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Identification Number: EM-09025

Intended Audience: All
RCs/ARCs/ADs/FOs/TSCs/PSCs/OCO/ODARHQ/ALJs

Originating Office: ORDP OISP

Title: Fugitive Felon: Stop Suspension or Denial of Individuals with Felony Warrants Affected by the Martinez Settlement

Type: EM - Emergency Messages

Program: Title II (RSI); Title VIII (SVB); Title XVI (SSI)

Link To Reference: See References at the bottom of this EM

Effective Date:
04/01/2009

Retention Date: October 1, 2009

Background:

As a result of a settlement agreement in *Martinez, et al. v. Astrue*, which should soon be approved by the court, this Emergency Message (EM) provides new instructions for processing Title II, Title VIII, Title XVI payments and representative payee actions that involve outstanding felony warrants. *Martinez* challenged the agency's policy and procedures in applying non payment actions to fugitive felons and non-selection of fugitive felons as representative payees. The settlement agreement requires the agency to change its processing of certain fugitive felon non-payments and non-selections (representative payees) effective April 1, 2009.

NOTE: The *Martinez* settlement does not affect SSA's policy or procedures for processing Title II, Title VIII, or Title XVI payments or representative payee actions for cases involving outstanding parole or probation violation warrants (e.g. offense codes 5011 and 5012.) Therefore, continue to follow current instructions for processing cases involving these warrants.

Martinez Settlement Policy

Effective immediately, SSA policy is to suspend or deny Title II and Title VIII benefits or Title XVI payments, and to prohibit an individual from serving as a representative payee only if the individual's outstanding felony warrant was issued for one of the following three offenses:

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

If more than one felony warrant exists, only suspend, deny, or do not select as a representative payee only for months during which the individual has a felony warrant with one of these three offense codes.

Processing Instructions

Apply the following instructions to individuals in all states including New York, Connecticut, and Vermont. The *Martinez* settlement should be used instead of referencing the Fowlkes Acquiescence Ruling (AR 06-1(2)).

1. Initiate action for suspension, non-payment, or claims denial based on an outstanding felony warrant with a felony offense code of 4901, 4902, or 4999 shown on the Fugitive Felon System Control File.
2. If an appeal is pending at the reconsideration, hearing, or Appeals Council level, apply the policy in this EM when making the appeal decision.
3. If a representative payee applicant or an existing representative payee has an outstanding felony warrant for offense code 4901, 4902, or 4999, the individual will be prohibited from serving as a representative payee. If any other felony warrant information comes to the attention of the decision-maker, it will be used to determine an applicant's suitability (or continued suitability) to serve as a representative payee.

Title II Initial Claims

The Agency no longer asks Title II applicants or claimants about their felony status on any of the Title II benefit applications. For additional information, see GN 02613.050.

Title XVI/Title VIII Eligibility Determinations

For Title XVI/Title VIII initial claims, a felony status question still exists on applications. To determine eligibility, verify the felony warrant offense code information to ensure that the individual does not have one of the three offense codes listed above. Complete the fugitive felon questions on the Law Enforcement (ALEF) and Felony Warrant (AWRF) screens. The good cause code "DNH" (individual is residing in a long term care facility) will now also be used to code cases that fall under the *Martinez* Settlement provisions in order to prevent non-payment of benefits.

Follow current procedures for completing MSSICS screens (MSOM MSSICS 008.022 and MSOM MSSICS 008.023). However, to ensure that payments will continue, also do the following:

- On the AWRF screen, enter "1" (Established) in the GOOD CAUSE field.
- On the DW01 screen in MSSICS, enter "**Martinez**"

Settlement” in Remarks.

- On the FFDG (Fugitive Felon Warrant Due Process/Good Cause) screen within the FFSCF (Fugitive Felon SSA Control File), enter “DNH” as the Good Cause reason.
- On the Good Cause Screen in FFAP (Fugitive Felon Automated Process) document that *Martinez* relief was granted to the case by entering the “DNH” code.

Representative Payee Applications

For representative payees, the question about felony status still exists on applications. If the applicant responds that he or she has an outstanding felony warrant, verify the offense code with OIG (see GN 02613.175 and SI 00530.150.) If the felony warrant offense code is 4901, 4902, or 4999, do not select the payee applicant. Generally, any criminal history casts serious doubt about the payee applicant’s character. For any other felony offense code, consider the reason for that warrant and the payee/beneficiary relationship in making the suitability determination.

Identification of Individuals Affected by the *Martinez* Settlement

Identification of individuals affected by the *Martinez* settlement will be done centrally and appropriate notices released. Comprehensive instructions on how to handle these cases will also be released at a later date. In the meantime, if individuals contact SSA on their own initiative about the *Martinez* settlement or because they recently received a notice telling them that their benefits are being suspended or that they are not being selected as a representative payee because of an outstanding warrant for a felony other than the felony offense codes above, follow the instructions below.

A. Field Office Walk-In Traffic/Phone Calls

Each FO must maintain and preserve a list of individuals who contact the FO and state they might be due payments in connection with the *Martinez* settlement. Include on the list, the name, SSN, current address, and phone number for each individual.

No further actions should be taken at this time. Additional processing instructions will be issued at a later date. See also Pipeline Cases, below.

B. TSC Calls

If an individual calls the national 800 number about the *Martinez* settlement, the 800 number agent will create a Manual Development Worksheet (MDW) and include the individual’s name, SSN, current address, and phone number. Explain that no further action can be taken at this time, but their contact information will be provided to the individual’s servicing field office for future actions. Include in REMARKS the words “*Martinez Settlement*” and transfer the MDW to the servicing field office.

If an individual calls the national 800 number about receiving a notice of fugitive

felon nonpayment on or after April 1, 2009, explain the information in Pipeline Cases, below.

C. Pipeline Cases

Title II - Due to the nature of the automated system that the agency has been using for fugitive felon non-payment processing, there may be cases in the pipeline which were already handled under the prior policy which resulted in non-payment for **all** felony offense codes. This automated system releases advance notices of proposed suspension and provides a 35-day protest period before suspension actions can be taken. Because the automation of these pipeline cases can result in non-payments on or after April 1, 2009, SSA may not be able to take all corrective actions as required by the *Martinez* settlement until a later date.

However, beginning April 1, 2009, if a beneficiary contacts SSA within the 35-day advance notice protest period and the offense code on the warrant is other than 4901, 4902, 4999 (or a parole or probation offense code,) process a protest action to stop suspension of benefits according to GN 02613.450.

Title XVI – For cases pending a felony suspension action in a field office, per the policy above, only suspend payments if the offense code on the warrant is 4901, 4902, 4999. No change is required for probation and parole violation suspension actions.

D. Good Cause Requests

Continue to process good cause requests for any felony suspension or denial determinations following current instructions in GN 02613.025 and SI 00530.015.

If good cause cannot be approved, and the suspension/nonpayment/denial was based on a felony warrant with an offense code other than 4901, 4902, or 4999, include the beneficiary or recipient on the FO list of *Martinez* contacts as indicated above.

Further Instructions and Additional Questions

Additional *Martinez* settlement processing instructions will be issued in the future.

Direct all program related and technical questions to your RO or PC support staff. RO and PC support staff may refer questions or problems to their Central Office contacts.

References:

SI 00530.000 Fugitive Felons and Parole and Probation Violators

GN 02613.000 Title II Fugitive Felons and Parole and Probation Violators

VB 00101.000 General Information on Special Veterans Benefits

GN 00504.102 Representative Payees Identified by the Fugitive Felon

Match

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