



Children's Advocacy Institute



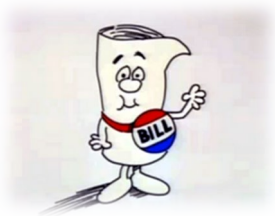
BUILDING ECONOMIC SECURITY FOR FOSTER YOUTH: PRESERVING SSI / OASDI / VA BENEFITS

[HTTPS://WWW.SANDIEGO.EDU/CAI/ADVOCACY/YOUTH-BENEFITS/](https://www.sandiego.edu/cai/advocacy/youth-benefits/)

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BACKGROUND, INFORMATION, HISTORY

- Approximately 10-12% of foster youth receive disability, survivor, or veterans' benefits. Closer to 20% are eligible. The annual average disability benefit per youth is over \$900/month. Purpose of benefits, distinction between insurance vs. entitlement.
- States routinely apply at various points for benefits on behalf of foster youth- **without** notifying them or their attorneys/representatives. They then routinely appoint themselves as the representative payee, using the funds to supplant existing obligation for foster care.
- States view this as “revenue maximization strategy” without reflecting upon ethical implications, fiduciary obligations, impact on youth, or adherence with agency primary mission.
- The practice violates the agencies’ fiduciary obligations under federal and state law to serve and protect children’s best interests.
- [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 and other Congressional allies



YOUTH VOICE: WHAT THE STATE TOOK



Malerie Shockley, 24

\$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. **“I didn’t realize I was basically paying for my own foster care[...].”**



Tristen Hunter, 21

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. **“I’m not even really sure where the money is now except that I don’t have it.”**



Katrina Edwards, 21

\$780/month when she was a teen

After entering foster care, Edwards ran away several times and was sent to mental health facilities. The state obtained disability benefits in her name. **“The state is taking my personal money when they’re barely even taking care of me? That doesn’t seem right.”**

Source: Hager, E. & Shapiro, J. (2021, April 22). State Foster Care Agencies Take Millions of Dollars Owed To Children In Their Care.



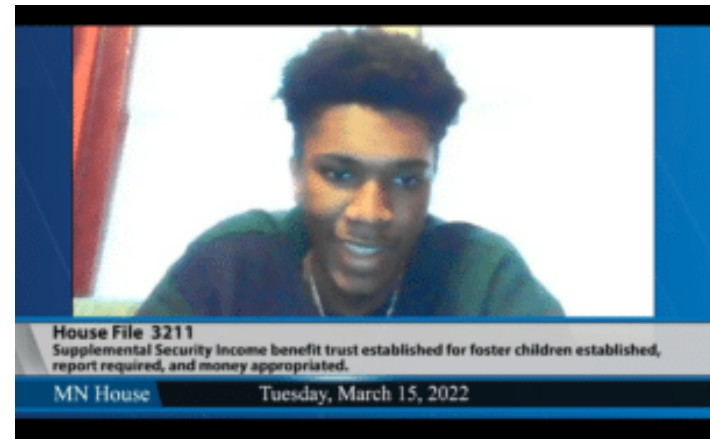
YOUTH VOICE: WHAT THE STATE TOOK

“I never thought that the system that was supposed to be helping me really was stealing from me the entire time.” Antonio Luna-Jackson,

[Imprint News 5/17/22](#)

“How are you going to make a child pay child support?”

-[Alex Carter](#), 21



YOUTH VOICE: HOW WOULD THEY HAVE USED THE MONEY?



Safe Housing



Education



Reliable
Transportation



Medical
Expenses



WHAT ARE THE RULES?

GUIDANCE FROM SOCIAL SECURITY ADMINISTRATION (SSA)

“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.[...]”

“Foster care agencies have traditionally been among SSA’s most dependable payee; however, their appointment as rep payee is not automatic. You must decide each case individually and consider other concerned relatives as possible payee choices.

Do not routinely appoint the foster care agency as payee for a child in foster care.”



FEDERAL CHILD WELFARE LAW AND RULES

Foster children have no obligation to pay for nor owe any debt for their own care. Although a fiduciary may use a child's benefits to pay for current maintenance needs, federal [rules](#) require that if current maintenance costs are otherwise provided for, the money must be used or conserved in the beneficiary's best interest.

State and federal law explicitly require states and in some cases the federal government to pay the costs of foster care (e.g. [MD](#) "Department shall pay for foster care" for all foster children). Title [IV-E](#) directs foster care maintenance payments to be paid for eligible youth including "payments to cover the cost of (and the cost of providing) food, clothing, shelter. . . .".

Title [IV-E](#) explicitly prohibits states from using other federal funds to supplant required state expenditures.



INTRODUCED AND PENDING REFORM

New legislation or policy has been adopted in:

[Nebraska](#), [Connecticut](#), [Illinois](#), [California](#), [Oregon](#), [New York City](#), [Philadelphia](#), [Los Angeles](#) and [Washington D.C.](#) and is pending

in [Washington](#), [Massachusetts](#), [Oregon](#) (with a bill preserving all benefits and other assets and a partner bill providing for a retroactive [refund](#) of benefits), [Minnesota](#) (also including restitution of benefits), [Texas](#) and the biggest piece of the pie, [California](#).

Congress introduced [H.R.9654](#) at the end of 2022, which would ban the practice, and plans to reintroduce a bill in the 118th Congress. The Biden Administration has promised to issue joint guidance and policy from SSA/ACF in the near future.

How Can Agencies Help?

Prospective Admin/Policy Reform

1. Standardize screening and applying for children's benefits upon entry into care and submit claims for IV-E administrative funds to pay for it.
2. Ensure notice to children and their attorneys/GALs when benefits are applied for and received by the agency.
3. Issue policy prohibiting supplantation of foster care maintenance costs with children's own assets.
4. Enforce duties of agency to follow SSA's rules on representative payee preference, accounting for children's funds, and fiduciary obligations.
5. Provide support/TA on conserving children's assets in appropriate accounts exempt from asset caps, and provide financial literacy for new representative payees and youth beneficiaries.



WHAT CAN YOUR LEGISLATURE/CONGRESS DO?

ELEMENTS OF A GOOD BILL

1. Agencies screen and begin applying for benefits within 60 days of a child's entry into care. Agencies apply for IV-E administrative dollars to help pay for process.
2. If eligibility is determined, seek and document search for appropriate representative payee and assist with appointment. If none is available, agency should step up to serve.
3. Provide notice to child and attorney/GAL when benefits are applied for/received. Engage youth in planning for conserved funds.
4. Ensure funds are used for child's current *unmet* current needs or conserved for their foreseeable future needs in appropriate account, and monitor annual accounting on use of funds.
5. Provide financial counseling or training to new representative establishing proper accounts to preserve eligibility/managing/disbursing funds.



Ask and FOIA Away

- How many children in care are receiving benefits? (SSI, disability, OASDI survivor, Veteran's survivor)? What other benefits is the state taking (some have LONG lists)? Savings? How much money does this amount to? What is the average SSI/Survivor benefit per child per year?
- How is the agency screening and applying for benefits for children entering care? Is the requirement to screen memorialized in statute or just in rules? Is there a trigger age or timeline?
- What state laws/policies provide for proper notice to foster children and their attorneys/GALs when applications are made and benefits awarded?
- What efforts are being made by the state to identify appropriate representative payees for foster children according to the SSA preference list?
- Is the state using children's benefits to supplement or to supplant its existing foster care obligations?
- Is the state handling SSI/OASDI/VA benefits in the same manner or differently according to category of benefits?
- 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 PASS/ABLE/Special Needs Trust accounts?
- What are the reasonably foreseeable needs of youth aging out of care, and how would their conserved assets help to meet those needs?



DISMANTLING ROADBLOCKS

- ≠ **Everybody else is doing it**
 - ≠ Not anymore. Over a dozen states, counties and Congress have introduced or passed new legislation barring or limiting the practice.
- ≠ **Not our fault- passing the buck**
 - ≠ SSA blames DHHS, both blame Congress. Congress blames the states. Federal legislation and administrative action, as well as state legislation and regulatory action AND litigation is needed to act to end this.
- ≠ **State plan requires revenue maximization strategy**
 - ≠ That may be true, but child welfare agencies have a common fundamental mission and mandate to serve the best interests of the child, not the fiscal interests of the state.
- ≠ **If states can't take kids benefits, they will stop screening/applying for benefits**
 - ≠ This is highly unlikely- this practice is baked in to most agency practice and would be difficult to stop and open them up to litigation. Agencies can/should seek IV-E administrative dollars to help pay for this.
- ≠ **Taking kids' money helps us secure their benefits**
 - ≠ Securing benefits for eligible foster youth serves the best interest of the child. Taking the money serves only the best interest of the state. See above point about IV-E admin \$.



YET MORE ROADBLOCKS TO DISMANTLE



- ≠ **The Supreme Court endorsed this practice in the [Keffeler](#) case.**
 - ≠ The SCOTUS ruling was unfavorable but limited to the anti-attachment clause of the Constitution. SCOTUS explicitly declined to rule upon other Constitutional issues.
- ≠ **Agencies or state have incorporated this source of revenue into their budgets. How will the state make up for these funds if and have to forego IV-E maintenance claims in some instances?**
 - ≠ Children in foster care have no obligation to pay for their care. That the state has been improperly taking their funds and must now properly use the benefits is not the responsibility of the foster children to resolve. The agency's fundamental duty is to act in the CHILD's best interest at all times.
- ≠ **Preserving federal benefits of foster youth promotes systemic inequity by creating advantages for disabled and orphaned foster youth that will not be enjoyed by other youth in care.**
 - ≠ Disabled and orphaned foster youth are singled out to pay for their own care while the state pays for care for all other youth. Policy reform on this alleviates an additional layer of inequity for impacted youth, without impacting other youth in the system.
- ≠ **Conserving foster youth benefits will result in a windfall to youth who don't know how to manage their money and may use it for imprudent or illicit purposes.**
 - ≠ This concern reveals paternalistic and prejudiced presumptions about foster youth. Existing data shows that youth will use cash assets for housing, food, education, etc.

Contact Information



Questions?

Please Visit CAI's Campaign Website

<https://www.sandiego.edu/cai/advocacy/youth-benefits/>

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