



**SOCIAL SECURITY ADMINISTRATION**

Refer To: [REDACTED]

Office of Disability Adjudication and Review  
Ste. 300  
2440 Tulare Street  
Fresno, CA 93721-9904

Date: June 15, 2010



**Notice of Decision – Fully Favorable**

I carefully reviewed the facts of your case and made the enclosed fully favorable decision. Please read this notice and my decision.

Another office will process my decision and decide if you meet the non-disability requirements for Supplemental Security Income payments. That office may ask you for more information. If you do not hear anything within 60 days of the date of this notice, please contact your local office. The contact information for your local office is at the end of this notice.

**If You Disagree With My Decision**

If you disagree with my decision, you may file an appeal with the Appeals Council.

**How To File An Appeal**

To file an appeal you or your representative must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at [www.socialsecurity.gov](http://www.socialsecurity.gov). Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

**Appeals Council  
Office of Disability Adjudication and Review  
5107 Leesburg Pike  
Falls Church, VA 22041-3255**

**Time Limit To File An Appeal**

- You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not

filing it on time.

### **What Else You May Send Us**

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

### **How An Appeal Works**

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 416 (Subpart N).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

### **The Appeals Council May Review My Decision On Its Own**

The Appeals Council may review my decision even if you do not appeal. If the Appeals Council reviews your case on its own, it will send you a notice within 60 days of the date of this notice.

### **When There Is No Appeals Council Review**

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

### **If You Have Any Questions**

We invite you to visit our website located at [www.socialsecurity.gov](http://www.socialsecurity.gov) to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

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**SOCIAL SECURITY ADMINISTRATION  
Office of Disability Adjudication and Review**

**DECISION**

**IN THE CASE OF**

**CLAIM FOR**

[REDACTED]  
(Claimant)

Overpayment of Supplemental Security  
Income

(Wage Earner)

[REDACTED]  
(Social Security Number)

**JURISDICTION AND PROCEDURAL HISTORY**

The claimant was notified on January 27, 2009, that he was overpaid \$22,455.00 in Supplemental Security Income (SSI) benefits. He filed a Request for Waiver of the overpayment, which was initially denied on March 24, 2009, and on reconsideration on June 30, 2009. This matter is before me now on the claimant's Request for Hearing filed on July 2, 2009. The claimant appeared and testified at a hearing held on May 27, 2010, in Fresno, California. Gregory Elovich, a non-attorney, represents the claimant.

**ISSUES**

The issue is whether the claimant was overpaid Supplement Security Income benefits from December 1, 2006 to January 1, 2009, and if so, whether the overpayment should be waived. After careful consideration of the issues and review of the entire record, I find that recovery of the overpayment is contrary to the good cause provisions of 42 U.S.C. section 1382.

**APPLICABLE LAW**

The Social Security regulations at 20 CFR section 416.1339(a) states an individual is ineligible for SSI benefits for any month during which he or she is (1) fleeing to avoid prosecution for a crime which is a felony under the laws of the place from which the individual fled, (2) fleeing to avoid custody or confinement after conviction of a crime which is a felony under the laws of the place from the individual fled, or (3) violating a condition of probation or parole imposed under Federal or State law (the "fugitive felony" policy). The section also applies to Title II and Title VIII benefits and affects an individual's ability to serve as representative payee for another.

The agency's policy changed effective September 24, 2009, pursuant to the settlement of a class action lawsuit against the Social Security Administration *sub nom Martinez et al. v. Astrue*, Case No. 08-4735 CW (N.D. Cal.). Under the stipulated agreement, the agency's current policy is to suspend or deny Title II, Title VIII, and Title XVI payments, and to prohibit an individual from serving as a representative payee only if the individual's outstanding felony warrant was issued

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for one of the following three offenses: escape; flight to avoid prosecution, confinement, etc.; and flight escape. The offense codes are 4901, 4902, and 4999, respectively.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**1. The claimant falls within the class of persons who are entitled to relief under the *Martinez* Settlement.**

As stated in the applicable laws set forth above, the agreement reached in *Martinez, et al. v. Astrue* stated the three types of warrants that can be considered as "fleeing felon" warrants, to wit, offense codes 4901, 4902, and 4999. The claimant's SSI benefits were suspended from December 2006 to January 2009 due to the existence of a felony warrant for the possession of a controlled substance that was issued in Oregon. The claimant presented evidence indicating that the offense code for dangerous drugs is 3599 (Exhibit 22, p. 12). Therefore under the *Martinez* Settlement, the claimant's Oregon warrant would not be grounds for suspension of his SSI benefits.

However, as of the date of the hearing, the Social Security Administration had not issued rules regarding identification of *Martinez* SSI class members or for provision of relief.

**2. The claimant's Request for Waiver of the overpayment was actually an appeal of the underlying initial fugitive felon determination.**

When the claimant filed his Request for Waiver of the Overpayment (Exhibit 4), he indicated that the charges associated with the warrant in question were dismissed (Exhibit 4, p. 2). In his Request for Reconsideration, the claimant again alleged that the warrant was dismissed because the charges were dropped (Exhibit 6, p. 1).

**3. There is good cause to find that an overpayment no longer exists due to the fact that the charges underlying the warrant were dismissed.**

42 U.S.C. section 1382(e)(4)(B)(i) states that the Commissioner of Social Security shall, for good cause, shall find an individual eligible for benefits if "a court of competent jurisdiction has found the person not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the person for the criminal offense, or issued any similar exonerating order ...."

The claimant presented evidence at the hearing that satisfies the above criteria. On February 17, 2010, a Multnomah County, Oregon Deputy District Attorney sent a copy of a dismissal order in Case No. 86-09-34238. He indicated that the case was dismissed and cannot be reprosecuted because the statute of limitations has passed (Exhibit 23, p. 1). The order itself is entitled "Judgment of Dismissal" and is dated February 11, 2009, and signed by a judge of the Oregon Circuit Court (Exhibit 20, p. 1). Although the Judgment was issued for [REDACTED] the District Attorney's letter indicates that [REDACTED] and the claimant [REDACTED] are the same person (Exhibit 23, p. 1).

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Since the charges which triggered an arrest warrant in Oregon in September 1986 were duly dismissed by a court of competent jurisdiction, the claimant was entitled to SSI benefits for all months for which he was otherwise eligible. Therefore, no overpayment exists for the period between December 1, 2006, and January 1, 2009. Consequently, no repayment is required.

DECISION

Because the charges that originated in Multnomah County, Oregon in 1986 were dismissed, the claimant was not a "fleeing felon" and not overpaid any sums between December 1, 2006, and January 1, 2009. I find that the overpayment in question no longer exists. Thus, repayment is not required.

*/s/ John Cusker*

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John Cusker  
Administrative Law Judge

June 15, 2010

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Date

**LIST OF EXHIBITS**

**Claimant:** [REDACTED]

**SSN:** [REDACTED]

Exh. Part No. No.	Description	No. of Pages
1	Statement for Determining Continuing Eligibility for Supplemental Security Income Payments dated 2/8/05	3
2	Supplemental Security Income Notice of Planned Action dated 1/9/09	6
3	Supplemental Security Income Notice of Overpayment dated 1/27/09	6
4	Request for Waiver of Overpayment Recovery or Change in Repayment Rate not dated	8
5	Supplemental Security Income Overpayment Information dated 3/24/09	2
6	Request for Reconsideration dated 5/13/09	2
7	Supplemental Security Income Overpayment Information dated 6/30/09	3
8	Request for Hearing by Administrative Law Judge dated 7/2/09	2
9	Report of Contact dated 10/28/09	1
10	Letter of Acknowledgement of Request for Hearing dated 11/6/09	7
11	Title XVI Overpayment Summary dated 12/8/09	4
12	SEQY dated 12/8/09	1
13	DEQY dated 12/8/09	1
14	New Hire Query dated 12/8/09	1
15	Fugitive Felon Warrant Data	4
16	Felony Warrant Information	2
17	Notice of Hearing dated 3/24/10	8
18	Appointment of Representative dated 4/6/10	1
19	Representative Brief Requesting <i>Martinez</i> Case Settlement dated 4/6/10	6

LIST OF EXHIBITS

Claimant: [REDACTED]

SSN: [REDACTED]

Exh. Part		No. of
No. No.	Description	Pages

EXHIBITS RECEIVED AT HEARING

20	Judgment of Dismissal, dated 2/11/09	3
21	SSA Policy Instruction dated 4/1/09	5
22	NCIC 2000 Code Manual with TOUs incorporated as of 1/26/10	15
23	Michael D. Schrunk, DA for Multnomah County dated 2/17/10	1
24	Representative Brief from Gregory J. Elovich dated 5/25/10	2

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (559)487-5391. Its address is:

Social Security  
1052 C Street  
Fresno, CA 93706-2131

John Cusker  
Administrative Law Judge

Enclosures:  
Decision Rationale

cc: Gregory J. Elovich  
1401 Fulton Street  
Suite 700  
Fresno, CA 93721