

May 25, 2010

John Cusker, ALJ
Office of Disability Adjudications and Review
2440 Tulare Street, Suite 300
Fresno, California 93721

re: [REDACTED]

SSN: [REDACTED]

Dear Judge Cusker:

I represent Mr. [REDACTED] in regard to a SSI overpayment problem. Social Security's summary of the overpayment is found in Exhibit 9. Social Security says that it overpaid Mr. [REDACTED] \$22,455.00 for the period 12/2006 to 01/2009 due to the existence of a felony warrant in Oregon. The decision to charge Mr. [REDACTED] with an overpayment is incorrect because the felony warrant was for the possession of a controlled substance and not a "fleeing felon" warrant.

As you know, Social Security may suspend benefits and/or charge an individual with an overpayment if that individual is fleeing to avoid criminal prosecution or custody or confinement after conviction, or due to violation of probation or parole (20 CFR §416.1339). The determination as to whether an individual is "fleeing" is made based on the existence of an arrest warrant. Pursuant to the recent settlement agreement in *Martinez, et. al. v. Astrue*, there are three warrants that qualify as "fleeing felon" warrants: Escape (offense code 4901), Flight to Avoid Prosecution, Confinement, etc. (offense code 4902), and Flight-Escape (offense code 4999). Individuals who were previously suspended from benefits because their warrants were not for the preceding offenses are now being reinstated under the terms of the *Martinez* agreement (see Policy Instruction EM-09025).

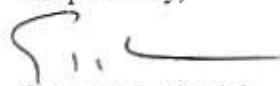
Although the warrant issued for Mr. [REDACTED] in Oregon was a felony warrant, the offense code, 3599, does not match any of the "fleeing" codes cited above (see Exhibit 15, p.4). Offense code 3599 is for Dangerous Drugs according to Oregon's NCIC 2000 Code Manual (see enclosed). Therefore, Mr. [REDACTED] is not a "fleeing felon" under 20 CFR §416.1339 and under the terms of the *Martinez* agreement.

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Mr. [REDACTED] is currently in pay status because he cleared the warrant after Social Security advised him of its existence (prior to the *Martinez* agreement; see enclosed Judgment of Dismissal dated 02-11-2009). He asks that you find that no overpayment exists as a result of the *Martinez* agreement.

I look forward to presenting Mr. [REDACTED] case to you in more detail on May 27, 2010. I have enclosed copies of various documents relevant to Mr. [REDACTED] case with this letter. You may obtain more information about the *Martinez* settlement on Social Security's website, ssa.gov/martinezsettlement/. Please contact me at your convenience if you need additional information or documentation to support Mr. [REDACTED] request.

Respectfully,



Gregory J. Elovich
Authorized Representative