

APPENDIX

“FUGITIVE FELON” EXAMPLES

1. **Flight to a Nursing Home** - In April, 1978, J.B. of Macon, Georgia, was sent to Seattle, WA as part of his job as a telephone installer/repairer. After he settled into his motel his employer notified him that the job fell through and that he would not receive the advance pay he had been told he would receive. He had no money to pay the motel bill and the innkeeper seized all his belongings when he left to go to his next assignment in Portland, OR. As far as he was concerned, that was the end of the unpleasant episode. What he did not realize was that in August, 1978, long after he left Seattle, the motel owner filed criminal charges for fraud against an innkeeper for his failure to pay the bill and that in August, 1978 a Seattle Justice Court issued a warrant for his failure to appear on the charge. He was not aware of the warrant or the criminal charges filed against him until October, 2001, by which time he was residing in a nursing home. At that time, both his SSI and Social Security¹ benefits were terminated because he was allegedly fleeing to avoid prosecution. He was also sent an overpayment notice for all benefits received since October, 1998. In January, 2002, he obtained representation from a legal services office, which, in turn, contacted the Office of the King County Public Defender. The public defender brought the matter to the attention of the court in Seattle, which then dismissed the charges in February, 2002. SSA then agreed to restore benefits prospectively, but refused to concede entitlement to benefits for the period before dismissal of the charges and continued to pursue the overpayment. In September, 2002, an ALJ reversed the determination finding that J.B. was not notified of the criminal case and found there was justification for his conduct in leaving Washington.

2. **Flight to Care for an Ailing Grandfather** - M.G. of Richmond, CA is a California native who receives SSI on the basis of the combined effects of a developmental disability and mental illness. In 1981, at age 14 she moved to Virginia with her mother who was transferred there by the U.S. Navy. She remained there until June, 1990 when she moved back to California with her mother who needed to return to care for M.G.'s ailing 86 year old grandfather, whose wife had just died. However, in May, 1990, before she left Virginia, she was charged with unauthorized use of a motor vehicle. After her arrest, there was a fire in the courthouse resulting in the courthouse being closed because of asbestos contamination on the day later in May when she was scheduled to appear. She then moved to California in June and states that she did not receive notice of a new court date. In December, 2001 she was notified that her benefits would be terminated. She requested reconsideration by means of a formal conference at which she would be able to present witnesses, cross-examine adverse witnesses and see any documentary evidence the agency has. However, she was denied her right to a conference. Instead SSA just sent her a Notice of Reconsideration affirming the original decision without stating any reasons. Her benefits were then discontinued in February, 2002. On April 26, 2002 an ALJ reversed the agency's decision to terminate benefits, stating that he found the facts in her case to be “compelling” and noting that she had a reason for returning to California and was now

¹ Title II benefits are not covered by the current fugitive felon provisions and those benefits were soon restored after a legal services office in Georgia intervened.

experiencing “considerable hardship.” Nevertheless the Appeals Council took the case on own motion review and in July, 2002 reversed the ALJ decision. The Appeals Council cited undisclosed “Social Security Administration guidelines” for the proposition that whenever there is an active felony warrant, “the claimant is assumed to be a fugitive felon.” M.G. has now been without benefits for a full year and has had to rely on the kindness of members of her church. She has appealed her case to the U.S. District Court, but a determination is not likely before summer. M.G. has no money to be able to return to Virginia to defend the charges.

3. **Mistaken Identity** - J.G. is a severely ill AIDS patient in San Diego, CA who is unable to leave his home because of severe respiratory problems. He has an extremely common name which also happens to be the name of a serial offender in Los Angeles who was born on the same day he was. J.G. is a Mexican immigrant who has never had criminal charges filed against him either in Mexico or in the United States. He has also never been to Los Angeles which is where all the offenses have occurred. When his benefits were terminated, it was ascertained that all of the offenses were alleged to have taken place in Los Angeles and that the defendant, while having the same name and birth date, had a different Social Security number. Nevertheless, he was told that the warrant would have to be satisfied for benefits to be restored. Fortunately for him, the police in Los Angeles did catch up with the other J.G. and put him behind bars for a period, thus causing the warrant to be recalled. SSA then restored benefits to J.G. in San Diego. However, J.G. in Los Angeles is apparently on the loose again and J.G.’s benefits in San Diego have once again been terminated.

4. **Mistaken Identity** - G.A., a Mexican-American woman from California, had her SSI benefits terminated based on a warrant from Massachusetts although she had never been to the East Coast. With the assistance of a public defender working with a legal services lawyer in California, benefits were restored when it was established that the defendant in Massachusetts, who had the same name, was Puerto Rican and was in fact a different woman.

5. **Shoplifting** - J.G., a Connecticut resident, returned to his native Georgia for his mother’s funeral over ten years ago. At the time he was drug addict and his life was a shambles. He had no money and nothing to eat. He was charged with shoplifting. However, he was unable to stay to respond to the charges because he had no place to stay and no money to live on. Instead he returned to Connecticut. In the intervening decade he has become a different person and has kicked his drug habit. However, he has AIDS and is unable to work and was receiving SSI because of his AIDS diagnosis. His SSI benefits were terminated last year because of the pending Georgia warrant. He is waiting for an ALJ hearing and still has no benefits. He is financially unable to return to Georgia to defend the charges.

6. **Hazy Memories of a Visit to New York** - L.G. is a Texas resident who had her benefits terminated in early 2002 based on a warrant from New York City. She clearly recalled visiting New York over twenty years ago but her serious mental limitations made her a very poor historian and she was unable to recall anything about the alleged incident. However, a dogged pro bono attorney in a law firm in Houston enlisted the assistance of a Legal Aid Society lawyer in New York and they discovered that the underlying charge from over twenty years ago was for fourth degree larceny involving an undisclosed item valued at \$7.00 and that the charge was not a

felony. Thus it clearly does not fall within the purview of the statute. However, that did not end the matter. The attorney representing L.G. reports that it took over a month of persistent haggling to finally restore benefits in November, 2002.

Many attorneys and other advocates report similar experiences with clients whose severe impairments prevent them from providing an adequate account of the circumstances surrounding the warrant.

7. No knowledge of charges - C.C. is a Cambodian refugee who arrived in the United States in 1981 and settled in Allston, Massachusetts. He remained there until 1985 when he and his family moved to San Francisco. Their departure 18 years ago was a case of flight to escape the cold winters of the Northeast. He began receiving SSI in 1989 and now resides in Antioch, CA, outside of San Francisco. He was unaware of any criminal charges until he received a notice dated June 26, 2002 telling him his benefits would be terminated because he was a fugitive felon. Benefits were terminated on July 1 without any opportunity for reconsideration.

With the assistance of both a public defender and a legal services lawyer in Massachusetts, documentation was obtained from the Brighton Municipal Court where the charges were filed. The court records show that the charges were for welfare fraud and were filed on September 1, 1988, three years after C.C. left Massachusetts. The reason given for issuance of the warrant was that the prosecutor had indicated that the defendant "may not appear unless arrested."

C.C. requested reconsideration of SSA's decision in July. SSA promptly responded with a notice stating "we are not reconsidering your claim since the principal issue is that we received an Office of Investigations notification that you are a fugitive felon." The notice goes on to state "you will need to clear up this warrant before SSI benefits are reinstated." He has had no benefits since June of last year and has no funds to return to Massachusetts to respond to the charges. He is currently awaiting an ALJ hearing.

8. No criminal charges - C.B. is a Los Angeles resident who lost his SSI benefits because he is alleged to be a "fugitive felon" on the basis of a warrant in a child support case in Chicopee, Massachusetts. Since child support proceedings are not criminal proceedings, they clearly do not fall within the statute and the matter should be resolved.

9. Contract dispute - J.G. is a 69 year old man currently residing in California who lost his SSI benefits in September, 2001 because he was determined to be a fugitive felon. He had been receiving benefits on the basis of disability since 1996. He lived in Nebraska in 1992 and that year entered into a contract to do some carpentry work for which he was given a \$2,000 advance. In the fall of that same year he moved to Colorado prior to completing the work. However, before he left Nebraska, he met with the property owner and a friend of his who agreed to complete the work. The three of them agreed to the terms and he paid the friend the \$2,000 advance and left for Colorado. In May, 1997 the owner of the property wrote to him in Colorado alleging that the work was never completed and that J.G. owed him \$2,000. J.G. agreed to pay \$75 per month with the understanding that criminal charges would not be filed.

He was only able to continue this for a few months on his limited SSI income. It was only when his SSI benefits were stopped in 2001 that he learned that criminal charges that had been filed against him in Nebraska on Dec. 29, 1993, more than a year after he left the state.

After spending a year without SSI benefits, J.G. received an ALJ decision restoring his benefits in September, 2002. The ALJ noted that J.G. was unaware of the criminal charges, that the County Attorney's office in Nebraska had declined extradition and that J.G. could not afford to travel to Nebraska to defend the charges.

10. **Flight to a Nursing Home** - L.B. has had three heart attacks and is another nursing home resident in Macon, Georgia. She was threatened with termination of benefits in July, 2001 for failure to appear on a charge of filing a false instrument in Elmira, NY that dated to 1979. Prompt coordinated action by a legal services lawyer in Georgia, and the public defender and the District Attorney in Elmira resulted in a judge promptly dismissing the charges in the interests of justice in August, 2001 and benefits continuing.

11. **Flight to a Nursing Home** - In yet another case of flight to a nursing home, also in Macon, Georgia, M.F. had been accused of fleeing to avoid prosecution for an eleven year old burglary charge in Texas. A legal services advocate in Georgia obtained verification that the charges in Texas had been dismissed and benefits were promptly restored.