office of the Inspector General,

Petitioner,

v.

Kendale Garrett,

Respondent.

Docket No. C-10-30

Decision No. CR2273

Date: October 22, 2010

**DECISION**

The Inspector General (IG) for the Social Security Administration (SSA) charges that Respondent, Kendale Garrett, violated section 1129 of the Social Security Act (Act), because she falsely reported her living arrangements in order to increase her monthly Supplemental Security Income (SSI) benefits. The IG proposes imposing against Respondent Garrett a \$50,000 civil money penalty (CMP).

The IG has not established that Respondent Garrett made false statements when she reported to SSA that she and her husband had separated. I therefore deny the proposed penalties and assessments.

**I. Background**

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; 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 (March 2, 2004).

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 “[k]new, or should have known, that the statement or representation was false or misleading,” made the statement “with knowing disregard for the truth,” or where the person omitted, “or otherwise withheld disclosure of” the material fact. 20 C.F.R. § 498.102(a).

In this case, the IG contends that, after learning that SSA significantly reduced her SSI benefits because of her husband’s income, Respondent Garret told SSA that she and her husband were separated; in fact, they continued living together. According to the IG, SSA paid her \$26,000 to which she was not entitled because of her misrepresentation. By letter dated August 25, 2009, the IG advised Respondent Garrett of his determination and the proposed penalty. IG Ex. 24. Respondent Garrett requested a hearing.

I convened a hearing on May 26, 2010, in Charlotte, North Carolina, at which Respondent Garrett represented herself. Ms. Debbie Shaw represented the IG.

I have admitted into evidence IG exhibits (Exs.) 1-27 and Respondent (Resp.) Exs. 1-4. Order Scheduling Hearing ¶ 2 (April 8, 2010); Transcript (Tr.) at 6. The parties have also filed initial briefs (IG Br.; Resp. Br.) and closing briefs (IG Cl. Br.; Resp. Cl. Br.).

## II. Issues

The issues before me are: 1) Did Respondent Garrett make, or cause to be made, to SSA a statement or representation of a material fact for its use in determining the amount of her SSI payments that she knew or should have known was false and misleading, or did she omit a material fact or make such a statement with knowing disregard for the truth; and, 2) if so, is the proposed penalty – \$50,000 – reasonable?

## III. Discussion

### ***A. The IG has not established that Respondent Garrett made false statements to SSA for its use in determining the amount of her SSI benefit.<sup>1</sup>***

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* 20 C.F.R. Part 416. A person’s income “is a major factor” in determining eligibility and the amount of the benefit –

---

<sup>1</sup> My findings of fact/conclusions of law are set forth, in italics and bold, in the discussion captions of this decision.

generally, the higher the income, the lower the benefit. 20 C.F.R. § 416.1100. If an otherwise eligible individual lives in the same household with an ineligible spouse, SSA “deems” some of the spouse’s income to the eligible individual, i.e., treats it as if it were the individual’s own income. 20 C.F.R. § 416.1160.

When Respondent Garrett applied for SSI benefits in May 2002, she told SSA that she was married and lived with her husband and three children. IG Ex. 1.

SSA finally approved her application for benefits on March 25, 2004.<sup>2</sup> Before it made any payments, however, SSA required Respondent Garrett to update her claim. Among other questions, the agency asked where she had lived and with whom since May 9, 2002, the date of her original application. She also had to provide the names of any employers, her pay stubs, and a list of all her resources. IG Ex. 2 at 1.

As part of the statement updating her information, SSA told her that the amount of her SSI check would be based on the information she provided and that she must report any changes to SSA.

Remember, a change may make the SSI monthly payment bigger or smaller. Report changes in income of your husband/wife who lives with you and changes in income, school attendance and marital status of ineligible children who live with you. You must report changes in things of value that you and your spouse own.

IG Ex. 2 at 3. The statement told her to report changes by telephone, in person, or by mail “within 10 days after the month it happens” and reminded her that anyone who lies or misrepresents the truth is committing a crime. IG Ex. 2 at 2-3. *See* Resp. Br. at 2 (in which Respondent Garrett concedes that she “was aware of her reporting responsibilities to tell SSA every time there is a change within ten days after the month in which it happens”).

In the statement, signed and dated May 18, 2004, Respondent Garrett advised SSA that, since May 1, 2002, she had been living with her husband, Glenn and her three children at 7815 Stokes Ferry Road, Salisbury, North Carolina. IG Ex. 2 at 4, 9.

In a notice of award, dated May 31, 2004, SSA advised Respondent Garrett that she was eligible for benefits. The notice explained that the amount of her benefits depended on her living arrangements (where she lived, with whom, and how food and shelter expenses were paid). Her benefits were greatly reduced – for some months she received no

---

<sup>2</sup> SSA initially denied Respondent Garrett’s application, but, on appeal, an administrative law judge awarded benefits, hence the delay between the time of her application and the approval. IG Exs. 2, 3.

payment at all – because of her husband’s income. IG Ex. 3 at 1-3. Specifically, SSA paid her nothing for April 2004, and the notice advised her that SSA would pay her only \$112 from May 1 through June 30, 2004, and would pay nothing thereafter. IG Ex. 3 at 2.

Respondent Garrett’s Report of Separation. In August 2004, Respondent Garrett reported to SSA that she and her husband no longer lived together. IG Ex. 14; IG Ex. 18 at 1-2 (Blackford Decl. ¶ 3); IG Ex. 20 at 1, 2 (Littlejohn Decl. ¶¶ 2, 5); Tr. at 33. According to the IG, she told SSA that they had not lived together since April 2004. IG Br. at 3. Respondent, however, denies ever claiming that she and her husband separated in April 2004; she maintains that she told SSA that they separated in August 2004, and, in fact, they were separated at the time she reported it. Resp. Br. at 2.

Although the IG bases much of its case on Respondent Garrett’s purported oral representation to SSA, it produces no direct evidence of that conversation. No report of contact or other evidence memorializes the statements she purportedly made that induced SSA to increase her benefits. The IG cannot even identify the SSA employee who took down the information. According to SSA Claims Representative Margaret Blackford, “Someone in the office did talk to [Respondent] in August 2004 and conducted an update to her record. This is when she informed SSA that she was no longer living with her spouse, Glenn Garrett.” IG Ex. 18 at 1-2 (Blackford Decl. ¶ 3).

In a notice dated August 23, 2004, SSA advised Respondent that her husband’s income would no longer affect the amount of her SSI payments, and, beginning April 1, 2004, she would receive \$564 per month.<sup>3</sup> IG Ex. 5. Arguably, the notice should have prompted Respondent Garrett to advise SSA of its error in order to avoid an overpayment.<sup>4</sup> However, a conflicting notice, dated September 29, 2004, confirmed that, in computing the amount of her SSI payments, SSA would no longer count her husband’s income or assets “because you no longer lived with him *beginning August 2004.*” (emphasis added) IG Ex. 6. Based on this later notice, Respondent could reasonably have concluded that SSA’s information was accurate, and that she had no obligation to correct their records.

Thus, the evidence – and absence of evidence – supports Respondent Garrett’s claim that she told SSA that she and her husband separated in August 2004, but, in error, an unidentified SSA employee computed benefits based on an April 2004 separation date.

---

<sup>3</sup> Her monthly payments increased to \$579/month in 2005, \$603/month in 2006, \$623/month in 2007, and \$637/month in 2008. IG Ex. 7 at 3.

<sup>4</sup> As mentioned above, until late November 2006, the IG had no authority to impose penalties for withholding material facts, so Respondent’s failure to report the error at this juncture would not subject her to any CMP, even if she had done so deliberately in order to obtain benefits to which she knew she was not entitled.

The 2004 separation. I also find that the more reliable evidence establishes that Respondent Garrett was, in fact, separated from her husband when she made the August 2004 call to SSA, and that her separation continued at least through the end of October 2004. The IG does not dispute that the Garretts may have been separated for a short while in August 2004, but, relying solely on testimony from Respondent's mother, the IG argues that the separation lasted only a few days.

When Respondent left her husband, she went to stay with her mother, Cathy Eubanks. Mrs. Eubanks agreed that her daughter sometimes stayed with her, but claimed that it was "very temporary," seven to ten days per year from 2004 through 2007. IG Ex. 19 at 2, 6; Tr. 11-12. I did not find this testimony reliable.

I am not convinced that Mrs. Eubanks accurately recalls the events of 2004. She asserts that she spoke to Claims Representative Blackford about her daughter's separation on "approximately" February 6, 2004. IG Ex. 19 at 5. But this date must be wildly incorrect. Because Respondent Garrett's SSI application was only approved on March 25, 2004, and Respondent advised SSA of her separation in August 2004, Claims Representative Blackford had no reason to contact Mrs. Eubanks as early as February 2004. For her part, Claims Representative Blackford does not refer to any conversations with Mrs. Eubanks prior to 2007. IG Ex. 18 at 3 (Blackford Decl. ¶ 10). At that time, Mrs. Eubanks furnished Claims Representative Blackford with evidence purporting to show that Respondent resided with her husband. IG Ex. 18 at 3-4 (Blackford Decl. ¶ 12); *see* IG Ex. 19 at 6 (Eubanks Decl. ¶ 4); IG Exs. 10, 11; Resp. Ex. 3.

But none of the documents Mrs. Eubanks provided to SSA refute Respondent's claim that she and her husband were separated in August 2004:

- A JC Penny bill showing that Respondent "ordered an MP3 player to be delivered to her home at Kingsway." IG Ex. 18 at 3.<sup>5</sup>

The IG has not provided a copy of this bill. However, Respondent Garrett produced a receipt showing that, *in November 2006*, she ordered an MP3 player and children's clothing from JC Penny. Although the receipt lists Kingsway Drive as the billing address, it shows that the merchandise was shipped to Cathy Eubank's address. Resp. Ex. 3; Resp. Br. at 4. Thus, the document is irrelevant to the question of where Respondent Garrett lived in August 2004, and, if anything, it tends to support Respondent's claim that she was separated from her husband in November 2006.

---

<sup>5</sup> In June 2004, the Garretts purchased a house at 1210 Kingsway Drive, Salisbury, North Carolina. IG Ex. 9 at 1; IG Ex. 14 at 2. Respondent Garrett concedes that the couple reconciled and began living in that house on November 15, 2004. IG Ex. 17 at 2.

- A letter from Morgan Elementary School written to Mr. and Mrs. Glenn Garrett about one of their children. IG Ex. 18 at 3.

The IG provides a copy of this letter. IG Ex. 11. It is dated November 29, 2006, so it is irrelevant to the question of where Respondent Garrett lived in August 2004. In any event, I find such documentation of limited value in establishing whether Respondent and her husband were living together. Whenever Respondent left her husband, she simply moved in with her mother. She did not sign a lease, open accounts with utility companies, or even have her mail forwarded.

- Bank statements from February 17, 2006 to May 15, 2006, showing that the Garretts shared a bank account and both were making deposits. IG Ex. 18 at 4.

The IG provides copies of bank statements (IG Ex. 10), which show that, from at least March 2005, Respondent Garrett and her husband maintained a joint checking account listing the Kingsway address. Bank statements from March 2005 through February 2007 show regular deposits (presumably from Glenn Garrett's employment) and monthly SSI deposits. While I agree that these documents provide strong evidence that Respondent Garrett had access to her husband's income, and was therefore likely overpaid her SSI benefits, they do not refute her claim that she left her husband in 2004. I note that she told SSA about this bank account when she updated her financial information in May 2004. IG Ex. 2 at 5. I see no evidence that SSA even asked Respondent Garrett about this account when she reported her separation, which might have been the more prudent course.

- From December 2006, a love letter written to Mrs. Garrett from her husband. IG Ex. 18 at 4.

The IG produces what appears to be a letter from Glenn Garrett<sup>6</sup> to Respondent, but I found no date on it. IG Ex. 13. Claims Representative Blackford makes much of language in the letter that refers to their having "been together for 13 years," but that statement does not establish that the couple was never separated during that time. Moreover, the letter describes an obviously volatile relationship, and alludes to the couple's separating ("I said I would take the kids away from you"; "when we do get to spend time together I take it straight to heart because it don't (sic) happen very often") as much as to their reconciling

---

<sup>6</sup> The letter is signed "Bryan," which is Glenn Garrett's middle name. *See, e.g.*, IG Ex. 2 at 5.

“I hope that we still continue being together”; “I love every day I get home and I see my beautiful wife”). IG Ex. 13 at 2-3. If it establishes anything, the letter shows that this couple was either separated or on the verge of separation, and Mr. Garrett, at least, was trying to reconcile.

- Date unsure, but a letter written by oldest daughter starting with the date of birth and going through 2005, stating when they moved to their new home and traveling on vacation as a family. IG Ex. 18 at 4.

The IG does not provide a copy of any such letter, and this characterization of it does not establish that the Garretts were living together in August 2004.

Mrs. Eubanks describes a conversation in which Claims Representative Blackford asked specific questions about her utility bills and other costs and, according to Mrs. Eubanks, instructed Respondent to contribute \$150 per month to cover her mother’s expenses. Had Mrs. Eubanks told the claims representative that her daughter was not living with her, Ms. Blackford would have had no reason to inquire about Mrs. Eubanks’s household expenses nor to tell Respondent Garrett that she should contribute a portion of her benefits to cover her mother’s costs. IG Ex. 19 at 1-2; Tr. 18-20.

Finally, the palpable hostility between mother and daughter makes it unlikely that Mrs. Eubanks could fairly describe their living arrangements or any other aspect of her relationship with her daughter.<sup>7</sup>

On the other hand, reliable evidence supports Respondent’s claim that the Garretts were separated from August through the end of October 2004. In September 2004, Respondent’s husband commenced a civil action against her, and she was served at her mother’s address. Resp. Ex. 1. On October 18, 2004, a judge ordered Respondent to stay away from her husband’s home and place of employment. Resp. Ex. 2. Based on these documents, I am satisfied that Respondent Garrett lived separate from her husband from August until at least November 2004, and she did not misrepresent her living situation when she reported the separation to SSA.

Respondent Garrett’s February 2007 representations. Although not mentioned in its August 25, 2009 notice letter (IG Ex. 24), the IG points to a second purported false statement. According to Claims Representative Blackford, on February 7, 2007, Respondent Garrett called SSA and reported that she had, in fact, separated from her husband in February 2004, not April 2004. An SSA employee “took her at her word,” changed her record to reflect the earlier date of separation, and sent her an additional

---

<sup>7</sup> That Mrs. Eubanks would offer to SSA a very personal letter from Respondent’s husband speaks volumes about the quality of the mother/daughter relationship.

\$645.15. IG Ex. 18 at 3 (Blackford Decl. ¶ 9).<sup>8</sup> Again, the IG provides no direct evidence of the conversation, and concedes that it cannot identify the SSA employee to whom Respondent purportedly spoke. *See* IG Ex. 18 at 2 (Blackford Decl. ¶ 5); Tr. at 9. I therefore find that the IG has not established that Respondent Garrett made a false statement in February 2007. In any event, the IG did not impose any penalty for this purported false statement, explaining that it would not do so because it could not identify the SSA employee who took the call. IG Cl. Br. at 10. I find this reasonable but note that the IG also failed to identify the SSA employee to whom Respondent reported her separation in August 2004.

***B. The IG may not impose a penalty for violations of section 1129, unless it has provided Respondent with adequate notice and an opportunity to respond.***

Respondent Garrett and her husband plainly have a tumultuous relationship. They fight. She leaves him. They reconcile. Determining exactly when they were separated is particularly difficult in this case because the testimony of those who had knowledge of the living arrangements is unreliable. I did not find Mrs. Eubanks a credible witness for the reasons discussed above. Respondent Garrett is no more credible and has made numerous inconsistent claims regarding her past living arrangements. *See, e.g.*, IG Ex. 14 at 3 (in which Respondent writes, “I admit that I am still legally married and spend [an average of] 3 nights at home with Glenn and the children”); IG Ex. 27 (claiming separation for all of 2005, 2006, 2007); Resp. Br. at 4; Tr. at 27 (claiming separation from September 2004 through November 2006).<sup>9</sup>

---

<sup>8</sup> The actions of SSA personnel here are baffling. Three months earlier, on November 15, 2006, Glenn Garrett called the field office to report that he and Respondent were separated, and that she had taken out a restraining order against him. IG Ex. 18 at 2 (Blackford Decl. ¶ 5); Tr. at 9. This was surprising news to SSA personnel since, for more than two years, the agency had been determining her benefits based on her earlier representation that she and her husband were separated. IG Ex. 18 at 2; *see* IG Ex. 7. SSA eventually launched an investigation that led to these proceedings. *See* IG Ex. 18 at 4 (Blackford Decl. ¶ 13); IG Ex. 20 (Littlejohn Decl.). Yet, according to SSA, when Respondent called demanding more money, they simply sent her a check without further inquiry.

<sup>9</sup> Respondent also testified that, during the two and a half years she lived with her mother, Ms. Eubanks “stole over \$30,000 worth of jewelry acquired during Respondent’s marriage.” Resp. Br. at 4; Tr. at 36. When asked whether she had reported to SSA that she possessed assets of that value, she claimed that the jewelry “was stolen before I applied for Social Security.” Tr. at 36-37; *see* IG Ex. 1 (stating “I do not own any type of resource”). When counsel pointed out that she claimed to have lived with her mother *after* she applied for (and, in fact, while she was receiving) SSI benefits, she disingenuously claimed that she “didn’t know jewelry was considered a type of

(Continued...)



In any event, I need not sort out the Garretts' living arrangements since November 28, 2006 (when the IG first had the authority to impose penalties for omissions) nor determine whether, during the periods she reconciled with her husband, Respondent Garrett knowingly withheld that information from SSA in order to increase the amount of her SSI benefits. The IG has proposed remedies here for Respondent Garrett's purported misrepresentations of August 2004, not for her subsequently failing to report that she and her husband reconciled.

By regulation, the IG sends written notice of his intent to impose a penalty. 20 C.F.R. § 498.109(a). The notice must include:

- (2) A description of the false statements, representations, or other actions . . . and incidents, as applicable, with respect to which the penalty and assessment, as applicable, are proposed.

Here, the IG's notice letter charges that, in August 2004, Respondent Garrett "verbally reported to SSA that [she] had separated from her husband," when, in fact, they "have been living together continuously since August 2004." IG Ex. 24 at 1.<sup>10</sup>

In its prehearing brief, the IG reiterated: "In this case the false statement at issue is when Respondent verbally informed SSA in August 2004 that she no longer lived with her husband effective April 2004." IG Br. at 10.<sup>11</sup>

In its closing brief, the IG claims, for the first time, a second basis for the proposed penalties, stating: "Only the August 2004 statement *and subsequent omissions* were subject to civil money penalty." IG Cl. Br. at 10 (emphasis added). I recognize that the IG might well have been able to show that Respondent Garrett deliberately withheld from

---

(...Continued)

<sup>9</sup> resource." Tr. 37. Whether she deliberately hid those assets from SSA (which I find unlikely) or unfairly accused her mother of stealing jewelry she did not possess (more likely), the exchange hardly enhances her credibility.

<sup>10</sup> The notice letter is troubling because it proposes a CMP of \$10,000 (in addition to the assessment in lieu of damages), even though it cites only one misrepresentation to support that CMP. It does *not* cite withholding disclosure of a material fact as a basis for imposing a penalty. The statute authorizes a maximum CMP of just \$5,000 per misrepresentation or receipt of benefits while withholding disclosure of a material fact. Act § 1129(a)(1); *see* 20 C.F.R. § 498.103.

<sup>11</sup> In that brief, the IG discusses the purported "verbal false statement" of February 7, 2007, but, as discussed above, he has not imposed any penalty for it. IG Cl. Br. at 10.

SSA material information that she reconciled with her husband, at least for part of the time after November 2004,<sup>12</sup> but the IG has not provided adequate notice that a penalty would be based on those omissions. It may not add the issue at the close of the case.

#### **IV. Conclusion**

The IG failed to establish that Respondent Garrett made false statements to SSA for its use in determining the amount of her SSI benefit, which was the basis for its proposed penalty. I therefore deny the proposed penalties and assessments.

\_\_\_\_\_  
/s/

Carolyn Cozad Hughes  
Administrative Law Judge

---

<sup>12</sup> Even Respondent Garrett concedes that she lived part of this time with her husband, although I doubt that she was with him in November 2006, since he filed yet another law suit against her at that time, and, on November 24, 2006, the county sheriff served her with a summons at her mother's house. Resp. Ex. 4.