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THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2015-0442

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CARRIE HENDRICK, *et al.*

v.

NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES

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ON APPEAL FROM THE MERRIMACK SUPERIOR COURT  
PURSUANT TO N.H. SUPREME COURT RULE 7

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**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE  
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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## **GLOSSARY**

AFDC	Aid to Families with Dependent Children
App.	Plaintiffs' Appendix
DHHS	New Hampshire Department of Health and Human Services
DHHS Br.	Brief for the New Hampshire Department of Health and Human Services (filed Nov. 9, 2015)
FANF	Financial Assistance to Needy Families
POMS	Program Operations Manual System (SSA guidance document)
PRWORA	Personal Responsibility and Work Opportunity Reconciliation Act of 1996
SSA	Social Security Administration
SSDI	Social Security Disability Income (Title II of the Social Security Act)
SSI	Supplemental Security Income (Title XVI of the Social Security Act)
TANF	Temporary Assistance for Needy Families

## INTRODUCTION AND SUMMARY

The United States submits this brief in response to the Court's order of February 3, 2016, requesting the Solicitor General's views on whether N.H. Code Admin. R. He-W 654.04(c) is consistent with federal law. That rule requires New Hampshire's Department of Health and Human Services ("DHHS") to count a disabled child's Supplemental Security Income ("SSI") benefits as income available to the child's entire household for purposes of determining the household's eligibility for cash assistance under the State's Temporary Assistance for Needy Families ("TANF") program. As explained below, Rule He-W 654.04(c) conflicts with the federal Social Security Act and implementing regulations, and it is therefore preempted by federal law.

Under federal law, SSI benefits for disabled children are directed to a "representative payee," who is usually the child's parent or guardian. 42 U.S.C. § 1383(a)(2)(A)(ii)(I); 20 C.F.R. §§ 416.610(b), 416.621(c). Federal law mandates that the representative payee use the SSI funds solely for the "use and benefit" of the disabled child. 42 U.S.C. § 1383(a)(2)(A)(ii)(I); 20 C.F.R. § 416.635(a). Any funds not required for the child's "current maintenance," including "costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items," must be saved for the child's future use. 20 C.F.R. §§ 416.640(a), 416.645(a). And unlike certain other federal benefits—including benefits provided under Title II of the Social Security Act, *cf.* 20 C.F.R. § 404.2040(a)(1)-(2)—SSI funds may *not* be used to pay for the distinct needs of other household members.

Rule He-W 654.04(c) conflicts with these requirements. By counting a disabled child's SSI benefits as income available to the child's "assistance group," the rule improperly treats the child's benefits as a source of support for the entire household. On that basis, the rule reduces a household's TANF benefit by one dollar for every dollar in SSI that is received by a disabled child in the household. And by depriving households of cash assistance to which they would otherwise be

entitled under state law, solely because a disabled child receives SSI benefits under federal law, the rule operates to place considerable pressure on representative payees to use the disabled child's SSI benefits to support the needs of other household members, in clear contravention of federal requirements. The rule thereby "frustrate[s]" the operation of federal law and "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-73 (2000) (internal quotation marks omitted).

DHHS's contrary arguments are without merit. Although it is true that States enjoy broad flexibility to design their own TANF plans, this flexibility does not permit States to adopt rules that conflict with other federal programs. As relevant here, a State may not use the availability of benefits under the federal SSI program as a reason for denying benefits under a State's TANF plan where the SSI benefits are, as a matter of federal law, not available to the TANF assistance group. Accordingly, Rule He-W 654.04(c) is preempted by federal law and should be set aside.

## STATEMENT

### A. Federal Statutes and Regulations

1. The Supplemental Security Income program, codified at Title XVI of the Social Security Act, is a need-based federal assistance program that sets a "guaranteed minimum income level" for individuals "who have attained age 65" or who "are blind or disabled." *Sullivan v. Zebley*, 493 U.S. 521, 524 (1990) (internal quotation marks omitted); *see* 42 U.S.C. § 1381. SSI payments are funded by the federal government and administered by the Social Security Administration ("SSA"). 42 U.S.C. § 1383.

In order for a child to be eligible for SSI payments, the child must be blind or disabled and must have limited income and resources. 42 U.S.C. § 1382(a)(1). A child is considered "disabled" if he or she has a physical or mental impairment that results in "marked and severe functional limitations," and which can be expected either to result in death or to last continuously for at least

one year. *Id.* § 1382c(a)(3)(C)(i). A child is considered to have limited income and resources if the child has less than \$2,000 in assets, 20 C.F.R. § 416.1205(c), and “countable income” below the federal benefit rate (currently \$733 per month), *see id.* §§ 416.1110-416.1182. In certain circumstances, SSA will deem a parent’s income and resources as belonging to the disabled child, *see id.* §§ 416.1165, 416.1202(b), but SSA does not deem such income when the parent receives state TANF assistance, *see id.* §§ 416.1142(a)(1), 416.1161(a)(2). As of 2016, an eligible child may receive a monthly SSI payment of up to \$733. *See* 42 U.S.C. §§ 1382(b), 1382f; 80 Fed. Reg. 66,963, 66,964 (Oct. 30, 2015); SSA, *Understanding Supplemental Security Income* 9 (2016), <https://www.ssa.gov/ssi/documents/USSI%202016.docx>.

For SSI beneficiaries who are unable to manage their own payments, including most children under the age of 18, SSA directs the beneficiary’s payments to a third party, known as a “representative payee.” 42 U.S.C. § 1383(a)(2)(A)(ii)(I); 20 C.F.R. § 416.610(b). The statute directs the representative payee—who is generally the parent or guardian of the disabled child, *see* 20 C.F.R. 416.621(c)—to use SSI funds “for the use and benefit” of the child. 42 U.S.C. § 1383(a)(2)(A)(ii)(I). A representative payee who “converts such payment, or any part thereof, to a use other than for the use and benefit of” the child thereby commits “misuse of benefits.” *Id.* § 1383(a)(2)(A)(iv). A representative payee who commits misuse of benefits is subject to a range of civil and criminal penalties. *See id.* § 1383(a)(2)(A)(iii) (termination of payments to representative payee); *id.* §1383a(a)(4) (fine of up to \$250,000 and/or imprisonment of up to 5 years); *id.* §§ 1383(a)(2)(H)(i), 1383a(b) (repayment or restitution of misused benefits); *id.* § 1320a-8(a)(3) (civil money penalty of up to \$5,000 per act of misuse, plus assessment of twice the amount misused). The statute empowers SSA to “prescribe by regulation the meaning of the term ‘use and benefit’ for purposes” of preventing misuse of benefits. *Id.* § 1383(a)(2)(A)(iv); *see also id.* §§ 405(a), 1383(d)(1) (providing SSA with general rulemaking authority in administering SSI program).

SSA has promulgated “[d]etailed regulations govern[ing] a representative payee’s use of benefits.” *Washington State Dep’t of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 376-77 (2003). A representative payee who receives SSI funds on behalf of a disabled child must “[u]se the benefits received on [the child’s] behalf *only* for [the child’s] use and benefit in a manner” that the payee “determines . . . to be in [the child’s] best interests.” 20 C.F.R. § 416.635(a) (emphasis added). An expenditure of SSI funds is considered to “have been used for the use and benefit of the beneficiary” if the funds “are used for the beneficiary’s current maintenance.” *Id.* § 416.640(a). “Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items.” *Id.* Any funds not spent on the beneficiary’s current maintenance must be saved or invested for future use. *Id.* § 416.645(a).

Representative payees are required to submit an annual accounting to SSA that informs the agency, in aggregate terms, how much of the SSI was spent on the beneficiary’s care and support, and how much was saved. 20 C.F.R. § 416.665; *see* SSA, *Form SSA-6230-F6: Representative Payee Report* (rev. Aug. 2013) (attached in Addendum).<sup>1</sup> Representative payees must also “[e]nsure that [the beneficiary is] receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing [SSI] benefits.” 20 C.F.R. § 416.635(g); *see also id.* § 416.994a(z).

SSA also administers the Social Security Disability Insurance (“SSDI”) program under Title II of the Social Security Act. Under SSDI, certain disabled persons are eligible for cash assistance based on their work history (or family member’s work history), and without regard to the person’s income and resources. As with SSI, if an SSDI recipient is unable to manage his or her own funds,

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<sup>1</sup> Where SSA suspects misuse, it may conduct a follow-up interview and may require the representative payee to distinguish among funds expended for (1) care and maintenance, (2) clothing, (3) personal expenditures, and (4) other expenses. *See* 42 U.S.C. § 1383(a)(2)(C)(iv); SSA, *Form SSA-624-F5: Representative Payee Evaluation Report* (rev. Sept. 2013) (attached in Addendum).

SSA will direct the benefits to a representative payee. 42 U.S.C. § 405(j). The representative payee must use the SSDI funds “only for [the] use and benefit” of the beneficiary, 20 C.F.R. § 404.2035(a), and SSA considers SSDI funds to have been “used for the use and benefit of the beneficiary if they are used for the beneficiary’s current maintenance,” *id.* § 404.2040(a)(1). In contrast with SSI, however, federal SSDI regulations specifically provide that “[n]otwithstanding the provisions of [20 C.F.R. § 404.2040(a)(1)], if a beneficiary is a member of an Aid to Families With Dependent Children (AFDC) assistance unit”—i.e., a household receiving federal welfare benefits—SSA “do[es] not consider it inappropriate for a representative payee to make the [SSDI] benefit payments available to the AFDC assistance unit.” *Id.* § 404.2040(a)(2).<sup>2</sup> No corresponding provision exists under the SSI regulations that would permit a beneficiary’s SSI funds to be made available to other household members. *Cf.* 20 C.F.R. § 416.640(a) (containing no such exception).

2. Temporary Assistance for Needy Families (“TANF”) is a federal program that provides block-grant funding to States to create public assistance programs that offer, among other things, cash assistance to needy families with children. 42 U.S.C. §§ 601 *et seq.* Congress enacted TANF in 1996 to replace the Aid to Families with Dependent Children (“AFDC”) program. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996). Under AFDC, indigent families had been entitled by federal law to cash assistance if they met a uniform federal eligibility standard. *See, e.g., Townsend v. Swank*, 404 U.S. 282, 285-86 (1971). By contrast, under TANF, needy families enjoy no federal entitlement to public assistance. *See* 42 U.S.C. § 601(b).

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<sup>2</sup> SSA construes this regulation to apply to the TANF program, which replaced AFDC in 1996. *See* SSA, *Program Operations Manual System (“POMS”) GN 00602.020: Using Title II Benefits to Support Other Family Members* ¶ A.1, <https://secure.ssa.gov/poms.nsf/lnx/0200602020> (“SSA regulations . . . do not consider it inappropriate for a payee to use a [Title II] beneficiary’s funds to assist the other members of the TANF household unit.”).

Under TANF, each participating State designs its own welfare program. *See* 42 U.S.C. § 602. A State’s TANF program should be designed to advance four goals: (1) providing assistance to needy families with children; (2) ending needy parents’ dependency on government benefits; (3) reducing the number of out-of-wedlock pregnancies; and (4) encouraging the formation and maintenance of two-parent families. *Id.* § 601(a)(1)-(4). A State may use its federal block-grant funds “in any manner that is reasonably calculated to accomplish” any of those purposes. *Id.* § 604(a)(1). In addition, States are given broad discretion to set the terms and conditions of their TANF programs, including in how they determine eligibility for benefits. *See id.* § 602(a)(1)(B)(iii) (directing States to “set forth objective criteria for the delivery of benefits” without establishing federal eligibility rules); 64 Fed. Reg. 17,720, 17,722 (Apr. 12, 1999) (final rule) (PRWORA “provides [States] broad flexibility to set eligibility rules and decide what benefits are most appropriate”).

At the federal level, the TANF program is administered by the Administration for Children and Families of the U.S. Department of Health and Human Services. The federal agency performs limited administrative functions and may impose penalties against States in certain circumstances, such as where a State fails to meet applicable work-participation requirements. 42 U.S.C. § 609(a); *cf. id.* § 607(a) (requiring that States achieve minimum work-participation rates for recipients of cash assistance). Congress otherwise provided that “[n]o officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.” *Id.* § 617.

## **B. New Hampshire’s TANF Program**

This case arises out of changes that New Hampshire made in 2012 and 2013 to the way it determines eligibility for households containing SSI recipients for purposes of its TANF program.

1. New Hampshire uses its TANF block grant to operate several public assistance programs, including a program to provide cash assistance to families with dependent children. *See* Plaintiffs’

Appendix (“App.”) 41. This program, known as Financial Assistance to Needy Families (“FANF”), is operated by New Hampshire’s Department of Health and Human Services. *See* N.H. Rev. Stat. Ann. §§ 167:77 *et seq.*; N.H. Code Admin. R. He-W 601.04(g). Under state law, all persons who are eligible for FANF benefits are entitled to receive them. *See* N.H. Rev. Stat. Ann. § 167:82, I.

To determine eligibility for FANF assistance, the State follows a two-step process. *See* App. 383-84. First, DHHS determines the relevant “assistance group,” which is the group of individuals who live together and who are considered as a unit in making FANF eligibility determinations. In determining the members of an assistance group, New Hampshire law includes all dependent children and their parents who live together in the same household, subject to certain exceptions. *See* N.H. Rev. Stat. Ann. § 167:79, II (2011). Prior to 2012, New Hampshire law expressly required DHHS to exclude SSI recipients in determining the membership of an assistance group. *See id.* (excluding “person[s] receiv[ing] . . . supplemental security benefits under Title XVI of the Social Security Act” from the assistance group).<sup>3</sup>

Second, after defining the members of the assistance group, DHHS calculates the group’s available income and resources in order to determine whether the group is eligible for FANF benefits. *See* N.H. Rev. Stat. Ann. §§ 167:79-167:81; N.H. Code Admin. R. He-W 652.02, 654.01-654.04. New Hampshire law requires DHHS to include all earned and unearned income of any member of the assistance group, unless that type of income is specifically excluded by statute. N.H. Rev. Stat. Ann. § 167:80, III-IV. As relevant here, income from federal means-tested assistance programs (such as SSI) is generally excluded from consideration in determining eligibility for assistance, but may be included if DHHS promulgates a specific rule providing for such treatment. *See id.* § 167:80, IV(h) (providing that “[f]ederal, state, and local means-tested assistance” shall “be

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<sup>3</sup> For example, prior to 2012, a household of five individuals that included one adult and three children who did not receive SSI, and one child who did receive SSI, would form a four-member assistance group for purposes of FANF.

excluded when determining eligibility for assistance,” unless the “means-tested assistance . . . is defined as included by [DHHS] by rules adopted” under state law). Prior to 2013, no such rule existed with respect to SSI. As a result, SSI benefits were not counted as income for TANF purposes by virtue of N.H. Rev. Stat. Ann. § 167:80, IV(h).

FANF benefits vary depending on the size, housing status, and available income of the assistance group. For example, an assistance group comprising one individual with no housing costs may receive up to \$171 per month in FANF benefits, whereas an assistance group comprising six individuals living in unsubsidized housing may receive up to \$879 per month. *See* N.H. Code Admin. R. He-W 658.02.

2. Beginning in 2012, New Hampshire implemented two changes to its FANF program that altered the treatment of households containing SSI recipients.

First, effective January 2012, the State amended its FANF program to eliminate the statutory provision that had excluded SSI recipients from being counted as members of the FANF assistance group. *See* 2011 N.H. Laws ch. 272:2 (S.B. 198-FN) (amending N.H. Rev. Stat. Ann. § 167:79, II).<sup>4</sup> As a result of this amendment, DHHS must now count SSI recipients as members of the assistance group for FANF purposes.

Second, effective June 2013, DHHS promulgated a rule providing that SSI benefits would henceforth be counted as unearned income for purposes of FANF eligibility determinations. *See* N.H. Code Admin. R. He-W 654.04(c) (“Pursuant to RSA 167:80, IV(h), supplemental security income (SSI) shall be counted as unearned income for FANF and the adult categories of financial assistance, when computing income pursuant to [applicable state regulations].”). As a result of this

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<sup>4</sup> The amendment also eliminated a separate provision that had barred recipients of “state supplemental assistance” from being included in the assistance group. *See* 2011 N.H. Laws ch. 272:2 (S.B. 198-FN) (amending N.H. Rev. Stat. Ann. § 167:79, II). New Hampshire’s state supplemental assistance program is not at issue in this case.

rule, any SSI funds received by a disabled child within an assistance group are now counted as if they were available to the entire assistance group.

The effect of these changes was to reduce or eliminate the FANF benefits that the State would otherwise provide to needy households within which at least one member receives SSI benefits, and thereby to reduce the State's aggregate spending on FANF cash assistance. *See* App. 103 (describing change as “the result of budget reductions”); 33 N.H. Rulemaking Reg. No. 3, at 3 (Jan. 17, 2013) (noting that inclusion of SSI income in FANF eligibility calculations was a “costs-savings measure”), *available at* <http://www.gencourt.state.nh.us/rules/register/2013/january-17-13.pdf>. The legislature contemplated that these changes would yield \$9.1 million in savings: \$7.2 million from terminating all FANF benefits to 1,136 households, and \$1.9 million from reducing FANF benefits to another 420 households. *See* Fiscal Note, SB-198-FN (2011), *available at* <http://www.gencourt.state.nh.us/legislation/2011/SB0198.html>.<sup>5</sup>

3. As a result of these changes, New Hampshire's TANF program differs from those of most other States in its treatment of SSI benefits. Of the 51 jurisdictions (all States plus the District of Columbia) that participate in TANF, only two—New Hampshire and Wisconsin—count a disabled child's SSI benefits as if they were income available to the entire TANF assistance group. *See* Erika Huber et al., The Urban Institute, *Welfare Rules Databook: State TANF Policies as of July 2014*, at 66-67 (2015), <http://anfdata.urban.org/databooks/2014%20Welfare%20Rules%20Databook>

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<sup>5</sup> The legislative history associated with these changes indicates that the legislature may have misunderstood existing law. The majority committee report for SB-198 suggests that the legislature believed that the statutory change was necessary in order to prevent individuals from simultaneously receiving benefits from both FANF and SSI. *See* House Finance Comm., Majority Comm. Report on SB198-FN, at 2 (N.H. Oct. 5, 2011) (“Due to an oversight in budget preparation, some citizens were allowed to ‘double dip’ in public assistance.”), *reprinted at* [http://www.gencourt.state.nh.us/house/caljournals/journals/2011/houjou2011\\_68.html](http://www.gencourt.state.nh.us/house/caljournals/journals/2011/houjou2011_68.html). But even before SB-198, New Hampshire law already barred SSI recipients from receiving FANF cash assistance, and any FANF grant to an SSI recipient's household was based solely on the presence and financial need of non-SSI recipients. As a result, no such “double dipping” was possible.

%20(FINAL).pdf. Several other States—including Idaho, New Jersey, and West Virginia—count SSI recipients as members of the assistance group for TANF purposes, but do not count those recipients’ SSI funds as income available to the assistance group. *See id.* at 66-67 & nn.3-4.<sup>6</sup>

### **C. Procedural History**

1. Plaintiff Carrie Hendrick is the mother of six children, two of whom are disabled and receive SSI benefits. App. 44. Before the promulgation of Rule He-W 654.04(c), the Hendrick assistance group received a monthly FANF payment of \$847.80, in addition to the SSI benefits received by the two disabled children. App. 44, 380. After the rule change, DHHS included the SSI benefits of the two disabled children, each of whom received \$654 in monthly SSI, as countable income for the entire assistance group. App. 44-45. As a result, in April 2014, DHHS determined that the Hendrick family was no longer eligible for FANF assistance because their income exceeded the maximum income level. App. 45. The only income identified by DHHS in its calculations was \$1308 in SSI benefits received by the two disabled children. *See App.* 132.

Plaintiff Jamie Birmingham is the mother of three children, one of whom receives SSI. App. 46. The Birmingham family first applied for FANF assistance after Rule He-W 654.04(c) entered effect, and DHHS included the disabled child’s monthly SSI payments in its benefit calculations. App. 46. DHHS reduced the FANF assistance that the Birmingham family would otherwise receive by \$274.30, the amount of the child’s SSI benefit. App. 46, 148, 381.

2. Plaintiffs filed suit in Merrimack Superior Court seeking to set aside Rule He-W 654.04(c) as invalid and to enjoin DHHS from including children’s SSI benefits in its FANF eligibility

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<sup>6</sup> The Welfare Rules Databook states that Idaho may count the SSI benefits of a disabled child as income available to the TANF assistance group in limited circumstances. *See Welfare Rules Databook* at 66-67 & n.2. The application form for Idaho’s TANF program indicates, however, that unearned income does “NOT include . . . Supplemental Security Income (also known as Title XVI).” Idaho Dep’t of Health & Welfare, Form HW2000: Application for Assistance, at 15 (rev. Dec. 17, 2015), *available at* <http://go.usa.gov/cuZ8V>.

calculations. App. 10-23, 379-82. Among other things, plaintiffs argued that the challenged rule violates provisions of the federal Social Security Act and its implementing regulations requiring that representative payees use SSI benefits only for the use and benefit of the disabled child. *See* 42 U.S.C. § 1383(a)(2)(A)(ii)(I); 20 C.F.R. § 416.635(a). Plaintiffs and DHHS reached agreement on a stipulated set of facts, *see* App. 41-47, and each then moved for summary judgment.

The trial court granted summary judgment for DHHS. *See* App. 379-91. The trial court concluded that DHHS's decision to count a disabled child's SSI benefits in determining an assistance group's eligibility for FANF "does not interfere with the requirement that [SSI] benefits be expended for the use and benefit of the beneficiary." App. 386. In reaching this conclusion, the trial court analogized SSI benefits to other forms of assistance, such as SSDI benefits, which other courts had held may be counted as income in a State's TANF eligibility calculations. App. 386-88.

**3.** Plaintiffs appealed to this Court, which held oral argument on January 13, 2016. On February 3, 2016, this Court invited the views of the Solicitor General on two questions: (1) "Is it unlawful for the State to terminate, reduce, or deny a household's Temporary Assistance to Needy Families (TANF) because a child with disabilities in the household receives federal Supplemental Security Income (SSI)?"; and (2) "Does inclusion of the child's SSI as TANF assistance group income violate the federal Social Security Act and regulations?"

## ARGUMENT

### **Rule He-W 654.04(c) Conflicts With Federal Law And Is Therefore Preempted.**

Rule He-W 654.04(c) mandates that a disabled child's SSI benefits be counted as if they were income available to the child's entire assistance group. The rule thereby yields a dollar-for-dollar offset of the financial assistance that DHHS would otherwise provide to a FANF-eligible household. But federal law expressly prohibits a representative payee from using a disabled child's SSI benefits for any purpose besides the "use and benefit" of the disabled child. 42 U.S.C. § 1383(a)(2)(A)(ii)(I); 20 C.F.R. § 416.635(a). Because Rule He-W 654.04(c) conflicts with the requirements of federal SSI law, it is preempted and should be set aside.

#### **A. Principles Of Federal Preemption.**

Preemption doctrine rests on the Supremacy Clause, which provides that "the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. State laws may be preempted not only by federal statutes, but also by regulations duly promulgated by a federal agency in the exercise of its statutory authority. *See, e.g., City of New York v. FCC*, 486 U.S. 57, 64 (1988) ("The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof."); *Koor Commc'n, Inc. v. City of Lebanon*, 148 N.H. 618, 621 (2002) ("Federal regulations have the same preemptive force as federal statutes.") (internal quotation marks omitted).

Preemption may be either express or implied. *See Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372 (2000). Implied preemption includes both field preemption, under which federal law displaces state law on any subject for which Congress has "occup[ie]d the field," and conflict preemption, under which federal law preempts inconsistent state laws. *Id.* Conflict preemption exists not only "where it is impossible for a private party to comply with both state and federal law,"

*id.*, but also where “under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” *id.* at 373 (brackets and internal quotation marks omitted) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); accord *Wenners v. Great State Beverages, Inc.*, 140 N.H. 100, 104 (1995). Whether such “obstacle” preemption exists in a given case “is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects.” *Crosby*, 530 U.S. at 373. Within this analysis, a federal agency’s explanation about how “state law affects the [federal] regulatory scheme” is ordinarily afforded considerable weight. *Wyeth v. Levine*, 555 U.S. 555, 576-77 (2009) (citing *Geier v. American Honda Motor Co.*, 529 U.S. 861, 883 (2000)).

**B. Federal Law Requires Representative Payees To Use SSI Funds Solely For The “Use And Benefit” Of The Beneficiary.**

Under the Social Security Act, the individual recipient of SSI—rather than his or her family or caregiver—is the legal owner of his or her SSI funds. See 42 U.S.C. § 1381a (“Every . . . disabled individual who is determined . . . to be eligible . . . shall . . . be paid benefits . . .”). For blind or disabled children, SSA generally directs SSI funds to a “representative payee,” who is usually the parent or guardian of the child. *Id.* § 1383(a)(2)(A)(ii)(I); 20 C.F.R. § 416.621(c). This payment arrangement does not affect the child’s legal entitlement to receive the benefit of his or her SSI funds. Rather, Congress specifically directed that the representative payee expend these funds for the “use and benefit of the individual” beneficiary. 42 U.S.C. § 1383(a)(2)(A)(ii)(I).

The Social Security Administration has implemented these requirements by regulation. A representative payee must spend the SSI benefits “*only* for [the beneficiary’s] use and benefit” and in a manner that promotes the beneficiary’s “best interests.” 20 C.F.R. § 416.635(a) (emphasis added). An expenditure of SSI funds is considered to be “for the use and benefit of the beneficiary” if “used for the beneficiary’s current maintenance,” such as “costs incurred in obtaining food, shelter,

clothing, medical care and personal comfort items” for the beneficiary. *Id.* § 416.640(a).<sup>7</sup> If any SSI funds remain after the representative payee has addressed the beneficiary’s current and reasonably foreseeable needs, the payee is required to “conserve[] or invest[]” those funds “on behalf of the beneficiary.” *Id.* § 416.645(a). The regulations thus demonstrate that SSI funds, when administered by a representative payee, are for the benefit of the SSI recipient alone, and may not be diverted to meet the needs of other persons—even other persons residing in the same household.

In this respect, the regulations applicable to SSI benefits differ from the regulations applicable to SSDI benefits. As noted above, SSDI—unlike SSI—is not a means-tested program. Title II regulations governing SSDI establish an express exception under which a representative payee is allowed “to make the [Title II] benefit payments available to the [TANF] assistance unit,” “[n]otwithstanding” the general requirement that Title II funds be directed “only” to the “use and benefit” of the beneficiary. 20 C.F.R. §§ 404.2035(a), 404.2040(a)(1)-(2). Title II regulations also permit a representative payee to use SSDI funds to support the beneficiary’s “legally dependent spouse, child, and/or parent.” *Id.* § 404.2040(c).<sup>8</sup> In contrast, no similar exceptions exist in the Title XVI regulations governing SSI. As a result, the representative payee for a disabled child receiving SSI cannot use the SSI benefits to support other members of the child’s family or household.

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<sup>7</sup> Public guidance directed to both Title II and Title XVI representative payees provides further detail: “First, you must take care of the beneficiary’s day-to-day needs for food and shelter. Then, you must use the money for the beneficiary’s medical and dental care that’s not covered by health insurance. You can also pay for the beneficiary’s personal needs, such as clothing and recreation. You must save any money left after you pay for the beneficiary’s needs . . . .” SSA, *A Guide For Representative Payees* 5-6 (July 2015), <https://www.ssa.gov/pubs/EN-05-10076.pdf>; *see also* App. 53 (earlier version of same guidance).

<sup>8</sup> *See also* SSA, *POMS GN 00602.001: Use of Benefits* ¶ A.2, <https://secure.ssa.gov/poms.nsf/lnx/0200602001> (stating that a representative payee can expend funds for the support of a beneficiary’s legal dependents “*in title II only*”) (emphasis added); SSA, *POMS GN 00605.067: How To Evaluate Payee Responses About Use of Benefits* ¶ D.2, <https://secure.ssa.gov/poms.nsf/lnx/0200605067> (“If not needed for [the current and foreseeable needs of the beneficiary] *or for the support of certain of the title II beneficiary’s legal dependents*, the benefits must be conserved and invested for the beneficiary.”) (emphasis added and citation omitted).

The importance of the “use and benefit” restriction for SSI benefits is highlighted by the consequences that may follow in cases in which funds are misused. The Social Security Administration requires representative payees to provide an annual accounting of how the recipient’s SSI benefits were spent or saved. *See* 20 C.F.R. § 416.665. In cases of suspected misuse, SSA may undertake further investigation. *Cf.* 42 U.S.C. § 1383(a)(2)(C)(iv). As explained above, a representative payee who is found to have misused a beneficiary’s SSI benefits may face imprisonment, significant fines, and/or restitution in addition to adverse administrative action. *See supra* p. 3 (citing 42 U.S.C. §§ 1320a-8(a)(3), 1383(a)(2)(A)(iii), (2)(H)(i), § 1383a(a)(4), (b)).

**C. By Deeming SSI Benefits Available To The Entire Household,  
Rule He-W 654.04(c) Conflicts With Federal Requirements.**

1. Rule He-W 654.04(c) provides that, in determining an assistance group’s eligibility for cash assistance under FANF (New Hampshire’s TANF program), a disabled child’s SSI benefits must be counted as unearned income for the entire household. *See* N.H. Code Admin. R. He-W 654.04(c) (providing that “supplemental security income (SSI) shall be counted as unearned income for FANF and the adult categories of financial assistance”). Under this rule, DHHS will reduce a household’s FANF assistance grant by one dollar for every dollar that the disabled child receives in federal SSI benefits. Thus, the core premise of DHHS’s rule is that a disabled child’s SSI payment constitutes cash available to the child’s entire household.

Federal law prohibits representative payees from using SSI benefits in this manner. As explained above, rather than allowing SSI funds to be used as general household income, federal law strictly requires that SSI benefits be used “only for [the] use and benefit” of an individual beneficiary. 20 C.F.R. § 416.635(a). The challenged New Hampshire rule thus impedes “the accomplishment and execution of the full purposes and objectives of Congress” and “stands as an obstacle” to the operation of federal law. *Crosby*, 530 U.S. at 373 (quoting *Hines*, 312 U.S. at 67); *accord Great State Beverages*, 140 N.H. at 104.

It is well established that States may not determine eligibility for state-law benefits, or regulate a beneficiary's expenditure of federal benefits, in ways that contravene or frustrate federal conditions or requirements. For example, in *Rose v. Arkansas State Police*, 479 U.S. 1 (1986) (per curiam), the Supreme Court invalidated on preemption grounds an Arkansas statute that offset, on a dollar-for-dollar basis, the payment of state benefits to the families of deceased law-enforcement officers if those families also received death benefits under federal law. The Court held that the state statute thereby contravened a provision of federal law providing that “[t]he benefit payable under this subchapter shall be in addition to any other benefit that may be due from any other source.” *Id.* at 2 (quoting 42 U.S.C. § 3796(e) (1986)). Considering this provision, the Court explained that “Congress plainly intended to give supplemental benefits to the survivors, not to assist the States by subsidizing their [own] benefit programs.” *Id.* at 4. The Court held that even though the State was not required to provide any state-law benefits at all, once it determined to do so, the State was prohibited by federal law “from reducing the compensation it otherwise would provide to account for the federal payment.” *Id.*

Likewise, in *Townsend v. Swank*, 404 U.S. 282 (1971), the Supreme Court held preempted a state law that contradicted federal law by barring AFDC benefits for needy dependent children who were enrolled in college. The Court affirmed that “a state eligibility standard that excludes persons eligible for assistance[] under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause.” *Id.* at 286; *see also, e.g., Blum v. Bacon*, 457 U.S. 132 (1982) (holding preempted a state law that barred AFDC recipients from receiving additional emergency assistance, contrary to federal regulations); *Carleson v. Remillard*, 406 U.S. 598 (1972) (holding preempted a state law excluding children of military personnel from AFDC benefits, where no federal law permitted such an exclusion); *cf. Bennett v. Arkansas*, 485 U.S. 395 (1988) (per curiam) (holding preempted a state law that purported to “permit[] the State to attach [Social Security] funds

that federal law exempts from legal process” under 42 U.S.C. § 407(a)); *Lawrence County v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256 (1985) (holding preempted a state law that purported to direct how local governments could spend federal funds where Congress contemplated that local governments should be permitted to “use the [federal] payment for any governmental purpose”).

Similar reasoning applies here. Under Rule He-W 654.04(c), SSA’s payment of SSI benefits to a disabled child under *federal* law becomes the sole basis for DHHS’s decision to terminate or reduce a grant of FANF cash assistance to the relevant household under *state* law. But federal law mandates that SSI benefits be used only for the use and benefit of the disabled child. *See* 42 U.S.C. § 1383(a)(2)(A)(ii)(I); 20 C.F.R. § 416.635(a). DHHS’s use of a disabled child’s SSI benefits as a predicate for determining a household’s benefits under FANF thereby contravenes and frustrates the operation of the Social Security Act and its implementing regulations.<sup>9</sup>

2. The conflict posed by Rule He-W 654.04(c) is underscored by its real-world consequences. Under the rule, the receipt of SSI benefits by a disabled child will in many instances cause the child’s entire household to lose all access to FANF benefits. *See supra* p. 9. And because SSI, like FANF, is a means-tested program that depends on overall household income and resources, any household in which a disabled child receives SSI will generally have few, if any, sources of income other than public assistance. As a result, other, non-disabled members of the same household are also likely to lack sufficient resources to meet their own needs.<sup>10</sup>

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<sup>9</sup> We understand the relief requested by plaintiffs to be limited to invalidating Rule He-W 654.04(c). *See* Pls.’ Br. 1, 5, 24. Plaintiffs do not ask this Court to invalidate the amendment to N.H. Rev. Stat. Ann. § 167:79, II, under which SSI recipients are counted as members of the FANF assistance group. *See* 2011 N.H. Laws ch. 272:2 (S.B. 198-FN). Thus, if this Court invalidates Rule He-W 654.04(c), disabled children receiving SSI would still be counted as members of the FANF assistance group, but their SSI funds would not be counted as assistance-group income.

<sup>10</sup> As noted above, to be eligible for SSI, a child must have less than \$733 in monthly income and less than \$2,000 in available resources, including any income and resources deemed to be available from other family members. *See supra* pp. 2-3.

As a consequence, the operation of Rule He-W 654.04(c) places significant pressure on representative payees to divert SSI funds to the benefit of non-SSI recipients. When a family loses all or a large part of its FANF benefits, the disabled child's SSI income may become the family's only ready source of cash. Thus, whenever a new expense arises, the family would as a matter of practical necessity need to rely on the child's SSI funds to meet the expense. For example, if a non-disabled child needs a winter coat or has a medical co-payment that is not covered by Medicaid, a parent may have little option but to use the disabled child's SSI funds to pay for those expenses, even though to do so would violate federal law.

That concern is well illustrated by the facts of this case. Plaintiff Carrie Hendrick is a mother of six children, two of whom receive monthly SSI benefits of \$654 each. App. 44-45. Before DHHS included the two children's SSI benefits in its FANF calculations, the Hendrick assistance group received approximately \$850 in monthly FANF assistance. App. 44. After the rule change, DHHS determined that the Hendrick family had \$1,308 in monthly income, and it denied further FANF assistance because the family's monthly income exceeded the applicable FANF maximum of \$942. App. 132. DHHS denied FANF assistance even though the Hendricks had no resources and no monthly income besides the two children's SSI benefits. App. 132. As a result, the only cash available to the Hendrick family comes from the children's SSI. Ms. Hendrick thus may have little choice but to use the SSI funds to support her entire seven-person assistance group, even though federal law expressly requires her to use those funds "only for [the] use and benefit" of her two disabled children. 20 C.F.R. § 416.635(a). These circumstances are not unusual: roughly 70% of children receiving SSI have no other countable source of household income. *See* SSA, *Annual Statistical Supplement* tbl. 7D1 (2015), <https://www.ssa.gov/policy/docs/statcomps/supplement/2015/>.

DHHS's practice of treating SSI benefits as available to meet the living expenses of other family members is contrary to the basic purpose of the SSI program. The legislative history of the SSI program shows that Congress was particularly concerned with the plight of poor, disabled children. The House Report stated that "disabled children who live in low-income households . . . are deserving of special assistance" because they "are certainly among the most disadvantaged of all Americans." H.R. Rep. No. 92-231, at 147-48 (1971). The report specifically recognized that disabled children have "needs [that] are often greater than those of nondisabled children." *Id.* at 148. It is precisely for that reason that Congress wanted disabled children to be able to obtain SSI benefits instead of the more limited per-child benefits then available under the AFDC program. *See id.* (noting that bill would allow "disabled children to get benefits under [SSI], if it is to their advantage, rather than under the programs for families with children [i.e., AFDC]"); *cf. Washington State Dep't of Soc. & Health Srvs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 390 (2003) (noting that SSI's "basic objective[]" is to "provide a 'minimum level of income' to children" who otherwise lack "sufficient income and resources to maintain a standard of living at the established Federal minimum income level.") (quoting 20 C.F.R. § 416.110). It would frustrate Congress's intent to provide enhanced benefits to disabled children if a child's receipt of SSI had the effect of displacing not simply the child's own receipt of AFDC/TANF (as Congress expected), but also all of the cash assistance that would otherwise be available to other members of the same household.

**3.** Both of the federal courts that have considered the question presented by this case have reached this same conclusion. In *V.R. v. Obl*, No. 3:98-cv-1176 (S.D. W. Va. Feb. 3, 1999) (available at App. 174-97), the plaintiffs sought a preliminary injunction against a West Virginia law that counted a child's SSI payments as household income in the State's calculation of TANF benefits. Granting the plaintiffs' motion, the district court concluded that the State's "policy of counting a child's SSI benefits as household income presents an obstacle to fulfillment of Congress's

requirement that representative payees use SSI benefits only for the use and benefit of the child beneficiary.” App. 195. After the preliminary injunction was entered, the State revoked its policy, and the litigation was then dismissed as moot. *See* App. 202 (docket entry 50).

Similarly, in *Eneliko v. Dreyfus*, No. 2:11-cv-0312 (W.D. Wash. Feb. 28, 2011) (available at App. 204-11), the plaintiffs requested preliminary relief against a Washington law that would have deemed a child’s SSI benefits as income “available to non-disabled household members.” App. 205. The court found that the plaintiffs had demonstrated a likelihood of success on their claim that the state rule was “in direct conflict with or obstruct[ed] the purposes of” federal law requiring that representative payees spend SSI benefits solely for the use and benefit of the beneficiary. App. 208. As in *V.R.*, the State rescinded its policy following the issuance of preliminary relief, and the litigation was later dismissed by stipulation of the parties. *See* App. 212-15.<sup>11</sup>

#### **D. DHHS’s Contrary Arguments Are Unavailing.**

1. DHHS principally defends Rule He-W 654.04(c) by pointing out that the rule does not explicitly purport to displace a representative payee’s duty under federal law to expend SSI funds solely for the “use and benefit” of the beneficiary. *See* Brief for N.H. Dep’t of Health & Human Servs. (“DHHS Br.”) 12, 17, 25. But the fact that the rule does not expressly direct a parent to misuse the SSI funds does not save the rule from preemption scrutiny. Preemption occurs not solely where it is legally impossible for a party to comply with both state and federal law, but also where a state law regulates in a manner inconsistent with federal law or otherwise frustrates the

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<sup>11</sup> A federal district court recently upheld a Vermont law that decreased an assistance group’s TANF benefits by up to \$125 if the group included an adult recipient of SSI funds. *Wheeler v. Cohen*, No. 2:15-cv-170, 2015 WL 6872338 (D. Vt. Nov. 9, 2015). But the Vermont statute applied only to adult SSI beneficiaries, who ordinarily do not have a representative payee, and expressly “exclud[ed] payments received on behalf of a child.” *Id.* at \*1. The Vermont law also resulted in only a partial offset (capped at \$125) rather than an absolute, dollar-for-dollar offset. In any event, the plaintiffs there did not argue that the Vermont law conflicted with the federal requirement that a representative payee use SSI funds for the “use and benefit” of the beneficiary, 42 U.S.C. § 1383(a)(2)(A)(ii)(I), and the *Wheeler* court did not consider that question.

purposes and objectives of federal law. *See Crosby*, 530 U.S. at 372-73; *accord Great State Beverages*, 140 N.H. at 104.

That is the case here. Rule He-W 654.04(c) uses a federal-law benefit intended exclusively for one person (SSI) to offset a state-law benefit that the State would otherwise provide to other persons (FANF), even though the federal benefit is legally unavailable to those other persons under federal law. Such a rule, in turn, places significant pressure on representative payees to divert SSI funds to meet the needs of other household members even though federal law prohibits such diversion. *Cf. V.R. v. Ohl*, at App. 195 n.18 (recognizing that such a rule leaves representative payees “with the choice of facing possible criminal punishment for using SSI benefits improperly or of leaving the needs of nondisabled children in the household unmet”). The Supremacy Clause does not permit States to redirect federal benefits in this manner.

2. DHHS also contends that a representative payee will not violate federal law by using SSI benefits to meet the needs of other household members so long as the disabled child receiving SSI benefits is simultaneously benefited. *See* DHHS Br. 20. It is true that a representative payee may permissibly use SSI funds for common household expenses, such as rent, that benefit the disabled child even as they incidentally benefit other family members. *See* 20 C.F.R. § 416.640(a) (noting that paying for “shelter” satisfies the “use and benefit” requirement); *see also* App. 55 (SSA guide for representative payees) (“You can buy furniture for the beneficiary’s personal use, as well as items that may be shared with other members of the household, such as a television.”). But DHHS’s argument overlooks the fact that non-disabled family members will also have many personal expenses that are distinct from the needs of the entire household, such as clothing, school-related expenses, and medical co-payments. Under federal law, a representative payee cannot use the SSI-eligible child’s benefits to pay for the distinct expenses of other family members. *See supra* pp. 4-5,

14. But for the challenged New Hampshire rule, the household would indisputably be able to obtain and use FANF cash assistance to pay for such costs.

DHHS posits that plaintiffs and similarly situated households will not suffer hardship from losing FANF benefits because they may be eligible for other forms of public assistance, such as Medicaid, the National School Lunch Program, the Supplemental Nutrition Assistance Program (formerly known as food stamps), and Women, Infant, and Children (WIC) benefits. DHHS Br. 11. But these programs, unlike TANF, are limited to nutritional and medical assistance, and do not provide families with cash that may be used for other expenses. Families who have little or no cash income besides SSI will still face pressure to use SSI funds to pay for costs that fall outside of the restricted ambit of the other public-assistance programs. In any event, DHHS counts a child's SSI benefits in its FANF calculation regardless of the assistance group's eligibility for other welfare programs. *See* N.H. Code Admin. R. He-W 654.04(c). Thus, the availability of other forms of assistance cannot affect the preemption analysis.

3. DHHS errs in suggesting that SSI benefits might permissibly be used to meet other household expenses even when they do not directly benefit the disabled child. *See* DHHS Br. 14-18, 20, 31.<sup>12</sup> DHHS relies on several cases holding, with respect to Title II (SSDI) benefits, that a representative payee may use Title II payments for the benefit of an entire assistance group notwithstanding the general rule that the payee must use those benefits “only” for the “use and benefit” of the beneficiary, 20 C.F.R. § 404.2035(a). *See Sneed v. Saenz*, 16 Cal. Rptr. 3d 563 (Ct. App. 2004) (holding that California could lawfully consider minor dependents' Title II benefits as general

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<sup>12</sup> DHHS also suggests that if SSI funds were not available to the whole household, a representative payee would face the “intolerable burden” of calculating the disabled child's percentage “share” of every household expense, and using the SSI benefits to pay for only that percentage. DHHS Br. 20. As already noted, however, SSA considers it permissible for a representative payee to use SSI funds to pay for common household expenses that benefit the beneficiary child while also incidentally benefiting other household members, and does not require such expenses to be apportioned among household members.

household income); *Rosado v. Bowen*, 698 F. Supp. 1191, 1197 (D.N.J. 1987) (stating that Title II funds could be spent “in a manner which would benefit the entire household”).

Those cases are inapposite. The rules governing Title II (SSDI) and Title XVI (SSI) benefits are not the same. Whereas SSA regulations explicitly allow a representative payee to use Title II assistance for the general expenses of a TANF assistance group, *see* 20 C.F.R. § 404.2040(a)(2); *supra* pp. 5, 14, the regulations have no comparable provision for SSI benefits under Title XVI. As noted, SSI and SSDI benefits differ significantly because SSI is a means-tested program and SSDI is not. This Court has already recognized the important differences between SSDI and SSI, and has properly concluded that a child’s receipt of SSI will not offset a parent’s child-support obligations even though a child’s receipt of SSDI may do so. *See In re Lister*, 162 N.H. 48, 51-52 (2011).

DHHS’s invocation of *Bowen v. Gilliard*, 483 U.S. 587 (1987), similarly has no bearing upon the preemption analysis here. In *Gilliard*, the plaintiffs challenged a *federal* law requiring that child-support payments be counted as assistance-group income for purposes of determining a household’s eligibility for AFDC. *Id.* at 592-94.<sup>13</sup> The Supreme Court held that this law must be applied notwithstanding a *state-law* requirement that the child support be used for the “benefit” of an individual child. *Id.* at 595-96. Here, by contrast, it is federal law that creates the relevant “use and benefit” restriction, and state law that regulates inconsistently with that restriction; thus, in this case, unlike in *Gilliard*, there is a basis for federal preemption. *Accord Rose*, 479 U.S. at 4 (similarly

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<sup>13</sup> Of note, although Congress required child-support payments to be counted as assistance-group income for AFDC purposes, it expressly excluded both SSI beneficiaries and their SSI income from being counted as part of the AFDC assistance group. *See* 42 U.S.C. § 602(a)(24) (1988); 45 C.F.R. § 233.20(a)(1)(ii) (1987).

concluding that a federal-law offsetting rule “did not present a Supremacy Clause issue,” while holding a state-law offsetting rule to be preempted).<sup>14</sup>

4. DHHS also defends its rule by relying on the broad flexibility that federal law affords States in designing their TANF plans, and the fact that needy families enjoy no federal entitlement to TANF assistance. DHHS Br. 3-4, 30-31. But the flexibility that Congress granted to States under TANF does not allow States to establish eligibility rules that conflict with laws governing other federal programs. As explained above, a State cannot deny TANF benefits to a household solely on the basis that a household member receives other federal benefits if those other federal benefits are, as a matter of federal law, not available to the TANF assistance group. *Cf. Rose*, 479 U.S. at 4 (holding State’s benefits law preempted, even though State was not required to provide benefits at all, because federal law “prohibit[ed] a State from reducing the compensation it otherwise would provide to account for the federal payment”).

DHHS also suggests that invalidating Rule He-W 654.04(c) could leave the State with no practical option other than to transfer money from one needy family to another. DHHS Br. 32-33. Even if that were the case, it would not save from preemption a state law that conflicts with federal requirements. In any event, the State’s TANF plan funds numerous programs extending well beyond cash assistance to needy families. Although we lack a detailed accounting of the State’s TANF expenditures, it appears that New Hampshire uses only about 35% of its TANF funds for basic cash assistance. *See* U.S. Dep’t of Health & Human Servs., *New Hampshire TANF and MOE Spending and Transfers by Activity, FY 2014*, <https://www.acf.hhs.gov/sites/default/files/ofa/>

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<sup>14</sup> In any event, the “benefit” restrictions applicable to child-support payments under state law were evidently less restrictive than the “use and benefit” restriction that applies to SSI. *Compare Gilliard*, 483 U.S. at 600 n.14 (suggesting that parents could properly spend child-support funds on “other children living in the same home” on the theory that providing for the child’s siblings would “benefit” the child for whom child-support payments were received), *with* 20 C.F.R. §§ 416.635(a), 416.640(a) (requiring that SSI funds be used “only for [the] use and benefit” of the SSI recipient and omitting any provision that would allow funds to be used for other family members).

2014\_tanf\_moe\_new\_hampshire.pdf. Federal law affords DHHS the discretion, if it wishes, to allocate more of its TANF funds toward cash assistance for needy families.<sup>15</sup>

### CONCLUSION

For the foregoing reasons, the Court should hold that Rule He-W 654.04(c) conflicts with federal law and is therefore preempted.

Respectfully submitted,

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MAY 2016

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<sup>15</sup> According to a recent news article, New Hampshire's FANF program is currently running a surplus. See Allie Morris, *Hassan Talks Jobs in State of the State*, Concord Monitor, Feb. 5, 2016, at A1 (reporting that FANF program "ran a surplus last year of roughly \$20 million due to falling caseloads").

**CERTIFICATE OF SERVICE**

I hereby certify that on May 5, 2016, I effected service on the parties by sending two copies of this brief by Federal Express overnight delivery to each of the following addresses:

Ruth D. Heintz  
New Hampshire Legal Assistance  
117 North State Street  
Concord, NH 03301

MaryBeth L. Misluk  
Attorney, Civil Bureau  
New Hampshire Attorney General  
33 Capitol Street  
Concord, NH 03301

  
\_\_\_\_\_  
JEFFREY E. SANDBERG

## ADDENDUM

# Social Security Administration

## Representative Payee Report

### Why You Received This Form

We must regularly review how representative payees, including parents, stepparents, and grandparents with custody of minor children, used the benefits they received on behalf of the Social Security and/or Supplemental Security Income (SSI) beneficiaries. We do this to ensure the benefits are used properly. When you were appointed representative payee, you were informed of the duties and responsibilities of a representative payee, including keeping records and reporting on the use of benefits.

### What You Need To Do

You must report to SSA on your use of benefits if you received any Social Security and/or SSI payments during the 12 month period shown on the enclosed form. You must do this if you wish to continue receiving benefits on behalf of another person. You should use the records you have saved to answer the questions on the enclosed form. The name(s) of the child(ren) we are asking about are shown in item 3 on the form. If you receive benefits for children not named in item 3, we will send you another form. **Use this form only for the child(ren) named in item 3.**

You may submit this form online via [www.ssa.gov/payee](http://www.ssa.gov/payee). Please follow the instructions for Internet Payee Accounting Report. If you complete the form online, you will be able to print a receipt and a copy of your report. If you report online, you should have all your records and the enclosed form handy to help you answer the questions. You should not send in a paper form if you complete the online version.

Any records you have saved such as bank statements, cancelled checks, receipts for rent, etc., should be kept for two years from the time you file your report with SSA. You should not send in any of these records with your report form. If we have any questions or require proof, we will contact you.

### General Instructions

Please read these instructions before you complete the enclosed report form or submit your report online. You should either complete and return the report form or submit the online report, within 30 days.

To help us process your report, please follow these instructions:

1. Use black ink.
2. Keep your numbers and "X's" inside the boxes.
3. Do not use dollar signs.
4. Show money amounts in dollars only. Do not show cents.

For example, show \$1,540.30 like this:

**DOLLAR AMOUNT**  

		1	,	5	4	0
--	--	---	---	---	---	---

5. Use the REMARKS section on the back of the form to provide additional information as requested.
6. Review the payee mailing address and correct if necessary. If you change the payee mailing address to a P.O. Box, show the payee's actual physical address in REMARKS.
7. Be sure you, the representative payee, sign the form.

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**Some  
Definitions  
To Help You**

**Benefits** - The Social Security and/or SSI money that you receive.

**Payee** - You. The person who receives Social Security and/or SSI benefits for someone else.

**Beneficiary** - The person for whom you receive Social Security and/or SSI benefits.

**Report Period** - The 12-month period shown on the report for which you must account for the benefits you received.

**Total Accountable Amount** - The amount of benefits paid to you during the report period **plus** any amount you reported as saved on last year's report.

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## HOW TO FILL OUT THE FORM

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**QUESTION 1 -  
Payee Felony  
Convictions**

Place an "X" in the "YES" box if during the report period, you (the payee) were convicted of a crime considered to be a felony, and explain the type of crime under REMARKS. Otherwise, place an "X" in the "NO" box.

---

**QUESTION 2 -  
Does The  
Child(ren)  
Live With You?**

Place an "X" in the "NO" box if **any** of the children named in item 3 did not live with you in **all** of the months in the report period **or any** of the children are not living with you now. Explain the change and provide the child(ren)'s current address under REMARKS.

**Note: Do not consider vacations, weekend or other short visits when you answer this question.**

---

**QUESTION 3 - Accounting  
For Benefits**

The total accountable amount includes the benefits you received during the report period **plus** any benefits you reported as saved on last year's report.

**A. Who Decided  
How Benefits  
Were Used?**

Place an "X" in the "YES" box if **you** (the payee) decided how to use the money. Place an "X" in the "NO" box if you turned over the full amount of benefits for any of the children to **another person** who decided how to use the money. Explain under REMARKS to whom the money was given and why.

**B. Amount  
Spent**

Show the total amount of benefits spent to care for all the children named in item 3. This amount includes food, housing, clothing, medical and dental expenses, recreation, and education.

**C. Unused  
Benefits**

Show the amount of benefits you **saved** for the child(ren) at the end of the report period, including any interest earned. Show zeroes if you did not save any of the benefits.

---

**QUESTION 4 -  
Savings Information**

Answer this question if you showed an amount in 3.C.

**A. Type Of  
Account**

Place an "X" in the box which shows how you are saving the benefits. Place an "X" in the "Other" box if your method of saving the benefits is not listed.

**B. Account  
Title**

Place an "X" in the box which most accurately describes the account title you have on the child(ren)'s savings. Place an "X" in the "Other" box if the account title is different **or** if you have not placed the savings in any type of account.

**Note: A savings or checking account title should always show that the money belongs to the child(ren), but the child(ren) should not have direct access to the funds.**

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**QUESTION 5 -  
Other Savings/  
Account Titles**

Answer this question only if you checked "OTHER" in 4.A. or 4.B.

**Type Of  
Account**

Indicate whether the saved benefits are in cash, Treasury Bills, or some other investment such as mutual funds. For mutual funds, be sure to show the name of the fund in your response (e.g., "XYZ Growth" mutual fund).

**Title Of  
Account**

Show the title of the account if the savings are in an account or other investment. Show "none" if the savings are not in an account or investment.

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**6. Payee's  
Signature**

**Sign your name in this block.** If you sign by mark ("X"), please have two witnesses sign their names and show the date.

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**Your Responsibilities  
As Representative  
Payee**

As payee, you must use the Social Security and SSI benefits you receive for the care and well-being of the child(ren). In addition to reporting on the use of benefits, you must report any changes which may affect the child's eligibility for benefits, or the payment amount.

You should report the changes as soon as possible by calling SSA at 1-800-772-1213, or by calling or writing your local SSA office.

For example, you must tell us if the child:

- moves,
- marries,
- goes to work,
- is adopted,
- is imprisoned, or
- you are no longer responsible for the child.

If you are payee for a child receiving SSI benefits, we may ask you for proof that the child is receiving medical treatment for his/her disabling condition. We may ask for this information at the time we review the child's case. If we do ask for this information, you must give it to us.

If you are no longer the payee for the beneficiary, you must return any funds you have saved to SSA.

**Continued on the Reverse**

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**The Privacy Act  
And Paperwork  
Reduction Act  
Statements**

Sections 205(j) and 1631(a) of the Social Security Act, as amended, authorize us to collect the information on this form. The information you provided enables us to account for the child(ren)'s payments and to ensure that you use the payments for the child(ren)'s needs.

Your responses are voluntary. However, without the information, we may not be able to continue sending the child(ren)'s payments to you.

We rarely use the information you give us for any purpose other than for accounting purposes. However, we may use it for the administration and integrity of Social Security programs. We may also disclose information to another person or to another agency in accordance with approved routine uses, which include, but are not limited to, the following:

1. To comply with Federal laws requiring the release of information from Social Security records (e.g. to the Government Accountability Office and Department of Veterans Affairs);
2. To facilitate statistical research, audit, or investigative activities necessary to assure the integrity and improvement of Social Security programs;
3. To respond to a request on your behalf from a Congressional office or the Office of the President; and
4. To other Federal agencies and our contractors, including external data sources, to assist us in efficiently administering our programs.

We may also use the information you give us in computer matching programs. Matching programs compare our records with records kept by other Federal, State, or local government agencies. We use the information from these programs to establish or verify a person's eligibility for federally funded or administered benefit programs and for repayment of incorrect payments or delinquent debts under these programs.

A complete list of routine uses for this information is available in our Privacy Act System of Records Notice (SORN) entitled, Master Representative Payee File (60-0222). The complete SORN, additional information about this form, routine uses of information, and our programs and systems are available online at [www.socialsecurity.gov](http://www.socialsecurity.gov) or your local Social Security office.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. §3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 15 minutes to read the instructions, gather the facts, and answer the questions. *You may send comments on our time estimate above to: SSA, 6401 Security Blvd, Baltimore, MD 21235-6401. Send **only** comments relating to our time estimate to this address, not the completed form.*

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**If You Have  
Any Questions**

If you have any questions, please call us at 1-800-772-1213. We can answer most questions over the phone. If you prefer to visit one of our offices, please use the 800 number and we will give you the address and telephone number of the office nearest you. Please take this report with you if you visit an office. You may also visit our website at [www.socialsecurity.gov](http://www.socialsecurity.gov).

# Representative Payee Report

Form Approved  
OMB No. 0960-0068

PAYEE'S NAME AND ADDRESS          If change of address, check box and enter new address on back of report. <input type="checkbox"/>	REPORT PERIOD					SOCIAL SECURITY NUMBER	
	FROM:			TO:			
	ID	BIC	PC	DOC	CF	TAA	FP
	BIC1	CF	BSSN		BIC3	CF	BSSN
BIC2	CF	BSSN		BIC4	CF	BSSN	

**This report is about the benefits you received between \_\_\_\_\_ and \_\_\_\_\_ for the child(ren) named below. Please read the enclosed instructions before completing this report to help you answer each question.**

<b>1.</b> Were you (the payee) convicted of a crime considered to be a felony between _____ and _____? If YES, please explain in REMARKS on the back of this form.	YES <input type="checkbox"/>	NO <input type="checkbox"/>
<b>2.</b> Did <b>all</b> the children named below live with you from _____ to _____? If NO, please explain and provide the child(ren)'s current address in REMARKS on the back of this form.	<input type="checkbox"/>	<input type="checkbox"/>
<b>3.</b> Benefits paid to you between _____ and _____ = \$ _____ Benefits you reported as <b>saved</b> on last year's report = \$ _____ Total Accountable Amount = \$ _____  <b>A.</b> Did you (the payee) decide how the \$ _____ was spent or saved for all the children named below? If NO, please explain in REMARKS on the back of this form.	YES <input type="checkbox"/>	NO <input type="checkbox"/>
<b>B.</b> How much of the \$ _____ did you use for the care and support of the child(ren) named below between _____ and _____?	DOLLAR AMOUNT (NO CENTS)	
<b>C.</b> Show how much, if any, of the \$ _____ you <b>saved</b> for each child named below as of _____? If none, show zeroes.	<input type="text"/> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/>	

BIC	CHILD'S NAME	DOLLAR AMOUNT	BIC	CHILD'S NAME	DOLLAR AMOUNT
		<input type="text"/> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/>			<input type="text"/> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/>
		<input type="text"/> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/>			<input type="text"/> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/>

**4.** If you showed an amount in 3.C. above, place an "X" in the boxes below to show how you are saving the child(ren)'s benefits. If you have more than one account, you may mark more than one box in each section.

A. TYPE OF ACCOUNT					B. TITLE OF ACCOUNT		
Savings/ Checking Account <input type="checkbox"/>	U.S. Savings Bonds <input type="checkbox"/>	Certificates of Deposit <input type="checkbox"/>	Treasury Bills <input type="checkbox"/>	Other <input type="checkbox"/>	Child(ren)'s Name by Your Name <input type="checkbox"/>	Your Name for Child(ren)'s Name <input type="checkbox"/>	Other <input type="checkbox"/>

FOR SSA USE ONLY		
ATT <input type="checkbox"/>	MARK <input type="checkbox"/>	SIG <input type="checkbox"/>
UND1 <input type="checkbox"/>	UND2 <input type="checkbox"/>	OTH <input type="checkbox"/>

**5.** Answer the question only if you answered "OTHER" in 4.A. or 4.B. on the front page. If you answered "OTHER" in 4.A. or 4.B., show the type of account or investment and the title of the account or investment in which you saved each child's benefits.

CHILD'S NAME	TYPE OF ACCOUNT OR INVESTMENT	TITLE OF ACCOUNT OR INVESTMENT

**REMARKS**

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**NEW ADDRESS**

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I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge. I understand that anyone who knowingly gives a false or misleading statement about a material fact in this information, or causes someone else to do so, commits a crime and may be sent to prison, or may face other penalties, or both.

<b>PAYEE'S SIGNATURE</b> <i>(If signed by mark (X), two witnesses must sign below)</i>	<b>DATE</b> <b>7.</b> _____
	<b>DAYTIME TELEPHONE NUMBER(S)</b> <i>(Include area code)</i> <b>8.</b> _____ <small>Area Code</small>

**6.** WITNESS SIGNATURES ARE REQUIRED ONLY IF THE PAYEE'S SIGNATURE ABOVE HAS BEEN SIGNED BY MARK (X).

SIGNATURE OF WITNESS	DATE
SIGNATURE OF WITNESS	DATE

# REPRESENTATIVE PAYEE EVALUATION REPORT

TP	CC	GS	NAM
TYA	MBA	CF	
BENEFICIARY'S NAME		SOCIAL SECURITY NUMBER	
PAYEE'S NAME			REPORT PERIOD
			From:
PAYEE'S ADDRESS			To:
CITY AND STATE		ZIP CODE	PHONE NUMBER (Include area code)

## PART I INFORMATION FROM PAYEE

1.	<b>GUARDIANSHIP STATUS</b>			
	Is legal guardianship now in effect?	<input type="checkbox"/> YES <input type="checkbox"/> NO If yes, show guardian's name and address below (if other than payee).		
	GUARDIAN'S NAME	GUARDIAN'S ADDRESS		
2.	<b>CUSTODY</b>			
	(a) Did the beneficiary live alone or with someone other than the payee?	<input type="checkbox"/> YES <input type="checkbox"/> NO If yes, answer 2(b). If no, skip to item 4.		
	(b) Show below where the beneficiary lived. Show the relationship of the custodian to the beneficiary, the dates of residence and the reason for any change in custody.			
	NAME	ADDRESS	RELATIONSHIP	DATES OF RESIDENCE
				REASON FOR CHANGE
3.	<b>DEMONSTRATION OF CONCERN</b>			
	(a) How did the payee learn of the beneficiary's needs?			
	(b) Did the payee maintain contact with the beneficiary? If yes, show type of contact (visits, phone, letters) and frequency. If no, explain.	<input type="checkbox"/> YES <input type="checkbox"/> NO		
	(c) Did the payee provide the beneficiary with funds for personal spending? If yes, show to whom the funds were given (e.g., directly to the beneficiary, the custodian). If no, show why not.	<input type="checkbox"/> YES <input type="checkbox"/> NO		
4.	<b>USE OF BENEFITS</b>			
	(a) Did the payee turn over the checks or the full amount of the checks to another party? If yes, show to whom the funds were given (e.g., the beneficiary, the custodian).	<input type="checkbox"/> YES <input type="checkbox"/> NO		
		NAME		
	(b) Amount used for beneficiary's care and maintenance. If paid to another party, show to whom.	AMOUNT \$		
		NAME		

4. (cont.)	(c) Amount used for beneficiary's clothing.	AMOUNT \$
	(d) Amount used for beneficiary's personal expenditures. If less than \$360, explain in remarks.	AMOUNT \$
	(e) Amount used for other than items (b) through (d) above. (Exclude savings.) Explain in remarks.	AMOUNT \$
	(f) Total amount of benefits used.	TOTAL AMOUNT \$
	(g) Did the payee record expenditures (receipts, cancelled checks, etc.)?	<input type="checkbox"/> YES <input type="checkbox"/> NO

5.	<b>CONSERVED FUNDS</b>		
	(a) Total amount of conserved funds. Subtract item 4(f) from TYA and add conserved funds from prior years.	AMOUNT \$	
	(b) How are conserved funds held?		Enter an amount or zero in the above field
	<input type="checkbox"/> CASH	<input type="checkbox"/> U.S. SAVINGS BONDS	<input type="checkbox"/> OTHER (Explain)
	<input type="checkbox"/> CHECKING ACCOUNT	<input type="checkbox"/> SAVINGS ACCOUNT	
	(c) HOW ARE CONSERVED FUNDS TITLED?		
	TYPE OF HOLDING	TITLE OR OWNERSHIP	NAME AND ADDRESS OF BANK
	ACCOUNT NUMBER		
	(d) Are the funds mingled with funds of another person(s)? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, answer (e).	(e) Are funds clearly recorded as belonging to the beneficiary? <input type="checkbox"/> YES <input type="checkbox"/> NO	

6.	<b>OTHER INCOME</b>		
	(a) Did the beneficiary have other income which affects the entitlement to or use of Social Security benefits?	<input type="checkbox"/> YES <input type="checkbox"/> NO If yes, answer (b) and (c).	
	(b) Type Of Other Income	<input type="checkbox"/> WORKMEN'S COMPENSATION	<input type="checkbox"/> VA BENEFITS
		<input type="checkbox"/> OTHER (Explain)	<input type="checkbox"/> PUBLIC ASSISTANCE (Explain)
	(c) Is there a payee for other income?	<input type="checkbox"/> YES <input type="checkbox"/> NO If yes, show name and address of payee below.	
	NAME OF PAYEE	ADDRESS OF PAYEE	

7.	<b>OTHER INFORMATION</b>		
	Has the payee ever been convicted of a crime considered to be a felony?	<input type="checkbox"/> YES <input type="checkbox"/> NO If yes, explain in remarks .	

8.	<b>REMARKS</b>		
	<b>I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.</b>		
	SIGNATURE	DATE	

**PART II INFORMATION FROM BENEFICIARY**

<b>1.</b>	<b>ALL CUSTODY SITUATIONS</b>	
	(a) Is the beneficiary aware of entitlement to Social Security benefits?  <input type="checkbox"/> YES <input type="checkbox"/> NO	(b) Did the beneficiary participate in decisions on expenditures?  <input type="checkbox"/> YES <input type="checkbox"/> NO
	(c) Did the beneficiary receive funds for personal spending?  <input type="checkbox"/> YES <input type="checkbox"/> NO	(d) Were any large purchases made for the beneficiary?  <input type="checkbox"/> YES <input type="checkbox"/> NO
	(e) Does the beneficiary have any unmet needs?  <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, explain.	EXPLANATION
	(f) Did the beneficiary live with someone other than the payee?  <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, answer 2. below.	(g) Did the beneficiary live alone?  <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, answer 2. and 3. below.
<b>2.</b>	<b>BENEFICIARY NOT IN PAYEE'S CUSTODY</b>	
	(a) Did the payee maintain contact with the beneficiary?  <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, show type of contact (visit, phone, letters) and frequency.      If no, explain	
	(b) Did anyone other than the payee demonstrate concern for the beneficiary?  <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, show who and type and frequency of contacts.	
<b>3.</b>	<b>BENEFICIARY LIVED ALONE</b>	
	(a) Was the beneficiary responsible for his/her maintenance expenses? (Rent, utilities)  <input type="checkbox"/> YES <input type="checkbox"/> NO	(b) Did the beneficiary purchase his/her food and clothing?  <input type="checkbox"/> YES <input type="checkbox"/> NO
<b>4.</b>	<b>OTHER INFORMATION</b>	
	Have any suspension or termination events occurred (e.g., marriage of child beneficiary)?	<input type="checkbox"/> YES <input type="checkbox"/> NO (If yes, explain in remarks)
<b>5.</b>	<b>REMARKS</b>	

**PART III INFORMATION FROM CUSTODIAN**

CUSTODIAN'S NAME	ADDRESS	PHONE (Include area code)
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<b>1. PAYEE AND CUSTODIAN ARE NOT THE SAME PERSON OR ORGANIZATION</b>			
(a) Did the beneficiary live with the custodian during the entire report period?		<input type="checkbox"/> YES	<input type="checkbox"/> NO
If no, show other custodians if known.			
(b) Who would the custodian notify in cases of emergency?			
(c) Was a charge made for care and maintenance of the beneficiary? If yes, show the amount paid by the payee.		<input type="checkbox"/> YES	<input type="checkbox"/> NO
Amount \$			
(d) Did the payee demonstrate personal concern for the beneficiary?		<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, explain below .			
FREQUENCY OF VISITS	PROVIDES CLOTHING <input type="checkbox"/> YES <input type="checkbox"/> NO	GIFTS <input type="checkbox"/> YES <input type="checkbox"/> NO	OTHER (Specify)
(e) Did the payee contribute money for the beneficiary's personal use? If yes, show the amount contributed by the payee.		<input type="checkbox"/> YES	<input type="checkbox"/> NO
Amount \$			
(f) Does the custodian hold and control the beneficiary's personal use funds?		<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, answer (g).			
(g) Are the beneficiary's funds mingled with funds of other persons?		If yes, are the funds clearly designated as the beneficiary's?	
<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO	

<b>2. ALL CUSTODIANS</b>			
Were any group purchases made?		If yes, were the purchases approved by SSA?	
<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO	

<b>3.</b>	REMARKS

**PART IV      EVALUATION AND ACTION TAKEN**

SIGNATURE AND TITLE	OFFICE	DATE
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**Privacy Act Statement**  
Collection and Use of Personal Information

Sections 205(j)(3) and 1631(a)(2)(c) of the Social Security Act, as amended, authorize us to collect this information. We will use the information you provide to determine your suitability to continue being a representative payee and to determine if the beneficiary's current needs are being met.

Furnishing us this information is voluntary. However, failing to provide us with all or part of the information may cause us to terminate you as a representative payee.

We rarely use the information you supply us for any purpose other than to make a determination regarding your suitability as representative payee and the beneficiary's current needs. We may disclose information to another person or to another agency in accordance with approved routine uses, which include but are not limited to the following:

1. To enable a third party or agency to assist us in establishing rights to Social Security benefits and/or coverage;
2. To comply with Federal laws requiring the release of information from our records (e.g., to the Government Accountability Office and Department of Veterans Affairs);
3. To make determinations for eligibility in similar health and income maintenance programs at the Federal, State, and local level; and,
4. To facilitate statistical research, audit, or investigative activities necessary to assure the integrity and improvement of our programs (e.g., to the Bureau of the Census and to private entities under contract with us).

We also may use the information you give us in computer matching programs. Matching programs compare our records with records kept by other Federal, State and local government agencies. We use the information from these programs to establish or verify a person's eligibility for federally funded or administered benefit programs and for repayment of incorrect payments or delinquent debts under these programs.

A complete list of routine uses of the information you provided us is available in our Systems of Records Notices entitled, Claims Folder System, 60-0089 and Master Representative Payee File, 60-0222. These notices, additional information regarding this form, and information regarding our programs and systems, are available online at [www.socialsecurity.gov](http://www.socialsecurity.gov) or at your local Social Security office.

**Paperwork Reduction Act Statement** - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 30 minutes to read the instructions, gather the facts, and answer the questions related to representative payment. **SEND OR BRING THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE. The office is listed under U. S. Government agencies in your telephone directory or you may call Social Security at 1,800,772,1213 (TTY 1,800,325,0778).** You may send comments on our time estimate above to: SSA, 6401 Security Blvd, Baltimore, MD 21235-6401. **Send only comments relating to our time estimate to this address, not the completed form.**