

OFFICE OF PATIENTS' RIGHTS

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MEMORANDUM

TO: All Patients' Rights Advocates

FROM: Office of Patients' Rights

RE: Representative Payees for Social Security

DATE: February 17, 2000

In the course of providing assistance to advocates and clients, we have received several questions regarding representative payment of social security (SSA) and supplemental security income (SSI) benefits. This memo addresses some basic questions about when a representative is appointed, what his/her responsibilities are and the representative payee's scope of authority.

1. When is a representative payee appointed?

The Social Security Administration appoints a representative payee when that agency determines that a client is mentally or physically incapable of managing or directing the management of his/her benefit payments. The representative payee can be a person (family member/friend) or an organization (a social service agency). Persons receiving SSI benefits who have issues with drug or alcohol abuse are required to have a representative payee. For these persons, a non-profit community agency that provides these services is the preferred payee (20 C.F.R. §§ 404.2001, 404.2010, 416.601, 416.610).

Before approving someone to be a representative payee, SSA will require documentation of the payee's identity, verify the payee's social security or employer identification number, and, to the extent practicable, conduct a face-to-face interview. In addition, SSA will check its own records to determine whether the payee was ever convicted of a Social Security felony or dismissed as the representative payee for someone else for misusing SSI funds. Finally SSA will look more closely at certain categories of payees, for instance, persons who are not related to the client or persons who are payees for other people.

2. What are the responsibilities of a representative payee?

The SSA and/or SSI check goes directly to the representative payee, but the money belongs to the client and may be used only for that person. *A representative payee has the responsibility to use the payments he/she receives for in the best interest of the client.* (20 C.F.R. §§ 404.2035, 416.635) This responsibility is met if the payments are used for the beneficiary's current maintenance. Current maintenance includes- food, shelter, clothing, medical care and personal comfort items (20 C.F.R. §§ 404.2040, 416.640).

If the client is receiving care in an eligible institution because of a mental or physical disability, current maintenance includes the customary charges for care and services provided by the institution. It also includes expenditures for those items which will aid in the client's recovery or release from the institution or expenses for personal needs which will improve the client's condition while in the institution. (20 C.F.R. §§ 404.2040, 416.640).

If a debt (including conservatorship, public defender or other county fees) arose prior to the establishment of the payeeship, payment on the debt can only be made if the current and reasonably foreseeable needs of the client are met (20 C.F.R. §§ 404.2040, 416.640).

3. Can a representative payee charge the client for payee services?

Qualified non-profit organizations serving as representative payee may be authorized by Social Security to charge a monthly fee for services: \$50 per month for persons who have issues of drug and alcohol abuse and \$25 per month for all other persons. Fees charged in excess of these amounts or without Social Security's authorization are considered a misuse of the client's benefits. (20 C.F.R. §§ 416.640a, 404.2040a).

4. Can a representative payee make treatment decisions for a client?

No, a representative payee cannot make treatment decisions for a client, nor can he/she force a client to take medication.

Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the state of California (Cal. Welf. & Inst. Code § 5325.1).

This includes the right to make decisions about one's own treatment. Clients retain the right to refuse or consent to treatment unless that right is specifically limited by the court. The Social Security's appointment of a representative payee does not legally limit a client's right to refuse or consent to treatment.

5. Can a representative payee make placement decisions for a client?

No, a representative payee does not have the authority to make placement decisions for a client. Clients retain the right to make their own decisions regarding placement unless limited by the court and a conservator is granted the authority to make placement decisions for the client (Cal. Welf. & Inst. Code § 5358). The Social Security's appointment of a representative payee does not legally limit a client's right to make his/her own placement decisions.

The representative payee does have some discretion concerning how benefit payments are spent. In managing a client's benefit payments, the representative payee is guided by the best interest of the client (20 C.F.R. §§ 404.2035, 416.635). Making decisions using the best interest standard involves a broad examination of the social and emotional needs, and the moral, medical and legal concerns *from the client's perspective*. Using this standard, a representative payee may have the discretion to refuse to fund, with benefit payments, a placement that is substandard or harmful to the client.

6. What can the client do if the payee is misusing his/her funds?

Ask Social Security to suspend payments to the representative payee and to investigate. The Social Security Administration has the responsibility to investigate cases of alleged financial abuse. Even if the client does not have an alternative representative payee, the payment can come to the Social Security office in the meanwhile.

The Social Security Administration has the authority to require the payee to submit a written accounting of how the client's benefits were used (20 C.F.R. §§ 404.2065, 416.665). The payee may be personally liable for any misuse of the client's benefit payments (20 C.F.R. §§ 404.2041, 416.641).

Social Security will select a new payee if they determine that the client's interests are not being served by the current payee or that the current payee is unable to carry out his/her responsibilities (20 C.F.R. §§ 404.2050, 416.650).

7. How can a client show that he/she no longer needs representative payment?

The Social Security Administration appoints a representative payee when that agency determines that a client is mentally or physically incapable of managing or directing the management of his/her benefit payments. Social Security comes to its determination by considering the following information: “medical evidence,” such as statements from physicians or other medical professionals based on a recent examination of the client; “court determinations” of the client’s legal incompetence; and lay evidence, such as statements from relatives or friends or other people in a position to know and observe the client.

Likewise, representative payment will be stopped when Social Security determines that the client is able to manage or direct the management of his/her own benefit payments. The client may request direct payment and submit information to Social Security to support this request. Here again, the types of information Social Security will consider are a physician’s or other medical professional’s statement that the client is able to manage or direct the management of his/her own payment, a court order restoring the client’s rights in a case where the client was adjudged legally incompetent, or other lay evidence that indicates that the client can manage his/her own funds. Physician’s statements supporting direct payment can be submitted to Social Security on form SSA-787 (20 C.F.R. §§ 404.2055, 416.655).

County advocates should consult with legal counsel designated by the county to represent and/or advise the advocate (often referred to as the County Counsel).