

## § 416.584

(c) If the findings referred to in paragraph (a) of this section affirm that all or part of the overpayment is past due and legally enforceable and, if waiver is requested and we determine that the request cannot be granted, we will refer the overpayment to the Department of the Treasury. However, no referral will be made if, based on our review of the overpayment, we reverse our prior finding that the overpayment is past due and legally enforceable or, upon consideration of a waiver request, we determine that waiver of our collection of the overpayment is appropriate.

[62 FR 49439, Sept. 22, 1997]

### § 416.584 Review of our records related to the overpayment.

(a) *Notification by the overpaid individual.* An overpaid individual who intends to inspect or copy our records related to the overpayment as determined by us must notify us stating his or her intention to inspect or copy.

(b) *Our response.* In response to a notification by the overpaid individual as described in paragraph (a) of this section, we will notify the overpaid individual of the location and time when the overpaid individual may inspect or copy our records related to the overpayment. We may also, at our discretion, mail copies of the overpayment-related records to the overpaid individual.

[62 FR 49439, Sept. 22, 1997]

### § 416.585 Suspension of offset.

If, within 60 days of the date of the notice described in § 416.581 of this subpart, the overpaid individual notifies us that he or she is exercising a right described in § 416.582(a) of this subpart and submits evidence pursuant to § 416.582(b) of this subpart or requests a waiver under § 416.550 of this subpart, we will suspend any notice to the Department of the Treasury until we have issued written findings that affirm that an overpayment is past due and legally enforceable and, if applicable, make a determination that a waiver request cannot be granted.

[62 FR 49440, Sept. 22, 1997]

## 20 CFR Ch. III (4-1-01 Edition)

### § 416.586 Tax refund insufficient to cover amount of overpayment.

If a tax refund is insufficient to recover an overpayment in a given year, the case will remain with the Department of the Treasury for succeeding years, assuming that all criteria for certification are met at that time.

[62 FR 49440, Sept. 22, 1997]

## Subpart F—Representative Payment

**AUTHORITY:** Secs. 702(a)(5), 1631 (a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383 (a)(2) and (d)(1)).

**SOURCE:** 47 FR 30475, July 14, 1982, unless otherwise noted.

### § 416.601 Introduction.

(a) *Explanation of representative payment.* This subpart explains the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee. It also explains the responsibilities that a representative payee has concerning the use of the funds he or she receives on behalf of a beneficiary. A representative payee may be either a person or an organization selected by us to receive benefits on behalf of a beneficiary. A representative payee will be selected if we believe that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her own interest.

(b) *Policy used to determine whether to make representative payment.* (1) Our policy is that every beneficiary has the right to manage his or her own benefits. However, some beneficiaries due to a mental or physical condition or due to their youth may be unable to do so. Under these circumstances, we may determine that the interests of the beneficiary would be better served if we certified benefit payments to another person as a representative payee. However, we must select a representative payee for an individual who is eligible for benefits solely on the basis of

disability if drug addiction or alcoholism is a contributing factor material to the determination of disability.

(2) If we determine that representative payment is in the interest of a beneficiary, we will appoint a representative payee. We may appoint a representative payee even if the beneficiary is a legally competent individual. If the beneficiary is a legally incompetent individual, we may appoint the legal guardian or some other person as a representative payee.

(3) If payment is being made directly to a beneficiary and a question arises concerning his or her ability to manage or direct the management of benefit payments, we will, if the beneficiary is 18 years old or older and has not been adjudged legally incompetent, continue to pay the beneficiary until we make a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

[47 FR 30475, July 14, 1982, as amended at 60 FR 8150, Feb. 10, 1995]

**§ 416.610 When payment will be made to a representative payee.**

(a) We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—

(1) Legally incompetent or mentally incapable of managing benefit payments; or

(2) Physically incapable of managing or directing the management of his or her benefit payments; or

(3) Eligible for benefits solely on the basis of disability and drug addiction or alcoholism is a contributing factor material to the determination of disability.

(b) Generally, if a beneficiary is under age 18, we will pay benefits to a representative payee. However, in certain situations, we will make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. For example, we make direct payment to a beneficiary under age 18 if the beneficiary is—

(1) A parent and files for himself or herself and/or his or her child and he or

she has experience in handling his or her own finances; or

(2) Capable of using the benefits to provide for his or her current needs and no qualified payee is available; or

(3) Within 7 months of attaining age 18 and is initially filing an application for benefits.

[47 FR 30475, July 14, 1982, as amended at 54 FR 35483, Aug. 28, 1989; 60 FR 8150, Feb. 10, 1995]

**§ 416.615 Information considered in determining whether to make representative payment.**

In determining whether to make representative payment we consider the following information:

(a) *Court determinations.* If we learn that a beneficiary has been found to be legally incompetent, a certified copy of the court's determination will be the basis of our determination to make representative payment.

(b) *Medical evidence.* When available, we will use medical evidence to determine if a beneficiary is capable of managing or directing the management of benefit payments. For example, a statement by a physician or other medical professional based upon his or her recent examination of the beneficiary and his or her knowledge of the beneficiary's present condition will be used in our determination, if it includes information concerning the nature of the beneficiary's illness, the beneficiary's chances for recovery and the opinion of the physician or other medical professional as to whether the beneficiary is able to manage or direct the management of benefit payments.

(c) *Other evidence.* We will also consider any statements of relatives, friends and other people in a position to know and observe the beneficiary, which contain information helpful to us in deciding whether the beneficiary is able to manage or direct the management of benefit payments.

**§ 416.620 Information considered in selecting a representative payee.**

In selecting a payee we try to select the person, agency, organization or institution that will best serve the interest of the beneficiary. In making our selection we consider—