

## Details of Proposed *Hart v. Colvin* Settlement

*Hart v. Colvin* is a Social Security Disability Insurance (SSDI) and SSI disability class action that concerns a doctor who was disqualified from serving on the Social Security consultative examiner panel, and whose exam reports continued to be relied upon by Social Security even after the disqualification.

Dr. Frank Chen performed consultative examinations in the Bay Area and the Central Coast as far south as San Luis Obispo. After many complaints over a period of years, he was disqualified from serving on the Social Security consultative examiner panel in December, 2013. Problems with his exam reports include statements that he performed tests he did not in fact perform and conclusions that were inconsistent with medical evidence already in the record, with no explanation or acknowledgement of the inconsistency. The examinations were very short, and there were allegations that he was rude to people.

Even after the disqualification of Dr. Chen in 2013, Social Security continued to rely on his reports in denying or terminating disability benefits.

The *Hart v. Colvin* class action sought to require the Social Security Administration to reopen all prior determinations that terminated or denied SSI and/or SSDI benefits and that relied on a report from Dr. Chen. The settlement, which was preliminarily approved on November 9, 2016, provides new disability determinations for many class members.

### Who is eligible for relief?

The class includes individuals who were examined by Dr. Chen from 2007 through 2013. Individuals may have seen Dr. Chen either as part of their application for SSDI or SSI disability benefits, or as part of a continuing disability review.

With two exceptions, some form of relief would be provided to any individual who:

- Had an exam by Dr. Chen between 2007 and 2013, AND
- Had their claim denied in part (partially favorable decision) or in full (unfavorable decision).

### Who is not eligible for relief?

The biggest exclusion is that individuals who were in current pay status on October 14, 2015 (the date the class was certified) are not eligible for relief. “Current pay” means that the individual was receiving SSDI, SSI disability, or SSDI that automatically converted into Social Security retirement at full retirement age. However, if someone was receiving Social Security Retirement benefits on October 14, 2015 that was not converted from disability benefits, they are not excluded and are still eligible for relief. If someone came into current pay status after October 14, 2015, that person also is eligible for relief.

The only other exclusion is an extremely limited one. This is where the individual had an Administrative Law Judge (ALJ) decision affirming a denial or termination and the ALJ’s decision explicitly stated that Dr. Chen’s report was not given any weight. Note that this should be a very narrow exception. If the report was given any kind of weight, then the claim remains eligible for relief. For example, if the decision gave the Dr. Chen report “little to no weight”, or if the Dr. Chen report was not mentioned at all, then the claim remains eligible for relief, as it is not explicit that the Dr. Chen report was given no weight.

## What is the relief?

The relief provided in the settlement varies depending on the status of the class member's claim and the amount of time since their examination by Dr. Chen. Class members are divided into three groups:

- An individual who saw Dr. Chen from 2011-2013, and whose claim is closed, is in Group 1.
- An individual who saw Dr. Chen from 2007-2010, and whose claim is closed, is in Group 2.
- An individual who saw Dr. Chen from 2007-2013, and whose claim is open, is in Group 3.

Individuals can be eligible whether they have a closed claim or an open claim. A closed claim means that there is no active appeal in process on the claim involving the Dr. Chen report, as of the date of final approval of the settlement. An open claim means that there is an active appeal in process on the claim involving the Dr. Chen report, as of the date of final approval of the settlement.

### Group 1 (2011-2013 time period, closed claims)

Group 1 individuals were examined by Dr. Chen on or after January 1, 2011, and have closed claims. If a class member in Group 1 elects relief, then they will be able to get a new decision on their case.

If the individual never appealed the denial or termination of disability benefits or if the final decision was made on reconsideration (the first stage of the appeal process), then a special "Disability Processing Unit" of the Social Security Administration will decide the case for the period covered by the earlier denial, without considering the report of Dr. Chen. If an administrative law judge (ALJ) made the final decision on the closed claim, then a new ALJ hearing will be scheduled, without considering Dr. Chen's report. If the Appeals Council made the final decision on the closed claim, then the claim will be remanded for a new ALJ hearing, without considering Dr. Chen's report. In all of these cases a Group 1 class member will be able to submit supplemental evidence relating to the time period covered by the closed claim. If the individual is found disabled for the closed claim, then the individual will also have the option to present supplemental evidence, and Social Security may order a new medical exam, in order to decide if the disability extended beyond the closed period, and up until the present. The individual will receive benefits for whatever period of disability that they are able to prove, including both back benefits and ongoing benefits.

A Group 1 class member has the option to appeal the readjudication decision. The normal appeal rights and process apply, except that, in the case of a determination by the Disability Processing Unit, the class member can appeal directly to the Administrative Law Judge without the necessity of reconsideration.

### Group 2 (2007-2010 time period, closed claims)

Group 2 individuals were examined by Dr. Chen between January 1, 2007 and December 31, 2010, and have closed claims. For a class member in Group 2 to obtain relief they must not only return the claim form, but they must also file a new application for SSDI or SSI disability and be approved. If they are found currently disabled, only then will their closed claim involving the Dr. Chen report be readjudicated by the "Disability Processing Unit" described above, without considering the report of Dr. Chen. The individual will then also be able to submit supplemental evidence relating to the closed claim, but no new medical exam will be ordered. The DPU would perform a lookback assessment to readjudicate only the prior closed period (from application to final decision). If found disabled in that prior period, the individual would receive back benefits for that prior period.

A Group 2 class member does not have the option to appeal the readjudication decision. A Group 2 class member also does not have the option to try to show disability extending between the prior closed period and the new current period of disability.

## Group 3 (2007-2013 time period, open claims)

Group 3 individuals were examined by Dr. Chen between January 1, 2007 and December 31, 2013, and have open claims. All class members with open claims are at the ALJ level and beyond, and relief will be offered through the ALJ hearing process. Those with claims that are in district court must request that the district court remand the case to the Appeals Council, to then remand for an ALJ hearing.

A class member in Group 3 can choose whether the Dr. Chen report is considered in adjudicating their claim. If the class member wants to have the ALJ consider Dr. Chen's report, then the ALJ will consider it. In that case, the ALJ will also consider the reasons Dr. Chen was removed from the consultative examination panel, should also consider whether ordering an additional consultative examination is appropriate, and should explain the weight, if any, he or she gives to Dr. Chen's report.

## Prospective relief

The settlement also requires Social Security to do a study of the processes through which Social Security monitors the California Disability Determination Service Division's consultative examiner process, under which Dr. Chen performed examinations. After the conclusion of that study, Social Security must issue a document identifying processes for notifying adjudicators when an individual consultative examiner has been disqualified for conduct determined to undermine the reliability of that provider's reports.

## Fairness Hearing

The case citation is: *Hart v. Colvin*, Civil Action No. 3:15-cv-00623-JST (N.D. Cal.)

The fairness hearing will be held on March 16, 2017 at 2pm at the following address:

United States District Court  
Northern District of California  
450 Golden Gate Avenue, Courtroom 9 -19th Floor  
San Francisco, California 94102.

At the hearing the court may approve or deny approval of the proposed settlement. It cannot change the terms of the settlement. If approval is denied, the lawsuit continues. You may appear in person at the hearing or through your attorney. All written objections to the settlement and supporting papers must (a) clearly identify the case name and number (*Hart v. Colvin*, Case Number 3:15-cv-00623-JST), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before February 10, 2017.

## Additional questions?

The attorneys representing plaintiffs are Justice in Aging, the law firm of Morrison & Foerster LLP, and the Legal Aid Society of San Mateo County.

For more information, please contact Trinh Phan ([tphan@justiceinaging.org](mailto:tphan@justiceinaging.org)).

### WASHINGTON

1444 Eye Street, NW, Suite 1100  
Washington, DC 20005  
202-289-6976

### LOS ANGELES

3660 Wilshire Boulevard, Suite 718  
Los Angeles, CA 90010  
213-639-0930

### OAKLAND

1330 Broadway, Suite 525  
Oakland, CA 94612  
510-663-1055