



FOSTER CHILDREN & SOCIAL SECURITY OVERPAYMENTS

The Problem: Too many foster youth with disabilities do not receive full Supplemental Security Income (SSI) payments as adults due to fraudulent payments to their former caretakers years earlier. This places former foster youth at risk of:

- homelessness;
- wage garnishment;
- loss of tax refunds and TANF payments;
- credit problems from the debt;
- loss of discretionary income for activities, services and supplies; and
- ineligibility for otherwise available placements in adult residential programs for individuals with intellectual disabilities.

This problem arises when children receiving SSI payments are placed in paid foster care but SSI payments wrongfully continue to be paid to individuals other than the children, often to the former caretaker from whom the child was removed when placed in foster care. Foster care and SSI payments both come from the same federal funding source (Title IV-E), only one of which is permitted at a time. When both payments continue, the SSI amount is deemed an overpayment to the child.

The child then owes that overpayment amount to the Social Security Administration (SSA) -- despite never receiving or benefitting from the funds paid to the former adult relative or caregiver who received and spent the money after the child left that person's care. Unfortunately, the adult who wrongly benefitted rarely is obligated to repay the funds to the SSA. That burden unfairly falls instead to the child.

Part of the problem is that neither the child welfare agency nor the adult payee receiving the child's SSI report to the SSA that the child was removed from the caretaker and placed in foster care. Consequently, when SSI payments continue while a child is in foster care, the SSI amount is treated as an overpayment that the child must repay, dollar for dollar, in one of the three following ways:

- 1) If the child no longer receives any form of Social Security payment as an adult, the overpayment is simply a debt that the federal government can collect by retaining any tax refund and/or garnishing wages or TANF payments.
- 2) If the child does receive SSI as an adult, 10% of the monthly benefit will be retained by the SSA each month, along with any tax refund, until the full amount owed is repaid. This means that a child who has significant needs would be unlikely to receive the full SSI monthly benefit (roughly \$750 in Pennsylvania) when leaving foster care because someone else fraudulently received the SSI payments while the child was placed in a foster or group home.
- 3) If the child receives Social Security payments as an adult other than SSI, the entirety of each monthly payment, along with any tax refund or TANF payments owed, may be retained by the SSA until the full amount of the overpayment is repaid. This would include retaining any Title II Social Security payments owed due to the death or disability of the child's caretaker.

Individuals can seek waiver of the overpayment obligation, which requires proving: 1) that the former foster child was not at fault for the overpayment; and 2) that repaying the amount would cause undue financial hardship, and to that end may require proof of income.

The SSA publication regarding overpayments, <https://www.ssa.gov/pubs/EN-05-10098.pdf>, provides further information, including this warning: *"If you aren't receiving benefits, and you don't pay the amount back, we can recover the overpayment from your federal income tax refund or from your wages if you're working. Also, we can recover overpayments from future SSI or Social Security benefits. We'll also report the delinquency to credit bureaus."* That warning likely refers to the provisions of 31 U.S.C. § 3720A providing that any federal agency who is owed a legally enforceable debt, who properly notifies the individual of the debt, shall petition the IRS to reduce any refunds that are payable to the individual. See <https://www.law.cornell.edu/uscode/text/31/3720A>.

The collection of an overpayment by retaining tax refunds or future Social Security benefits assumes that proper notice has been given to the individual. The notice provides a timeframe to request waiver or dispute the overpayment. Notice can be problematic for former foster youth, who may be homeless or move frequently – and because that notice often is sent not to the former foster youth but to the payee who wrongfully received the money and caused the problem.

For former foster youth struggling to make ends meet while living paycheck to paycheck, this is a significant barrier to living independently. Those foster youth who remain disabled as adults now have what already is a minimal income from SSI further reduced by 10% each month. They also may be counting on a tax refund that they will never receive. Those who qualify for TANF may not receive those payments. Individuals applying for jobs or apartments where a credit check is required may lose that employment or housing opportunity due to poor credit because the federal government reported the overpayment debt to the credit bureaus.

Approval for placement in housing programs for adults with disabilities often requires eligibility for SSI and allowing the housing program to receive the full SSI amount. Even when that is not the case, former foster youth will lose that \$750 per month, which would otherwise pay for activities, additional supports, or supplies and other items that significantly improve the quality of life for adults with intellectual disabilities in residential placement programs.

Potential Solutions

Coordination and Cooperation to Avoid Overpayments: In most instances, overpayments are avoidable. Better communication between child welfare agencies and Social Security officials could eliminate many of the concurrent payments for foster care and SSI that result in overpayments. Another potential check and balance on the system would be to cross-reference Title IV-E benefits by the payee's social security number or other identifier to stop any ongoing overpayments. Surely the same system that identifies and highlights the overpayment when the child applies for SSI as an adult could flag that problem years earlier to avoid the original fraud, save the government money by not continuing the wrongful payments, and prevent saddling former foster children years later with a debt that they cannot afford to repay for money never received.

At KidsVoice, we only learned of this problem after extending our legal representation in 2014 to our clients through age 24 rather than terminate our advocacy at 18 or 21 when children leave the child welfare and juvenile court systems after their dependency case closes. We are working with our county child welfare agency to eliminate future overpayments and ensure that this avoidable problem stops impacting the children we represent.

We also have made efforts to educate other child advocates across the state and country about the need to protect foster children from overpayments. Many attorneys in other jurisdictions similarly were unaware of the prevalence of this problem -- as it is not apparent until after children leave the juvenile court and child welfare systems and seek social security benefits as adults. We have presented on this topic at statewide and national programs and conferences. Further education and greater awareness is needed among child welfare agencies, juvenile court judges and administrators, and attorneys for children.

Exempt Former Foster Youth from Overpayment Obligations: It is an undue and unfair hardship to subject former foster youth to repay Social Security amounts they never received or benefitted from, especially when better attention and coordination between child welfare agencies and the Social Security Administration in many instances could have prevented the overpayment or fraud in the first place. A federal legislative or regulatory change could remedy this problem by exempting foster youth from repaying overpayments caused by concurrent payments of foster care and SSI. Perhaps the payees who wrongfully received the overpayments could instead be subject to a repayment obligation.

We would be pleased to discuss this problematic issue and explore potential solutions. Attached are examples of overpayment situations we have addressed for KidsVoice clients.

SOCIAL SECURITY OVERPAYMENTS – CASE EXAMPLES

- One client received notification that she owed almost \$10,000 to the Social Security Administration. It turned out that her grandmother continued to receive benefits while the child was in the custody of the county child welfare agency. We were able to rectify this overpayment by advocating to the Social Security Administration about the child's placement history, need for funding, and that she never benefitted from the money taken.
- Another case involved siblings with significant physical disabilities. The family member who had been their former caregiver continued to receive SSI on behalf of each child, despite their placement outside of the home for the last several years. The amount of the overpayment was nearly \$100,000. This case eventually was referred to the Pennsylvania Office of Inspector General who has recommended criminal prosecution and we arranged for there to be no offset to or money owed by the children.
- We assisted a former client with intellectual disabilities whose benefit was reduced due to an overpayment to instead have the full amount of the benefit paid.
- Another client was notified of an overpayment that resulted from his father continuing to receive the child's SSI benefits despite the child being out of the father's care for most of his life. The overpayment was close to \$50,000, which we were able to eliminate.
- Another former client whose complicated social security record was impacted by several overpayments became frustrated by multiple visits to the Social Security office to try to sort out the issue. After learning of this, we accompanied her to that office five different times to address the overpayment and correct the payee. Ultimately, the overpayment was waived and she received her full benefit.