

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RYAN CLARK, JOY JORDAN, RAYMOND :
GIANGRASSO, TONY GONZALES, JOHNNY :
L. HEATHERMAN, and MONELL WHITE, :
individually on behalf of themselves, and on :
behalf of all those similarly situated :

Plaintiffs, :

v. :

MICHAEL J. ASTRUE, Commissioner of the :
Social Security Administration, in his official :
capacity, :

Defendant. :

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06 Civ. 15521 (SHS)

PROPOSED *[Signature]*

ORDER

In an opinion dated March 19, 2010, the U.S. Court of Appeals for the Second Circuit held that the “the Social Security Administration’s practice of treating a warrant alleging that a recipient is violating a condition of probation or parole as sufficient and irrebuttable evidence that the recipient is in fact violating a condition of probation or parole is inconsistent with the plain meaning of the Social Security Act.” *Clark v. Astrue*, 602 F.3d 140 (2d Cir. 2010). This Court subsequently certified a class defined as “All persons nationwide for whom an initial determination to suspend or deny SSI and/or OASDI benefits was made and/or an initial determination of overpayment of such benefits was made and such initial determination was based solely on the existence of a warrant for an alleged violation of probation or parole, provided: (i) the initial determination was made during the period from October 24, 2006 to and including such time in the future when final relief is entered in this action; or (ii) a timely administrative appeal of such initial determination was pending on or after October 24, 2006.”

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

SECTION 1 DEFINITIONS

1.1 “Action” means the litigation in the United States District Court for the Southern District of New York, 06 Civ. 15521 (SHS), and the U.S. Court of Appeals for the Second Circuit, 08-5801-cv, and all proceedings had therein.

1.2 “Class Counsel” or “Plaintiffs’ Counsel” means: Proskauer Rose LLP, the National Senior Citizens Law Center and the Urban Justice Center.

1.3 The “Class” or “Class Members” means: a Plaintiff class, pursuant to Fed. R. Civ. P. 23(b)(2), comprising: “All persons nationwide for whom an initial determination to suspend or deny SSI and/or OASDI benefits was made and/or an initial determination of overpayment of such benefits was made and such initial determination was based solely on the existence of a warrant for an alleged violation of probation or parole, provided: (i) the initial determination was

made during the period from October 24, 2006 to and including such time in the future when final relief is entered in this action; or (ii) a timely administrative appeal of such initial determination was pending on or after October 24, 2006.”

1.4 “Court” means the United States District Court for the Southern District of New York.

1.5 “Defendant” or “the Commissioner” means Michael J. Astrue, the Commissioner of Social Security, in his official capacity, and/or his successors, if any.

1.6 “Named Plaintiffs” refers to Plaintiffs Raymond Giangrasso, Johnny L. Heatherman, Monell White, Ryan Clark and Joy Jordan.

1.7 “OASDI” means the Old Age, Survivors, and Disability Insurance program, under Title II of the Social Security Act.

1.8 “Overpayment” shall have the meaning as set forth in 20 C.F.R. §§ 404.501, 404.502 and 416.537(a).

1.9 “Parties” means the Named Plaintiffs, the Class and Defendant.

1.10 “Plaintiffs” refers to the Named Plaintiffs, acting on their own behalf and on behalf of all Class Members.

1.11 “SSA” means the Social Security Administration.

1.12 “SSI” means the Supplemental Security Income program under Title XVI of the Social Security Act.

SECTION 2 PROSPECTIVE RELIEF

2.1 Defendant is hereby enjoined from suspending OASDI benefits, or denying or suspending SSI payments, or making a determination of an overpayment of such benefits and payments based solely on an outstanding probation or parole violation warrant, including any such warrant with one of the following National Crime Information Center (NCIC) offense

codes: 5011 (parole violation), 5012 (probation violation), 8101 (juvenile offenders – abscond while on parole), and 8102 (juvenile offenders – abscond while on probation).¹

SECTION 3 REMEDIAL PROVISIONS

3.1 For all Class Members whose benefits were suspended solely on the basis of an outstanding probation or parole violation warrant, Defendant shall fully reinstate all benefits retroactive to the date the benefits were suspended and on an ongoing basis. However, if there is another basis for suspending benefits for any portion of the retroactive period or ongoing benefit period, Defendant may suspend such benefits upon notice to the individual with appeal rights in conformity with SSA regulations. Except as stated herein, all payments to Class Members are subject to regular payment, non-payment, and reduced payment provisions of the Social Security Act.

3.2 For all Class Members for whom SSA has made an initial determination of an overpayment, as defined in the Commissioner's regulations (20 C.F.R. §§ 404.902(j) and 416.1402), Defendant shall reverse such overpayment determination and return any funds already recovered unless any or all of those funds are needed to recover another outstanding overpayment not related to this Order and for which a notice was provided to the individual as required in the Commissioner's regulations (20 C.F.R. §§ 404.904 and 416.1404) .

3.3 For all Class Members who were denied SSI payments based solely on an outstanding probation or parole violation warrant and whose claims were otherwise fully developed, Defendant shall reopen such claims and determine benefits based on the original application date.

¹ On August 20, 2010, SSA issued instructions to cease this practice for individuals residing in New York, Connecticut or Vermont. On May 9, 2011, SSA issued instructions to cease this practice nationwide.

3.4 Unless critical or expedited case processing procedures apply, for all Class Members with appeals pending at any administrative level of determinations made solely on the basis of an outstanding probation or parole violation warrant, Defendant shall review and complete development of such cases based on the original date of the appeal.

3.5 For all Class Members previously determined by SSA to be disabled who filed a new application for SSI payments subsequent to their suspension or denial, Defendant shall vacate any determination of non-disability on the subsequent application if it was not made in compliance with the requirements for continuing disability reviews as provided in 42 U.S.C. § 423(f).

3.6 Following the Effective Date, SSA shall contact Class Members through an informational notice (an OASDI or SSI one-time class settlement informational notice) mailed via U.S. Postal Service (U.S.P.S.) first class mail to the last known address in SSA records with a designated post office box as the return address. Prior to sending this informational notice, SSA shall match the addresses in its records for all SSI Class Members who are not in current pay against the U.S.P.S. National Change of Address (NCOA) file. In those instances where a match is not made, the informational notice will be sent with Forwarding Service Requested special handling. The informational notice shall include a bolded Spanish language paragraph including a brief description regarding this matter and inviting the Class Members to contact their local Social Security office for an explanation of the notice. SSA shall bear the full cost of the informational notices. The informational notices shall advise how SSA's policy regarding outstanding probation and parole warrants has changed and that individuals may be entitled to or eligible for benefits or payments for applicable periods of suspension or non-payment. This

informational notice will not require a response on the part of the Class Member. SSA will follow its normal operating procedures if an informational notice is returned as undeliverable.

3.7 When providing specific relief to an OASDI or SSI Class Member, SSA will mail an individualized notice to each Class Member. This notice, to be sent via U.S.P.S first class mail to the last known address in SSA records, will explain the specific relief that will be provided. Those Class Members who have a Spanish language indicator on their records will be sent a Spanish language notice. Those Class Members with visual impairments who have requested that notices be provided in an alternate format will be provided a notice in the manner in which they have previously identified, along with a notice in standard print format. SSA shall bear the full cost of the notices. If a notice is returned as undeliverable, SSA will follow normal operating procedures, including POMS SI 2301.240.C.1, to attempt to locate the individuals.

3.8 To the extent that it is inconsistent with a provision(s) in this Order, change(s) in any controlling statutes shall supersede this Order.

3.9 This Order is not intended to change, modify, or revise SSA's or the Office of Inspector General's implementation of sections 42 U.S.C. §§ 402(x)(C) and 1382(e)(5)(A) of the Social Security Act with regard to the disclosure of information to federal, state, or local law enforcement.

SECTION 4 IMPLEMENTATION PLAN

No later than sixty (60) days following entry of this Order, Defendant shall submit for the Court's approval a plan for implementation of this Order that sets forth the anticipated time frames for implementing the terms of the Order. The implementation plan shall specify the time frames for: 1) posting a news item on SSA's official, public website (as provided in Section 5.1 of this Order); 2) posting a notice of the provisions of this Order in each SSA Field Office (as provided in Section 5.2 of this Order); 3) identifying Class Members; 4) mailing the

informational notices described in Section 3.6 of this Order; 5) mailing the individual notices described in Section 3.7 of this Order; 6) providing OASDI relief by an automated process; 7) providing OASDI relief manually; 8) providing SSI relief manually; and 9) with respect to numbers 6, 7 and 8 herein, completing cases.

SECTION 5 PUBLICATION

5.1 No later than thirty days (30) days following the entry date of this Order, SSA shall publicize the terms of this Order by posting a news item on the home page of its official, public website, www.socialsecurity.gov, that will summarize the key provisions, and attach a copy of this Order.

5.2 Upon mailing the informational notices described in Section 3.6 of this Order, SSA shall post a notice of the provisions of this Order in each SSA Field Office. This notice shall remain posted in each SSA Field Office until SSA substantially completes the implementation of this Order as described in Section 6.3 below.

SECTION 6 INQUIRIES, COMMENTING AND REPORTING

6.1 SSA and Class Counsel shall each designate an individual or individuals who will serve as a point of contact. The designated individual(s) will act in good faith to address any inquiries from Class Counsel related to the implementation of this Order.

6.2 SSA shall provide Class Counsel with an advance copy of any newly created and subsequently revised draft POMS, HALLEX, Chief Judge Bulletins, Emergency Messages to SSA components, template individual notices to Class Members described in Section 3.7 of this Order, draft informational notices to Class Members described in Section 3.6 of this Order, any specialized *Clark* notice language, and any other notices that effectuate any term of this Order. Class Counsel shall provide comments, if any, to SSA, within five business days of receiving the

drafts. SSA will consider Plaintiffs' comments in good faith, although SSA is not obligated to respond to and/or incorporate these comments in the final instructions and notices.

6.3 SSA shall report the following information to Class Counsel: 1) the total number of potential OASDI Class Members; 2) the total number of potential SSI Class Members; 3) the total number of OASDI informational notices sent; 4) the total number of SSI informational notices sent; 5) the total number of informational notices returned; (items 3, 4 and 5 will be provided only once); 6) the total number of OASDI cases completed by an automated process; 7) the total number of OASDI cases completed manually; and 8) the total number of SSI cases completed manually. SSA shall continue reporting the above information quarterly to Class Counsel until it substantially completes the implementation of this Order. For the purposes of this Order, substantially completes means SSA completes at least ninety-five (95) percent each of the OASDI and SSI cases. For the purposes of this Section, "completes" means that SSA has provided the required relief as stipulated in Section 3 of this Order or has apprised the individual that no relief is appropriate. SSA shall further notify the Class Counsel of any anticipated difficulties in adhering to the implementation plan's time frames.

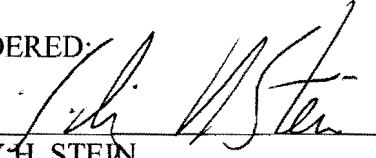
SECTION 7 CONTINUING JURISDICTION

7.1 The Court will retain jurisdiction over this matter for the purposes of: (a) enforcing the provisions of this Order in the event that one of the Parties claims that there has been a breach of this Order; and (b) modifying this Order if jointly requested by the Parties, or if the parties do not agree, upon good cause shown by either Party. Both Class Counsel and Defendant's counsel shall make reasonable efforts to resolve any issues with regard to this Order.

7.2 Nothing in this Order prohibits the Defendant from promulgating regulations regarding suspending OASDI benefits or denying or suspending SSI payments as provided in

42 U.S.C. §§ 402(x)(1)(A)(v) and 1382(e)(4)(A)(ii).

SO ORDERED:



SIDNEY H. STEIN
United States District Judge
Southern District of New York

Dated: New York, New York
April 13, 2012