

**WRITTEN STATEMENT OF  
ELMER CERANO, MEMBER OF THE BOARD OF DIRECTORS AND THE TREASURER FOR  
THE NATIONAL DISABILITY RIGHTS NETWORK (NDRN)  
BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON SOCIAL SECURITY**

**June 5, 2013**

Good morning, my name is Elmer Cerano, and I am a Member of the Board of Directors and the Treasurer for the National Disability Rights Network (NDRN). I am also the Executive Director of the Michigan Protection and Advocacy Service, a role I have served in for 11 years. NDRN is the membership organization for the 57 Congressionally created and funded Protection and Advocacy (P&A) agencies, which exist in every state and U.S. territory, and for Native American tribes in the Four Corners region. The P&A system, initially created in 1975 in response to concerns about the treatment of individuals with developmental disabilities, is now collectively the largest provider of legally based advocacy services to individuals with all types of disabilities.

I have been a part of the disability rights movement through working for the ARC of Maryland, United Cerebral Palsy Association of Detroit, the Pennsylvania Protection and Advocacy Service and the Michigan Protection and Advocacy Service, and serving as the Chair of the NISH Board of Directors and as the Treasurer of the NDRN Board of Directors. I testify today on the issues I have seen throughout my career involving Social Security Act beneficiaries who have been appointed a representative payee as well as the important work the P&A system is currently performing to address problems with representative payees.

Throughout my career I have unfortunately come across many examples of representative payees that were not providing the best support and service for Social Security beneficiaries. Sometimes these representative payees have been organizations, sometimes friends, and sometimes family members or guardians. There is not one type of representative payee that will by the nature of who the organization or person is ensure that the beneficiary is not being abused, neglected, or financially exploited. That is why effective and strong monitoring of representative payees is extremely important.

P&A agencies in each state and territory provide legal advice, representation, and advocacy to individuals with disabilities on a range of issues such as accessing services in the community and protecting rights contained in the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and other federal and state laws. Congress provided the P&As with broad authority to investigate suspected incidents of abuse and neglect of individuals with disabilities, including access to records, and the ability to monitor organizations and facilities who provide services to ensure the safety and protection of the rights of individuals with disabilities. In 1999, the P&A system became connected to the Social Security system when Congress established the Protection and Advocacy for Beneficiaries of Social Security or PABSS program to enable the P&A system to assist beneficiaries of Social Security who face legal issues in returning to work.

Throughout their existence, P&As have been involved in assisting individual beneficiaries with problems with Representative Payees, however in 2009, the P&A systems involvement with representative payee issues dramatically increased following the discovery of horrific abuse and neglect of thirty-two men with disabilities by Henry's Turkey Service, an organizational representative payee in Iowa who also employed the beneficiaries.

The problems at Henry's were discovered In February of 2009, when fire officials in Atalissa, Iowa closed a residential "bunkhouse" housing individuals with intellectual and cogitative disabilities owned by Henry's after finding serious and numerous safety violations. Henry's further exploited the men by paying them \$60 - \$65 a month for work in a nearby turkey processing plant, while also harassing the men because of their disabilities. Henry's was recently found liable for millions of dollars in damages for violations of the Fair Labor Standards Act and the Americans with Disabilities Act (ADA), including one of the largest jury awards for punitive and compensatory damages for violations of the anti-employment discrimination provisions of the ADA. During this time of egregious abuse, Henry's was also supposed to be responsible for the proper and appropriate use of the men's Social Security cash benefits as their representative payee.

To their credit, following the discovery of the abuse by Henry's, the Social Security Administration (SSA) moved very quickly to determine whether other organizational payees were employing and exploiting the beneficiaries they were appointed to serve. As part of this effort, SSA turned to NDRN and the nationwide network of P&A agencies to conduct reviews of organizational representative payees who also employ beneficiaries. Given the P&A's decades of experience investigating allegations of abuse and neglect of individuals with disabilities, P&A's knowledge of the resources and services available in each state, the ability of the P&As to conduct follow-up investigations, and the P&A's experience assisting Social Security beneficiaries under the PABSS program, SSA recognized that the P&A system was in a unique position to check for other possible abuse and exploitation by payees. In October 2009 SSA contracted with NDRN to help create and manage the Representative Payee Review Project using the P&As to review payees selected by SSA. P&As began reviewing payees in late December 2009. I believe SSA should be credited with taking swift action by using an already existing system that SSA had a relationship with to increase the monitoring of representative payees after the exposure of the abuse and neglect by Henry's Turkey Service.

During the first two years of the project, the P&As completed 700 on-site reviews of organizational representative payees, most of whom SSA had identified employed at least one beneficiary. The primary focus for the first 20 months of the project was to check for possible wage and hour or work place safety violations by the payee; interview a sample of beneficiaries to find out how they were being treated by the payee; and check the condition of any housing provided to the beneficiaries by the payee. In early 2011, SSA expanded the project to review organizational representative payees who do not employ beneficiaries, and to require that the P&As formally review how the payee is managing the beneficiaries' Social Security cash benefits. These changes shifted the focus of the reviews to how the payee manages the benefits, in addition to continuing to check on any housing provided by the payee and the overall welfare of the beneficiaries.

As of March 31, 2013, just over 3 years from the start of the first reviews, P&As have reviewed 1,552 organizational payees nationwide and completed 7,040 interviews of beneficiaries, or a guardian, family member, or close friend for beneficiaries unable to communicate. Reviews have covered a broad range of payees, including small group homes and board and care homes, nursing facilities, government agencies, and disability service providers offering day treatment programs or other similar services, and organizations running sheltered workshops for individuals with disabilities. Based on these reviews, most payees work to adhere to SSA requirements for managing Social Security benefits, as well as to follow federal and state regulations designed to protect the health and safety of workers and individuals with disabilities. However, P&As have uncovered problems, some of them very serious.

After every on-site review of a payee, the P&A files a report documenting the review which is sent to SSA after NDRN staff review the quality and completeness of the reports. In these reports, the P&A indicates possible problems identified during the review and recommends follow-up by SSA for those problems within SSA's authority. SSA makes the ultimate determination about whether a payee has or has not followed or violated SSA requirements for organizational representative payees.

In addition to reviewing SSA requirements, and because of our history of investigations and monitoring for possible abuse and neglect, P&As also address problems which are outside of SSA's authority by referring them to relevant federal and state oversight agencies, such as the Department of Labor for possible wage violations, local fire marshals for housing safety concerns, state regulatory agencies for issues involving the care or treatment of individuals with disabilities, or back to the P&A organization itself.

The P&A can represent individual beneficiaries for problems discovered during the review, or conduct further investigation of the payee if warranted, for example if abuse and neglect is suspected, based on other P&A investigative authority. For example, during the review of a payee in 2011 a P&A agency discovered beneficiaries with mental illness living in deplorable conditions, including a serious bed-bug infestation, in housing provided by the payee. After reporting the problems to SSA, the P&A conducted further investigations and has been working with relevant officials, including the Veterans Administration. As another example, in 2010 when reviewing a representative payee who also employed beneficiaries, the P&A observed possible workplace safety violations and referred the matter to the Organizational Safety and Health Administration (OSHA). In a follow-up investigation OSHA found violations and imposed fines on the payee.

In terms of the financial management of benefits by payees, two areas 1) failure to maintain funds in proper bank accounts, and 2) poor or confusing recordkeeping, appear as the most common possible problems reported by the P&As. SSA makes the final determination if a problem actually occurred. P&A agencies have reported a number of payees whom the P&A believed placed beneficiary funds in the general operating account of the organization, a direct violation of SSA requirements. Likewise, P&As have reported that a number of payees placed the benefits of multiple beneficiaries into a single account without obtaining prior SSA approval

as required. Similarly, P&As have reported cases where the payees uses a bank account containing benefits for the personal expenses of the owner without clear record keeping.

Another issue that has clearly arisen from the reviews done by the P&As is the desire by the representative payees for additional training. As stated earlier, most payees try to adhere to SSA policies, but P&As have encountered example after example of payees saying they need more training on their responsibilities as a payee. Providing training on the rights of persons with disabilities and the responsibilities of those that care for them is something P&As do every day. If expanded, I believe the positive effects of this training by P&As would be twofold: First it would reduce the incidents of financial mismanagement and violation of state and federal laws, and two these trainings could help expand the pool of eligible payees by offering exposure of the representative payee program to people and the information and knowledge necessary to be a successful payee.

As mentioned previously, SSA should be commended for acting quickly to address potential abuse of beneficiaries after the discovery of exploitation by Henry's Turkey Service. SSA was creative in developing a way to provide additional oversight of representative payees and better protect the broader welfare of beneficiaries using an already existing system with experience. Based on my experience over the years, and the work of the P&As on the representative payee project, I make the following recommendations:

First, monitoring of representative payees needs to continue to better ensure compliance with both SSA requirements, as well as with other federal, state, or local laws protecting the rights of persons with disabilities. The experience of the P&As suggest that organizational payees may not only be violating SSA requirements, but also state licensing laws, or local housing ordinances. Because of this the Representative Payee Review Project should be expanded as it is an already existing project that can continue to address both SSA and other violations of law.

Second, SSA should coordinate with other federal agencies, such as the Department of Labor, the Veterans Administration, and the U.S. Department of Justice to ensure all rights of beneficiaries are protected. As mentioned, P&As have made referrals to other agencies for problems found which are outside of SSA's authority.

Third, SSA should support broader, more extensive, and more formal training to representative payees, so that payees understand their responsibilities to the beneficiary and to SSA. Such trainings could be provided by an outside trainer if SSA staffing precludes the agency from providing the trainings directly. With knowledge of representative payee requirements and the supports and services available in each state, P&A agencies are one option to provide such training to current and potentially new payees. Such training might further enable SSA to recruit and maintain payees.

Fourth, custodial parents who are representative payees should still be required to file to become the payee of the minor child and to complete annual filings. Based on P&A experience, in not all cases do custodial parent's use benefits for the benefit of the child with a disability, and

once the minor child reaches age 18, there are no safeguards to ensure the parent is the appropriate choice to be the payee.