



## **Representative Payee for Social Security Benefits**

*The Voice is the e-mail newsletter of The Special Needs Alliance. This installment was written by Martha C. Brown, CELA, a Special Needs Alliance member in St. Louis, Missouri. Martha [Martha Brown](#) limits her practice to elder law and special needs law. A Fellow of the National Academy of Elder Law Attorneys and a Certified Elder Law Attorney, Martha has been designated a Super Lawyer for the last six years. Through her numerous community presentations and continuing legal education presentations, Martha helps attorneys and the public understand and address legal issues concerning the elderly and people with disabilities. Currently Martha is participating in the statewide task force to rewrite the guardianship code in Missouri.*

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*The Social Security Administration (SSA) disability program is the primary government benefit that provides income to people with disabilities. If individuals with a disability are unable to work and have paid into the social security system, they may receive Social Security Disability Insurance (SSDI). Supplemental Security Income (SSI), in contrast, is the social security benefit for people with disabilities who have not paid into the social security system or have paid too little for too short a period of time. To qualify for SSI, individuals must have assets that are worth less than \$2,000, excluding a house and a car.*

*Once SSDI or SSI benefits are approved, SSA will review the application to determine if the beneficiary can handle his or her cash benefit. If SSA determines that the beneficiary cannot handle the cash benefit, SSA will designate a representative payee to receive the monthly income and manage the funds on behalf of the beneficiary. SSA does not recognize powers of attorney or guardians appointed in state court.*

### **When Is a Representative Payee Required?**

*Whether or not a social security beneficiary needs a representative payee is a decision made by SSA based on the beneficiary's abilities. SSA presumes that every adult beneficiary can handle his or her social security check, unless there is evidence otherwise. SSA relies primarily on medical evidence to make this determination. An opinion letter offered by the primary care physician of the beneficiary is usually sufficient to support a decision to designate a representative payee. The physician must have examined the beneficiary within the prior year.*

*In addition, SSA caseworkers are encouraged to assess the beneficiary if there is a face to face meeting at the time of application. In some cases a person will apply for disability benefits and the caseworker will recommend that a representative payee be appointed because of limitations observed by the caseworker during the initial meeting. Also, social workers, other professionals and family members who interface with the applicant may provide evidence to the caseworker, which will support SSA's decision to appoint a representative payee. SSA rules state that someone declared incapacitated by a court (presumably in a guardianship proceeding) must have a representative payee.*

### **Who Will SSA Name as Representative Payee?**

*SSA has a list of preferred individuals to be appointed as representative payee. If the recipient is a minor child, SSA will typically appoint the biological or adoptive parent who has custody as the representative payee. It is important to note that only one person can be appointed representative payee even if both parents are living and willing to serve as representative payee. If no natural or legal guardian or adoptive parent has custody of a minor beneficiary, SSA will look at the following persons in the listed order:*

- 1. A step-parent with custody,*
- 2. A close relative with custody but who provides for the child's needs,*
- 3. A relative or close friend without custody but shows strong concern for the minor child,*
- 4. An authorized agency or institution, or*
- 5. Anyone else not listed who may have strong concerns for the child.*

*For adult beneficiaries, the representative payee preferred list issued by SSA is:*

- 1. The spouse,*
- 2. A parent,*
- 3. A relative with custody,*
- 4. A legal guardian,*
- 5. A public or non-profit agency,*
- 6. A federal or state institution,*
- 7. A statutory guardian,*
- 8. A voluntary conservator,*

9. *A private for-profit institution with custody licensed in the state, or*
10. *Anybody else who is not listed but is qualified and able to act as representative payee.*

*If the recipient with disabilities suffers from a substance abuse, SSA makes an effort not to appoint a representative payee who will encourage or enable the beneficiary's continued abuse of alcohol or drugs. SSA will not appoint the following individuals as representative payee: convicted felons, healthcare providers, representatives of healthcare providers, applicants who have misused social security benefits and creditors of the beneficiary.*

### ***How to Become a Representative Payee***

*The person who wants to be the representative payee (applicant) must apply to SSA. Generally, SSA will require that the applicant have an in-person interview with the caseworker. The representative payee is identified with a specific identifying number. The social security number of the representative payee is usually what is used for that number. If the representative payee is an organization, then the organization's tax identification number is used.*

*The interview for the applicant for representative payee must follow certain requirements. The representative payee must agree to receive benefits on behalf of the beneficiary, make distributions in the beneficiary's best interest, understand the legal requirements and be willing to comply with those requirements. The applicant must understand potential liability for overpayments if SSA determines benefits have been paid in error. If the SSA caseworker believes the applicant understands these important duties, the person is eligible to be appointed representative payee.*

### ***What Are Representative Payee's Duties?***

*The representative payee must do the following:*

1. *Meet with the beneficiary regularly to determine current and future needs of the person,*
2. *Use the funds in the beneficiary's best interest,*
3. *Save and invest benefits not needed for the beneficiary's current needs,*
4. *Keep detailed and accurate records of how benefits are used to provide an accurate report to SSA when requested,*
5. *Report any change in circumstances that may affect the beneficiary's entitlement or amount of payment,*

6. *Provide information to SSA related to periodic redeterminations of eligibility,*
7. *Show SSA that medical treatment is obtained for minor children,*
8. *Report changes in address and changes in custody,*
9. *Act on behalf of the beneficiary for matters relating to any claim for benefits,*
10. *Notify SSA if the representative payee believes that the recipient no longer needs a representative payee, and*
11. *Turn over any saved or unused benefits to SSA when the services of representative payee terminates.*

*It is important for the representative payee to have a separate bank account for the deposit of the monthly SSI or SSDI check. Other funds should not be co-mingled with this account and only the representative payee should be a signer on the account.*

#### ***Who can not be a representative payee?***

*Representative payees must be trustworthy, capable of managing funds, and willing to act in the best interests of the beneficiary. Therefore, individuals who have been convicted of a crime related to misuse of funds or have a history of mismanaging their own finances cannot be a representative payee. Additionally, individuals who have been declared legally incompetent, are unable to communicate effectively in English, or have a conflict of interest with the beneficiary cannot act as a representative payee.*

#### ***Can a representative payee live in another state?***

*Representative payees must be trustworthy, capable of managing funds, and willing to act in the best interests of the beneficiary. Therefore, individuals who have been convicted of a crime related to misuse of funds or have a history of mismanaging their own finances cannot be a representative payee. Additionally, individuals who have been declared legally incompetent, are unable to communicate effectively in English, or have a conflict of interest with the beneficiary cannot act as a representative payee.*

#### ***What is the difference between a guardian and a representative payee?***

*A guardian is appointed by a court to manage an individual's personal and legal affairs, while a representative payee is appointed by the SSA to manage their Social Security benefits. The primary role of a guardian is to make decisions regarding the individual's medical care, living arrangements, and other aspects of their life. On the other hand, the primary role of a representative payee is to manage the Social Security benefits, ensuring they are used for the beneficiary's basic needs, such as food, shelter, and clothing.*

## **Conclusion**

*The fact that an SSI or SSDI recipient has a guardian or has a power of attorney designating an agent does not eliminate the need for SSA to appoint a representative payee if the beneficiary is not capable of managing his or her monthly cash benefit. The representative payee has important responsibilities and should seek legal advice if there are any questions or concerns regarding the beneficiary's continuing eligibility for benefits.*

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