

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001
 CESAR A. PERALES
 Commissioner

(An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.)

ADMINISTRATIVE DIRECTIVE

TO: Commissioners of Social Services

TRANSMITTAL NO: 83 ADM-15
 (Adult Services)

SUBJECT: Financial Management Procedures for
 Protective Services for Adults (PSA)

DATE: April 15, 1983

SUGGESTED
 DISTRIBUTION: Directors of Accounting, Income Maintenance,
 Medical Assistance, Services, Attorneys

CONTACT PERSON: Questions concerning this release should be directed as follows: program questions to the Division of Adult Services 1-800-342-3715, Christina Hay, ext. 3-1713, Sharon Lane, ext. 3-8728, Irv Abelman ext. 131-5097; fiscal questions to the Bureau of Local Financial Operations, Upstate Region, 1-800-342-3715, Richard Radzysinski, ext. 4-0192; Metro Region, Anthony Funigiello, (212) 488-4516.

I. PURPOSE

The purpose of this directive is to advise districts of the requirement to establish a financial management system for the PSA program and to develop and implement detailed written procedures regarding the system in order to assure the responsive and effective delivery of financial management services to PSA clients. This administrative directive assists the districts in meeting the requirements, as supported in Section 473 of the Social Services Law and as set forth in Part 457 of the Department Regulations, to function as a conservator, representative payee or protective payee when such services are required by a PSA client and there is no one else capable or willing to act in this capacity.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Soc. Serv. Law & Other Legal Ref.	Bulletin/Chapter Ref.	Misc. Ref.
79 INF-8 80 ADM-71		Part 457	473 SSL	Bulletin 194	Consolidated Services Plan
82 INF-6					Guide to Procedures in Financial Management

II. BACKGROUND

PSA clients must be: at least 18 years of age; have mental and/or physical impairments; be threatened with harm by the actions of themselves or others; have unmet essential needs; and have no one able or willing to assist them in a responsible manner. Since these individuals have a limited capacity to act in their own best interests, there will be specific instances when they will be unable to properly manage their financial resources. Oftentimes this problem is compounded by the fact that individuals have limited or inadequate funds to meet their needs.

The increase in the numbers of frail elderly and mentally impaired persons residing in the community has resulted in a gradual increase in requests for financial management services and the identified need for the entire spectrum of financial management services. A standard operating procedure must be in place in each local district if the needs of PSA clients are to be met in a responsible, responsive manner, and if the district is to have the greatest degree of protection as it manages an individual's financial resources.

There are several benefits to the client and the district resulting from the effective provision of the financial management component of PSA. There are instances when the provision of this service in a timely and appropriate manner will alleviate a serious situation, precluding the occurrence of a crisis. Failure to provide financial management, in some instances, may forestall the provision of other essential benefits and services leading to further deterioration of the person's condition. The caseworker may be unnecessarily expending time attempting to fix problems caused by financial management difficulties rather than addressing the source of these problems which are affecting the overall functioning of the individual. In these situations, the Department views the financial management component of PSA as a potential facilitator to the provision of the appropriate range of services. It is also possible that the provision of the service may prevent untimely placement in an institutional setting or reinstitutionalization for certain individuals. Timely delivery of appropriate financial management services is not only supportive of the "least restrictive environment" philosophy of PSA, but also may prove to be a cost-effective means of maintaining persons in the community.

The Department is supportive of district efforts to develop and utilize other resources for delivering the financial management component of PSA. Additional community resources could include, but not necessarily be limited to, other public or private agencies, attorneys, family and friends. Given the nature of the service, the development and utilization of other resources will have to be undertaken in a judicious manner with effective accountability measures included. Unfortunately, for a PSA client, his natural support system may no longer be available or appropriate as a resource to assist with financial management.

III. PROGRAM IMPLICATIONS

Each local department of social services, in accordance with Section 473 of the Social Services Law, Part 457 of the Department's regulations and the State's Consolidated Services Plan, is required to provide financial management

services on behalf of PSA clients when these services are determined necessary. As a result of this directive, each district will have to develop a financial management system and establish written procedures supporting that system.

Given that the system must encompass the entire spectrum (informal to formal) of financial management services, it will necessitate interaction and discussion among various divisions in your district, including services, accounting, and/or fiscal administration, medical assistance, income maintenance, and legal. The involvement of accounting is crucial to the establishment of a sound fiscal system. In the development of the system there are five basic considerations which must be addressed and incorporated:

1. The client's money must be readily accessible;
2. There must be a method for meeting emergency needs of the client;
3. Controls and accountability measures must be securely in place for the protection of the client and for the protection of the district and its staff who will be managing the client's funds;
4. There must be compliance with state fiscal requirements; and
5. There must be compliance with the county fiscal office's requirements.

The Department recognizes that the development of such a system will take time and effort and that a high degree of cooperation will be required of staff in various divisions, especially in services and accounting. However, as stated above, the result should be beneficial for both caseworkers and clients as time can be utilized for addressing the needs of the client, rather than being consumed by the problems inherent in an unrefined, unresponsive service delivery system.

IV. REQUIRED ACTION

1. Each district shall review its current financial management system for PSA, however that may be defined, to determine if it meets the requirements of this administrative directive.
2. Districts that currently have a financial management system in place which may adhere to the requirements as set forth in this directive may request a review by this Department to determine if the system is approvable. Such requests must be submitted no later than June 30, 1983.
3. Each district shall develop written procedures for financial management services for PSA and implement the procedures which, at a minimum, shall incorporate the requirements set forth in this directive and its attachments. Required actions are identified with a ** and the "SHALLS" are capitalized.

4. No later than June 30, 1984, each district shall submit assurance in writing to the Department that a financial management system for PSA clients has been established in accordance with this administrative directive with written procedures on file. The letter of assurance shall be submitted to:

Deputy Commissioner
Division of Adult Services
New York State Department of Social Services
40 North Pearl Street
Albany, NY 12243

5. Each district shall train all involved staff when the system is in place.

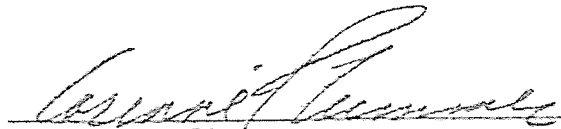
V. ADDITIONAL INFORMATION

1. Although this material relates specifically to financial management services for PSA, you may find it has application for financial management services for non-PSA clients.
2. Staff should thoroughly review this entire directive and 79 INF-8 prior to any detailed development work. Technical assistance will be available from the Department's program and fiscal staff. In order for state staff to be responsive to the needs of the districts, requests for on-site technical assistance should be received by the Department by May 31, 1983. This will allow for planning and scheduling of visits in a responsive, efficient manner. Requests received after this date will be responded to as time and staffing constraints permit.
3. The Department will conduct regional technical assistance sessions on a statewide basis. These sessions will be for program and accounting/ fiscal staff of all districts and will address the contents of this directive and other general information relative to this directive. They are not intended to address district specific problem areas. Specific concerns related to each district's financial management system will be addressed via the on-site technical assistance at the request of the district.
4. Material from the Federal Register regarding the Social Security Administration's regulations on representative payment under Titles II, Old Age, Survivors, and Disability Insurance (OASDI), and XVI Supplemental Security Income for the Aged, Blind and Disabled (SSI) of the Social Security Act is attached.
5. Attached is a copy of the legislation which was signed into law as Chapter 489 of the Laws of 1982 with an effective date of October 1, 1982. This bill expands the powers of the court in providing protection of a

proposed conservatee's property, pending appointment of a conservator. This bill would allow a court to issue a temporary restraining order preventing any specified person from affecting the property of the proposed conservatee and to give the temporary restraining order the effect of a restraining notice to persons having custody of the property of the proposed conservatee. It would prevent any specified person from doing or allowing any act or omission endangering the welfare of the proposed conservatee. The temporary restraining order could be issued upon the production of proof that in the absence of such an order the property of the proposed conservatee would be dissipated to his detriment or his welfare would be endangered.

EFFECTIVE DATE

This directive is effective March 15, 1983.


Corinne Plummer
Deputy Commissioner
Division of Adult Services

Attachments

Financial Management System for Protective Services for Adults: Requirements and Guidelines for the Division of Services

The following requirements and guidelines have been developed to assist you in establishing a financial management system in your district. Although the accounting division in each agency carries major responsibility for fiscal transactions, it is important that in these particular instances the service division is acutely aware of its obligation to act responsibly in managing the clients' financial resources, and to be accountable for its actions. It would be extremely prudent to keep this in mind as you develop the system. It is imperative to have the ability within the system to account for all funds disbursed on behalf of an individual.

You should refamiliarize staff with 79 INF-8 which contains basic information on financial management which should prove useful as you develop your system. Remember that it is important to develop a system which supports the entire spectrum of financial management services. As services staff, it is also very important to bear in mind the concept of providing the service by the least restrictive measure. The main purpose of financial management services is to assist the client, in the best way possible for him, to maintain his optimum level of functioning. In several instances, a by-product will be the easing of the caseworker's difficulties in dealing with the case.

When a PSA case has been referred to and accepted by the agency, during the assessment period it is important that the need for financial management services be addressed immediately. The October 1981 revision of the definition for PSA requires that "Conservatorship or other financial management proceedings have been started within the first 50 days of the provision of PSA" (60 days from the date of eligibility) in order to extend the time period for the delivery of homemaker and housekeeper/chore service from six months to a maximum of one year. The initiation of financial management proceedings within 50 days, at a minimum, requires that a memo which is signed by the caseworker, and by the supervisor is formally filed in the case record. The memo should stipulate what financial management proceedings have been initiated and briefly state supporting evidence. Depending upon the level of financial management being pursued the memo may be addressed to the attorney, to the Director of Social Services, to file, or to the income maintenance supervisor, etc. The important issue is that a formal statement has been made regarding financial management proceedings and is on file to support extending homemaker or housekeeper/chore services.

During the evaluation of a client's ability to manage his finances, you need to consider what resources may be available to assist him, and what his short term and long term potential for financial management may be.

When a decision is made that the individual does not need financial management, that should be clearly stated in the record as part of the assessment material with supporting statements. As ongoing assessment occurs, you must be prepared to be responsive to an ensuing need for financial management services.

** If financial management services are considered necessary, then the local district SHALL establish a separately identifiable case record which SHALL include, at a minimum, the documentation specifically related to supporting the flow of money. This includes the information set forth in part d,e,f,g, and the updated financial management plan record noted in part h. For example, the folder could be

labeled or color-coded so it is easily identifiable and retrievable, and may be kept in the main services case file or in a separate file in the workers area. Other related documentation may be kept either in this same record or in the established services case record.

** The agency record(s) SHALL:

- a. document the need for financial management services;
- b. document the need for the particular level of financial management services you have selected to deliver. This would include reasons less restrictive measures are not being utilized. Written supervisory approval or disapproval SHALL be required as a part of this documentation with the supervisor signing and dating the submitted documentation. A disapproval by a supervisor SHALL include reasons for such disapproval;
- c. record all possible resources (e.g. family member, neighbor, other agencies, church, etc.) available to assist the client with financial management and the potential degree of success anticipated in pursuing those resources, and the final outcome. Include copies of all correspondence;
- d. include a financial management plan record which will specifically explain the anticipated budget breakout (e.g. rent, food, sundries, clothing, telephone, department store payment) for the client. The supervisor SHALL sign and date the plan, or any revisions, to signify approval.
- e. include a ledger sheet to record all fiscal transactions. If a client is capable of understanding the transaction, the services staff SHALL have him acknowledge in writing that he has received a check(s) or cash. If the client is not capable of understanding, such information SHALL be included in the financial management record;
- f. include 1 copy of each authorization document to expend funds (see Accounting Guidelines for minimum information requirements);
- g. include an agreement signed by the client to indicate his accord with any informal method. The agreement SHALL be time-limited, SHALL state the specific conditions of the agreement about assistance with money management and SHALL contain a statement to assure the client's right to reassume full responsibility for money management upon request. The Department strongly recommends the involvement of district legal staff in the establishment of such agreements.
- h. include any change in the circumstances of the client which will affect the financial management plan and document what that effect will be and any adjustments that are made by the inclusion of an updated financial management plan record;

- i. document the money management ability of the client on an as-needed, case-specific basis in order to support the need to pursue either more restrictive or less restrictive means of financial management;
- j. include proof/documentation of other necessary information as required in the establishment of formal types of financial management services (e.g. conservatorship, representative payee, etc.); (*)
- k. include all completed forms required by other agencies when application and approval for a fiduciary is being pursued. (e.g. Social Security- representative payee);
- l. include all written communication and document verbal contacts with legal staff; include all court-related material when formal financial management services are being pursued;
- m. record the specific responsibilities of services staff and legal staff in each case, for those cases necessarily involving legal staff on an ongoing basis; and
- n. include any other documentation and/or information (e.g. transmittal sheet) pertinent to the financial management component of the PSA case.

You will note that the one major item missing from the above list is receipts for all expenditures. You must have a receipt to account for all expenditures. However, the receipts are to be maintained in the accounting division. You should establish a method, by means of a basic transmittal sheet, of forwarding the receipts to the accounting division on a routine basis as established by discussion and agreement between the two divisions in your agency.

The establishment of a separately identifiable financial management case record has several advantages. It gives a comprehensive picture of an individual's finances making it much easier for a supervisor to monitor and for any staff person to take responsibility if the designated caseworker is unavailable. If a situation should arise where there is some question as to the current balance of the individual's account, the ledger sheet maintained in this record would serve as an additional checkpoint in attempting to resolve the question. In addition, you have the balance-on-hand figure so you do not always have to contact accounting for that information. You can also determine whether or not you and the client are establishing any unacceptable spending patterns. The ledger sheet, if designed appropriately could give you information requested by the Social Security Administration when they request an accounting from the Representative Payee.

** The initial determination about the level of financial management and the financial management plan record SHALL be approved by a supervisor. This will help assure that the correct level of financial management is being pursued and moves responsibility for the decision from a specific caseworker, making it an agency decision. This is a supportive measure for the caseworker and a safeguard for the client.

(*) (Reference: Guide to Procedures in Financial Management)

** Once the initial determination has been approved, the status of the financial management component of the service SHALL be thoroughly reviewed, at a minimum, on an annual basis. Changes in the client's condition will determine the need for interim assessments. ** At the time of such assessment, the financial management plan SHALL be updated to reflect the current status of the case.

The following requirements and guidelines address-the various levels of financial management:

(a) Informal

Some of the more routine informal methods include direct deposit, assistance and supervision on a non-restrictive basis from a case manager, case aide, and homemaker or housekeeper, counseling, training in household management and assisting friends, relatives or other individuals to provide financial management services. In discussing the problem with the client, he may request that someone actually retain his checkbook and oversee all his transactions. ** In instances where informal methods with a somewhat more restrictive nature, such as this are employed, services staff SHALL file in the financial management case record, a time-limited agreement signed by the client which specifies the conditions of the service including a statement regarding his right to discontinue the arrangement immediately upon written or verbal request.

If there is doubt regarding the individual's capacity to understand the content and purpose of the agreement, staff should obtain an assessment from an appropriate professional before pursuing such action. If it is determined that the individual does not have the capacity to understand the content and purpose of the agreement, then no agreement should be established. As was previously noted, district legal staff should be involved in establishing such agreements. The legal staff may want to be involved in each instance where an agreement is drawn up or they may develop a form agreement which can be utilized thereafter without involvement by legal staff in individual cases. ** If the district established the policy that it will not do the more restrictive informal methods requiring an agreement, then the district shall provide an alternative method for addressing the financial management needs of the client.

(b) Formal

There are seven (7) methods of formal financial management, including power of attorney, vendor restricted payment, protective payment, representative payee, conservator, committee and guardian of the mentally retarded, which may be utilized in PSA cases. These methods are noted in some detain in the Guide to Procedures in Financial Management which was disseminated to all districts upon its completion in the spring of 1980.

OCR Notes: Though "detain" in original – should be "detail"?

Power of Attorney, (POA) whether to be with general power or limited power over a specific area, will have limited application in local districts. A power of attorney does not afford as great a degree of protection for either the client or the local social services district as do other types of formal financial management. It is revocable at will by the principal and has no requirement for accounting for expenditures made on behalf of an individual. Therefore districts are advised to be extremely prudent in utilizing this method of financial management.

The district's attorney should evaluate each case where POA may be appropriate in light of the particular circumstances of the individual case. In certain instances, use of a POA may be appropriate, with either a district official or some other person (friend, relative, clergyman, agency official, etc.) serving as the attorney-in-fact. It is normally preferable for a POA to be as specific and limited as possible.

District staff involved in financial management should also understand the difference between POA and a durable FDA. The distinction is that a competent individual may execute a durable POA which specifically states that it will survive the subsequent disability or incompetence of the individual. On the other hand, an ordinary FDA is permitted to last only as long as the individual remains competent.

Caseworkers, in their professional capacity, should not accept designation as power of attorney.

** If it is necessary for the district to assume power of attorney, the district SHALL maintain the record as required in this directive.

Vendor restricted payment as a method of financial management will be mostly the responsibility of the income maintenance staff in terms of the authorization procedure. Services staff are responsible for making the referral to income maintenance with complete instructions as to what expenses will be met through a vendor restricted payment. ** A mechanism for follow-up SHALL be established by services staff to verify that the financial management services have been established as requested. ** In those instances where Income Maintenance has referred the case to services, the services staff SHALL advise income maintenance staff of the determination made in regard to financial management services. Again, services staff are responsible for ascertaining the level or financial management and for follow-up to assure that the service has been established as requested.

** If a client needs to have his finances handled completely through the use of vendor restricted payments, services staff SHALL make sure that there are minimal personal funds available to the client.

Protective payments can only be utilized in Aid to Dependent Children and Home Relief cases and therefore has a limited application for PSA. The number of such cases requiring PSA is minimal at the present time.

** For those cases which are PSA and require protective payment, or one of the remaining, more restrictive, formal methods of financial management (representative payee, conservator, committee and guardian of the mentally retarded) services staff SHALL maintain the case record as required by this directive. Services staff should also familiarize themselves with the accounting staff's procedures in supporting financial management services in order to utilize the system appropriately.

In the initial stages of pursuing more restrictive measures of financial management in which legal staff would become involved, the Department highly recommends that services staff formalize referrals or requests and subsequent exchanges of information through written exchanges. Once the local

district has been designated as the fiduciary, depending upon the amount of money and types of assets involved, the local district's attorney may have an ongoing responsibility in the case. For example, investment procedures and real property transactions should, at a minimum, be overseen by the agency's attorney. It is imperative that the delineation of responsibility between services and legal staff is clear and understood by both parties.

Points of General Application

Whenever possible, the client should be involved in the decision making process and every attempt must be made to help him understand the action you are taking and the reason(s) for doing so.

It is worth noting here that the need for any type of financial management services does not automatically define the case as a PSA case. Since the request for financial management services may be initiated by other divisions or units within your agency, it will be important for services to do a full assessment of the situation and determine whether in fact the case qualifies for Protective Services for Adults.

** As previously noted in the discussion of vendor restricted payments, services staff SHALL make sure there are minimal personal funds available to the client. In all instances of financial management services, it is important to address this particular need of the client. ** Appropriate accountability SHALL exist for disbursement of these personal funds. The client can sign a receipt for the check(s), cash or funds he receives or can sign the ledger card which has a record of all transactions.

** In all instances there SHALL be a mechanism in place which proves that the money or check has left your hands and is now the responsibility of another individual. Depending upon the circumstances at the time, the other individual may be the client, your co-worker, your supervisor, your commissioner, the client's sister, etc.

Imprest or Revolving Fund

As you will note in the accounting guidelines, an imprest fund (or revolving fund) can be established in such a manner as to completely address the needs of an effective, accessible financial management system. However, a Services staff would authorize a withdrawal amount in the established manner which they may receive as money rather than in check form. It is important for the worker to return receipts and/or any unused portion of the money to the cashier in as timely a manner as possible. ** If some of this money is given to the client, then there SHALL be some type of written acknowledgement by the client that he has received the stated amount,

Food Stamps

There may be cases where the agency feels that assistance is needed by the client to assure appropriate utilization of food stamps. Basically, the caseworker can involve the client only on a voluntary basis to accomplish this. Another option is to find a responsible individual that the client is willing to designate as his authorized representative. The authorized representative can cash the Authorization to Purchase (ATP), and with the household's full knowledge, can use the identification card and food stamps to purchase food for the household.

If the latter option is being considered by the caseworker as a potential alternative to present to the client for his consideration, then the caseworker should assess the potential authorized representative(s) prior to his discussions with the client. The caseworkers must be reasonably sure that the suggested individuals are capable of acting in the best interests of the client.

If one or more potential authorized representatives are being considered by the client, the caseworker can assist in helping him to understand the choices, but the final designation is the right of the client.

In instances where an authorized representative is misusing the food stamps, the caseworker should report the situation to the agency's food stamp unit for proper action.

(References: New York State Food Stamp Manual, Section II, pp 16-18; June 7, 1982, Distribution of Consolidated Food • Stamp Correspondence, New Policy, Section 4, Disqualification of Authorized Representative)

Purchase of Services

** Districts opting to contract for financial management services SHALL assure that the contractor meets all the requirements of this directive which would apply to the portion of the case for which the contractor has service delivery responsibility. ** Depending upon the service delivery responsibilities carried by the contractor and those carried by the local department of social services, appropriate records as required by this directive SHALL be maintained by each involved party. ** It is not necessary to maintain duplicate records for purposes of this directive, however complete sets of records on shared cases SHALL be readily available for review upon request by the Department.

Financial Management System for Protective Services for Adults: Accounting and Fiscal Guidelines1. Background

The following guidelines are provided to assist the local districts in developing procedures which will provide for sufficient internal controls including: separation of duties, specific responsibilities, and the establishment of a complete audit trail.

2. Receipt of Funds

Social Services Law Sec. 87 directs that all funds received by a local social services district must be deposited with the county fiscal officer. Money received for a person under a representative payee, protective payee or conservatorship arrangement should be placed in a T53 trust account.

3. Distribution of Funds

All disbursements of funds should be authorized by a document which has been signed by the case manager and his/her supervisor. This document should be presented to the accounting section to initiate payments. At a minimum, the documents should include the client's name and address, case number, amount, date, and the above mentioned signatures.

The accounting section should retain the authorizing document and maintain a permanent record of all transactions with a trust account ledger care for each case.

4. Options

It is understood that in some districts it is not possible for the fiscal officer to respond as quickly as might be desired with funds from trust accounts. With the consent of the legislative body of the county the following procedure is recommended. A revolving fund may be established from the trust account which would give the local social services Commissioner or his designee the authority and ability to write checks to clients. The initial amount would be transferred from the trust control account. At the end of each month, the revolving fund is replenished from the individual trust accounts involved in that period.

The authority to set up and maintain such revolving funds is derived from County Law Sections 376 and 371.

In a given district it may be desirable to make use of a revolving fund only for emergency situations. Other districts may wish to use this procedure for all transactions. The volume of transactions would dictate the size of the fund,

5. Miscellaneous

Receipts for all expenditures (within reason) made on behalf of the client should be kept by the social services accounting section. A signed slip by the client for money retained as pocket money should be obtained if feasible. This would help to maintain a more complete record of disbursement.

STATE OF NEW YORK

S. 7581-A
Cal. No. 293

A. 9372-A

SENATE—ASSEMBLY

(Prefiled)

January 6, 1982

IN SENATE—Introduced by Sens. GOODMUE, BASSUSH, BERMAN, BRUNG, LACK, MARONI, MARKOWITZ, MENDEZ, RUIZ, WINIKOW—read twice and ordered printed, and when printed to be committed to the Committee on Mental Hygiene and Addiction Control—reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY—Introduced by M. of A. CONNELLY—read once and referred to the Committee on Mental Health, Alcoholism and Substance Abuse—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, in relation to authorizing certain provisional remedies relating to proposed conservatees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The mental hygiene law is amended by adding a new section
2 77.08 to read as follows:
3 § 77.08 Provisional remedies.
4 (a) The court may, for good cause, with or without security, include
5 in an order to show cause commencing a special proceeding under this ar-
6 title a temporary restraining order when:
7 1. the petition seeks an injunction prohibiting any specified person
8 from obtaining or arranging for the sale, assignment or disposal of the
9 property of the proposed conservatee or doing or suffering to be done
10 any act or omission endangering the welfare of the proposed conservatee;
11 2. an affidavit based upon personal knowledge in support of the peti-
12 tion, along with other proofs, if any, satisfactorily demonstrates that
13 in the absence of such restraining order, the property of the proposed
14 conservatee would be dissipated to his detriment or the welfare of the
15 proposed conservatee would be endangered; and

EXPLANATION—Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

SA

LBO2-26-29-546A

1 3. the person sought to be restrained is not the proposed
2 conservatee.

3 (b) Notice of a temporary restraining order shall be given to any
4 person restrained and to any person having custody or control over the
5 person or property of the proposed conservatee in such manner as the
6 court may prescribe. Such temporary restraining order shall neither be
7 vacated nor modified except upon notice to the petitioner and to each
8 person required to receive notice of the petition pursuant to subdivi-
9 sion (a) of section 77.07 of this article.

10 (c) Where it satisfactorily appears from the petition, affidavits,
11 and such other testimony or proofs as may be required by the court that
12 a person has done, suffered to be done or omitted to do, or threatens or
13 is about to do an act that endangers the welfare of the proposed conser-
14 vatee, or has acquired or is about to acquire any property from the
15 proposed conservatee during the time of his alleged impairment without
16 adequate consideration, the court may, with or without security at any
17 stage of the proceeding, enjoin such person from selling, assigning, or
18 disposing of said property or confessing judgment which may become a
19 lien on said property or receiving or arranging for another person to
20 receive any additional property from the proposed conservatee during the
21 pendency of the proceeding hereunder or doing or suffering to be done
22 any act or omission endangering the welfare of the proposed conservatee.
23 Such order shall be made upon notice of motion or upon the initiative of
24 the court and may, in the discretion of the court, be continued for ten
25 days after the appointment of a conservator. Notice of an injunction
26 shall be given to any person enjoined and to any person having custody
27 or control over the person or property of the proposed conservatee in
28 such manner as the court may prescribe.

29 (d) Notice of the appointment of a conservator shall be given to any
30 person restrained or enjoined and to any person ordered to receive not-
31 ice of such restraint or injunction in such manner as the court may
32 prescribe.

33 (e) At any stage subsequent to the commencement of a proceeding, the
34 court may appoint a temporary receiver to preserve the property of the
35 proposed conservatee pending adjudication of conservatorship.

36 (f) Where it satisfactorily appears from the petition, affidavits,
37 and such other testimony or proofs as may be required by the court that
38 the interest of the proposed conservatee would be appropriately served,
39 the court may provide in a temporary restraining order that such tem-
40 porary restraining order shall have the effect of:

41 1. a restraining notice when served in a manner and upon such persons
42 as the court in its discretion shall deem appropriate.

43 2. conferring information subpoena power upon the attorney for the
44 petitioner when the court in its discretion shall deem it appropriate.

45 (g) Where such a temporary restraining order provides for a restrain-
46 ing notice a person having custody or control over the person or
47 property of the proposed conservatee who receives such notice is forbid-
48 den to make or suffer any sale, assignment, transfer or interference
49 with any property of the proposed conservatee except pursuant to an or-
50 der of the court.

51 (h) Where such a temporary restraining order provides the
52 petitioner's attorney with information subpoena power service of a copy
53 of the order together with an information subpoena shall require any
54 person so subpoenaed to provide petitioner's attorney with any informa-
55 tion concerning the financial affairs of the proposed conservatee.

1 § 2. Subdivision (d) of section 77.25 of such law is relettered sub-
2 division (e) and a new subdivision (d) is added to read as follows:

3 (d) To the extent permitted by the court order appointing a conserva-
4 tor, any contracts, conveyances or dispositions made during the pendency
5 of the special proceeding by the conservatee in favor of or at the in-
6 stance of, any person who had actual notice thereof, as the result of
7 fraud, restraint or undue influence, shall be voidable at the option of
8 the conservator.

9 § 3. This act shall take effect on the first day of October next suc-
10 ceeding the date on which it shall have become a law.

§ 271.703 Tight formations.

(d) Designated tight formations.

(91) Monte Christo Vicksburg 9000' Formation in Texas. RM479-75-035 (Texas—20).

(i) Delineation of formation. The Monte Christo Vicksburg 9000' Formation is located in a portion of Hidalgo County, Texas, and is encountered in portions of the following surveys: Jackson Subdivision of the San Salvadore Del Tale Grant, Juan Jose Balli Survey A-290; Section 200, Tex.-Mex. Ry. Co. Survey A-124; Section 206 Tex.-Mex. Ry. Co. Survey A-137; Section 207, Tex.-Mex. Ry. Co. Survey A-126; Section 210, W. T. Bomar Survey A-324; Section 211, Tex.-Mex. Ry. Co. Survey A-128; Section 214, Macedonia Vela, Jr. Survey A-323. Excluded from the designation is a rectangular area in the Juan Jose Balli Survey A-290, two sides of which extend due north and south, the north line being 750' north of and the west line being 750' west of the Shell Oil Co. Bright & Schiff Hamman #1 Well, and the south side being 750' south of the east line being 750' east of the Shell Oil Co. Bright & Hamman #2 Well.

(ii) Depth. The Monte Christo Vicksburg 9000' Formation ranges from a depth of approximately 9000 feet to approximately 9700 feet, with a gross average thickness of approximately 650 feet. The bottom of the formation may extend as deep as 10,400 feet in the undeveloped areas.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind and Disabled; Representative Payment

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations reorganize and restate in simpler language our regulations on representative payment under titles II, Old-Age, Survivors, and Disability Insurance (OASDI), and XVI, Supplemental Security Income for the Aged, Blind, and Disabled (SSI) of the Social Security Act. These regulations

(1) explain representative payment; (2) state when title II and title XVI benefits will be paid to a representative payee rather than directly to the entitled person; (3) indicate the procedure we follow in selecting a representative payee; (4) specify the responsibilities of a representative payee; and (5) clarify our responsibilities to the beneficiary when we make payments to a representative payee on his or her behalf.

DATE: These amendments are effective July 14, 1982.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 584-7452.

SUPPLEMENTARY INFORMATION: We have rewritten and reorganized the existing regulations to make them clearer and easier for the public to use. In the process of reviewing our existing regulations, our policies in this area were also reexamined. We decided that the regulations should continue to present a set of basic guidelines for persons acting as representative payees. We also added to the regulations several of the policies we now follow in making representative rather than direct payment but which are not in the current regulations. First, we have added a provision to explain that we will give a beneficiary or the individual acting on his or her behalf advance notice before we make a determination that representative payment will be made. Second, we have added a provision to indicate that when conserved funds are held in an interest-bearing account, the interest from the account, as well as the principal, is the property of the beneficiary. Third, we have added a more complete explanation of how we select a representative payee and what we expect of him or her once the selection has been made. Fourth, we have clarified our responsibilities to a beneficiary when we select someone else to receive payments on the beneficiary's behalf. Fifth, we have added to the list of representative payee responsibilities, the responsibility to report to us any event which occurs that will affect the beneficiary's continued right to payments.

The Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on December 1, 1980 at 45 FR 79601 with a 60-day comment period.

Revision and Reorganization of the Regulations

These regulations are being revised and reorganized to simplify and improve our regulations. The regulations carry out sections 205, 1102, and 1631 of the Social Security Act.

The current regulations on representative payment of title II benefits are in Subpart U of Part 404 in Title 20 of the Code of Federal Regulations. On May 29, 1981, Subpart Q of Regulations No. 4 was redesignated as Subpart U (§§ 404.2001-2055) and a new Subpart Q, implementing section 304 (Determinations of Disability) of Pub. L. 95-265 (the Social Security Disability Amendments of 1978) was published as a final regulation at 46 FR 29100-29217. Corresponding title XVI regulations appear in Subpart F of Part 416 in Title 20.

When We Make Representative Payment

As a general rule, we pay benefits directly to the person entitled to receive them so that the person will have the full use of and control over his or her own funds. However, when we have reason to believe that a beneficiary is not able to handle the funds in his or her own interest, we investigate to determine whether benefits should be paid to someone else on his or her behalf. If we determine that a beneficiary cannot manage benefit payments in his or her own interest, we will select a representative payee and certify payments to the payee for the use and benefit of the beneficiary. Before we make this determination, we must be sure that the interests of the beneficiary will be served by our making representative rather than direct payment. Whenever we make representative payment, we certify payment to the representative payee on behalf of the beneficiary. This is to indicate that payment is being made to the representative payee as a fiduciary, and that the money is not the payee's own or for the payee's benefit, but solely for the benefit of the beneficiary. If we pay benefits to a representative payee and the representative payee misuses the benefits, we have no authority to make restitution of the misused funds and that the responsibility for restitution applies to the representative payee. (See §§ 404.2041 and 416.641.)

There are certain situations where we always make representative payment. For example, if we learn that a beneficiary has been found legally incompetent, we will name a representative payee. The payee we

select will often be the court-appointed fiduciary. However, depending upon the circumstances, we may select some other person who shows a personal as well as a financial responsibility for the beneficiary. Also, by law, we must select a representative payee to receive the Supplemental Security Income payments of a person who is eligible for benefits on the basis of a disability and who has been medically determined to be an alcoholic or a drug addict. Also, we generally name a representative payee to receive the benefits of a person under age 18.

How We Select a Representative Payee

The existing regulations describe the information we need from a person before we select him or her as a representative payee. They do not indicate, however, the preferences we use in selecting a payee. Our list of preferred payees is a guide we have prepared on the basis of our experience. It is considered along with all other factors in helping us select an appropriate payee for the beneficiary. We have included these preferences in §§ 404.2001 and 416.601.

Before We Name a Representative Payee

We have added a section to the regulations to reflect our current procedure of giving advance notice of our determination to make representative payment and to name a payee. In this notice we tell the beneficiary or the individual acting on his or her behalf that we plan to name a representative payee, indicate who the payee will be, and ask the person to contact us if he or she wishes to object to our proposed actions. If the person objects, we will review our intended decisions and consider any additional information given to us. We will then issue a determination stating the means of payment and the payee, which may be appealed under our administrative review process. The advance notice procedures are explained in §§ 404.2020 and 416.600.

Responsibilities of a Representative Payee

The existing regulations state certain responsibilities of a representative payee. These responsibilities are included in these regulations. We have added to this list the responsibility to report to us any event which occurs that will affect the beneficiary's continued right to payments. This is contained in §§ 404.2035 and 416.635. We have also added an example in §§ 404.2045 and 416.645 to illustrate our view that moneys not needed for the beneficiary's

current maintenance should be deposited in an interest-bearing account or invested on behalf of the beneficiary. We have had experience with representative payees holding funds rather than investing them. Also, in some instances the funds were invested by a representative payee, but the dividends did not accrue to the benefit of the beneficiary. Some institutions or agencies acting as a representative payee deposit funds not needed for the current maintenance of the beneficiary in an interest-bearing account, but the interest payable on the account does not accrue to the beneficiary. In §§ 404.2045 and 416.645 of the regulations, we have added a provision to clarify that the interest earned from an investment account is the property of the beneficiary, and not the property of the payee.

Changes From Current Regulations Made by the Final Rule

1. We have added a provision to explain that we will give a beneficiary or the individual acting on his or her behalf advance notice before we make a determination that representative payment will be made. (See §§ 404.2020 and 416.630.)

2. We have added a provision to indicate that when conserved funds are held in an interest-bearing account, the interest from the account, as well as the principal, is the property of the beneficiary. (See §§ 404.2045 and 416.645.)

3. We have added a more complete explanation of how we select a representative payee and what we expect of the payee once the selection has been made. (See §§ 404.2020, 404.2021, 404.2025, 404.2035, 416.620, 416.621, 416.625, and 416.635.)

4. We have revised the preference list of potential representative payees for a beneficiary age 18 or older. This list includes persons other than those specifically mentioned who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for a beneficiary, i.e., members of community groups or organizations who volunteer to serve as a payee for a beneficiary. This was omitted from the preference list when the NPRM was published. We have also reversed the order of the last two preferences in the preference list of potential payees for a beneficiary under age 18. These were not in proper order in the NPRM. (See §§ 404.2021 and 416.621.)

5. We have clarified our responsibilities to a beneficiary when we select someone else to receive

payments on the beneficiary's behalf. (See §§ 404.2041 and 416.641.)

6. We have added to the list of representative payee responsibilities the responsibility to report to us any event which occurs that will affect the beneficiary's continued right to payments. (See §§ 404.2035 and 416.635.)

Response to Public Comments

In response to the NPRM we received 42 comments: 33 from attorneys, legal aid and social service organizations and 9 from various government employees and other members of the public.

Our objective in this recodification is to clarify the existing regulatory provisions by the use of simpler language and improved organization, so that they will be more easily understood by members of the public. Some of the comments we received were very useful in preparing the final version of the regulations. Several of the revisions discussed below were made as a result of these comments. Some of the comments were not applicable to these particular regulations. Those comments are not addressed in the preamble. Other comments are condensed, summarized or paraphrased.

For ease of comprehension and for perspective, we have grouped comments according to the subject and the issues raised. Our responses are presented in the order in which the regulations are organized.

Discussion of Public Comments Changes We Made From Notice of Proposed Rulemaking to Final

As the result of the public comments we received, we have made the following revisions in the final regulations.

1. *Emphasize that a representative payee should not be selected solely on the basis of a physical condition or limitation of the beneficiary.* We received several comments to the effect that proposed regulations would permit or require representative payment for mentally competent individuals who are physically incapable of managing their own benefits. In response to these comments we added "to direct the management of" to the last sentence of §§ 404.2021(a) and 416.621(a) to make it clear that physical disability would require representative payment only if the individual is unable to manage or to direct others in the management of benefit payments. This sentence now reads: "Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his

or her own interest." Other sections revised as a result of these comments are 404.2001(b), 404.2015, 404.2033, 416.601(b), 416.615 and 416.635. Also, §§ 404.2010(a)(2) and 416.610(a)(2) of the proposed regulations have been revised to reflect that the beneficiary is "physically incapable of managing or directing the management of his or her benefit payments."

2. *Expand when representative payment will be made on behalf of a drug addict or alcoholic.* In response to several comments that we clarify when representative payment will be made on behalf of a drug addict or alcoholic we have added a new paragraph (3) to § 416.610(a) to provide for representative payment to an individual who is "Eligible for benefits solely on the basis of a disability and who is medically determined to be a drug addict or alcoholic." This provision reflects the current law.

3. *Clarify when we will make direct payment to minor beneficiaries.* One commenter suggested that we make direct payment to a minor beneficiary whenever the beneficiary shows the ability to manage benefits or meet the appropriate State law regarding emancipation. We added to §§ 404.2010(b) and 416.610(b) examples of situations in which we make direct payment to beneficiaries under age 18. The regulations will not, however, contain all our procedures concerning direct payment to minors. These are contained in our internal procedures.

4. *Editorial changes.* Various editorial comments were received. These comments were considered and, where the review indicated inclusion of the recommended changes would improve the regulations, the appropriate changes were made.

Changes We Did Not Make

For the reasons stated below, we did not agree that the final regulations should be revised to include other changes suggested by commenters, and we did not adopt the following suggestions:

1. *Revise the advance notice procedure.* We received the following comments for improving the advance notice procedure in §§ 404.2030 and 416.630.

(a) Omit the term "generally" in subsection (a) of §§ 404.2030 and 416.630 and specifically include legally incompetent adults and minors under the advance notice procedure.

(b) Provide and oral hearing before a representative payee is named.

(c) Explain when the advance notice is not sent.

(d) Have the advance notice reflect a specific time frame within which to protest.

(e) Identify what is to be included in the advance notice.

(f) Provide advance notice if we are continuing payment to the original representative payee at the time of reinstatement of benefits after a successful appeal or long-term suspension.

As noted, these comments are not being adopted. Sections 404.2030 and 416.630 provide to whom advance notice is sent and what is included in the advance notice. We have not provided for an oral hearing or face-to-face interview. If the beneficiary or his or her representative does, in fact, protest the proposed determinations, we will provide him or her with an opportunity to meet with us and to examine the evidence (as appropriate under part 401 of the regulations, disclosure procedures) before the decisions are formally rendered.

The term "generally" has been retained because exceptions to the advance notice procedure are more appropriately discussed in our operating procedures and not the regulations. In addition, information pertaining to when advance notice is not sent and the specific time frame within which to protest the payee recommendation, is also contained in our operating procedures.

Also, our current instructions provide the beneficiary with an opportunity to contest a continued appointment at the time of reinstatement of the beneficiary's benefits after a successful appeal or long-term suspension.

2. *Provide a face-to-face meeting to determine the capability of a beneficiary.* One commenter suggested we provide a face-to-face meeting to determine a beneficiary's capability. There is an opportunity for a face-to-face meeting discussed in our procedural instructions. Since we consider that procedure one of many operational details of our basic policy, we have not included it in the regulations. Generally, we believe only basic policy should be covered in the regulations.

3. *Personal needs of the beneficiary.* We received several comments that §§ 404.2040(b) and 416.640(b) of the proposed regulations should be changed to reflect that a beneficiary's personal needs over and above the expenses incurred for his or her basic needs (room, board, and nursing care) may be paid from the beneficiary's funds only after the beneficiary's obligations to pay for his or her basic needs have been met. Also, we received comments that

the beneficiary's Medicaid eligibility and payment for covered services to an institutionalized individual would cease if the patient's representative payee does not pay the patient's share of liability for a medical vendor payment.

Benefits certified to a representative payee are considered to be used in a beneficiary's best interests if they are used for a beneficiary's current maintenance. Since clothing and personal comfort items are considered costs incurred for current maintenance, we have not added this statement.

Although we provide guidelines as to what is in the beneficiary's best interests, there is a considerable amount of discretion provided the payee. If satisfying the beneficiary's significant personal needs before paying his or her institutional charges is in the beneficiary's best interests, then the payee is performing appropriately.

Finally, Medicaid eligibility and payment for covered services to an institutionalized individual does not cease if the patient or that patient's representative payee does not pay the patient's share of liability for a medical vendor payment. While title XIX policy requires that all patient income in excess of the personal needs allowance be considered as the patient's share of liability when computing the medical vendor payment amount, it does not mandate that the amount of the patient's liability actually be paid as a condition of eligibility. If the patient's liability is not paid, there is no change in Medicaid status. It is a matter between the patient (or representative payee) and the Medicaid facility. In fact, there is no such requirement in the Medicaid law or regulations and the States are not permitted to impose one.

4. *Payment of a beneficiary's debt.* We received three comments that §§ 404.2040(d) and 416.640(d) of the proposed regulations should be amended to reflect that if funds are available, a payee is required to satisfy a debt of the beneficiary for basic needs even if the debt arose before the first month for which payments were certified to the payee. A payee is authorized and directed to apply benefits for the use and benefit of the beneficiary. While the payee has the authority to determine how and for what purpose the benefits are to be used for the beneficiary, the payee is required to use them in a manner that serves the beneficiary's best interests.

Whenever there is a use of legal process to compel payment of a past indebtedness which jeopardizes the beneficiary's current maintenance, including the satisfaction of his or her

reasonably foreseeable future needs, it is the representative payee's responsibility to invoke, on the beneficiary's behalf, the protection of section 207 of the Act. [Section 207 exempts benefits, either before or after payment, from execution, levy, attachment, garnishment, or other seizure by creditors so long as payments are identifiable.] A representative payee may, however, use benefits to discharge a valid, properly authenticated past indebtedness of the beneficiary provided the amount required to discharge such a past indebtedness is not necessary for the beneficiary's current maintenance, including his or her reasonably foreseeable future needs.

5. *Make the Social Security Administration liable for the misuse of benefit payments.* Several commenters suggested that §§ 404.2031 and 416.641 of the proposed regulations be revised to make us, as well as the representative payee, liable for misuse. We have no authority to assume liability for misuse.

It was also suggested that misuse should be an appealable determination and that we have a more affirmative role in attempting to recover misused funds. We are examining our policies with regard to the misuse of benefits and to recoupment generally. Any changes to current policy resulting from our study will be the subject of separate regulations.

6. *Eliminate examples specifying an amount which requires deposit in an interest-bearing account.* A number of commenters recommended that the examples in §§ 404.2045(a) and 416.645(a) of the proposed regulations be deleted since they specify an amount that requires depositing funds in an interest-bearing account and this requirement has not yet become part of a published regulation. We have determined that a monetary figure should be placed in the regulations for depositing funds in an interest-bearing account and that \$150 would be a reasonable money amount.

7. *Require mandatory accountings.* Several commenters suggested that we require regulatory scheduled mandatory accounting. Under the regulations, we may require such accounting. However, we are reviewing our present accounting and verification process. As a result of our findings, we may make changes in the accounting requirements. If any changes are made they will be the subject of separate regulations.

8. *Liability for overpayment.* We received a comment suggesting that the regulations should specify whether the beneficiary and/or the representative payee are jointly or severally liable for an overpayment. Liability for

overpayment is discussed in the Social Security Rulings (SSR 84-7). This ruling indicates that where a representative payee receives an overpayment on behalf of a beneficiary, the payee and the beneficiary may, under certain circumstances, be jointly and individually liable for the overpayment. However, the payee is not liable if he or she used the amounts received for the benefit of the beneficiary and was without fault with regard to the overpayment.

9. *Discuss situations in which the beneficiary objects to the appointment of a representative payee.* One commenter recommended that the regulations should discuss situations in which the beneficiary objects to the appointment of a specific representative payee but we appoint the payee over protest. Such a discussion would make the regulations unnecessarily lengthy. Furthermore, the payee determination is an appealable determination. The appeals process is discussed in Regulations No. 4, Subpart J and Regulations No. 16, Subpart N.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—The reporting/recordkeeping requirements in the sections of these regulations cited below are subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and therefore require Office of Management and Budget (OMB) approval. These requirements are presently approved by OMB under the OMB approval numbers cited.

Regulation section	OMB approval No.
404.2015(a)	2962-0014
416.625(b)	
404.2035(a)	2962-0073
404.2035(c)	2962-0012
416.635(c)	
404.2065	2962-0068 (individuals) 2962-0069 (institution)
416.635(b)	2962-0125
416.665	2962-0125

These regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—Since a notice of proposed rulemaking for these rules was issued before January 1, 1981, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

These amendments are hereby adopted and set forth below.

(Catalog of Federal Domestic Assistance Program, Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.804 Social Security-Survivors Insurance; 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental security income (SSI).

Dated: May 17, 1982.

Paul B. Simmons,

Acting Commissioner of Social Security.

Approved: June 21, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

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Subpart U—Representative Payment

Sec.

- 404.2001 Introduction.
 - 404.2010 When payment will be made to a representative payee.
 - 404.2015 Information considered in determining whether to make representative payment.
 - 404.2020 Information considered in selecting a representative payee.
 - 404.2021 Order of preference in selecting a representative payee.
 - 404.2025 Information to be submitted by a representative payee.
 - 404.2030 Advance notice of the determination to make representative payment.
 - 404.2035 Responsibilities of a representative payee.
 - 404.2040 Use of benefit payments.
 - 404.2041 Liability for misuse of benefit payments.
 - 404.2045 Conservation and investment of benefit payments.
 - 404.2050 When new representative payee will be selected.
 - 404.2055 When representative payment will be stopped.
 - 404.2060 Transfer of accumulated benefit payments.
 - 404.2065 Accounting for benefit payments.
- Authority: Sec. 205 and 1101 of the Social Security Act, 55 Stat. 1360, 49 Stat. 647, 52 U.S.C. 403 and 1302.

Subpart U—Representative Payment

§ 404.2001 Introduction.

(a) *Explanation of representative payment.* This subpart explains the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee. It also explains the responsibilities that a representative payee has concerning the use of the funds he or she receives on behalf of a beneficiary. A representative payee may be either a person or an organization selected by us to receive benefits on behalf of a beneficiary. A representative payee will be selected if we believe that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest.

(b) *Policy used to determine whether to make representative payment.* (1) Our policy is that every beneficiary has the right to manage his or her own benefits. However, some beneficiaries due to a mental or physical condition or due to their youth may be unable to do so. Under these circumstances, we may determine that the interests of the beneficiary would be better served if we certified benefit payments to another person as a representative payee.

(c) If we determine that representative payment is in the interest of a beneficiary, we will appoint a representative payee. We may appoint a representative payee even if the beneficiary is a legally competent individual. If the beneficiary is a legally incompetent individual, we may appoint the legal guardian or some other person as a representative payee.

(3) If payment is being made directly to a beneficiary and a question arises concerning his or her ability to manage or direct the management of benefit payments, we will, if the beneficiary is 18 years old or older and has not been adjudged legally incompetent, continue to pay the beneficiary until we make a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

§ 404.2010 When payment will be made to representative payee.

(a) We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—

(1) Legally incompetent or mentally incapable of managing benefit payments; or

(2) Physically incapable of managing or directing the management of his or her benefit payments.

(b) Generally, if a beneficiary is under age 18, we will pay benefits to a representative payee. However, in certain situations, we will make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. For example, we make direct payments to a beneficiary under age 18 if the beneficiary is—

(1) Receiving disability insurance benefits on his or her own Social Security earnings record; or

(2) Serving in the military services; or

(3) Living alone and supporting himself or herself; or

(4) A parent and files for himself or herself and/or his or her child and he or she has experience in handling his or her own finances; or

(5) Capable of using the benefits to provide for his or her current needs and no qualified payee is available; or

(6) Within 4 months of attaining age 18 and is initially filing an application for benefits.

§ 404.2015 Information considered in determining whether to make representative payments.

In determining whether to make representative payment we consider the following information:

(a) *Court determinations.* If we learn that a beneficiary has been found to be legally incompetent, a certified copy of the court's determination will be the basis of our determination to make representative payment.

(b) *Medical evidence.* When available, we will use medical evidence to determine if a beneficiary is capable of managing or directing the management of benefit payments. For example, a statement by a physician or other medical professional based upon his or her recent examination of the beneficiary and his or her knowledge of the beneficiary's present condition will be used in our determination, if it includes information concerning the nature of the beneficiary's illness, the beneficiary's chances for recovery and the opinion of the physician or other medical professional as to whether the beneficiary is able to manage or direct the management of benefit payments.

(c) *Other evidence.* We will also consider any statements of relatives, friends and other people in a position to know and observe the beneficiary, which contain information helpful to us in deciding whether the beneficiary is

able to manage or direct the management of benefit payments.

§ 404.2020 Information considered in selecting a representative payee.

In selecting a payee we try to select the person, agency, organization or institution that will best serve the interest of the beneficiary. In making our selection we consider—

(a) The relationship of the person to the beneficiary;

(b) The amount of interest that the person shows in the beneficiary;

(c) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;

(d) Whether the potential payee has custody of the beneficiary; and

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary.

§ 404.2021 Order of preference in selecting a representative payee.

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interest. The preferences are:

(a) For beneficiaries 18 years old or older, our preference is—

(1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law, which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for a beneficiary, e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.

(b) For beneficiaries under age 18, our preference is—

(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 unauthorized social agency or custodial institution.

§ 404.2025 Information to be submitted by a representative payee.

(a) Before we select a representative payee, the payee applicant must give us information showing his or her relationship to the beneficiary and his or her responsibility for the care of the beneficiary.

(b) Anytime after we have selected a payee, we may ask the payee to give us information showing a continuing relationship to the beneficiary and a continuing responsibility for the care of the beneficiary. If the payee does not give us the requested information within a reasonable period of time, we may stop paying the payee unless we determine that the payee had a good reason for not complying with our request, and we receive the information requested.

§ 404.2030 Advance notice of the determination to make representative payment.

(a) Generally, whenever we intend to make representative payment and to name a payee, we notify the beneficiary or the individual acting on his or her behalf, of our proposed actions. In this notice we tell the person that we plan to name a representative payee and who that payee will be. We also ask the person to contact us if he or she objects to either proposed action. If he or she objects to either proposed action, the person may—

- (1) Review the evidence upon which the proposed actions will be based; and
- (2) Submit any additional evidence regarding the proposed actions.

(b) If the person objects to the proposed actions, we will review our proposed determinations and consider any additional information given to us. We will then issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

(c) If the person does not object to the proposed actions, we will issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

§ 404.2035 Responsibilities of a representative payee.

A representative payee has a responsibility to—

(a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;

(b) Notify us of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits;

(c) Submit to us, upon our request, a written report accounting for the benefits received; and

(d) Notify us of any change in his or her circumstances that would affect performance of the payee responsibilities.

§ 404.2040 Use of benefit payments.

(a) *Current maintenance.* We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

Example: An aged beneficiary is entitled to a monthly Social Security benefit of \$401. Her son, who is her payee, disburses her benefits in the following manner:

Rent and utilities	\$200
Medical	25
Food	40
Clothing (socks)	55
Shoes	20
Miscellaneous	20

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(b) *Institutional care.* If a beneficiary is receiving care in a Federal, State, or private institution because of mental or physical incapacity, current maintenance includes the customary charges made by the institution, as well as expenditures for those items which will aid in the beneficiary's recovery or release from the institution or expenses for personal needs which will improve the beneficiary's conditions while in the institution.

Example: An institutionalized beneficiary is entitled to a monthly Social Security benefit of \$200. The institution charges \$700 a month for room and board. The beneficiary's brother, who is the payee, loans the beneficiary new shoes and does not

have any funds to purchase miscellaneous items at the institution's canteen.

The payee takes his brother to town and buys him a pair of shoes for \$25. He also takes the beneficiary to see a movie which costs \$5. When they return to the institution, the payee gives his brother \$2 to be used at the canteen.

Although the payee normally withholds only \$15 a month from Social Security benefits for the beneficiary's personal needs, this month the payee deducted the above expenditures and paid the institution \$70 less than he usually pays.

The above expenditures represent what we would consider to be proper expenditures for current maintenance.

(c) *Support of legal dependents.* If the current maintenance needs of the beneficiary are met, the payee may use part of the payments for the support of the beneficiary's legally dependent spouse, child, and/or parent.

Example: A disabled beneficiary receives a Veterans Administration (VA) benefit of \$215 and a Social Security benefit of \$125. The beneficiary resides in a VA hospital and his VA benefits are sufficient to provide for all of his needs, i.e., cost of care and personal needs. The beneficiary's legal dependents—his wife and two children—have a total income of \$250 per month in Social Security benefits. However, they have expenses of approximately \$450 per month.

Because the VA benefits are sufficient to meet the beneficiary's needs, it would be appropriate to use part of his Social Security benefits to support his dependents.

(d) *Claims of creditors.* A payee may not be required to use benefit payments to satisfy a debt of the beneficiary. If the debt arose prior to the first month for which payments are certified to a payee, if the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

Example: A retroactive Social Security check in the amount of \$1,540 (representing benefits due for July 1980 through January 1981) was issued on behalf of the beneficiary to the beneficiary's aunt who is the representative payee. The check was certified in February 1981.

The nursing home, where the beneficiary resides, submitted a bill for \$7,128 to the payee for maintenance expenses the beneficiary incurred during the period from June 1980 through November 1980. (Maintenance charges for December 1980 through February 1981 had previously been paid.)

Because the benefits were not required for the beneficiary's current maintenance, the payee had previously saved over \$500 for the beneficiary and the beneficiary had no foreseeable needs which would require large disbursements, the expenditure for the maintenance charges would be consistent with our guidelines.

§ 404.2041 Liability for misuse of benefit payments.

Our obligation to the beneficiary is completely discharged when we make a correct payment to a representative payee on behalf of the beneficiary. The payee in his or her personal capacity, and not SSA, may be liable if the payee misuses the beneficiary's benefits.

§ 404.2045 Conservation and investment of benefit payments.

(a) *General.* If payments are not needed for the beneficiary's current maintenance or reasonably foreseeable needs or the support of legal dependents, they shall be conserved or invested on behalf of the beneficiary. Conserved funds should be invested in accordance with the rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary.

Example: A State institution for mentally retarded children, which is receiving Medicaid funds, is representative payee for several Social Security beneficiaries. The checks the payee receives are deposited into one account which shows that the benefits are held in trust for the beneficiaries. The institution has supporting records which show the share each individual has in the account. Funds from this account are disbursed fairly quickly after receipt for the current support and maintenance of the beneficiaries as well as for miscellaneous needs the beneficiaries may have. Several of the beneficiaries have significant accumulated resources in this account. For those beneficiaries whose benefits have accumulated over \$100, the funds should be deposited in an interest-bearing account or invested relatively free of risk on behalf of the beneficiaries.

(b) *Preferred investments.* Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. If the payee is the legally appointed guardian or fiduciary of the beneficiary, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds—

____ (Name of beneficiary)
 _____ (Social Security Number), for whom _____ (Name of payee) is representative payee for Social Security benefits.

(2) For interest or dividend paying accounts—

____ (Name of beneficiary) by
 _____ (Name of payee), representative payee

(c) *Interest and dividend payments.* The interest and dividends which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

§ 404.2050 When a new representative payee will be selected.

When we learn that the interests of the beneficiary are not served by continuing payment to the present payee or that the present payee is no longer able to carry out the payee responsibilities, we try to find a new payee. We will select a new payee if we find a preferred payee or if the present payee—

- (a) Has not used the benefit payments on the beneficiary's behalf in accordance with the guidelines in this subpart;
- (b) Has not carried out the other responsibilities described in this subpart;
- (c) Dies;
- (d) No longer wishes to be payee;
- (e) Is unable to manage the benefit payments; or
- (f) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information which we request.

§ 404.2055 When representative payment will be stopped.

If a beneficiary receiving representative payment shows us that he or she is mentally and physically able to manage or direct the management of benefit payments, we will make direct payment. Information which the beneficiary may give us to support his or her request for direct payment include the following—

- (a) A physician's statement regarding the beneficiary's condition, or a statement by a medical officer of the institution where the beneficiary is or was confined, showing that the beneficiary is able to manage or direct the management of his or her funds; or
- (b) A certified copy of a court order restoring the beneficiary's rights in a case where a beneficiary was adjudged legally incompetent; or
- (c) Other evidence which establishes the beneficiary's ability to manage or direct the management of benefits.

§ 404.2060 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested benefit payments shall transfer these funds, and the interest earned from the invested funds,

to either a successor payee or to use, as we will specify. If the funds and the earned interest are returned to us, we will re certify them to a successor representative payee or to the beneficiary.

§ 404.2065 Accounting for benefit payments.

A representative payee is accountable for the use of benefits. We may require periodic written reports from representative payees. We may also, in certain situations, verify how a representative payee used the funds. A representative payee should keep records of what was done with the benefit payments in order to make accounting reports. We may ask the following questions—

- (a) The amount of benefit payments on hand at the beginning of the accounting period;
- (b) How the benefit payments were used;
- (c) How much of the benefit payments were saved and how the savings were invested;
- (d) Where the beneficiary lived during the accounting period, and
- (e) The amount of the beneficiary's income from other sources during the accounting period. We ask for information about other funds to enable us to evaluate the use of benefit payments.

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

2. Subpart F of Part 416 is revised to read as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart F—Representative Payment

- Sec.
- 416.601 Introduction.
- 416.610 When payment will be made to a representative payee.
- 416.615 Information considered in determining whether to make representative payment.
- 416.620 Information considered in selecting a representative payee.
- 416.621 Order of preference in selecting a representative payee.
- 416.625 Information to be submitted by a representative payee.
- 416.630 Advance notice of the determination to make representative payment.
- 416.635 Responsibilities of a representative payee.
- 416.640 Use of benefit payments.
- 416.641 Liability for misuse of benefit payments.

Sec.

- 416.643 Conservation and investment of benefit payments.
- 416.650 When new representative payee will be selected.
- 416.651 When representative payment will be stopped.
- 416.660 Transfer of accumulated benefit payments.
- 416.665 Accounting for benefit payments.
- Authority: Secs. 1102 and 1301(e)(2) and (d)(1) of the Social Security Act; 49 Stat. 647; 86 Stat. 1473; 42 U.S.C. 1302 and 1303 (e)(2) and (d)(1).

Subpart F—Representative Payment

§ 416.601 Introduction.

(a) *Explanation of representative payment.* This subpart explains the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee. It also explains the responsibilities that a representative payee has concerning the use of the funds he or she receives on behalf of a beneficiary. A representative payee may be either a person or an organization selected by us to receive benefits on behalf of a beneficiary. A representative payee will be selected if we believe that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her own interest.

(b) *Policy used to determine whether to make representative payment.* (1) Our policy is that every beneficiary has the right to manage his or her own benefits. However, some beneficiaries due to a mental or physical condition or due to their youth may be unable to do so. Under these circumstances, we may determine that the interests of the beneficiary would be better served if we certified benefit payments to another person as a representative payee. However, we must select a representative payee for an individual who is eligible for benefits solely on the basis of disability and who is medically determined to be a drug addict or an alcoholic.

(2) If we determine that representative payment is in the interest of a beneficiary, we will appoint a representative payee. We may appoint a representative payee even if the beneficiary is a legally competent individual. If the beneficiary is a legally incompetent individual, we may appoint the legal guardian or some other person as a representative payee.

(3) If payment is being made directly to a beneficiary and a question arises concerning his or her ability to manage

or direct the management of benefit payments, we will, if the beneficiary is 18 years old or older and has not been adjudged legally incompetent, continue to pay the beneficiary until we make a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

§ 416.610 When payment will be made to a representative payee.

(a) We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—

(1) Legally incompetent or mentally incapable of managing benefit payments; or

(2) Physically incapable of managing or directing the management of his or her benefit payments; or

(3) Eligible for benefits solely on the basis of a disability and who is medically determined to be a drug addict or alcoholic.

(b) Generally, if a beneficiary is under age 18, we will pay benefits to a representative payee. However, in certain situations, we will make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. For example, we make direct payment to a beneficiary under age 18 if the beneficiary is—

(1) A parent and files for himself or herself and/or his or her child and he or she has experience in handling his or her own finances; or

(2) Capable of using the benefits to provide for his or her current needs and no qualified payee is available; or

(3) Within 4 months of attaining age 18 and is initially filing an application for benefits.

§ 416.615 Information considered in determining whether to make representative payment.

In determining whether to make representative payment we consider the following information:

(a) *Court determinations.* If we learn that a beneficiary has been found to be legally incompetent, a certified copy of the court's determination will be the basis of our determination to make representative payment.

(b) *Medical evidence.* When available, we will use medical evidence to determine if a beneficiary is capable of managing or directing the management of benefit payments. For example, a statement by a physician or other medical professional based upon his or her recent examination of the

beneficiary and his or her knowledge of the beneficiary's present condition will be used in our determination. If it includes information concerning the nature of the beneficiary's illness, the beneficiary's chances for recovery and the opinion of the physician or other medical professional as to whether the beneficiary is able to manage or direct the management of benefit payments.

(c) *Other evidence.* We will also consider any statements of relatives, friends and other people in a position to know and observe the beneficiary, which contain information helpful to us in deciding whether the beneficiary is able to manage or direct the management of benefit payments.

§ 416.620 Information considered in selecting a representative payee.

In selecting a payee we try to select the person, agency, organization or institution that will best serve the interest of the beneficiary. In making our selection we consider—

(a) The relationship of the person to the beneficiary;

(b) The amount of interest that the person shows in the beneficiary;

(c) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;

(d) Whether the potential payee has custody of the beneficiary; and

(e) Whether the potential payee is in position to know of and look after the needs of the beneficiary.

§ 416.621 Order of preference in selecting a representative payee.

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interests. The preferences are:

(a) For beneficiaries 18 years old or older our preference is—

(1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution organized for profit and licensed under State law, which has custody of the beneficiary and

(5) Persons other than above who are qualified to carry out the responsibilities

of a payee and who are able and willing to serve as a payee for the beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.

(b) For beneficiaries under age 18, our preference is—

(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

An authorized social agency or custodial institution.

§ 416.525 Information to be submitted by a representative payee.

(a) Before we select a representative payee, the payee applicant must give us information showing his or her relationship to the beneficiary and his or her responsibility for the care of the beneficiary.

(b) Anytime after we have selected a payee, we may ask the payee to give us information showing a continuing relationship to the beneficiary and a continuing responsibility for the care of the beneficiary. If the payee does not give us the requested information within a reasonable period of time, we may stop paying the payee unless we determine that the payee had a good reason for not complying with our request, and we receive the information requested.

§ 416.530 Advance notice of the determination to make representative payment.

(a) Generally, whenever we intend to make representative payment and to name a payee, we notify the beneficiary or the individual acting on his or her behalf, of our proposed actions. In this notice we tell the person that we plan to name a representative payee and who that payee will be. We also ask the person to contact us if he or she objects

to either proposed action. If he or she objects to either proposed action, the person may—

(1) Review the evidence upon which the proposed actions will be based; and

(2) Submit any additional evidence regarding the proposed actions.

(b) If the person objects to the proposed actions, we will review our proposed determinations and consider any additional information given to us. We will then issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

(c) If the person does not object to the proposed actions, we will issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

§ 416.535 Responsibilities of a representative payee.

A representative payee has a responsibility to—

(a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;

(b) Notify us of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits (See Subpart G of this Part concerning these reporting requirements);

(c) Submit to us, upon our request, a written report accounting for the benefits received; and

(d) Notify us of any change in his or her circumstances that would affect performance of the payee responsibilities.

§ 416.540 Use of benefit payments.

(a) *Current maintenance.* We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items.

Example: A Supplemental Security Income beneficiary is entitled to a monthly benefit of \$264. The beneficiary's son, who is the representative payee, disburses the benefits in the following manner:

Rent and utilities	\$166
Medical	20
Food	60
Clothing	10
Miscellaneous	8

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(b) *Institution not receiving Medicaid funds on beneficiary's behalf.* If a beneficiary is receiving care in a Federal, State or private institution because of mental or physical incapacity, current maintenance includes the customary charges for care and services provided by the institution, and expenditures for those items which will aid in the beneficiary's recovery or release from the institution or expenses for personal needs which will improve the beneficiary's conditions while in the institution. Any payments remaining may be used for a temporary period to maintain the beneficiary's residence outside of the institution unless a physician has certified that the beneficiary is not likely to return home.

Example: A disabled beneficiary is entitled to a monthly benefit of \$264. The beneficiary, who resides in a boarding home, has resided there for over six years. It is doubtful that the beneficiary will leave the boarding home in the near future. The boarding home charges \$115 per month for the beneficiary's room and board.

The beneficiary's payee pays the boarding home \$115 and uses the balance to purchase miscellaneous personal items for the beneficiary. There are no benefits remaining which can be conserved on behalf of the beneficiary. The payee's use of the benefits is consistent with our guidelines.

(c) *Institution receiving Medicaid funds on beneficiary's behalf.* If a beneficiary is in an institution throughout a month and the institution receives Medicaid funds on behalf of the beneficiary, any payments due shall be used only for the personal needs of the beneficiary, and not for current maintenance.

Example: A disabled beneficiary resides in a psychiatric hospital. The superintendent of the hospital receives \$35 per month as the beneficiary's payee. The benefit payment is disbursed in the following manner which would be consistent with our guidelines:

Miscellaneous current items	50
Clothing	11
Conserved for future needs of the beneficiary	5

(d) *Claims of creditors.* A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

Example: A disabled beneficiary was determined to be eligible for a monthly benefit payment of \$208 effective April 1981. The benefits were certified to the beneficiary's brother who was appointed as the representative payee. The payee conserved \$27 of the benefits received, in

June 1981 the payee received a bill from a doctor who had treated the beneficiary in February and March 1981. The bill was for \$175.

After reviewing the beneficiary's current needs and resources, the payee decided not to use any of the benefits to pay the doctor's bill. (Approximately \$180 a month is required for the beneficiary's current monthly living expenses—rent, utilities, food, and insurance—and the beneficiary will need new shoes and a coat within the next few months.)

Based upon the above, the payee's decision not to pay the doctor's bill is consistent with our guidelines.

§ 416.644 Liability for misuse of benefit payments.

Our obligation to the beneficiary is completely discharged when we make a correct payment to a representative payee on behalf of the beneficiary. The payee personally, and not SSA, may be liable if the payee misuses the beneficiary's benefits.

§ 416.645 Conservation and investment of benefit payments.

(a) *General.* If payments are not needed for the beneficiary's current maintenance or reasonably foreseeable needs, they shall be conserved or invested on behalf of the beneficiary. Conserved funds should be invested in accordance with the rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary.

Example: A State Institution for mentally retarded children, which is receiving Medicaid funds, is representative payee for several beneficiaries. The checks the payee receives are deposited into one account which shows that the benefits are held in trust for the beneficiaries. The institution has supporting records which show the share each individual has in the account. Funds from this account are disbursed fairly quickly after receipt for the personal needs of the beneficiaries. However, not all these funds were disbursed for this purpose. As a result, several of the beneficiaries have significant accumulated resources in this account. For those beneficiaries whose benefits have accumulated over \$150, the funds should be deposited in an interest-bearing account or invested relatively free of risk on behalf of the beneficiaries.

(b) *Preferred investments.* Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. If the payee is the legally appointed guardian or fiduciary of the

beneficiary, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds—
 _____ (Name of beneficiary) _____
 (Social Security Number), for whom _____ (Name of payee) is representative payee for Supplemental Security Income benefits;

(2) For interest or dividend paying accounts—
 _____ (Name of beneficiary) by _____ (Name of payee), representative payee.

(a) *Interest and dividend payments.* The interest and dividends which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

§ 416.555 When a new representative payee will be selected.

When we learn that the interests of the beneficiary are not served by continuing payment to the present payee or that the present payee is no longer able to carry out the payee responsibilities, we try to find a new payee. We will select a new payee if we find a preferred payee or if the present payee—

- (a) Has not used the benefit payments on the beneficiary's behalf in accordance with the guidelines in this subpart;
- (b) Has not carried out the other responsibilities described in this subpart;
- (c) Dies;
- (d) No longer wishes to be payee;
- (e) Is unable to manage the benefit payments; or
- (f) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information which we request.

§ 416.555 When representative payment will be stopped.

If a beneficiary receiving representative payment shows us that he or she is mentally and physically able to manage or direct the management of benefit payments, we will make direct payment. Information which the beneficiary may give us to support his or her request for direct payment include the following—

(a) A physician's statement regarding the beneficiary's condition, or a statement by a medical officer of the institution where the beneficiary is or was confined, showing that the beneficiary is able to manage or direct the management of his or her funds; or

(b) A certified copy of a court order restoring the beneficiary's rights in a case where a beneficiary was adjudged legally incompetent; or

(c) Other evidence which establishes the beneficiary's ability to manage or direct the management of benefits.

§ 416.650 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested benefit payments shall transfer these funds, and the interest earned from the invested funds, to either a successor payee, or to us, as we will specify. If the funds and the earned interest are returned to us, we will recertify them to a successor representative payee or to the beneficiary.

§ 416.655 Accounting for benefit payments

A representative payee is accountable for the use of benefits. We may require periodic written reports from representative payees. We may also, in certain situations, verify how a representative payee used the funds. A representative payee should keep records of what was done with the benefit payments in order to make accounting reports. We may ask the following questions—

- (a) The amount of benefit payments on hand at the beginning of the accounting period;
- (b) How the benefit payments were used;
- (c) How much of the benefit payments were saved and how the savings were invested;
- (d) Where the beneficiary lived during the accounting period; and
- (e) The amount of the beneficiary's income from other sources during the accounting period. We ask for information about other funds to enable us to evaluate the use of benefit payments.

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ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 005022/R113; FR-FRL 2165-6]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.