

## ***Martinez v. Astrue Information***

### Background:

- 1996: Congress passed a law prohibiting payment of SSI to anyone who is “fleeing to avoid prosecution” for a felony.
- 2005: Social Security Protection Act extends this penalty to Title II AND representative payees
- The SSA policy was to automatically suspend benefits anytime it learned of an outstanding warrant for a felony.
- Martinez was filed in 2008 by NSCLC et al. on behalf of a nationwide-class
- The case settled and under the settlement, the SSA is able to continue its policy only if an outstanding felony warrant was issued for escape, flight to avoid prosecution or confinement, etc., or flight-escape.
- The settlement does not however restrict SSA or the OIG’s (Office of the Inspector General) data-sharing activities with law enforcement.

### Why the Policy was challenged:

- SSA matched warrant databases against people receiving benefits, and when a match was made, SSA provided information on the person’s location to law enforcement.
- SSA then waited 60 days to allow law enforcement to arrest the individual.
- If the law enforcement declined to pursue the person, SSA then took action and suspended the benefits.
  - This affected those with warrants for minor offenses that might have been decades old.
  - Many of the people affected did not even know there were warrants out against them.
- The law also prohibited payment of benefits to those violating a condition of the person’s probation or parole—the SSA policy automatically suspends or denies benefits when there is a warrant out for violation of probation or parole

### People affected by *Martinez*?

- Anyone who had Social Security, SSI, or SVB (Special Veterans’ Benefits) benefits that were denied or suspended due to an outstanding felony warrant AND people who were not permitted to serve as representative payees due to an outstanding felony warrant.
- These people have been split up into 3 groups as it comes to retroactive relief: see the handout.
- \*In Philly we’ve mostly seen people charged with an overpayment rather than people that have had their benefits suspended (as per Morgan)

### Prospective Relief:

- As of 4/1/09, the SSA changed its policy—they are no longer going to deny benefits or refuse to allow someone to serve as a rep. payee solely on the basis of an outstanding felony warrant
- EXCEPT: SSA can still suspend or deny benefits or refuse to allow someone to be a rep. payee IF THE OUTSTANDING FELONY WARRANT IS BASED ON A CRIMINAL CHARGE OF ESCAPE/FLIGHT TO AVOID/ OR FLIGHT/ESCAPE.

### Retroactive Relief:

- Most class members are eligible for retroactive benefits: split into 3 categories
  - **Group 1:** no new application or disability determination is required—should get full retroactive benefits for the period in which they were cut off (SSA will automatically stop overpayments and refund overpayments already recovered)
  - **Group 2:** will likely need to finish establishing eligibility including disability determination for those under 65—should get full retroactive benefits based on the date of the original application (should be automatic)
  - **Group 3:** probably will need to reapply- should receive a notice from SSA which tells person what to do. CLIENT MUST CONTACT SSA WITHIN 6 MONTHS OF THE NOTICE IN ORDER TO GET A PROTECTIVE FILING DATE
- 12/09: notices should have been sent to Groups 1 and 2
- 1/10: SS overpayment collections cease and refunds begin
- 4/10-9/10: notices should be sent to SSI and SVB class members

- 4/10-12/20: SSA will reopen the claim, reassess the eligibility as needed, and reinstate benefits for SSI and SVB class members in Groups 1 and 2
- 4/10-6/10: informational notices are sent to Title II class members in Group 3—THESE PEOPLE MUST REQUEST REINSTATEMENT WITHIN 6 MONTHS OF DATE OF NOTICE TO BENEFIT FROM 4/1/09 PROTECTIVE FILING DATE
- 4/10- 9/10: informational notices sent to SSI and SVB class members in Group 3—THESE PEOPLE MUST CONTACT SSA WITHIN 6 MONTHS OF DATE ON NOTICE TO BENEFIT FROM 4/1/09 PROTECTIVE FILING DATE (related overpayment will stop by end of 2010)

#### Advocacy Tips:

- MAKE SURE SSA HAS CURRENT ADDRESS—THIS IS THE MOST IMPORTANT THING!
  - Especially for Group 3
  - Even more important for SSI (Groups 1, 2, and 3) where SSA ceases to update address info after 12 months
  - SSI recipients should contact the local SSA office and provide their current address and phone and ask to be put on the Martinez list
- SSA might wrongly put someone into Group 3 if they filed a request for reconsideration, and it was never acted on (they should be in Group 1 or 2 as their issue is they never received a decision on the reconsideration)—make sure you know the facts, as it is easier to be in Group 1 or 2 than Group 3
- Members of Group 3 who are currently subject to overpayment should consider requesting a waiver of recovery of the overpayment immediately, and most should qualify (NOTE: Most recently we're being told by SSA that they cannot act on these cases yet, so they will require additional follow-up)
- OUTREACH is IMPORTANT!
- When meeting with clients, make sure to distinguish between outstanding felony arrest warrants and warrants for probation or parole—SSA CAN deny benefits on the former, but CAN'T on the latter
- Help clients plan for the use of their retroactive benefits—RETROACTIVE PAYMENTS ARE EXCLUDED FROM COUNTABLE RESOURCES FOR SSI AND SSI-RELATED MEDICAID ELIGIBILITY FOR 9 MONTHS FOLLOWING RECEIPT. DO NOT COMMINGLE SSI AND TITLE II RETROACTIVE PAYMENTS.
- If client's Medicare Part B (Medical Insurance) coverage was affected from the suspension of benefits, SSA claims it has no obligation to make these class members whole (there is a possible pending suit concerning this matter- stay tuned and contact the NSCLC if you have a client who is a class member who lost Medicare Part B and is not Medicaid eligible)

#### No Social Security Benefits for Prisoners Act of 2009:

- Under this law, individuals who are not receiving monthly OASDI (Old-Age, Survivors and Disability Insurance) or SSI benefits because they are prisoners, fugitive felons (under the *Martinez* definition), or probation or parole violators will not be paid retroactive benefits—including those due benefits under *Martinez*.
- Once the individual is no longer a prisoner, fugitive felon, or probation or parole violator, he or she can receive the *Martinez* settlement payment

\*As far as what HAP is doing: Anna and I will be going out and giving shelter presentations on this topic to help in the outreach effort, hoping to bring those affected by this decision in...

\*Also, this information is what has been reported by the NSCLC and SSA: until we have some real *Martinez* cases, it will be difficult to work out the idiosyncrasies that will inevitably be involved in each case

All information from National Senior Citizens Law Center (NSCLC website) and the Congressional Response Report on the "No Social Security Benefits for Prisoners Act of 2009)