

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,

Petitioner,

v.

MARSHA BENITA POWELL,

Respondent.

17-AF-0152-PF-006

February 20, 2018

Appearances

Terri L. Román, Joel A. Foreman, & Geoffrey L. Patton, Attorneys
United States Department of Housing and Urban Development, Washington, D.C.
For Petitioner

Marsha Benita Powell, Kinston, North Carolina
Pro Se

INITIAL DECISION AND ORDER

BEFORE: Alexander FERNÁNDEZ, Administrative Law Judge

This matter is before the Court upon a *Complaint* filed by the United States Department of Housing and Urban Development (“HUD”) against Marsha Benita Powell (“Respondent”) seeking civil penalties and assessments under the Program Fraud Civil Remedies Act (“PFCRA”), 31 U.S.C. § 3801, et seq., as implemented by 24 C.F.R Part 28. The *Complaint* alleges that Respondent caused false statements to be made to a local housing authority through her participation in HUD’s Housing Choice Voucher Program.

PROCEDURAL HISTORY

HUD filed the *Complaint* on August 3, 2017, along with six documentary exhibits. The *Complaint* charged Respondent with 13 counts of violating PFCRA. On September 6, 2017, the Court received an *Answer* from Respondent in the form of an undated letter stating that she did not want to attend a hearing, but wanted the Court to take her financial situation into

consideration. Respondent also submitted several items of documentary evidence pertaining to her financial situation.

On September 7, 2017, the Court issued a *Notice of Hearing and Order* scheduling a hearing and setting forth pre-hearing deadlines, including a December 5, 2017, deadline for the parties to submit exhibits. Later that day, in view of Respondent's statement that she did not want to attend an in-person hearing, the Court issued an order vacating the hearing and stating that a decision would be issued, if necessary, based on the written record after the submission of documentary evidence and arguments. All other deadlines set forth in the *Notice of Hearing and Order* remained in effect.

On October 23, 2017, HUD filed a *Motion for Summary Judgment* based on the documentary evidence already submitted by the parties. The Court issued an order instructing Respondent to file her response, if any, by November 13, 2017. Respondent did not file a response to the *Motion for Summary Judgment*.

On December 11, 2017, after the deadline for submission of exhibits had passed, the Court issued an order instructing Respondent to submit any additional documentary evidence by January 10, 2018, as it appeared that several intended attachments to her *Answer* were either missing or incomplete. Respondent did not file a response.

On January 26, 2018, the Court issued an *Order Granting Partial Summary Decision on Liability*. The Court granted HUD's *Motion for Summary Judgment* on the issue of liability as to Counts 2 through 13, but not Count 1, which was barred by PFCRA's statute of limitations. However, the Court declined to determine what penalties and assessments to impose against Respondent. Instead, the Court gave the parties a final opportunity to submit additional documentary evidence bearing on penalties or assessments, noting that Respondent was proceeding *pro se* and appeared to have unintentionally failed to submit relevant documentation with her *Answer*. The Court gave the parties a deadline of February 2, 2018, to submit additional documentary evidence. Neither party has submitted any additional evidence. This matter is now ripe for decision.

LEGAL FRAMEWORK

HUD's Section 8 Housing Choice Voucher Program

Section 8 of the United States Housing Act, as amended by the Housing and Community Development Act of 1974, authorizes HUD to administer various assistance programs to help low-income families afford decent housing. 42 U.S.C. § 1437f; see Pub. L. No. 93-383, § 201(a), 88 Stat. 633, 662-66 (1974). One such program is the Housing Choice Voucher Program ("Voucher Program"), which is a tenant-based rental subsidy program through which HUD provides local public housing authorities with funds that are used to make housing assistance payments on behalf of eligible low-income families. See 42 U.S.C. § 1437f(o); 24 C.F.R. § 982.1.

To participate in the Voucher Program, an eligible low-income family must first obtain a voucher from the local public housing authority. The family then finds a housing unit to rent, submits a copy of the lease to the public housing authority, and requests approval of the tenancy. 24 C.F.R. § 982.302. If the public housing authority approves the tenancy, it executes a Housing Assistance Payments (“HAP”) contract with the landlord for the benefit of the tenant. See id. § 982.451. The HAP contract allows the tenant to live in the housing unit for below-market rent through a HUD-funded subsidy to the landlord that covers the difference between the contractual rent and the tenant’s obligation under the program rules. See 42 U.S.C. § 1437f(b)(1).

The Voucher Program statute, HUD’s implementing regulations, and the HAP contract all set forth eligibility requirements and other conditions that the landlord and tenant must meet in order to participate in the program. See generally 42 U.S.C. § 1437f; 24 C.F.R. part 982. For example, under the Voucher Program regulations, a housing unit that is occupied by its owner or a person with any interest in the unit is ineligible for participation in the program. 24 C.F.R. § 982.352(a)(6). Similarly, the regulations prohibit a Voucher Program tenant from owning or having any interest in the unit the tenant is leasing. Id. § 982.551(j). These regulatory requirements are typically incorporated into the HAP contract.

PFCRA (Program Fraud Civil Remedies Act)

PFCRA, codified at 31 U.S.C. §§ 3801 *et seq.*, provides federal executive branch agencies with a civil administrative remedy for false claims. The statute imposes civil liability on any person who makes, presents, or submits, (or causes to be made, presented, or submitted), a claim that the person knows to be false, fictitious, or fraudulent, or knows to include or be supported by a written statement which asserts a false, fictitious, or fraudulent material fact. 31 U.S.C. § 3802(a)(1); see 24 C.F.R. § 28.10(a)(1).

A person found to be liable under PFCRA is subject to a civil penalty of not more than \$7,500 for each false, fraudulent, or fictitious claim. 24 C.F.R. § 28.10(a) (2011). In addition, if the government actually paid the claim, the person is subject to an assessment of not more than twice its amount. 31 U.S.C. § 3802(a)(1), (3); 24 C.F.R. § 28.10(a)(6).

A “claim” includes “any request, demand, or submission ... made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits).” 31 U.S.C. § 3801(a)(3). For example, a request for rental assistance under the Voucher Program falls within this definition. See, e.g., HUD v. Thompson, No. 16-AF-0058-PF-015 (HUDALJ Aug. 11, 2016) (order granting partial summary judgment on liability in PFCRA case). For purposes of determining the number of claims, “each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.” 31 U.S.C. § 3801(b)(1); 24 C.F.R. § 28.10(a)(2). In Voucher Program cases, HUD considers each monthly housing assistance payment to represent a separate paid claim. HUD v. McGee, No. 12-F-026-PF-13 (HUDALJ June 27, 2012).

A respondent charged with a PFCRA violation in connection with a HUD program may request a hearing before an Administrative Law Judge to determine his or her liability and the amount of any civil penalty or assessment to be imposed. 31 U.S.C. §§ 3801(a)(7)(A),

3803(d)(2), 3803(f). The hearing is conducted in accordance with the Administrative Procedure Act (“APA”) and HUD’s regulations implementing both the APA and PFCRA (found at 24 C.F.R. part 26, subpart B and 24 C.F.R. part 28, respectively). Id. § 3803(g)(1)(A); 24 C.F.R. §§ 28.1, 28.40. The government has the burden of proving the respondent’s liability and any aggravating factors by a preponderance of the evidence, and the respondent has the burden of proving any affirmative defenses and mitigating factors by a preponderance of the evidence. Id. § 3803(f); 24 C.F.R. § 26.45(e).

FACTUAL BACKGROUND

Respondent has resided in a double wide home in Kinston, North Carolina since approximately 1991. She and her late husband purchased the subject home in 1995.¹ Tax documents show that, for purposes of this proceeding, Respondent has owned the subject home at all relevant times.

In August 2000, Respondent applied for Section 8 rental assistance from the Housing Authority of the City of Kinston (“KHA”) after her husband unexpectedly passed away. On October 9, 2000, Respondent executed a lease agreement whereby she, under the name “Benita-Powell,” rented the subject home to herself, under the name “Marsha Chapman Powell,” effective October 1, 2000. In October and November 2000, Respondent submitted the lease to KHA and requested Section 8 rental assistance for the subject home.

On November 3, 2000, Respondent, in her capacity as the owner and landlord of the subject home, executed a HAP contract with KHA under the name “Benita Powell” to rent the home to “Marsha B. Powell.” She admits that she knew she could not legally rent to herself under the Voucher Program, so, in addition to using two different names on the lease and HAP contract, she provided KHA staff with her late husband’s Social Security number for purposes of reporting income she received as a HAP landlord. She also admits that she directed KHA to send the HAP payments to a post office box held in her daughter’s name and a bank account held in her goddaughter’s name.

KHA records reveal that, from January 1, 2001 to September 4, 2012, KHA paid Respondent \$57,448 in rental assistance payments and \$9,142 in utility payments under the HAP contract for the subject home. Thus, KHA paid a total of \$66,590 under the HAP contract. In 2012, after being investigated by HUD, Respondent signed an affidavit admitting that she had received \$66,590 under the contract.

In connection with the facts set forth above, Respondent was charged in the state of North Carolina with the felony of obtaining property by false pretenses in violation of N.C. GEN. STAT. § 14-100. She pled guilty to this charge. On March 1, 2016, North Carolina’s Lenoir County District Court imposed a suspended jail sentence, six months of home detention, and sixty months of supervised probation and ordered Respondent to pay \$66,590 in restitution to HUD. As of October 23, 2017, Respondent represented that she had paid \$1,600 of that amount.

¹ Respondent claims that they did not purchase the property on which the home was located. She says she continues to rent the lot for about \$60 per month.

HUD now seeks an additional \$110,856 from Respondent in civil penalties and assessments under PFCRA. Respondent admits the allegations in the *Complaint*, but contends that HUD is attempting to recover more than she is able to pay.

DISCUSSION

In its January 26, 2018 *Order Granting Partial Summary Decision on Liability*, the Court found that Respondent knowingly made a material misrepresentation in the HAP contract and knowingly concealed from HUD the fact that she was both the landlord and the tenant under the contract, thereby renting her double wide to herself for more than ten years. Respondent’s actions amounted to the knowing submission of false and fraudulent claims for rental assistance under HUD’s Section 8 Voucher Program. Accordingly, the Court found Respondent liable under PFCRA for the false and fraudulent claims alleged in Counts 2 through 13 of the *Complaint*. The sole issue now remaining in dispute is the amount of penalties and assessments to be imposed against Respondent.

A. Parties’ Positions

For each false claim submitted by Respondent, HUD seeks (1) a civil penalty of \$7,500, which is the maximum amount allowed under PFCRA, and (2) an assessment of twice the amount of the claim, which is also the maximum allowed under PFCRA. See 31 U.S.C. § 3802(a); 24 C.F.R. § 28.10(a) (2008). In total, HUD seeks \$102,384 in penalties and assessments. In support of this amount, HUD cites factors including the duration and extent of the fraud perpetrated by Respondent, the government’s actual losses, and the “great need” to deter Respondent and others from engaging in similar conduct. HUD’s proposed penalties and assessments for each claim are set forth in the table below.

Claim/ Count	Date	HAP Payment	Utility Payment	Total Subsidy	Proposed Assessment	Proposed Penalty	Total
1 (barred)	09/01/11	\$486	\$0	\$486	\$972	\$7,500	\$8,472
2	10/03/11	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
3	11/01/11	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
4	12/01/11	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
5	01/03/12	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
6	02/01/12	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
7	03/01/12	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
8	04/01/12	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
9	05/02/12	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
10	06/04/12	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
11	07/03/12	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
12	08/02/12	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
13	09/04/12	\$500	\$16	\$516	\$1,032	\$7,500	\$8,532
TOTAL (not including Count 1):					\$12,384	\$90,000	\$102,384

Respondent argues that she is unable to pay the proposed amounts because she is unemployed and cannot obtain employment, as she is disabled and now has a felony conviction on her record. She contends that, when she entered into the HAP contract in 2000, she was acting out of desperation and on the advice of an employee of the local public housing authority, but she is now sincerely remorseful for her actions. She also notes that she has already been criminally convicted for her wrongdoing and is paying restitution.

B. Analysis of Penalty Factors

HUD's regulations mandate the consideration of one or more of eighteen factors when imposing penalties and assessments under PFCRA. See 24 C.F.R. § 28.40(b). These factors are discussed in turn below. HUD bears the burden of proving any aggravating factors by a preponderance of the evidence and Respondent bears the burden of proving any mitigating factors by a preponderance of the evidence. Id. § 26.45(e).

(1) The number of false, fictitious, or fraudulent claims or statements.

HUD considers each Section 8 rental assistance payment to represent a separate claim. See HUD v. McGee, No. 12-F-026-PF-13 (HUDALJ June 27, 2012). Twelve false claims are at issue here, representing twelve monthly rental assistance payments that were made to Respondent under the HAP contract between October 2011 and September 2012.

Before October 2011, Respondent received 129 other rental assistance payments dating back to January 2001, although the statute of limitations has expired on these older claims. Thus, Respondent made a total of 141 false claims.

Despite the involvement of many claims, all of them arise from the same material misrepresentations Respondent made when she signed the HAP contract in 2000 with the intent of qualifying to receive rental assistance payments under the Section 8 Voucher Program. The common origin of the claims somewhat mitigates their large quantity, as each does not represent a separate course of wrongful conduct.

(2) The time period over which such claims or statements were made.

Respondent made false certifications when she signed the HAP contract in November 2000 and accepted fraudulently obtained rental assistance payments from January 2001 to September 2012. Thus, she made false claims for more than twelve years.

(3) The degree of Respondent's culpability with respect to the misconduct.

Respondent has admitted full responsibility for her actions. She has also admitted that she knew she could not legally rent her home to herself under the Voucher Program, that she intentionally concealed material facts from the government in order to participate in the program, and that she was the sole beneficiary of her misconduct. The Court finds that Respondent is fully culpable for her misconduct.

(4) The amount of money or the value of the property, services, or benefit falsely claimed.

Respondent falsely claimed a total of \$66,590 in rental assistance and utility payments between January 2001 and September 2012. If time-barred claims (i.e., claims pre-dating September 7, 2011) are excluded from consideration and only the claims set forth in Counts 2 through 13 are included in the calculation, the total decreases to \$6,192.

(5) The value of the government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation.

HUD claims an actual loss of \$66,590 under the Voucher Program. HUD further asserts that the government incurred consequential damages when it expended additional, unspecified amounts of resources investigating Respondent's misconduct and pursuing this litigation.

HUD's total quantifiable loss is \$66,590. However, if time-barred claims are excluded from consideration, HUD's total quantifiable loss amounts to just \$6,192.

Respondent has been ordered by a state court to reimburse HUD for its \$66,590 loss. Respondent represents that she has paid \$1,600 in restitution so far, meaning that \$64,990 of the total loss remains unreimbursed.

Respondent argues that she would have qualified for a Section 8 voucher regardless of the misrepresentations she made in obtaining rental assistance. This argument seems to imply that HUD still would have given Respondent rental assistance, and therefore would have incurred the same loss, even if she had not falsely concealed the fact that she owned the unit she was renting. Respondent and her husband had purchased the double wide in 1995, and the family had subsisted on the husband's monthly income of approximately \$2,000 from janitorial work plus Respondent's monthly income of \$450 from Social Security disability benefits. Respondent's husband passed away unexpectedly shortly before August 2000. Respondent contends that she subsequently applied for rental assistance out of grief and "desperation to keep a roof over the head of myself and my two young children as I could not afford it on my own." "It was not that I didn't qualify for the assistance based on my income etc, as I did," Respondent asserts, "but I wanted to hold on to the house my husband had provided for me. That was part of my grieving, and not seeing things clearly."

Although Respondent's plight arouses sympathy, the Court is unwilling to conclude that HUD still would have provided rental assistance to Respondent even in the absence of the false claims. If Respondent had made clear to the government that she owned the double wide, this may have rendered her ineligible for subsidized rent. Respondent admits that she did not disclose her HAP income in the documents she submitted to KHA over the years because she did not want KHA to realize that she was receiving this income, which may have also rendered her ineligible for a voucher. Respondent's misrepresentations caused HUD to incur an actual loss of \$66,590 when it expended funds on rental assistance for Respondent without realizing that she owned the rental unit.

(6) The relationship of the civil penalties to the amount of the government's loss.

HUD seeks \$90,000 in civil penalties for the PFCRA violations alleged in Counts 2 through 13. As discussed above, HUD incurred a loss of \$6,192 due to these twelve violations. Thus, the total proposed penalty for the twelve violations amounts to approximately 1,453% of the government's actual loss.

However, if time-barred claims are taken into consideration, the penalty is more proportionate to the loss. As discussed above, the government's overall loss under the HAP contract between January 2001 and September 2012 was \$66,590. The proposed penalty amounts to approximately 135% of this loss.

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of government programs and operations, including particularly the impact on the intended beneficiaries of such programs.

HUD asserts that Respondent's misconduct has the potential to adversely impact public confidence in the management of government programs and operations, particularly because it continued for well over a decade. The Court agrees. Respondent's successful perpetration of a fraud under the Section 8 Voucher Program for over twelve years undermines public confidence in the integrity of the program and in the government's ability to effectively manage it.

(8) Whether Respondent has engaged in a pattern of the same or similar misconduct.

As HUD points out, Respondent's misconduct was not an isolated or one-time incident. Using her middle name, Respondent invented a fictional person named "Benita Powell" to serve as landlord and receive payments under the HAP contract. Over the course of twelve years, Respondent engaged in a series of misrepresentations to maintain this pretense so that she could continue receiving money to which she knew she was not entitled. For example, Respondent initially routed the HAP payments to a post office box held in her daughter's name so that the payments would not be traceable to Respondent; when KHA later began requiring electronic deposits, Respondent had her goddaughter set up a bank account to receive the HAP funds in order to maintain the fraud. Thus, Respondent engaged in a pattern of misconduct.

(9) Whether Respondent attempted to conceal the misconduct.

Respondent admits that she took numerous measures to conceal her misconduct, including signing the lease under two different names, making false certifications in the HAP contract regarding her interest in the subject home, and ensuring that the HAP payments could not be traced to her by using her deceased husband's Social Security number for income reporting purposes and by routing the funds to a mailbox and bank account that were not connected to her name.

(10) The degree to which Respondent has involved others in the misconduct or in concealing it.

It appears that Respondent involved several family members and acquaintances, such as her daughter and goddaughter, in concealing her misconduct. However, Respondent claims full responsibility for her actions and asserts that she was the sole beneficiary of the misconduct.

(11) If the misconduct of employees or agents is imputed to Respondent, the extent to which Respondent's practices fostered or attempted to preclude the misconduct.

This factor does not apply here.

(12) Whether Respondent cooperated in or obstructed an investigation of the misconduct.

When HUD investigated Respondent's misconduct in 2012, she signed an affidavit admitting her wrongdoing. She also pled guilty to criminal charges stemming from the misconduct in Lenoir County District Court in North Carolina. Thus, it appears Respondent has been fully cooperative in the investigation of the misconduct.

(13) Whether Respondent assisted in identifying and prosecuting other wrongdoers.

This factor does not apply here, as neither party has identified any other wrongdoers who were investigated or prosecuted.

(14) The complexity of the program or transaction, and the degree of Respondent's sophistication with respect to it, including the extent of Respondent's prior participation in the program or in similar transactions.

Although Respondent's misconduct was extensive, there is no evidence that she previously participated in the Voucher Program or in similar transactions, nor is there evidence that she holds any degree of sophistication as a Section 8 landlord.

HUD argues that Respondent used multiple names and a false Social Security number to engage in misconduct under the Voucher Program, suggesting a somewhat sophisticated scheme to exploit the program. Respondent, however, claims that she was advised by a KHA employee to use her middle name and her deceased husband's Social Security number when she applied for the program. This suggests that Respondent may not have crafted such a scheme entirely on her own.

(15) Whether Respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to

have dealt dishonestly with the government of the United States or of a state, directly or indirectly.

Respondent pled guilty to a felony in the state of North Carolina in connection with the same misconduct that is at issue in this case. Otherwise, there is no evidence she has engaged in other similar offenses or dishonest dealings with the government.

(16) The need to deter Respondent and others from engaging in the same or similar misconduct.

HUD argues that the need for deterrence is great because the agency relies on participants in federal housing programs to provide truthful information and to use the funds they receive for the purposes for which the funds were allocated. The Court agrees that imposition of penalties and assessments will serve the useful purpose of deterring Respondent and others from engaging in similar misconduct. The need for deterrence is reduced in this case by Respondent's prior criminal conviction and sentencing for the same misconduct, which should have already produced a deterrent effect.

(17) Respondent's ability to pay.

Respondent contends that HUD is seeking more than she is able to pay, as she is disabled, unemployed, and already struggling to meet her basic living expenses. Respondent asserts that she is unable to work due to multiple health issues, but even if she were healthy, no one would hire her now that she has been convicted of a felony. She further asserts that she has "no money left to do anything with" after paying her monthly bills, prescription costs, and \$100 in restitution. Respondent contends that her monthly income is \$1,065.00 from Social Security benefits. In her *Answer*, Respondent indicated that she was attaching bank statements showing monthly mortgage payments of \$492.17 to Vanderbilt Mortgage; a utility bill showing monthly utility expenses of \$350 to \$377; proof that she pays \$60 in monthly lot rent for the property where her double wide is located; and proof of "medication expenses." However, she submitted only Social Security statements, one utility bill, and a partial printout of account activity for an unidentified account showing debits made on three dates for "VANDERBILT MORTG MORTG PMT," with no payment amounts listed.

HUD asserts that Respondent has failed to prove inability to pay because the documents she has submitted do not reflect her complete financial picture. HUD suggests that Respondent must receive retirement benefits from the North Carolina Retirement System as the beneficiary of her late husband, who was a county employee, but she has not documented these benefits, nor has she submitted any bank or tax statements. HUD further notes that Respondent has not explained how she pays for medical expenses, cable or satellite television, transportation, telephone service, clothing, or groceries. HUD concludes that Respondent must have another source of income that she has not disclosed to the government or to this Court. HUD further argues that Respondent owns real estate and personal property that she could liquidate to pay a judgment.

Respondent's Social Security statements show that she receives a total of \$1,065.00 in Social Security benefits each month. Respondent is no longer receiving HAP payments. There is no evidence of any other income she may be receiving. In the absence of evidence, the Court declines to speculate that she receives income from other undisclosed sources.

Tax documents from the state of North Carolina show that Respondent owns the double wide, which was valued at \$18,918.00 in 2015. There is no evidence that she owns real estate or holds any other significant assets, liquid or otherwise.

Respondent's monthly expenses are difficult to quantify because she submitted incomplete evidence. Respondent submitted a \$344.31 utility bill dated July 30, 2017. As of that date, Respondent was carrying an unpaid, past due balance of \$844.51. The only other evidence of expenses Respondent has submitted is a document that appears to be a partial printout of an account statement. The printout seems to corroborate her allegation that she makes monthly mortgage payments to Vanderbilt Mortgage, although it does not contain any payment amounts or other information that would confirm her assertion that the monthly payment amount is \$492.17. Respondent also alleges that she pays \$60.00 per month in lot rent, \$100.00 per month in restitution, and an unspecified amount in medication expenses.

Although the evidence is incomplete, the Court finds Respondent's assertions regarding her monthly expenses and financial status to be generally credible and accepts that she spends approximately \$344.41 per month on utilities, \$492.17 on her mortgage, \$60.00 on lot rent, and \$100.00 on restitution. These expenses add up to \$996.48 per month. Respondent's known income is just \$1,065.00 per month, leaving her with less than a hundred dollars each month to apply toward other essential costs of living such as food and medical expenses after she has paid her mortgage, rent, utilities, and restitution.

Given Respondent's financial status, imposing the hefty civil penalties and assessments sought by HUD would work a financial hardship on Respondent. The Court credits her assertion that she would be unable to pay \$102,384.00 in penalties and assessments.

(18) Any other factors that may mitigate or aggravate the seriousness of the false claim or statement.

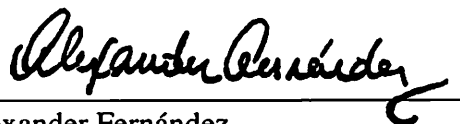
The parties have not identified any additional mitigating or aggravating factors.

C. Conclusion

HUD seeks the maximum penalty of \$102,384.00 against Respondent for the false claims she made. Numerous factors discussed above weigh in favor of imposing a significant penalty, particularly the lengthy time period over which Respondent made the false claims, the fact that her conduct undermined public confidence in the integrity of the Section 8 Voucher Program, and the fact that she engaged in a pattern of misconduct and purposeful concealment of her wrongdoing.

However, these factors are tempered by Respondent's full cooperation in the investigation of her misconduct and acceptance of responsibility for such misconduct, her limited financial resources and potential income, and the fact that she has already been ordered to pay \$66,590.00 in restitution by a criminal court. In consideration of all the evidence and the factors listed in 24 C.F.R. § 28.40, the Court determines that the appropriate amount of penalties and assessments to be imposed against Respondent in this case is \$25,596.00, or one quarter of the maximum allowed.

So **ORDERED**,



Alexander Fernández
Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 26.52. This order may be appealed to the Secretary of HUD by either party within 30 days after the date of this decision. The Secretary (or designee) may extend this 30-day period for good cause. If the Secretary (or designee) does not act upon the appeal within 30 days, this decision becomes final.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
451 7th Street, S.W., Room 2130
Washington, DC 20410

Facsimile: (202) 708-0019

Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Hearings and Appeals.

Judicial review of final decision. Judicial review of the final agency decision in this matter is available as set forth in 31 U.S.C. § 3805.