

## ***Clark v Astrue: SSA Files Implementation Plan with Court***

The Social Security Administration (SSA) has filed the outlines of its implementation plan with the court in compliance with the court's order of April 13, 2012 in *Clark v. Astrue*, No 06-15521 (S.D.N.Y.). This was a case brought against SSA challenging its practice of relying exclusively on outstanding probation and parole warrants as sufficient evidence that individuals are in fact violating a condition of probation or parole as a basis for denying them benefits.

### **Make Sure Social Security Has Your Current Address**

In order to be sure you obtain the relief to which you are entitled, it is important that SSA has your current address. If you have moved since your benefits were suspended or denied, you must notify SSA as soon as possible of your current mailing address. If you are homeless, it is important that they have an address where you can regularly receive mail so you can receive a notice of how to receive your benefits.

### **If You Have Changed Your Address –**

For those who were receiving or applying for Social Security (OASDI) benefits, the most reliable way to notify SSA of your new address is via the SSA website at [www.ssa.gov/change](http://www.ssa.gov/change) address. If you were receiving or applying for SSI, the most reliable way is to visit your local Social Security office.

### **What the Plan Says It Will Do**

Under the plan SSA states that it will:

- Post a notice about the *Clark* order in each SSA field office between October 1 and December 31, 2012. These notices are to remain posted through March 31, 2014.

### ***For Social Security (OASDI) Beneficiaries***

- Send a general informational notice about the case to identified Social Security (OASDI - old age, disability and survivors benefits) class members whose benefits were suspended because of a warrant for an alleged violation of probation or parole beginning in October, 2012 and finishing by March 31, 2013.

- Reinstatement of OASDI benefits, including retroactive benefits, beginning October 1, 2012. For some OASDI class members this will be an automated process and all payments to those in the automated process should be completed no later than March 31, 2013. Only OASDI cases in which benefits were suspended on or after January 1, 2008 and without a subsequent incarceration can be handled through the automated process.
- Manually reinstate OASDI benefits between Jan. 1 and Sept. 30, 2013. This will include all cases in which benefits were suspended before 2008 and certain other more limited categories whose benefits were suspended in 2008 or later.

#### ***For Supplemental Security Income (SSI) Cases***

- Send a general informational notice about the case to identified class members who were either denied SSI benefits because of a warrant for an alleged violation of probation or parole or whose SSI benefits were suspended because of a warrant for an alleged violation of probation or parole.
- Reinstatement of all payments for class members whose SSI benefits were suspended retroactive to the first month of suspension provided the individual continues to meet other SSI eligibility requirements (e.g., continued financial eligibility) beginning April, 2013 and continuing through March, 2014.
- Reopen SSI applications of all class members whose applications were denied because of a warrant for an alleged violation of probation or parole and make a determination if the person meets other eligibility requirements, e.g., financial, age or disability with reopening beginning in April, 2013 and all cases being reopened by March, 2014.
- If a class member whose SSI benefits were suspended because of a warrant for an alleged violation of probation or parole later filed another application and was denied on the basis of not being disabled, that non-disability determination will be reversed and will not affect their eligibility for retroactive benefits.

#### **Common Questions**

*What if you were actually violating a condition of probation or parole?*

It does not matter for purposes of obtaining relief in this case if you were actually violating a condition of probation or parole since that was not the basis for SSA suspending or denying benefits in the first place. However, it is still a good idea to resolve any outstanding warrants since an unresolved violation of a condition of probation or parole could result in the loss of future benefits if SSA pursues such a policy.

*Why do SSI Cases take longer to be paid?*

SSI cases take longer because each one must be processed manually with a case by case determination of continued financial eligibility and amount of benefits for each month. Many of the Social Security (OASDI) cases can be processed on an automated basis and thus once they are identified, they can be paid promptly.

*What do I have to do to be reinstated and receive my back benefits?*

For most Social Security (OASDI) cases you don't have to do anything as long as SSA has your current mailing address and bank account information. However, for SSI cases, you will receive a letter telling you that you have to contact your local SSA office and provide information on your current financial eligibility.

*What if I have changed bank accounts since I last received benefits?*

You should promptly notify SSA of your new bank account.

*Will I receive my back SSI benefits any sooner if I go in to my local SSA office now and ask them to process my back benefits?*

No, because the local office will not have the information they need to process your back benefits. However, you should go in as soon as you receive the letter telling you to contact them.

*What should I do if I am not currently receiving SSI and I am financially eligible?*

You can go in to your local Social Security office now and file an application for SSI. This will not speed up receipt of your back benefits but it can result in payment of current and future benefits while you wait for processing of your back benefits under the court order in Clark. If you are age 65 or over and a U.S. citizen, your new claim for SSI benefits can be processed rapidly. However, for some (but not all) non-citizens and all those under age 65, a new disability determination will be necessary.

*Can I file a new SSI application if I still have an outstanding warrant?*

Yes, SSA's policy has changed as a result of the court order in *Clark* and they no longer deny benefits on the basis of an outstanding warrant for an alleged violation of a condition of probation or parole.

*How will I receive my back benefits?*

If you were receiving Social Security benefits, you will receive all your back benefits in a single payment. If you were receiving SSI benefits and continue to be SSI eligible, Congress has required SSA to generally pay the back benefits in three separate installments. The first installment will be equal to three times the monthly benefit rate. Thus in a state which does not provide state supplementation the first installment for an individual would be \$698 x 3 or \$2094. It would be slightly higher in states that provide supplementary payments. The second installment would come six months later and would be the same amount. The third and final installment would come six months after that and would include all the remaining benefits that were wrongfully withheld.

*Can the first two installments of back SSI benefits be increased?*

The first two installments can be increased if you can show 1) outstanding debts for food, clothing, shelter or necessary medical expenses or 2) current or anticipated medical expenses or expenses related to purchase of a home.

When will payment of SSI back benefits be completed?

Payment of most SSI back benefits should be completed between April, 2013 and March, 2014. Some of those were under age 65 at the time of application and whose SSI applications were denied without a determination of disability will require a disability determination and may receive final payment at a later date.

*If you need legal help with your case, consult a local legal services office. Listings of local offices can be found in directories that are included on the NSCLC website ([www.NSCLC.org](http://www.NSCLC.org)) under For Consumers.*