

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

The Inspector General of the Social Security Administration,

Petitioner,

v.

Evelyn Oquendo,

Respondent.

Docket No. C-13-1352

Decision No. CR4187

Date: September 4, 2015

DECISION

The Inspector General (IG) of the Social Security Administration (SSA) charges that Respondent, Evelyn Oquendo, violated section 1129 of the Social Security Act (Act) because she deliberately misled SSA about her living arrangements and household income in order to maintain her Supplemental Security Income (SSI) benefits. The IG proposes imposing against Respondent Oquendo a civil money penalty (CMP) totaling \$126,167.31.

For the reasons discussed below, I agree that Respondent Oquendo deliberately withheld material facts and falsely reported her living arrangements and household income so that her SSI benefits would not be reduced or cancelled. In light of her deliberate, long-standing deception, I consider \$126,167.31 a reasonable CMP.

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. 20 C.F.R. §§ 416.202;

416.1100. In determining whether an individual is eligible for benefits, SSA considers her entire household's income and resources. 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.

Generally, state law determines whether two individuals are husband and wife for purposes of determining SSI eligibility. However, if the individuals "hold themselves out" to their community as husband and wife, SSA will consider them as such. Act § 1614(d)(2); 20 C.F.R. § 416.1806(a)(3).

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 she knows or should know is material to SSA's determining eligibility for benefits or benefit amounts.

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," or who has 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).

Procedural Background. In this case, the IG contends that Respondent Oquendo deliberately misled SSA about her living arrangements. She repeatedly told the agency that she lived alone or with her children, when, in fact, she was living with her putative husband, William Candelario. By letter dated July 8, 2013, the IG advised Respondent Oquendo that, because she withheld material information from SSA, he proposed imposing against her a penalty of \$60,000 plus an assessment in lieu of damages of \$66,167.31, for a total CMP of \$126,167.31 ($\$60,000 + \$66,167.31 = \$126,167.31$). SSA Ex. 8.

Respondent Oquendo requested a hearing.

On January 20, 2015, I convened a hearing, via video teleconference, from the offices of the Departmental Appeals Board in Washington, D.C. Ms. Penny Collender and Ms. Joscelyn Funnié, representing the SSA IG, appeared from New York City. Transcript (Tr.) 4. Mr. Mark Alves represented Respondent Oquendo and appeared from Boston, Massachusetts. Tr. 5. IG witness Elena Torres testified from Puerto Rico; IG witnesses Jason Donnelly and William Candelario, and Respondent Oquendo testified from Boston.

The parties filed pre-hearing briefs (IG Br.; Resp. Br), and post-hearing briefs (IG Post-hrg. Br.; Resp. Post-hrg. Br.). I admitted into evidence SSA Exhibits 1-10 (SSA Exs. 1-10) and Respondent Exhibits (Resp. Exs.) 1- 6. Summary of Prehearing Conference at 2 (July 3, 2014); Tr. 6.

Issues

The issues before me are:

1. Did Respondent Oquendo omit, or otherwise knowingly withhold from SSA, disclosure of a fact or facts that she knew or should have known were material to determining her eligibility for SSI benefits and/or the amount of those benefits; and
2. If so, is the proposed penalty – \$126,167.31 – reasonable.

Summary of Prehearing Conference at 1-2 (July 3, 2014); Tr. 5-6.

Discussion

1. Respondent Oquendo violated section 1129 of the Act, because she deliberately withheld material facts and made false statements to SSA for its use in determining her eligibility for SSI benefits.¹

The early representations. In her efforts to obtain and continue receiving SSI benefits, Respondent Oquendo represented to SSA the following:

- On **May 31, 1994**, Respondent Oquendo applied for SSI disability benefits. On her application, she acknowledged that she was in a “holding out relationship,” i.e., living in the same household and holding themselves out as a married couple, with William Candelario. SSA denied her application based on a lack of medical evidence. SSA Ex. 1 at 2; SSA Ex. 9 at 2 (Torres Decl. ¶ 4).
- She reapplied for benefits on **November 25, 1997**, but this time she claimed that she was the sole member of her household. Again, SSA denied the application, finding that she did not meet the medical criteria for benefits. SSA Ex. 1 at 2.

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

- On **December 7, 1998**, she applied for SSI benefits a third time. She reported that she lived in an apartment on Gaylord Street in Dorchester, Massachusetts, with her three children, Enrique Candelario, Lillian Candelario, and Ismael Oquendo. This time, SSA awarded her benefits. SSA Ex. 1 at 2; SSA Ex. 9 at 2 (Torres Decl. ¶ 4).
- After SSA has approved a claimant's application for SSI disability benefits, the claimant must undergo a "pre-effectuation review conference" before SSA will pay any benefits. The purpose of the conference is to assure that the claimant is still financially eligible for SSI and to update other relevant information. Here, Respondent Oquendo completed her pre-effectuation review conference on **April 6, 1999**, at which she reported no changes to her living situation. SSA Ex. 1 at 2.
- On **December 29, 2000**, Respondent Oquendo called SSA to report that her daughter had a baby, who was a new addition to the household. SSA Ex. 1 at 2.
- On **September 9, 2002**, she reported that she lived at a new address with her grandson only. SSA Ex. 1 at 2-3.
- On **February 7, 2011**, when SSA redetermined Respondent Oquendo's eligibility for SSI benefits, she reported that she lived alone in an apartment on Magnolia Street in Dorchester, with no additional household income and no marriage or "holding out relationship." SSA Ex. 1 at 3; SSA Ex. 9 at 2 (Torres Decl. ¶ 4).

Thus, for many years after she was awarded benefits, Respondent Oquendo consistently maintained that she lived alone or with her children/grandchild and that she had no family income beyond her SSI benefits, the children's welfare benefits, and a state housing allowance. She reported no marriage or "holding out relationship" with William Candelario or anyone else. SSA Ex. 1 at 2.

The investigation. An anonymous individual contacted SSA's Boston Field Office and alleged that Respondent Oquendo lived with her "husband," William Candelario, and concealed from SSA that living arrangement and her household income. In response, on February 21, 2012, the IG began an investigation. SSA Ex. 1 at 2; SSA Ex. 9 at 1-2 (Torres Decl. ¶ 3); Tr. 51.

On December 10, 2012, Respondent Oquendo met with IG Special Agents Elena Torres and Jason Donnelly at the SSA District Office in Dorchester, Massachusetts. SSA Ex. 1 at 10; SSA Ex. 9 at 2 (Torres Decl. ¶ 5); SSA Ex. 10 at 2 (Donnelly Decl. ¶ 4). Both agents are fluent in English and Spanish, and Special Agent Torres is certified as a bilingual criminal investigator. SSA Ex. 9 (Torres Decl. ¶ 1); SSA Ex. 10 at 1 (Donnelly Decl. ¶ 1); Tr. 30. According to the agents, Respondent Oquendo understood and spoke English. In fact, they began the interview in English, and Respondent Oquendo

responded in English. She subsequently asked that they speak Spanish, so the agents continued the interview in Spanish. SSA Ex. 9 at 2 (Torres Decl. ¶ 5); SSA Ex. 10 at 2 (Donnelly Decl. ¶ 4); Tr. 31.

Although the parties vehemently disagree about what transpired during that meeting, compelling evidence establishes the following:

Early in the interview, Respondent Oquendo blatantly misrepresented her relationship with William Candelario. She admitted that William Candelario Sr. was the father of her children but claimed that she had not seen him in a long time. Then she changed her story and said that she had seen him the night before. In fact, he had driven her to the district office and was outside, in his car, waiting for her, which she eventually admitted. SSA Ex. 9 at 2 (Torres Decl. ¶ 5); SSA Ex. 10 at 2 (Donnelly Decl. ¶ 4); Tr. 127; *see* Tr. 98, 130 (conceding that, when William Candelario had a car, he gave her rides). Respondent Oquendo's efforts to deceive the special agents significantly undermine her credibility.

According to both Special Agent Torres and Special Agent Donnelly, whom I found completely credible, Respondent Oquendo agreed to provide a voluntary, written statement but asked Special Agent Torres to assist her in preparing it. Agent Torres wrote the statement based on the information the respondent provided. She read the statement to Respondent Oquendo in English and in Spanish. SSA Ex. 9 at 2 (Torres Decl. ¶ 6). After reviewing the statement, Respondent Oquendo said that no changes needed to be made. She signed it and initialed each page. The special agents signed as witnesses. SSA Ex. 9 at 3 (Torres Decl. ¶ 6); SSA Ex. 10 at 2-3 (Donnelly Decl. ¶ 5); Tr. 37-39.

In the statement, Respondent Oquendo acknowledged that, in March 2004, her husband, William Candelario Sr., was released from jail and came to live with her. In 2005, they moved to the Magnolia Street apartment with their grandchild and have been living there ever since. She acknowledged that she and William Candelario never officially married but said that they had been holding themselves out to others as husband and wife since 1978. She admitted that they had lived together for many years, except from 1998 to 2004, when William Candelario was in jail. She knew that having him in her household would affect her SSI benefits but claimed that she did not know that she had to report his living with her. SSA Ex. 3 at 1-2; SSA Ex. 9 at 2-3 (Torres Decl. ¶ 6); SSA Ex. 10 at 2-3 (Donnelly Decl. ¶ 5). At the hearing, however, she admitted knowing that she had to report such a living arrangement. Tr. 126-27.

Respondent Oquendo also explained that they resided in Section 8 housing, which was under her name. William Candelario could not be listed on the Section 8 award because of his felony conviction. SSA Ex. 3 at 3; SSA Ex. 10 at 3 (Donnelly Decl. ¶ 5). She said

that she paid \$136 per month in rent.² With respect to their other household expenses, she said that they divided the cable bill evenly; William paid either the electric bill or the gas bill, depending on which arrived first, and she paid the bill that arrived second. She and her grandchildren received food stamps, with which she bought food, and he bought more food with cash. SSA Ex. 3 at 3.

On February 4, 2013, Special Agents Torres and Jamie Mazzone, from the Department of Housing and Urban Development, interviewed the owner of Respondent Oquendo's apartment building. The owner told the agents that Respondent Oquendo lived there with her grandson. Section 8 authorizes only two people to live in the apartment, but the owner, who did not live in the building, nevertheless acknowledged that she had seen William Candelario there. SSA Ex. 9 at 3 (Torres Decl. ¶ 8); Tr. 51.

Post-investigation representations. Respondent Oquendo soon began to backtrack on the representations she made in her written statement. On January 22, 2013, responding to another redetermination of eligibility, she told SSA that she continued to live in an apartment on Magnolia Street with her grandson only and that, except for food stamps, she received no help or money to pay for food, rent, or utilities from any person not living with her or from any agency. SSA Ex. 4 at 3. She admitted that William Candelario "stays with me a couple of days a week, but I do not consider him my spouse and we do not hold ourselves out to the community as man and wife." She said that William Candelario lived on Puritan Road in Somerville and that she did not know his phone number. SSA Ex. 4 at 1.

In these proceedings, Respondent Oquendo has denied virtually every prior admission. In her written declaration, she admitted that William Candelario was the father of her children but said that they were never married and never held themselves out as husband and wife. Resp. Ex. 1 at 1 (Oquendo Decl. ¶¶ 2, 3, 4). But we know that this cannot be accurate because, when she applied for benefits in 1994, she acknowledged her "holding out" relationship with William Candelario. SSA Ex. 1 at 2; SSA Ex. 9 at 2 (Torres Decl. ¶ 4).

In her written declaration, she also denies that she and William have lived together since he was released from jail in 2004 and that he has ever provided any financial support. Resp. Ex. 1 at 1 (Oquendo Decl. ¶¶ 5, 6).

With respect to her meeting with Special Agents Torres and Donnelly, she states that she received a letter instructing her to go to SSA on December 10, 2012, and, when she arrived, "a woman" told her that she was under criminal investigation and questioned her in English only, never in Spanish. In fact, to support her claim that she didn't understand

² Respondent's landlord confirmed that Respondent Oquendo is responsible for \$136 per month, and the Section 8 program pays the balance of the rent. SSA Ex. 1 at 17.

what she was signing, Respondent Oquendo claims that she is essentially illiterate in both English and Spanish and that she did not even know that Special Agent Torres spoke Spanish. Tr. 116-17. She also claims that “the woman” told her to write something, but she responded that she could not read or write. So “the woman” wrote something and told Respondent Oquendo to sign and initial “in many places,” which she did, even though she did not know what was written. Resp. Ex. 1 at 1 (Oquendo Decl. ¶ 8); Tr. 118-19.

I do not find any of this credible. To accept Respondent’s assertions, I would have to believe that neither Agent Torres nor Agent Donnelly speak Spanish, as they claim, or that they deliberately refused to communicate with the person they were supposed to be interviewing. I reject both propositions. The agents are plainly fluent in Spanish, and had no discernible reason to refuse to communicate with Respondent in a language she could understand.

Moreover, Respondent’s claims of ignorance are inconsistent with her written declaration, in which she describes in some detail the conversation she had with Special Agent Torres and, thus, inadvertently admits that she well understood what transpired. According to her declaration, “the woman” asked several times about the father of her children and told her that:

they had videos and pictures of him living at my home and using his own keys. I said that was not possible because I would not let him live there. I told her she come to my house (sic) anytime and check but she said no.

Resp. Ex. 1 at 1 (Oquendo Decl. ¶ 8); *but see* Tr. 115 (denying that Agent Torres told her she had videos). Moreover, Respondent Oquendo concedes that she answered the questions posed by Agent Torres. She does not say whether she responded in English or Spanish. If she speaks little to no English, she would have responded in Spanish. But she also claims that she didn’t even know that Special Agent Torres spoke Spanish. How, then, did they communicate?

Other evidence undermines Respondent Oquendo’s claims that she does not speak or understand English. She has lived in the Boston area since 1992 and eventually conceded that she speaks “a little English.” Tr. 109, 111. During the hearing, it appeared that she well understood the proceedings. During cross-examination, for example, while I was giving instructions to the translator, Respondent’s attorney, who does not speak Spanish, gave her some instructions that were not audible on the record and was admonished not to engage in conversation with her while she was testifying. Tr. 123-24; *see* Tr. 112. At another point, Respondent Oquendo corrected the interpreter in his translation of her testimony. Tr. 132-33. These lapses suggest more than a passing knowledge of English.

Respondent Oquendo may not have understood their potential implications, but she well understood the facts she admitted.

Respondent also attacks those portions of her written statement regarding who pays the utility bills. She produces letters from her grandson's healthcare providers declaring that, because the grandson has a chronic illness, utilities should not be shut off. Resp. Ex. 6. But, contrary to Respondent's suggestion, these letters do not negate her written statement regarding who paid the utility bills. The letters prevent shut-off; they do not mean that she didn't have to pay those bills. Presumably, the utility company could collect any arrearage by other means.³

William Candelario's testimony. I found the testimony of William Candelario even less credible than Respondent's. His testimony ran the gamut from unconvincingly vague to incredible. Initially, he was unable or unwilling to provide any details as to where he has lived since his release from prison in 2004: "in one place for a time, and then one place – in another place for another time." Tr. 66. Then he claimed that, as an ex-convict, he "couldn't have any fixed address." Tr. 68, 69.⁴

After much equivocation, he claimed that, when released from prison in April 2004, he lived with his son Enrique in Walpole, Massachusetts. Tr. 72. According to Enrique, his father began to live with him in 2005. Resp. Ex. 5. But William Candelario testified that in 2005 he lived in Charlestown with a friend named "Roberto." He said that he did not know Roberto's last name, but met him at a dance club. He said that he moved in with Roberto because Respondent Oquendo "didn't want me in the house anymore." Tr. 72, 76-77. I found this testimony especially hard to credit.

When asked if he spent nights at Respondent Oquendo's house, he first replied that "[i]t was just now and again" to see his grandson. Tr. 88. Then he said "[I]t could be that I went by there and I might spend the day and I might spend the night, but I didn't live there. I had other obligations." Tr. 89.

He also denied ever contributing any rent or other housing expenses to Respondent Oquendo or anyone else, although he allowed that he might occasionally have given some money to a family member with whom he was living. Tr. 88, 90. He conceded that

³ The letters dated June 8, 2011 and later raise some additional questions. Resp. Ex. 6 at 12-16. According to her February 7, 2011 redetermination, Respondent Oquendo lived alone at that time. SSA Ex. 1 at 3; SSA Ex. 9 at 2 (Torres Decl. ¶ 4).

⁴ The IG suggests that William Candelario meant that he was prohibited from living in Section 8 housing, which, in the IG's view, explains why he has claimed other addresses. IG Post-hrg. Br. at 4-5. Although not dispositive, I find this scenario more likely than any Respondent has offered.

he might even have given Respondent Oquendo a small amount of money so that she could buy their grandchild a toy. Tr. 105, 106. Thus, according to Mr. Candelario, he has lived in a variety of places since his release from prison but has never paid any rent or other household expense. I find this unlikely.

Nor was I persuaded by the declarations from various family members. Daughter Lillian Candelario claims that she has “never seen” her father stay overnight at her mother’s residence. Resp. Ex. 2 (Lillian Candelario Decl. ¶ 7). Even her parents don’t make that claim. Each admitted that William Candelario spent the night there, although they were vague as to how often. SSA Ex. 4 at 1; Tr. 128-29.

William Candelario’s income. On January 31, 2013, Special Agents Torres and Mazzone visited the Pearl Meat Packing Company and spoke to the company president and to the comptroller. They confirmed that William Candelario had worked continuously for the company since 2003, when he started there as part of a prison pre-release program. This is consistent with his earnings record, which shows that he worked for Pearl from 2003 through 2011, with annual earnings that ranged from \$4,127.20 to \$26,858.27. In 2011, he earned \$24,782.52. SSA Ex. 1 at 3. The company executives told the agents that they understood that William Candelario lived with his wife and son, William Candelario, Jr., who also worked for the company. SSA Ex. 9 at 3 (Torres Decl. ¶ 7); Tr. 44-45. They mentioned that a woman who identified herself as his “wife” would call the company, when, for example, he was unable to report for work due to illness. Tr. 45.

In his testimony, William Candelario confirmed that he worked full-time for the Pearl Company and had worked there for 12 years. Tr. 65. He said that he earned about \$498 per week or \$24,000 per year. Tr. 66.

Thus, by her own admission, Respondent Oquendo has lived with William Candelario since 2004, and they held themselves out as husband and wife. William Candelario worked full-time and contributed to the household expenses. Although she well understood her obligation to report honestly her living arrangements and household income, Respondent Oquendo deliberately misled SSA so that her SSI benefits would not be reduced or cancelled. The IG may therefore impose a CMP.

2. The I.G. proposes a reasonable CMP against Respondent Oquendo.

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. Each month an individual withholds a material fact counts as a separate instance of making a false statement and/or misrepresentation of a material fact. Act §1129(a)(1); 20 C.F.R. §§ 498.103(a), 498.103(b); *see* SSA Ex. 8.

Citing the six-year statute of limitations, the IG seeks no penalties for the misrepresentations Respondent Oquendo made prior to July 2007. Act § 1129(b)(1). He proposes a CMP covering the period from July 2007 through April 2013. IG Br. at 12. During this time, Respondent Oquendo collected at least 70 benefits checks to which she was not entitled. This alone could subject her to a penalty of \$350,000 (\$5,000 X 70 months).

In addition, this record includes two instances, since July 2007, in which Respondent Oquendo affirmatively made false statements regarding her living arrangements. On February 7, 2011, she reported that she lived alone with no additional household income and no marriage or “holding out” relationship. SSA Ex. 1 at 3; SSA Ex. 9 at 2 (Torres Decl. ¶ 4). On January 22, 2013, she told SSA that she lived with her grandson only and received no help or money to pay for food, rent, or utilities from any person not living with her. SSA Ex. 4 at 1. These statements could add an additional \$10,000 to her penalty.

The amount of the proposed penalty – \$60,000 – is thus significantly lower 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.

As a result of her deception, the IG determined that SSA paid her \$66,167.31 more in benefits than what she should have received. SSA Ex. 5. After deducting the overpayment amount incurred prior to July 2007, that amount is lowered to \$44,132.15. SSA Ex. 7. The IG’s proposed assessment in lieu of damages – \$66,167.31 – is significantly lower than twice the amount of the benefits paid as a result of Respondent’s misrepresentations and withholding of disclosure (\$88,264.30). The proposed assessment in lieu of damages is therefore within 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 Oquendo has a history of prior offenses, although he points out that her deception continued for a substantial period of time. IG Br. at 19.

With respect to her financial condition, the IG is correct that 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.”). Although given the opportunity, Respondent Oquendo did not submit to the IG a financial disclosure form, nor has she provided any financial documents as part of these proceedings. Even her written declaration is silent on the issue. She has made no effort to establish that her financial condition prevents her from paying the penalty.

Nevertheless, I have considered that she is an SSI recipient and, as such, has limited resources and income. For this reason, it is fitting to keep the CMP well below the maximum amount authorized, even though she has been guilty of deception and fraud lasting for many years and continuing through the time of the hearing in this matter.

And her dissembling has been substantial, which leads to the other factors I must consider. As this record establishes, Respondent Oquendo engaged in years-long deception, much longer than the period of time for which she is being held accountable. During that time, she knowingly withheld material information from SSA, and, when directly questioned about her living arrangements and household income, she lied. She attempted to mislead federal investigators and this tribunal. Her degree of culpability is substantial and would justify a CMP greater than that imposed here.

Finally, I note that the integrity of the SSI program depends on each beneficiary accurately reporting household income and assets so that SSA can determine whether she qualifies and, if she does, the accurate amount of her benefits. Where, as here, the beneficiary deliberately misrepresents the make-up and income of her household, she undermines the integrity of that system.

Conclusion

Respondent Oquendo violated section 1129 of the Act because she deliberately withheld material facts and made false statements to SSA for its use in determining her continuing eligibility for SSI benefits and the amount of those benefits. I consider the \$126,167.31 CMP reasonable.

/s/

Carolyn Cozad Hughes
Administrative Law Judge