



Food and
Nutrition
Service

Park Office
Center

3101 Park
Center Drive
Alexandria
VA 22302

DATE: 06/27/2017

SUBJECT: Supplemental Nutrition Assistance Program: Changes to the Martinez Fleeing Felon Test after the *Barry v. Lyon* Decision

TO: Regional Directors
Supplemental Nutrition Assistance Program
All Regions

Supplemental Nutrition Assistance Program (SNAP) regulations at 7 CFR 273.11(n) require State agencies to choose between two tests to establish fleeing felon status: the four-part test and the alternative test, often called the Martinez test. The Food and Nutrition Service (FNS) is issuing this memo to clarify changes in the Martinez test necessitated by the *Walter Barry, et al. v. Nick Lyon* decision of the United States Court of Appeals for the Sixth Circuit.

Under SNAP regulations, a State agency must choose to adopt one of two tests to determine whether an individual is a fleeing felon and therefore an ineligible household member. Under the four-part test described in 273.11(n)(1)(i), an individual is considered to be a fleeing felon if the State agency verifies that:

- 1) There is an outstanding felony warrant for the individual by a Federal, State, or local law enforcement agency, and the underlying cause for the warrant is for committing or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing or a high misdemeanor under the law of New Jersey;
- 2) The individual is aware of, or should reasonably have been able to expect that, the felony warrant has already or would have been issued;
- 3) The individual has taken some action to avoid being arrested or jailed; and
- 4) The Federal, State, or local law enforcement agency is actively seeking the individual as provided in 273.11(n)(3).

Under the Martinez test described in 273.11(n)(1)(ii), an individual is considered to be a fleeing felon if a law enforcement officer acting in official capacity presents to the State agency an outstanding felony arrest warrant that conforms to one of three prescribed National Crime Information Center (NCIC) Uniform Offense Classification Codes.

On August 25, 2016, the *Barry v. Lyon* decision was filed in the United States Court of Appeals for the Sixth Circuit. That decision, in applicable part, held that a Michigan SNAP recipient's benefits could not be terminated under the fleeing felon test simply by matching the recipient's name with a Michigan law enforcement computer-generated list showing an outstanding arrest warrant. The mere existence of the computer match was insufficient to establish that law enforcement was **actively seeking** the apprehension of the SNAP recipient. The *Barry* court held that, in addition to the felony arrest warrant, law enforcement must also inform the State agency that it is actively seeking apprehension of the SNAP recipient. Technically, the addition by the *Barry v. Lyon* decision of an actively seeking requirement in addition to a valid felony arrest warrant applies only to States within the Sixth Federal Circuit. However, the actively seeking requirement may eventually be applied in other judicial circuits and it is FNS policy to implement SNAP consistently throughout the United States.

Because actively seeking is already a requirement of the four-part test, the primary effect of *Barry v. Lyon* is on the Martinez test. As a consequence of the court's decision, FNS will amend its regulation at 273.11(n) to require that "actively seeking" in the context of the Martinez test can only be established by 1) presentment by law enforcement of a felony arrest warrant conforming to one of the three prescribed NCIC classification codes **and** 2) a determination by the State agency that law enforcement is actively seeking to arrest the fugitive felon within 20 days (if law enforcement approaches the State agency) or 30 days (if the State agency initiates the inquiry with law enforcement).

In the interim, this memo describes how State agencies that have adopted the Martinez test must now implement that test.

Actively Fleeing to Avoid Prosecution for a Felony

The actively fleeing requirement of the Martinez test is still satisfied by the presentment by law enforcement of a felony arrest warrant that conforms to one of the three prescribed NCIC classification codes: Escape, Flight to Avoid, and Flight-Escape. All three of these code classifications connote intent to avoid apprehension and thus demonstrate that the individual is actively avoiding apprehension.

Actively Seeking

To satisfy the actively seeking requirement after *Barry v. Lyon*, law enforcement must both present a valid felony arrest warrant **and** inform the State agency of its intent to apprehend the individual. FNS will be amending the alternative (Martinez) test in SNAP regulations to include the requirement that a Federal, State, or local law enforcement agency is actively seeking the individual as defined in 273.11(n)(3)(i) or (iii).

The actively seeking requirement can be satisfied regardless of whether law enforcement or the State agency initiates presentment of a warrant. However, who initiates presentment determines the required timeframe for actively seeking. Law enforcement must inform the State agency that it intends to enforce the outstanding felony warrant within 20 days (if law enforcement initiates presentment) or 30 days (if the State agency initiates the inquiry with law enforcement).

In order to satisfy the Martinez test, it is important that a felony arrest warrant conforming to one of the three prescribed NCIC classification codes is actually presented to the State agency. Mere existence of a warrant is insufficient, as is a statement by a law enforcement official that a felony arrest warrant exists for this person.

Verification

As FNS stated in the Clarification of Eligibility of Fleeing Felons Final Rule Questions and Answers dated March 8, 2016, States may choose to include one or more questions on the SNAP application to ask if the applicant is a fleeing felon, but are not required to do so. In the case of an individual self-declaring that they are a fleeing felon, whether on the application, at the interview, or otherwise, the State agency must verify the information from an independent source before accepting the declaration as true since the applicant may not understand the question or law enforcement may not be actively seeking the individual.

For quality control (QC) purposes, State agencies should document in the case file any actions relating to application of the State's chosen fleeing felon test. In a State using the Martinez test, if an individual is determined to be ineligible due to being a fleeing felon, the case file should include a copy of the felony arrest warrant, clear indication of the appropriate NCIC classification code, documentation of whether law enforcement or the State agency initiated presentment of the warrant, and that law enforcement informed the State agency that it intended to enforce the warrant within the appropriate time frame.

Please distribute this guidance to your State agencies and advise them to contact their respective FNS Regional Offices points of contact with any questions and for technical assistance. FNS Regional Offices should contact Sasha Gersten-Paal at (703) 305-2507 with any questions concerning this memorandum.

Sincerely,

/S/

Lizbeth Silbermann
Director
Program Development Division