

RIGHTS OF MASSACHUSETTS INDIVIDUALS WITH A REPRESENTATIVE PAYEE

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WHAT IS A REPRESENTATIVE PAYEE?

A representative payee is a person or organization authorized by the Social Security Administration (SSA) to cash and manage certain benefits checks -- Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) -- for a person deemed unable to do so. Federal regulations set out when SSA will appoint a representative payee and define the payee's responsibilities.

The representative payee only has authority over income from the particular source of income for which he or she is the payee. For example, a payee for SSI checks cannot control a recipient's bank account if it contains funds from sources other than SSI, or even if it contains SSI funds if those funds were received prior to the representative payee's appointment.

A representative payee cannot make personal decisions on behalf of the person with a disability and cannot make financial decisions about personal property or real estate that the recipient owns. The powers of a representative payee are thus more restricted than those of a guardian or conservator and most powers of attorney. (Note that the SSA does not recognize a power of attorney for SSA benefits, and a representative payee is the only mechanism by which someone other than the recipient can cash and manage the benefits.)

WHEN DOES THE SOCIAL SECURITY ADMINISTRATION APPOINT A REPRESENTATIVE PAYEE?

SSA policy states that all recipients have the right to manage their own SSA payments.¹ However, the local SSA office will appoint a representative payee if it determines that you cannot manage, or direct someone to manage, benefit payments in your own interest.² The SSA will appoint a representative payee if you are:

- legally incompetent (as determined by a court);
- mentally incapable of managing benefit payments;
- physically incapable of managing, or directing someone to manage benefit payments; or
- under age 18, unless you are applying for SSI or SSDI within seven months of turning 18, or you live on your own and have shown that you can manage the benefits.³

SSA will look at court findings on competence, medical evidence, and statements of family, friends, or service providers to decide if you are capable of managing your funds.⁴

SSA also may require a representative payee for a person who has a substance abuse condition.⁵ Like other cases in which Social Security decides to appoint a representative payee, the person may appeal that decision.

HOW DOES THE SOCIAL SECURITY ADMINISTRATION DETERMINE “CAPABILITY?”

SSA begins with the presumption that all individuals are capable of managing their own funds, unless there is evidence to the contrary.⁶ SSA claim specialists may not rule you incapable out of a mere desire to “protect” you or because they deem it simply more “convenient” for you.⁷ To decide if you are capable of managing your funds, a claim specialist from your local SSA field office will conduct an interview with you and look at three types of evidence:⁸

- **Legal evidence.** If a court ruled that you are incompetent, the SSA claim specialist does not need to continue assessing your capability. He or she may simply rule that you are incapable.⁹
- **Medical evidence.** The most common form is a letter of evaluation from your doctor. SSA considers your doctor’s opinion (and any other medical evidence) “very important” to capability determinations.¹⁰
- **Lay evidence.** This is evidence based on the SSA claim specialist’s interview with you. It may also include statements of family, friends, or service providers.¹¹

HOW IS A REPRESENTATIVE PAYEE SELECTED?

An individual must apply to SSA to be your representative payee. SSA will decide who your representative payee will be.

In selecting a representative payee, SSA will consider:

- your relationship to the potential representative payee, if any;
- the amount of interest that the potential representative payee shows in you;
- any legal authority the potential representative payee has to act on your behalf;
- whether the potential representative payee has custody of you; and
- whether the potential representative payee is likely to know and look after your needs.¹²

IS THERE AN ORDER OF PREFERENCE FOR SELECTING WHO WILL SERVE AS THE REPRESENTATIVE PAYEE?

If you are over age 18 and have not been determined to need a payee on the basis of having a substance abuse condition,¹³ preference is given, in this order, to:

- a legal guardian, spouse or other close relative you live with, who has custody over you, or who demonstrates a strong concern for your welfare;
- a friend you live with or who demonstrates strong concern for your welfare;
- a public or nonprofit agency or institution (such as a nursing home or psychiatric hospital) which has custody of you (for a fee, paid by you);
- a private, profit-making institution, licensed under State law, which has custody of you (the institution may keep a large portion of your benefit check to pay your expenses);
- persons other than those listed above who are willing and able to serve as representative payee, e.g., members of community groups or organizations.¹⁴

The order of preference, however, is flexible to accommodate SSA's desire to select the payee who will best serve your interests.¹⁵

WHO MAY NOT SERVE AS A REPRESENTATIVE PAYEE?

Certain people who may not serve as representative payees include:

- persons convicted of a violation of certain sections of the Social Security Act;
- persons who have been convicted of an offense resulting in imprisonment of more than one year, unless SSA specifically makes an exception;
- persons who receive certain benefits through a representative payee;
- those persons who have previously served as representative payees and were found to have misused funds.¹⁶

In addition, people or institutions to whom you owe money (your creditors) generally may not serve as your representative payee. Exceptions exist for a creditor who is:

- related to you and living in your household;
- your legal guardian or representative;
- a licensed or certified care facility;
- a qualified organization which has incurred expenses by providing you with a representative payee and therefore authorized to collect a monthly fee from you;
- an employee, administrator, or owner of a licensed or certified care facility in which you live, only if SSA has been unable to find an alternative representative payee; or
- any person SSA deems appropriate based on a written determination.¹⁷

WILL THE SOCIAL SECURITY ADMINISTRATION INVESTIGATE REPRESENTATIVE PAYEE APPLICANTS BEFORE MAKING AN APPOINTMENT?

SSA must investigate and approve each applicant seeking to serve as representative payee.¹⁸ SSA must keep a list of all representative payees, and be sure that certifying a particular person "is in the interest of" the recipient. Whenever practicable, a face-to-face interview must take place.¹⁹ SSA must:

- obtain proof of the person's identity;
- verify the nominated payee's Social Security number or employer identification number;
- find out if the nominated payee is disqualified because he or she has been convicted of a "Social Security felony" or for another reason and find out if the nominated payee has ever misused another recipient's funds;
- verify the payee applicant's employment and or direct receipt of Title II, VIII, or XVI benefits;
- verify the payee applicant's concern for the beneficiary with the beneficiary's custodian or other interested person;
- require the payee applicant to prove a relationship to the beneficiary and also describe his or her responsibility for the care of the beneficiary;
- determine whether the payee applicant is a creditor of the beneficiary.²⁰

After a representative payee has been selected, SSA may, at any time, ask the payee to provide information showing that the payee's relationship with you continues, and that the payee is not mishandling your money. If the representative payee fails to respond within a reasonable time, SSA may stop payments to the representative payee or select another person to serve as payee. SSA will consider paying you directly if it decides to stop sending your payments to your representative payee. At the same time, SSA will look for a new payee.²¹

If SSA does not follow procedures to investigate and monitor the representative payee, and the payee misuses your funds, SSA may be liable to you for the misused funds, and may have to pay you back.²²

WHAT ARE THE DUTIES OF A REPRESENTATIVE PAYEE?

Once appointed and certified, the representative payee must determine from you what you need. The benefit checks will be sent to the payee, who will endorse and deposit them in a separate bank account for you. The payee should make payments on your behalf from this account. The representative payee should keep accurate records and retain all bills, receipts and canceled checks. If you receive SSI, the representative payee must make sure that your savings do not go over the \$2000 limit for an individual or \$3000 for a member of a married couple. This could make you ineligible for SSI.

A representative payee must spend SSI and SSDI funds only for your benefit. The representative payee must act in your *best interest*, taking into account your individual requirements and particular circumstances.²³

The spending priorities are:

- items for your basic maintenance (food, clothing, shelter, utilities, personal care, medical and dental care, education, personal comfort items, etc.);
- reasonably foreseeable needs (rehabilitation services, expenses for transfer, etc.);
- basic costs for any legal dependents (such as children) which are not paid by other sources such as AFDC, Social Security benefits, etc.;
- saving and investing;
- payment of some debts.²⁴ (Please note: SSI and SSDI funds cannot be taken by someone else to pay most debts, except paying SSA back for overpayments, Internal Revenue Service levies for the collection of unpaid federal taxes, or court-ordered garnishments for the enforcement of child support and/or alimony obligations.)

Medical expenses also should be paid, but only what is not covered by other sources such as Medicaid, Medicare or the free care pool. **If you are on SSI and in an institution that does not accept Medicaid, the representative payee should prioritize basic needs and items that will aid in your recovery or release, as well as provide money to improve your general condition, such as giving you canteen money. If the institution accepts Medicaid, then Medicaid should pay the institution's costs, and SSI may only be used for personal needs.**

If you are in an institution, your representative payee may spend Social Security money to maintain your home unless:

- you have no dependents living there;
- you have been gone for six months or more; and
- a doctor certifies that it is unlikely that you will return home.

Representative payees must establish "special needs accounts" for minors whose retroactive payments are more than six times the maximum benefit. These amounts may only be used for certain expenses, which are related to the child's disability and which benefit the child, such as education, personal needs assistance, and special equipment. The rules remain in effect after the minor turns 18, even if there is no longer a representative payee.

HOW DOES YOUR REPRESENTATIVE PAYEE ACCOUNT FOR THE USE OF BENEFITS?

Your representative payee will be required to submit annual written reports to SSA. (A parent or spouse who is your representative payee and lives with you does not have to file these annual financial reports.) In order for SSA to confirm how your representative payee is using funds, the payee should keep records of how benefits were used in order to make accounting reports and make those records available upon request. SSA may request the following information from your representative payee:

- where you lived during the accounting period;
- who made the decisions on how your benefits were spent or saved;
- how your benefit payments were used; and
- how much of your benefit payments were saved and how the savings were invested.²⁵

WHO IS LIABLE IF YOUR REPRESENTATIVE PAYEE MISUSES YOUR BENEFITS?

The representative payee is responsible for paying back your benefits if he/she misuses them. SSA will make every reasonable effort to obtain restitution of misused benefits in order to repay these benefits to you.²⁶

SSA will repay benefits in cases where they have determined that a representative payee misused benefits and the payee is serving 15 or more beneficiaries. SSA will pay you or your alternative representative payee when it makes restitution an amount equal to the misused benefits less any amount SSA collected from the misuser and repaid to you.²⁷

SSA will repay benefits if it committed “negligent failure” in its investigation or monitoring of your representative payee that results in misuse of your benefits by an individual payee who is serving no more than 14 beneficiaries. SSA will pay you or your alternative representative payee when it makes restitution an amount equal to the misused benefits less any amount SSA collected from the misuser and repaid to you.²⁸

“Negligent failure” means that SSA has failed to investigate or monitor a representative payee or that SSA did investigate or monitor a representative payee but did not follow established procedures in its investigation or monitoring.²⁹ Examples of SSA’s negligent failure include but are not limited to the following:

- ◆ SSA did not follow its established procedures when investigating, appointing, or monitoring a representative payee;
- ◆ SSA did not timely investigate a reported allegation of misuse; or

- ◆ SSA did not take the necessary steps to prevent the issuance of payments to the representative payee after it was determined that the payee misused benefits.³⁰

SSA's repayment of misused benefits under these provisions does not alter the representative payee's liability and responsibility.³¹

ISSUES WHEN INSTITUTIONS SERVE AS REPRESENTATIVE PAYEES

There are several problems that may arise when institutions rather than individuals act as representative payees. While the following practices are not illegal, they create problems for beneficiaries:

- SSA automatically designating the institution as your representative payee when you are admitted, even if you already have one;
- the institution paying itself first for your "maintenance," then giving whatever is left over to you;
- the institution pooling your money with that of other Social Security recipients under its care in one bank account and not awarding you interest;
- the institution remaining your representative payee after you leave.

However, it is illegal when the institution:

- does not first use benefits for your needs;
- uses your SSI money to pay its costs if you have Medicaid or other insurance that will pay, or takes more from your payments than the state allows;
- pays for maintenance, such as cleaning or repairs to the facility;
- pays for improvements to the facility, such as buying new beds or carpeting the activity room;
- pays for items that are supposed to be part of the basic fee, such as sheets and towels;
- pays itself for any debts you owe unless there is money left over after your monthly costs are taken care of and SSA has approved the payment.

HOW DOES ONE OBJECT TO THE APPOINTMENT OF A REPRESENTATIVE PAYEE?

SSA must give you notice that it intends to appoint a representative payee for you. If you are a minor or if you are legally incompetent, the notice will go to your legal guardian or representative. SSA will provide this notice before the representative payee is actually

appointed. This notice will afford the beneficiary an opportunity to appeal the representative payee appointment.³² The advance notice will:

- explain the right of the beneficiary to appeal the determination that a representative payee is necessary;
- explain the right to appeal the choice of a particular person to serve as the representative payee of the beneficiary; and
- explain the right to review the evidence upon which the choice of payee designation is based, and to submit additional evidence.³³

You therefore have the right to appeal and object to the appointment of a representative payee or to object to the appointment of the specific representative payee in your case.³⁴ To appeal the decision, you should file a written statement with your local SSA office to let them know of your objection.³⁵

If you object or appeal the appointment of a representative payee within 10 days of receiving the notice of appointment, SSA will not appoint the representative payee right away. Instead, it will first resolve your appeal. Depending on SSA's decision, the representative payee may or may not then be appointed.³⁶

If you do not object within 10 days, you have 60 days to submit to SSA your request for reconsideration.³⁷ Reconsideration is the first step in asking SSA to change its decision with respect to its appointment of a representative payee.³⁸ If you are not satisfied with the reconsideration decision, you may request a hearing before an administrative law judge 60 days from the date that you receive the decision.³⁹

HOW DOES ONE CHANGE A REPRESENTATIVE PAYEE?

SSA will stop sending your checks to your representative payee if SSA learns that your interests are not being served by sending your checks to your representative payee rather than directly to you or if your representative payee is no longer willing or able to serve you.⁴⁰ Benefits will not be paid to a representative payee if that person:

- has been found by SSA or a court to have misused your benefits;
- has not used your benefits on your behalf in accordance with SSA's guidelines;
- has not carried out other responsibilities required by SSA;
- dies;
- no longer wants to serve as your representative payee;
- is unable to manage your benefits; or
- fails to cooperate with SSA.⁴¹

If you believe that your representative payee should be changed for any of the reasons stated above, you should inform your local SSA office of your situation and the reason(s)

you want to change your representative payee. SSA should then investigate your request and then approve or deny that request based on their investigation.⁴²

If you have a current payee but there is another person who is willing and able to serve as your new payee, that other person can file an application with SSA asking to be appointed as your new payee.⁴³

HOW DOES ONE REMOVE A REPRESENTATIVE PAYEE?

If you want to remove your representative payee, you must demonstrate to SSA that you are mentally and physically able to manage or direct the management of your benefit payments without a payee.⁴⁴

To request the removal of a representative payee, you will need to request that SSA re-evaluate your capability. The re-evaluation process utilizes the same criteria as the original determination (which is described in the previous section entitled, “How Does the Social Security Administration Determine ‘Capability?’”).

As stated previously, SSA relies heavily on medical evidence. Therefore, the first step should be to talk to your doctor. Find out why he or she found it appropriate for you to be appointed a representative payee in the first place. If you and your doctor agree that the medical or psychiatric issues that made a representative payee necessary have improved, ask your doctor if he or she would be willing to write a letter to SSA supporting the removal of your representative payee. SSA will consider your doctor’s statement about your condition, particularly about your ability to manage or direct management of your funds, when it reviews your request for direct payment.⁴⁵ If your doctor believes that a representative payee is still needed, ask what improvements he or she is looking for before he or she would support removal of your payee.

After speaking to your doctor, gather other evidence to support the removal of your representative payee.⁴⁶ These may include documented instances showing that you have been able to responsibly handle your SSA funds such as letters from group home staff stating that certain bills were paid by you and on time. SSA will also accept a certified copy of a court order restoring your rights in a case where you were adjudged legally incompetent.⁴⁷

Then, visit your local SSA office. There you will be asked to fill out an application for representative payee removal. SSA also refers to this as a capability determination. The most important document needed for SSA to approve the removal of your representative payee is a doctor's statement supporting the removal, so be sure to stay in touch with your doctor throughout this process and to file his or her support letter with your application.

If you have a physical or mental disability that makes visiting your local SSA office difficult, you may schedule to have your capability determination interview take place over the phone. While SSA strongly prefers in-person interviews, there is no written SSA policy that *requires* that interviews be in person.⁴⁸ To schedule a phone interview,

call your local SSA field office and request “a phone interview to re-evaluate a beneficiary’s ability to manage benefits.” You will likely need to briefly explain the reason that you cannot physically go to the SSA office. For example, “I have been diagnosed with severe agoraphobia and cannot leave my home.” It may help to clarify that you are making an ADA request for reasonable accommodation.

SSA *should* schedule you a phone appointment with a claim specialist based on your request. The first person you speak with at SSA, however, may tell you an in-person interview is required. If the first person you speak with denies your request, ask to speak with a supervisor. Supervisors are usually more familiar with the SSA policy manual (Program Operations Manual System, i.e. POMS) and may be more comfortable “making an exception.”

If you successfully schedule a phone interview, be prepared to explain during your interview why the reason that prevented you from going to the SSA office will not prevent you from properly handling your benefits and payments. Also keep in mind that after a phone interview, the SSA claim specialist will likely ask you to mail in the required forms and evidence, including identification information and a letter from your doctor. It is best to already have this information on hand before you schedule an interview.

You can find your local SSA office by visiting <http://www.ssa.gov/boston/MA.htm> or by calling 1-800-772-1213.

CAN ONE VOLUNTARILY ASK FOR A REPRESENTATIVE PAYEE EVEN IF ONE’S DOCTOR DOES NOT THINK IT IS NECESSARY?

Yes, just visit your local SSA office and tell them you'd like to add a representative payee to your account. They will then ask you to fill out an application requesting a representative payee. If there is someone in particular whom you'd like to act as your representative payee and you have discussed the responsibility with this individual, be sure to list this person in your application and have him/her express to their local SSA office that he/she is interested in acting as your payee. In order for someone to act as your payee, he/she must first submit an application to be selected as a representative payee (form SSA-11) to his/her local SSA office. Note: An individual representative payee is never allowed to ask for a fee from his/her beneficiaries.

If you requested a representative payee from SSA voluntarily, it may be easier to remove your representative payee later on if you feel you no longer need their services. However, SSA may still request a letter from your physician stating that you are competent to handle your own financial affairs. If you decide you would like to remove your voluntary payee, it is best to first speak with your doctor to see if he/she would support your request before visiting your local SSA office to apply for removal.

You can find your local SSA office by visiting <http://www.ssa.gov/boston/MA.htm> or by calling 1-800-772-1213.

HOW DOES ONE FILE A COMPLAINT AGAINST A REPRESENTATIVE PAYEE?

For example, this is the process an individual would use to challenge a decision by a Representative Payee who refuses to increase payments according to the wishes of a beneficiary.

As described above, payees must manage a beneficiary's payments consistent with spending priorities.

When a representative payee refuses to increase payments as a beneficiary requests, the beneficiary should think about whether the payee is following these priorities. If the beneficiary believes the payee is not, the beneficiary may call SSA at 1-800-772-1213 and register a complaint. SSA will contact the beneficiary's local SSA office. The local SSA will then contact the beneficiary and attempt to resolve the problem. If the beneficiary is not satisfied, he/she may file an appeal to have the representative payee removed.

FOR MORE INFORMATION ABOUT SOCIAL SECURITY AND REPRESENTATIVE PAYEES:

For information and legal advice regarding Social Security and representative payees, contact:

- Your local legal services office (the Legal Advocacy and Resource Center, at 617-742-9179, can give you the telephone number);
- Disability Law Center (800-872-9992).

For general information about disability issues, contact:

- Mass. Network of Information Providers for People with Disabilities (800-642-0249);
- Mass. Office on Disability (800-322-2020).

To reach the Social Security Administration, contact:

- Social Security Administration (800-772-1213) -- Write down the name of the person you speak to, the date and time you called, and what they said.

¹ 20 C.F.R. 404.2001(b)(1).

² 20 C.F.R. 404.2001.

³ 20 C.F.R. 404.2010.

⁴ 20 C.F.R. 404.2015.

⁵ See 20 C.F.R. 404.2011(a)(1).

⁶ Social Security Administration, Program Operations Manual System § GN 00502.001.

⁷ P.O.M.S. § GN 00502.001.

⁸ 20 C.F.R. 404.2015.

⁹ P.O.M.S. § GN 00502.020.

¹⁰ P.O.M.S. § GN 00502.040.

¹¹ P.O.M.S. § GN 00502.030.

¹² 20 C.F.R. 404.2020.

¹³ The order of preference for representative payees for those who are disabled and have substance abuse conditions and is: a) State licensed or bonded non-profit organizations; b) a government agency whose goal “is to carry out income maintenance, social service or health care-related activities”; c) a State or local government agency with fiduciary responsibilities; d) A person who an agency appoints (other than a Federal agency) referred to in a, b, and c if appropriate; or e) a family member. 20 C.F.R. 404.2021(b). If the preferred payees are not available, SSA may appoint others like legal guardians, treatment providers, or even friends, if SSA's investigation shows them to be appropriate payees. If the recipient has no appropriate payee resources, SSA must provide some assistance, usually a referral from a list of local resources.

¹⁴ 20 C.F.R. 404.2021(a).

¹⁵ 20 C.F.R. 404.2021.

¹⁶ 20 C.F.R. 404.2022. In extraordinary circumstances, SSA may make exceptions to the general rule prohibiting those who have misused funds in the past and allow such individuals to serve as a representative payee. 20 C.F.R. 404.2022(d).

¹⁷ 20 C.F.R. 404.2022(e).

¹⁸ 20 C.F.R. 404.2024.

¹⁹ 20 C.F.R. 404.2024(a)(1).

²⁰ 20 C.F.R. 404.2024(a).

²¹ 20 C.F.R. 404.2025.

²² 20 C.F.R. 404.2024(c).

²³ 20 C.F.R. 404.2035.

²⁴ 20 C.F.R. 404.2040.

²⁵ 20 C.F.R. 404.2065.

²⁶ 20 C.F.R. 404.2041(a).

²⁷ 20 C.F.R. 404.2041(b).

²⁸ 20 C.F.R. 404.2041(c).

²⁹ 20 C.F.R. 404.2041(d).

³⁰ 20 C.F.R. 404.2041(d).

³¹ 20 C.F.R. 404.2041(e).

³² 20 C.F.R. 404.2030(a).

³³ 20 C.F.R. 404.2030(a).

³⁴ 20 C.F.R. 404.2030(b).

³⁵ 20 C.F.R. 404.909(a).

³⁶ 20 C.F.R. 404.2030(b)(2). However, if you received and signed your notice while you were in a local SSA field office, SSA's decision will be effective immediately. 20 C.F.R. 404.2030(b)(2).

³⁷ 20 C.F.R. 404.909(a).

³⁸ See 20 C.F.R. 404.907.

³⁹ 20 C.F.R. 404.921; 20 C.F.R. 404.929; 20 C.F.R. 404.933(b)(1).

⁴⁰ 20 C.F.R. 404.2050.

⁴¹ 20 C.F.R. 404.2050.

⁴² 20 C.F.R. 404.2050.

⁴³ <http://www.ssa.gov/payee/bene.htm>

⁴⁴ 20 C.F.R. 404.2055.

⁴⁵ 20 C.F.R. 404.2055(a).

⁴⁶ 20 C.F.R. 404.2055(c).

⁴⁷ 20 C.F.R. 404.2055(b).

⁴⁸ P.O.M.S. § GN 00502.050.