
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**AN INDIVIDUAL REPRESENTATIVE PAYEE
FOR THE SOCIAL SECURITY ADMINISTRATION
IN LOS ANGELES, CALIFORNIA**

March 2010

A-15-09-19150

AUDIT REPORT



Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.
- Promote economy, effectiveness, and efficiency within the agency.
- Prevent and detect fraud, waste, and abuse in agency programs and operations.
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.

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- Independence to determine what reviews to perform.
- Access to all information necessary for the reviews.
- Authority to publish findings and recommendations based on the reviews.

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SOCIAL SECURITY

MEMORANDUM

Date: March 31, 2010

Refer To:

To: Peter D. Spencer
Regional Commissioner
San Francisco

From: Inspector General

Subject: An Individual Representative Payee for the Social Security Administration in Los Angeles, California (A-15-09-19150)

OBJECTIVE

Our objectives were to ensure the selected representative payee had effective safeguards over the receipt and disbursement of Social Security benefits. We also determined whether the representative payee used and accounted for these benefits in accordance with the Social Security Administration's (SSA) policies and procedures.

BACKGROUND

Some individuals cannot manage or direct the management of their finances because of their youth or mental and/or physical impairments. Congress granted SSA the authority to appoint representative payees to receive and disburse benefits for those beneficiaries' payments.¹ A representative payee may be an individual or an organization. SSA selects representative payees for Old-Age, Survivors and Disability Insurance (OASDI) beneficiaries and Supplemental Security Income (SSI) recipients when representative payments would serve the individuals' interests. Representative payees are responsible for managing benefits in the beneficiary's best interest.²

SSA categorized the representative payee under review as a "volume" payee who cared for 15 or more SSA beneficiaries.³ This representative payee was a professional fiduciary in Los Angeles, California, providing conservatorship, trust management, probate administration, and other fiduciary services. During our audit period, March 1, 2008 to February 28, 2009, this representative payee served

¹ *Social Security Act* §§ 205(j) and 1631(a)(2); 42 U.S.C. §§ 405(j) and 1383(a)(2).

² We use the term "benefits" in this report to refer to both OASDI benefits and SSI payments.

³ SSA, Program Operations Manual System (POMS), GN 00605.400.

approximately 162 SSA beneficiaries. The representative payee was the court-appointed guardian for approximately 20 percent of the beneficiaries he served. For the remaining beneficiaries in his care, he established a trust account for each individual and served as the trustee. Most of the beneficiaries this representative payee served were elderly and suffered from dementia.

SSA completed a review of this individual representative payee in February 2009. Its review concluded the payee maintained accurate records and demonstrated concern for the beneficiaries. It also noted the representative payee conducted his payee activities in a manner consistent with an organizational payee. SSA recommended the representative payee change his designation on SSA's records from an individual to an organizational payee.

RESULTS OF REVIEW

We found the individual representative payee generally had sufficient internal controls for the receipt and disbursement of Social Security benefits. Particularly, the representative payee had adequate segregation of duties, proper authorization for transactions, and physical safeguards over assets and records. We also noted that the representative payee provided a suitable level of care for the beneficiaries through the selection of care facilities he placed them in. However, we identified an issue involving the conservatorship and trustee fees collected by the representative payee that we believe SSA should consider for further review.

The representative payee served as either a court-appointed conservator or the trustee for the beneficiaries in his care. The representative payee collected a conservatorship or trustee fee from most of the SSA beneficiaries he served. We selected a sample of 67 beneficiaries for review. During our review period, we determined the representative payee received approximately \$515,000 in SSA benefits for the beneficiaries in our sample. In addition, we determined the representative payee collected conservatorship or trustee fees, totaling approximately \$225,000, for the beneficiaries in our sample population.

To collect conservatorship fees, the representative payee had to file a petition with the California Superior Court (Court) that included a declaration supporting the conservatorship fees. The Court requires that the conservator regularly file the accountings of the conservatorship. We noted that the representative payee's conservatorship fees ranged from several hundred to several thousand dollars. However, for trust accounts, the trustee fees may not need to be approved by the Court before the representative payee can collect a fee.

When an individual is appointed a legal guardian for a competent or incompetent beneficiary or maintains a trust account on behalf of the beneficiary, part of the beneficiary's funds may be used for guardianship costs, court-ordered fees, and/or reasonable compensation for the trustee. These fees may be collected provided the guardianships and/or trusts appear to be in the beneficiary's best interest, the

beneficiary's personal needs are met first, and the beneficiary's funds would not be depleted by the collection of guardianship and/or trust fees. Because of the size and complexity of these conservatorships and trust accounts, it is difficult to provide guidance on what constitutes an excessive fee.⁴

We noted the representative payee collected fees from 31 of the 67 individuals in our sample. Most of these beneficiaries received other sources of income, such as pensions, Department of Veterans Affairs (VA) benefits, and rental income. We noted that for four of these beneficiaries, whose only source of income was their SSA benefits, the conservatorship and trustee fees collected were over 50 percent of the SSA benefit the representative payee received on their behalf. We considered these fees to be excessive.

The representative payee stated that, for some of the beneficiaries who also received Medi-Cal benefits, he claimed 100 percent of their SSA benefits as his fee. He further stated that he did this to ensure the beneficiaries maintained their eligibility for Medi-Cal benefits. However, if the beneficiaries' needs exceeded their Medi-Cal benefit, the representative payee stated he would refund a portion of his fees. Medi-Cal is California's public health insurance program that provides health care services for children and adults with limited income and resources. Medi-Cal is financed equally by the State and Federal governments.

Although some beneficiaries in our sample had additional sources of income, we believe some of the fees the representative payee collected may have been excessive given the beneficiaries' individual circumstances. For example, the representative payee was the conservator for a married couple receiving benefits. Both spouses in the couple received Title II benefits, periodic dividend payments, and pension benefits. The representative payee maintained separate bank accounts for each spouse and paid their individual expenses. In November 2008, the representative payee petitioned the Court to collect conservatorship fees from both beneficiaries. The Court awarded the representative payee a conservatorship fee of approximately \$23,000 from the husband's account and approximately \$16,000 from the wife's account.

Another beneficiary was residing in Mexico. This beneficiary was receiving Title II benefits and workers' compensation payments. In September 2008, the beneficiary's non-custodial spouse removed him from the care facility in California and moved him to Mexico. The representative payee remained the conservator and continued to manage the beneficiary's account. We noted that most of the expenses paid from the trust account were for storage unit rentals. In February 2009, the representative payee petitioned the Court to collect his conservatorship fee. When the Court approved the fees, the judge stated in the court documents that the conservatorship fees appeared high for the level of services provided. The judge also stated he wanted to know why the conservator had not informed the Court the beneficiary was residing in Mexico.

⁴ SSA, POMS GN 00602.040; GN 00602.075.

However, the judge approved the conservatorship fees of \$8,616.25 in April 2009. The representative payee collected a partial payment of \$4,316 from the beneficiary's account. This transaction left approximately \$350 in the beneficiary's account.

Because of the excessive fees the representative payee collected for our initial sample of beneficiaries, we expanded the scope of our review to include the remaining 95 beneficiaries. We reviewed the accounting ledgers for excessive fees paid to the representative payee. For our review period, the representative payee received SSA benefits totaling \$621,000 for these 95 beneficiaries. He collected conservatorship and trustee fees of \$226,000 from 58 of these beneficiaries. We noted for 18 beneficiaries, the fee collected was over 50 percent of the SSA benefits the representative payee received on the beneficiary's behalf. For 11 beneficiaries, the SSA benefits were the beneficiaries' only source of income. We consider these fees to be excessive.

CONCLUSION AND RECOMMENDATION

The representative payee under review had adequate internal controls for the receipt and disbursement of Social Security benefits. However, we found the representative payee collected approximately \$450,000 in fees during our 12-month review period from 89 of the 162 beneficiaries he served.⁵ By collecting large fees from the beneficiaries, the representative payee was rapidly depleting the beneficiaries' funds. This action left fewer funds available for the beneficiaries' foreseeable needs.

We recommend SSA:

Refer the 15 beneficiaries who had over 50 percent of their Social Security benefits taken in fees, and these benefits were their only source of income, to the Regional Chief Counsel for review.

AGENCY COMMENTS

SSA agreed to refer the 15 beneficiaries to the Office of General Counsel for review. See Appendix D for the full text of SSA's comments and Appendix E for the full text of the representative payee's comments.



Patrick P. O'Carroll, Jr.

⁵ Of the 89 beneficiaries, 28 also had other sources of income.

Appendices

[APPENDIX A](#) – Acronyms

[APPENDIX B](#) – Representative Payee Responsibilities

[APPENDIX C](#) – Scope and Methodology

[APPENDIX D](#) – Agency Comments

[APPENDIX E](#) – Representative Payee Comments

[APPENDIX F](#) – OIG Contacts and Staff Acknowledgments

Acronyms

C.F.R.	Code of Federal Regulations
Court	California Superior Court
OASDI	Old-Age, Survivors and Disability Insurance
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SSA	Social Security Administration
SSI	Supplemental Security Income
U.S.C.	United States Code
VA	Department of Veterans Affairs

Representative Payee Responsibilities

Representative payees are responsible for using benefits to serve the beneficiary's best interests. The responsibilities include the following.¹

- Determine the beneficiary's current needs for day-to-day living and use his/her payments to meet those needs.
- Conserve and invest benefits not needed to meet the beneficiary's current needs.
- Maintain account records of how the benefits are received and used.
- Report events to the Social Security Administration (SSA) that may affect the individual's entitlement or benefit payment amount.
- Report any changes in circumstances that would affect their performance as a representative payee.
- Provide SSA an annual Representative Payee Accounting Report to account for benefits spent and invested.
- Return any payments to SSA to which the beneficiary is not entitled.
- Return conserved funds to SSA when no longer serving as the representative payee for the beneficiary.
- Be aware of any other income Supplemental Security Income recipients may have and monitor their conserved funds to ensure they do not exceed resource limits.

¹ 20 C.F.R. §§ 404.2035 and 416.635

Scope and Methodology

Our audit covered the period March 1, 2008 through February 28, 2009. To accomplish our objectives, we:

- Reviewed applicable Federal laws and regulations as well as the Social Security Administration's (SSA) policies and procedures pertaining to representative payees.
- Reviewed prior Office of the Inspector General and SSA work in the representative payee area.
- Contacted SSA's San Francisco Regional Office and the Pomona Valley, California, field office personnel to obtain background information and prior audits regarding the individual representative payee.
- Compared and reconciled a list of SSA beneficiaries in the representative payee's care from the payee to a list obtained from the representative payee system.
- Reviewed the representative payee's internal controls over the receipt and disbursement of Social Security benefits.
- Selected a sample of 25 beneficiaries for whom the individual served as the representative payee and trustee. We also reviewed all the beneficiaries' files where the representative payee served as the court-appointed conservator. In addition, we selected a sample of 11 beneficiaries who had passed away during our review period. For our three samples of beneficiaries, we performed the following tests.
 - ✓ Compared benefit amounts paid according to SSA's records to the benefit payments recorded in the payee's accounting records.
 - ✓ Reviewed the beneficiaries' bank statements and the payee's accounting records to determine whether benefit payments were properly deposited.
 - ✓ Reviewed beneficiary files for supporting documentation of expenses and personal spending.
- Conducted site visits at two care facilities that housed several beneficiaries in the representative payee's care. We interviewed three beneficiaries to determine whether their basic needs were being met.
- Reviewed the accounting ledgers for the remaining 95 beneficiaries in the representative payee's care. We noted only the benefits recorded on the accounting ledgers and the conservatorship and trust fees paid to the representative payee.

We performed our fieldwork in Los Angeles, California, between June and December 2009. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Agency Comments

March 22, 2010

SF REPLY -- 22009063 Draft Report "An Individual Representative Payee for the Social Security Administration in Los Angeles, California" (A-15-09-19150)

Thank you for the opportunity to comment on the draft report "An Individual Representative Payee for SSA in Los Angeles". We are pleased OIG found the payee, [REDACTED] has sufficient internal controls over the receipt and disbursement of Social Security benefits. We are also pleased that OIG found he provides a suitable level of care for the beneficiaries. Those are both good signs of a payee properly performing his/her duties.

We have reviewed the recommendation from the audit and our comments are provided below:

Refer the 15 beneficiaries who had over 50 percent of their Social Security benefits taken in fees, and these benefits were their only source of income, to the Regional Chief Counsel for review.

Response: We think this recommendation was made overlooking an important provision in existing POMS instructions (see below). However, we obtained the ledgers used in the audit and sent them to OGC for review. We await their findings.

POMS [GN 00602.040B](#) (last paragraph) directs us to refer cases to the Regional Chief Counsel (RCC) when the SSA/SSI benefits represent at least 50 percent of the estate, and the costs associated with the guardianship proceedings and/or attorney fees appear excessive in light of the beneficiary's income and resources. The ledgers OIG obtained, which were the basis for the recommendation, do not establish SSA benefits constitute 50 percent of the estate; rather they establish SSA benefits constituted 50 percent of the income received by the beneficiaries during the review period. As a case in point, from our conversation with one of the OIG auditors, \$40,000 was deposited into one beneficiary's account outside the review period, indicating the beneficiary's assets include more than SSA benefits.

Staff questions to our response may be directed to either Jeff Jesmok (510) 970-8246 or De Anna Barrios-Terry (510) 970-8213 of our Center for Programs Support.

Pete

Regional Commissioner

Representative Payee Comments

March 18, 2010

Victoria Vetter
Audit Director @
Social Security Administration
Baltimore, MD 21235-0001

Re: Rep Payee Audit Report

Dear Victoria:

I feel the examples used for collection of fees were incorrectly demonstrated. If a Judge issues a court order for fees there has to be justification behind it. In one example you quoted that a Judge stated the fees appeared high for services rendered. Well a Judge can say whatever he wants in open court but the bottom line is that he approved the fees that were requested(after more detailed facts were presented). My fees have also been cut on several occasions when there was no justification to cut them. But that is why we have the judicial process. In another example you stated we were awarded fees from both a husband and wife. Well they were two separate cases with two separate fee requests with two different sets of circumstances. In another example you stated incorrectly that one of my clients was residing in Mexico when I explained to you that he was kidnapped!!! By the way, we got him back and he is now living safely in Los Angeles, CA. The services I perform for each client does not only involve financial management and maintenance. Many of the cases also involve complicated messes we have to protect the clients from and messes we have to fix. Nobody works for free!!! Many of the cases I handle are charity cases we receive no compensation for. I have been doing this function of Fiduciary Services for 23 years now. My Company has a good reputation with the Courts and whatever fees are awarded is justified. If a client runs out of money we keep the case until their demise and make sure they get the same excellent care they are accustomed to. And some fees, although approved and collected during the Audit year were not representative of just one year, but a collective period of as much as two years. Considering all the work entailed in keeping my clients protected and comfortable and in maintaining their best positive quality of life, my fees are not excessive.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely:

OIG Contacts and Staff Acknowledgments

OIG Contacts

Victoria Vetter, Director for Financial Audit Division

Mark Meehan, Audit Manager

Acknowledgments

In addition to those named above:

Judi Kammer, Senior Auditor

Kelly Stankus, Auditor

David Rodriguez, Attorney

For additional copies of this report, please visit our web site at www.socialsecurity.gov/oig or contact the Office of the Inspector General's Public Affairs Staff Assistant at (410) 965-4518. Refer to Common Identification Number A-15-09-19150.

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OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

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