

§416.610

20 CFR Ch. III (4-1-06 Edition)

(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 if drug addiction or alcoholism is a contributing factor material to the determination of disability.

(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.

[47 FR 30475, July 14, 1982, as amended at 60 FR 8150, Feb. 10, 1995]

§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 disability and drug addiction or alcoholism is a contributing factor material to the determination of disability.

(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 7 months of attaining age 18 and is initially filing an application for benefits.

[47 FR 30475, July 14, 1982, as amended at 54 FR 35483, Aug. 28, 1989; 60 FR 8150, Feb. 10, 1995]

§416.611 What happens to your monthly benefits while we are finding a suitable representative payee for you?

(a) *We may pay you directly.* We will pay current monthly benefits directly to you while finding a suitable representative payee unless we determine that paying you directly would cause substantial harm to you. We determine substantial harm as follows:

(1) If you are receiving disability payments and we have determined that you have a drug addiction or alcoholism condition, or you are legally incompetent, or you are under age 15, we will presume that substantial harm exists. However, we will allow you to rebut this presumption by presenting evidence that direct payment would not cause you substantial harm.

(2) If you do not fit any of these categories, we make findings of substantial harm on a case-by-case basis. We consider all matters that may affect your ability to manage your benefits in your own best interest. We decide that substantial harm exists if both of the following conditions exist:

(i) Directly receiving benefits can be expected to cause you serious physical or mental injury.

(ii) The possible effect of the injury would outweigh the effect of having no income to meet your basic needs.

(b) *We may delay or suspend your payments.* If we find that direct payment will cause substantial harm to you, we may delay (in the case of initial eligibility for benefits) or suspend (in the case of existing eligibility for benefits) payments for as long as one month while we try to find a suitable representative payee. If we do not find a payee within one month, we will pay you directly. If you are receiving disability payments and we have determined that you have a drug addiction or alcoholism condition, or you are legally incompetent, or you are under age 15, we will withhold payment until a representative payee is appointed even if it takes longer than one month. We will, however, as noted in paragraph (a)(1) of this section, allow you to present evidence to rebut the presumption that direct payment would cause you substantial harm. See § 416.601(b)(3) for our policy on suspending the benefits if you are currently receiving benefits directly.

Example 1: Substantial Harm Exists. We are unable to find a representative payee for Mr. X, a 67 year old claimant receiving title XVI benefits based on age who is an alcoholic. Based on contacts with the doctor and beneficiary, we determine that Mr. X was hospitalized recently for his drinking. Paying him directly will cause serious injury, so we may delay payment for as long as one month based on substantial harm while we locate a suitable representative payee.

Example 2: Substantial Harm Does Not Exist. We approve a claim for Mr. Y, a title XVI claimant who suffers from a combination of mental impairments but who is not legally incompetent. We determine that Mr. Y needs assistance in managing benefits, but we have not found a representative payee. Although we believe that Mr. Y may not use the money wisely, there is no indication that receiving funds directly would cause him substantial harm (*i.e.*, serious physical or mental injury). We must pay current benefits directly to Mr. Y while we locate a suitable representative payee.

(c) *How we pay delayed or suspended benefits.* Payment of benefits, which were delayed or suspended pending appointment of a representative payee,

can be made to you or your representative payee as a single sum or in installments when we determine that installments are in your best interest.

[69 FR 60236, Oct. 7, 2004]

§ 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;