

List of Subjects**20 CFR Part 404**

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

20 CFR Part 408

Administrative practice and procedure, Aged; Reporting and recordkeeping requirements, Social Security; Special Veterans benefits; Veterans.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental security income (SSI).

Dated: June 19, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts J and U of part 404, add subpart F to part 408, and amend subparts F and N of part 416 of Title 20 of the Code of Federal Regulations as follows:

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

1. The authority citation for subpart J continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b) and (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 *note*); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 *note*).

2. Amend § 404.902 by revising paragraph (o), removing the word “and” at the end of paragraph (v), revising the period at the end of paragraph (w) to read “; and” and adding paragraph (x) to read as follows:

§ 404.902 Administrative actions that are initial determinations.

* * * * *

(o) Whether the payment of your benefits will be made, on your behalf, to a representative payee;

* * * * *

(x) Whether we were negligent in failing to investigate or monitor your representative payee, which resulted in the misuse of benefits by your representative payee.

3. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

4. Add § 404.2011 to read as follows:

§ 404.2011 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 dispute 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 entitlement to benefits) or suspend (in the case of existing entitlement to benefits) payments for as long as 1 month while we try to find a suitable representative payee for you. 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 and 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 dispute the presumption that direct payment would cause you substantial harm. See § 404.2001(b)(3) for our policy on suspending 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 retirement beneficiary

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 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 II claimant who suffers from a combination of mental impairments but who is not legally incompetent. We determine that Mr. Y needs assistance in managing his 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.*, 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.

5. Amend § 404.2021 by revising the heading and paragraph (a) introductory text, redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) to read as follows:

§ 404.2021 What is our order of preference in selecting a representative payee for you?

* * * * *

(a) For beneficiaries 18 years old or older (except those described in paragraph (b) of this section), our preference is—

* * * * *

(b) For individuals who are disabled and who have a drug addiction or alcoholism condition our preference is—

(1) A community-based nonprofit social service agency which is licensed by the State, or bonded;

(2) A Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(3) A State or local government agency with fiduciary responsibilities;

(4) A designee of an agency (other than a Federal agency) referred to in paragraphs (b)(1), (2), and (3) of this section, if appropriate; or

(5) A family member.

* * * * *

6. Add § 404.2022 to read as follows:

§ 404.2022 Who may not serve as a representative payee?

A representative payee applicant may not serve if he/she: