



HEARING BEFORE

**WAYS AND MEANS SUBCOMMITTEES ON SOCIAL SECURITY AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES**

FEBRUARY 7, 2017

STATEMENT

OF

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**ACTING DEPUTY COMMISSIONER FOR RETIREMENT AND DISABILITY POLICY
SOCIAL SECURITY ADMINISTRATION**

Chairman Johnson, Chairman Buchanan, Ranking Member Larson, Ranking Member Lewis, and Members of the Subcommittees:

Thank you for inviting me to discuss how the Social Security Administration determines whether a beneficiary is incapable of managing his or her benefit payments. I am Marianna LaCanfora, Acting Deputy Commissioner for Retirement and Disability Policy.

Background

As this is the first time that we are appearing before you in this Congressional session, I would like to provide a brief overview of our programs. We administer the Old-Age, Survivors, and Disability Insurance (OASDI) program, commonly referred to as “Social Security.” Individuals earn coverage for Social Security retirement, survivors, and disability protection and benefits by working and paying Social Security taxes on their earnings.

We also administer the Supplemental Security Income (SSI) program, which provides monthly payments to people with limited income and resources who are aged, blind, or disabled. Adults and children under age 18 can receive payments based on disability or blindness. General tax revenues fund the SSI program.

Few government agencies touch the lives of as many people as we do. Social Security pays monthly benefits to approximately 62 million individuals, consisting of 42 million retired workers and 3 million of their spouses and children; 9 million workers with disabilities and 2 million dependents; and 6 million surviving widows and widowers, children, and other dependents of deceased workers. During fiscal year (FY) 2017, we expect to pay more than \$940 billion to Social Security beneficiaries. In addition, in FY 2017, we expect to pay nearly \$55 billion in Federal benefits to a monthly average of approximately 8 million SSI recipients. In carrying out these programs, we are among the most efficient agencies in the Federal Government—our discretionary administrative costs represent about 1.3 percent of benefit payments that we paid under the OASDI and SSI programs.

Overview of the Representative Payee Program

Early on in Social Security’s history, Congress recognized that some beneficiaries were incapable of managing their benefits, and amended the Social Security Act to allow us to appoint representative payees for such beneficiaries. Representative payees help our vulnerable beneficiaries by managing their benefit payments for their basic needs. We appoint representative payees to manage benefits for adult and child beneficiaries under Social Security’s retirement, survivors, and disability programs, and for adult and child recipients of the SSI program. Over half of individuals with representative payees are minor children.

It is important to note that we presume adult beneficiaries are capable of managing, or directing someone else to manage, their benefits, unless there is evidence to the contrary. This presumption does not apply to adults who have been determined by a court to be legally incompetent or minor children; under Social Security Administration regulations, we usually

must pay those individuals through a representative payee. In all other situations, we will only consider appointing a representative payee when we learn that a beneficiary has a mental or physical impairment that may prevent him or her from managing, or directing the management of, his or her benefits. In that case, our field office technicians make a formal capability determination, using criteria set forth in our regulations, to see whether it is in the beneficiary's interest to have payments made through a representative payee. Our field office technicians are assigned the responsibility to decide whether a beneficiary is incapable of managing his or her benefits.

Making a Capability Determination

Under our regulations, we consider three types of evidence to make a capability determination.

- *Legal evidence.* If there is an allegation that the beneficiary is legally incompetent, we will seek legal evidence. If a court order establishes that the beneficiary is legally incompetent, no further development is necessary: we will appoint a representative payee.
- *Medical evidence.* If the beneficiary is legally competent, we will obtain medical evidence and consider the beneficiary's physical or mental abilities to manage his or her benefits. Specifically, we obtain an opinion from a medical professional who has examined the beneficiary regarding the beneficiary's ability to manage, or direct the management of, benefits.
- *Lay evidence.* We will also obtain lay evidence. Lay evidence is anything other than legal or medical evidence that shows the extent to which a beneficiary is able to manage his or her benefits. We typically obtain lay evidence from an interview with a beneficiary and from third parties who know the beneficiary and can provide information pertaining to the beneficiary's ability to manage money. In interviewing the beneficiary, we ask a number of questions designed to elicit information about whether the beneficiary recognizes and can provide for his or her needs. We ask about the beneficiary's ability to manage his or her finances, his or her living situation, food, shelter, medical needs, and available support.

Selecting a Representative Payee

Once we learn that a beneficiary requires a payee, we select a person, preferably a family member, or an organization to manage the beneficiary's payments.

To select a suitable payee, we examine certain regulatory criteria, including the representative payee applicant's relationship to the beneficiary, whether the applicant has custody of the beneficiary, all known information about the applicant's past payee performance, and any criminal history. We also look to see if the applicant has demonstrated concern for the beneficiary's well-being, is knowledgeable about the beneficiary's current or foreseeable needs, or lives with the beneficiary.

Appeal Rights

The Social Security Act requires us to send advance notice to any legally competent adult before appointing a representative payee. Once we determine that a beneficiary is incapable and have selected a payee, we send an advance notice of the proposed appointment to the beneficiary before certifying benefits to the proposed payee. The advance notice informs the beneficiary that we have determined that a payee is needed, provides the name of the proposed payee, and explains the beneficiary's right to appeal within 60 days of receipt of the advance notice. The advance notice also advises the beneficiary that if no protest is received within 10 days of the receipt of the advance notice (we allow an additional 5 days for mailing time), we will make payment to the payee named in the advance notice. The beneficiary retains the right to file an appeal during the remaining time in the 60-day appeal period. The beneficiary may contest our capability determination or our payee selection, or both.

If a beneficiary contests either determination, a field office technician who was not involved in making the original capability determination will review the initial determination. This is the reconsideration step of our administrative appeals process. If the beneficiary is dissatisfied with the reconsideration determination, he or she may seek a hearing before an administrative law judge (ALJ), whose decision, in turn, may be reviewed by the Appeals Council. If an individual is not satisfied following these administrative appeals, he or she may request judicial review by filing a civil action in Federal District Court.

Improvements in Our Process for Determining Capability

As with our other workloads, we periodically consider how we can improve our capability determination process. In this area, we have done a number of internal quality reviews. We also asked the National Academy of Medicine (NAM) of the National Academies of Sciences, Engineering, and Medicine to conduct a study of our current policy for capability determinations, compare our process to three similar benefit programs, and provide recommendations for improving the accuracy and efficiency of our policy and procedures for making determinations. The 12-member NAM committee consisted of experts in the fields of psychology, neuropsychology, psychiatry, social work, occupational therapy and rehabilitation, behavioral economics, bioethics, and law.

In its review of similar benefit programs, NAM examined the Department of Veterans Affairs, the Office of Personnel Management, and Service Canada. NAM found no "gold standard" for determining financial capability among the programs. Each program reviewed has unique aspects that the committee considers good practice and that, taken together, can contribute to a more procedurally sound process. Notably, NAM found that our requirement for "lay" evidence in making capability determinations was consistent with their conclusion that evidence of real-world financial performance is the most reliable basis for making determinations. Further, NAM suggested that obtaining lay evidence from professionals and other third parties who have directly observed how a beneficiary manages his or her benefits is the best source of evidence. The NAM report provided six recommendations for how we can improve our capability determination policies and procedures. We continue to evaluate the recommendations and the

feasibility of implementing them, while also considering agency resource constraints. We are already addressing some of these recommendations, as described below.

In addition to these efforts, we continue to work closely with our Office of the Inspector General (OIG) and the U.S. Government Accountability Office, both of which have made several suggestions for improving our representative payee program. For example, OIG recently audited our capability determination process for disabled beneficiaries receiving direct payment who previously had a representative payee. OIG found that we need to improve controls to ensure we make and document capability determinations for these beneficiaries. We agreed and put a strategy in place (described below) to address this recommendation. In another audit, OIG found that in some cases beneficiaries received direct payment under one program (for example, SSI) while receiving other benefits (for example, OASDI) through a payee. We are using additional systems enhancements (also described below) to prevent this occurrence.

In response to these reports, we have developed a number of initiatives to improve our capability determination process. These initiatives include:

Improve capability instructions in our policy guidance. Specifically, we consolidated and clarified our capability determination policy instructions to better ensure that field office technicians consistently develop and document these determinations. In issuing these instructions, we implemented the NAM study recommendation to provide detailed guidance to third party sources on the feedback they provide to SSA about a beneficiary's financial performance. For example, we added structured questions for field office employees to ask third-party sources. We clarified that third party sources must have direct observation and knowledge of a beneficiary's financial performance to assist us in making a capability determination. We finalized this policy guidance in January.

Increase training frequency and responsiveness. In all situations where policy is revised, we must follow up with training that will familiarize employees with new procedures. For example, we will amplify the release of significant policy guidance by delivering comprehensive training through a nationwide interactive video broadcast to all of our field office employees who make capability determinations. This training will be released by early April 2017.

Enhance our systems for documenting capability determinations. We are developing a robust business process and systems support to facilitate comprehensive decision-making and standardized documentation across our field offices. These enhancements will ensure that field office employees document the pertinent facts from all applicable medical, lay, and legal evidence relied upon to make the capability determination. These enhancements will also satisfy the OIG report recommendation that we improve controls to ensure SSA employees document their capability determinations. Furthermore, these enhancements will systematically enforce our new structured set of questions to third parties about a beneficiary's financial performance, which will greatly improve our collection of lay evidence. We are implementing enhancements to our system in FY 2017 to reinforce proper documentation and accountability. Regarding situations where a beneficiary receives direct payment for one program and has a payee for the other, our electronic representative payee system (eRPS) now requires employees to check all records where entitlement exists.

Provide quality review to verify results. As we make changes to policy, training, and systems processing in order to strengthen the capability determination process, we are also committed to reviewing the results of our actions. Our quality review process will evaluate outcomes, analyzing the effectiveness of our policies, training, and systems revisions.

Conclusion

Again, thank you for the opportunity to describe our efforts regarding these very important issues. I will be happy to answer any questions you may have.