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*Social Security Administration: Suspension of Benefits for
Fugitive Felons and the Agency's Response to the Fowlkes
Decision*

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April 27, 2006

Abstract. In December 2005, the United States Court of Appeals for the Second Circuit issued a decision in *Fowlkes v. Adamec*, 432 F. 3d 90 (2nd 2005), that struck down part of the SSA's interpretation of its fugitive felon regulations, and held that the mere existence of an outstanding arrest warrant does not make a beneficiary a fugitive felon whose benefits may be suspended. This report includes a discussion of this decision as well as an overview of the SSA's acquiescence ruling that will apply this decision to SSI, SSDI, and OASI cases in Connecticut, New York, and Vermont.

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Social Security Administration: Suspension of Benefits for Fugitive Felons and the Agency's Response to the *Fowlkes* Decision

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Summary

Fugitive felons are not eligible to receive benefits from the Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or Old-Age and Survivors Insurance (OASI) programs administered by the Social Security Administration (SSA). For the purposes of these programs, *fugitive felons* are currently considered to be any persons with outstanding warrants for felony offenses. These prohibitions first went into effect in 1996 for the SSI program and in 2005 for the SSDI and OASI programs. This report includes an overview of the current laws, regulations, and internal SSA guidance related to fugitive felons; an explanation of the limited exception provided in cases of mitigating circumstances; and a brief legislative history of the provisions.

In December 2005, the United States Court of Appeals for the Second Circuit issued a decision in *Fowlkes v. Adamec*, 432 F. 3d 90 (2nd 2005), that struck down part of the SSA's interpretation of its fugitive felon regulations, and held that the mere existence of an outstanding arrest warrant does not make a beneficiary a fugitive felon whose benefits may be suspended. This report includes a discussion of this decision as well as an overview of the SSA's acquiescence ruling that will apply this decision to SSI, SSDI, and OASI cases in Connecticut, New York, and Vermont.

This report will be updated to reflect any policy changes.

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Fugitive Felons Ineligible for Benefits

A *fugitive felon* is any person who is fleeing to avoid prosecution for a felony crime or to avoid custody or confinement after conviction for a felony crime. Sections 202(x)¹ and 1611(e)(4)(A)² of the Social Security Act specify that fugitive felons are not eligible to receive benefits administered by the Social Security Administration (SSA). This prohibition includes Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act as well as Social Security Disability Insurance (SSDI)³ and Old-Age and Survivors Insurance (OASI, more commonly known as retirement and widows Social Security benefits)⁴ under Title II of the Social Security Act. Benefits already paid to fugitive felons are considered overpayments by the SSA and must be paid back to the government. Benefits can be restored if a person who was considered a fugitive felon is exonerated of all charges.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, provided for the prohibition of SSI benefit payments to fugitive felons and went into effect in August 1996.⁵ The Social Security Protection Act of 2004, P.L. 108-203, extended the prohibition of benefit payments to fugitive felons to the SSDI and OASI programs. These prohibitions went into effect January 1, 2005.⁶

The SSA estimates that since the prohibition on SSI payments to fugitive felons went into effect in August 1996, the agency has suspended the benefits of nearly 78,000 fugitive felons, including nearly 24,000 in FY2003.⁷ These suspensions are estimated to have saved the SSI program more than \$83 million in payments not made to fugitive felons and in overpayments to fugitive felons recovered by the SSA.⁸

¹ 42 U.S.C. § 402(x). This provision applies to Social Security Disability Insurance (SSDI) and Old-Age and Survivor's Insurance (OASI) benefits under Title II of the Social Security Act.

² 42 U.S.C. § 1382(e)(4)(A). This provision applies to Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act.

³ For more information on the SSI and SSDI programs, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by Scott Szymendera.

⁴ For more information on the OASI program, see CRS Report 94-27, *Social Security: Brief Facts and Statistics*, by Gary Sidor, and CRS Report RS22294, *Social Security Survivors Benefits*, by Kathleen Romig and Scott Szymendera.

⁵ For more information on the fugitive felon provisions of P.L. 104-193, see CRS Report RS20325, *Efforts to Prevent Prisoners and Fugitives from Receiving Benefits from the Social Security Administration*, by Rachel W. Kelly.

⁶ For more information on P.L. 108-203, see CRS Report RL32089, *The Social Security Protection Act of 2004 (H.R. 743)*, by Dawn Nuschler.

⁷ Testimony of Joanne B. Barnhart, Commissioner of Social Security, *The Supplemental Security Income Program, Hearing Before the Subcommittee on Human Resources of the Committee on Ways and Means, U.S. House of Representatives*, 108th Cong., 2nd sess., Apr. 29, 2004, Serial No. 108-44 (Washington: GPO, 2004). Available at the SSA website http://www.ssa.gov/legislation/testimony_042904.html.

⁸ Social Security Administration, Office of the Inspector General, *Assessment of the Supplemental Security Income Fugitive Felon Project*, A-01-03-23070, Sept. 2003, at <http://www.ssa.gov/oig/ADOBEPDF/A-01-03-23070.pdf>. Data on SSDI and OASI benefit suspensions is not yet available.

Definitions of *Fugitive Felon*

Statutory Definition

The statutory definition of *fugitive felon* used for the purposes of denying SSI, SSDI, and OASI benefits can be found in Titles II and XVI of the Social Security Act. Section 1611(e)(4)(A) of the Social Security Act provides the definition of *fugitive felon* for the SSI program whereas Section 202(x)(1)(A) provides the same definition for the SSDI and OASI programs. The definition states that no person may receive benefits during any month in which he or she is

fleeing to avoid prosecution, or custody or confinement after conviction, under the laws 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, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding one year regardless of the actual sentence imposed.⁹

Regulatory Definition for SSI

Implementing regulations provide more detailed information on how an individual becomes a fugitive felon for the purposes of denying SSI benefits.¹⁰ This more detailed definition gives fugitive status to a person at the time that a warrant is issued for his or her arrest. Specifically, the regulations state that a person becomes ineligible for SSI benefits because of his or her fugitive status on the first day of the earlier of

(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; or

(ii) The first month during which an individual fled to avoid such prosecution, fled to avoid such custody or confinement after conviction, or violated a condition of his or her probation or parole, if indicated in such warrant or order, or in a decision by a court or other appropriate tribunal.¹¹

⁹ 42 U.S.C. §§ 1382(e)(4)(A) and 402(x)(1)(A).

¹⁰ No implementing regulation exists for the denial of SSDI or OASI benefits for fugitive felons. However, a regulation was proposed by the SSA on Dec. 5, 2005. In this same announcement, the SSA also proposed changing the regulations governing the denial of benefits for the SSI program. For more information, see *Nonpayment of Benefits to Fugitive Felons and Probation or Parole Violators*, 70 *Fed. Reg.* 72411 (Dec. 5, 2005).

¹¹ 20 C.F.R. § 416.1339(b)(1).

SSA's Internal Guidance

The SSA gives internal guidance to its employees via its Program Operations Manual System (POMS).¹² POMS is not a regulation and does not have the force of law.¹³ However, it is used to guide the actions of SSA employees. Unlike the definition of *fugitive felon* found in the statute or in implementing regulations, the SSA's POMS guidance specifically states that a person is considered a fugitive solely on the basis of an outstanding warrant, without any consideration of whether the person is actually fleeing or attempting to avoid being captured. For the purposes of suspending SSI benefits, POMS states that "the warrant does not have to state that the individual is fleeing for the suspension to apply."¹⁴ For the purposes of suspending SSDI or OASI benefits, POMS states that "the person does not have to be actively hiding or evading the law in any way for these provisions to apply. The existence of the unsatisfied warrant is the only criterion necessary."¹⁵

Mitigating Circumstances

The Social Security Protection Act of 2004, P.L. 108-203, gives the SSA commissioner a limited ability to pay benefits to fugitive felons if, in her opinion, mitigating circumstances should be considered. However, mitigating circumstances can be used only to pay benefits to a fugitive felon if the felony offense that is the basis for the warrant is both nonviolent and not related to a violation of the drug laws.¹⁶ Cases involving violent crimes or felonies resulting from the use, sale, or manufacture of illegal drugs are not eligible for the mitigating circumstances exception; under no circumstances can a fugitive felon with an active outstanding warrant for these charges receive SSI, SSDI, or OASI benefits.

Legislative History

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, contained a provision prohibiting the payment of SSI benefits to fugitive felons. In its report on the bill, the House Committee on the Budget stated that the SSI program was "intended for the

¹² The entire Program Operations Manual Systems (POMS) can be found on the SSA website at <http://policy.ssa.gov/poms.nsf/partlist!OpenView>.

¹³ The Supreme Court affirmed that POMS does not have the force of law in *Schweiker v. Hansen*, 450 U.S. 785 (1981). Proposed regulations issued by the SSA would bring current regulations in line with its POMS guidance. See 70 Fed. Reg. 72413 *et seq.* (Dec. 5, 2005).

¹⁴ POMS SI 00530.010.

¹⁵ POMS GN 02613.001.

¹⁶ An estimated 50.5% of state prison inmates and 10.5% of federal prison inmates were sentenced for violent offenses. An estimated 21.4% of state prison inmates and 54.9% of federal prison inmates were sentenced for drug offenses. For more information, see U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2004* (Washington: GPO, 2005).

aged, blind, and disabled” and that “fleeing convicts or probation or parole violators should not be supported through federal benefits.”¹⁷

The Social Security Protection Act of 2004, P.L. 108-203

Although the payment of SSI benefits to fugitive felons was prohibited in 1996, this prohibition initially did not apply to SSDI or OASI benefits. The prohibition was extended to these programs effective January 1, 2005, with the passage of the Social Security Protection Act of 2004, P.L. 108-203. In its report on the bill, the House Committee on Ways and Means explained that prohibiting fugitive felons from receiving SSDI and OASI benefits was intended to help “stop fraud, waste, and abuse” in these programs. In addition, the committee expressed concern that SSDI and OASI benefits were being used to aid fugitive felons in their flights from prosecution or punishment.¹⁸

In its report on the bill, the Senate Committee on Finance explained that the fugitive felon provision should only apply if a law enforcement agency is actively pursuing the person. The committee stated that this instruction, which is not explicitly mentioned in the law as enacted, was intended to prevent the SSA from becoming the “law enforcement agency of last resort” for people who may have committed crimes but whom local or state law enforcement is no longer interested in pursuing. The committee cited that it was aware of numerous cases in which law enforcement agencies chose not to pursue individuals identified as having open warrants through the enforcement of the existing SSI fugitive felon rules.¹⁹

Fowlkes v. Adamec

On December 6, 2005, the Second Circuit Court of Appeals ruled that the SSA policy of suspending or denying SSI benefits to individuals whenever there is an outstanding felony arrest warrant is contrary to the agency’s regulations and the underlying statutory provisions.²⁰ As a result of this decision, the SSA issued an acquiescence ruling that will affect the way the fugitive felon provisions of the Social Security Act are applied to applicants and beneficiaries in three states.

Overview of the Court’s Decision

Fowlkes was living in Schenectady, New York, and receiving SSI benefits when the SSA learned of two outstanding Virginia arrest warrants, one for petty larceny and the other for a voter registration offense. Applying its policy with regard to fugitive felons in POMS, SSA suspended

¹⁷ U.S. Congress, House Committee on the Budget, *Welfare and Medicaid Reform Act of 1996*, report to accompany H.R. 3734, 104th Cong., 2nd sess., H.Rept. 104-651 (Washington: GPO, 1996), p. 1384. The Senate did not issue a committee report.

¹⁸ U.S. Congress, House Committee on Ways and Means, *Social Security Protection Act of 2003*, report to accompany H.R. 743, 108th Cong., 1st sess., H.Rept. 108-46 (Washington: GPO, 2003), pp. 23, 35.

¹⁹ U.S. Congress, Senate Committee on Finance, *Social Security Protection Act of 2003*, report to accompany H.R. 743, 108th Cong., 1st sess., S.Rept. 108-176 (Washington: GPO, 2004), p. 16.

²⁰ *Fowlkes v. Adamec*, 432 F. 3rd 90 (2nd Cir. 2005). Fowlkes appealed the District Court’s grant of the SSA’s motion to dismiss Fowlkes’ claims, *Fowlkes v. Adamec*, 2003 WL 24241828 N.D.N.Y., Mar. 31, 2003.

Fowlkes' benefits. Under the POMS guidance,²¹ Fowlkes' intent to flee, or his knowledge of the pending charges, was deemed irrelevant to his suspension of benefits. On appeal, Fowlkes argued that he was not a fugitive felon ineligible for SSI benefits under 42 U.S.C. § 1382(e)(4)(A), because the statutory language requires he have an intention to flee, which Fowlkes argued he lacked prior to March 2000 because he was unaware of the indictments against him in Virginia, and which Fowlkes argued he lacked after March 2000 when he became aware of the indictments because he was financially unable to return to the charging state. In addition, Fowlkes argued that the SSA regulations require a court order finding that Fowlkes was a fleeing felon before the SSA can suspend benefits, and that no such court order existed in his case.

The circuit court held that the SSA's interpretation of the statute embodied in POMS was in direct conflict with the plain language of the statute and its implementing regulations. The court stated as follows:

The statute does not permit the Commissioner to conclude simply from the fact that there is an outstanding warrant for a person's arrest that he is "fleeing to avoid prosecution." 42 U.S.C. § 1382(e)(4)(A). "Fleeing" in § 1382(e)(4)(A) is understood to mean the conscious evasion of arrest or prosecution. *See Black's Law Dictionary* 670 (8th ed. 2004) (defining "flight" as "[t]he act or an instance of fleeing, esp. to evade arrest or prosecution"). Thus, there must be some evidence that the person knows his apprehension is sought. The statute's use of the words "to avoid prosecution" confirms that for "flight" to result in a suspension of benefits, it must be undertaken with a specific intent, i.e., to avoid prosecution.²²

Thus, the court found the SSA's implementing regulation to be consistent with the statutory requirements because the regulation includes a requirement of a finding of intentional "flight." Indeed, the court posited that the regulation "may be stricter than the statute, insofar as it provides that the effective date of a benefits suspension is the date of issuance of a warrant or order *issued by a court or other authorized tribunal* on the basis of a finding that an individual fled or was fleeing from justice. Thus, the regulation does not permit the *agency* to make a finding of flight; rather, it demands a court or other appropriate tribunal to have issued a warrant or order based on a finding of flight."²³ The court found that the POMS passages cited by the Commissioner were in direct conflict with the regulation in that they contemplate suspension of benefits without any finding of "flight" by a court or other tribunal. 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 a person was fleeing or had fled from justice.

The circuit court remanded the *Fowlkes* case back to the district court for further proceedings consistent with the court's holding that the SSA is only permitted to suspend benefits because of a person's fugitive felon status as of the date that a warrant or court order finding that a person has fled or is fleeing from justice was issued.

SSA's Acquiescence Ruling

On April 6, 2006, the SSA issued an acquiescence ruling that explains how the agency will apply the *Fowlkes v. Adamec* ruling to agency decisions to suspend the benefits of persons deemed to be

²¹ POMS SI 00530.010.

²² 432 F. 3rd at 96.

²³ *Id.* at 97.

fugitive felons.²⁴ Although the *Fowlkes* case dealt only with SSI benefits, this acquiescence ruling will apply to all administrative determinations or decisions by the SSA involving Title II and Title XVI applicants, Title II beneficiaries and Title XVI recipients who live in states within the jurisdiction of the Court of Appeals for the Second Circuit (i.e., Connecticut, New York, and Vermont). The acquiescence ruling went into effect on April 6, 2006, however, it can be applied retroactively to the date of the court’s decision in *Fowlkes*, December 6, 2005, if a beneficiary or recipient can demonstrate that the application of the acquiescence ruling would have changed the outcome of his or her case.

Within the states affected by the *Fowlkes* decision, the SSA will no longer rely solely on the existence of an outstanding warrant to determine the fugitive status of a beneficiary. Rather, before making a determination that an individual is fleeing to avoid prosecution, and thus is a fugitive felon, the SSA “must have evidence that the individual knows that there is an outstanding felony arrest warrant, and the outstanding arrest warrant must have been issued on the basis that the individual has fled or is fleeing from justice.”²⁵ However, in all other parts of the country, the SSA will continue its policy of suspending benefits based solely on the existence of a warrant, without any consideration of whether the person is actually fleeing or attempting to avoid being captured, as set forth in POMS guidance.²⁶

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²⁴ Social Security Acquiescence Ruling 06-1(2); *Fowlkes v. Adamec*, 432 F. 3rd 90 (2nd Cir. 2005): Determining Whether an Individual is a Fugitive Felon Under the Social Security Act (Act)—Titles II and XVI of the act, 71 *Fed. Reg.* 17551 (Apr. 6, 2006).

²⁵ 71 *Fed. Reg.* 17552 (April 6, 2006).

²⁶ See POMS SI 00530.010 and POMS GN 02613.001.