



Children's Advocacy Institute



Proper Use of SSI for Foster Children*

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SSI BENEFITS OF FOSTER YOUTH IMPROPERLY INTERCEPTED AND SPENT

- Approximately 10-12% of children found to have been abused or neglected and placed in foster care receive Social Security disability or survivor benefits. Many more may be eligible.
- Many states routinely screen and apply for benefits on behalf of foster youth- without ever notifying them or their attorneys/GALs. If benefits are approved, foster care agencies routinely appoint themselves as the representative payee – in violation of SSA instructions to identify and propose to SSA other caring adults and step in only as a last resort.
- Benefit checks are then sent to the foster care agency, who uses the child's SSI benefits to supplant their existing obligation to pay for for foster care and rarely for any supports, services or future needs related to the child's disability. This means that the state pays for foster care expenses for all children *except* those receiving SSA benefits, who get charged for their own care but derive no benefit from their benefits.
- In almost all cases, neither foster children nor their attorneys/GALs ever know that they were receiving benefits and never see a dollar of their benefits.
- The practice violates SSA's duty to provide proper notice; hold organizational rep payees accountable for their fiduciary obligations, enforce the representative payee preference list, and ensure benefits are used only for the child's use and benefit, than for the benefit of state budgets.



YOUTH VOICE: WHAT THE STATE TOOK



Malerie Shockley, 24

\$720 to \$790 per month during her teen years.

Shockley was moved between many foster homes and facilities in Alaska, where she says she faced abuse. She developed debilitating PTSD and panic attacks and qualified for disability benefits. **“I didn’t realize I was basically paying for my own foster care [...].”**



Tristen Hunter, 21

Nearly \$700 a month starting when he was 12.

Hunter’s mother died when he was 7, making him eligible for survivor benefits. Later, his father went to prison, and Hunter was placed in a foster home. **“I’m not even really sure where the money is now except that I don’t have it.”**



Katrina Edwards, 21

\$780/month when she was a teen

After entering foster care, Edwards ran away several times and was sent to mental health facilities. The state obtained disability benefits in her name. **“The state is taking my personal money when they’re barely even taking care of me? That doesn’t seem right.”**

Source: Hager, E. & Shapiro, J. (2021, April 22). State Foster Care Agencies Take Millions of Dollars Owed To Children In Their Care.



FEDERAL LAW AND POMS ON USE OF FOSTER YOUTH BENEFITS

- 42 U.S. Code § 6729(a) establishes that all state foster care agencies are required to provide and pay for “foster care maintenance payments” “ on behalf of each child who has been removed from the home of a relative . . .” Foster care maintenance is defined in 42 U.S. Code § 675 as “payments to cover the cost of (and the cost of providing) food, clothing, shelter, []. . .”
- 45 CFR § 75.306 explicitly prohibits agencies from using money other than state funds to pay the cost of care. The regulation prohibits the use of other (non-IV-E) federal funds for state costs.
- 42 U.S.C. § 675 requires child welfare agencies to develop individualized case plans for each child, focused on serving the best interests of foster children and specifically requiring the agency to help children in their future struggle for self-sufficiency. The entire Chafee Foster Care Program for Successful Transition to Adulthood is intended to serve this purpose.
- 20 C.F.R. § 404.2021 articulates that Social Security Administration (SSA) abide by a preference list to guide appointment of a representative payee to manage, use, and conserve a child's funds. Foster care agencies are at the bottom of the list, yet are most often the only option identified, and nearly always selected by SSA to serve.
- 42 U.S.C. § 405(j); 20 C.F.R. § 404.2035(a) outlines obligations of representative payees for Social Security benefits and deems them fiduciaries, obligated to use SSI and OASDI funds for the beneficiary’s “use and benefit” and in a manner that is in the beneficiary’s best interest.
- Social Security Administration’s Program Operations Manual System GN 00602.001 states that a representative payee must exercise discretion for each child beneficiary and apply the benefits “in the best interests of the beneficiary...” Within this framework, representative payees are permitted to use a child's benefits to pay for current maintenance needs if they are not being provided for elsewhere. **POMS GN 00602.001** explains “A payee must use benefits to provide for the beneficiary’s current needs such as food, clothing, housing, medical care and personal comfort items, or for reasonably foreseeable needs. *If not needed for these purposes... the payee must conserve or invest benefits on behalf of the beneficiary...*”) (emphasis added).

GUIDANCE FROM SOCIAL SECURITY ADMINISTRATION ON FOSTER YOUTH BENEFICIARIES

“Cases involving foster care are among the most sensitive SSA encounters.”

“It is essential that SSA do all it can to protect the rights of children who may not be able to rely on their parents to do so. It is extremely important that SSA follow all legal requirements, including conducting a complete investigation of the individual or organizational representative payee applicant, using the payee preference list appropriately to identify when other payee leads should be developed and providing due process to the child’s parent and/or legal guardian.”

Do not routinely appoint the foster care agency as payee for a child in foster care.”



SSA PREFERENCE LIST FOR REPRESENTATIVE PAYEES

- 1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;
- 2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well-being;
- 3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well-being;
- 4) A relative or stepparent who has custody of the beneficiary;
- 5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well-being;
- 6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well-being; and
- 7) **An authorized social agency or custodial institution.** [such as a foster care agency]

as amended at [69 FR 60232](#), Oct. 7, 2004; [85 FR 7664](#), Feb. 11, 2020



SSA Actions to Ensure Proper Notice and Use of SSI Benefits of Foster Children

1. Enforce and clarify POMS related to notice (GN 00503.100) that when a child is in foster care and the agency serves as the representative payee, that notice must be provided to the child's legal representative (attorney or GAL) and parent if the parent's rights have not been terminated. Provide immediate notice to all current beneficiaries.
2. Issue POMS to clarify (GN 00602.001) that when a child's maintenance needs are provided and paid for by law by a state agency, as is the case with foster children, use of the child's benefits to supplant the cost of their care provides no benefit to the child and is not allowed. Benefits must be used for unmet current needs or conserved for foreseeable future needs.
3. Enhance oversight and enforcement of law and POMS by SSA and by P&A network.
4. Enhance SSA oversight and enforcement of law and POMS on states/counties applying to serve as representative payee. Are they following prohibition on automatic self-appointment? Have they provided all information/options for SSA to appoint according to the payee preference list? When serving as RP, are foster care agencies complying with all specified fiduciary obligations?



WHAT'S NEW?

- [Up to Date Media Coverage](#)
- [A Growing Number of States Vow to Stop Seizing Benefits Owed to Foster Youth](#)
- [San Diego County has taken thousands of dollars in social security benefits - Lawsuit seeks changes](#)
- [Hawaii Introduces Resolution to Cease Practices of Taking Youth Benefits](#)
- [Arizona Introduces Bills to Screen and Apply for Federal Benefits for Children in DCS Care](#)
- [Massachusetts Considers Legislation to Protect Benefits Owed to Foster Youth](#)



Preserving the Federal Benefits of Foster Youth campaign
<https://www.sandiego.edu/cai/advocacy/youth-benefits>

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