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BY FAX (410) ~~965~~-2830, 5 pages

Commissioner of the Social Security Administration
PO Box 17703
Baltimore, MD 21235-7703

RE: Proposed Rules, Representative Payment Under Titles II, VIII and XVI

Dear Commissioner:

Thank you for the opportunity to provide comment on your proposed regulations concerning the Representative Payment Program. The Disability Law Center provides technical and assistance and legal back up to Social Security Advocates across Massachusetts. It's support staff has more than 50 cumulative years experience representing social security claimants and beneficiaries and has provided direct representation to those with representative payee problems in the existing administrative process, federal court and through class action litigation. While we acknowledge the need for a representative payment program we believe that the current system is in total disrepair and acts to hinder, rather than foster, the beneficent purposes of the Social Security Act.

1. Payment for Payee Services: We agree with the opinion that forcing claimant's to pay for payee services is not at all a good situation. We also recognize the prohibitive costs involved with SSA financing for such an endeavor. Charges for such services should be limited to \$25 per month and appointment of a payee who will charge for services should always be a last resort. While we may not think that \$25 per month is not a significant sum, we must realize that \$25 represents a day and a half's living funds for an SSI recipient. Further, the payees who charge such a fee must be carefully approved and monitored. A Massachusetts non-profit agency dropped all of its DAA clients after the repeal of the DAA provisions due to the loss of the ability to charge a monthly fee for services. The resignation en masse left several SSI recipients without access to funds which, in turn, resulted in significant problems with their ability to maintain housing, food supplies, etc. Clearly, the agency was solely interested in using the representative payee program as a fund raising tool and did not have the interests of the recipients at heart. Further confusion resulted due to SSA's employees' failure to understand that benefits could not be permanently suspended to this class of individuals as they were no longer DAA recipients.

The Protection and Advocacy System for Massachusetts

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Suspensions due to a lack of payee can only last 30 days, after which direct payment is required by the Act and its implementing regulations.

The current proposal that would allow certain state agencies (including state hospitals) to charge a fee and that the fee be "indexed" should not be finalized without extensive study into the workings of these agencies and their current histories as representative payees. These agencies can almost always be seen as being in the position of "creditor" of the beneficiary as often times charges for room and board are assessed and billed directly to the resident. Further, exempting these agencies from any reporting requirements is a dire mistake. It is these very agencies that have big the most significant source of client complaints in Massachusetts. For example, the Massachusetts Department of Social Services (DSS) serves as representative payee for many of the disabled children in their care and custody. One complaint to our office related to a disabled 17 year old girl who had been invited to her high school prom. When she approached her foster parent in hopes of purchasing a dress for the event the foster parent contacted her case manager at DSS. The case manager indicated that there would not be sufficient time to access the child's personal needs account and that the dress could not be purchased. Needless to say the child was heart broken. Upon the foster parent's contact to the Law Center, DSS managed to access the child's own SSI benefits to purchase the dress. The matter came very close to federal court intervention but for the agency's last minute decision to allow the purchase. A mechanical process came very close to devastating a disabled child on one of the most important nights of her young life.

In another example, a Massachusetts State Hospital was attempting to influence a resident to diet in order to lose weight. The resident refused all efforts on the part of the hospital. After being involuntarily placed on a diet, the hospital discovered that the resident was ordering food to be delivered to the hospital. The hospital's response was to apply to become the resident's representative payee. The application was filed and approved by your agency. The resident's food access was severely limited as a result and the "forced treatment" became reality due to the appointment of the hospital as representative payee. Clearly, being appointed representative payee for the intention of forcing treatment upon an individual was not contemplated by SSA, yet this situation, and other like it, persists.

Human Rights Officers working at Massachusetts State Hospitals have opined that "one of the main reasons that the hospital likes the role of rep payee is that they are able to limit choices. For the client who receives \$3.00 or \$5.00 daily, he/she must decide whether to save the monies in order to purchase a pack of cigarettes the next day or purchase a sandwich at the café. Controlling patients money limits their choices. To me, it is still a form of financial exploitation."

An Advocate reports "for all the times I have seen patients with Rep Payees, I still haven't seen a treatment plan that includes a goal of teaching the patient to manage money. Instead, if they address it at all, they simply say that the patient will receive \$X per day or week."

State agencies and state hospitals who control the lives of SSDI and SSI recipients in

Massachusetts have little understanding of the intended role of a representative payee and act in a manner inconsistent with the statute and existing regulations. The accountability of these agencies and hospitals will be addressed later in these comments.

2. Pre-appointment Investigations: This office has handled many claims involving misuse of benefits by payees. When initiating such a claim a request for copies of the appointment application and documentation resulting from the investigation is made. Even in cases involving a "creditor payee" no such documents exist, aside from the basic application. The result is a very simple claim for duplicate payment (after misuse is found) due to SSA negligence in the appointment process. Not once have any investigation documents been discovered despite the requirement that such an investigation (at times requiring written findings) occur prior to all appointments. As a result of our experiences we cannot agree that SSA does anywhere near an adequate job of investigating payees prior to appointment.

The terms of investigation contained within the current proposals are not strong enough to protect the recipients who will lose all rights to control their social security funds. Certain documents must be obtained by SSA and the face-to-face interview should not be optional absent extreme circumstances. The example cited (not being able to find child care) is simply not severe enough to warrant exempting a proposed payee from a personal interview. This face-to-face interview is the perfect opportunity to provide proposed payees with a mini-training so that they are aware of their responsibilities and boundaries. Written materials, that may or may not be read, are simply not doing the job that is required.

The proposals seem to indicate that SSA is taking on the responsibility for locating and appointing payees. While we believe this is appropriate, our experience is that this is not something that is taken on by the local offices. Many, many claimants are simply turned away at the front desk and told that they must find their own payees despite reporting that they are alone, without friends or relatives who will perform this task. Statutorily required lists of agencies and individuals willing to serve individuals within the area served by local offices are non-existent and/or sorely out of date. In fact, when requesting the list, most recipients are simply told that no such list exists.

3. Pre-appointment Notice: While our clients do tend to receive the 10 day advance notice of appointments, a recent experience will provide an example of our routine client situation. Our client was living in the community when a recent medical emergency required a temporary in-patient stay at a state hospital. Upon realizing that the client received SSDI benefits, the hospital applied to become her payee. The client was very upset by this as she believed that her subsidized apartment would be at risk if she was not able to continue to pay her rent. She received a 10 advance notice of the hospital's appointment and immediately attempted to contact the SSA office. After making several attempts to call the office she contacted SSA's 800 number. She was informed that the hospital was already in the computer and there was nothing she could do about it. Further, she had to pay the hospital bills assessed to her. After this very distressing call, she wrote a letter to the local SSA office objecting to the appointment. Upon finally making phone contact with the local office she was again told that the hospital was

already listed as her payee in the computer and that the SSDI benefits would be sent to the hospital. All of these contacts occurred before the 10 day period had run.

A social worker assisting the client contacted our office and was instructed to file an appeal of the appointment. The social worker was told by SSA that no such appeal right existed. Our office then became involved and filed all of the appropriate appeal documents with the SSA office. Only after advocacy involvement was any attention paid to the client's desires. It is also important to point out that absolutely no investigation was conducted despite the fact that the hospital was a creditor of the client. Fortunately the matter was resolved in the client's favor and her mother was appointed as her payee in place of the state institution. However, no notice was ever provided to the client, or to our office as representative, of this appointment or of the previous appointment of the hospital. Upon contacting the local office I was informed that no such notices were issued and that all that could be provided was a copy of a computer printout acknowledging the appointment of the client's mother as payee. While the blatant due process violation is clear, and was fortunately harmless in this instance, constant due process violations of this nature occur throughout Massachusetts on a frighteningly consistent basis.

Addressing this very point are your proposals that indicate that both the decision as to the need for a payee and the decision as to whom to appoint are appealable issues. While this point seems clear in your introductory remarks, it is not clear in the proposed regulation itself. For example, proposal 4042030 (a) does not clearly indicate that these are two separate and distinct issues and that each is amenable to the administrative appeal process. This must be made clear for both recipients and SSA employees in order not to disrupt the rights of recipients.

4. Accountability: The proposal indicates that the representative payment program's "accountability process relies on the yearly report sent to each payee". While we agree that the program, as devised and regulated, requires such annual reports, we rarely see any such reports or any other monitoring evidence when reviewing client files. This may well be reflective of the very high success rate of our efforts to prove SSA negligence in order to demand duplicate payment. We cannot point to one case where monitoring reports or annual accounting forms were provided by any payee who has been found to have misused a recipient's benefits. Our experience indicates that only parents of disabled children who live in the household receive and complete these reports. Clearly, this population poses the most insignificant risk of misuse.

On the other hand, state agencies and institutional payees that indicate little involvement with the recipient, but for the collection of disability benefits as reimbursement for care, will be exempted from annual reporting. The workers associated with these large capacity payees, upon whom the recipients are completely dependent for information, often prove completely ignorant as to the purposes of the benefits provided or the fact that the client even receives benefits. This tends to benefit the payee as once the SSI \$2000 resource limit is reached, the cost of care reimbursement automatically increases from 75% to 100% of monthly benefits. In such cases, it appears that the payees failure to make the availability of benefits and a workable access process known to the client and/or social worker should be required by SSA and should be a monitoring point. We believe that institutional payees should be monitored much more closely than they are currently,

as this is where most "misuse" incidences occur. The large amounts of benefits being funneled into the accounts of these payee agencies should be indicative of the importance of close monitoring particularly when the agency has a mandate to provide services to its client regardless of the client's ability to pay for those services.

We believe that SSA should be required to review a significant sampling of individual and institutional payees each year. Such review should include visits by the payee to the local office for an interview and a close inspection of accounts and bookkeeping methods used by the payee. Institutional payees should also be required to provide information about client access to their accounts including processes used, the length of time needed to release funds to the client, and the payee's method of ensuring that all recipients in their care are fully aware of the availability of social security funds and the access process.

Lastly, the "indexing" of fees, if allowed at all, should not occur automatically. Any increase in fees allowed to a non-individual representative payee should be the result of a request for an increase by the payee and a complete investigation of that payee's activities and performance as payee before any increased fee is allowed.

5. SSA Training and Priority: Again, it is necessary to impress upon you our belief that the representative payee program, while very necessary, imposes a significant curtailment of a recipient's liberty. As such, the decision to appoint a payee should be regarded as a major event in the life of a disabled individual. Our experience indicates that SSA personnel know little about the program and treat it with a callous disregard. SSA must take steps to train its personnel as to the workings of the program and the importance of the program to the recipients. Also, we believe that SSA must make the representative payee program a priority in order to allow the program the attention it needs and deserves.

While we appreciate that the representative payee program is in need of some serious adjustment and/or enforcement, we believe that some of the proposal are bit weak and should be strengthened to provide for exceptional protections and processes for individual recipients whose basic right to control and manage their own funds has been removed under the auspices of such a very low and inconsistently applied standard. We thank you for your consideration of these remarks and will be happy to provide you with any further information you may deem necessary.

Sincerely,



Ray Cebula
Senior Staff Attorney
Disability Benefits Project