

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
	:	
v.	:	
	:	No. 3:03CV762 (DJS)
NICOLE PELLETIER,	:	
Defendant.	:	

MEMORANDUM OF DECISION

Plaintiff United States of America (“plaintiff” or “United States”) brings this collection action against defendant Nicole Pelletier (“defendant” or “Pelletier”) for repayment of survivor benefits that were paid to defendant on or about October 1989 through November 1999.

Plaintiff’s motion for summary judgment [**doc. #16**] is now pending before the court. The motion is **GRANTED** as follows.

DISCUSSION

Plaintiff has motioned for summary judgment under F.R.C.P. 56(c), arguing that there are no genuine issues of material fact that preclude resolution in the United States’ favor. Defendant contends that her conviction is not final until she has exhausted her appeals in state court and therefore a material issue of fact exists and summary judgment should be denied. Alternately, the defendant restates her prior argument that the plaintiff’s claims are, in part, barred by the statute of limitations.

I. Standard of Review

A motion for summary judgment may be granted “if the pleadings, depositions, answers

to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c).

Summary judgment is appropriate if, after discovery, the nonmoving party “has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). “The burden is on the moving party ‘to demonstrate the absence of any material factual issue genuinely in dispute.’” American Int’l Group, Inc. v. London Am. Int’l Corp., 664 F.2d 348, 351 (2d Cir. 1981) (quoting Heyman v. Commerce & Indus. Ins. Co., 524 F.2d 1317, 1319-20 (2d Cir. 1975)).

A dispute concerning a material fact is genuine “‘if evidence is such that a reasonable jury could return a verdict for the nonmoving party.’” Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). The court must view all inferences and ambiguities in a light most favorable to the nonmoving party. See Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991). “Only when reasonable minds could not differ as to the import of the evidence is summary judgment proper.” Id.

II. Facts

The United States seeks to recover overpayments of social security benefits in the amount of \$50,715 made to Nicole Pelletier on or about October 1989 through November 1999. The payments were made to Pelletier in the form of survivor benefits due her on the death of her husband, Olidor Pelletier in October 1989. There is no dispute as to the sum of the social security benefits paid to Pelletier or the time period during which she received payments.

Nicole Pelletier was convicted in Connecticut Superior Court on May 20, 2002 as an accessory to the murder of Oidor Pelletier. She has since appealed her conviction to the Connecticut Supreme Court. No action has yet occurred on her appeal. These facts are also undisputed.

The United States first contacted Pelletier on April 23, 2003, demanding repayment. Defendant has, to date, failed to respond to the government's request.

III. Overpayment Under the Social Security Act

Plaintiff seeks to recover the payments, totaling \$50, 715, made to Nicole Pelletier in the form of survivor benefits. The government's claim is based on the language of 20 C.F.R. §404.35(b), which reads, in relevant part: "[y]ou may not become entitled to or continue to receive any survivor's benefits or payments on the earnings record of any person...if you were convicted of a felony or an act in the nature of a felony of intentionally causing that person's death." 20 C.F.R. §404.35(b).

There are no disputed material facts in this case that would preclude summary judgment in favor of the United States. Nicole Pelletier was convicted in Connecticut Superior Court on May 20, 2002 on the charge of Accessory to Murder. C.G.S. §53a-8a; C.G.S. §53a-54a. Under Connecticut law, an accessory is treated as a principal. C.G.S. §53a-8a. Pelletier was sentenced to sixty years imprisonment for her actions.

Pelletier's conviction falls squarely within the scope of 20 C.F.R. §404.35(b). Murder is defined, in part, as when an individual "with intent to cause the death of another person, [s]he causes the death of such person." C.G.S. §53a-54a. Murder is a Class A felony in Connecticut.

C.G.S. §53a-54a(c). There is no dispute that Pelletier was convicted of a felony for intentionally causing the death of the person whose benefits she then claimed. Pelletier was legally barred from collecting the social security monies paid her, and she is obligated to repay the United States.

The Social Security Act provides that when an individual is paid “more than the correct amount” the Commissioner of Social Security may “require such person...to refund the amount in excess of the correct amount.” 42 U.S.C. §404(a)(1)(A). Here, Pelletier was not entitled, by law, to collect any of Olidor Pelletier’s social security benefits. Thus, the Commissioner may require her to refund the entirety of the payments she received between 1989 and 1999, a sum totaling \$50,715. The plaintiff’s motion is granted.

IV. Defendant’s Arguments

Defendant Pelletier argues that her conviction is not final and therefore summary judgment should be denied. Alternately, she claims that the plaintiff’s claims should be dismissed as time-barred by the applicable statute of limitations. Defendant’s arguments are without merit.

This court has previously considered and rejected plaintiff’s arguments in its ruling dated September 24, 2003, denying the defendant’s motion to dismiss. Pelletier raises no new facts or points of law that would lead this court to reconsider its prior ruling that her conviction is a final judgment under Connecticut law and the Social Security Act. Further, the court has already held that the statute of limitations was tolled until May 20, 2002. The government’s claim is not time-barred.

CONCLUSION

The United States is entitled to recover from Nicole Pelletier overpayments of social security benefits in the amount of \$50,715.00. Pelletier is not entitled, due to her conviction for murder under Connecticut law, to collect survivor benefits. Federal regulations specifically bar individuals such as Pelletier, convicted of a felony for intentionally causing the death of the beneficiary, from receiving social security benefits owed to the deceased.

The United States' motion for summary judgment [**doc. #16**] is **GRANTED**. Judgment shall enter for the plaintiff. The Clerk of the Court is ordered to close the case.

IT IS SO ORDERED at Hartford, Connecticut, this ____ day of May, 2004.

DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE