

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

United States Department of Housing
and Urban Development,

Plaintiff,

v.

Jacqueline Y. Williams,

Defendant.

HUDALJ 93-2005-PF

Decided: November 18, 1993

Jacqueline Y. Williams, *pro se*

Philip A. Kesaris, Esq.
For the Government

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

INITIAL DECISION

Background

On April 9, 1993, the Plaintiff, U.S. Department of Housing and Urban Development ("HUD" or "the Department") issued a Complaint seeking an assessment of \$22,078 and a civil penalty of \$20,000 against the Defendant, Jacqueline Y. Williams, pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-12 ("the Act"), and HUD's implementing regulations, 24 C.F.R. Part 28.¹ The Department alleges that Mrs. Williams, on four separate occasions, understated her family income by failing

¹The Complaint notified Defendant that failure to file an Answer within 30 days of receipt of the Complaint would result in the imposition of the maximum amount of penalties and assessments without right to appeal. Because Defendant failed to file a timely response, on May 27, 1993, a Notice of Issuance of Initial Decision informed Defendant that an Initial Decision assuming the facts alleged in the Complaint to be true would be issued and the maximum amount of penalties and assessments would be imposed. The Notice also informed Defendant that the Initial Decision would become final 30 days after issuance, unless she filed a motion to reopen, demonstrating that extraordinary circumstances prevented her from filing an answer. 24 C.F.R. § 28.19. On June 1, 1993, Defendant submitted correspondence to this tribunal. Because she is *pro se* and the rules require a liberal construction to ensure that justice is served, her letter was treated as a timely response to the Complaint and a request for hearing.

to include her husband's wages on Section 8 rental assistance applications. Because determinations of eligibility and the amount of assistance are calculated based on family income, HUD contends that Defendant fraudulently obtained assistance payments. Defendant asserts that her husband was not living with her at the time she submitted the applications, and that therefore, she was not required to include his earnings as part of her family income.

A hearing was held on September 8, 1993, in Washington, D.C. Post-hearing briefs were neither submitted by the parties nor required by this tribunal. Accordingly, this matter is ripe for decision.

Findings of Fact

1. Pursuant to Section 8 of the U.S. Housing Act of 1937, HUD provides funding to local public housing agencies for rental assistance payments to landlords on behalf of low-income families. One such agency is the Department of Housing and Community Development, Prince George's County, Maryland ("DHCD"). *See* 42 U.S.C. § 1437f; Tr. 17-18.²

2. DHCD determines the rental assistance payments based on family members' income as reported in applications submitted by the family seeking housing assistance. The Section 8 applicant's portion of the rent is either 30% of adjusted gross income or 10% of gross income. The Section 8 assistance payment comprises the remainder of the rent. *See* 42 U.S.C. § 1437f; HUD Complaint at 2.

3. Applicants may apply annually for a 12 month contract of assistance. At present there are approximately 4,000 people on DHCD's waiting list for Section 8 assistance. Tr. 17, 20.

4. On January 25, 1988, Mrs. Williams, who then resided at [REDACTED] Landover, Maryland, with her husband, [REDACTED], and her two sons, submitted a Section 8 rental assistance application to DHCD. H. Ex. 1; Tr. 22. The application required that Defendant declare income sources of all family members in residence.³ Defendant reported her income as \$555.12 biweekly and her husband's income as \$292.19 weekly. Tr. 23-24; H. Ex. 1.

5. On January 28, 1988, DHCD notified Mrs. Williams that she was ineligible for assistance payments based on her family income. DHCD also informed her that if her

²The following reference abbreviations are used in this decision: "H. Ex." for HUD's Exhibit and "Tr." for Transcript.

³The DHCD application form requires identification "only for those who will live in the Section 8 unit." H. Exs. 1, 8, and 13.

income decreased within the next twelve-month period, she could request a redetermination on her eligibility. Tr. 24-25; H. Ex. 2.

6. At Defendant's request, on February 3, 1988, Mr. Williams provided a notarized letter to DHCD stating that he had moved out of his wife's apartment because he was unable to provide financially for her and her two sons. H. Ex. 3; Tr. 29, 109.

7. DHCD recalculated Defendant's family income without her husband's salary and determined that Defendant was eligible for monthly housing assistance payments of \$276 for the period from April 1988 to March of 1989, for a total of \$3312 for contract year 1988. Tr. 28-29.

8. On February 17, 1988, Mrs. Williams signed a Certificate of Family Responsibilities ("Certificate"). H. Ex. 4. She has signed a Certificate every year since 1976 when she first participated in the Section 8 program. Tr. 84.

9. The Certificate requires each applicant to report all family income and the names of all persons residing in the house for the lease year. Also the applicant must notify DHCD in writing whenever there is a change in income or any family member moves in or out of the residence. Anyone "who stays more than 30 days a year or who uses [the applicant's] address as his or her official address, is considered to be a resident." H. Ex. 4.⁴

⁴The Certificate states the following:

1. I must report all family income from all sources and the names of persons who will be living in the household during the course of the Lease year.
2. If, any time during the year, anyone in my family moves in or moves out, I must report it immediately to the Section 8 Office. A person who stays more than 30 days a year or who uses my address as his or her official address, is considered to be a resident of my house.
3. If, any time during the year, I or any member of my family has a change in income sources, I must report it immediately to the Section 8 Office. . . .
4. I will be backcharged for any failure to report such changes should they occur. If such failure is judged to be intentional, my participation in the program will be ended. If such failure is judged to be accidental, I will have to pay backcharges before the contract expiration date; otherwise, I will not be allowed to continue in the program. I understand, too, that cases of serious abuse will be turned over to . . . HUD. . . for further investigation and possible prosecution. . . .

H. Ex. 4.

10. A DHCD rental specialist discusses the requirements of this Certificate with each applicant every year the applicant seeks assistance. Specifically, the specialist explains to each applicant that anyone who consistently receives mail at the address is considered to be a resident of the house for the purpose of determining the housing assistance payments. In addition, the specialist reviews the application and its requirements with each applicant annually. Finally, the specialist also discusses these documents any time that an applicant reports a change in income or family composition. Tr. 18-20, 82-83.

11. On January 9, 1989, Mrs. Williams applied for assistance and submitted a signed and dated Certificate. In addition to her two sons, Mrs. Williams listed her nephew as a member of her household. Her biweekly salary of \$827.93 is the only reported income. H. Exs. 8, 9.

12. As part of the application process, Mrs. Williams provided DHCD with a December 1988 bank statement for a joint checking account in her and her husband's names. The address on the statement is her Landover, Maryland address. H. Ex. 24; Tr. 62. The joint account remains open. However in July of 1993, Mrs. Williams opened up her own account after Mr. Williams wrote an overdraft on the joint account. Although she never removed her name from the joint account, she currently uses only her individual checking account. Tr. 117.

13. DHCD determined that Defendant was eligible for housing assistance payments of \$381 a month, from April 1989 to March 1990, for a total of \$4572 for contract year 1989. The assistance supplemented the rent for an apartment, located at [REDACTED] Capitol Heights, Maryland, that she occupied as of April 1989, Tr. 43, 71; H. Exs. 11, 12.

14. In January of 1990, Mrs. Williams submitted an application and Certificate. Mrs. Williams reported as income her biweekly salary, as well as a monthly payment of \$175 for the care of her nephew. DHCD determined that her monthly assistance was \$275 for the period from April 1990 to March 1991. H. Exs. 13, 14, 16; Tr. 46, 49.

15. On October 29, 1990, Mrs. Williams submitted an addendum to her 1990 application notifying DHCD that her mother had moved in with her, and she reported her mother's social security income. She listed herself, her two sons, her nephew, and her mother as "family members who will live in the dwelling," as required by the Application for Addendum. H. Ex. 18. Defendant also submitted another Certificate. Accordingly, Mrs. Williams' monthly assistance payments decreased from \$275 to \$191 for the remainder of that contract year, from December 1990 until March 1991. Her total assistance for contract year 1990 was \$2964. H. Ex. 18, 21; Tr. 52, 55.

16. In January 1991, DHCD conducted an investigation to determine whether Mr. Williams had resumed his residency with Defendant. DHCD reviewed Mrs. Williams' file and obtained tax returns, bank statements, and other documents. Tr. 57-59.

17. On March 4, 1989, the Williams filed a joint tax return for the 1988 tax year. They reported the [REDACTED] apartment as their address, and both Defendant and her husband signed and dated the return. Mr. Williams' income for 1988 was \$ [REDACTED]. H. Ex. 23. For tax year 1990, Mr. Williams filed an individual return on April 12, 1991. He provided the Falkland Place address on the return and reported his annual income as \$ [REDACTED]. H. Ex. 26.

18. Mr. Williams' annual income when added to Defendant's would have rendered the Williams family ineligible for assistance for the period from April 1988 to March 1991. Tr. 59-61, 65-66, 73-74.

19. A February 8, 1991, credit report on Mr. Williams provides the Falkland Place address as his residence. H. Ex. 25. His driver's license also lists the Falkland Place address and shows that he changed his address to [REDACTED] Falkland Place in April 1989. H. Ex. 29; Tr. 70-71.

20. The Postmaster in Capital Heights, Maryland, verified that Mr. Williams was receiving mail at the Falkland Place address. H. Ex. 27; Tr. 67. Mrs. Williams admitted that she opened and then discarded some of her husband's mail. She also returned some correspondence to the post office. Tr. 122-23. In addition to Mr. Williams, two of Mrs. Williams' sisters and her landlord at times received mail at her Falkland Place address. Neither the sisters nor the landlord lived with Mrs. Williams. Tr. 79-80.

21. The registration for a 1985 Dodge Caravan that Mrs. Williams drove showed the owner as [REDACTED] Williams, [REDACTED] Falkland Place, Capital Heights, Maryland. H. Ex. 28. Because Mrs. Williams had a poor credit history, she was unable to purchase the van in her name. Therefore, her husband purchased it for her. Tr. 78. Mrs. Williams made the monthly payments on the automobile. Tr. 92.

22. Based upon the results of its investigation, DHCD determined that Mr. Williams resided with Mrs. Williams, and that Mrs. Williams should have been ineligible for assistance for contract years 1988-1990. Accordingly, DHCD notified Mrs. Williams that her assistance would be terminated and that she was entitled to a DHCD hearing on her eligibility. Tr. 74, 77, 80-82.

23. Mrs. Williams requested and was granted a hearing by DHCD. A DHCD Hearing Officer conducted the hearing in April of 1991 and terminated her assistance for failure to report both her husband's residency with her and his income. H. Ex. 30.

24. During the DHCD hearing, Defendant informed the hearing officer that her husband visited occasionally. Nevertheless, she insisted that they were then separated and had been separated since he moved out in early 1988. She further informed DHCD that she returned mail not addressed to her or the family members living with her to the post office. She also stated that other than these actions, she had no way of preventing her husband from receiving mail at her address. Although she complied with one of DHCD's requests to furnish documents for proof of Mr. Williams' residency, none of them reflected her husband's address as being other than her own.⁵ Tr. 74-75, 79-80, 92, 100-01, 105, 111-12; H. Ex. 30.

25. Although the Williamses were separated, they maintained an amicable relationship.⁶ During their separation, Mr. Williams would visit his wife and stay overnight "once or twice a week." Tr. 127, 131-32. About once a week he provided his wife with \$30-\$40 for utility and food bills. Tr. 134.

26. The Williamses have reconciled and are presently living in a rental home at [REDACTED] Clinton, Maryland. Tr. 131-32, 151.

Discussion

The Program Fraud Civil Remedies Act provides that any person who knowingly submits false claims to the Government is liable for a civil penalty of up to \$5,000 for each claim and an assessment of up to twice the amount of the claims paid by the

⁵Mrs. Williams provided her husband's pay stubs, which failed to disclose an address, and letters sent to her home, which were addressed to her landlord and sisters. At the close of the hearing, the DHCD hearing officer requested that, within the next two weeks, she submit bank statements for the previous two years to prove that she made payments on the van, proof that she paid her own utilities, income tax returns, and other information. Defendant's request to submit a statement from her husband as to his residency and address was denied by DHCD. Because she had already provided documents to DHCD and she considered the amount of additional documentation requested as burdensome, she left the hearing in an indignant outrage. She was not contacted further by DHCD, and she never provided the additional requested information.

⁶DHCD opined that "Mr. Williams had probably never moved from the household" in early 1988. Tr. 74, 87-88. The Department, however, failed to prove by a preponderance of the evidence that he continued to reside with Defendant. HUD merely relied on the fact that he listed his wife's address on various documents and that he received mail at her residence. Neither fact proves that he actually lived with Defendant. Without a permanent residence of his own, it would not be surprising for him to use Mrs. Williams' address for mail and reporting purposes, particularly in light of their amicable relationship.

Mrs. Williams credibly testified that although her husband had moved out, he would visit her and stay overnight at least once a week during their separation. She also notified DHCD of his visits during her hearing. Further, as part of her 1989 application she provided DHCD with the joint checking account statement with her address as the mailing address. She did not conceal her husband's visits or withhold documents showing her husband's use of her address from the DHCD, even though this information might possibly mean the loss of assistance benefits.

Government. A claim is false if it omits a material fact that the person had a duty to report. 31 U.S.C. § 3802(a)(1) and (3); 24 C.F.R. § 28.5(a). A "claim" is defined as "any request, demand, or submission. . .for. . .money" that is made to HUD or a Government entity acting on HUD's behalf. 31 U.S.C. § 3801(a)(3)(A) and (b)(3); 24 C.F.R. §§ 28.5(a)(3) and 28.3.

To establish liability, the Department must demonstrate by a preponderance of the evidence that Mrs. Williams "knew or had reason to know" that the claims were false. 31 U.S.C. §§ 3801(a)(5) and 3803(f); 24 C.F.R. §§ 28.5(d) and 28.59(b). If liability is found, imposition of the maximum amount of assessment and penalty are not automatic. HUD regulations set forth numerous factors for determining the dollar amount of an assessment and penalty. *See* 24 C.F.R. § 28.61(b).

I find that Defendant knowingly submitted three false claims. She knew that the Certificate required her to report her husband as a resident and his income because he was using her address as his official address, and she was aware that her husband was doing so. The fact of her husband's residency was material because his income made her ineligible for assistance. Accordingly, I conclude that Defendant is liable for the amount of assistance that she received from April 1988 until March 1991, together with a \$1000 penalty for each claim.

1. Defendant submitted three false claims.

Defendant's applications for housing assistance comprise three separate claims. Her three applications constituted submissions to DHCD, an agency acting on behalf of HUD in disbursing Section 8 housing assistance, for money in the form of housing assistance payments.⁷ *See* 31 U.S.C. §§ 3801(a)(3) and 3802(a)(1); 24 C.F.R. §§ 28.3, 28.5(a)(2) and (3).

While Defendant does not dispute that she submitted the three claims, she maintains that they were not false because her husband moved out and did not live with her during the time period when she sought assistance. In reliance on the language in

⁷The Department contends that Defendant's addendum to her third application, which added her mother as a family member, constitutes a fourth claim. However, the addendum was not an individual request or demand for money; rather, it amended the original claim and notified DHCD of a change in familial composition and income, thus resulting in a reduction of benefits. Consequently, it does not constitute a separate claim. *Cf. U.S. v. Killough*, 848 F.2d 1523, 1533 (11th Cir. 1988) (Under the False Claims Act, *each* voucher that *demands payment* constitutes a claim.).

The Government's Complaint fails to allege that the addendum constitutes a false "statement" under 31 U.S.C. § 3802(a)(2). A complaint must specify the allegations and their "statutory basis for liability." Moreover, it must identify the "statements that are the basis for the alleged liability" and explain "the reasons why liability allegedly arises from those...statements." 24 C.F.R. § 28.13(b)(1). Accordingly, I do not consider the issue of whether the addendum includes a false statement in assessing a penalty against Defendant.

the application forms, she asserts that he was not a "family member who . . . live[d] in the Section 8 unit" because he had moved out and they did not cohabit permanently or consistently during their separation. The applications require reporting "*only* for those who will *live in* the Section 8 unit." H. Exs. 1, 8, 13 (emphases added). However, Defendant was not entitled to rely solely on the terms of the applications without reference to the Certificates of Family Responsibilities.

Based on criteria contained in the Certificates, Mr. Williams must be considered to have been a resident and should have been reported. The Certificate states that anyone "who uses [the applicant's] address as his or her official address, is considered to be a resident." Because Mr. Williams used Defendant's address as his official address, he was a resident for the purpose of Section 8 filings. His mail was regularly sent to Defendant's address. He provided Defendant's address as his own on his driver's license and reported a change of address to Falkland Place in April 1989, the month Defendant moved. He reported Defendant's address on joint and individual tax returns. A credit report on Mr. Williams recites the Falkland Place address, as does the van registration. Moreover, the Williamses' joint checking account lists Defendant's address. Accordingly, under the terms of the Certificate, Mr. Williams was a resident because he used Defendant's address as his official address. The omission of his name and income from the Section 8 applications rendered them false claims. See 31 U.S.C. § 3802(a)(1)(A) and (C).⁸

2. Defendant knew that the claims were false.

Defendant knew that the claims were false because she was aware of the requirements of the Certificate, and she knew that her husband was using her address as his official address. Defendant has been a Section 8 participant since 1976. Every year since then she has filed an application for assistance and submitted a Certificate of Family Responsibilities. With each such submission, a DHCD employee explained that, under the terms of the Certificate, anyone who consistently receives mail at the address is considered to be a resident and that the applicant must report that individual and his or her income. Accordingly, she knew of the Certificate's definition of residency and her duty to report an individual using her address.

Moreover, Defendant knew that her husband was using her official address as his own. Her knowledge is evident because she admitted that she returned some of his mail to the post office and discarded other correspondence. However, he continued to receive mail regularly at her address, and accordingly, she was bound by the terms of the Certificate to report his income.

⁸The Certificate also defines a resident as anyone "who stays more than 30 days a year." While Defendant admitted that her husband occasionally visited her, the government offered no evidence of the exact nature and duration of his visits. Accordingly, I cannot conclude that he stayed in the residence for more than 30 days a year. Neither did DHCD rely on this factor in terminating her eligibility.

She also knew that he otherwise used her address as his official address. She signed a joint tax return that noted only her address. She used the van that was registered in his name and listed her address. Finally, until July of 1993, she and her husband maintained a joint checking account that showed her address as the mailing address.

Because her husband's income would have made her ineligible for assistance, his use of her address was a material fact that she had a duty to report under the terms of the Certificate. Omission of that fact rendered her claims false and made her liable for the violations. See 31 U.S.C. § 3802(a)(1)(B).

3. An assessment and civil penalties are appropriate.

HUD seeks the maximum assessment and civil penalties against Defendant - a \$21,696 assessment, twice the amount of the assistance payments of \$10,848, and a penalty of \$15,000, \$5000 for each of three claims.⁹ However, based on consideration of the regulatory factors for determining the amount of assessments and penalties, I find that an assessment of \$10,848 and a penalty of \$3000 are appropriate. See 24 C.F.R. § 28.61(b).

Defendant engaged in a pattern of misconduct from 1988 through 1990 by filing three false claims in a relatively short period of time. The amount of money claimed, \$10,848, was substantial considering Defendant's modest financial circumstances. Because there are approximately 4,000 prospective applicants awaiting Section 8 assistance, Defendant's misconduct has had a direct, adverse impact on the intended beneficiaries of the Section 8 program who should have received the assistance to which Defendant was not entitled. Finally, having participated in the program for approximately a fifteen-year period, Defendant was well aware of its requirements, which were not so complex as to insulate her from liability. Accordingly, both an assessment and a penalty are warranted.

Given her limited financial resources, an assessment in an amount not exceeding the actual loss to the Government, together with a penalty of \$3,000 is warranted. The penalty sought by the Government would be unduly harsh in light of other actions taken by Defendant. She appropriately reported her mother's social security income which resulted in a decrease in her benefits. Rather than attempt to conceal her violations, she informed DHCD of her husband's visits and furnished it with the joint checking account statement that evidenced her husband's use of her address and her knowledge of that

⁹HUD's Complaint incorrectly seeks an assessment of \$22,078 based on a calculation of payments through April 1991, when in fact payments were made only through March of 1991. Compare HUD Complaint at 8 with H. Ex. 21 and Tr. 54-55. In addition, the Department requested \$20,000 in civil penalties for *four* claims. However, because only three claims were filed, the maximum amount of penalties possible is \$15,000.

use. Finally, Defendant no longer participates in the Section 8 program, and therefore, the need to deter her is not presently compelling. However, others must be forewarned that similar misconduct cannot and will not be tolerated. Nevertheless, the maximum assessment and penalty need not be imposed to accomplish such deterrence. Accordingly, I conclude that an assessment of \$10,848 and a penalty of \$3,000 are warranted under the facts of this case.

ORDER

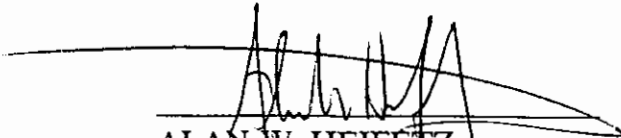
Defendant's applications for Section 8 housing assistance constitute false claims and violate 24 C.F.R. § 28.5. Defendant is liable under 31 U.S.C. § 3802 for an assessment and a civil penalty. Therefore, it is

ORDERED that on the date this Decision becomes final, Defendant shall be liable to the United States for an assessment of \$10,848.00 and a civil penalty of \$3,000.00.

Defendant has the right:

(1) to file a motion for reconsideration with this tribunal within twenty (20) days of receipt of this Decision in accordance with 24 C.F.R. § 28.75, or

(2) to file a notice of appeal with the Secretary of HUD within thirty (30) days of issuance of this Decision or a decision concerning a motion for reconsideration, pursuant to 31 U.S.C. § 3803(i), and in accordance with 24 C.F.R. § 28.77.



ALAN W. HEIFETZ
Chief Administrative Law Judge