

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

LAW IN BRIEF

WHAT IS A REPRESENTATIVE PAYEE, AND DO I NEED ONE?

SUBSTITUTED JUDGMENT

Substituted judgment is a legal tool that can be used when a person needs assistance making decisions about his/her care or property due to his/her inability to fully understand a decision that needs to be made or inability to communicate a decision. Substituted judgment gives power to another person to make decisions on behalf of the person who is in need but incapacitated.

Types of Substituted Judgment

There are several types of substituted judgment available. When selecting a type of substituted judgment, one should note that the best form of substituted judgment is the option which allows the person in need to remain as involved and independent as possible in the decision-making process for his/her care.

The different types of substituted judgment include:

- Health Care Power of Attorney
- Representative Payee
- Power of Attorney
- Conservatorship
- Guardianship

Note: Each type listed previously is *in order* from most independence to least independence for the person in need. See last page of this brief for more information on each type.

This law in brief will discuss the type of substituted judgment known as **Representative Payee**.

WHAT IS A REPRESENTATIVE PAYEE?

A Representative Payee is a person designated to manage the funds of another person receiving social security benefits from the Social Security Administration ("SSA"). Social Security

prefers the beneficiary manage his or her own benefits. However, when the beneficiary's interests would be better served by having another person manage the benefits, the Social Security Administration may assign a Representative Payee to manage the beneficiary's benefits.¹

- **Beneficiary:** A person receiving Social Security benefits.
- **Representative Payee:** A person selected by the SSA to help a beneficiary manage his or her money. This person owes a duty to the beneficiary to ensure his or her benefits are managed properly.²

HOW DOES SSA DETERMINE WHETHER I AM IN NEED OF A REPRESENTATIVE PAYEE?

If you are UNDER 18 years of age:

You **WILL** be assigned a Representative Payee, **UNLESS**:

- (1) a parent files for his or her own benefits and/or the benefit for the child (you) **AND** the parent has experience managing SS benefits;
- (2) you are capable of using the benefits to provide for your needs and no qualified payee is available; or
- (3) you will turn 18 within 7 months from filing for an application for benefits.

If you are OVER 18 years of age:

You **MAY** be assigned a Representative Payee, **IF**:

- (1) you have been deemed legally incompetent or mentally incapable of managing benefits payments; or
- (2) you are physically incapable of managing or directing the management of your benefits payments; or
- (3) you are eligible for benefits because of a disability related to drug addiction or alcoholism.

Other Considerations:

- 1) Court determinations: The SSA may consider whether a court has found the beneficiary to be incompetent.
- (2) Medical Evidence: The SSA may consider any evidence from a treating physician or psychiatrist explaining any illnesses the beneficiary may have and his or her opinion on whether the beneficiary is capable of managing his or her benefits.
- (3) Other Evidence: The SSA may consider any other relevant information from friends, family, and others able to observe whether you are able to manage your benefits.

¹ 20 C.F.R. § 416.601.

² 42 U.S.C. § 1383(a), 20 CFR 416.635.

WHO MAY SERVE AS A REPRESENTATIVE PAYEE?

Almost any person, organization, or institution may serve as a Representative Payee for a person in need. However there are limits to who may serve as Representative Payee.

A person **may not** be a Representative Payee if:

- He/she has been convicted of certain SSA Acts.
- He/she has a Representative Payee for his/her benefits.
- He/she was a Representative Payee for a different person previously and was found by SSA or a court to have misused the person's funds.
- He/she is a creditor (someone who provides goods/services for payment in return.)
- He/she has been convicted of a felony in which the nature of the felony would pose a risk to you or your benefits (e.g. financial fraud or theft).

PAYEE SELECTION PREFERENCES

While anyone may be designated as a Representative Payee for a person in need of one, the SSA wants to ensure the best person is selected to protect the beneficiary's interests. To help guide them in selecting a suitable payee, the SSA has created preferences to select the option that will provide the beneficiary with the best protection over other options that may be less secure.

<p>Preferences if you are over 18 years old¹</p>	<p>(1) Legal guardian, spouse, or other relative who is responsible for care of you or has a strong interest in your personal well-being.</p> <p>(2) A friend who is responsible for care of you or has a strong interest in your personal well-being.</p> <p>(3) A public or nonprofit agency or institution responsible for care of you.</p> <p>(4) A private institution such as a nursing home or facility that is responsible for care of you.</p> <p>(5) Members of community groups or organizations who volunteer and are willing to serve as a payee for you.</p>
<p>Preferences if you are disabled due to a drug addiction or alcoholism²</p>	<p>(1) A community-based, non-profit social service agency licensed by the State, or bonded.</p> <p>(2) A federal, state or local government whose mission is to carry out income maintenance, social service, or health care related activities.</p> <p>(3) A state or local government agency with fiduciary responsibilities.</p> <p>(4) A designee of an agency (other than a federal agency) listed above.</p> <p>(5) A family member.</p>

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<p>Preferences if you are under 18 years old ³</p>	<p>(1) A natural or adoptive parent who:</p> <ul style="list-style-type: none"> (a) has custody of you, or is your guardian; (b) does not have custody of you, but is contributing toward your support and demonstrates strong concern for your well-being; (c) does not have custody of you and is not contributing toward your support but demonstrates strong concern for your well-being. <p>(2) A relative or stepparent who has custody of you.</p> <p>(3) A relative who does not have custody of you but contributes toward your support and demonstrates concern for your well-being.</p> <p>(4) A relative or close friend who does not have custody of you but demonstrates concern for your well-being.</p> <p>(5) An authorized social agency or custodial institution.</p>
<p>¹ 42 U.S.C.A. § 1383(a), 20 C.F.R. § 416.21(a). ² 42 U.S.C.A. § 1383(a), 20 C.F.R. § 416.21(b). ³ 42 U.S.C.A. § 1383(a), 20 C.F.R. § 416.21(c).</p>	

WHAT DUTIES DOES A REPRESENTATIVE PAYEE OWE A BENEFICIARY?

A Representative Payee **MUST**:

1. Use the beneficiary's social security benefits to benefit them in a manner that serves their best interest. This means determining the beneficiary's needs, ensuring those needs are met, and saving the remainder.
2. Keep benefits received on the beneficiary's behalf separate from his or her own income or benefits (unless the payee is the beneficiary's spouse, parent, or stepparent and lives with you or has a state or local government exception).
3. Keep records of all payments received and how any money was spent or saved.
4. Regard any interest earned on the benefits as the beneficiary's property.
5. Notify SSA of any change in the beneficiary's circumstances that may affect their benefits.
6. Submit an annual report on the beneficiary's benefits (when requested by SSA).
7. Notify SSA of any changes in his or her ability to perform as a payee.
8. Ensure the beneficiary receives medical treatment for the condition that is the basis of their benefits.

A Representative **MUST NOT**:

1. Use the beneficiary's benefits for his or her own personal expenses.
2. Use the beneficiary's benefits in a way that would leave them without necessary items or services.
3. Keep or receive benefits after he or she is no longer a payee.
4. Charge the beneficiary for his or her service as a payee (unless SSA approves it).

Appealing, Removing and Reporting a Representative Payee

Appealing the SSA's decision to appoint a Representative Payee or appeal who was assigned as payee

To appeal a decision made by the SSA, the beneficiary must **submit an appeal in writing within 60 days** of receiving notice that you have been assigned a Representative Payee.

Review Removing a Representative Payee³

SSA will continue to send funds to a Representative Payee until you are able to show that you are able to manage your funds. You may request that SSA review your need for a representative payee at anytime. To establish that you are able to manage your finances and should receive direct payment, SSA suggests providing:

- (1) Medical Evidence: a statement from a physician or medical officer of the institution where you reside stating you are able to manage your own funds; **or**
- (2) Court Order restoring your rights in a case where you were found legally incompetent; **or**
- (3) Any evidence from family or close friends who know you and could write a letter to SSA stating that you no longer need a payee.

Reporting a Representative Payee

If you think a representative payee has misused, wasted or abused your benefits, you may report it to the Office of Inspector General Fraud Hotline of the SSA.

U.S. Mail: Social Security Fraud Hotline
P.O. Box 17785
Baltimore, Maryland 21235

FAX: 410-597-0118

Telephone: 1-800-269-0271 (10:00 a.m. – 4:00 p.m. EST)

TTY: 1-866-501-2101 for the deaf or hard of hearing.

Online: www.ssa.gov/fraudreport/oig/public_fraud_reporting/form.htm

³ 20 C.F.R. § 416.655

As stated previously in this information, there are many different types of substituted judgment for an individual in need. Below is a guide to other decision-making alternatives. The best form of substituted judgment is one that works to protect a person in need but also gives him/her the most independence in his/her life decisions.

Types of Substituted Judgment (Alternatives to Full Guardianship)	
<i>These Alternatives are listed in order from least restrictive to most restrictive form of substituted judgment.</i>	
Health Care Power of Attorney	A person selected by the individual in need to make decisions on his or her behalf regarding health care. The individual selects an “attorney-in- fact”, granting him or her authority to make medical decisions for the individual, when he or she becomes unable to make those decisions on his or her own.
Representative Payee	A person selected by the Social Security Administration to make decisions for a person receiving Social Security payments. The Payee is limited to only making decisions about those Social Security benefits.
Power of Attorney	A document that you draft selecting a person to make decisions on your behalf regarding your income, property and assets.
Conservatorship	A Conservator is a court-appointed person granted the power to help an incapacitated person make decisions about his or her property and assets. A Conservator may be the Public Guardian. A Conservatorship may be limited to certain decisions, for a temporary time, or it may be a full Conservatorship that must be contested to be removed.
Guardianship	A Guardian is a person granted the power to make decisions for a minor or incompetent person. A Guardian may make decisions about the person’s living arrangements, medical care, education, legal decisions and obligations, money and property. A Guardian may be appointed by a court or designated through a power of attorney or will. The Public Guardian may be designated as a Guardian for an incompetent person. A Guardianship may be limited to certain decisions, for a temporary time, or it may be a full Guardianship that must be contested to be removed.