


**DEPARTMENT OF HUMAN RESOURCES
SOCIAL SERVICES ADMINISTRATION
311 W. SARATOGA STREET
BALTIMORE, MD 21201**

DATE: August 15, 2015

POLICY #: SSA-CW #16-7
(Replaces SSA-CW #15-1)

TO: Directors, Local Departments of Social Services
Assistant Directors, Services

FROM: Drew McKone, Chief of Staff 
Office of the Secretary

RE: Social Security Disability Insurance (Title II) and Supplemental
Security Income (Title XVI) benefits applied for on behalf of
children in Out-of-Home Placement

PROGRAMS AFFECTED: Out-of-Home Placement Services

ORIGINATING OFFICE: Out-of-Home Placement Services

ACTION REQUIRED OF: All Local Departments

REQUIRED ACTION: Implement Policy and Procedures

ACTION DUE: August 31, 2015

CONTACT PERSONS: Steven Youngblood, LCSW-C
Foster Care Director
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PURPOSE:

The purpose of this policy is to provide direction as to the implementation of the notification requirements of Local Departments of Social Services (LDSS) and the Vendor regarding Old Age, Survivor's and Disability Insurance (OASDI), (Title II) and Supplemental Security Income (Title XVI) benefits applied for on behalf of children in care.

BACKGROUND:

On September 26, 2013, the Court of Appeals of Maryland released its decision in *In re: Ryan W.*, a Child in Need of Assistance ("CINA") case in which a former foster child challenged the use by the Baltimore City Department of Social Services (BCDSS) of his OASDI benefits to reimburse itself for the current costs of his care.

Local departments of social services routinely apply for social security benefits on behalf of children in their care, become the representative payee for those benefits, and use those benefits to offset the cost of foster care, as outlined in COMAR 07.02.11.29(K) and (L). Ryan disputed the local department's authority to use the funds to reimburse itself and requested that the department return the funds. He argued that the Department should have either saved his OASDI benefit payments or spent the benefit payments on items or services other than the cost of his care. Ryan also argued that BCDSS's failure to notify him that it had applied to receive OASDI benefits on his behalf as his representative payee violated his due process right to notice.

The Court upheld the legitimacy of the Department's regulations regarding the use of a child's resources for reimbursement toward the cost of care. Specifically, the Court held that the Department's practice of applying a child's social security benefits directly toward the cost of care is consistent with federal law. As to the Department's failure of notification, the court agreed with Ryan and imposed two new requirements on local departments so that the child's CINA attorney can, if appropriate, pursue any applicable federal administrative and/or judicial review procedures concerning the determinations made by the Social Security Administration with regard to the appointment of a representative payee and the payee's use of the funds. Any disputes regarding the use of social security benefits must be resolved through the federal administrative process; the juvenile court does not have authority to control the use of social security funds.

DEFINITIONS:

"Old Age, Survivor's and Disability Insurance" (otherwise known as OASDI) falls under Title II of the Social Security Act. It is a comprehensive federal benefits program that provides monthly benefits intended to replace, in part, the loss of income as a result of retirement, disability, or death.

"Social Security Disability Insurance" (otherwise known as SSDI, Social Security Disability, or Disability Insurance Benefits (DIB)) is part of the OASDI program. SSDI provides disability benefits to wage earners who have earned enough work credits to qualify. Sometimes SSDI provides disability benefits to the wage earner's child.

“Supplemental Security Income” (otherwise known SSI) falls under Title XVI of the Social Security Act. SSI provides disability benefits to individuals who have never worked, or whose work history has not earned them the credits needed to qualify for Social Security Disability Insurance (SSDI). These individuals can apply for disability benefits under the SSI program.

ACTION:

Steps to complete when applying for benefits on behalf of children in care:

Previously, it had been the responsibility of the LDSS to apply for benefits on behalf of the child, and notify the child’s CINA counsel, when application was made, and the LDSS was named the representative payee.

Under the Disability Benefits Advocacy Project, the roles and responsibilities of the LDSS are modified.

The Vendor will be responsible for the following:

- Applying for initial benefits on behalf of identified children in foster care. The initial application includes requesting that the LDSS be the child’s representative payee for the benefits.
- Applying on behalf of the LDSS to be the representative payee for children entering foster care, that are receiving social security benefits upon entry into foster care.
- Completing *DHR/SSA 224: Notification To Child’s Counsel For Title II and Title XVI Benefits* and sending the completed form to the child’s CINA counsel. This includes Sections 1-3 on the form.
- Forwarding a copy of the *Notification To Child’s Counsel For Title II and Title XVI Benefits* to the LDSS, advising the LDSS that notification has been sent to the child’s CINA counsel.

The LDSS will be responsible for the following:

- Once benefits are awarded, and the LDSS has been named the representative payee, the LDSS will complete **Section 4: Confirmation of Benefits** on the *Notification To Child’s Counsel For Title II and Title XVI Benefits* form that was forwarded to the LDSS by the Vendor.
- The completed *Notification Form* will then be forwarded to the child’s CINA counsel by the LDSS.
- The LDSS staff/caseworker must scan the *Notification Form* into the MD CHESSIE file cabinet of the youth’s service case.
- In addition to completing Section 4 of the *Notification Form* and forwarding the form to the child’s CINA counsel, the LDSS must notify the child’s CINA counsel of the date of appointment as representative payee, and the amount and date of the receipt of the benefits for the period since the last permanency planning hearing. The most efficient means of providing this information will be to include it in the court reports prepared for each permanency planning hearing in a separate section named Title II and Title XVI Benefits for Children in Care. The LDSS will include the following in the court report:
 - The date the LDSS became the representative payee;
 - The date the benefits were awarded and the monthly amount of the award; and
 - If applicable, any lump sum payments
- **All discussions with respect to Title II and Title XVI benefits must be documented in MD CHESSIE on a contact note.**

**NOTIFICATION TO CHILD'S COUNSEL FOR
TITLE II AND TITLE XVI BENEFITS**

The Vendor must notify child's counsel when an initial application is made on behalf of the child in care for Title II and Title XVI benefits. The Vendor will also notify child's counsel when application is made to be the child's representative payee for receipt of Title II and Title XVI benefits. This notification must be completed and forwarded to the child's counsel immediately upon applying for such benefits, or requesting that the LDSS become the child's representative payee. Once benefits are received, and the LDSS has been named the child's representative payee, the LDSS must complete Section 4 and forward this notification again to the child's counsel.

Section 1. Identifying Information

Child's Name: _____ Date of Birth: _____

LDSS Address: _____

City: _____ State: _____ Zip Code: _____ Phone () _____

Section 2. Counsel Information

Child's Counsel's Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____ Phone () _____

Section 3. Benefit Information

Benefits Applied for (check all that apply):

_____ Old Age

_____ Survivors -please check box that applies: Mother Father

_____ Disability Insurance

_____ Social Security Disability Insurance

_____ Supplemental Security Income (Title XVI)

Date initial application for benefits identified above were applied for on behalf of the child. Please note, when making initial application, this also includes the date the

LDSS applied to be the representative payee for the benefit: _____

Date Counsel Notified: _____

Date LDSS applied to be representative payee for a benefit the child was already receiving upon entry into foster care: _____

Date Counsel Notified: _____

Section 4. Confirmation of Benefits

Date the LDSS is named the representative payee: _____

Date Benefits Awarded: _____ Monthly Amount Awarded: _____

Date Counsel Notified of Commencement of Benefits and Monthly Amount Awarded: _____

I attest that the information I provided above is accurate and understand that supporting documentation may be required.

Local Department of Social Services Representative Signature

Date