

SSA Changes Policy on “Fleeing Felons”

At a hearing in August 2009, the court preliminarily approved settlement of *Martinez v. Astrue*, Case No. 08-Civ-4735 CW (N.D.Cal., filed Oct. 15, 2008), a nationwide class action challenging SSA’s definition of “fleeing felon.” In the settlement, SSA agrees to change its definition of “fleeing” to include a much narrower group of individuals with outstanding warrants. The “fairness” hearing in the court has been scheduled for September 24, 2009. Under the terms of the settlement, relief will be provided to more than 200,000 individuals whose benefits were previously suspended or denied, with more than \$500 million in benefits paid to some class members (see below). The settlement will not become final until the judge grants final approval after the fairness hearing and the appeal time has run.

Note: The *Martinez* settlement **does not** apply to individuals whose benefits have been suspended or denied benefits because of a warrant based on a violation of probation or parole.

SSA changed its policy, as of April 1, 2009, going forward, as provided in the settlement agreement. Under the new policy, SSA will suspend or deny benefits **only** if the individual’s outstanding felony warrant was issued for one of the following three offenses, which are directly based on the concept of “fleeing”:

- Escape (offense code 4901)
- Flight to avoid prosecution, confinement, etc. (offense code 4902)
- Flight-Escape (offense code 4999)

Under the pre-*Martinez* settlement policy, the vast majority of suspensions/denials were based on offense codes other than these three offenses. SSA’s current policy, effective April 1, 2009, is set forth in Emergency Message EM-09025 (Apr. 1, 2009), available on the SSA website at: <http://tinyurl.com/cr3zev>. Another set of instructions, EM-09024 (Mar. 31, 2009), available at <http://tinyurl.com/dhm957>, deals with the selection of representative payees. Court documents and information on the *Martinez* settlement are on the National Senior Citizens Law Center website, www.nsclc.org.

In addition to the significant policy change effective April 1, 2009, the settlement will provide retroactive relief to two groups of class members:

- **For individuals who have been suspended or denied since January 1, 2007, or who had a live administrative claim pending on this issue on August 11, 2008, and who continue to be otherwise eligible for benefits:** SSA will cease collecting overpayments based on the challenged policy and will repay full retroactive benefits to. About 80,000 individuals are in this group. They will not be required to file a new application or have a continuing disability review (CDR) prior to reinstatement. It is estimated that SSA will pay about \$500 million in withheld benefits to this group.

- **For all individuals who had benefits suspended or denied since January 1, 2000:** SSA will send a notice to all individuals who had benefits suspended or denied since January 1, 2000. The notice will advise that SSA's policy has been changed and that they may now be eligible to receive benefits. These individuals will be given the chance to re-establish eligibility, with a protective filing date of April 1, 2009, if they contact SSA within 6 months of receiving the notice. Any overpayments being collected from this group will be forgiven.