

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—

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- (a) The relationship of the person to the beneficiary;
- (b) The amount of interest that the person shows in the beneficiary;
- (c) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;
- (d) Whether the potential payee has custody of the beneficiary; and
- (e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary.

§416.621 Order of preference in selecting a representative payee.

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interests. The preferences are:

- (a) For beneficiaries 18 years old or older our preference is—
 - (1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;
 - (2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;
 - (3) A public or nonprofit agency or institution having custody of the beneficiary;
 - (4) A private institution operated for profit and licensed under State law, which has custody of the beneficiary; and
 - (5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for the beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.
- (b) For beneficiaries under age 18, our preference is—
 - (1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;
 - (2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;

- (3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well being;
- (4) A relative or stepparent who has custody of the beneficiary;
- (5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well being;
- (6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and
- (7) An authorized social agency or custodial institution.

§416.625 Information to be submitted by a representative payee.

- (a) Before we select a representative payee, the payee applicant must give us information showing his or her relationship to the beneficiary and his or her responsibility for the care of the beneficiary.
- (b) Anytime after we have selected a payee, we may ask the payee to give us information showing a continuing relationship to the beneficiary and a continuing responsibility for the care of the beneficiary. If the payee does not give us the requested information within a reasonable period of time, we may stop paying the payee unless we determine that the payee had a good reason for not complying with our request, and we receive the information requested.

§416.630 Advance notice of the determination to make representative payment.

- (a) Generally, whenever we intend to make representative payment and to name a payee, we notify the beneficiary or the individual acting on his or her behalf, of our proposed actions. In this notice we tell the person that we plan to name a representative payee and who that payee will be. We also ask the person to contact us if he or she objects to either proposed action. If he or she objects to either proposed action, the person may—
 - (1) Review the evidence upon which the proposed actions will be based; and