

*Audit Report*

Parole and Probation Violators and  
the Clark Court Order

# OIG

Office of the Inspector General  
SOCIAL SECURITY ADMINISTRATION

## MEMORANDUM

Date: November 5, 2015 Refer To:

To: The Commissioner

From: Inspector General

Subject: Parole and Probation Violators and the Clark Court Order (A-01-12-11215)

The attached final report presents the results of the Office of Audit's review. The objective was to assess the Social Security Administration's implementation of the *Clark* court order.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.



Patrick P. O'Carroll, Jr.

Attachment

# Parole and Probation Violators and the Clark Court Order

## A-01-12-11215



November 2015

**Office of Audit Report Summary**

### Objective

To assess the Social Security Administration's (SSA) implementation of the *Clark* court order.

### Background

On April 13, 2012, a U.S. District Court judge in New York issued a nation-wide class action court order in *Clark v. Astrue (Clark)*. The court order prevented SSA from suspending or denying Old-Age, Survivors and Disability Insurance benefits and Supplemental Security Income payments based solely on the existence of parole or probation violation arrest warrants.

To conduct our review, we identified a population of 86,251 individuals listed in SSA's Civil Action Tracking System as potential *Clark* class members. We selected a random sample of 275 for further analysis.

### Findings

Based on our sample, we estimate SSA provided approximately \$584.3 million in relief to *Clark* class members. Despite the complexities of these cases, SSA provided appropriate relief to about 76,528 (89 percent) of the *Clark* class members. However, projecting our sample results to the population, we estimate

- 5,646 (6 percent) beneficiaries did not receive approximately \$21.6 million in relief they were due, and
- 4,077 (5 percent) beneficiaries received approximately \$6.3 million more relief than they were due.

Overall, about 9,723 class members did not receive the accurate amount of relief due them.

In reviewing our sample cases that were incorrectly paid, we did not identify any trends or common characteristics. Hence, we were not able to identify any cases for corrective action beyond the 31 identified during our review of the 275 sample cases. As such, the only way we found to identify additional beneficiaries who were over/underpaid would be to re-review each case. Because of the costs involved in such a review compared to the dollars identified as over/underpaid, we are not recommending SSA take such action unless they can identify a more cost-effective method.

### Recommendation

We recommend SSA review and take appropriate corrective action on the 31 cases we sent it in July 2015. SSA agreed with the recommendation.

## TABLE OF CONTENTS

Objective .....	1
Background .....	1
Results of Review .....	2
Sample Results.....	2
How SSA Processed Clark Court Order Relief .....	3
Cases Processed Correctly .....	3
Cases Provided Less Relief Than Due.....	4
Cases Provided More Relief Than Was Due .....	4
Conclusions.....	5
Recommendation .....	5
Agency Comments.....	5
Appendix A – Scope, Methodology, and Sample Results.....	A-1
Appendix B – Agency Comments.....	B-1
Appendix C – Acknowledgements.....	C-1

## **ABBREVIATIONS**

CATS	Civil Action Tracking System
OASDI	Old-Age, Survivors and Disability Insurance
POMS	Program Operations Manual System
SSA	Social Security Administration
SSI	Supplemental Security Income

## OBJECTIVE

Our objective was to assess the Social Security Administration's (SSA) implementation of the *Clark* Court Order.

## BACKGROUND

On April 13, 2012, a U.S. District Court judge in the Southern District of New York issued a nation-wide class action court order on remand from the second circuit appellate decision in *Clark v. Astrue*.<sup>1</sup> The court order prevented SSA from suspending or denying Old-Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments based solely on the existence of parole or probation violation arrest warrants.<sup>2</sup>

The *Clark* court order defined a *Clark* class member as the following.

All persons nationwide for whom an initial determination to suspend or deny SSI and/or OASDI benefits was made and/or an initial determination of overpayment of such benefits was made and such initial determination was based solely on the existence of a warrant for an alleged violation of probation or parole, provided: (i) the initial determination was made during the period from October 24, 2006 to and including such time in the future when final relief is entered in this action; or (ii) a timely administrative appeal of such initial determination was pending on or after October 24, 2006.<sup>3</sup>

The *Clark* court order generally requires that SSA<sup>4</sup>

- reinstate OASDI benefits and/or SSI payments and make retroactive payments to class members for whom SSA made an initial determination on October 24, 2006 or later to suspend or deny OASDI benefits and/or SSI payments based on an outstanding parole or probation violation warrant;
- reverse overpayment determinations based on parole or probation violation warrants and return any funds recovered if SSA made the initial overpayment determination on October 24, 2006 or later; and
- make retroactive payments to class members whose appeals of the suspension, denial, or overpayment was pending on October 24, 2006 or later.

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<sup>1</sup> *Clark v. Astrue*, 602 F.3d 140 (2d Cir. 2010).

<sup>2</sup> Clark Order 06 Civ. 15521 §2.1 (SHS).

<sup>3</sup> Id. at §1.3.

<sup>4</sup> Id. at §3.

In August 2015, SSA notified us that the majority of the *Clark* cases were processed in 2013. To conduct our review, we identified a population of 86,251 individuals listed in SSA's Civil Action Tracking System (CATS) as potential *Clark* class members.<sup>5</sup> We selected a random sample of 275 individuals for further analysis. Additionally, we referred cases to SSA for review and corrective action as needed. See Appendix A for our scope, methodology, and sample results.

## RESULTS OF REVIEW

Based on our sample results, we estimate SSA provided approximately \$584.3 million in relief.<sup>6</sup> Despite the complexities of these cases, SSA provided appropriate relief to about 76,528 (89 percent) of the *Clark* class members. However,

- 5,646 (6 percent) did not receive approximately \$21.6 million in relief they were due, and
- 4,077 (5 percent) received approximately \$6.3 million more relief than was due.

Overall, about 9,723 class members did not receive the accurate amount of relief due them.

### Sample Results

We sampled 275 individuals whom SSA had identified as potential *Clark* class members and found

- 244 (89 percent) were processed correctly
  - ✓ 152 received relief totaling \$1.5 million,<sup>7</sup> and
  - ✓ 92 were not due relief;<sup>8</sup>
- 18 (6 percent) did not receive \$68,911 in relief they were due;<sup>9</sup> and
- 13 (5 percent) received \$20,021 more relief than they were due.<sup>10</sup>

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<sup>5</sup> CATS is a database that assists SSA in tracking potential class action members involved in class action court cases and in managing litigation activity. SSA listed *Clark* class members in CATS with a court case identifier of C1 through C5.

<sup>6</sup> For purposes of this review, we use the term "relief" to indicate how SSA compensated the *Clark* class members.

<sup>7</sup> Of the \$1,537,901, SSA issued \$944,307 as relief under the OASDI program and \$593,594 in relief under the SSI program.

<sup>8</sup> These individuals were not due any *Clark* relief for such reasons as not responding to SSA's requests concerning *Clark*; parole or probation warrant suspensions were before the *Clark* court order relief eligibility date; or, OASDI or SSI was suspended for another reason, such as income, during what would have been the *Clark* period.

<sup>9</sup> Of the \$68,911, SSA did not issue \$51,417 due under the OASDI program and \$17,494 due under the SSI program.

<sup>10</sup> Of the \$20,021, SSA issued \$17,137 more relief than due under the OASDI program and \$2,884 more relief than due under the SSI programs.

Overall, 31 individuals did not receive the accurate amount of relief due them. In July 2015, we referred the 31 cases to SSA for review and corrective action.

## How SSA Processed Clark Court Order Relief

SSA processed the *Clark* relief in many forms. Specifically, the Agency issued relief to the class members by

- paying OASDI benefits or SSI payments withheld or recovered because of the parole or probation violation warrant;
- applying the relief to recover any outstanding overpayment(s);
- using the relief to collect past-due Medicare premiums;
- paying garnishments that were past due on behalf of the class member scheduled to receive relief;
- posting a pending underpayment (if the class member was not in a current payment status); or
- any combination of the above.

## Cases Processed Correctly

SSA correctly processed 244 (89 percent) of our 275 sample cases and provided 152 individuals \$1.5 million in relief and determined 92 individuals were not due relief.

For example, for one OASDI beneficiary, SSA suspended benefits because of a parole/probation violation warrant in February 2007, resulting in an \$11,592 overpayment from December 2005 through January 2007. Additionally, because of the suspension, SSA withheld \$1,704 in OASDI benefits from February through March 2007. As of April 2013, this beneficiary had repaid \$5,680 of the \$11,592 overpayment—leaving a \$5,912 balance. As a result of the *Clark* court order, SSA considered the OASDI benefits withheld from February through March 2007 due and no longer considered this beneficiary overpaid from December 2005 through January 2007.

Therefore, SSA

- removed the overpayment \$5,912 balance—funds the beneficiary had already received and
- issued the beneficiary a \$7,384 payment—the amount SSA withheld (\$1,704) plus the amount the beneficiary repaid (\$5,680).

In another case, an SSI recipient's payments were suspended from July 2007 through January 2009 because of a parole/probation violation warrant. When SSA reviewed this case to determine relief, it found the recipient had received other Federal benefits during the period of parole/probation violation suspension. The recipient should not have been eligible for SSI

payments during the parole/probation violation suspension period because of the income received from the other Federal benefits.<sup>11</sup> Therefore, SSA determined no *Clark* relief was due for this recipient.

## Cases Provided Less Relief Than Due

We found 18 individuals (6 percent) in our sample did not receive \$68,911 in relief they were due. These cases were complex and involved SSA reviewing several years of information to determine the relief due.

For example, one OASDI beneficiary's benefits were suspended because of a parole/probation violation warrant from September 2007 through April 2013, which resulted in \$61,256 in benefits overpaid and withheld, and this was the amount of relief due.<sup>12</sup> However, in May 2013, the beneficiary received \$56,021 in relief, \$5,235 (\$61,256 - \$56,021) less than was due. We referred this case to SSA in June 2015 for review, and, in July 2015, SSA agreed the beneficiary was due an additional \$5,235 in relief but had not taken steps yet to issue the additional funds to the class member.

## Cases Provided More Relief Than Was Due

We found 13 individuals (5 percent) in our sample received \$20,021 more relief than they were due. Some of these individuals received more relief than was due because SSA processed relief for overpayments that were not eligible for relief (that is, the overpayment was for a reason other than a parole/probation violation) and/or SSA processed relief for a parole/probation violation overpayment waived or deleted before the *Clark* court order.

For example, one SSI recipient's payments were suspended because of a parole/probation violation warrant from February through May 2007, which resulted in a \$2,492 overpayment—the amount of relief due. SSA originally posted the parole/probation violation overpayment in July 2007 and included a \$1,246 prison<sup>13</sup> suspension overpayment for June through July 2007 for a total posted overpayment of \$3,738 (\$2,492 + \$1,246). SSA processed the relief for the total overpayment of \$3,738, which included the time he was in prison, resulting in the recipient receiving \$1,246 more than was due. We referred this case to SSA in July 2015, and SSA agreed the recipient received \$1,246 more relief than was due, but the Agency had not yet taken any steps to recover the funds.

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<sup>11</sup> SSI is a needs-based program for aged, blind, or disabled individuals, and recipients must meet certain income and resource limits for eligibility. *Social Security Act* § 1611, 42 U.S.C. § 1382. *See also*, SSA, POMS, SI 00501.001 (January 18, 2005).

<sup>12</sup> The \$61,256 comprised a \$4,188 overpayment from September 2007 through January 2008 and \$57,068 of benefits SSA withheld because of the parole/probation violation warrant.

<sup>13</sup> *Social Security Act* § 1611(e)(1)(A), 42 U.S.C. § 1382(e)(1)(A), prohibits SSI payments to individuals who have been confined in a public institution (such as a prison) throughout any month.

## **CONCLUSIONS**

Overall, we estimate SSA provided approximately \$584.3 million in *Clark* court order relief. Despite the complexities of these cases, SSA provided appropriate relief to about 76,528 (89 percent) of the *Clark* class members. However, about 9,723 class members did not receive the accurate amount of relief due them.

In reviewing our sample cases that were incorrectly paid, we did not identify any trends or common characteristics. Hence, we were not able to identify any cases for corrective action beyond the 31 identified during our review of the 275 sample cases. As such, the only way we found to identify additional beneficiaries who were over/underpaid would be to re-review each case. Because of the costs involved in such a review compared to the dollars identified as over/underpaid, we are not recommending SSA take such action unless they can identify a more cost-effective method.

## **RECOMMENDATION**

We recommend SSA review and take appropriate corrective action on the 31 cases we sent it in July 2015.

## **AGENCY COMMENTS**

SSA agreed with the recommendation. See Appendix B.



Steven L. Schaeffer, JD, CPA, CGFM, CGMA  
Assistant Inspector General for Audit

# *APPENDICES*

## **Appendix A – SCOPE, METHODOLOGY, AND SAMPLE RESULTS**

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To accomplish our objective, we:

- Reviewed applicable sections of the *Social Security Act* and the Social Security Administration’s (SSA) rules, policies, and procedures.
- Reviewed Office of the Inspector General reports related to parole or probation violators as well as the *Martinez* class action lawsuit.<sup>1</sup> Specifically, we reviewed the following reports.
  - ✓ *Title II Benefits to Fugitive Felons and Probation or Parole Violators* (A-01-07-17039), July 2, 2008.
  - ✓ *Probation or Parole Violators Serving as Representative Payees* (A-01-09-29112), August 19, 2009.
  - ✓ *The Social Security Administration’s Fugitive Felon Program and the Martinez Settlement Agreement* (A-01-09-29177), October 15, 2009.
  - ✓ *Implementation of Phase I of the Martinez Settlement Agreement* (A-01-10-10160), February 25, 2011.
- Identified a population of 86,251 individuals listed as potential *Clark* class members as of February 2013 in SSA’s Civil Action Tracking System.
- Randomly sampled and reviewed 275 cases from our *Clark* class member population.
- Referred cases to SSA for review and corrective action for instances where the *Clark* relief processed appeared to be incorrect.
- Estimated the number of class members whose *Clark* relief was processed correctly and incorrectly.
- Quantified the total amount of *Clark* relief processed and amount of *Clark* relief incorrectly processed.

We conducted our review between April and July 2015 in Boston, Massachusetts. The principle entities audited were SSA’s field offices and program service centers under the Office of the Deputy Commissioner for Operations; the Office of Income Security Programs under the Office of the Deputy Commissioner for Retirement and Disability Policy; and the Office of Systems Electronic Services under the Office of the Deputy Commissioner/Chief Information

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<sup>1</sup> *Martinez v. Astrue*, No. 08-CV-4735 CW (N.D. Cal.). *Martinez* challenged SSA’s fugitive felon policy of basing payment suspensions solely on the existence of an outstanding felony arrest warrant rather than developing information to confirm the individual was “fleeing.”

Officer for Systems. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on our audit objectives. We tested the data obtained for our audit and determined them to be sufficiently reliable to meet our objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Sample Results

**Table A–1: Population and Sample Size**

	Class Members
Population	86,251
Sample Size	275

**Table A–2: Estimated Class Members Who Had *Clark Relief* Processed Correctly**

	Number of Class Members
Sample Results	244
Point Estimate	76,528
Upper Limit	79,107
Lower Limit	73,397

**Note:** Projections were calculated at the 90-percent confidence level.

**Table A–3: Estimated *Clark Relief* Processed**

	Dollars
Sample Results	\$1,862,951
Point Estimate	\$584,295,905
Upper Limit	\$706,497,691
Lower Limit	\$462,094,119

**Note:** Projections were calculated at the 90-percent confidence level.

**Table A–4: Estimated Class Members Who Received Less *Clark* Relief Than Due**

	Number of Class Members	Dollars
Sample Results	18	\$68,911
Point Estimate	5,646	\$21,613,218
Upper Limit	8,234	\$34,546,922
Lower Limit	3,689	\$8,679,513

**Note:** Projections were calculated at the 90-percent confidence level.

**Table A–5: Estimated Class Members Who Received More *Clark* Relief Than Due**

	Number of Class Members	Dollars
Sample Results	13	\$20,021
Point Estimate	4,077	\$6,279,449
Upper Limit	6,388	\$9,899,012
Lower Limit	2,434	\$2,659,887

**Note:** Projections were calculated at the 90-percent confidence level.

## **Appendix B – AGENCY COMMENTS**

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### **SOCIAL SECURITY**

#### **MEMORANDUM**

Date: October 23, 2015 Refer To: S1J-3

To: Patrick P. O'Carroll, Jr.  
Inspector General

From: Frank Cristaudo /s/  
Counselor to the Commissioner

Subject: Office of the Inspector General Draft Report, "Review of Parole and Probation Violators and the Clark Court Order" (A-01-12-11215)--INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,  
“REVIEW OF PAROLE AND PROBATION VIOLATORS AND THE CLARK COURT  
ORDER” (A-01-12-11215)**

Thank you for the opportunity to comment on the draft report. We appreciate your work in assessing our implementation of the court order.

**Recommendation 1**

Review and take appropriate corrective action on the 31 cases we sent in July 2015.

**Response**

We agree. We completed our review and took appropriate corrective action on the 31 cases.

## **Appendix C – ACKNOWLEDGEMENTS**

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Judith Oliveira, Director, Boston Audit Division

David Mazzola, Audit Manager

Frank Salamone, Senior Auditor

Kevin Joyce, IT Specialist

Brennan Kraje, Statistician

Kim Beauchamp, Writer-Editor

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