

## Who Benefits from Foster Youth Benefits?

### Issue Summary & Info

- It is estimated that 20% of foster youth should be receiving disability, survivor, or veterans' benefits but approximately only 10-20% of foster youth are eligible for and receive these benefits. There is no comprehensive national data collected or reported by SSA and ACF on the numbers of youth or amounts of benefits, however in Maryland, the annual average of benefits per youth was \$8500.
- States routinely apply for these benefits on behalf of foster youth- without notice to the youth or the youth's attorney. Then, states routinely appoint themselves as the representative payee to receive the funds, again with no notice to the youth or their attorney in most states.
- Representative payees, including state agencies, must use Social Security funds for the use and benefit of the beneficiary. For children whose families have no means to provide for their basic needs, SSI can help with food, clothing, and shelter, as well as with services relating to the child's disability. States, however, are already obligated to pay for the basic needs of *all* foster children, and there should not be unequal application of this obligation to disabled and orphaned foster youth. SSI explicitly requires that any funds that are not used for unmet basic needs be conserved for the beneficiary's future use.
- No accounting is done in most states tying the use of disabled youth's SSI benefits to any special services, therapies, or equipment related to their disability. Rather, the money is used to reimburse the state for basic foster care maintenance expenses already provided for under Title IV-E. This is a double violation of the states' obligations as fiduciaries- once as the legal parent of the child, and again in the role of representative payee.
- The same can be said for orphaned youth whose parents paid into Social Security insurance or served in the U.S. military and died, leaving survivor benefits to their children. These funds are applied for and received by the state agency in most cases, without any notice to or consent from the child or their attorney/representative, without any accounting for the use of the funds, and without any of the benefits being conserved for future use.
- The vast majority of foster youth eligible for and receiving SSI/OASDI/VA benefits never know about it. There is *no notice to youth* or their attorney/representative of application for benefits. *No notice of appointment* of benefit award. No opportunity to propose alternative payee in accordance with the SSA preference list who would use the benefits in the child's interest. There is no consent to appoint the state to receive benefits or to use them to reimburse the agency for existing state financial obligations.
- If another vulnerable group, such as retired veterans, were having their federal benefits intercepted by a state agency without notice or due process and without accountability for their use, it would not be tolerated.



- ***Why do states do this?*** It is a long-standing revenue maximization strategy for states, acknowledging that states may not "double-dip" with IV-E and SSI, and that SSI provides more revenue to states without requiring other income eligibility or state matching. The practice has simply become routine across states, which many agencies taking a "well, everyone else is doing it" approach without reflecting upon the ethical implications or fiduciary obligations at stake.
- Existing federal legislation and regulations establish clear requirements pertaining to notice, due process, appropriate payees for youth, information sharing, and data collection which are not being followed or enforced. However, federal law neither endorses nor prohibits this practice explicitly. Legislation to limit the practice has been introduced in Congress three times since 2008, with an updated bill being crafted now by Rep. Danny Davis.
- Litigation on the issue has produced mixed results, with the Supreme Court making a limited unfavorable ruling in 2013, and state courts acting to get benefits back in the hands of foster youth in NC, MD, and AK.
- To date, Maryland is the only state to pass legislation limiting the practice. Legislation in Texas was introduced in 2021 and several additional states are gearing up for state bills.