



This is basic information and does not constitute legal advice.

## Substituted Judgment – Representative payee

### What is substituted judgment?

Substituted judgment can be used if you need help making decisions about your care or property. There are several types of substituted judgment you can choose. The best type of substituted judgment is one that allows you to be as independent as possible.

### What are the types of substituted judgment?

There are many types of substituted judgment you can choose. The different types include: health care power of attorney, representative payee, power of attorney, durable power of attorney, conservatorship, and guardianship. The types are listed in order from allowing you the most independence (health care power of attorney) to the least independence (guardianship).

## Representative payee

### What is a representative payee?

A representative payee is a person or organization chosen by the Social Security Administration (SSA) who will manage your social security benefits when you are not able to manage them yourself. The representative payee owes you a duty to manage your benefits properly. 42 U.S.C. §1383(a), 20 CFR 416.601.

### When is a representative payee used?

A representative payee is used when the SSA decides that it is in your best interest.

- A person who receives social security benefits is called a “*beneficiary*.” If the beneficiary is **18 years of age or older**, the SSA will consider the following things to decide whether a representative payee should be used:
  - If you are legally incompetent or mentally incapable of managing your own benefits

- If you are not able to manage or direct the management of your benefits; or
  - If you are only eligible for social security benefits because of a disability and drug addiction, or alcoholism is a factor of your disability. 42 U.S.C. §1383(a)(2)(A)(ii)(II); 20 CFR 416.610(a).
- Generally, if the beneficiary is **under 18 years of age** the SSA will appoint a representative payee. The SSA may directly pay benefits to you if you are under 18 years of age if:
    - You are a parent and you file for your own benefits and/or the benefit of your child **and** you have experience in managing SSA benefits;
    - You are able to use the benefits to provide for your own needs in a situation where a representative payee is not available; and
    - You will turn 18 years of age within seven months and you are filing an application for benefits for the first time. 42 U.S.C. §1383(a), 20 CFR 416.610(b).
  - The SSA also considers additional information in determining whether to appoint a representative payee such as:
    - **Court determinations**  
The SSA may consider whether a court has decided that you are incompetent.
    - **Medical evidence**  
For example, your doctor provides information that shows you have had a recent examination, your illness and chances of recovery, and the doctor's opinion on whether you are able to manage your benefits. That information may be used to determine whether you need a representative payee.
    - **Other evidence**  
The SSA may consider relevant information from friends, family and others who have been able to observe whether you are able to manage your benefits. 42 U.S.C. §1383(a); 20 CFR 416.615.

## Who may be a representative payee?

In deciding who will be a representative payee, the SSA will select a person, agency, organization, or institution that will serve your best interests. Whenever possible, the SSA chooses a family member or friend who is interested in your well-being. In choosing a representative payee, the SSA considers:

- The person's relationship to you;
- If the person has shown an interest in your well-being;
- If the person already has any legal authority to act on your behalf;

- If the person has custody of you; and
- If the person will be able to meet your needs. 42 U.S.C. §1383(a)(2)(B)(iii); 20 CFR 416.620.

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

A person **cannot** be a representative payee if:

- They have been convicted of certain Social Security Act violations;
- They have a representative payee for SSA benefits; and
- If they were a representative payee for someone else and they misused their SSA benefits. 42 U.S.C. §1383(a)(2)(B)(iii); 20 CFR 416.622.

### **What if I feel I do not need a representative payee or I do not like who the SSA appoints?**

If you do not agree that you need a representative payee, or if you want a different payee, you have sixty (60) days to appeal that decision by sending a letter to the SSA stating your concerns. Once you have appealed, you might have a hearing by the Commissioner of the SSA. You may have further review of your case if you do not agree with the Commissioner's final decision. 42 U.S.C. §1383(a)(2)(B)(xi); 42 CFR 416.630.

Information on how to make an appeal should be included in the letter from SSA that names your representative payee. Contact Nebraska Advocacy Services if you are unsure how to file an appeal.

You may also ask SSA to review whether you need a representative payee at any time. If you believe that you no longer need a representative payee, the SSA will want to see evidence that you can be your own payee. Some evidence you may want to provide to the SSA includes:

- Legal evidence  
You may want to provide legal evidence, such as a court order, to the SSA if you had a guardian but you no longer do. This may help to show legal documentation that you can manage your own money.
- Medical evidence  
Having a letter from your doctor that says you are able to manage your own money will help to show SSA that you no longer need a representative payee.
- Lay evidence  
Lay evidence is statements from family, friends, or other people who know you and could tell the SSA whether you are able to manage your own money. A letter from any one of these people may also help to show SSA that you no longer need a representative payee.

The SSA will more likely believe that you no longer need a representative payee if you are able to provide them with both medical and lay evidence.

For example, if you have a letter from your doctor that says he or she thinks you can manage your own money and you have a letter from your brother that also says you can manage your own money, you can submit these to the SSA. The SSA will read these together as medical evidence (from your doctor) and lay evidence (from your brother) to help decide if you still need to have a representative payee manage your social security benefits. SSA Program Operations Manual System (POMS) §§ GN00502.020; GN00502.030.

### **What if there are several possible representative payees?**

The SSA will give **priority** to certain persons or institutions when choosing a representative payee:

- **Priority when the beneficiary is 18 years of age or older:**
  - A legal guardian or spouse who has custody of you or who shows a strong interest in your well-being;
  - A friend who has custody of you or who shows a strong interest in your well-being;
  - A public or nonprofit agency where you live (state or county hospitals, state or county institutions, etc.);
  - A private institution licensed under State law where you live (private nursing homes, private care facilities, etc.); and
  - Other persons who can meet the responsibilities of a payee and who are willing to be your payee. 42 U.S.C. §1383(a), 20 CFR 416.621(a).
  
- **Priority when the beneficiary is under age 18:**
  - A biological or adoptive parent or a guardian who has custody of you;
    - A biological or adoptive parent who does not have custody of you, but who helps support you and has a strong interest in your well-being;
    - A biological or adoptive parent who does not have custody of you, and who does not help support you but has a strong interest in your well-being;
    - A relative or stepparent who has custody of you;
    - A relative who does not have custody of you, but who helps support you and has a strong interest in your well-being;
    - A relative or close friend who does not have custody of you, but shows a strong interest in your well-being; and
    - An authorized social agency or institution. 42 U.S.C. §1383(a), 20 CFR 416.621(c).
  
- **Priority when the beneficiary is disabled and has a drug addiction or alcoholism condition:**
  - A community-based nonprofit social service agency which is licensed by the State;
    - A Federal, State, or local government agency whose mission is to carry out income maintenance, social services, or health care related activities;
    - A State, or local government agency with fiduciary responsibilities; and
    - A family member. 42 U.S.C. §1383(a)(2)(B)(vii); 20 CFR 416.621(b).

## What are the duties and responsibilities of a representative payee?

A representative payee is responsible for:

- Using the benefits only for your needs in a way that will serve your best interests. Examples of proper use of benefits are: food, clothing, shelter, utilities, dental care, education, medical care, and insurance. 42 U.S.C. §1383(a)(2)(F)(ii)(II); 20 CFR 416.640;
- Submitting information that shows a continuous and on-going relationship with you (when requested by the SSA);
- Using the benefits only for your needs in a way that will serve your best interests;
- Notifying the SSA of any things that may change your amount of benefits or right to receive benefits;
- Submitting an annual written report of the benefits you have received (when requested by the SSA);
- Notifying the SSA of any changes that would affect the performance of the representative payee; and
- Beneficiaries under 18 years of age, making sure that you have been and are receiving medical treatment for the condition that is the basis for your benefits. 42 U.S.C. §1383(a)(2)(C)(v); 20 CFR 416.625; 416.635.
- A representative payee **must not**
  - Use your benefits for his or her own personal expenses;
  - Use your benefits in a way that would leave you without necessary items or services;
  - Keep or receive your benefits once he or she is no longer a representative payee; and
  - Charge you for services unless they have been given permission by the SSA. 42 U.S.C. §1383(a)(F)(III); 20 CFR 416.635; 416.641.

If the SSA learns that the representative payee no longer is serving your best interests or if he or she no longer wants to be your representative payee, the SSA may select a new representative payee or pay you directly. 42 U.S.C. §1383(a), CFR 416.650.

## When will the duties of a representative payee end?

A representative payee may end if you can show that you are mentally and physically able to manage your own benefits. The SSA will make further payments directly to you if you

are able to show that you do not need a representative payee. The SSA considers the following things when deciding whether you have shown that you can manage your own benefits:

- A statement from your doctor that shows you are able to manage your own benefits;
- A certified copy of a court order that reinstates your rights if you were previously found to be legally incompetent; and
- Other evidence that shows you are able to manage your own benefits. 20 CFR 416.655.

### **What if a representative payee misused a beneficiary's benefits?**

A representative payee is responsible for abusing your benefits and may have to pay back the money misused. 42 U.S.C. §§1383(a)(2)(A)(iv); 42 U.S.C. §1383(a)(H)(i); 42 U.S.C. §1383(a)(E); 20 CFR 416.641.

If you think that a representative payee has misused, wasted, or abused your benefits, you may report it to the Social Security Administration, Office of Inspector General Fraud Hotline. You can contact the Office of Inspector General Fraud Hotline by:

- Letter (or fax at 410-597-0118) and mail it to:  
Social Security Administration Fraud Hotline  
P.O. Box 17768  
Baltimore, MD 21235
- Phone at 1-800-269-0271 or TTY 1-866-501-2101. The hours to call are between 10:00 a.m. to 4:00 p.m. Eastern Standard Time;
- Completing the Fraud Reporting Form available on-line at <http://www.ssa.gov/oig/guidelin.htm>;
- When reporting the misuse by a representative payee, make sure you include the following information:
  - Name, address, and telephone number for you and the representative payee;
  - Social Security Number of you and the representative payee;
  - Date of birth for you and the representative payee; and
  - Details about why you think the representative payee has abused your benefits, including who did the abuse, exactly what they did to make you suspicious, when and where the abuse happened, and how the abuse was committed.