

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: District of Columbia  
Department of Human  
Services  
Docket No. A-06-66  
Decision No. 2127

DATE: November 6, 2007

DECISION

The District of Columbia Department of Human Services (DC) appealed a determination by the Administration for Children and Families (ACF), dated January 31, 2006, that DC 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 DC's child support enforcement program under title IV-D of the Act failed to achieve the required performance levels for establishing orders of support and for establishing paternity during federal fiscal year (FFY) 2004, following DC's failure to achieve the required performance levels during FFY 2003. The amount of the penalty is \$2,104,486, or 3% of DC's TANF funding for FFY 2001.

This appeal was stayed pending resolution of the appeal in federal court of Alabama Dept. of Human Resources, et al., DAB No. 1989 (2005), in which the Board sustained ACF's imposition of earlier penalties on DC and eight other States for failure to achieve required IV-D performance levels during FFYs 2001 and 2002 and/or to submit reliable data needed to calculate performance during those years. (In addition, while Alabama was pending before the Board, DC appealed a second penalty imposed for failure to achieve the required performance level for establishing orders of support during FFY 2003 following failure to achieve the required performance level during FFY 2002. That appeal, Docket No. A-05-46, was stayed pending the Board's decision in Alabama.) 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, DC argues that it received neither the notice set forth in ACF's regulations nor the corrective action year contemplated by statute. DC also argues that ACF's determination that DC was required to improve its performance level at establishing support orders during the corrective year by five percentage points was wrong. 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) (addressing and finding in ACF's favor on the notice and corrective action year issues, as well as on other issues).\*

DC raises the same arguments that it previously raised in DAB No. 1989 and on which the Board ruled in ACF's favor. Following a telephone conference convened on October 31, 2007, DC 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 cases, cited above. Accordingly, with the parties' consent, we are issuing a summary decision sustaining ACF's determination that DC 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. (We are separately issuing, with the parties' consent, a summary decision in Docket No. A-05-46, also sustaining ACF's penalty determination based on the analysis first presented in Alabama and further developed in the other Board decisions and in the related court decisions, cited above.)

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\* DC also argued that the penalty of 3% of DC's TANF funding was excessive because it is the amount authorized for a third successive penalty. When DC made that argument its appeal of DAB No. 1989, which upheld the first penalty, was pending in federal court, and its appeal of the second penalty was pending before the Board. As the court affirmed DAB No. 1989 and the Board is issuing, with the parties' consent, a decision upholding the second penalty, that argument is no longer applicable.

Conclusion

For the reasons stated above or incorporated by reference, we uphold ACF's determination imposing a penalty on DC of \$2,104,486, based on DC's failure to achieve the required performance levels for establishing orders of support and for establishing paternity during FFY 2004.

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

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

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