A Child-Centered Approach to Social Security Benefit Management for Children in Foster Care

For many years, advocates, legislators, and child welfare leaders have considered how best to steward the benefits available to children who are eligible for and/or receive Social Security benefits and live in foster care settings. As established by federal regulations and a Supreme Court decision, almost all child welfare agencies apply any Social Security benefit funds that a child receives to cover the cost of the child's care, just as a parent or guardian must do. As recently noted in an April 2021 piece by NPR and the Marshall Project [1], some argue that these funds should be set aside in a trust for the child's later use, even advocating for legislation to make this a requirement for states.

While there is always a need to review and reflect on policies and practices, there is also a responsibility to reflect on the purpose of and justification for those policies and practices. It is essential to understand the foundation of the particular policy and practice because—without a full understanding of the creation and implementation—there can often be unintended consequences in their modification or removal.

Social security benefits are provided to children so that the caretaker of the child can use the funds to meet their needs. When the child welfare agency is granted legal custody of the child by the courts, the agency is responsible for the care of that child. As the caretaker of the child, the state must make decisions about how the benefits will be used to care for the child. When a state agency becomes the representative payee for a child's benefit, the state applies Supplemental Support Income (SSI) and Retirement, Survivors, and Disability Insurance (RSDI) benefits toward the cost of caring for the child because that is the intended use of the funds. In addition, as explained in more detail below, to maintain eligibility for the SSI benefit, the child cannot have resources exceeding $2,000 [2]. The state must carefully manage the child's funds so that the child maintains eligibility for SSI, a benefit that will follow the child or youth when they exit care.

Although nothing has changed in federal law or policy, the recent reporting highlights the lived experience of children and youth in foster care. Their stories open the conversation about how state child welfare agencies currently can exercise their fiduciary responsibilities with policies that put the child at the center of their decisions about these benefits. Public Consulting Group (PCG) works with states and counties to support their responsibility to follow federal guidance and regulations and appropriately manage the benefits that children in their care receive. Below, we have presented some critical facts around how social security benefits must be used and managed; we also provide recommendations for how states can use an approach that follows all federal guidelines, maintains children's eligibility for benefits, and focuses on using the funds for the greatest good of the child and family.

[1] https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca

[2] 1 See 22 CFR 404.2035(a), 416.635(a). $2,000, SSA will suspend their SSI benefits.

Social Security Benefits for Foster Children

There are two common types of benefits provided through the Social Security Administration (SSA) to children: Supplemental Security Income (SSI) and Retirement, Survivors, and Disability Insurance (RSDI). Each benefit has different rules that govern how the funds can be accessed, used, and managed.

Both SSI and RSDI must be spent for the use and benefit of the child, which includes food, shelter, clothing, medical care, and personal comfort items [3]. Children who receive SSA benefits up to the age of 18 require a representative payee to be appointed to manage their benefits. The representative payee should be the person/entity that is financially responsible for the care of the child—usually, a parent or guardian.

When a child welfare agency gains custody, the agency is responsible for providing funding for food, shelter, clothing, medical care, and personal comfort items for the child. The child welfare agency applies to become the representative payee for the child on a case-by-case basis. If a child is placed with a kinship caregiver, a child welfare agency may encourage the kinship caregiver to apply to become the representative payee for the child. Representative payees must follow SSA rules and guidelines in the management of benefits, and child welfare agencies are audited by the SSA to confirm that the agency is managing child benefits appropriately.

How Agencies Can Take a Child-Centered Approach to Benefits

While there are some limitations on how benefits can be spent or saved, child welfare agencies have an opportunity, within current federal regulations and guidelines, to create a child-centered approach to their Social Security benefits program. A child-centered approach is governed by the principle that decisions about a child's Social Security benefits should always be made to the maximum benefit of the child and their family.

Supplemental Support Income:

SSI is an income supplement program for people who are over 65, are blind, or who have disabilities and who have limited income and resources. Children who qualify for SSI do so based on their own physical or psychological disability, in accordance with the SSA's rules for defining disability. The maximum SSI monthly payment amount is based on the current Federal Benefits Rate (FBR), which is $794 for 2021. Some states pay their SSI recipients an additional State Supplemental Payment (SSP). SSI was established to support the basic needs of a qualifying person, which SSA defines as food, shelter, clothing, and personal needs related to their disability and medical costs. The maximum resources a child can have to maintain eligibility for SSI is $2,000. It should be noted that SSI eligibility also makes an individual categorically eligible for Medicaid, which pays for reasonable and necessary health care. Once a child's SSI resources exceed $2,000, SSA will suspend their SSI benefits. Once benefits are suspended for more than 12 months, SSA will end the child's SSI eligibility.

Because of this strict asset limit, child welfare agencies cannot fully set aside SSI benefits for a child's later use. By continually using funds for the benefit of the child, a child welfare agency can maintain the child's ongoing eligibility and access to benefits by keeping their resource total under $2,000. Although child welfare agencies must consider the implications of the SSI asset limit, they can consider policies and practices that will do the greatest good for children and families, such as:

- **Allow for a transition period to support reunification.** When a child initially enters foster care, and especially when the goal for the child's case is reunification with the parent or guardian, the child welfare agency may delay their application to become the representative payee so that the child's parent or guardian continues as representative payee. In addition to other program funding that the state agency may make available, the parent or guardian must use the funds toward concrete costs that will go to meeting the child's basic needs and shortening time to reunification.

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[3] See 22 CFR 404.2035(a), 416.635(a).

Some examples of this include securing stable housing, furnishings for that stable housing, transportation for employment, and expenses associated with visitation for the child. The child welfare agency and court should confirm that these funds are being spent according to federal guidelines to protect the child from a future obligation to repay funds that were not spend toward their benefit.

In some cases, when a child's benefit has continued to go to a parent or caretaker after the child has been placed in foster care for more than one month, if the parent is unable to demonstrate that the funds were used to meet the child's basic needs this is considered an overpayment and the SSA may require the funds to be repaid. When this happens, a youth aging out of foster care may find that they owe SSA a large sum of money when the youth becomes the payee for their own benefit. States should carefully determine when to become the representative-payee for a youth to reduce the risk that a youth would become liable for funds provided to their parent while the youth was in foster care. While the state is the representative-payee for a child, if an overpayment occurs, the state is responsible to pay back any overpayments and the child is protected from liability.[4]

Establish Personal Needs Accounts. SSI funds must be spent to support the child's basic needs, and many child welfare agencies comply with this requirement by applying the child's monthly benefits toward the cost of the child's foster care placement, clothing, and medical needs. However, the agency could set aside a portion of the funds each month and place them in a Personal Needs Account. Those funds can be made available to the child through a request made by caseworkers to access the funds. We find that 10–15 percent per month is manageable for the case worker to spend regularly enough on allowable expenditures so that the child's account does not exceed the resource limit of $2,000.

Create a savings account up to $2,000. Some child welfare agencies have funding and processes in place to provide funds to all children in foster care to pay for special expenditures, including things like sports equipment, camps, technology tools, prom attire, and specialized educational cost. For children who receive SSI, if the child welfare agency already has a process in place to cover personal needs expenses, states could establish a savings account for the child and deposit the first few months of SSI benefits into the savings account, up to $2,000. Subsequent monthly payments could then be applied toward the cost of the child's care; the funds in the savings account can be made available to the child and family when they exit care.

Pursue and maintain SSI eligibility for children that are also Title IV-E eligible. Some child welfare agencies do not pursue SSI benefits for children in foster care if they are Title IV-E eligible because, in some cases, Title IV-E can cover a higher cost of care. As a result, a child who could be eligible for SSI may never apply for and receive the benefit. There are two options for managing eligibility for children who are eligible for both SSI and Title IV-E:

- SSI eligibility can be maintained by not claiming for Title IV-E funds for one month each year, allowing for one month of SSI benefits to be paid to the child. If SSI benefits are not suspended for more than 12 months, SSI eligibility is maintained.[5]

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4 https://www.congress.gov/bill/115th-congress/house-bill/4547/text

5 We do not recommend this option if a state chooses to establish personal needs accounts. If a state establishes personal needs accounts, we recommend forgoing Title IV-E funding for Foster Care Placement Maintenance costs, and accepting SSI benefits instead, so that a Title IV-E eligible child has the same access to funds set aside in a PNA account as a Title IV-E ineligible child. The agency can still receive Title IV-E funding for the allowable administrative costs for a child who receives SSI benefits.

- The child's Title IV-E eligibility could be established as eligible, with their foster care placement costs designated as non-reimbursable or non-claimable for Title IV-E. Under this option, SSI benefits are paid monthly. The child welfare agency would not claim for Title IV-E funds for maintenance costs but can still receive federal funding for Title IV-E administrative costs incurred on behalf of the child.

- **Assist families with the process of becoming the representative payee** when a child leaves care in every case.

- **Set older youth up for success.** Assist youth aging out of care in setting up a bank account and applying to be their own representative payee or identifying an appropriate payee before they age out of foster care. Additionally, educate the youth about the rules regarding managing their SSI and Medicaid benefits.

- **Establish an ABLE account.** Achieving a Better Life Experience (ABLE)[6] accounts are tax-free savings accounts available to cover qualified disability expenses, including education, housing, transportation, job supports and training, prevention, and wellness. The SSA disregards the first $100,000 of assets in an ABLE account; only resources above $100,000 would cause SSA to suspend a child's SSI benefit. A legal guardian, agent with power of attorney, or youth over age 18 can establish an ABLE account. Other people in a child's life are also able to make contributions towardp the child's ABLE account.

Retirement, Survivors, and Disability Insurance:

RSDI is meant to provide income support to children under the age of 18 (or 19 if they are in high school full time), who would have otherwise been supported by the parent's working income that went away due to the parent's death, SSA disability, or SSA retirement. Only children whose parent gained insured status with SSA by paying Social Security taxes are eligible to receive RSDI benefits. RSDI is not a means-tested benefit. There are no limits to the income or assets that an RSDI recipient can have. However, if a child also qualifies for SSI, the $2,000 asset rule applies to their SSI benefit. Meaning, if their RSDI funds exceed $2,000, the child will no longer be eligible for SSI. As child welfare agencies consider policies and practices that will provide the greatest good for the child and families, they can adopt practices like the following:

- **Establish Personal Needs Accounts.** For a child who receives RSDI only, there is no limit on the amount of funds they can have in their own account. Child welfare agencies may use some of the child's RSDI benefit to offset the cost of care and also set aside a percent of monthly RSDI benefits for the personal needs of the child or to build up a savings account.

- **Gradually increase the savings for older youth.** A child welfare agency can increase the set aside percent for older youth to build up a savings account to have in place prior to when they age out of care.

  Example: Maryland's Department of Human Services sets aside 40 percent of RSDI benefits once a child turns 14 years old. The percent of the set aside increases each year to 100 by the time the youth turn 18 years old. The set aside money is put into a saving account that will follow the youth when they leave care.[7]

- **Actively manage resources** for children who receive both RSDI and SSI benefits, maintain the child's SSI eligibility by keeping their savings below the asset limit, or by setting up an ABLE account[8] where the child can have savings in excess of $2,000 without losing eligibility for SSI.

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6 https://www.ssa.gov/ssi/spotlights/spot-able.html

7 https://www.npr.org/transcripts/992993650

8 As noted above, a parent, guardian, or agent with power of attorney can establish an ABLE account for the child. A state may have to develop policies and procedures in accordance with their state laws to authorize an individual who has power of attorney and can open the account on behalf of a child.

- **Assist families with the process of becoming the representative payee** when a child leaves care **in every case.**
- **Set older youth up for success.** Assist youth aging out of care in setting up a bank account, transferring balances to that account, and (if applicable) applying to be their own payee or identifying an appropriate payee before they age out of foster care. If the youth is also an SSI recipient, educate the youth about the rules for managing their SSI benefits. Child welfare agencies can also assist adult youth or their new payee with spending RSDI funds on necessary items such as furniture, education, transportation, and/or housing costs prior to aging out of foster care.

Conclusion

Appropriately managing Social Security benefits on behalf of a child in the care of a state child welfare agency is complex. It takes a significant level of effort to administer, especially when agencies adopt a more child-centered approach. However, with good processes in place, the programmatic benefits for the agency and the child can offer better outcomes. We encourage child welfare agencies to have conversations to explore changes that can enhance their current benefits program and to develop some of the child-centric best practices described above to the maximum benefit of the child and their family.

About PCG

Public Consulting Group LLC (PCG) is a leading public sector solutions implementation and operations improvement firm that partners with health, education, and human services agencies to improve lives. Founded in 1986 and headquartered in Boston, Massachusetts, PCG employs over 2,500 professionals in more than 40 offices worldwide—all committed to delivering solutions that change lives for the better. The firm has extensive experience in all 50 states, clients in six Canadian provinces, and a growing practice in Europe. PCG offers clients a multidisciplinary approach to meet challenges, pursue opportunities, and serve constituents across the public sector. To learn more, visit www.publicconsultinggroup.com.

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