



The Settlement in *Martinez v. Astrue*

**Benefits Available to Your Social
Security and SSI Clients**

**National Senior Citizens Law Center
January 29, 2010 Training**

Martinez Case: Results


- Over 200,000 older people and people with disabilities can regain eligibility for Social Security and SSI.
- Well over \$500,000,000 in retroactive relief alone.
- Individual retroactive amounts are sufficient to restore individuals to stable living situation.

Counsel for Plaintiffs

- National Senior Citizens Law Center
- Munger, Tolles & Olson, LLP
- Urban Justice Center Mental Health Project
- Disability Rights California
- Legal Aid Society of San Mateo County

Martinez Case: Background

- Congress passed law in 1996: prohibits payment of SSI to anyone who is “fleeing to avoid prosecution” for a felony.
- Social Security Protection Act extends penalty to Title II, effective 1/1/05. It also extends to representative payees.
- SSA policy automatically suspended benefits anytime it learned of an outstanding warrant for a felony.



POLL: Do you know of people who lost or were denied benefits due to an outstanding warrant?

- Yes.
- No.

The Challenged Policy

- SSA matched warrant databases against people receiving benefits.
- When a match was made SSA provided information on the individual's whereabouts to law enforcement in the jurisdiction that issued the warrant.
- SSA then waited 60 days to allow law enforcement to secure an arrest.

The Challenged Policy

- Only after law enforcement declined to pursue the individual did SSA take action to suspend benefits.
- Thus most of those who lost benefits were wanted for minor offenses, often from decades earlier.
- Many did not even know criminal charges had been filed against them.

***Martinez* Case: Background**

- Second Circuit (*Fowlkes v. Adamec*, 432 F.3d 90, 2005) and other courts decided that SSA's interpretation was illegal.
 - None of the cases was a class action.
 - SSA only abided by *Fowlkes* decision in Second Circuit states (NY, CT & VT).
- *Martinez* plaintiffs filed suit in 2008 in California federal district court.

Martinez Case: Background

! Note: the law also prohibits payment of benefits to those violating a condition of probation or parole. SSA's policy automatically suspends or denies benefits when there is a warrant out for violation of probation or parole.

- NSCLC filed separate lawsuit challenging that policy (*Clark v. Astrue*), now pending with Second Circuit.
- If warrant is for probation or parole violation, client is not part of *Martinez* settlement.

***Martinez* : Settlement Class**

- Who is in the Martinez settlement class?
 - Anyone who had benefits under Title II (Social Security) or Title XVI (SSI) or Title VIII (Special Veterans' Benefits – SVB) denied or suspended due to an outstanding felony warrant.
 - Anyone not permitted to serve as a representative payee due to an outstanding felony warrant.

***Martinez*: Prospective Relief**

- Prospective relief: as of April 1, 2009, SSA changed its policy. Will no longer suspend or deny benefits, or refuse to allow someone to serve as rep payee, solely on the basis of an outstanding felony warrant.
 - Cite to Emergency Messages 09025 (April 1, 2009) (suspension or denial of benefits) and 09024 (Mar. 31, 2009) (rep payees).
 - Outstanding warrants may still be considered as a factor in determining suitability as rep payee.

***Martinez* Prospective Relief**

! Exception: SSA can still suspend or deny benefits, or refuse to allow someone to be a rep payee, if the outstanding felony warrant based on criminal charge of escape, flight to avoid, or flight/escape.

- National Crime Information Center (NCIC) offense codes 4901, 4902 and 4999.
- A tiny percentage of all warrants issued.

***Martinez* Retroactive Relief**

- Most class members also eligible for significant retroactive relief.

***Martinez*: Retroactive Relief**

- Group #1 includes:
 - Benefits suspended on or after Jan. 1, 2007;
OR
 - Benefits suspended prior to Jan. 1, 2007 AND
 - Administrative appeal of suspension pending on or after Jan. 1, 2007, including:
 - Administrative appeal decision on suspension of benefits.
 - Appeal pending without decision.

***Martinez* Retroactive Relief**

- Group #1 will get:
 - **Full retroactive benefits** for the period during which benefits were suspended pursuant to the challenged policy.
 - Most Social Security beneficiaries will get reinstated automatically.
 - SSI recipients will get letter to make appointment with SSA to document continued eligibility, especially financial eligibility.
 - SSA will automatically stop overpayments and refund overpayments already recovered.

***Martinez*: Retroactive Relief**

- Group # 1
 - No New Application Required.
 - No New Disability Determination Required.

***Martinez* Retroactive Relief**

- Group #2 includes:
 - Application for benefits denied on or after Jan. 1, 2007; OR
 - Administrative appeal of denial pending on or after Jan. 1, 2007, including:
 - Administrative appeal decision on denial of benefits.
 - Appeal pending without decision.

***Martinez* Retroactive Relief**

- Group #2 will get:
 - **Full retroactive benefits** based on date of original application.
 - Most Social Security applicants will get reinstated automatically.
 - SSDI applicants do not need to currently meet “date last insured” requirement.
 - SSDI applicants should have already been determined to be disabled and will not need a new disability determination.

***Martinez* Retroactive Relief**

- Group #2 will get (continued):
 - SSI applicants will likely need to finish establishing eligibility, including disability determination for those under 65.
 - If already determined disabled during earlier SSI application, no need for new determination prior to retroactive payment of benefits.

***Martinez* Retroactive Relief**

- Group #3 includes:
 - Benefits suspended or denied between 2000 and 2006; AND
 - No administrative appeal pending on or after 1/1/07.

***Martinez* Retroactive Relief**

- Group #3 will get:
 - **Limited retroactive benefits**, based on April 1, 2009 protective filing date.
 - Retro benefits *not* automatic. Will receive notice from SSA and invitation to contact SSA.
 - Must contact SSA within six months of date on notice in order to get protective filing date.
 - Notices mailed to claimants' last known address.
 - If already back on benefits, SSA will stop collecting overpayments, but will not refund overpayments already recovered.

Expected Timeline for Retroactive Relief

- December 2009: notices sent to Social Security class members in Groups #1 and #2.
 - Includes Social Security portion for concurrent beneficiaries.
- January 2010: Social Security overpayment collections cease and refunds begin to Social Security beneficiaries.
 - Includes Social Security portion of concurrent beneficiaries' payments.
 - Refunds should be complete by June 2010.

Expected Timeline for Retroactive Relief

- April-September 2010: notices sent to SSI and SVB class members in Groups #1 and #2.
- April-December 2010: reopen claim, reassess eligibility as needed, and reinstate benefits for SSI and SVB class members in Groups #1 and #2.

Expected Timeline for Retroactive Relief

- April-June 2010: informational notices sent to Title II class members in Group #3. Must request reinstatement within 6 months of date of notice to benefit from April 1, 2009 protective filing date.
 - Related overpayment collection will stop by end of 2010.


Expected Timeline for Retroactive Relief

- April-September 2010: informational notices sent to SSI and SVB class members in Group #3. Must contact SSA within 6 months of date on notice to benefit from April 1, 2009 protective filing date.
 - Related overpayment collection will stop by end of 2010.

Advocacy Tips

! Make sure SSA has current address.

- Especially important for Group #3, which must act within six months of date on notice.
- Even more important for SSI (Groups 1, 2 & 3) where SSA ceases to update address info after 12 months.
- Social Security beneficiaries can update address online,
<https://secure.ssa.gov/apps6z/ICOA/coa001.jsp>.
- SSI recipients should contact local SSA office, provide current address and phone, ask to be put on *Martinez* list as required by EM-09025.
 - Let us know if local office has no idea what this is!



POLL: Have you or someone you know contacted SSA for information about eligibility for retroactive benefits under *Martinez*?

- No.
 - Yes. SSA's representative provided individualized information about eligibility for benefits.
 - Yes. SSA's representative gave me general information about the *Martinez* settlement, but was unable or unwilling to answer questions about individual eligibility.
 - Yes. SSA's representative had no idea what we were talking about.

Advocacy Tips

! SSA may improperly treat people as Group #3 members if they filed a request for reconsideration and it was never acted on..

- Those who appealed a suspension or denial and did not receive decision on recon should be in Group #1 or Group #2 (full retro relief).
- Explore facts thoroughly to determine whether appeal was filed, and when.

Advocacy Tips

- Explore facts thoroughly to determine whether appeal was filed, and when (continued).
 - Remember many people file appeals which are never processed by SSA.
 - In addition, some may have good cause for missing appeal deadline, e.g., if local SSA office misled them by telling them no appeal was possible due to outstanding warrant. See 20 CFR 404.911 & 416.1411 for criteria for establishing good cause for missing a deadline.
 - Contact NSCLC to report on efforts (successful and unsuccessful) to move people from Group # 3 to Group #1 or #2.

Advocacy Tips

- Members of Group #3 who are currently subject to overpayment should consider requesting waiver of recovery of the overpayment immediately. Most should qualify.

Advocacy Tips

- Outreach and education is important– over 200,000 class members stand to benefit from retro relief!
- NSCLC has consumer fact sheet on its website.

Advocacy Tips

- Many are hard to reach and are homeless or have moved and will not receive SSA notice.
 - Screen at intake.
 - Make sure to distinguish between outstanding felony arrest warrants and warrants for probation or parole
 - Old intakes.
 - Former clients.
 - Shelters, food banks, soup kitchens.
 - Senior centers
 - Area agencies on aging.
 - Mental health providers.
 - State and local general assistance programs.

Advocacy Tips

- Plan for use of retroactive benefits.
 - Make a plan before the money is received.
 - Work with community organizations.
 - Retroactive payments excluded from countable resources for SSI and SSI-related Medicaid eligibility for nine months following month of receipt. 20 C.F.R. 416.1233. Do not commingle SSI and Title II retroactive payments.

Advocacy Tips

- Plan for use of retroactive benefits, cont.
 - Advise SSI and concurrent beneficiaries of SSI transfer penalty:
 - Transferring a resource for less than fair market value makes one ineligible for SSI for # of months determined by amount of uncompensated transfer divided by SSI monthly payment rate. See 42 U.S.C. s. 1382b(c), See, also SSA POMS SI 01150
 - Repayment of legally enforceable obligation is ok, but repayment of moral obligation triggers penalty.

Advocacy Tips

- Some class members may have lost Medicare Part B coverage due to inability to pay premiums when their Social Security benefits were suspended.
 - SSA claims it has no obligation to make these class members whole.

Advocacy Tips

- **Loss of Medicare Part B (continued).**
 - SSA states that they will only be allowed to seek reinstatement in a General Enrollment Period (Jan. 1 – Mar. 31) and will then have to wait several months more before their Part B benefits can be reinstated.
 - SSA also states they will have to pay a lifetime penalty in the form of a higher Part B premium.

Advocacy Tips

- **Loss of Medicare Part B (continued).**
 - NSCLC and its co-counsel are considering a challenge to SSA's position on this issue.
 - Contact NSCLC if you have a client who is a class member who lost Medicare Part B coverage and is not Medicaid eligible.

Advocacy Tips

- Advocates should join NSCLC listserv for updated information.
 - www.nsclc.org/front-page/join-or-donate-to-nsclc.
- NSCLC can provide case consultation and technical assistance.
- Consumer fact sheet
 - www.nsclc.org/front-page/areas/social-security-ssi/Martinez-Settlement.
- Article in *Clearinghouse Review*.

Frequently Asked Questions

- My client needs SSI now, but according to this timeline will have to wait many months. Should he or she file a new application now?
 - If age 65 or over the answer is yes.
 - If in Group # 3, the answer is yes.
 - If in Group # 2, the answer is yes unless there has already been a favorable disability determination.

Frequently Asked Questions

- My client needs SSI now. Should he or she file a new application now? (continued)
 - If new application is filed, follow up to make sure client benefits from all possible retroactive relief.
 - If in Group # 1 and under age 65, the answer is no except in extreme situations since the new disability determination will take time and there is the risk of an adverse determination.

Frequently Asked Questions

- My client is a Martinez class member and has an appeal pending. Can he or she get relief sooner?
 - Class members with appeals pending at the reconsideration, ALJ or Appeals Council stages are entitled to an immediate, on-the-record determination, consistent with *Martinez*, per EM-09025.
 - Let NSCLC know results.

NSCLC Contact for Martinez Inquiries

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NSCLC Mission

- ***The National Senior Citizens Law Center advocates nationwide to promote the independence and well being of low income elderly and people with disabilities.***
 - **Advocates** for elderly and people with disabilities in legislative and administrative policymaking;
 - **Litigates** on issues having broad impact;
 - **Trains, informs and assists** local advocates to provide the best possible representation.