

## Fleeing Felon Case Summaries

***Blakely v. Comm.***, 330 F.Supp.2d 910 (W.D. Mich. 2004)

The mere existence of a warrant for Blakely's arrest on a felony assault charge was insufficient to show flight to avoid prosecution, and therefore could not serve as the basis for SSA's decision to terminate claimant's supplemental security income (SSI) benefits, even though the claimant, Blakely, was aware of warrant; Blakely was not aware of the warrant when he left the state, he did not attempt to conceal himself, he was financially and physically unable to travel to the state that issued the warrant, and the state refused to extradite him, even though he volunteered to return.

Plaintiff, Robert Blakely, was involved in a fight in Montana in February, 1996. No arrest was made at the time of the incident; however, several weeks later an arrest warrant was issued for Blakely. Blakely was living openly in Montana for six months following the arrest warrant without concealing his identity. Blakely subsequently moved to Michigan for employment and family reasons. During a traffic stop in Michigan in 1999, Blakely was informed of the outstanding warrant. Upon learning this information, Blakely offered to return to Montana; however, he did not have the economic ability to do so.

The Social Security Administration determined that pursuant to the "fleeing felon" provision of 42 U.S.C. § 1382(4)(a), Blakely's benefits should stop, and that there had been an overpayment of benefits beginning when Blakely learned about his status as a fleeing felon. When Blakely asked for extradition to address the warrant, he was denied. The court held that Blakely's conduct does not constitute intent to flee, and that the SSI commission's and the Appeals Council's rulings were not based on "substantial evidence" that Blakely intended to flee. Blakely's inability to return to Montana does not establish the intent to flee required for discontinuation of benefits.

***Hull v. Barnhart***, 336 F.Supp.2d 1113 (D. Oregon 2004)

Under the statute, the fleeing felon provision on which Social Security relies to terminate benefits only applies if a person intends to flee from prosecution, not if a warrant exists but was unknown to the person at the time she left the jurisdiction. Contrary to Social Security's argument that a person with an outstanding warrant is a fleeing felon under the statute until the warrant is resolved, the statute and applicable regulations in fact require a court finding that the person is in fact fleeing prosecution.

Plaintiff, Edith Hull, received SSI benefits between January 2000 and February 2002. Hull also had an outstanding arrest warrant, issued three months after she moved to Oregon, on October 17, 1995 in Sparks, Nevada for obtaining money by false pretenses and uttering a forged instrument.

In 2002, while Hull was living in Oregon, an ALJ ruled that Hull was a fleeing felon, was ineligible for SSI benefits, and had received a benefit overpayment of \$8,957. Hull claims to have had no knowledge of the warrant until she received a letter from the SSA in January 2002. While this case was pending, in April of 2004, Hull was arrested on the Nevada warrant. Hull waived extradition; however, Nevada did not take custody of her. As a result, in May 2004, Hull was released from jail and the fugitive charges were dismissed.

A commissioner's decision to terminate benefits must be based on substantial evidence that the individual actually intended to flee. SSA's argument that if a warrant is issued, a person

is a fleeing felon until the warrant is cleared fails to incorporate any notion of intent. In order for SSA to cut benefits, it must show that the person intended to avoid prosecution. Once it is determined that a felon is not fleeing and is available for prosecution, benefits may be resumed.

***Garnes v. Barnhart***, 352 F.Supp.2d 1059 (N.D. Cal. 2004)

District court was not required to defer to SSA Commissioner's interpretation of "fleeing felon" statute, despite statute's failure to define that phrase; The agency's implementing regulation did not implicate an area of special agency expertise, and SSA's interpretation, that the mere issuance of a warrant sufficed regardless of the absence of any showing of intent, nullified the regulation's plain language requiring "an appropriate finding that the individual is fleeing, or has fled, to avoid prosecution".

Plaintiff, Marlo Garnes, was receiving SSI benefits as a result of a mental impairment. Garnes suffered from "severe anxiety and depression," was found to be incapable of living independently, and was twice hospitalized for her mental health impairment as a teen. In 1990, Garnes was arrested in Virginia for failing to return a rental car on time. On the date of Garnes' court date for the arrest, there was a fire in the courthouse, and no hearing took place. Garnes' mother moved to California in June of 1990; Garnes contended that, due to her disability, she had no choice but to move to California with her mother before the matter was judicially resolved. Garnes was later arrested in California as a result of the outstanding warrant, but was released when Virginia declined extradition.

In January 2001, Garnes was awarded SSI benefits; however, in December 2001, SSA notified Garnes that her benefits would be terminated in January 2002 as a result of her "fleeing felon" status. The ALJ reinstated Garnes' benefits based on the distinction between "failure to appear" in court and "fleeing to avoid prosecution;" but the SSA appeals council overturned the ruling.

On appeal to the federal district court, the court concluded that intent is an essential element of a determination that an individual's "fleeing felon" status merits discontinuation of benefits; and that the appeals council had made no analysis of Garnes' mental competence at the time of his move. SSA's determination that the plaintiff is eligible for benefits on the basis of a mental disability on the one hand, and a "fleeing felon" with the requisite intent to flee justice on the other hand, calls for further analysis of the individual's actual intent.

The case was remanded to SSA to either reinstate benefits retroactively and prospectively, or for further proceedings to determine Garnes' mental capacity and intent to flee.

***Fowlkes v. Adamec***, 432 F.3d 90 (2<sup>nd</sup> Cir. 2005)

Plaintiff, Felipe Fowlkes, began receiving SSI benefits in 1997 based on a mental disability. In September 1999, Fowlkes was charged with felony larceny and in November 1999, he was charged with a false material statement on a voter registration form, in Nottaway County, Virginia.

In March 2000, Fowlkes, who was then living in Schenectady, New York, received notice that his SSI benefits would be suspended retroactively to September 1999 as a result of his "fugitive felon" status. At the same time, Virginia declined extradition. In April of 2002, Fowlkes filed a complaint in the U.S. District Court for the Northern District of New York,

arguing that since Virginia would not seek his return, he was not "fleeing" justice. In addition, Fowlkes asserted that his right to due process had been violated. In reviewing the case, the district court denied Fowlkes' due process claim, as he was afforded an ALJ hearing.

The court declined to return the case to the Commissioner for further review. Fowlkes filed a timely appeal, arguing that the statute requires an intent to flee, as well as a court order finding that he did in fact flee prosecution before the suspension of benefits. The appeals court dismissed the due process claim based on the fact that Fowlkes did in fact receive a hearing. However, the court found that SSA's guidelines for declaring a person a fleeing felon were inconsistent with statute and regulations, in that they did not require proof of intent to evade justice.

The court, not SSA, is permitted to make a finding that the party is fleeing prosecution. Benefits cannot be suspended from the date a warrant itself was issued, but rather, from the date in which a person is officially declared a fleeing felon. The case was remanded to the district court to treat Fowlkes' complaint as a petition for review of the SSA Commissioner's decision to suspend Fowlkes' benefits.