

## Department of Health and Human Services

### DEPARTMENTAL APPEALS BOARD

#### Appellate Division

SUBJECT: Alabama Department of Human Resources      DATE: November 6, 2007  
Docket No. A-05-43  
Decision No. 2125

#### DECISION

The Alabama Department of Human Resources (Alabama) appealed a determination by the Administration for Children and Families (ACF), dated December 14, 2004, that Alabama is subject to a financial penalty that would reduce its funding for the Temporary Assistance for Needy Families (TANF) program under title IV-A of the Social Security Act (Act). ACF determined that a penalty was authorized because Alabama's child support enforcement program under title IV-D of the Act failed to achieve the required performance level for establishing paternity during federal fiscal year (FFY) 2003, following Alabama's failure to submit complete and reliable data needed to determine its performance at establishing paternity during FFY 2002. The amount of the penalty is \$1,065,384, or 2% of Alabama's TANF funding for FFY 2001.

This appeal was stayed pending the Board's resolution of Alabama's earlier appeal of a TANF funding penalty that ACF imposed for Alabama's failure to demonstrate with complete and reliable data that it achieved the required performance level during FFYs 2001 and 2002. Alabama appealed the earlier penalty jointly with eight other States on whom ACF had imposed penalties for failure to meet required IV-D performance levels, and/or to submit reliable data needed to calculate performance during FFYs 2001 and 2002. The Board found in favor of ACF and sustained ACF's determinations that the States were subject to penalties, in Alabama Dept. of Human Resources, et al., DAB No. 1989 (2005). The Federal District Court for the District of Columbia affirmed the Board's decision in Alabama Dept. of Human Resources, et al. v. U.S. Dept. of Health and Human Services, 478 F.Supp.2d 85 (D.D.C. 2007), and the States did not appeal the court's decision.

In this appeal, Alabama argues that it received neither the notice set forth in ACF's regulations, nor the corrective action year contemplated by statute. The Board rejected those arguments in DAB No. 1989, and the district court affirmed the Board's holding. See also Nevada Dept. of Human Resources, DAB No. 1995 (2005), aff'd, Nevada v. Leavitt, No. 05-00697-HDM-VPC (D. Nev. Dec. 28, 2006); Indiana Family and Social Services Administration, DAB No. 2001 (2005), aff'd, Alabama Dept. of Human Resources, et al.; Puerto Rico Dept. of the Family, DAB No. 1993 (2005), appeal pending; and Virgin Islands Dept. of Justice, DAB No. 2003 (2005) (all addressing and finding in ACF's favor on the notice and corrective action year issue, as well as on other issues).\*

Alabama raises the same arguments that it previously raised in DAB No. 1989 and on which the Board ruled in ACF's favor. In a telephone conference convened on October 31, 2007, Alabama agreed with ACF that it would be appropriate for the Board to issue a summary decision in this appeal based on the Board's previous decisions and the related court decisions, cited above. Accordingly, with the parties' consent, we are issuing a summary decision sustaining ACF's determination that Alabama is subject to a penalty, based on the analysis first presented in Alabama and further developed in the other Board decisions and in the related court decisions, cited above. We fully incorporate that analysis by reference here.

### Conclusion

For the reasons stated above or incorporated by reference, we uphold ACF's determination imposing a penalty on Alabama of

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\* Alabama also argued that the penalty of 2% of Alabama's TANF funding was excessive because it is the amount authorized for a second successive penalty. When Alabama made that argument its earlier appeal of the first penalty was pending before the Board. As the Board upheld the first penalty, that argument is no longer applicable.

\$1,065,384 for failure to achieve the required performance level at establishing paternity in FFY 2003.

\_\_\_\_\_/s/  
Sheila Ann Hegy

\_\_\_\_\_/s/  
Constance B. Tobias

\_\_\_\_\_/s/  
Judith A. Ballard  
Presiding Board Member