

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the case of:)	
)	
Department of Health and)	DATE: November 5, 1991
Human Services)	
)	
v.)	
)	Docket No. C-413
Joseph R. Graves, Jr.)	
)	Decision No. CR162
Defendant.)	
)	

DECISION

By a Complaint dated February 1, 1991, the Department of Health and Human Services notified Joseph R. Graves, Jr., the Defendant in this proceeding, that it was seeking to impose a civil penalty of \$5000 for each of six allegedly false, fictitious, or fraudulent claims, plus an assessment of \$4884 (corresponding to twice the amount allegedly falsely claimed), for a total of \$34,884. The Department brought its action under the Program Fraud Civil Remedies Act (PFCRA), 31 U.S.C. 3801 et seq. (1988), as implemented by regulations contained in 45 C.F.R. Part 79 (1990).

The Complaint advised Defendant that he had the right to request a hearing and that he could do so by filing an answer within 30 days of receiving the Complaint. Defendant did not file any response. Acting pursuant to 45 C.F.R. 79.10, the reviewing official referred the Complaint to the Departmental Appeals Board and the case was assigned to me.

By Orders dated July 25, 1991, and August 26, 1991, I notified Defendant that, upon referral of a complaint that had not been answered, the administrative law judge was to assume as true the facts as alleged in the complaint, and, if those facts establish the Defendant's liability under 45 C.F.R. 79.3, the administrative law judge was to issue a judgment by default in favor of the Department. I informed Defendant that unless he could show that extraordinary circumstances prevented him from

answering the Complaint in a timely fashion, I would be issuing such a judgment against him.

Defendant has neither filed an answer to the Complaint nor responded to my Orders, and the time is past for doing so. I assume as true those facts alleged in the Complaint, find that those facts establish Defendant's liability, and enter judgment against Defendant.

ISSUE

The issue in this case is whether the facts as alleged in the Complaint establish Defendant's liability under PFCRA and 45 C.F.R. 79.3.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I assume the facts in Findings 1-13 to be true as alleged in the Complaint.

1. The "Authority" under PFCRA bringing this complaint is the U.S. Department of Health and Human Services. 45 C.F.R. 79.2, 79.13.
2. The Defendant is Joseph R. Graves, Jr.
3. Joseph Graves, Defendant's father, was a beneficiary under the Social Security Administrations's Old-Age Insurance Benefits program, 42 U.S.C. 402 et seq. Joseph Graves died on October 16, 1982.
4. Joseph R. Graves, Jr., was born on August 10, 1933, and has never been eligible for benefits under the Old-Age Insurance Benefits program at any time relevant to this action.
5. On or about December 9, 1986, Defendant presented or caused to be presented to the Social Security Administration two checks for Old-Age benefits in the amount of \$405.00 each, made payable to Defendant's father, Joseph Graves.
6. The checks identified in paragraph 5 were deposited into Defendant's checking account # 212-349-469 at Horizon Financial, F.A., in Philadelphia, Pennsylvania.
7. On or about January 6, 1987, Defendant presented or caused to be presented to the Social Security Administration a check for Old-Age benefits in the amount

of \$408.00, made payable to Defendant's father, Joseph Graves.¹

8. On or about February 6, 1987, Defendant presented or caused to be presented to the Social Security Administration a check for Old-Age benefits in the amount of \$408.00, made payable to Defendant's father, Joseph Graves.

9. On or about March 5, 1987, Defendant presented or caused to be presented to the Social Security Administration a check for Old-Age benefits in the amount of \$408.00, made payable to Defendant's father, Joseph Graves.

10. On or about April 6, 1987, Defendant presented or caused to be presented to the Social Security Administration a check for Old-Age benefits in the amount of \$408.00, made payable to Defendant's father, Joseph Graves.

11. The checks identified in paragraphs 7-10 were deposited into Defendant's checking account # 43-2-158-4 at Continental Bank in Philadelphia, Pennsylvania.

12. Defendant presented or caused to be presented each of the six claims described in paragraphs 5-11, and knew or had reason to know that each of these claims was false, fictitious, or fraudulent. 31 U.S.C. 3802(a)(1).

13. The total amount falsely claimed and received by Defendant with respect to the six claims described in paragraphs 5-11 is \$2,442.00.

14. On the basis of the Findings 1 - 13, I find that Defendant is liable under PFCRA and 45 C.F.R. 79.3.

15. Defendant is subject to civil penalties of \$30,000, plus an assessment of \$4884, for total penalties and assessment of \$34,884.

¹ The Complaint originally alleged that this check was presented or caused to be presented on January 6, 1986. In a letter dated June 3, 1991, the reviewing official corrected the date to January 6, 1987. This letter was also personally served on Defendant on October 2, 1991, at the same time as he was personally served with the Complaint, my Orders of July 25 and August 26, 1991, and a copy of the implementing regulations.

ANALYSIS

This is a case of a complaint properly drawn and served, but not responded to by the defendant. The regulations in 45 C.F.R. Part 79 provide that in such a situation the administrative law judge is to assume as true the facts as alleged in the complaint. If those facts establish liability, the administrative law judge is required to impose the maximum amount of penalties and assessments allowed under PFCRA.

The Complaint, drawn in accordance with 45 C.F.R. 79.7, and a copy of the regulations was originally served on Defendant by certified mail signed for by a "Joan C. Graves." The Complaint, a June 3, 1991 letter containing a minor amendment, another copy of the regulations, and two notices from me regarding the impending default judgment were personally served on Defendant on October 2, 1991. In my Superseding Order and Notice of Proposed Default Judgment, dated August 26, 1991 (mailed to Defendant on that date and personally served on Defendant on October 2, 1991), I gave Defendant until October 22, 1991 to explain why he had not filed an answer to the Complaint. I received no response.

Congress intended that a person who violates PFCRA should be held liable and subject to penalties and an assessment. The regulations properly provide a means for imposing penalties and an assessment against a violator who chooses not to respond to allegations of a violation. Defendant has had ample notice and opportunity to assert his defense and has not done so. Thus, without further delay, I enter judgment against him.

CONCLUSION

For the reasons above stated, I conclude that Defendant is liable under PFCRA for penalties of \$30,000 and an assessment of \$4884, for total penalties and assessment of \$34,884.

/s/

Steven T. Kessel
Administrative Law Judge