

SOCIAL SECURITY ADVISORY BOARD STATEMENT

ON THE SUPPLEMENTAL SECURITY INCOME PROGRAM

Public Law 104-193 requires that members of the Social Security Advisory Board (SSAB) be given an opportunity, either individually or jointly, to include their views in the Social Security Administration's annual report to the President and Congress on the Supplemental Security Income (SSI) program. We have asked the Social Security Administration (SSA) to include in this year's annual report the continuation of an issue we raised in last year's report, SSAB's concerns regarding the SSI children's program.

INTRODUCTION

In our report last year we noted that the historical record of the SSI program for children suggests that changes in its laws and in the standards governing SSI disability adjudications were motivated by public opinion as reflected in media reports, court decisions and congressional mandates. We asked the big policy questions, about defining disability and determining criteria for eligibility, about where the disability program for children should be housed, and what benefits should be provided. We recommended that SSA conduct a comprehensive review of the children's program. This year we underscore the importance of taking on this review by looking at children in the foster care system.

SSI AND FOSTER CARE PROGRAMS

Today, about 400,000 children receive foster care benefits in the United States.¹ There are about 1.3 million children receiving Supplemental Security Income (SSI) under the children's SSI disability program. The following briefly outlines the two programs and how they overlap.

SSI Program

Title XVI of the Social Security Act authorizes a Federal benefit that provides a monthly cash payment to low-income individuals, including children, who have a physical or mental impairment or combination of impairments that meet the Act's definition of disability, and its income and resource limitations.

Disability

Determining whether a child meets the definition of disability involves a 3 step analysis. The child must have a physical or mental impairment that results in "marked and severe functional limitations"; the child must have a condition that has lasted or is expected to last at least 12

¹ Congressional Research Service. *Child Welfare: Social Security and Supplemental Security Income (SSI) Benefits for Children in Foster Care*. By Umar Moulta-Ali, Adrienne L. Fernandes-Alcantara, Emilie Stoltzfus. Report No 33855. September 2012.

http://greenbook.waysandmeans.house.gov/sites/greenbook.waysandmeans.house.gov/files/2012/documents/RL33855_%20v3_gb.pdf Note, the definition of child may vary from state to state and vary in age up to 20 years old.

months or result in death; and the child must not earn more than the substantial gainful activity amount or not work.²

Income and Resource Limitations

In determining resource eligibility a child's income and assets must fall below program guidelines. Since children rarely have income or assets of their own, SSA uses a process called "deeming" to assign part of the value of the parent's income and assets to the child. For children in foster care, the income and assets of the family they are living with are not deemed to them in making the resource eligibility determination.

Overview of State/Federal Relationship in Foster Care System

Title IV Part-E of the Social Security Act authorizes a Federal-State foster care program which authorizes Federal funding for foster care to States, Territories and Tribal Organizations,³ To participate, States must have a written case plan, reviewed annually by a judge. The plan details where each child in foster care is placed and outlines the services to be provided, with the ultimate objective of finding the child a permanent home, either through reunification with the child's own family, adoption or placement with a legal guardian. Children may wait in foster care for many years until this objective is met, and some end up aging out of the system.

Eligibility Requirements for Partial Reimbursement Under The Social Security Act Title IV-E

While a child is in foster care a State may seek partial reimbursement to cover the cost of the care if the child meets the income eligibility requirements under Title IV-E which is determined by looking at the family income of the home that the child has been removed from. If the child's family would have been eligible for benefits under Aid to Families with Dependent Children (AFDC) as it was in effect on July 16, 1996 then the child is eligible for benefits under Title IV-E.⁴

The timeframe for determining eligibility is based on either the month when a petition is filed in court to remove the child from his or her family home or the month a Voluntary Placement Agreement (VPA) is signed. From the date of the eligibility month:

- The child must have lived in the home of a specified relative within six months of the eligibility month.
- The child must be deprived of parental support.
- There must be a court order that finds: (1) continuation in his/her own home would be "contrary to the welfare of the child" and (2) reasonable efforts were made to prevent the removal of the child from his/her family or to facilitate the return of the child who has been removed.⁵

² The definition of the phrase in quotation marks is given as: "... a level of severity that meets, medically equals, or functionally equals the listings." See http://www.socialsecurity.gov/OP_Home/cfr20/416/416-0902.htm.

³ The Social Security Act, Title IV Part E *Federal Payments for Foster Care and Adoption Assistance* http://www.ssa.gov/OP_Home/ssact/title04/0400.htm

⁴ AFDC rules as they existed on July 16, 1996 --- P.L. 106-169

⁵ Child Welfare Policy Manual: 8.2B

http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=32#653

It should be noted that without these requirements the current provision of Title IV-E federal financial support to the States on an open-ended entitlement basis may not be sustainable.

Other Federal Funding

Other Federal sources exist to provide funding for children's programs with fewer constraints but they target other objectives. Title IV-B, the Stephanie Tubbs Jones Child Welfare Services program, allows Federal funding to offset the administrative costs related to case management, child placement, personnel training, data collection and other administrative costs, but do not directly benefit children in foster care. The Social Service Block Grant (SSBG) and the Temporary Assistance to Needy Families (TANF) grant provide funding for child welfare benefits not covered under Title IV-E. However, Title IV-E remains the largest source of funding for State foster care agencies.

Under Title IV-E, there are three expenditures for which States may request federal reimbursements; maintenance, administration and training. The reimbursement funding formula is different for each.

1. Maintenance includes room and board payments that are made to licensed foster parents, group homes and residential child care facilities, clothing expenses, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. The Federal government will reimburse the State for 50 percent to 83 percent of the costs. The State is responsible for the balance;
2. Administration includes those activities necessary for the proper and efficient administration of the Title IV-E State plan. Examples of reimbursable administrative activities include:
 - a) Referral to services
 - b) Determination of Title IV-E eligibility
 - c) Preparation for and participation in judicial determinations
 - d) Placement of the child
 - e) Development of the case plan
 - f) Case reviews
 - g) Case management and supervision
 - h) Recruitment and licensing of foster homes and institutions
 - i) Rate setting
 - j) Costs related to data collection and reporting
 - k) Proportionate share of related agency overhead;
3. Training includes the cost of providing short and long term training at educational institutions as well as in-service training for personnel employed by or preparing for employment by the State (including a Tribal Organization) or a local public agency administering the Title IV-E State plan. It also includes training for staff in private child welfare agencies and court personnel. Training also includes the cost of short term

training for current or prospective foster, adoptive parents, and relative guardians and members of State (or tribal) licensed or approved child care institutions providing care to foster or adopted children.

Overlap of Title IV-E Benefits and SSI

If a child receives benefits under Title IV Part E of the Social Security Act, it will not affect the child's *eligibility* for SSI benefits, but it may affect the *amount* of the SSI benefit. SSI does not consider the Title IV-E benefit earned income (i.e., income earned in exchange for work) which would disqualify the child from SSI. Rather, the Title IV-E benefit is considered "income based on need"⁶ which affects the SSI benefit *amount* with a dollar for dollar offset. Every Title IV-E dollar received on the child's behalf is offset from the SSI benefit. This includes the \$20.00 exclusion of unearned income which SSI allows many other beneficiaries to keep.⁷

There is no Federal mandate for States to screen to see if the child is eligible for SSI. In many states if the child is eligible for SSI the state can use the SSI benefit to offset its cost of caring for the child. But the state cannot receive reimbursement from both Title IV-E and SSI for one child. As described below, information exchange problems in this regard may lead to improper SSI payments in some cases.⁸

Title IV-E Waivers and its Effect on SSI

To test innovation and encourage reform, Congress has allowed the Department of Health and Human Services (HHS) to approve a set number of proposed projects from States that want to test programs that might improve outcomes for children and families. On September 30, 2011, The Federal Child and Family Services Improvement and Innovation Act (P.L. 112-34), was signed into law. It reauthorized HHS to approve up to 10 waiver demonstration projects for fiscal years 2012-2014. The approval from HHS does not provide additional money to fund proposed projects but instead waives Title IV-E's strict funding constraints. This allows states some flexibility to utilize Title IV-E funds.

Approved projects must be designed to accomplish one or more of the following goals:

- Increase permanency for all infants, children, and youth by reducing the time in foster placements when possible and promote a successful transition to adulthood for older youth;
- Increase positive outcomes for infants, children, youth, and families in their homes and communities, including tribal communities, and improve safety and well-being;
- Prevent abuse, neglect, and re-entry of infants, children and youth into foster care.⁹

⁶Income based on need, as defined by 20 C.F.R. §416.1124(c)(12), is assistance that is provided under a program which uses income as a factor of eligibility; and which is funded wholly or partially by the federal government or a non-governmental entity.

⁷ 20 CFR Section 416.1124c(12) http://www.socialsecurity.gov/OP_Home/cfr20/416/416-1124.htm and SSA, POMS SI 00835.706.C.5 <https://secure.ssa.gov/poms.nsf/lnx/0500835706>

⁸ SSA Office of the Inspector General. *Reduce Improper Payments and Increase Overpayment Recoveries (A-04-09-19091)*. May 26, 2009, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-04-09-19091_7.pdf

⁹ U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. *Summary of IV-E child welfare waiver demonstration*. <https://cbexpress.acf.hhs.gov> See also the National

However, at least some of the waivers may inadvertently result in improper SSI payments and States may be receiving Federal funds from two sources for the same purpose. This issue was discussed in a 2009 report by the SSA's Office of the Inspector General (OIG) which noted that when the Department of Health and Human Services (HHS) awarded a 5-year waiver to Florida in 2006, it exempted the detailed reporting requirements for Title IV-E expenditures.¹⁰ This lack of detail made it difficult for SSA to determine if the State was receiving money under Title IV-E and, thus, whether the SSI payment to the child should be offset. The issue was resolved when SSA instructed field offices to verify the foster care funding source with the Florida Department of Children and Families (DCF). If Florida's DCF asserted that State funds reimbursed the child's foster care maintenance costs, rather than Title IV-E funds, then SSA would not consider the foster care benefits as income and SSI benefits would not be subject to offset. The OIG report noted that it did not believe that Florida's accounting system provided enough detail to confirm its assertion, and moreover, several other States, Indiana, Ohio, Oregon and California were also participating in the same waiver program.

THE CHILDREN IN FOSTER CARE

Health Issues of Children in Foster Care and Young Adults

SSI provides financial support to adults and children with disabilities who meet the definition and income and resource limitations. Some SSI program costs could be reduced through proactive measures. Redirecting federal non-SSI support payments to states toward "early intervention" initiatives – to prepare those who age out of government support programs for a self-sufficient and self-determined life style – would help to minimize federal SSI expenditures on young adults with physical and mental impairments while assisting them to transition successfully toward a fulfilling adult lifetime. A case in point is foster care children, especially those who, today, age out of the program without adequate preparation.

Children arriving into the foster care system are often in crisis. This population is especially disadvantaged – with a high likelihood of chronic physical, emotional, and developmental conditions because of cumulative adverse life events. Studies profiling the health of children after entering the foster care system show high prevalence of medical problems and behavioral health conditions that if not adequately treated are likely to continue during adulthood:

In congressional testimony before the Ways and Means committee, Dr. David Rubin, Assistant Professor of Pediatrics at the University of Pennsylvania, School of Medicine, testified;

- Several decades of research has firmly established that the health care needs of children in out-of-home care far exceed other children living in poverty. Nearly half of all children

Conference of State Legislators <http://www.ncsl.org/research/human-services/child-welfare-title-ive-waiver-2012-thru-2014.aspx>

¹⁰ SSA Office of the Inspector General. *Reduce Improper Payments and Increase Overpayment Recoveries (A-04-09-19091)*. May 26, 2009, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-04-09-19091_7.pdf

in foster care have chronic medical problems, and up to 80% have serious emotional problems.”¹¹

Many foster care children who are not placed in a permanent home, age out of the system and find themselves without any supports or life skills to succeed. The transition to adulthood and self-sufficiency is challenging for such individuals. They may have questions about renting their first apartment, purchasing a car, going to college, managing expenses, and navigating all the paperwork required for insurance or taxes but they do not have access to the support networks who can help them.

- A Northwest Foster Care Alumni Study noted that alumni from foster care were six times more likely to suffer post-traumatic stress disorder, four times more likely to turn to substance abuse, twice as likely to experience depression, and more than two-and-a-half times more likely to be diagnosed with an anxiety disorder.¹²

The key support that many young adults would benefit from is counseling on how they could adapt despite health impairments and strive to successfully exit from government supports.

To compound these problems, some foster care alumni discover that their social security number (SSN) has been wrongfully used and their credit ruined while they were in the foster care system.

- An OIG audit report found potential misuse of foster-care children’s SSNs for work, credit or other purposes: Of the 96,000 children in the population studied the credit reporting agency estimated that over 4900 (5 percent) had credit files that contained evidence of misuse of SSNs.¹³

Repairing credit problems can be a complex, expensive, and time-consuming process and children exiting foster care need assistance getting negative items on their credit report removed.¹⁴ Such problems can severely impede transition toward a normal and productive adulthood.

But in many cases, such problems may be preventable, and dependency on SSI and other welfare programs could be minimized if foster-care support systems target individuals for providing assistance in acquiring life- and job-skills, provide counseling, and ensure access to support networks to pro-actively minimize problems and prepare them for life after foster care. Thus, while additional discussion about how to improve SSI eligibility, financial constraints, and

¹¹Testimony of David Rubin, MD MSCE FAAP, House Ways and Means Subcommittee on Income Security and Family Support hearing Foster Children and the Health Care System, July, 2007, available at: <http://stoneleighfoundation.org/content/foster-children-and-health-care-system>.

¹² Pecora P, Kessler R, Williams J, et al. *Improving Family Foster Care: Finding from the Northwest Foster Care Alumni Study*. Seattle, WA: Casey Family Programs, 2005. Available at http://www.casey.org/media/AlumniStudies_NW_Report_FR.pdf

¹³ See OIG report A-08-12-11253 Potential Misuse of Foster Children’s Social Security Numbers, September 2013, see also *The Fleecing of Foster Children How We Confiscate Their Assets and Undermine Their Financial Security*, the Children’s Advocacy Institute of the University of San Diego School of Law, (2011).

¹⁴ Linda Foley, et al. *Identity Theft: The Aftermath 2009*, Identity Theft Resource Center. 2009. available at, http://www.idtheftcenter.org/images/surveys_studies/Aftermath2009.pdf

benefit structure is needed, the time seems ripe for broader conversations on “early intervention” initiatives in order to reduce the likelihood of entry into SSI by children aging out of government support systems such as foster care. This perspective of the Board is consistent with SSA’s statutory role in ensuring public awareness about problems facing vulnerable populations under SSI.¹⁵

REPRESENTATIVE PAYEES

The Social Security Act¹⁶ specifies that SSA may assign a representative payee to a beneficiary if the agency determines that the “interest of the individual” beneficiary would be served by such an assignment.¹⁷

In the majority of cases, SSA assigns a representative payee for children who receive SSI benefits. Generally the representative payee is the biological parent, adoptive parent, or court-appointed guardian. SSA has a list of preferred payees which can be used as a guide but SSA stresses that the best interest of the beneficiary should always remain the top priority when selecting a representative payee. Applicants to become a representative payee are required to be carefully screened to ensure that the beneficiary’s best interest is served.

For minor children the order of preferred applicants are;

1. A natural or adoptive parent with custody;
2. A legal guardian;
3. A natural or adoptive parent without custody, but who shows strong concern;
4. A relative or stepparent with custody;
5. A close friend with custody who can provide for the child’s needs;
6. A relative or close friend without custody, but who demonstrates strong concern;
7. An authorized social agency or custodial institution; or
8. Anyone not listed above who shows strong concern for the child, is qualified, and able to act as payee, and who is willing to do so.¹⁸

The rules governing the responsibilities of representative payees are extensive. The representative payee must ensure that benefits are spent for the current and future use of the child, and if not used for current needs, the benefits should be saved and invested. Representative payees are required to complete an annual report explaining how benefits were used during the preceding year, and they must keep records so that an accurate accounting of benefits can be provided. Certain large retroactive SSI payments covering more than six months of benefits must be paid into a “dedicated account” in a financial institution. No other funds may be combined

¹⁵ Section 1635 of the Social Security Act (42 U.S.C. 1383d)
http://www.socialsecurity.gov/OP_Home/ssact/title16b/1635.htm

¹⁶ Section 1632(a)(2)(A)(I)

¹⁷ The procedures and guidelines for appointing a representative payee are outlined in Social Security regulations and policy. 20 CFR §416.621 Program Operations Manual System (POMS) See also SSA website for representative payees <http://www.socialsecurity.gov/payee/faqrep.htm/NewGuide/faqrep.htm#a0=9>

¹⁸ 20 CFR Section 416.621, http://www.socialsecurity.gov/OP_Home/cfr20/416/416-0621.htm; and POMS GN 0502.105 Payee Preference Lists <https://secure.ssa.gov/poms.nsf/lnx/0200502105>

with benefits deposited in a dedicated account. Money in a dedicated account must be used for only certain allowable expenses for the benefit of the child:

- Medical treatment and education or job skills training
- Personal needs assistance, special equipment, housing modification, and therapy or rehabilitation
- Any other item or service related to the child's disability that SSA determines to be appropriate.

Representative payees must keep a log of all withdrawals from a dedicated account and keep receipts for all expenditures for a period of at least two years.

Some advocates for children in foster care argue that SSA does not always correctly follow the representative payee appointment process and allege that State foster care agencies become a foster child's representative payee as part of a revenue maximization strategy. Such systemic practice of converting foster children's Social Security benefits into a source of State funds.¹⁹ This practice was challenged in a seminal Supreme Court case, involving a minor child in foster care whose benefits were being used to reimburse the State for the cost of foster care.²⁰

The Keffeler Case

Danny Keffeler was orphaned when he was twelve years old. He was placed in foster care, but his grandmother, Wanda Pierce, was appointed representative payee when Danny was awarded Social Security benefits. Mrs. Pierce did not provide any of Danny's benefits to the State to pay for the cost of Danny's foster care, so SSA removed her as the representative payee and appointed the foster care State agency. The case eventually ended up before the United States Supreme Court.

The question before the United States Supreme Court was whether the practice of reimbursing State costs from a child's foster care benefits is a violation of § 207(a) of the Social Security Act, which states;

The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Twenty-six States filed briefs supporting the position of the State agency noting that the practice had been approved by SSA and arguing that barring the reimbursement practice could leave the States in a position of economic peril. The United States Supreme Court overturned the Washington State Supreme Court decision, finding that neither the agency's actions to become a

¹⁹ The Fleecing of Foster Children How We Confiscate Their Assets and Undermine Their Financial Security, Melanie Delgado, Kriste Draper, Amy Harfeld, Christina Riehl, Elisa Weichel, 2011, http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf; Cardozo Law Review, *Foster Children Paying for Foster Care*, Daniel L. Hatcher, 7 Daniel L. Hatcher, Foster Children Paying for Foster Care, 27 CARDOZO L. REV. (2006) <http://cardozolawreview.com/Joomla1.5/content/27-4/HATCHER.WEBSITE.pdf>

²⁰ Washington State Dept. of Social and Health Services v. Guardianship Estate of Keffeler. 537 U.S. 371. Supreme Court. 2003.

representative payee for the children, nor its use of the children's Social Security benefits to reimburse State costs is the equivalent of an "execution, levy, attachment, garnishment, or other legal process," prohibited under §207(a) of the Social Security Act.

The United States Supreme Court decision has not completely settled the issue. Child Welfare advocates who oppose States acting as a representative payee and reimbursing themselves for the cost of care note that the court did not address the question of whether the reimbursement practice serves the child's "best interests."²¹ However, other child welfare advocates believe that the SSA funds are critical for child welfare agencies operating on tight budgets and that the use of these benefits to pay for the cost of current maintenance is consistent with the Federal purpose for providing those funds. Additionally, these advocates contend that by allowing the reimbursement, States will have a vested interest in implementing procedures to screen all children coming into foster care for possible eligibility for SSI which can then provide children vital services that they might not otherwise receive. Applying for SSI benefits can be a long and complicated process which States will not become involved in without some kind of incentive. In a National Survey of Child and Adolescent Well-Being, researchers estimate that there are more than 10 percent of children and youth in foster care who are eligible for SSI but do not receive it.²² SSI can provide additional security and benefits such as:

- Diagnostic evaluations completed during the application process will improve the likelihood that the child or youth will receive timely and appropriate treatment.
- SSI benefits can increase the amount of funds available to meet a child's/youth's needs, although children with a foster care maintenance payment or adoption assistance subsidy above the benefit payment will see no immediate, practical effect in receiving SSI or Social Security benefits.
- SSI benefits follow a child or youth who is returned home to a lower income biological family.
- SSI benefits can be a critical source of cash assistance and Medicaid for a youth who ages out of care and cannot be self-supporting because of a severe disability.
- SSI benefits ensure eligibility for a Federal adoption assistance subsidy if a child or youth cannot be returned to biological parents.²³

Advocates that oppose the practice of States being named the representative payee and then reimbursing itself for the cost of care argue that States taking on the role of the representative payee dilutes the fiduciary responsibility owed to the beneficiary and obfuscates an otherwise clear mandate from SSA that benefits belong to the beneficiary and are not the property of the

²¹ The decision did not affect Keffeler who had already reached the age of majority and used the benefits his grandmother had saved for him to pay for his college education <http://www.spokesmanreview.com/news-story.asp?date=120402&ID=s1267147>

²² *Estimates of Supplemental Security Income Eligibility for Children in Out-of-home Placements*. Research Brief no. 12. : National Survey of Child and Adolescent Wellbeing, 2007. available at, http://www.acf.hhs.gov/sites/default/files/opre/est_suppl.pdf

²³ O'Connor, Michael A. *A Guide to SSI and Social Security Benefits for Children and Youth in Out-of-Home Care*. Rep. Seattle: Casey Family Programs, 2001. available at, <http://www.ocfs.state.ny.us/main/publications/eligibility/29%20A%20Guide%20to%20SSI.pdf>

payee.”²⁴ These advocates also point to the potential Federal funding stream for States but note that the States are using the money to reduce State expenditures rather than as a resource to address the children’s unmet needs. These advocates also note that State agencies remain at the bottom of the payee preference list but are often automatically appointed as the payees for foster children through a process called the “kiddie loop” which is an expedited way to name a representative payee for more than one beneficiary.²⁵

*In Re John G*²⁶

Advocates opposed to the State reimbursement practice point to another important case that had a different outcome than Keffeler, and note litigation strategies to differentiate future claims from the Keffeler decision.

John G. was abandoned by his parents when he was still a child. John’s step father executed a will leaving his home purchased through Habitat for Humanity in trust to his son. After spending several years with other relatives, John G. eventually became a ward of the State.

The Department of Social Services became John’s representative payee; instead of using his social security survivor’s benefits to pay the mortgage on John’s Habitat for Humanity home (\$221.00) DSS applied the entire benefit (\$538.00) towards defraying the cost of foster care (approximately \$1300.00 per month). The Habitat home, valued at approximately \$80,000 with a \$27,000 outstanding mortgage went into foreclosure. John G’s court appointed guardian representing John G’s legal interests filed a motion to protect John’s interest in his home. The court noted that John will need the Habitat home as a residence when he turns eighteen years old and ages out of the foster care system. The court ordered DSS to use a portion of John’s Social Security benefits to pay the monthly mortgage on his home, the past-due mortgage and for some needed repairs. DSS appealed, asserting that using the social security benefits for John’s current maintenance was a common and accepted practice post Keffeler. The attorney for DSS argued that the agency had no obligation to use the boy’s money to pay his mortgage. “What if he had a \$2,000 monthly mortgage? What if every kid (in foster care) wanted a car?” “It would be wonderful if all this court had to do was what’s ‘fair and decent.’”

The Appeals Court upheld the trial court’s decision and the home that John G’s stepfather left for him was protected. This case shows that Social Security benefits should be purposed toward the beneficiary’s direct interest in each and every instance rather than used to offset expenses of the representative payee that may provide indirect or marginal benefits to the intended recipient. SSA should focus more attention on these issues when deciding who to appoint as representative payees and improve the clarity of rules regarding how benefits should be used.

²⁴ 3 Social Security Online, Frequently Asked Questions: What to Do When Someone is Unable to Handle Their Benefits (updated 12/28/2010), <http://www.socialsecurity.gov/payee/faqrep.htm#a0=4>

²⁵ POMS GN 00502.110 <https://secure.ssa.gov/poms.nsf/lnx/0200502110>

²⁶ 652 S.E. 2d 266 (2007)

RECOMMENDATIONS

The Board does not make specific recommendations on how to reform the program, because even though reviewing the history of the children's program reveals that there have been many changes, there has not been a comprehensive review followed by cohesive implementation of policy. In particular, the Board believes that the SSI program needs careful review with a clear objective of serving its child beneficiaries in the most effective way possible.

This report discusses several issues: The overlap between SSI and the Title IV-E foster care program; the potential for improper payments because of how these (and, potentially, other similar) programs interact with SSI; information gaps created by waivers for Federally funded but state-run (non-SSI) welfare programs such as the foster care program; the potential for repurposing non-SSI benefits to minimize Federal SSI expenditures in the long term; and the history of alternative and potentially conflicting perspectives on program implementation stemming from court cases - especially on how SSA benefits should be allocated. The discussion suggests the need for a broad-based review of the Federal SSI program within the context of complementary Federal welfare programs. SSA's provision of clear policy guidance and oversight to ensure that its programs are being properly and consistently administered could minimize the likelihood of disputes, delays, and especially the evolution of SSA policies through individual court decisions – a recipe for creating an uncoordinated patchwork of rules and procedures that may detract from the key objective of providing direct and meaningful support to the beneficiaries themselves. The broad review that we are recommending should seek clarity in setting rules and procedures, improved data collection, closer oversight, and a process of continuing policy reviews.

Barbara B. Kennelly, Chair (A)

Bernadette Franks-Ongoy

Jagadeesh Gokhale

Dorcas R. Hardy