

(2) Submit any additional evidence regarding the proposed actions.

(b) If the person objects to the proposed actions, we will review our proposed determinations and consider any additional information given to us. We will then issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

(c) If the person does not object to the proposed actions, we will issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

**§416.635 Responsibilities of a representative payee.**

A representative payee has a responsibility to—

(a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;

(b) Notify us of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits (See subpart G of this part concerning these reporting requirements);

(c) Submit to us, upon our request, a written report accounting for the benefits received;

(d) Notify us of any change in his or her circumstances that would affect performance of the payee responsibilities; and

(e) In cases in which the beneficiary is an individual under age 18 (including cases in which the beneficiary is an individual whose low birth weight is a contributing factor material to our determination that the individual is disabled), ensure that the beneficiary is and has been receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits (See §416.994a(i).)

[47 FR 30475, July 14, 1982, as amended at 62 FR 6420, Feb. 11, 1997]

**§416.640 Use of benefit payments.**

(a) *Current maintenance.* We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if

they are used for the beneficiary's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items.

*Example:* A Supplemental Security Income beneficiary is entitled to a monthly benefit of \$264. The beneficiary's son, who is the representative payee, disburses the benefits in the following manner:

Rent and Utilities .....	\$166
Medical .....	20
Food .....	60
Clothing .....	10
Miscellaneous .....	8

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(b) *Institution not receiving Medicaid funds on beneficiary's behalf.* If a beneficiary is receiving care in a Federal, State, or private institution because of mental or physical incapacity, current maintenance will include the customary charges for the care and services provided by an institution, expenditures for those items which will aid in the beneficiary's recovery or release from the institution, and nominal expenses for personal needs (e.g., personal hygiene items, snacks, candy) which will improve the beneficiary's condition. Except as provided under §416.212, there is no restriction in using SSI benefits for a beneficiary's current maintenance in an institution. Any payments remaining from SSI benefits may be used for a temporary period to maintain the beneficiary's residence outside of the institution unless a physician has certified that the beneficiary is not likely to return home.

*Example:* A hospitalized disabled beneficiary is entitled to a monthly benefit of \$264. The beneficiary, who resides in a boarding home, has resided there for over 6 years. It is doubtful that the beneficiary will leave the boarding home in the near future. The boarding home charges \$215 per month for the beneficiary's room and board.

The beneficiary's representative payee pays the boarding home \$215 (assuming an unsuccessful effort was made to negotiate a lower rate during the beneficiary's absence) and uses the balance to purchase miscellaneous personal items for the beneficiary. There are no benefits remaining which can be conserved on behalf of the beneficiary. The payee's use of the benefits is consistent with our guidelines.

(c) *Institution receiving Medicaid funds on beneficiary's behalf.* Except in the case of a beneficiary receiving benefits payable under § 416.212, if a beneficiary resides throughout a month in an institution that receives more than 50 percent of the cost of care on behalf of the beneficiary from Medicaid, any payments due shall be used only for the personal needs of the beneficiary and not for other items of current maintenance.

*Example:* A disabled beneficiary resides in a hospital. The superintendent of the hospital receives \$30 per month as the beneficiary's payee. The benefit payment is disbursed in the following manner, which would be consistent with our guidelines:

Miscellaneous canteen items .....	\$10
Clothing .....	15
Conserved for future needs of the beneficiary .....	5

(d) *Claims of creditors.* A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

*Example:* A disabled beneficiary was determined to be eligible for a monthly benefit payment of \$208 effective April 1981. The benefits were certified to the beneficiary's brother who was appointed as the representative payee. The payee conserved \$27 of the benefits received. In June 1981 the payee received a bill from a doctor who had treated the beneficiary in February and March 1981. The bill was for \$175.

After reviewing the beneficiary's current needs and resources, the payee decided not to use any of the benefits to pay the doctor's bill. (Approximately \$180 a month is required for the beneficiary's current monthly living expenses—rent, utilities, food, and insurance—and the beneficiary will need new shoes and a coat within the next few months.)

Based upon the above, the payee's decision not to pay the doctor's bill is consistent with our guidelines.

(e) *Dedicated accounts for eligible individuals under age 18.* (1) When past-due benefit payments are required to be paid into a separate dedicated account (see § 416.546), the representative payee is required to establish in a financial institution an account dedicated to the

purposes described in paragraph (e)(2) of this section. This dedicated account may be a checking, savings or money market account subject to the titling requirements set forth in § 416.645. Dedicated accounts may not be in the form of certificates of deposit, mutual funds, stocks, bonds or trusts.

(2) A representative payee shall use dedicated account funds, whether deposited on a mandatory or permissive basis (as described in § 416.546), for the benefit of the child and only for the following allowable expenses—

(i) Medical treatment and education or job skills training;

(ii) If related to the child's impairment(s), personal needs assistance; special equipment; housing modification; and therapy or rehabilitation; or

(iii) Other items and services related to the child's impairment(s) that we determine to be appropriate. The representative payee must explain why or how the other item or service relates to the impairment(s) of the child.

(3) Representative payees must keep records and receipts of all deposits to and expenditures from dedicated accounts, and must submit these records to us upon our request, as explained in §§ 416.635 and 416.665.

(4) The use of funds from a dedicated account in any manner not authorized by this section constitutes a misapplication of benefits. These misapplied benefits are not an overpayment as defined in § 416.537; however, if we determine that a representative payee knowingly misapplied funds in a dedicated account, that representative payee shall be liable to us in an amount equal to the total amount of the misapplied funds.

(5) The restrictions described in this section and the income and resource exclusions described in §§ 416.1124(c)(20) and 416.1247 shall continue to apply until all funds in the dedicated account are depleted or eligibility for benefits terminates, whichever comes first. This continuation of the restrictions and exclusions applies in situations where funds remain in the account in any of the following situations—

(i) A child attains age 18, continues to be eligible and receives payments directly;

(ii) A new representative payee is appointed. When funds remaining in a dedicated account are returned to us by the former representative payee, the new representative payee must establish an account in a financial institution into which we will deposit these funds, even if the amount is less than that prescribed in § 416.546; or

(iii) During a period of suspension due to ineligibility as described in § 416.1321, administrative suspension, or a period of eligibility for which no payment is due.

[47 FR 30475, July 14, 1982, as amended at 61 FR 10278, Mar. 13, 1996; 61 FR 67206, Dec. 20, 1996]

**§ 416.640a Compensation for qualified organizations serving as representative payees.**

(a) *General.* A community-based, non-profit social service agency which meets the requirements set out in paragraph (b) of this section may request our authorization to collect a monthly fee from a beneficiary for providing representative payee services.

(b) *Organizations that may request compensation.* We will authorize an organization to collect a fee if all the following requirements are met.

(1) It is community-based, i.e., serves or represents one or more neighborhoods, city or county locales and is located within its service area.

(2) It is a nonprofit social service organization founded for religious, charitable or social welfare purposes and is tax exempt under section 501(c) of the Internal Revenue Code.

(3) It is bonded or licensed in the State in which it serves as representative payee.

(4) It regularly provides representative payee services concurrently to at least five beneficiaries. An organization which has received our authorization to collect a fee for representative payee services, but is temporarily not a payee for at least five beneficiaries, may request our approval to continue to collect fees.

(5) It was in existence on October 1, 1988.

(6) It is not a creditor of the beneficiary. See paragraph (c) of this section for exceptions to this requirement.

(c) *Creditor relationship.* If an organization has a creditor relationship with a beneficiary we may, on a case-by-case basis, authorize the organization to collect a fee for payee services notwithstanding this relationship. To provide this authorization, we will review all of the evidence submitted by the organization and authorize collection of a fee when:

(1) The services provided by the organization help to meet the current needs of the beneficiary; and

(2) The amount the organization charges the beneficiary for these services is commensurate with the beneficiary's ability to pay.

(d) *Authorization process.* (1) An organization must request in writing and receive an authorization from us before it may collect a fee.

(2) An organization seeking authorization to collect a fee must also give us evidence to show that it is qualified, pursuant to paragraphs (b) and (c) of this section, to collect a fee.

(3) If the evidence provided to us by the organization shows that the requirements of this section are met, we will notify the organization in writing that it is authorized to collect a fee. If we need more evidence, or if we are not able to authorize the collection of a fee, we will also notify the organization in writing that we have not authorized the collection of a fee.

(e) *Revocation, cancellation and expiration of the authorization.* (1) We will revoke an authorization to collect a fee if we have evidence which establishes that an organization no longer meets the requirements of this section. We will issue a written notice to the organization explaining the reason(s) for the revocation.

(2) An organization may cancel its authorization at any time upon written notice to us.

(f) *Notices.* The written notice we will send to an organization authorizing the collection of a fee will contain an effective date for the collection of a fee pursuant to paragraphs (b) and (c) of this section. The effective date will be no earlier than the month in which the organization asked for authorization to collect a fee. The notice will be applicable to all beneficiaries for whom the organization was payee at the time of