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My Responsibilities as the Organizational Representative Payee for Supplemental Security Income Beneficiaries: A Best Practices Guide



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As a representative payee (rep. payee) you have a fiduciary duty to act in the best interest of the beneficiaries that you are serving.¹ The three major responsibilities of the rep. payee can broadly be categorized as: money management; accounting and reporting obligations; and advocacy.

I. Money Management

Your money management responsibilities mean that you have duty to actively assist the beneficiary in budgeting their monthly benefits to most effectively meet their needs. It requires an understanding of the financial obligations and spending habits of the beneficiary. Money management includes tracking what other source of funds the beneficiary may have access to as well as the bills or debts he or she has accumulated over time. This will allow you to manage the beneficiary's Supplemental Security Income² (SSI) or Title XVI funds in a manner that ensures that all of the beneficiary's basic current needs are met, while keeping enough money left for recreational expenses and savings.³ It will also enable the rep. payee to help prevent the beneficiary from incurring an overpayment.

Example of Effective Money Management

Sam receives \$1100 in SSI each month. His rent and utility bills are \$500 per month and he attends night school to become an electrician. Winter is approaching. Sam's parents live in Hawaii. Sam lives in California and longs to see he parents. Sam has diabetes. His rep. payee is Frank who works for Homestead Rep. Payee Inc.

A rep. payee may take the following steps to support Sam:

Frank frequently discusses Sam's budget with him. Whenever Sam's SSI is deposited in his correctly titled checking account, Frank uses it to cover Sam's rent and utilities and makes sure that he does not have any unmet medical needs that month. Frank and Sam have agreed to set aside \$100

¹ 20 CFR § 416.635; SSA POMS GN 00502.114 ('POMS' is a manual that SSA staff rely on to explain what they must do to comply with Social Security regulations.) It can be accessed at <https://secure.ssa.gov/poms.nsf/home!readform>

² This publication focuses on the rules pertaining to SSI recipients. In the event that a rep. payee is managing the Social Security Disability Insurance (SSDI) benefits or concurrent SSI/SSDI benefits of a beneficiary it is important to learn the differences in the SSDI rules which in many instances are less restrictive than SSI.

³ 20 CFR § 416.645

each month to save for a plane ticket to Hawaii so he can visit his parents. Frank also asks Sam if he needs any warm clothes for the coming winter. Frank takes Sam to the nearest clothing store and helps Sam get a good discount on a nice coat.

After reviewing Sam's account balance for the month, Frank realizes that Sam will be slightly above his resource limit. Frank calls Sam and asks if it is ok for him to use some of the excess balance to pay the tuition for Sam's night school. Frank explains to Sam why they must pay the tuition in order to spend down Sam's balance to avoid potential overpayment in the coming months.

Frank then gives Sam \$100 for his personal and incidental (P&I). Sam likes to use the P&I for candy which exacerbates his diabetes. However, Frank knows that once he has given the P&I to Sam he cannot prohibit Sam from spending it on candy. Instead, Frank meets with Sam to explain how Sam's eating candy may be harmful to his health. Frank and Sam agree that the P&I can be reduced and placed into Sam's savings budget so he can buy a new couch, instead of using it on candy.

a. Using the Money to Meet the Needs of the Beneficiary

Your primary responsibility as the rep. payee is to ensure that the beneficiary's basic needs are met.⁴ These needs include housing, food, clothing, healthcare, and comfort items. SSI funds should always be used to pay for those needs first before meeting the beneficiary's other financial obligations, such as repayment of existing outstanding debts.⁵ If there is any money left after the current maintenance needs have been met, you should have a clear understanding of how the beneficiary would prefer to use that money. These additional expenditures could be for items to support a more comfortable life, travel, additional medical supplies, and services to promote independence, recreation, or savings for a rainy day.

A rep. payee should take an active role in finding ways to save the beneficiary's resources. For example, you could assist the beneficiary with negotiating a cheaper rent or help him or her find more affordable housing.

⁴ 20 CFR § 416.640

⁵ 42 U.S.C. § 407; 20 CFR § 416.640(d)

You should also look for shopping discounts for items like groceries and clothes.

You should work closely with the beneficiary to come up with a budget to cover all the items he or she needs, including the allotment of allowances for (P&I) expenses.⁶ P&I can be disbursed in any way that is preferred by the beneficiary, but is usually a cash allowance.

You should also talk to the beneficiary to understand when and how he or she prefers to have the P&I disbursed. Some rep. payees disburse the P&I at the beginning of the month while others disburse it bi-weekly or in small amounts every few days.

Once P&I allowance has been distributed, the rep. payee should not dictate how the money is to be spent. That means that you should not require the beneficiary make an accounting to you or provide receipts for expenses no matter if you disagree with the beneficiary's P&I purchases.

b. Communication

In order to effectively manage a beneficiary's SSI money, the rep. payee should be in frequent communication with the beneficiary. This means you should take affirmative steps to reach out to the beneficiary at least every 2 weeks if not more frequently, even if the beneficiary does not regularly contact you on his or her own. With the beneficiary's consent, you may also coordinate with the beneficiary's social worker or service provider to purchase goods and services to meet the beneficiary's care needs, such as therapeutic devices or rehabilitative activities. Frequent communication is the best way to understand your beneficiary's current needs and spending interests.

During your check-in with the beneficiary, you should inform him or her about the account balance and find out if the current disbursement plan works for beneficiary. The rep. payee should also inquire about any additional income or resources that the beneficiary may have, perhaps from

⁶ "Personal Needs Allowance" is a term commonly used for beneficiaries residing in long-term care facilities. However, you will likely hear it also used as a term for spending money given to beneficiaries living in the community.

wages, inheritance, or gifts, so as to avoid exceeding the monthly income limit or going over resource and having monthly benefits suspended.

Accurate income and resource reporting is particularly important for beneficiaries who are receiving SSI because their eligibility and the amount of their monthly benefit depend on how much income and resources they have. If the beneficiary exceeds these limits while still receiving monthly benefits, they will be suspended from the program for the months that they are overpaid.⁷ Therefore, to avoid a suspension of benefits and/or overpayment, you must always be aware of the income and resources the beneficiary has. That way you can effectively manage their SSI benefits and accurately report relevant changes to the SSA.

If the beneficiary did receive income or resources that exceeded the limits, communication becomes particularly important to help the beneficiary spend-down the amount in a timely manner. You can talk to the beneficiary to see if he or she would like to spend the money on any outstanding bills or items that the beneficiary has been trying to save for. If the beneficiary is significantly over-resourced because, for example, he or she has received a lump sum payment, your duty as rep. payee will vary depending on the source of the funds.⁸ Although you will have SSA reporting obligations either way if it cannot be spent-down in time, it is important to remember that unless the lump sum is from a retro-active SSI payment you may not exert control over it. Therefore, for non-SSI lump sum payments such as from an inheritance, you should coordinate with the beneficiary and--with their consent--other service providers and/or members of the beneficiary's support network, to determine how the funds can best be used to benefit the beneficiary. For example, it may be appropriate to purchase burial services or work with someone who can set up a special

⁷ The resource limits are \$2,000 for an individual, or \$3000 for a couple—though there are a number of exceptions to the countable resources. The income limits are more complicated as they change annually and vary depending on the source of the income and what state a beneficiary resides in, if the state supplements the benefits. They are also subject to multiple exceptions. Therefore, it is advisable to visit the SSA website for more detailed and timely information on income limits.

http://www.socialsecurity.gov/policy/docs/quickfacts/prog_highlights/

⁸ Please see DRC publication on lump sum payments at <http://www.disabilityrightsca.org/pubs/550001.pdf>

needs or supplemental needs trust so that the beneficiary's benefits will not be impacted.⁹

II. Accounting and Reporting Obligations

The rep. payee must constantly keep track of beneficiary expenses and report all issues or changes to the local SSA office. A well-maintained accounting system not only ensures that the annual report you make to the SSA is complete, but it is also another way to understand the beneficiary's financial needs. Careful accounting also ensures that you are able to provide documentary evidence in case you are audited by the SSA or the beneficiary is disputing a SSA financial determination.

a. Record Keeping

If you keep the beneficiary funds in a bank account, you must keep your own independent ledger record to track the beneficiary funds, including a running balance, deposits, and withdrawals. You should not rely on bank records for this purpose. Each line item should have clear notations detailing the reasons for withdrawals or the source of deposits.

It is also a good practice to have a person other than the person who created the ledger reconcile the bank statements with the rep. payee's own internal ledgers and sign off on each review. Fresh eyes may uncover accounting discrepancies that may otherwise go unnoticed.

At all times, receipts for all expenses, other than what the beneficiary spends with his/her P&I should be saved and referenced in the rep. payee's ledger. Receipts should be made readily available for the staff person conducting the reconciliation.

In addition to the bank statements and internal ledgers, the rep. payee should also have a P&I log that documents all P&I disbursed to the beneficiary. The log should include the amount disbursed, the reason for disbursement, the time of disbursement, remaining P&I balance, and a

⁹ In such a situation is recommended that an attorney specializing in special needs trusts be consulted so that is drafted to effectively protect the SSI benefits. Depending on the source of the funds there are specific requirements as to who is allowed to set up such a trust. See 42 U.S.C. Sec. 1396p(d)(4)(A)

space for the beneficiary to sign off on the receipt of the P&I money. If the P&I is kept as cash on hand each P&I disbursement must clearly identify the beneficiary to whom it belongs and must be securely locked away in a safe.

b. Reporting to SSA

A rep. payee must submit an accounting of beneficiary income and earnings to the SSA annually.¹⁰ However, anything that affects the beneficiary's SSA eligibility during the year must be reported to the SSA immediately. This includes any change that affects the beneficiary's living situation, work, schooling, income, medical condition, marital status or international travel lasting more than a month.¹¹ This is to avoid the overpayment situation. Timely reporting allows the SSA to accurately adjust the benefit amount or suspend benefits if necessary for the months in which a beneficiary is ineligible.

You must also notify the SSA if your business or organization is unable to continue as the beneficiary's rep. payee. This could be for health reasons, retirement, bankruptcy, mismanagement, or just because you want to get out of the business.¹²

In all cases, the rep. payee should assist the beneficiary with finding a new suitable rep. payee or with becoming his or her own payee. It is your responsibility to coordinate the transfer of the beneficiary's remaining balance to the new rep. payee or back to the SSA if no one can be found. The SSA will act as a temporary rep. payee in such case.¹³ Keep in mind that if the beneficiary is subject to an assessment, then the SSA may withhold some amount of beneficiary funds necessary to cover the overpayment.

To the extent possible, you should attempt to establish a personal relationship with a local SSA administrator. Often times such a connection can speed up the responsiveness of the local SSA office and potentially aid

¹⁰ 20 CFR § 416.665

¹¹ POMS SI 02301.005

¹² POMS GN 00502.114

¹³ 20 CFR 416.611

in a timely resolution of any problem that might arise regarding the beneficiary's SSI benefits.

III. Advocacy

Being a rep. payee is not just acting as a fiduciary. It also means that you must also be the beneficiary's advocate when it comes to protecting his or her SSI funds.¹⁴ If the beneficiary receives a Social Security notice about any changes in his or her eligibility or benefit level, you should assist him or her in any follow-up with the SSA to ensure that the beneficiary's continued receipt of funds is protected. This responsibility is particularly important if the overpayment was assessed for a period during which the beneficiary was money managed by you as the rep. payee.¹⁵ Advocating for the beneficiary not only includes assisting him or her with submitting the appropriate documentation and evidence to dispute any SSA claims, but also accompanying the beneficiary to meetings or hearings before the SSA or an administrative law judge (ALJ) to help the beneficiary present his or her case. You should always ask the beneficiary if he or she would like your assistance in resolving a particular SSA issue.

a. SSA Correspondence

As a rep. payee you will receive correspondence from the SSA regarding many issues that affect the beneficiary.¹⁶ It is important to open these letters as soon as they arrive because they may contain extremely time sensitive information. For example if the beneficiary receives an Overpayment Notice **you must respond within 10 days** if you want the SSA to hold off on collecting repayment from the next month's benefit check and from the months beyond.¹⁷ Another important example is Continuing Disability Review (CDR) examinations notices. The SSA will periodically require the beneficiary to participate in CDRs to demonstrate

¹⁴ POMS GN 00502.114

¹⁵ As a rep. payee, you may still be liable for any fines or overpayment assessed against the beneficiary if it was as a result of a failure to provide appropriate money management. 20 CFR § 416.552; POMS SI 02201.020

¹⁶ POMS SI 02302.310

¹⁷ POMS SI 02220.010A.5.a. However, the 10-day limit may be extended if you can establish good cause as to why the request was not made on time. POMS SI 0220.010A5.b

that they still meet the disability criteria.¹⁸ Similarly, the beneficiary may need to provide certain forms of documentation in order to continue receiving benefits. These things will also have to occur within a set amount of time and you do not want to discover these requests after the deadline has passed.

b. Appealing Decisions

Any unfavorable decision affecting a beneficiary can be appealed if it is done in a timely fashion. For example, if a beneficiary's benefits are being suspended or reduced for some reason or if beneficiary's request to become their own payee is denied, these are appealable issues.

The first step in appealing a decision is filing a request for reconsideration. This should be done within 60 days of the unfavorable decision. However that time can be extended if you can demonstrate good cause for late filing.¹⁹ This can be done in a letter or by using the SSA form.²⁰ When you file the request you can specify if you would like a case review, an informal conference or a formal conference. If you request a case review, the appeal will be considered based solely on the written evidence you have provided.²¹ If you request an informal or formal conference you will have an opportunity to meet in-person at the field office with the Social Security representative and to present witnesses.²² An in-person meeting is a good idea because it allows the beneficiary an opportunity to explain themselves and answer any outstanding questions the SSA representative might have. Before a formal conference the beneficiary is entitled to review his or her file to see if there is any missing information or unfavorable information that can be addressed.

¹⁸ POMS DI 28001.003

¹⁹ POMS SI 04020.020B.2-3 The notice is considered to have been received 5 days after the date of the notice. If it is beyond the 10 or 60 day limit you can try and demonstrate why you had "good cause" for late filing and ask for the appeal to be accepted.a

²⁰ You can get a copy of the Request for Reconsideration form from your local SSA office or online by going to: <http://www.ssa.gov/forms/ssa-561.pdf>.

²¹ POMS SI 02301.300C.7

²² POMS SI 04020.050 A formal conference allows you to request that the SSA subpoena witnesses will not otherwise agree to come. Even if you do not want to subpoena a witness, it is helpful to request a formal conference to preserve the beneficiary's rights.

If the Request for Reconsideration is denied, you have the option of appealing the issue to an Administrative Law Judge. Once again, this must be done within 60 days of receipt of the unfavorable decision or good cause must be demonstrated²³. Often times you have a better chance of having a successful appeal at the ALJ level than in the field office because the ALJ has more discretion and may consider a wider range of factors and have a better understanding of the law. As discussed above, it may be appropriate to retain an attorney to represent the beneficiary at the hearing. However, if the rep. payee is acting as the advocate it is a good idea to submit a letter brief to the ALJ at least 2 weeks before the hearing detailing the issues that are being appealed and what beneficiary's position is in regard to each. You can also submit any additional evidence you want the judge to review such as recent medical records or assessments. It is important to submit new evidence in advance of the hearing if possible.

At the hearing there will be no opposing attorney. Instead both the ALJ and the advocate will have an opportunity to question the beneficiary and any witnesses. In addition to any of the beneficiary's witnesses, the ALJ will usually get a vocational expert and often a medical expert. Although the beneficiary will not be entitled to any expert reports or opinions before the hearing they are entitled to the experts' resume or C.V. so that they can question the experts regarding their qualifications.²⁴

It is a good idea to work with the beneficiary to prepare before the hearing so they are less nervous during it. You can do this by explaining the process and practicing asking and answering questions.

If you disagree with an ALJ's decision it can be appealed to the Appeals Council (AC). Once again, this must be done within 60 days of receipt the ALJ's decision.²⁵ The AC has discretion over whether or not to review the matter. They can dismiss, deny or grant the appeal.²⁶ If the appeal is granted, the case may be sent back to the ALJ for further development. This is often a very time-consuming process.

²³ HALLEX I-2-0-60 (HALLEX is the Hearing, Appeals and Litigation Law Manual and set forth the rules that SSA must follow in the appeals process.)

²⁴ HALLEX I-2-1-30

²⁵ HALLEX I-3-0-60

²⁶ HALLEX Chapters I-3-4 through I-3-8

If the AC dismisses or denies the appeal, the beneficiary can appeal the ruling in Federal District Court within 60 days.²⁷ This is a much more complicated and involved process so it is recommended that you discuss it with an attorney.

c. Overpayment Appeals

Unfortunately, it is not uncommon for a beneficiary to receive an overpayment notice.²⁸ This can be a major source of stress for beneficiary who is relying on their limited SSI benefit to meet his or her basic daily needs. Overpayment notices are issued when the SSA believes that a beneficiary has received a greater benefit than he or she is entitled to. These notices can be issued pertaining to a recent overpayment or something that is alleged to have occurred many years before. Regardless of the time that has elapsed and whether or not the money has already been spent, the beneficiary will be required to repay the amount alleged, unless he or she successfully appeals the issue or obtain an overpayment waiver. The process for appealing an overpayment decision is the same as described above, though there are several additional factors to consider.

It is important to review an overpayment notice very carefully because sometimes they are simply inaccurate due to a technical error and other times the beneficiary can demonstrate that their income was offset with allowable expenses, so in fact he or she was not overpaid.²⁹

Examples of Allowable Expenses

The beneficiary may have Impairment-Related Work Expenses (IRWEs) such as medication, personal assistance, or accommodated transportation which enables him or her to work without counting towards income.

Work incentives program such as PASS which allows the beneficiary to set aside income for vocational training and other specified expenses and not have it counted in their monthly income calculation.

²⁷ HALLEX I-4-1-2

²⁸ For more detailed information on what to do about an SSI overpayment please refer to our publication "SSI Overpayments" which can be found on our website at:

<http://www.disabilityrightsca.org/pubs/542101.html>

²⁹ <http://www.ssa.gov/oact/cola/incomexcluded.html>

The first step in disputing an overpayment notice on behalf of the beneficiary is to file the Request for Reconsideration. However, at the same time as you file for reconsideration you can also ask the SSA to “stay recovery” of the overpayment until the appeal is resolved. This means that you are requesting that they do not begin collecting repayment from the next month’s benefit check and all checks thereafter until the amount is paid off. In order to have the recovery stayed, **that request must be made within 10 days of receipt of an overpayment notice.**³⁰ In general, if this request is not made in time and good cause cannot be demonstrated for late filing, or if the appeals are denied, the SSA is only allowed to retain a maximum of 10% of a monthly benefit check for repayment.³¹ If that amount will cause a hardship for the beneficiary, you can negotiate a smaller monthly payback amount.³²

If the Request for Reconsideration is denied and you may file a request for hearing by an Administrative Law Judge (ALJ) as described in section III.b.³³

If it is ultimately determined that the beneficiary was actually overpaid you can file a request for an overpayment waiver. By filing a for a waiver the beneficiary is admitting that they were in fact overpaid in the amount alleged, but in the interest of justice or efficient SSA administration they should not be required to repay it.³⁴

³⁰ You can briefly state the reason for your request for consideration on the form in order to get it filed in time and then later provide a more detailed explanation of your appeal. This is likely necessary anyway because the form provides limited space for you to explain the reason for your appeal.

³¹ POMS SI 02220.016

³² POMS SI 02220.017A.1-2

³³ You can get the request for hearing form from your local SSA office or online by going to:
<http://www.ssa.gov/forms/ha-501.pdf>

³⁴ POMS SI 02260.001. Depending on how you go about the appeal process both and the Reconsideration review and the Overpayment Waiver issues might be heard by the administrative law judge at the same time.

IV. What a Rep. Payee is NOT

A rep. payee only has authority to assist a beneficiary with managing his or her Social Security income. That means the rep. payee cannot act as his or her representative to make healthcare decisions or other financial decisions not connected to the SSI benefit. If the beneficiary is receiving other moneys from, for example, work or inheritance the rep. payee may not control those funds and should not deposit them into the same account that holds his or her SSI income.

Example of Rep. Payee Duties for Non-SSI Income

Sam receives \$1100/month in SSI, but he also works 3 days per week at the local grocery store and is due to receive a large inheritance from his father's estate.

Sam's rep. payee should manage the SSI income, but tell Sam that he is free to spend his wages anyway he would like since it not connected to his SSI. Sam is also free to manage his inheritance without the rep. payee's interference.

However, the rep. payee must notify the SSA the amount of his wages and inheritance when he receives it. The rep. payee should work closely with Sam to help him spend down the inheritance on items that benefit Sam because Sam could potentially be over-resourced and subject to an overpayment assessment.

If the inheritance cannot reasonably be spent down in the allotted time a special needs trust should be considered. It would most likely have to be set up by someone other than the rep. payee or the beneficiary. However, if such a trust is drafted correctly, the funds in it would not affect the beneficiary's SSI benefits.

V. How do I Hold Beneficiary Funds?

The rep. payee may deposit the beneficiary's SSI benefits into either an individual bank account or collective bank account. However, in order to use a collective account, some very specific requirements must be met.³⁵ (See below list). These accounts should not have fees that are charged to

³⁵ POMS GN 00603.020

the beneficiary. If the accounts do have fees or bank charges, you can work with your banker to have them waived. Credit unions and small local banks are often more flexible with the waiver of fees.

Before you create a collective account these are some concerns you must consider:

1. Each beneficiary's share of money within the account must be readily identified by clear record keeping;
2. If it is an interest bearing account you must be able to allocate the interest payment in proportion to the share of the balance each beneficiary maintains;
3. Each beneficiary's needs can only be met with funds matching his or her balance;
4. Beneficiaries should not have debit card access to the account; and
5. SSA must review and approve the collective account in writing.

An individual account may only contain the SSI money of one specific beneficiary. If you only have a few beneficiaries for whom you are their rep payee, this may be the best way to keep track of each individual's money and account balance.

If you are the rep. payee for many beneficiaries, you may hold their SSI in a collective account. A collective account works much like a joint checking account where all the beneficiaries share one account number. However, the funds of each beneficiary must only be used for their own benefit, and separate records must be kept for each beneficiary. You may not use money in this account for your overhead costs or the bills of the agency.

You may provide a debit card for those beneficiaries that have individual accounts. However, the debit card limit should be restricted to the P&I amount that you have budgeted with the beneficiary. This protects the beneficiary from over-draft fees should he or she withdraw more money than there is in the account.

At no time should you be keeping all the beneficiary funds as cash in locked box systems. Withdrawals from a locked box are difficult to track and it makes it extremely difficult to keep proper accounting of beneficiary

balances. In addition, a locked box may allow unfettered access to beneficiary funds by anyone who can access the lock key, which could result in a high risk of theft.

a. Titling the Account(s)

Whether you hold beneficiary funds in an individual or collective account, it must be clear on its title that the funds belong to the beneficiary and is only managed by your organization as his or her rep. payee. That means any account title that only contains your organization's name or identification will not be an acceptable rep. payee account.³⁶

Generally, the title must indicate the ownership belonging to either a group of Social Security beneficiaries or an individual beneficiary name followed by an indication that it is money managed by a rep. payee organization or company.

b. Commingling of Funds

Bank Account Titling Examples:

Wrong: "Homestead Rep. Payee Inc. Account"

Right: "Social Security Beneficiary Account Managed by Homestead Rep. Payee Inc."

"Homestead Rep. Payee Inc. on Behalf of Social Security Beneficiaries"

"Social Security Beneficiary Sam Rep. Payee Trust Account"

Generally, the rep. payee may not deposit any beneficiary's SSI into an account containing non-beneficiary funds, such as a business operating account or accounts holding funds belonging to other clients that do not have a need for a rep. payee.³⁷ That practice is called "commingling". If you commingle funds it is considered as a mis-management of beneficiary funds and may be construed as fraud against the SSA. This is subject to auditing or investigation.

³⁶ POMS GN 00603.010

³⁷ POMS GN 00603.010

Ordinarily, at least 2 months of a beneficiary's SSI benefits are protected from garnishment, levy or other such legal process to recover money owed.³⁸ However, by commingling a beneficiary's SSI funds with the rep. payee's operating account it may be difficult or impossible for the beneficiary to enjoy those protections, if their SSI benefits cannot be discerned from the rest of the funds in the account. This could make the SSI benefits subject to the reach of both the beneficiary's and rep. payee's creditors.

Commingling can also result in overpayment assessments because the rep. payee's operating money is attributed to the beneficiary which is likely to put him or her greatly over the resource limit.

Additionally, there is the danger that you may inadvertently or intentionally use beneficiary funds for expenses like facility repairs or staff payroll. This is because commingling makes it more challenging to distinguish operating money from SSI benefits once funds have been commingled.

c. Conduit Payee Practices

The rep. payee should not hand beneficiary funds to a third-party to manage, such as an individual or another organization. This is called "conduit payee practice" because the rep. payee is merely acting as a conduit through which beneficiary funds flows to a third-party or the beneficiary himself. It is a practice strongly discouraged by the SSA and may often result in your removal as the beneficiary's rep. payee.³⁹

Conduit payee practice frequently occurs where the beneficiary lives in an adult residential facility (ARF) or is using an independent living (ILS) provider but is money managed by a rep. payee located far away. The rep. payee signs out a check for the entire monthly SSI amount directly to the third-party, such as the facility administrator or the ILS provider. The third-party then uses the money to pay for rent and other expenses and disburses the remaining balance as P&I to the beneficiary at their discretion.

³⁸ 42 U.S.C. § 407

³⁹ POMS GN 00608.044; 00605.066

Possible Pitfalls of a Conduit Payee Arrangement:

Frank the rep. payee is located 50 miles from Sam who lives in an ARF. Sam has lived at the ARF for 10 years and gets along with the ARF administrator, Adam. Frank and Sam rarely get a chance to meet directly due to the distance between them.

Every month Frank will write a check to Adam for Sam's entire \$1100 SSI amount. Adam uses the money to pay for the \$1000 ARF fee and cashes the remaining \$100 to be disbursed to Sam every few days as P&I. Frank does not track when and how Adam disburses funds to Sam.

At the end of the year Frank calls Sam to check up on him and finds out that Sam has only been receiving \$60 per month in P&I, and rarely worked with Adam to budget his P&I money. Adam tells Frank that he does not know what happened to the remaining \$40 each month because he never kept a ledger of money he received from Frank.

It is impossible after a year to find out who eventually pocketed Sam's \$40 each month. As a result, Sam has been defrauded and deprived of opportunities to benefit his quality of life.

The rep. payee in effect delegates the responsibilities to manage the beneficiary's SSI to a party who has no oversight or accountability for how the money is handled. Not only does the beneficiary receive much less communication from the rep. payee, but the practice creates a significant risk of mismanagement, fraud, or theft.

The SSA has not expressly prohibited conduit payee practices and it may be permissible if you have clearly documented instructions to the third-party about how to disburse the beneficiary's funds and maintain frequent direct contact with the beneficiary.⁴⁰

If you have a conduit payee arrangement with a third-party, you should instead consider whether the third-party is suitable and willing to become the beneficiary's rep. payee, particularly if the third-party knows the beneficiary well and is in a position to interact with him or her every day. If

⁴⁰ POMS GN 00605.066

the conduit practice has developed because you are located too far away from the beneficiary you should consider helping the beneficiary find another rep. payee who is closer or assist the beneficiary to become their own payee if he or she is capable.

Sam tells Frank that he feels ready to become his own payee. Frank agrees and works with Sam to come up with a plan for Sam to manage his own money.

Frank starts by increasing Sam's P&I with clear written direction that Sam is to spend the additional P&I to pay the rent and night school tuition by himself while leaving enough left for allowance and savings. Frank keeps the remaining money in Sam's individual checking account and continues to monitor his expenditures.

Frank also helps Sam obtain statements from his friends, therapist, and doctor describing that Sam has shown a significant improvement in his ability to handle his own money which is evidenced by his improving diabetic condition brought about by Sam's responsible management of his P&I which he continues to save each month instead of buying too much candy.

VI. Assisting the Beneficiary to Become His or Her Own Payee

The rep. payee should at all times consider whether the beneficiary is capable of becoming his or her own payee. To reach this goal, you should meet and work with the beneficiary to come up with a plan through which he or she can become increasingly more independent. For example, this may involve increasing P&I disbursement to allow the beneficiary to pay for his or her own rent and bills and then ensuring the beneficiary is keeping up with their new responsibilities. The rep. payee could also coordinate with trusted local businesses to have them assist the beneficiary with financial transactions.

You should be mindful that giving too much financial autonomy to the beneficiary may also be considered a conduit payee practice because you are no longer overseeing the purchases made with the funds. The rep.

payee should therefore always have written documentation detailing what the beneficiary should spend his or her money on.

The rep. payee may also assist the beneficiary with obtaining statements from friends, family, local businesses, and healthcare professionals describing his or her ability to manage money independently.⁴¹

Assuming the beneficiary wants to become their own payee, and after obtaining sufficient evidence and documentation of their ability to managing his or her own funds, you may contact the local SSA to request a review of the beneficiary's suitability to manage his or her own SSI. You should communicate with the SSA in writing and attach copies of all supporting statements.

VII. Your Rep. Payee Service is Much Needed!

Your role as the rep. payee is very important to the beneficiary. Your careful management of his or her funds enables the beneficiary to purchase important necessities while saving money for that rainy-day fund. Your diligence in helping the beneficiary conserve his or her money not only helps serve their best interest, but it also assist the beneficiary in becoming more independent by teaching the life skills necessary to live on his or her own through activities such as budgeting, accounting, balancing, and shopping for the best deals.

⁴¹ POMS GN 00502.050

APPENDIX SSA

Appeals at a Glance

Initial Determinations

If you and/or the beneficiary disagree with an “initial determination” by the SSA (ex. eligibility; benefit amount; overpayment assessment; denial of beneficiary’s request to become own payee) you have a duty to assist and advocate for the beneficiary in an appeal.



60 days to file from receipt of unfavorable notice/decision* (10 days* to request continued full payments during initial overpayment appeal).

Reconsideration

- The appeal will be decided in the field office (FO) by SSA staff.
- You can request a conference with a hearing officer or a case review on papers alone. You may bring witnesses and new evidence.
- Use Form SSA-561 or SSA-789 or write a letter to SSA (usually to FO) requesting reconsideration.



60 days to file from receipt of reconsideration decision* and ask for continued payments.

Hearing

- Appeal will be decided by an administrative law judge (ALJ) at the local Office of Adjudication and Review hearing office (HO).
- You can request an on the record review (OTR) based on the papers if the issue is very straightforward. If it is not granted you will have a hearing.
- ALJ may request a vocational expert and/or medical expert. You may bring witnesses and submit additional evidence.
- Use Form HA-501 or write a letter to the SSA (usually to the FO) requesting review.
- A pre-hearing letter brief and new evidence is recommended in advance of hearing.



60 days to file from receipt of hearing decision.

Appeals Council

- Appeal will be decided by the Appeals Council (AC) in Virginia without a hearing.
- The AC will grant, deny or dismiss your request without considering the merits.
- Use Form HA-520 or write a letter SSA (usually to ODAR) requesting review.
- If you do not have time to submit a letter brief or new evidence with the request for review you can submit written request for addition time to submit evidence.



60 days to file from receipt of Appeals Council notice of action.

Federal Court

- Your appeal will be decided by a judge in U.S. District Court without a hearing.
- This is a more formal filing process. You will need to check with your local rules of court for specifics.
- There is a filing fee for filing in District Court. If the beneficiary cannot afford to pay the fee he or she can file a request to proceed In Forma Pauperis.
- The decision will be based on the written transcript which will include all exhibits and appeals previously submitted. You are also expected to file a formal legal brief in support of your appeal.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>