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Emergency Message

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Identification Number EM-11032**Effective Date:**

05/09/2011

Intended Audience: All RCs/ARCs/ADs/FOs/TSCs/PSCs/OCO/
OCO-CSTs/ODARHQ/ALJs**Originating Office:** ORDP OISP**Title:** **Clark Court Case: Stopping Suspensions and Denials Based Solely on
Federal or State Probation or Parole Violation Warrants – POMS
instructions will follow****Type:** EM - Emergency Messages**Program:** Title II (RSI); Title XVI (SSI); Disability**Link To Reference:** See References at the end of this EM**Retention Date: November 30, 2012****Background on Clark v. Astrue court case**

We previously informed you in [EM-10061 SEN](#), that on 3/19/2010, the Second Circuit Court of Appeals rendered a decision in *Clark v. Astrue*, finding that SSA's practice of relying solely on outstanding probation or parole violation arrest warrants to suspend or deny benefits conflicted with the plain meaning of the Social Security Act. Because of that decision, we stopped suspending or denying title II benefits and title XVI payments based solely on an outstanding probation or parole violation warrant for individuals who resided in New York, Connecticut, or Vermont.

Upon remand from the Second Circuit on 3/18/2011, the District Court for the Southern District of New York certified a nationwide class in *Clark v. Astrue* that includes all individuals whose benefits or payments were suspended or denied on or after October 29, 2006 (If this class definition changes, we will issue another instruction). Based on this class certification, we are no longer suspending or denying benefits or payments based solely on a probation or parole violation warrant. However, at this time **do not take any action to remedy prior suspensions or denials** based solely on a probation or parole violation warrant.

Action to take on probation and parole violation warrants

Effective immediately, do not suspend or deny title II benefits or title XVI payments to an individual based solely on an outstanding probation or parole violation warrant with any of the following offense codes:

- 5011 – Parole violation
- 5012 – Probation violation
- 8101 – Juvenile offenders – abscond while on parole

- 8102 – Juvenile offenders – abscond while on probation
- 9999 -- with an offense charge symbol of “probation or parole violation.”
- “Blank”-- with an offense charge symbol of “probation or parole violation.”

The Office of the Inspector General (OIG) has already stopped referring warrants with the above offense codes into our automated nonpayment processes for suspension or denial of title II benefits or title XVI payments.

NOTE: The *Martinez* Settlement addressed outstanding felony arrest warrants, not probation and parole violation warrants. Continue to comply with the Martinez settlement per [GN 02613.860 - GN 02613.885](#).

Continue to accept requests for good cause and process good cause determinations. If you deny a good cause request, and the person is in current payment status, do not initiate a suspension or denial action. For instructions on processing good cause, see [GN 02613.025 – GN 02613.030](#) for Title II and [SI 00530.015](#) for Title XVI.

We will provide more specific processing instructions in the future.

Direct all program related and technical questions to your RO or PC support staff. RO and PC support staff may refer questions or problems to their Central Office contacts.

References:

[EM-10061](#) – SEN, Clark Court Case: Stop Suspensions and Denials of Probation or Parole Violators – Second Circuit only (New York, Connecticut, and Vermont)

[GN 02613.860 – GN 02613.885](#), Martinez Settlement Relief

[GN 01613.025 – GN 02613.030](#), Good Cause Provisions

[SI 00530.015](#), Good Cause Provision

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