



# Disabilities Training Conference

ADVOCATING FOR CHILDREN IN FLORIDA'S DEPENDENCY SYSTEM

## **Benefits Management and the role of Representative Payees and Guardianship to help Individuals with Disabilities achieve their employment goals**

Amanda Heystek, Director of Litigation, Disability Rights Florida  
Victor Panoff, Senior Advocate / Investigator, Disability Rights Florida  
Kane Lamberty, Senior Human Services Program Specialist,  
Florida Department of Children and Families

# Learning Objectives

Learning outcome 1: To increase understanding role of Representative Payees and Guardians during the employment planning process.

Learning outcome 2: To provide an understanding of the interaction between employment and benefits.

Learning outcome 3: To provide strategies and tactics to resolve cases and protect/ restore benefits.

# Legal Advice/Case Scenarios

- The information and discussion is not meant to be legal advice and you should rely on your own retained counsel for such legal advice.
- To facilitate the learning objectives, we will discuss case scenarios at the end of the presentation in order to share experience, resources, and suggestions.

# The representative payment program

The Representative Payment Program, 20 CFR 404.2001, et seq., and 416.601, et seq., provides for payment of social security disability insurance (SSDI) and/or supplemental security income (SSI) benefits to a person other than the recipient.

# Who needs a representative payee?

2 categories of recipients are required to have a payee:

- Children under age 18 20 CFR 404.2010(b), 416.610(b),
- Beneficiaries determined legally incompetent 20 CFR 404.2010(a)(1), 416.610(a)(1)


The Social Security Administration will also appoint a representative payee for beneficiaries determined by SSA to be incapable of handling their money

# Who needs a representative payee? (continued)

- A payee will be appointed to manage benefits if SSA determines that a particular recipient is mentally or physically unable to manage, or direct the management, of benefit payments in his/her best interest. 20 CFR 404.2001(b), 416.601(b).
- This determination is considered a capability decision, NOT a legal competency determination.
- Legal evidence, medical evidence and lay evidence may form the basis for the determination that the person is not capable of managing his or her payments.

# What is a representative payee?

- Person,
  - Agency, including foster care agencies
  - Organization, or
  - Institution selected to receive and manage benefits on behalf of an incapable or legally incompetent beneficiary.
- The selection of a payee must focus on the person, or entity, that will best serve the recipient's interests.  
20 CFR 404.2020, 416.620



**Being a Social Security representative payee does not entitle an individual to manage any funds that aren't Social Security or SSI payments.**



# Duties of an organizational representative payee

- Use the payments for the beneficiary's current needs & save the remainder.
- File accounting report.
- Notify Social Security when the beneficiary is no longer your responsibility
- Report all required events
- File an annual report of earnings
- Notify SSA when you can no longer serve as payee
- Return any conserved funds if you stop being payee

# Other ways to help the beneficiary

- Establish a budget & discuss it with the beneficiary
- Explain expenses
- Involve the beneficiary in financial decisions
- Explain Social Security and SSI payments

## Foster Care and Child Care Agencies

To help provide financial protections to children in care, we encourage agencies with a child with a qualifying disability living in foster care to file for SSI benefits immediately upon the child's entrance into the foster care system.

# Helping Individuals with Disabilities achieve employment goals

- Representative Payee should encourage the beneficiary achieve their employment goals and assist in the work planning process.
- Any return to work can impact a beneficiaries status financial status.
- It is critical that the Representative Payee understand the implications of work activity and earned income on benefits.
- Though a beneficiary may choose to have their payee manage their wages, SSA's authority only extends to the benefits.

# GUARDIANSHIPS

- Youth in Extended Foster Care may have a Limited or Plenary Guardianship
- Regis Little Act: Children with a chapter 39 proceeding can have a guardianship initiated at 17.5 years old. The order of appointment can issue on their 18<sup>th</sup> birthday. The guardianship may be Limited or Plenary. Fla. Stat. 744.3012(4)

# **SOME RETAINED RIGHTS OF WARD**

- **restored to capacity at the earliest possible time**
- **remain as independent as possible**
- **properly educated**
- **receive prudent financial management**
- **receive services and rehabilitation necessary to maximize the quality of life**
- **counsel**
- **receive visitors and communicate with others**
- **privacy**

# RIGHT TO WORK

- The right to seek or retain employment may be removed from an individual through the guardianship but may not be delegated to the guardian/GA. § 744.3215(2)(f)
- However, consider the National Guardianship Association Standards #9 and #12

# NGA Standard 9

- The guardian shall provide the person under the guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising as they relate to the personal care and financial needs of the person.
- The guardian shall attempt to maximize the self-reliance and independence of the person.
- The guardian shall make and implement a plan that seeks to fulfill the person's goals, needs and preferences. The plan shall emphasize the person's strengths, skills, and abilities to the fullest extent in order to favor the least restrictive setting.

# NGA Standard 12

- To make reasonable efforts to secure for the person...training, education, and social and vocational opportunities that are appropriate and that will maximize the person's potential for self-reliance and independence.



# GUARDIANSHIP PLAN

- Fla. Stat. 744.3675 (adults and minors)
- Generally, the initial guardianship plan must contain an attestation that the guardian has consulted with the ward and honored the ward's wishes consistent with the rights retained by the ward under the plan.
- Incapacitated individuals are not fungible. There is an expectation for a relationship between the guardian and the ward. –J. Warner in *Legal Aid Soc.ʻy of Palm Beach County, Inc. v. Guardianship of Jaffe*, 178 So.3d 527 (Fla. 4<sup>th</sup> DCA 2015)

# Not Happy with the Plan

- Any interested person, including the individual, may petition the court for review of the guardianship plan or why the actions of the guardian are not in the best interest of the individual. Fla. Stat. 744.3715.
- Even if they believe the guardian of the property is not accounting properly or timely for the ward's assets, they can request the court's review.

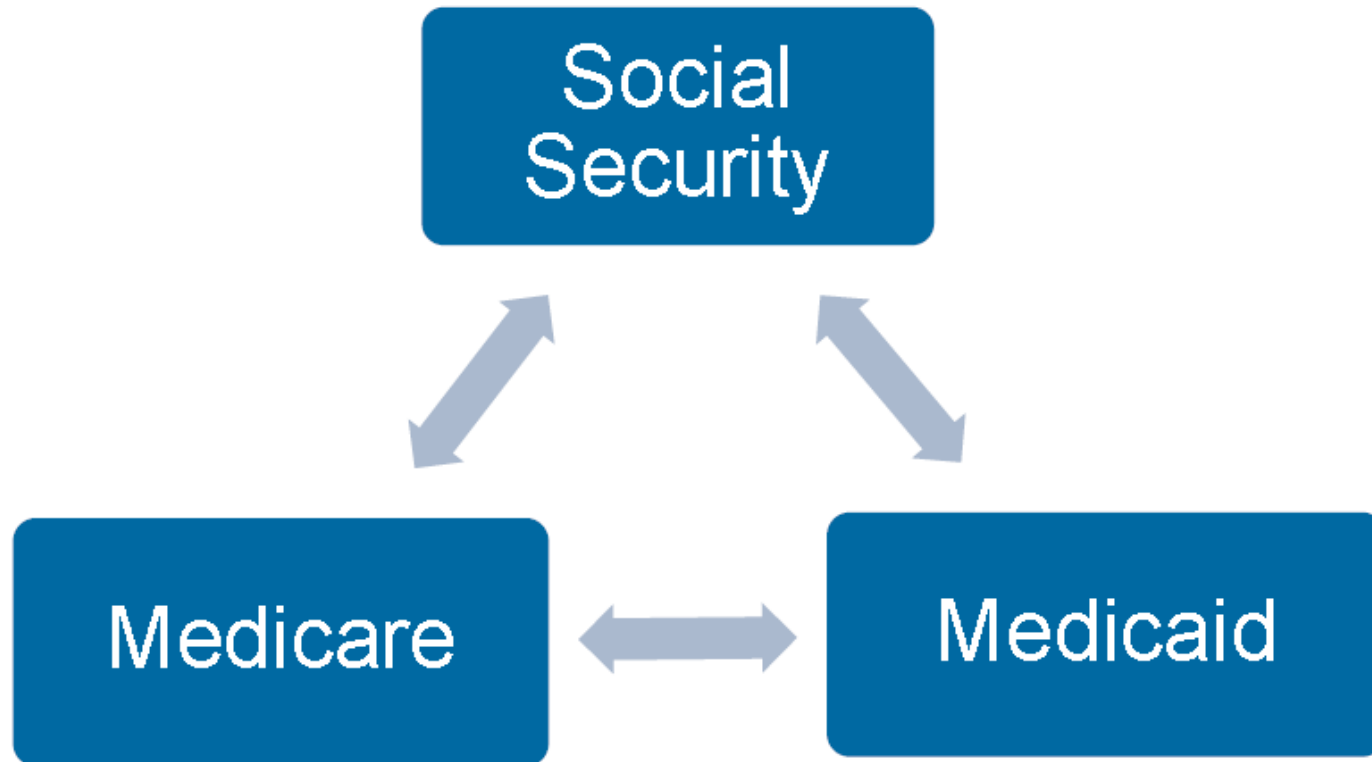
# Reporting

- A guardian advocate may not be required to file an annual accounting if the individual only receives Social Security benefits and that is their only income. Fla. Stat. 393.12(10).
- Guardianship accountings are prepared in a format similar to that of fiduciary accountings on a cash bases. So accrued income (money owed but not yet received) and accrued liabilities (money owed but not yet paid) are not included in the accounting as receipts and disbursements until the money is actually received or paid.
- Guardian of the property is obligated to file the individual's tax return.

# Supported Decision Making

- An alternative to guardianship.
- Allows individual to make decisions with the help of family, friends or others chosen by the individual.
- There is no singular model of supported decision-making.

# Benefits Management



# Definition of Disability Adult

"The inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

# Substantial Gainful Activity

Substantial gainful means the performance of significant physical and/or mental activities in work for pay or profit, or in work of a type generally performed for pay or profit, regardless of the legality of the work.

- \$1,130 per month in 2016 for individual with a disability other than blindness
- \$1,820 per month in 2016 for a person who is blind  
Individuals who are blind and applying for SSI do not need to meet an SGA test but rather a test to ascertain level of blindness
- Individuals cannot be working at the time of application or, if working, can not be earning more than the substantial gainful activity level or SGA

# SSI Income Eligibility

## 20 CFR 416.1100 - .1147

- Income is defined as “anything you receive in cash or in kind that you can use to meet your needs for food and shelter.”
  - Income can be earned or unearned.
  - Income can be in-kind in the form of shelter or food received free or at reduced cost.
  - Income can be deemed from a spouse, parent, or sponsor (of an alien).
- Income is counted in the month it’s received for SSI income eligibility purposes.



# Definition of Disability Child

- A child may be eligible for SSI disability benefits beginning as early as the date of birth; there is no minimum age requirement
- To be eligible for SSI benefits, a child must be either blind or disabled
- An individual under age 18 is "disabled" if he or she has a medically determinable physical or mental impairment, which:
  - ---results in marked and severe functional limitations; and
  - ---can be expected to result in death; or
  - ---has lasted or can be expected to last for a continuous period of not less than 12 months.

# SSI - Earned Income

## 20 CFR 416.1110 - .1111

- Income from work, including:
  - wages
  - self-employment net income
  - in-kind payment (e.g., free rent for work)
  - royalties and honoraria
- Treated much more favorably than unearned income.

# Basic Earned Income Deduction. 20 CFR 416.1112

- BASIC FORMULA

GROSS EARNED INCOME

LESS \$65 earned income exclusion

LESS unused portion \$20 general exclusion

DIVIDED BY 2

Equals SSI COUNTABLE EARNED INCOME

# SSI – Resources

## 20 CFR 416.1201 - .1266

- SSI limits the amount of countable resources that an SSI recipient can own.
- Must both own and have legal access to resource or it's not countable
- An individual recipient can hold only \$2000 in countable resources. A married couple can hold only \$3000 in countable resources.
- Income remaining as of the 1<sup>st</sup> moment of the month after the month received becomes a resource.

# Suspense vs Termination

## 20 CFR 416.1320 - .1336

- SSI ineligibility for a non-disability reason (e.g., income or resources) does not immediately result in eligibility termination; it results in suspense of benefits instead.
- Suspense for 12 consecutive months results in termination. 20 CFR 416.1335
- The difference is that a termination requires a reapplication to regain eligibility.

# Title II Disabled Adult Child/ Childhood Disability Benefit

- 18 years of age or older;
- disabled by SSA's definition before age 22;
- the child of insured workers who are either disabled, retired or deceased
- Have filed an application for child's benefits and
- Be unmarried. (some exceptions) (If adult child marries, benefits end unless marriage is to another social security beneficiary.)
- POMS DI 10115.001, 20 CFR 404.350 - .352.

# Protected Medicaid

An individual who was receiving SSI benefits is eligible for Protected Medicaid if they meet the following:

- Is over the age of 18;
- Has blindness or a disability which began before the age of 22;
- The individual is entitled to Title II benefits on a parent's record due to the retirement, death or disability of a parent, and loses SSI due to receipt of that benefit or increase in that benefit; and
- The individual would continue to be eligible for SSI in the absence of the Title II disabled adult child's benefit or such increases to that benefit

# Age 18 Redetermination

- The 1996 Personal Responsibility and Work Opportunity Reconciliation Act requires that all youth who receive Supplemental Security Income (SSI) go through a redetermination process for their benefit eligibility at age 18
- At age 18, a review is scheduled to determine whether or not the condition or illness meets the SSA's definition of disability for an adult. The purpose of the Age 18 redetermination is to review the current medical evidence to determine whether the young adult meets the criteria for disability under the adult criteria.
- Section 301- Continued Payment Under a Vocational Rehabilitation or Similar Program



# Continuing Disability Review (CDR)

During the initial determination process, when someone is found disabled by SSA their file is set to be reviewed periodically. How often depends on their Medical Improvement Expected (MIE) date. At that time, SSA will do an inquiry of their status of disability. This is called a Medical CDR.

Since engaging in earned income is part of the initial determination process, when someone on benefits goes to work or is found to be working; SSA does a Work CDR.

## Medical CDR vs. Work CDR

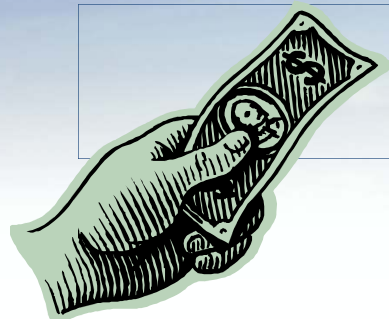
- To see if you have medically improved.
- Leads to termination of benefits.
- To see if you are working at a substantial level.
- Leads to suspension



# SSI Work Incentives



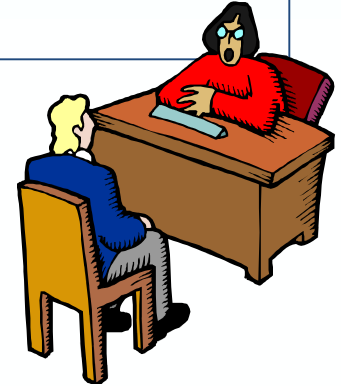
- **\$65 Earned Income Exclusion (EIE)**
- **Student earned income exclusion:  
For 2016 \$1,780 month/\$7,180 year**
- **Impairment-related work expense**
- **Blind work expense**
- **1619B continuation of Medicaid  
eligibility**
- **Section 301**
- **Plan for Achieving Self-Support  
(PASS)**
- **Expedited Reinstatement**



# SSDI Work Incentives

- Trial Work Period (\$\$810 for 2016)
- Extended Period of Eligibility
- Impairment Related Work Expenses
- Subsidy
- Continuation of Medicare
- Medicare for People with Disabilities who work
- Section 301
- Expedited Reinstatement

# Expedited Reinstatement



- **SSDI or SSI**
- **Current work is under SGA**
- **Same or related disabling condition**
- **Prior termination due to work activity**
- **Within 60 months of last entitlement**
- **Provisional Benefits**

# Medicaid

## **Medicaid is a Categorical Federal-State Program**

- SSI eligibility results in categorical eligibility for Medicaid. Medicaid eligibility flows from SSI eligibility.
- Working Disabled under 1619(b).

## **Florida SSI-Related Programs**

- ICP/HCBS/Hospice/HCDA
- MEDS-AD/ICP-MEDS
- QMB SLMB QI1

# Medicaid

## Florida Family-Related Medicaid

- Individuals potentially eligible for Family-Related Medicaid include:
- Pregnant Women
- Children
- Parents and other Caretaker Relatives
- Children with Title IV-E Adoption Assistance, Foster Care or Guardianship Care
- Former Foster Care Children under age 26 – There is no income test for this group; however, the individual must have received Florida Medicaid when they aged out of foster care in Florida.

# Medicaid Eligibility Through DCF

Earnings from employment may change the category of Medicaid you are eligible for, but will not make you ineligible for Medicaid.



# Medicaid Eligibility Through DCF

## For all types of Medicaid for disabled individuals:

Income of any type, and  
accumulated income and  
assets, can be sheltered in  
a special Trust for the  
Disabled, and won't count  
towards Medicaid eligibility.



# Medicaid Eligibility Through DCF

## There are two types of Trusts for the Disabled:

- Trust for the Disabled Under 65, called the “(d)(4)(A)”
- Pooled Trust for the Disabled called the “(d)(4)( c)”

 **Both must be approved by DCF  
Legal Counsel**

# Medicaid Eligibility Through DCF

## Medicaid Waiver only:

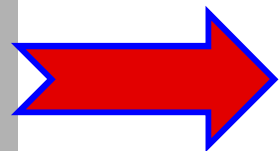
- Income of any type (but not assets) can be sheltered in a Qualified Income Trust (QIT) and won't count towards Medicaid eligibility.



## Information available at:

[http://www.dcf.state.fl.us/programs/access/docs/qualified\\_income\\_trust\\_factsheet.pdf](http://www.dcf.state.fl.us/programs/access/docs/qualified_income_trust_factsheet.pdf)

# Medicaid Trusts



It is recommended that you seek professional legal advice to utilize any type of trust for Medicaid eligibility.

# Medicaid Eligibility

- For information on Medicaid Programs, Eligibility information and to apply for Medicaid, visit:

<http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash>



# 1619(b) Medicaid While Working: Eligibility

- To be eligible, an individual must
  - Have a disability
  - Meet all SSI eligibility requirements except for countable earned income
  - Have received SSI for a previous month in the eligibility period
  - Need Medicaid and
  - Not have earnings that would replace the SSI benefit, the Medicaid benefit and any personal care services paid for by public funds. See POMS SI 02302.010 C 1.

# P & A employer payee reviews

- Since December, 2009, P&A (PABSS) grantees are assisting SSA to monitor organizational payees
- Conducting onsite visits of housing and employment sites for health and safety issues
- Interviewing payees and beneficiaries
- Reporting findings to SSA via NDRN.

# Payee issues

If you encounter situations where an individual or organizational payee is improperly using benefits, not taking care of food, housing and medical needs, or abusing the beneficiary, please report any concerns immediately to:

- Disability Rights Florida (800)342-0823
- Office of Inspector General SSA (800)269-0271

P & A's receive additional grant funding to investigate certain payee issues.

# Case # 1

- Alex is 17 years old. He lives in a Group Home and the CBC has paying his room and board.
- He is receiving \$487.00 in SSI monthly based on Physical / Orthopedic Impairments.
- Alex does not meet the level of care for Institutional Care Medicaid.
- Alex reports that there is \$15,000 saved in Master Trust account.
- He is oriented and competent and has a Rep Payee in place.
- Alex would like to work.
- What can the Rep Payee/Guardian do to help Alex during the employment planning process?



## Case #2

- Jane is 18 years old
- She has a Representative Payee
- She was found eligible for SSI/Adult standards upon re-determination
- She is opting into Extended Foster Care
- She has a developmental disability and is receiving services through the iBudget waiver
- She wants to work and eventually move into Supportive Living
- What can the Rep Payee do during the employment planning process?

# Case #3

- Bill is 17.5 years old
- He is not receiving SSI
- He does receive a Survivor Benefit because of a deceased parent
- Bill wants to work
- What can be done to help Bill in planning for employment?
- What would be done differently if Bill has a disability?

# Case #4

- Susie is 18 years old
- Receives SSI but reduced by foster care stipend/household income
- Fostered by family caregivers, her grandparents
- Susie is working
- What planning for employment will help Susie?
- What happens if her grandfather dies?

# Reference Materials

- A Guide For Representative Payees SSA Publication No. 05-10076  
<https://www.ssa.gov/pubs/EN-05-10076.pdf>
- A Guide to Supplemental Security Income (SSI) for Groups and Organizations SSA Publication No. 05-11015  
<https://www.ssa.gov/pubs/EN-05-11015.pdf>
- When A Representative Payee Manages Your Money SSA Publication No. 05-10097 <https://www.ssa.gov/pubs/EN-05-10097.pdf>
- Working While Disabled — How We Can Help SSA Publication No. 05-10095 <https://www.ssa.gov/pubs/EN-05-10095.pdf>
- 2016 Red Book SSA Publication No. 64-030  
<https://www.ssa.gov/redbook/>

# Contact Information

- **Amanda Heystek**, Director of Litigation  
[amandah@disabilityrightsflorida.org](mailto:amandah@disabilityrightsflorida.org)
- **Victor Panoff**, Senior Advocate/Investigator  
[victorp@disabilityrightsflorida.org](mailto:victorp@disabilityrightsflorida.org)
- Phone: (850) 488-9071 or (800) 342-0823
- [www.disabilityrightsflorida.org](http://www.disabilityrightsflorida.org)