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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELAINE CLARK, RAYMOND GIANGRASSO, TONY :
GONZALES, JOHNNY L. HEATHERMAN, and :
MONELL WHITE, individually on behalf of themselves, :
and on behalf of all those similarly situated :

Plaintiffs, :

v. :

JO ANNE B. BARNHART, Commissioner of the Social :
Security Administration, in her official capacity, and the :
SOCIAL SECURITY ADMINISTRATION, Defendants, :

Defendants. :

**NATIONWIDE CLASS
ACTION COMPLAINT**

06 cv 15521 (SHS) (RLF)

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INTRODUCTION

1. Plaintiffs bring this class action on behalf of themselves, and on behalf of a nationwide class of similarly situated individuals to challenge defendants Jo Anne B. Barnhart (“Commissioner”) and Social Security Administrations’ (“SSA”) (collectively, “Defendants”) unlawful policy of suspending or denying Old Age, Survivors, and Disability Insurance (“OASDI”) and/or Supplemental Security Income (“SSI”) benefits based on the existence of an outstanding warrant against the beneficiary for an alleged violation of a probation or parole condition without a determination and/or finding that such individual has in fact committed such a violation (“Policy”).

2. Defendants' Policy is based on a crude computer-matching program, which does not involve any effort to inquire into the facts of individuals' cases or even to verify that the individuals named in the warrants are in fact the individuals whose benefits are being suspended or denied.

3. Defendants' Policy violates the Social Security Act, 42 U.S.C. §§ 402(x)(1)(A)(v) and 1382(e)(4)(A)(ii), and the regulations promulgated thereunder. The statute and regulations authorize suspension or denial of benefits only when an individual is found to be actually "violating a condition of probation or parole." Indeed, the Commissioner's own regulation explicitly requires that a suspension or denial of SSI benefits not go into effect except upon a warrant or order "issued by a court or other duly authorized tribunal **on the basis of an appropriate finding that the individual ... is violating, or has violated, a condition of his or her probation or parole.**" 20 C.F.R. § 1339(b) (Emphasis added)

JURISDICTION AND VENUE

4. The Court has jurisdiction over Plaintiffs' claims under 42 U.S.C. §§ 405(g) and 1383(c)(3) as well as 28 U.S.C. § 1361.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 405(g) in this Court because at least one named Plaintiff resides within this District.

PARTIES

6. Plaintiff ELAINE CLARK is a 63-year-old female who currently resides in Amherst, New York. In or about 1996, Ms. Clark began receiving Social Security Disability Insurance ("SSDI"), a form of OASDI benefits, when she was diagnosed with end-stage renal disease. Since that time, she has been diagnosed with numerous medical conditions, including diabetes mellitus, joint disorders of the lower extremities, hypertension, hyperlipidemia,

depression, esophagitis reflux, osteoporosis, and anemia. In January 2006, retroactive to January 2005, the SSA unlawfully ceased paying benefits to Ms. Clark based on a warrant issued solely on the basis of an allegation that she was violating a condition of probation, notwithstanding the absence of any finding that she had in fact violated any condition of her probation.

7. Plaintiff RAYMOND GIANGRASSO is a 50-year-old male who currently resides in New York, New York. In or about 1987, Mr. Giangrasso began receiving SSI disability benefits after recovering from a three-month-long coma caused by over-prescribed painkillers and sleep medications. The effects of the coma left Mr. Giangrasso with lasting physical and psychological damage, which precluded him from working. In January 2004, the SSA unlawfully stopped paying benefits to Mr. Giangrasso based on a warrant issued solely on the basis of an allegation that he was violating a condition of probation, notwithstanding the absence of any finding that he had in fact violated any condition of his probation.

8. Plaintiff TONY GONZALES is a 63-year-old male who currently resides in Oregon City, Oregon. In or about March 2005, Mr. Gonzales began receiving Social Security retirement benefits, a form of OASDI benefits. In or around September 2005, retroactive to March 2005, the SSA unlawfully suspended Mr. Gonzales' benefits based on a warrant issued solely on the basis of an allegation that he was violating a condition of his probation. To date, there has been no finding that Mr. Gonzales has in fact violated any condition of his probation.

9. Plaintiff JOHNNY L. HEATHERMAN is a 51-year-old male who currently resides in Binghamton, New York. In or about 2001, Mr. Heatherman began receiving SSDI benefits, retroactive to 1999 after a workplace injury in or about 1997. Since that time, Mr. Heatherman has been diagnosed with, among other things, Reflex Sympathetic Dystrophy ("RSD") and bipolar disorder. Mr. Heatherman requires several medications to control the

severe pain from RSD and to control his bipolar disorder. Effective February 2006, the SSA unlawfully suspended Mr. Heatherman's SSDI benefits based on a warrant issued solely on the basis of an allegation that he was violating a condition of his probation. To date, there has been no finding that Mr. Heatherman has in fact violated any condition of his probation.

10. Plaintiff MONNELL WHITE is a 56-years-old male and currently resides in Crescent City, Florida. Mr. White commenced receiving SSDI benefits in 1993. Effective October 2006, the SSA stopped paying benefits to Mr. White based on a warrant issued solely on the basis of an allegation that he was violating a condition of probation, notwithstanding the absence of any finding that he had in fact violated any condition of his probation.

11. Defendant JOANNE B. BARNHART is the Commissioner of the SSA. As such, she is charged with administering and supervising all benefits programs administered by SSA nationwide, including OASDI and SSI. Commissioner Barnhart is sued in her capacity as the official charged with performing the statutory and regulatory duties of the SSA and with supervisory responsibility over the SSA and its divisions, agents, employees and representatives.

12. Defendant SOCIAL SECURITY ADMINISTRATION administers and supervises all SSA benefits programs nationwide under the Social Security Act.

13. All divisions, agents, employees and representatives of Defendants were acting within the scope of their agency or employment while making any of the statements and committing any of the acts alleged herein. Defendants and all of their respective divisions, agents, employees and representatives each acted as the agent or representative of each other in committing any of the acts or making any of the statements alleged herein.

CLASS ACTION ALLEGATIONS

14. Plaintiffs bring this action as a class action pursuant to Rules 23(a), 23(b)(2) and (b)(3), of the Federal Rules of Civil Procedure.

15. Plaintiffs bring this action on behalf of themselves and as representatives of a class of similarly situated persons. The Class consists of:

All persons whose SSI or OASDI benefits were suspended or denied, or whose SSI or OASDI benefits are threatened with suspension or denial based solely on the existence of a warrant issued on the basis of an alleged violation of probation or parole without a finding that such individual has violated his or her probation or parole before such suspension or denial.

16. The class is so numerous that joinder of all members is impracticable. While the exact number of class members is currently unknown and only can be obtained through appropriate discovery, on information and belief, there are, at a minimum, tens of thousands of class members.

17. There are questions of law and fact common to all class members that predominate over questions only affecting individual class members, including, among others: (a) whether 42 U.S.C. §§ 402(x)(1)(A)(v) and 1382(e)(4)(A)(ii) require a finding that an individual is committing or has committed a violation of probation or parole prior to suspending or denying benefits; and (b) whether Defendants have engaged in a pattern of suspending or denying class members' benefits based solely upon the existence of a warrant and absent a finding that an individual is committing or has committed a violation of probation or parole.

18. Plaintiffs' claims are typical of the claims of all class members, and arise from the same course of conduct by Defendants. The relief sought is common to all class members. In addition, Defendants have acted and continue to act on grounds generally applicable to all class members, thereby making injunctive and declaratory relief appropriate to the class as a whole.

19. Plaintiffs will fairly and adequately protect the interests of the class members.

PRESENTMENT AND EXHAUSTION

20. Plaintiffs and class members have presented their claims to the Commissioner within the meaning of 42 U.S.C. § 405(g).

21. Any exhaustion requirement should be waived because Plaintiffs' claims are collateral to their respective claims for benefits, there is irreparable harm, and exhaustion would be futile.

THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT

22. Effective August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), Pub. L. No. 104-193, 42 U.S.C. §1382(e)(4), amended the Social Security Act by adding a provision authorizing the SSA to suspend or deny SSI benefits to individuals fleeing to avoid prosecution or sentencing for a felony or who are violating probation or parole for any offense, including misdemeanors, violations and other lesser offenses.

23. The PRWORA provides, in relevant part:

No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter with respect to any month during such month the person is —

(A) fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees . . . ;
or

(B) violating a condition of probation or parole imposed under Federal or State law.

42 U.S.C. § 1382(e)(4).

24. In 2004, Congress extended this provision, effective January 1, 2005, to all OASDI benefits. *See* Pub. L. No. 108-203, 42 U.S.C. §402(x), as amended.

25. The implementing regulation for 42 U.S.C. § 1382(e)(4) provides, in relevant part:

(1) Suspension of benefit payments because an individual is a fugitive . . . is effective with the first day of whichever of the following months is earlier —

(i) The month in which a warrant or order for the individual's arrest or apprehension, an order requiring the individual's appearance before a court or other appropriate tribunal (e.g., a parole board), or similar order is issued by a court or other duly authorized tribunal **on the basis of an appropriate finding that the individual —**

(A) Is fleeing, or has fled, to avoid prosecution as described in paragraph (a)(1) of this section;

(B) Is fleeing, or has fled, to avoid custody or confinement after conviction as described in paragraph (a)(2) of this section;

(C) Is violating, or has violated, a condition of his or her probation or parole as described in paragraph (a)(3) of this section.

20 C.F.R. § 1339(b) (emphasis added).

**THE SOCIAL SECURITY ADMINISTRATION'S
APPLICATION OF THE PRWORA AND IMPLEMENTING REGULATIONS**

26. In 2005, United States Court of Appeals for the Second Circuit had occasion to interpret the subsection of 42 U.S.C. § 1382(e)(4) that makes a person ineligible for SSI benefits if the individual is “fleeing to avoid prosecution” for a felony, holding that the SSA may not conclude, simply from the fact that there is an outstanding warrant for a person’s arrest for a felony, that such person is “fleeing to avoid prosecution” within the meaning of 42 U.S.C. § 1382(e)(4). *See Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005). Rather, the Court held that “benefits may be suspended only as of the date of a warrant or order issued by a court or other authorized tribunal on the basis of a finding that an individual has fled or was fleeing from justice.” *Id.* at 97.

