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## **Social Security to Repay \$500 Million**

### **Social Security to Pay \$500 Million For Withholding Fugitives' Benefits**

**By Rebecca Beyer**  
Daily Journal Staff Writer

SAN FRANCISCO - The Social Security Administration has agreed to repay more than \$500 million in a proposed settlement of the class action claims of hundreds of thousands of people whose benefits it had withheld.

The lawsuit, filed in the Northern District of California in October 2008, challenged a Social Security Administration policy that withheld benefits from anyone with an outstanding felony warrant for arrest. The policy was adopted despite the fact that federal law only requires the administration to withhold benefits from people who were "fleeing to avoid prosecution, or custody or confinement after conviction." *Martinez v. Astrue*, 08-4735.

The administration's broad interpretation of that statute meant that over the years, thousands of people have had their disability or retirement benefits withheld despite the fact that they might never have been aware of an outstanding warrant. In addition, the database the administration used to track down people with warrants sometimes identified the wrong people.

A spokesman for the Social Security Administration declined to comment on the proposed settlement until it becomes final. On Tuesday, U.S. District Judge Claudia Wilken granted preliminary approval to the settlement.

An estimated 200,000 people will be eligible to re-establish benefits because of the settlement. Attorneys from Munger, Tolles & Olson, including San Francisco partner David H. Fry, the National Senior Citizens Law Center, the Legal Aid Society of San Mateo County, Disability Rights California and the Urban Justice Center in New York worked on the case.

The administration's prior policy - which has been changed as part of the settlement - did not include a check to see whether people were fleeing or evading warrants for their arrest.

"When they got a match, they sent out a notice to suspend benefits," said Gerald A. McIntyre, one of the plaintiffs' attorneys from the National Senior Citizens Law Center in Los Angeles. "But if there was no match, they didn't give up. Sometimes people give false social security numbers when they are arrested. Sometimes people make data entry errors. Sometimes the name and date of birth may lead them to someone else with that name born the same day."

One of the named representatives in the class action, Redwood City resident Rosa Martinez, saw her disability benefits withheld in December 2007 after a case of mistaken identity. The administration said there was an outstanding drug warrant for Martinez's arrest in Miami, Fla. Although Martinez had never been to Miami or been charged with a crime or arrested, her payments of \$870 per month were suspended.

"It was a very sad and very frustrating thing that happened," Martinez said Tuesday. "It was upsetting because, first of all, I wasn't that person. I hadn't committed any crime or anything."

Eventually, Martinez was able to get her benefits restored, but not through any orderly process by the Social Security Administration. Legal Aid of San Mateo County attorney Christopher A. Douglas took her case and helped her fight the decision.

"Rosa's case is emblematic of a lot of the difficulties in navigating that system, not just for consumers or beneficiaries but for advocates as well," Douglas said. "In Rosa's case, they didn't follow their own appeal process, they didn't give her a formal conference as they are required to and they treated her in a very callous fashion."

The Social Security Administration had been challenged on its policy before - in at least eight different individual cases - and lost. But individual cases are not binding.

"We were confident we would win this," McIntyre said. "That's why we were seeking class-wide relief and also retroactive relief. We felt the law is pretty clear on this at this point."

The proposed settlement resolves outstanding cases nationwide, restoring full and retroactive benefits to people who had them withheld since Jan. 1, 2007. Attorneys for the class estimated that group includes 80,000 people with withheld benefits totaling more than \$500 million. The settlement also allows people whose benefits were withheld between 2000 and 2006 to have their benefits restored with a start date of April 2009 if they can prove eligibility.

In addition, the Social Security Administration has changed its policy. After the parties reached an agreement in principle in March, the administration began denying benefits only to those whose warrants include a code that identified them as being involved in "flight" or "escape."

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