



Office of the Inspector General


SOCIAL SECURITY ADMINISTRATION

Memorandum

Date: June 19, 2015

Refer To: CC150302

To: Kristi Schmidt
Acting Deputy General Counsel

From: Joscelyn Funné 
Acting Counsel to the Inspector General

Subject: SSA Request for OIG Referral Pursuant to Section 1129(l) Post-Indictment

As you know, members of our staffs have had ongoing discussions regarding SSA OIG's investigation into allegations of fraudulent SSA disability insurance (DI) claims filed in Puerto Rico. As a result, SSA requested any relevant information from OIG pertaining to OIG's Puerto Rico investigation involving Dr. Rafael Miguez-Balseiro and Dr. Erica Rivera-Castro to assist the Agency in carrying out its responsibilities under sections 205(u) and 1631(e)(7)(A)(i) of the *Social Security Act (Act)*, 42 U.S.C. §§ 405(u) and 1383(e)(7)(A)(i).

From about January 2012 through February 2012, Dr. Miguez-Balseiro treated a putative patient (Person A) who was generally in good health and was not suffering from any physical or mental disabling condition. However, Dr. Miguez-Balseiro stated on a Psychiatric Medical Report submitted to SSA that this patient was suffering from recurrent and severe depressive disorder, accompanied by anxiety, that this patient was experiencing crying spells, that this patient's body and mind were slow, that this patient had problems concentrating, and that this patient suffered from feelings of inadequacy, desperation, felt useless and worthless, and was suicidal. In September 2012, SSA approved Person A for disability insurance benefit payments, with an established onset date of October 1, 2011.

From about June 2012 through February 2013, Dr. Rivera-Castro treated a putative patient (Person B) who was generally in good health and was not suffering from any physical or mental disabling condition. However, Dr. Rivera-Castro stated on a mental Disorder Questionnaire that this patient was suffering from emotional disability due to pain, that this patient was distant and withdrawn due to panic, this patient was unable to understand complex instructions due to retraction as a result of pain, and this patient was suffering from a variety of cervical and lumbar conditions that limited Person B's ability to stand, walk, or carry out the responsibilities of any occupational activity. Though SSA denied Person B's application for SSA disability insurance benefit payments, these documents were submitted to SSA for use in its review of the application.

On August 16, 2013, separate multi-count indictments were returned against Drs. Miguez-Balseiro and Rivera-Castro. A similar indictment was returned against Dr. Jose R. Hernandez-Gonzalez. The relevance of Dr. Hernandez-Gonzalez's plea agreement is discussed below. Each

indictment alleged a false statement or representation to SSA. The indictment against Dr. Miguez-Balseiro alleged that, on or about July 16, 2012, Dr. Miguez-Balseiro made false statements or representations of material facts for use in determining rights to Social Security Disability Insurance payments for Person A. It was alleged that his actions were in violation of Title 42, United States Code, Section 408(a)(3). The indictment against Dr. Rivera-Castro alleged that, on or about June 5, 2013, she made false statements or representations of material fact for use in determining rights to Social Security Disability Insurance payments for Person B. It was alleged that her actions were in violation of Title 42, United States Code, Section 408(a)(3).

On September 22, 2014, Dr. Rivera-Castro plead guilty to “one-count Information.” This new one count Information charged her with having failed to keep documents or make required entries, which she was required by law to maintain, in violation of Title 26, United States Code, Section 5603(b)(1) and (2) – a Class A misdemeanor, for the period of “in or about July, 2012, through in or about May, 2013.” Specifically, Dr. Rivera-Castro plead guilty to failing to maintain a cash ledger of the monies she received for medical visits from YCR and for a medical report filed with the Social Security Administration. The plea agreement was accepted by the Court.¹

On September 24, 2014, Dr. Miguez-Balseiro plead guilty to “one-count Information.” This new one count Information charged him with having failed to keep documents or make required entries, which he was required by law to maintain, in violation of Title 26, United States Code, Section 5603(b)(1) and (2) – a Class A misdemeanor, for the period of “in or about January, 2012 through in or about July, 2012.” Specifically, Dr. Miguez-Balseiro plead guilty to failing to maintain a cash ledger of the monies he received for medical visits from RCM and for a medical report filed with the Social Security Administration. The plea agreement was accepted by the Court.²

In addition, on October 28, 2013, Dr. Jose R. Hernandez-Gonzalez, a neurologist in Puerto Rico, plead guilty to participating in a conspiracy to make false statements to SSA, in violation of Title 18, United States Code, Section 371 – a felony. Dr. Hernandez-Gonzalez admitted that beginning in approximately 2008, he associated himself with a non-attorney representative

¹ With the entry of the plea by Dr. Rivera-Castro to the information, on October 14, 2014, a Judgment of Dismissal was entered in the case against Dr. Rivera-Castro, dismissing, with prejudice, the charges in the indictment of “false statement or representation to SSA (42 U.S.C. 408(a)(3)) and wire fraud (18 U.S.C. 1343).”

² With the entry of the plea by Dr. Miguez-Balseiro to the information, on September 29, 2014, a Judgment of Dismissal was entered in the case against Dr. Miguez-Balseiro, dismissing, with prejudice, the charges in the indictment of “false statement or representation to SSA (42 U.S.C. 408(a)(3)) and Health care fraud (18 U.S.C. 1347 and 2).”

named Samuel Torres-Crespo, and they agreed to share the proceeds Mr. Torres-Crespo received as payment from approved beneficiaries. Dr. Hernandez-Gonzalez admitted that he would exaggerate medical complaints and symptoms in order to maximize the probability that his patients would be approved for Social Security disability insurance benefits.

Dr. Hernandez-Gonzalez also admitted that he referred his patients to other medical specialists for medical diagnosis and treatment, even though the patients' conditions did not warrant the referral. These referrals were made to doctors who Dr. Hernandez-Gonzalez knew would also exaggerate or fabricate the patients' conditions to strengthen the patients' disability applications. Two of the physicians to whom Dr. Hernandez-Gonzalez admitted to making such referrals were Drs. Miguez-Balseiro and Rivera-Castro.

Based on the information above, pursuant to section 1129(l) of the *Act*, 42 U.S.C. § 1320a-8(l), OIG has reason to believe that fraud was involved with medical evidence submitted by Drs. Miguez-Balseiro and Rivera-Castro. As the criminal actions involving Drs. Miguez-Balseiro and Rivera-Castro are complete, it is our understanding that action by SSA to redetermine the eligibility of individuals who have had medical information submitted on their behalf by Drs. Miguez-Balseiro and Rivera-Castro would not jeopardize the prosecution of any person still a subject of the underlying investigation.

If you have any questions or need additional information, please contact me or have your staff contact [REDACTED]