



Children's Advocacy Institute

To: Social Security Administration
From: Amy Harfeld, National Policy Director, Children's Advocacy Institute
Re: Proposed Action to Support Proper Use of Foster Youth Benefits
Date: October 27, 2021

1. POMS Policy Memo to State/County Agencies Clarifying Law & Policy

- a. Review of preference list and obligation to follow it
- b. Prohibition on automatic appointment of agency as representative payee
- c. Requirement to determine representative payee on individual basis and address how payee will best represent the child's best interest and meet fiduciary obligations
- d. Requirement for records of efforts and outcomes to find a payee higher up the list
- e. Required notice to beneficiaries and their legal guardians or legal representatives upon application and receipt of benefits. In instances where the agency is serving as rep. payee, notice should go to the legal representative of the child to avoid ethical conflict.
- f. Required annual accounting of funds for each beneficiary explaining use of benefits in child's best interest
- g. Review policy requirements of SSI distinguished from OASDI

2. POMS Alert Ordering States/Counties to Cease Automatic Self-Appointment in Accordance with SSA Policy

3. Data Request/Analysis on Current Beneficiaries from State/County Agencies

- a. Number of children in care receiving benefits
- b. What category of benefit
- c. How many have rep payees who are not the agency
- d. How much is the state/county collecting for each child and for all children total
- e. How money is being used (is it tied to the child at all? Is it staying within child welfare system? Is it going into general state accounts?) and how it relates to the child's disability
- f. Whether agencies are providing annual accounting of monthly benefit amount and how the funds were used in the child's best interest
- g. Whether agencies are providing notice to child's legal representative

4. POMS Policy Memo on Fiduciary Obligations of States/Agencies

Guidance should squarely explain that it is contrary to the fiduciary obligation of a state agency representative payee to use the children's SSA benefits to pay/reimburse the state agency for "current maintenance needs" when those costs are already required to be paid for by the state agency, as outlined in case law. See attached memo.

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- 5. POMS Memo Requiring Immediate Notice & Accounting to Current Beneficiaries, Legal Guardians & Legal Representatives if Payee is Not Agency**
- 6. Comprehensive SSA Assessment on State/County Compliance w/POMS**
 - a. Analysis of whether and how well each state/county is complying with the representative payee preference list
 - b. Analysis of state regs/policy, some of which explicitly direct the agency to automatically appoint itself as representative payee.
 - c. Review of whether state/county is providing documentation of attempts to identify higher level payees
 - d. Analysis of whether agencies are providing an individualized annual accounting of each beneficiary's funds
 - e. Are there distinctions between how states are handling SSI and OASDI benefits?
- 7. SSA Policy and Plans for Enhanced Oversight and Monitoring**
 - a. What action will SSA take to enforce law and policy when states are acting in violation the law/rules? Does this differ between SSI and OASDI?
 - b. How will beneficiaries be made whole?
 - c. What actions will be taken if states continue existing practices?
 - d. Where is data on P&A audits? How is that data utilized by SSA? How can that process result in better outcomes for beneficiaries?
- 8. Data Sharing Agreement Supplement**
 - a. Data on how many youth have received overpayments because their parents are still receiving SSI?
 - b. Notice trigger to inform SSA if a child is in care so that SSI payments to the parents can stop and youth are protected from consequences of the overpayments to family?
- 9. SSA-ACF-DOD-DOJ Policy and Strategy Roundtable**
 - a. Identify collaborative strategies to share information, comply with existing SSA regulations and federal law, and ensure performance of fiduciary obligations in child's best interests.
 - b. What is the extent of assets of foster children seized/frozen because of asset caps on recipients of SSI or OASDI. Where is that money going?