



Children's Advocacy Institute

# BUILDING ECONOMIC SECURITY FOR FOSTER YOUTH: PROTECTING SSI/OASDI/VA BENEFITS

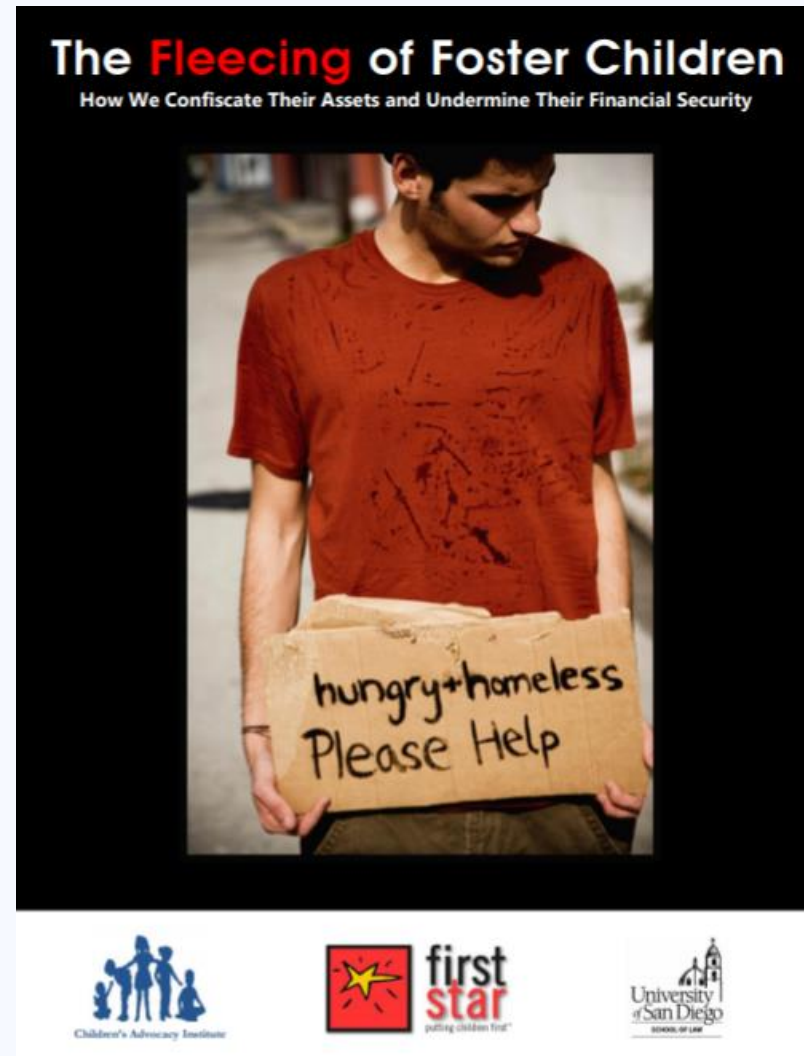
**Amy C. Harfeld, JD**  
**National Policy Director**



FOSTER YOUTH AGING OUT OF CARE  
REQUIRE GUIDANCE, SUPPORT, AND  
RESOURCES AS THEY MOVE TOWARDS SELF-  
SUFFICIENCY.

STATE-SANCTIONED INTRUSIONS UPON THEIR  
RIGHTS AND BENEFITS VIOLATES THE ETHICAL  
AND MORAL OBLIGATIONS OF OUR FOSTER  
CARE SYSTEM, AND IS FUNDAMENTALLY  
UNJUST, UNCONSTITUTIONAL, AND FISCALLY  
IMPRUDENT.

[SEE FLEEING OF FOSTER CHILDREN REPORT](#)





# State Foster Care Agencies Take Millions Of Dollars Owed To Children In Their Care

April 22, 2021 · 7:00 AM ET

Heard on [All Things Considered](#)

ELI HAGER



JOSEPH SHAPIRO



Ash Adams for NPR

**MALERIE SHOCKLEY, 24**

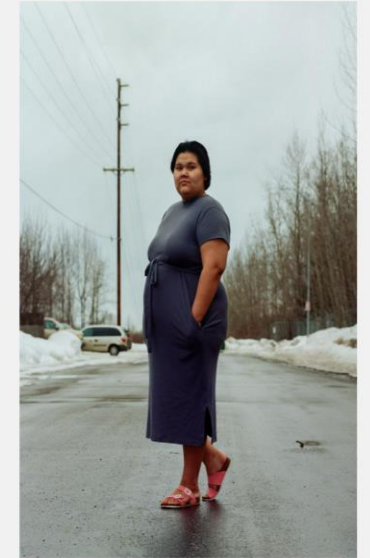
**WHAT THE STATE TOOK**  
\$720 to \$790 per month during her teen years Shockley was moved between many foster homes and facilities in Alaska, where she says she faced abuse. She developed debilitating PTSD and panic attacks and qualified for disability benefits.



Ash Adams for NPR

**TRISTEN HUNTER, 21**

**WHAT THE STATE TOOK**  
Nearly \$700 a month starting when he was 12 Hunter's mother died when he was 7, making him eligible for survivor benefits. Later, his father went to prison, and Hunter was placed in a foster home.



Ash Adams for NPR

**KATRINA EDWARDS, 21**

**EDWARDS, 21**  
**WHAT THE STATE TOOK**  
\$780 a month starting when she was in her mid-teens After entering foster care, Edwards ran away several times and was sent to mental health facilities. The state obtained disability benefits in her name.

# CASE LAW

SCOTUS

KIEFFELER, 2004

STATES NOT VIOLATING ANTI-ATTACHMENT PROVISION OF US CONSTITUTION IN ACTING AS REPRESENTATIVE PAYEE FOR FOSTER YOUTH RECEIVING SSI BENEFITS. DECISION DID NOT RULE ON OTHER CONSTITUTIONAL OR DUE PROCESS ISSUES.

Cook County

Willigham

Consent Decree: Notice and Accounting Required- no admin costs allowed

North Carolina

John G

Benefit to house restored to youth

Maryland

Alex B

Portion of Youth Benefits Set Aside

Alaska

Kauffman S I

Appeal pending- temporary suspension

# GOVERNING FEDERAL LAW

## H.R. 4547, the Strengthening Protections for Social Security Beneficiaries Act of 2018

- Requires Social Security Administration (SSA) to conduct reviews of representative payees under the Supplemental Security Income (SSI) program and the Old Age, Survivors, and Disability Insurance (OASDI) program. The SSA must also conduct periodic onsite reviews of individual and organizational payees.
- SSA must: (1) share information to identify represented minor beneficiaries who are in foster care; and (2) determine the appropriate representative payee for any represented minor beneficiary who has entered foster care, exited foster care, or changed foster care placement in a given month.
- The Government Accountability Office must report to specified congressional committees on issues related to represented minor beneficiaries in foster care with respect to SSI and OASDI benefits

# SSA GUIDANCE REGARDING MINOR BENEFICIARIES IN CARE

Cases involving foster care are among the most sensitive SSA encounters.

It is essential that SSA do all it can to protect the rights of children who may not be able to rely on their parents to do so. It is extremely important that SSA follow all legal requirements, including conducting a complete investigation of the individual or organizational representative payee applicant, using the payee preference list appropriately to identify when other payee leads should be developed and providing due process to the child's parent and/or legal guardian.

Foster care agencies have traditionally been among SSA's most dependable payees; *however, their appointment as rep payee is not automatic. You must decide each case individually and remember to consider other concerned relatives as possible payee choices. Do not routinely appoint the foster care agency as payee for a child in foster care.*

GN 00503.100E.2.

## POLICY OF ADMINISTRATION FOR CHILDREN AND FAMILIES

The difference between title XVI (SSI) and title IV-E should be considered carefully by the decision maker when choosing whether to apply for either or both title IV-E or SSI benefits on behalf of the child. Information regarding the benefits available under each program should be made available by the title IV-E agency so that an informed choice can be made *in the child's best interest*.

To achieve this goal, title IV-E agencies should exchange information regarding eligibility requirements and benefits with local Social Security district offices and establish formal procedures to refer clients and their representatives to the local Social Security district office for consultation and/or application when appropriate.

## WHAT IS THE SSA'S ESTABLISHED ORDERED PREFERENCE LIST FOR REPRESENTATIVE PAYEES OF FOSTER YOUTH RECEIVING BENEFITS?

- (1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;
- (2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well-being;
- (3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well-being;
- (4) A relative or stepparent who has custody of the beneficiary;
- (5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well-being;
- (6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well-being; and
- (7) **An authorized social agency or custodial institution. [such as a foster care agency]**  
as amended at 69 FR 60232, Oct. 7, 2004; 85 FR 7664, Feb. 11, 2020]



## **QUESTIONS AGENCY MUST ASK TO DETERMINE APPROPRIATE REPRESENTATIVE PAYEE:**

- · Has the court given the agency legal custody? Is agency the legal guardian?
- · Does the child have a living parent? If so, have parental rights been terminated?
- · Are there other family members or concerned adults who provide support and show concern for the child?
- - What efforts have been made to follow the Payee Preference List

# NOTICE AND DUE PROCESS REQUIREMENTS OF STATE AGENCIES APPLYING FOR AND RECEIVING FOSTER YOUTH BENEFITS

## Notice and due process for beneficiaries:

Commissioner of Social Security shall provide written notice of its initial determination to pay benefits, who will receive the benefits or which representative payee will serve to do so, and in the case of a minor child beneficiary, to the legal guardian or legal representative of such individual.

Any notice described in clause shall identify the person designated as the representative payee, and shall explain the right of such beneficiaries to appeal a determination of a particular representative payee, and to review the evidence upon which such designation was based and submit additional evidence.

## FIDUCIARY OBLIGATIONS OF REP. PAYEES OF FOSTER YOUTH

Representative Payees of foster youth benefits are *fiduciaries*. Their duty must be primarily to the child, and their priority be the use of the funds in the child's best interest given the individual circumstances of needs of the particular child and other available resources. Their duties (GN 00502.113.D) include:

- using and saving the money for the child's benefit;
- filing annual accounting reports on use of funds in child's best interest;
- reporting changes which the beneficiaries' eligibility and benefit amount;
- record keeping & accounting; and
- returning conserved funds.

<https://secure.ssa.gov/poms.nsf/lnx/0200502159>

# BY THE NUMBERS

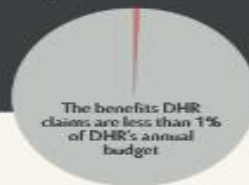
SB 524/HB 575

Protecting the Resources of Children in State Custody

## CURRENT PRACTICE

Currently, certain abused and/or neglected children, who live in a foster home, group home, or treatment center, can receive federal benefits, such as Supplemental Security Income (SSI)/Social Security Disability Insurance (SSDI) & Social Security Survivor's Benefits.

However, the Department of Human Resources (DHR) is not required to use that money for additional services for that child. Rather, DHR is keeping this money to reimburse itself for the cost of that child's care.



**\$8,500**

The average amount of SSI/SSDI benefits DHR can claim on behalf of a single foster child each year.

**FEDERAL LAW** requires states to use a foster child's benefits in a manner determined to be in that child's best interests.



## UNDER SB 524/HB 575, DHR WOULD BE REQUIRED TO:

- Provide notice to the foster youth and their attorneys when applications for benefits are made; and
- Place the child's federal benefits into an account for the child to access upon leaving care.

## WHEN A FOSTER YOUTH'S BENEFITS ARE SAVED INTO AN ACCOUNT,

They are better prepared to support themselves upon aging out of the child welfare system.

### ONE YEAR OF SSI/SSDI BENEFITS IS EQUIVALENT TO:



**Almost 1 YEAR**  
Childcare for a  
2-4 year old



**6.8 YEARS**  
Books & supplies  
for college



**5.5 YEARS**  
SNAP  
benefits



**9.7 MONTHS**  
Rent for a one-  
bedroom

ADVOCATES FOR CHILDREN & YOUTH | 2015 | [www.acy.org](http://www.acy.org) | [mrock@acy.org](mailto:mrock@acy.org) | [f](https://www.facebook.com/marylandacy) [t](https://twitter.com/MarylandACY) @MarylandACY

1. The average weekly cost of childcare for a 2-4 year old in either a child care center or family child care program is \$166.05; the yearly cost is \$8634.60. Maryland Family Network. (2013) Child Care Demographics 2013. <http://mdchildcare.org/mdcfo/pdf/demographics.pdf>  
2. Based on the average (\$1243) of the estimated yearly cost of books and materials at UM College Park (\$1130), UM Baltimore County (\$1200), and Prince George's County Community College (\$1400). Data not available for Baltimore City Community College or Community College of Baltimore County.  
3. Based on the average (\$4732) yearly cost of tuition at Prince George's County Community College (\$8256), Baltimore City Community College (\$2640), and Community College of Baltimore County.  
4. The average yearly SNAP benefit per person in Maryland, for FY 13, is \$1528.68. <http://www.fns.usda.gov/pd/IRSNAPreg5op.htm>  
5. The average monthly rent in Maryland is \$876, which was calculated by averaging the Fair Market Rent for all metropolitan areas in Maryland: [http://www.huduser.org/portal/datasets/fmr/fmrFY2014\\_code/2014state\\_summary.pdf](http://www.huduser.org/portal/datasets/fmr/fmrFY2014_code/2014state_summary.pdf)

## **Maryland to become the FIRST state to stop DHS from Charging Abused and Neglected Children for their Own Care**

Currently DHR applies for Social Security Disability (SSDI) and Social Security Survivor (OASDI) benefits for children in their care who have been abused and/or neglected and live in a foster home, group home, or treatment center. Rather than using that child's benefits for additional services for that child, they are using the money to reimburse the state for the cost of their placement.

The Maryland General Assembly has made history by passing legislation that will ensure children are notified when application for benefits are submitted, that there is an accounting done of how the benefits are being spent, and for older youth, at least a portion of the benefits are used to help with the difficult transition out of foster care. National data from the most expansive survey of former foster youth (720 of whom were contacted at age 26) indicates how poor their outcomes are:<sup>1</sup>

- 31% (182) of youth surveyed reported being homeless or needing to couch-surf after aging out of the child welfare system and almost half reported experiencing homelessness more than once
- 50% reported experiencing homelessness more than once
- 19.9% (118) had no high school diploma or GED at age 26
- Only 2.5% (15) had a 4 year degree; 4.4% (26) had a 2 year degree
- 46.8 % (279) were unemployed (About half worked in the past year and half had last worked more than a year ago.)
- 15.3% (91) have a chronic medical condition
- **76.5% (254) of women and 47.6% (119) of men were receiving means tested benefits**

Compared to a 1 in 194 chance for someone in the general U.S. population, youth that have aged out of care have a 1 in 11 chance of experiencing homelessness over the course of a year.<sup>2</sup>

This bill requires DHR to put at least the following percentages of the benefits into savings accounts:

14-15 year olds:	40%
16-17 year olds:	80%
18-20 year olds:	100%

# **WHAT STATES HAVE DUG IN? MARYLAND AND TEXAS TBD...**

## **STATE ADVOCACY: IMMEDIATE OPPORTUNITY FOR CASAS, ATTORNEYS, GALS, JUDGES**

Develop training for minors' counsel and CASAs to understand issue, develop advocacy tools, incorporate work into practice;

Ask the child welfare agency if their client is receiving benefits and find out who the representative payee is;

- Search for a more appropriate payee (if payee is currently the state/county/child welfare agency);
- Demand an accounting of the use of funds;
- Advocate to the representative payee if it is the state that benefits be used to pay for specific, additional services beyond foster care maintenance;
- If the child isn't currently seeking benefits, ask the child welfare agency to screen the client to see if benefits are available.

## **STATE ADVOCACY: ENFORCING EXISTING REQUIREMENTS AND FURTHER ADVOCACY OPPORTUNITIES**

Press for immediate review and notice to current and future beneficiaries, legal guardian, and attorney/GAL;

Instructions/guidance and public pressure on agencies regarding compliance with representative payee preference list, notice, and accounting/reporting requirements of rep payees;

Research/writing on constitutional law implications as well as issues around takings, conversion, liability for violation of fiduciary;

Identify clients or classes prime for class action litigation and partner with law firm to file suit, or contact previous attorneys/advocates involved in other cases.



## **STATE ADVOCACY: PUBLIC EDUCATION**

Educate agencies and advocates on rules and restrictions regarding supplementing/supplanting IV-E match with SSI, OASDI, VA.

Provide training/policy guidance on asset cap limits for eligible youth and preventing state seizure of funds or eligibility termination.

Help establish ABLE or other special accounts in your state exempt from the asset caps to protect conserved benefits or other earnings/assets of youth.

Help develop and track tools for accounting, and reporting on use of funds as required by SSA (see Child Trends survey).

Advocate or propose policy allowing for draw-down of IV-E funds for legal representation of youth to include advocacy/administrative costs on use of public benefits.



# STATE ADVOCACY: DATA REQUESTS TO MAKE

How many children in care in each state are receiving these benefits? (SSI, disability, OASDI survivor, Veteran's survivor?)

How is the agency identifying children entering care who are receiving benefits or may be eligible for benefits?

What efforts are being made by the state to identify appropriate representative payees for foster children according to the SSA preference list?

Is there an established liaison between foster care agency and SSA? How are the required annual reports submitted?

How and when are agencies providing notice/due process to children/guardians/lawyers and opportunities to engage?

Is the state handling SSI/OASDI/VA benefits in the same manner or differently according to category of benefits?

For the youth that the state reimburses itself using the SS/SSI benefits, does the state also claim IV-E benefits for eligible youth or does the state not seek IV-E funds for the youth for whom they claim SS/SSI benefits?

Are benefits handled the same way when children are in foster care with kin/relative caregivers?

How is the agency reporting/tracking use of the funds? Are the annual required reports to SSI and VA being filed? Shared w/child/atty? Conserved in dedicated or ABLE accounts? Deposited in other accounts?

What is the extent of assets of foster children seized/frozen because of asset caps on recipients of SSI or OASDI. Where is that money going?

## CONTEMPLATING LITIGATION? CONSIDER THIS\*:

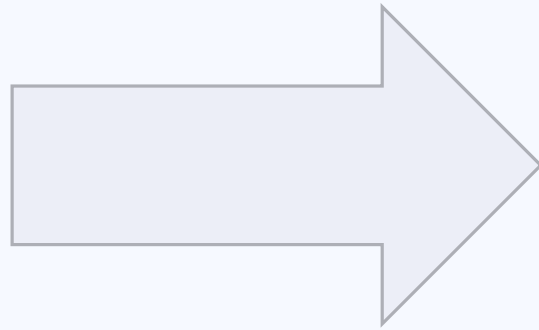
1. Individual case or class action?
2. OASDI (some easier policy arguments) SSI (largest number of beneficiaries in care), VA survivor benefits, or both?
3. Current or former foster youth?
4. Note to tort claims limits (some states allow only one year for a claim after it arises, even if youth has no notice)
5. State court or Federal Court?
6. Discovery pros and cons?
7. If state court, juvenile court proceeding or affirmative claim in state circuit court (tort claims act considerations)?
8. Are there jurisdictional pros or cons on bringing the case in juvenile court v. circuit courts?
9. Is there an ideal fact pattern to pursue such as if the state/county claims both IV-E and takes survivor benefits?
10. Addressing/avoiding Keffeler and considering any creative related precedent

*\* Thanks to Dan Hatcher for this guide*

# CHECK ON YOUR CURRENT CLIENTS- IS THIS HAPPENING NOW? TO FORMER CLIENTS?

 The Marshall Project

04.22.2021



WERE YOU EVER IN FOSTER CARE?  
HERE'S HOW TO FIND OUT IF THE GOVERNMENT  
TOOK YOUR MONEY—  
AND HOW TO TRY AND GET IT BACK.

# BY THE NUMBERS

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**5.5 YEARS**

SNAP benefits



**9.7 MONTHS**

Rent for a one-bedroom

## FURTHER RESOURCES & CONTACT

1. The NPR/Marshall Project investigative series: <https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca>:  
[Second segment](#) on Morning Edition on recouping benefits;  
[Third segment](#) on Morning Edition on how for-profit companies mine foster children for benefits;  
[Marshall Project tool](#) to conduct a real-time search on individual benefits/beneficiaries.
2. Children's Advocacy Institute's report on obstacles to financial security for foster youth aging out: [http://www.caichildlaw.org/Misc/Fleecing\\_Report\\_Final\\_HR.pdf](http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf)
3. The 2018 [Strengthening Protections for Social Security Beneficiaries Act of 2018](#) and GAO report on compliance with 2018 law <https://www.gao.gov/products/gao-21-441r>
4. Daniel L. Hatcher, Foster Children Paying for Foster Care, 27 CARDOZO L. REV. 1797, 1804 (2006)
5. Washington State Department of Social and Health Services v. Keffeler (2003) 537 U.S. 371, 379

## FURTHER RESOURCES CONTINUED...

6. NYTimes story on N. Carolina case of John G:  
<https://www.nytimes.com/2006/02/17/us/welfare-agencies-seek-foster-childrens-assets.html>
7. Dan Hatcher's book on the monetization of foster youth in The Poverty Industry:  
<https://nyupress.org/9781479874729/>
10. Foundational Background article by Professor Dan Hatcher: [https://scholarworks.law.ubalt.edu/all\\_fac/283/](https://scholarworks.law.ubalt.edu/all_fac/283/)
11. U.S. Supreme Court case of Keffeler from 2003, including pleadings, briefs, and state court links: <https://supreme.justia.com/cases/federal/us/537/371/>
15. Summary of 2018 MD bill: <http://blog.liftingtheveil.org/2015/03/06/maryland-legislators-file-new-laws-to-protect-foster-children/>

# HAVE QUESTIONS?

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