



The Superior Court of California
County of San Francisco
(415) 553-9395

GORDON PARK-LI
Chief Executive Officer

Criminal Division
850 Bryant Street, Room 101
San Francisco, CA 94103

February 3, 2006

Jo Anne B. Barnhart
Commissioner of Social Security
P.O. Box 17703
Baltimore, MD 21235-7703

Re: Nonpayment of Benefits to Fugitive Felons and Probation or Parole Violators,
NPRM, 70 Fed. Reg. 72411 (Dec. 5, 2005)

Dear Commissioner Barnhart:

I am writing to express concerns about the proposed new regulations to implement the statutory provisions for nonpayment of benefits to individuals who are "fleeing to avoid prosecution" for a felony. 42 U.S.C. 402(x)(1)(A)(iv) & 1382(e)(4)(A)(i). As I understand it, these proposed regulations essentially adopt current Social Security Administration (SSA) policy.

SSA's "fugitive felon" program was brought forcefully to my attention in 2004 when I was presented with a request to vacate a bench warrant for a 50 year old man with a very severe case of AIDS. His Supplemental Security Income (SSI) benefits had been suspended several months earlier, and he was threatened with loss of breathing equipment essential to his survival. He was unable to appear personally in court before me. However, his physician's declaration established that he was able to breathe only with the assistance of a long plastic tube surgically inserted in his throat and connected to an oxygen tank attached to his wheelchair. Since his SSI-linked Medi-Cal benefits were also suspended, he was unable to pay for this equipment, and the medical supply company indicated it would no longer provide it.

The evidence also indicated that the defendant had been in the hospital in a coma not long before the bench warrant was issued in this court for his failure to appear. The physician stated that the defendant was put on sedation and that memory loss is a common side effect of the sedatives that were used. The physician also indicated that the man had been diagnosed with hypoxia (low oxygen) which can impair brain function. The physician concluded that on the date the warrant was issued the defendant would have had great trouble in remembering appointments and that even if he had remembered he would have been physically unable to go to court. Based on the evidence before me, I vacated the warrant *nunc pro tunc*.¹

¹ The gentleman's attorney advises me that he died less than a year later.

I have provided all this detail about a single case because it illustrates important points that need to be made about the proposed regulations. As I understand it, the regulations would provide for nonpayment of benefits upon the mere existence of a warrant for the individual's arrest on a felony charge. Sections 404.471(a)(1) & 416.1339(a)(1). At the very least there needs to be an investigation of the individual's situation to determine if he or she truly was "fleeing to avoid prosecution" before essential subsistence benefits are suspended. This is especially important given the fragile state of health of many elderly and disabled Social Security and SSI beneficiaries. This refusal to examine the facts of the individual's situation prior to suspending benefits may have tragic results in some cases.

The decision to suspend benefits on the mere existence of a felony warrant also reflects a serious misunderstanding of the criteria for issuance of a bench warrant. In San Francisco Superior Court a bench warrant is routinely issued if an individual fails to appear in court on the appointed date. It does not in any way represent a determination that the defendant willfully failed to appear or is "fleeing to avoid prosecution." *See, Garnes v. Barnhart*, 352 F.Supp.2d 1059 (N.D. Cal. 2004).

I understand that the proposed rules also provide a good cause exception if the individual is found not guilty or if charges are dismissed or if the warrant is vacated or if there is some other similar exonerating order. However, the proposed rules would establish a 90 day time limit for proving good cause, with the 90 days running from the date the individual contacts SSA to request good cause. In many instances, this time limit is simply not realistic. For example, in the case referred to above, the individual's benefits had already been suspended for 6 months by the time I received the request to vacate the warrant. While I do not know the circumstances that caused this delay, it is easy to see how a significant delay may have occurred for someone in his physical and mental condition. It may have been some time before he was able to contact an attorney to assist him. Then once the attorney takes the case, it may take the attorney some time to obtain the necessary documentation from physicians and other sources

Other factors may contribute to a delay of greater than 90 days. Depending on the age of the case and/or the warrant, the case files may be archived in a remote location that is not readily accessible, thus building in a significant delay factor before the Court can make a decision about vacating the warrant. Where the warrant is from a state other than the one in which the defendant currently resides, it may take much longer, if the effort succeeds at all, to find someone willing to assist in vacating the warrant at a distant location.

I urge you to reconsider the idea of suspending benefits on the basis of a warrant alone and to allow individuals more than 90 days to prove good cause before their benefits are suspended. Thank you for considering these comments.

Sincerely,

Mary C. Morgan
Judge of the Superior Court