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STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

In re Guardianship of ANNA-MARIE MARGARET BAZAKIS

CHRISTY BOMBA, Coguardian of ANNA-MARIE MARGARET BAZAKIS, a legally protected person,

Appellant,

v

ANDREW BAZAKIS, Coguardian of ANNA-MARIE MARGARET BAZAKIS, a legally protected person,

Appellee.

Supreme Court No. 164652

Court of Appeals No. 358276

Saginaw Probate Court
LC No. 20-140294-DD

Amicus Brief of the Social Security Lawyers Section of the State Bar of Michigan

Min Jian Huang (P76454)
Sarah Ryan Schairbaum (P55911)
Crystal P. Bui (P77937)
Thomas A. Geelhoed (P35522)
James R. Rinck (P34355)
Kerry Jane Spencer (P43782)

Amicus Brief Committee,
Social Security Lawyers Section of the State Bar of Michigan,
Min.huang@wayne.edu

For Amicus Curiae Social Security Lawyers Section of the State Bar of Michigan

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Public Policy Position
Amicus Brief in the Matter of *In Re: Guardianship of Anna-Marie Margaret Bazakis*

The Social Security Lawyers Section is a voluntary membership section of the State Bar of Michigan, comprised of 391 members. The Social Security Lawyers Section is not the State Bar of Michigan and the position expressed herein is that of the Social Security Lawyers Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Social Security Lawyers Section has a public policy decision-making body with 15 members. On July 19, 2023, the Section adopted its position after a discussion and vote at a scheduled meeting. 15 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 0 members did not vote.

Support

Explanation:
The Michigan Supreme Court invited our section to submit an amicus brief in the matter of In re Guardianship of Anna-Marie Margaret Bazakis as it involves the application of federal Social Security Law. We formed an Amicus Brief Committee to prepare our section's official position and are ready to submit.

Contact Person: Joshua T. McFarland
Email: josh@jtrucks.com

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STATEMENT OF BASIS OF JURISDICTION

This Court has jurisdiction under MCR 7.312(H)(1)

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STATEMENT OF QUESTIONS INVOLVED

I. Whether the probate court's order requires Appellant to place AM's social security benefits into a joint account held by both the Appellant and the Appellee.

Appellant Answers:	Yes
Appellee Answers:	No
Probate Court Answers:	No
Court of Appeal's Answers:	No
Amicus Curiae Social Security Lawyers Section Answers:	No

II. If so, whether such order is prohibited by principles of federal preemption.

Appellant Answers:	Yes
Appellee Answers:	No
Probate Court Answers:	No
Court of Appeal's Answers:	No
Amicus Curiae Social Security Lawyers Section Answers:	Yes

INTERESTS OF AMICUS CURIAE

The Social Security Lawyers Section of the State Bar of Michigan is a recognized section of the State Bar of Michigan that is comprised of 391 members, who are attorneys representing Social Security claimants before the Social Security Administration and the U.S. Federal Courts. The Section provides services to its membership in the form of educational seminars and advocating for and commenting on proposed legislation relating to Social Security matters to improve Social Security claimants' experience in navigating the Social Security system.

In its April 21, 2023, Order, the Michigan Supreme Court directed the parties to file supplemental brief and this Court invited the Family Law, Probate and Estate Planning, Elder Law

& Disability Rights, and Social Security Lawyers Section of the State Bar of Michigan to file amicus curiae brief on two questions. Whether:

1) The probate court's order requires Appellant to place Ms. Bazakis's social security benefits into a joint account held by both the Appellant and Appellee; and
2) If so, whether such order is prohibited by principles of federal preemption.

The Social Security Lawyers Section appreciates this Court's invitation to participate as amicus curiae. Pursuant to MCR 7.212(H)(3), the Section states that neither counsel for the parties to this matter authored this amicus brief in whole or in part, and neither of them have made monetary contributions that are intended to fund the preparation and submission of this amicus brief.

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STATEMENT OF FACTS

This appeal arises from a dispute between two co-guardians as to the substance and legality of a court order issued by the Saginaw Probate Court on August 17, 2020 (the Order). The Michigan Court of Appeals previously reviewed the Order, and, on June 23, 2022, issued an opinion affirming in part and reversing in part that order. Appellant then filed this appeal to challenge provisions of the Order that the Michigan Court of Appeals affirmed.

Ms. Anna-Marie Bazakis is young woman with developmental disabilities. (Appendix A, 001-003). Pursuant to a petition for guardianship, on August 17, 2020, the Honorable Patrick J. McGraw of the Saginaw Probate Court issued an order appointing her parents, Christy Bomba (Appellant) and Andrew Bazakis (Appellee), as Ms. Bazakis's co-guardians. *Id*. Appellant, at some point, files for Supplemental Security Income (SSI) benefits with the U.S. Social Security Administration (SSA) on Ms. Bazakis's behalf based on Ms. Bazakis's disability. The SSA subsequently granted the application for SSI benefits. Since Ms. Bazakis has been deemed developmentally disabled, the SSA appointed Appellant as Ms. Bazakis's Representative Payee under the SSA's Representative Payee program, where Appellant receives and manages the SSI benefits on Ms. Bazakis's behalf.

On January 5, 2021, the probate court issued an order directing, in relevant parts, that "the Office for Social Security shall be informed of the co-guardianship arrangement for [Ms. Bazakis] and payments, when received, shall be split equally between the guardians." (Appendix B, 005). Thereafter, on April 27, 2021, Appellee filed a Motion to Compel seeking Appellant's compliance with the probate court's January 5th order. (Appendix C, 009). Appellant, in response, filed her own Motion to Amend the January 5th order, and a Motion to Quash a subpoena issued by Appellee to JP Morgan Chase Bank (Chase Bank), where Ms. Bazakis's SSI benefits are deposited.

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(Appendix D, 014). The subpoena directed Chase Bank to produce to Appellee monthly bank statements for any accounts at Chase Bank bearing Ms. Bazakis's name. (Appendix D, 024).

A little over a month later, on June 8, 2021, the Saginaw County Probate Court conducted a hearing on the motions filed by the parties, including issues related to the SSA and the SSI benefits. (Appendix E, 029; Tr 3:3-11). The first issue considered by the probate court concerned access to information about Ms. Bazakis's SSI claim. (Appendix E, 030; Tr 4:2-8). Counsel for Appellee conceded that only one person could serve as Ms. Bazakis's Representative Payee under the SSA's Representative Payee program, but he argued that Appellee, as co-guardian, should have access to the on-line Social Security file of Ms. Bazakis, along with access to information about the bank account used to hold and manage the SSI benefits awarded. (Appendix E, 030-031; Tr 4:19-5:16).

In response, Appellant's counsel indicated that Appellant had never setup an on-line account at the Social Security website for Ms. Bazakis, and therefore, could not provide the username and password requested by Appellee. (Appendix E, 032-035; Tr 6:25-9:23). The probate court expressed some skepticism about the lack of an on-line account, in part based on the court's own personal experience in dealing with the SSA for a developmentally disabled (DD) child. (Appendix E, 033; Tr 7:16-24). Appellant's counsel replied that Appellant's dealings with the SSA had been via the telephone, and that the only regular contact between the SSA and Appellant was the monthly payment of SSI benefits. (Appendix E, 034; Tr 8:16-20). In regard to information about the bank account, Appellant's counsel indicated that 19 days before the motion was filed, Appellant had provided bank statements to Appellee. (Appendix E, 031; Tr 5:19-25).

The parties then discussed other issues before the Court concluded,

> *The Court*: All right. You—I have at least 7 to 10 items that were addressed in your proofs and I've heard a little bit from you today.

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> Why don't I do this, both of you start writing and I'm going to tell you what I'll order and, then, you tell me if you see a problem with one of them, not arguing with what I did but how to do it.

(Appendix E, 042; Tr 16:3-9). In regard to Social Security items, the Court then stated,

> *The Court*: Number 1, payee [Appellant] will remain. If there is a portal access she's to give that, but if what she says is true that she just gets a check every month from social security and that's all she gets from social security, she's to make a photocopy of the check and then 50 percent of that should go to [Appellee's counsel's] IOLTA account or be a Zelle whichever [Appellee's counsel] chooses or some other easy pay so there's no problems or contact with each other
>
> ******
>
> Three, all [Ms. Bazakis's] bank accounts are to be joint with both co-guardians.

(Appendix E, 042; Tr 16:10-22). The parties then began discussing the details of the order. Appellant's counsel raised some issues.

> *Mr. Warner* [appellant's counsel]: "Your Honor, this is Curtis Warner. As far as the first order is the copy of the check, I guess I said it colloquially when she gets the check. It's actually a direct electronic deposit from the Social Security Administration that comes into the account, so I'm sorry if I used the colloquial check. It's a direct deposit, so she wouldn't be able to make a copy of any actual check.
>
> *The Court*: She can make a copy of the deposit as it goes in.
>
> *Mr. Warner* [appellant's counsel]: Yes. Yes.
>
> *The Court*: Email that.
>
> *Mr. Warner* [appellant's counsel]: Yes, she can and she's been doing that, and the other part of the order says all bank accounts are to be joint with all co-guardians. I—I had contacted the Chase Private Client services, and in fact they will not do that. There—their's only can be one representative payee. They will not add another person to it, so that is problematic. I mean we can try to do the order. We could send an order to Chase Bank but Chase Bank might not—might refuse to do it, so I just wanted—
>
> *The Court*: That's true. If they do refuse to do it, what I do is I go to another bank.

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Mr. Warner [appellant's counsel]: Again, it's our position is it's federal law and it can't be done under federal law but, I don't want to have to keep going to bank to bank to bank to find one that—and in my research and opinion in talking with bank, at least Chase Bank, it can't be done.

The Court: Is this only for the representative payee's social security account?

Mr. Warner [appellant's counsel]: That is correct, Your Honor.

The Court: And nothing else is in there at all?

Mr. Warner [appellant's counsel]: Correct, Your Honor. It is—it is just an account that is set up for Anna-Marie Bazakis with Christy Bomba being the representative payee. It's a separate account.

The Court: So the money goes in and comes right out?

Mr. Warner [appellant's counsel]: That is correct.

MR. PICARD: Your Honor, she can't give him access to the sign-in so that he can monitor that account without being as the named—named on the account itself.

The Court: Can she do that, Mr. Warner?

Mr. Warner [appellant's counsel]: It's kind of circumventing what Chase tells you you shouldn't be doing. I mean, the other—You can look at it, this is a discovery issue. What—what is the issue here. The court has ordered 50 percent. All they need to do is look at the social security website, see what the payment is supposed to be, see what the amount of money they receive month is, and divide by two. And all—all they need to do is to—equal those moneys up.

Now, she's also been providing statements about the stimulus checks that have came in. She's provided documentation to show that there is only 50 percent that is—is going there, so what—the whole thing is trying to circumvent. And this monitoring is really something the office of the inspector general does if they believe there is a crime that is involved, and they also with like subpoenas they target the specific reasons for it.

Here, you know, before—on April 8 before the motion's filed, Miss Bomba was already being transparent, she was doing what she was supposed to do and showing—they didn't want to come back to court—that she's giving 50 percent and including bringing up the stimulus checks and showing him that she's done that and also showing that to be 50 percent. So that—that part of

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> the order you're unfortunately asking something that can't be done, Your Honor, and the banks won't do it.
>
> *The Court*: The representative payee can only go to one bank?
>
> *Mr. Warner* [appellant's counsel]: No, Your Honor. What I'm saying is we would be going to multiple banks asking each bank to not comply with the federal law until we found one that did. A guy could be just going down this rabbit hole asking bank after bank after bank and I think maybe the easiest way to do is submit the order to one of these banks, to Chase and maybe one other bank and see if they'll do it, but if they don't, then submit, you know, a follow up supplement to the Court with the letters saying they can't comply with the order, Your Honor.
>
> *The Court*: Why don't you do that. Send it to them and in the meantime I'll check on my own because I have to do the same thing and I'll make sure that—I'll see from my standpoint and if you're wrong, then I'm going to award sanctions because I shouldn't have to be doing this on my own…
>
> *Mr. Picard* [appellee's counsel]: I was just going to say, Your Honor, even if she was the only one named on the account, if she gave him the password so he could access the on-line, as a co-guardian he would be doing his due diligence.
>
> *Mr. Warner* [appellant's counsel]: The password, because she has multiple Chase accounts, would give her—her own account. The other thing to do would be to set up another bank account in a neutral bank so there is no—and that can be done.
>
> *The Court*: Why don't you do that then. Why don't we make that the order. You set up a new account at a neutral bank and this information is shared that way.
>
> *Mr. Warner* [appellant's counsel]: Okay.
>
> *Mr. Picard* [appellee's counsel]: Thank you."

(Appendix E, 045-050; Tr 19:9-24:7).

As the probate court directed, Appellee's counsel prepared and submitted a proposed order to reduce to writing the orders issued from the bench by the probate court. (Appendix F). However, in the end, the probate court drafted its own order, issued on August 4, 2021 (the Order). The preamble to the Order states,

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> Subsequently the Court directed counsel for Bazakis to prepare an Order reflecting the Court's opinion. Counsel for [Appellee] submitted a proposed Order, counsel for [Appellant] objected and responded and asked that the Motions be set for hearing.
>
> The Court has reviewed the objections and responses over the transcript that was filed. The Court is preparing its own Order in order to make sure that one exists that the Court feels is proper. The Court's reasoning for doing so is for judicial economy and efficiency, the lack of cordiality amongst counsel, the expenses being incurred by the parties due to the ridiculous amount of argument and papers and law filed regarding the contents of an order." (Appendix G, 059-060).

The Order considered multiple issues. But for purposes of this brief, the focus is on the provisions related to the SSA and SSI benefits; paragraphs 1, 2, 3 and 5 of the probate court's order state,

> 1. Mother Christy Bomba [Appellant] remain as payee.
>
> 2. If there is a portal access, Christy Bomba [Appellant] is to provide any type of access she is given to father Andrew Bazakis [Appellee] ***{In the meantime Mother, Christy Bomba, [Appellant] is to set up a new account at a new bank so that a new password to that new account can be made and given to Father, Andrew Bazakis, [Appellee] so that both parties have access to a new account with a new password that only reflects the account of Anna Marie Bazakis}***
>
> 3. If she only receives a check every month from Social Security, then she is to make a photocopy of the check and then provide that photocopy to Mr. Picard [Appelle's counsel] and father Andrew Bazakis [Appellee]. Fifty percent of that Social Security check should go to Mr. Picard's [Appellee's counsel] ILOTA account or a Zelle whichever Mr. Picard [Appellee's counsel] chooses. ***{Mother [Appellant] shall make a copy of the means of deposit and provide that to Andrew Bazakis [Appelee], in the event direct deposits are made.}***
>
> * * * * *
>
> 5. All of Anna Bazakis' bank accounts are to be joint with the Co-Guardians." (Emphasis in original).
>
> (Appendix G, 060 ¶¶ 1, 2, 3, and 5).

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Appellant filed an appeal with the Michigan Court of Appeals challenging the Order. On June 23, 2022, the Court of Appeals issued an opinion addressing the Social Security issues raised along with other issues. Regarding Paragraph 3 of the Order that directs Appellant to pay half of the SSI benefits to Appellee, the Court of Appeals ruled that this order was preempted by the Social Security Act. The Court of Appeals reasoned that that order was preempted by federal law under 42 USC 1383(a)(2)(A)(ii)(I), and potentially 42 USC 407(a), which delegates to the Representative Payee the responsibility of determining how best to allocate SSI benefits disbursed to a Representative Payee on behalf of an SSI beneficiary. See *In re Bazakis*, 2022 Mich App LEXIS 2705, at * 13; 2022 WL 2276951 (Ct App, Jun. 23, 2022).

However, the Court of Appeals affirmed Paragraphs 2 and 5 the Order that directs Appellant is to setup a new bank account in Ms. Bazakis's name at a neutral bank, both co-guardians are to have password access to the account, and "all of the accounts in Ms. Bazakis's name would be held jointly between her coguardians." See *In re Bazakis*, 2022 Mich App LEXIS 2705, at *16. Appellant takes issue with opening joint accounts between Appellant, Appellee, and Ms. Bazakis, and for Ms. Bazakis's SSI benefits to be deposited in such a joint account. *Id*. Appellant argues that the probate court lacks authority to compel such action since it involves SSI benefits. *Id*. The Court of Appeals made two responses to Appellant's argument. *Id*. First, the Court of Appeals did not interpret Paragraph 2 of the Order as directing Appellant to create a joint bank account. *Id*. Rather, the Court of Appeals read Paragraph 2 as only requiring the creation of a separate account in the name of Ms. Bazakis but giving both co-guardians password access to that new account's information. *Id*. Second, the Court of Appeals stated that if the Order did require a joint account between Ms. Bazakis and her co-guardians, the Code of Federal Regulations contemplates SSI beneficiaries having joint accounts. *Id*. at *16-17. Therefore, federal law does not prohibit Ms.

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Bazakis from having joint bank accounts. *Id*. In turn, federal law does not preempt the Order if it indeed directs Appellant to setup a joint bank account for Ms. Bazakis.

Appellant now files an Application for Leave to Appeal regarding, in part, "Whether the probate court lacked jurisdiction to issue instructions related to the developmentally disabled person's Supplemental Security Income account and the administration thereof by mother [Appellant], in her capacity as the 'representative payee'?" On April 21, 2023, this Court issued an order inviting sections of the State Bar of Michigan, including the Social Security Lawyers Section, to file briefs amicus curiae. This brief is the response by the Social Security Lawyers Section.

ARGUMENT

I. The probate court's order does not require Appellant to place Ms. Bazakis's Supplemental Security Income (SSI) benefits into a joint account held by both the Appellant and Appellee, because the probate court's order is ambiguous on its face, and a review of the hearing transcript makes clear the probate court's intent to only grant Appellee viewing or information access to the account in which Ms. Bazakis's SSI benefits are deposited.

A. The probate court's order is ambiguous as to whether Appellant is to place Ms. Bazakis's SSI benefits into a joint account held by both the Appellant and Appellee, because Paragraphs 2 and 5 of the probate court's order conflict with each another.

Interpretation and construction of a court order follows the same rules as those that apply to the interpretation and constructions of contracts and other written documents. See *Wiitala v. Ford*, 2001 Mich App LEXIS 2009, at *7; 2001 WL 1179610 (Ct App, Oct. 5, 2001). Thus, in answering the question of what a court order directs begins with a plain reading of the court order itself. Court orders that are unambiguous on their face is to be followed as written, whereas court orders that are ambiguous on their face may be interpreted using available extrinsic evidence to determine the court's intent. *Wiitala*, 2001 Mich App LEXIS 2009, at *7 (citing *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992).

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Ambiguity exists only if one provision of a law "'irreconcilably conflicts' with another provision, or when it is equally susceptible to more than a single meaning." *Lafarge Midwest, Inc. v City of Detroit*, 290 Mich. App. 240, 247; 801 NW2d 629 (2010) (quoting *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003) and *Lansing Mayor v Mich Pub Serv Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004)). It is not sufficient that simply reasonable minds can differ as to the meaning of a provision, but "'all other conventional means of [ ] interpretation' have been applied and found wanting." *Id*. (quoting *Lansing Mayor*, 470 Mich at 165). Interpreting the meaning of a court order is a question of law that is reviewed de novo. See *Silberstein v Prof-Golf of America, Inc*., 278 Mich App 446, 460; 750 NW2d 615 (2008).

Here, the probate court's order is ambiguous on its face not because of the language used, but due to missing information and conflicting provisions. On August 4, 2021, the probate court entered an order (the Order) providing in relevant parts:

> 2. If there is a portal access, Christy Bomba [appellant] is to provide any type of access she is given to father Andrew Bazakis [appellee]. ***{In the meantime Mother, Christy Bomba, [appellant] is to set up a new account at a new bank so that a new password to that new account can be made and given to Father, Andrew Bazakis, [appellee] so that both parties have access to a new account with a new password that only reflects the account of Anna Marie Bazakis}***
>
> […]
>
> 5. All of Anna Bazakis' bank accounts are to be joint with the Co-Guardians.

(Appendix G, 060 ¶¶ 2 and 5) (emphasis by the probate court).

The Order is ambiguous in the first sentence of Paragraph 2 as it does not provide information as to what "portal" access is referring to. *Id*. Is it an online bank? The Social Security Administration (SSA) account? Without more information it is impossible to know what portal

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Appellant is supposed to be providing access to. Paragraph 2 then continues by directing Appellant to establish "a new account at a new bank so that a new password to that new account can be made and given to [Appellee], so that both parties have access to a new account with a new password that only reflects the account of [Ms. Bazakis]." (Appendix G, 060 ¶ 2). Reading the two sentences of Paragraph 2 together, one can attempt to infer that perhaps the portal access referenced in the first sentence of Paragraph 2 concerns access to a bank account, since bank account was the subject matter of the second sentence and the two sentences are in the same paragraph. If that were the case, it begs the question, why is the probate court ordering the creation of a new bank account if one already exists, and the probate court has already ordered for Appellant to provide Appellee with access to that existing account?

In Paragraph 5 of the Order, the probate court then directs that "[a]ll of [Ms. Bazakis's] bank accounts are to be joint with the Co-Guardians." (Appendix G, 060 ¶ 5). Read plainly, Paragraph 5 requires that ***all*** (emphasis added) of Ms. Bazakis's bank accounts to be joint accounts with her co-guardians; there are no exceptions noted. Paragraph 5 makes no distinction between a bank account that holds Ms. Bazakis's SSI benefits versus one that does not. Taken at face value, and in conjunction with Paragraph 2 of the Order, it then becomes unclear why the probate court is directing Appellant to grant Appellee access to a bank account to which the probate court has already order Appellee to be a joint owner. As joint owner, Appellee would have equal access to the jointly held account and would not require Appellant's permission. Additionally, whereas Paragraph 2 only grants Appellee "access" to a bank account bearing Ms. Bazakis's name, Paragraph 5 of the order directs that her co-guardians, both Appellant and Appellee, be joint owners of all Ms. Bazakis's bank accounts, a significantly higher level of interest in these bank accounts than mere access. Given the lack of clarity and conflicting level of access that the

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Appellant is directed to give to Appellee, the Order is ambiguous. Because of this ambiguity the Order is subject to construction and interpretation and extrinsic evidence may be utilized to provide clarity.

B. The hearing transcript and other extrinsic evidence show that the probate court did not intend for the Order to require Appellant to place Ms. Bazakis's SSI benefits into a joint account held by both the Appellant and Appellee.

Where the plain language of a court order is ambiguous, construction of the court order becomes permissible. *Wiitala*, 2001 Mich App LEXIS 2009, at *7. Construction becomes a question of fact for which extrinsic evidence may be introduced to determine what the court intends through its order. *Id*.

The August 4, 2021, probate court order (the Order) that gave rise to the instant appeal stemmed from a probate court hearing held June 8, 2021. (Appendix E, 029; Tr 3:2-11). The hearing was to address various motions filed by Appellant and Appellee concerning their co-guardianship of their developmentally disabled daughter, Ms. Bazakis. (Appendix E, 029; Tr 3:3-11). During that hearing, after arguments from both parties' counsel, the probate court orders from the bench that,

> *The Court:* Number 1 [representative] payee, mom will remain. If there is a ***portal access*** she is to give that, but if what she says is true [that she does not have access to an account with Social Security] that she just gets a check every month from social security and that's all she gets from social security, she's to make a photo copy of the check […]. (Emphasis added)

(Appendix E, 042; Tr 16:10-18). The term "portal access" was only used once during the hearing, and it was used in reference to an account with the Social Security Administration (SSA) as opposed to a bank. *Id*. Therefore, the "portal access" noted in the first sentence to Paragraph 2 of the Order refers not to portal access to a bank account, but rather an account with the SSA, if such an account exists for Ms. Bazakis.

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Then, the probate court orders from the bench, "…all Anna's bank accounts are to be joint with both co-guardians." (Appendix E, 042; Tr 16:21-22). Appellant's counsel raised issue with this portion of the Order, arguing that Appellant's counsel had been in contact with private client services at Chase bank and was advised that Chase bank would not allow more than one representative payee on an account with Ms. Bazakis. (Appendix E, 045; Tr 19:21-20:13). The probate court responds by suggesting that Appellant consult another financial institution, other than Chase, that may not limit the number of representative payees on an account. (Appendix E, 046; Tr 20:6-7). Appellant's counsel then argues that what the probate court is ordering Appellant to do violates a federal law, and by requiring Appellant's counsel to consult one financial institution after another, the probate court is asking Appellant's counsel to go down a "rabbit hole" looking for a financial institution that would be willing to violate that federal law. (Appendix E, 048; Tr 22:11-21).

After much back and forth between the probate court and Appellant's counsel, Appellee's counsel then interjects to this exchange, offering as a solution that instead of Appellee being added to Ms. Bazakis's bank account, as the probate court initially attempted to order, Appellant can simply share the username/password for online access to that account. (Appendix E, 049; Tr 23:17-21). Appellee's counsel argued that by having that access, Appellee "as co-guardian…would be doing his due diligence" in seeing how the funds in Ms. Bazakis's bank account are spent. *Id*. However, this suggestion raised its own problems. Appellant's counsel argues that in addition to Ms. Bazakis's account with Chase, Appellant also has her own personal bank account with Chase as well. (Appendix E, 049-050; Tr 23:22-24:1). Both accounts are managed by Appellant through a single online login. *Id*. Consequently, in directing Appellant to share her online login with Appellee for Chase bank, the probate court's order would effectively

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give Appellee access to Appellant's personal financial information in addition to Ms. Bazakis's information. *Id*. To address this new concern raised by Appellant's counsel, the probate court amended its original order that all Ms. Bazakis's account be joint with her co-guardians. (Appendix E, 050; Tr 24:2-5). The probate court stated, "[why] don't we make that the order. You [meaning the Appellant] set up a new account at a neutral bank and this information [meaning the online access and associated bank transactions] is shared that way." *Id*. Both parties' counsel agreed. (Appendix E, 050; Tr 24:6-7).

The probate court did not intend for the Order to require Appellant to place Ms. Bazakis's SSI benefits into a joint account held by both the Appellant and Appellee. As the exchange between the probate court and the parties' counsel shows, while the probate court initially ordered for all of Ms. Bazakis's bank accounts to be joint with her co-guardians, in response to objection raised by Appellant's counsel at the hearing, and the discussions with both counsels that followed, a different course of action was agreed upon and ordered. It was ordered that Appellant will setup a new account at a new bank for Ms. Bazakis, and then, Appellant is to share with Appellee the username/password to that new account. In essence, the probate court's ruling from the bench is captured in sentence 2 to Paragraph 2 of the Order. Paragraph 5 of the Order, while originally ordered from the bench at hearing, was amended verbally on the recorded and superseded by the contents of sentence 2 to Paragraph 2 of the Order.

It is noteworthy that the probate court had originally ordered for Appellee's counsel to draft an order consistent with the orders issued by the probate court from the bench at hearing. (Appendix E, 050; Tr 24:8-13). Pursuant to that request, Appellee's counsel drafted a proposed order for review and consent by Appellant's counsel and then signature by the probate court. (Appendix F, 056). Regrettably, arguments between counsel as to the language and substance of

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the order ensued, thus prompting the probate court to draft its own order. (Appendix G, 059). The probate court states in the Order that:

> [It] is preparing its own Order in order to make sure that one exists that the Court feels is proper. The Court's reasoning for doing so is for judicial economy and efficiency, the lack of cordiality amongst counsel, the expenses being incurred by the parties due to the ridiculous amount of argument and papers and law filed regarding contents of an order.

(Appendix G, 060). Indeed, the probate court made plain the frustration it felt in response to the actions and behavior of the parties' counsel, and that frustration may have caused the probate court to inadvertently include in its order the original directive for all of Ms. Bazakis's bank accounts to be joint with her co-guardians.

II. If this Court finds that the Order does require Appellant to place Ms. Bazakis's SSI benefits into a joint account held by both the Appellant and Appellee, the Order is prohibited by principles of federal preemption.

The Supremacy Clause of the United States Constitution states

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof […] shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. [US Const, art VI, cl 2.]

Under the Supremacy Clause, Congress may preempt state action by statute or by federal regulation. See *In re Vansach Estate*, 324 Mich App 371, 390; 922 NW2d 136 (2018), see also *Hillsborough County v. Automated Medical Laboratories, Inc*. 471 U.S. 707, 713; 105 S Ct 2371 (1985). Federal pre-emption of state action can take one of three forms, express preemption, conflict preemption, and field preemption. See *In re Vansach Estate*, 324 Mich App at 390. Express preemption requires a clear statement of Congress's intent to preempt state action. See *Konynenbelt v. Flagstar Bank, F.S.B.,* 242 Mich. App. 21, 26; 617 NW2d 706 (2000).

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"Preemption of state law by federal regulation is not favored," therefore, this Court has ruled that it "will not find express preemption unless a regulation clearly so state." *Id*. at 29.

In contrast, conflict and field preemption may be implied. *Id*. Conflict preemption exists where state law directly conflicts with federal law or with the purposes and objectives of Congress. *Id*. Field preemption on the other hand occurs where Congress intends to foreclose any state regulation in a particular field or area, regardless of whether "state law is consistent or inconsistent with 'federal standards'". *Foster v. Foster*, 505 Mich 151, 166; 949 NW2d 102 (2020) (citing *Oneok, Inc. v Learjet, Inc*. 575 US 373, 377; 135 S Ct 1591 (2015)) (internal citation omitted). Congress may make its intention to foreclose state regulation known explicitly through express statutory language, or implicitly through a statute's structure and purpose. *Id*. at 167 (citing *Arbuckle v Gen Motors LLC*, 499 Mich 521, 532; 885 NW2d 232 (2016)).

The ultimate goal in any preemption analysis is to determine the purpose Congress aims to accomplish. *Id*. Questions concerning whether federal law preempts state action are questions of law that are reviewed de novo. See *Foster*, 505 Mich at 165. The party claiming federal preemption of state action has the burden of proving it. See *Konynenbelt*, 242 Mich App at 29.

Title XVI of the Social Security Act authorizes the Commissioner of Social Security to pay benefits to "every aged, blind, or disabled individual who is determined to be eligible on the basis of [her] income and resources". 42 USC § 1381a. These monthly benefits are known as Supplemental Security Income or SSI benefits, and they are payable to adults and minors alike so long as they meet the requirements of the program. 20 CFR § 416.202; 20 CFR § 416.906. SSI benefits are a need-based program with strict income and asset, or resource, limits. 20 CFR § 416.1100. Given their importance to beneficiaries, federal law provides Social Security benefits special protection. Under 42 USC § 407(a),

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> The right of any person to any future payments under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subjection to execution, levy, attachment, garnishment, ***or other legal process*** […] (emphasis added).

42 USC § 407(a). This same protection is extended to SSI benefits under 42 USC § 1383(d). See 42 USC § 1383(d). Courts have affirmed the protections that Social Security and SSI benefits enjoy under federal law. See *Philpott v Essex County Welfare Bd*., 409 US 413, 93 S Ct 590 (1973) (Social Security funds do not lose the protection under section 407 from being deposited into a bank account);[1] see also, *NCNB Fin. Servs. v Shumate*, 829 FSupp 178 (W.D. Va. 1993), affd. 45 F.3d 427, cert. Denied 115 S Ct 2616 (As long as commingled funds in a bank account can reasonably be traced to Social Security, those funds retain their protection from legal process under section 407 of the Social Security Act).

In 1939, Congress passed legislation authorizing the SSA to establish the Representative Payee program.[2] With respect to the SSI benefit program, of which Ms. Bazakis is a beneficiary, the Social Security Act (the Act) provides:

> Upon a determination by the Commissioner of Social Security that the interest of such individual would be served thereby, such payments shall be made, regardless of the ***legal competency or incompetency of the individual*** […] to another individual or an organization […] for the use and benefit of the individual […] (emphasis added).

42 USC § 1383(a)(2)(A)(ii)(I). The "another individual or an organization" referenced in the statute is known as a "representative payee." *Id*. The Act then outlines the qualifications for an individual to serve as a representative payee, the process by which a representative payee may be

[1] Superseded by statute on other grounds. See *Luttrell v. Luttrell*, 994 NE2d 298, 303 n3 (Ind Ct App 2013)
[2] Social Security Administration, Training Organizational Representative Payee, available at https://www.ssa.gov/payee/LessonPlan-2005-2.htm#:~:text=,INTRODUCTION,else%20to%20manage%20their%20benefits.

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appointed and their appointment challenged, a representative payee's responsibilities, and how they may be removed and penalized. See 42 USC § 1383(a)(2)(B) *et seq*. Congress then vests in the Commissioner of SSA the authority to "make such administrative and other arrangements as may be necessary or appropriate to carry out the Commissioner's functions under [the Act]." 42 USC § 1383b(a).

The Act imposes mandatory qualifications for individuals seeking to serve as representative payee. 42 USC §§ 1383(a)(2)(B)(iii)-(v); 20 CFR § 416.622. Certain individuals are categorically prohibited from serving as a representative payee, including (1) persons convicted of committing certain crimes and violations; (2) persons or organizations whose status as payee has been revoked for fund misuse; (3) certain creditors of the beneficiary, and (4) Social Security beneficiaries who themselves have a representative payee. *Id*. Absent an advanced designation of a representative payee, for adult beneficiaries, the order of preference in selecting payees is,

> (1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;
>
> (2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;
>
> (3) A public or nonprofit agency or institution having custody of the beneficiary;
>
> (4) A private institution operated for profit and licensed under State law, which has custody of the beneficiary; and
>
> (5) Persons other than above who are qualified to carryout the responsibilities of a payee and who are able and willing to serve as a payee for the beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.

20 CFR § 416.621.

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The SSA must investigate and have adequate evidence that payment of benefits through a representative payee is in the interest of the beneficiary before doing so. 42 USC § 1383(a)(2)(B)(i). As part of the appointment process, the SSA undertakes several precautionary measures including a face-to-face interview,[3] where the SSA will verify the proposed payee's identity, social security number, criminal history, confirm that the proposed payee is not categorically prohibited in serving as payee, and in some cases, consider the proposed payee's income and resources. See 42 USC § 1383(a)(2)(B)(ii) and (vi); 20 CFR § 416.624. The agency's officers, who conduct these interviews, are instructed to look for evidence of the beneficiary's abuse or neglect, which must be reported to the applicable state health or welfare agency. See U.S. Soc. Sec. Admin., Program Operations Manual System (POMS), GN 00502.138 ("Evidence of Neglect or Abuse Discovered During Initial Interview or Payee Investigation"). The SSA's decision to appoint a representative payee may be challenged through administrative appeal. 42 USC § 1383(a)(2)(B)(xi); 20 CFR. § 416.630.

Once appointed, a representative payee has several duties,

A representative payee has a responsibility to—

> (a) ***Use the benefits received on [the beneficiary's] behalf only for [the beneficiary's] use and benefit*** in a manner and for the purposes he or she determines under the guidelines in this subpart, to be in [the beneficiary's] best interests (emphasis added);
>
> (b) ***Keep any benefits received on [the beneficiary's] behalf separate from his or her own funds and show [the beneficiary's] ownership of these benefits unless he or she is [the beneficiary's] spouse or natural or adoptive parent or stepparent and lives in the same household with [the beneficiary]***…(emphasis added);
>
> (c) Treat any interest earned on the benefits as [the beneficiary's] property;

[3] The SSA may waive the face-to-face interview requirement if such an interview would be impracticable and prove to cause the payee applicant undue hardship. 20 CFR § 416.624(c).

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> (d) Notify [the SSA] of any event or change in [the beneficiary's] circumstances that will affect the amount of benefits [the beneficiary] receive, [the beneficiary's] right to receive benefits, or how [the beneficiary] receive them;
>
> (e) Submit to [the SSA], upon [the SSA's] request, a written report accounting for the benefits received on [the beneficiary's] behalf, and make all supporting records available for review if requested by [the SSA];[4]
> (f) Notify [the SSA] of any change in his or her circumstances that would affect performance of his/her payee responsibilities; and
>
> (g) Ensure that [the beneficiary is] receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits.

20 CFR § 416.635. Further, federal statute or regulation provide specific directions to representative payees as to the appropriate use of the benefits disbursed to them and provides for civil and criminal liability in the event of misuse. 42 USC § 1383(a)(2)(H)(i); 20 CFR § 416.641.

Misuse is defined by statute as occurring "in any case in which the representative payee receives payment under this title […] for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person." 42 USC § 1383(a)(2)(A)(iv). The SSA considers the payee to have met the "use and benefit" requirement when benefits are used for the beneficiary's current maintenance, which includes "costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items."[5]

[4] Annual written reporting on the use of benefits by representative payees is required under statute and Social Security regulation. 42 USC § 1383(a)(2)(C)(i); 20 CFR § 416.665. However, it is not required where the representative payee is "(aa) a parent, or other individual who is a legal guardian of, a minor child entitled to such payment who primarily resides in the same household; (bb) a parent of an individual entitled to such payment who is under a disability who primarily resides in the same household; or (cc) the spouse of the individual entitled to such payment." 42 USC § 1383(a)(2)(C)(iv). Nevertheless, even when exempt from annual reporting requirements, representative payees are still expected to maintain records of benefits received and funds spent as "the Commissioner of Social Security may require a report at any time from any representative payee." 42 USC § 1383(a)(2)(C)(v).

[5] For minor beneficiaries who are in receipt of past-due benefits above a set amount, federal statute and regulations direct that a separate account be set up for the minor child and for those past-due benefits to be used for a) medical treatment and education or job skills training; b) personal needs assistance, special equipment housing modification and therapy or rehabilitation, if related to the child's impairment, and more. 20 CFR § 416.640.

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20 CFR § 416.640(a). If a representative payee, "[f]ails to cooperate, within a reasonable time, in providing evidence, accounting, or other information [the SSA] request(s)," showing no misuse of benefits under the payee's management, the SSA will terminate payments to the payee, and then either direct payment to a new payee, the beneficiary, or suspend payments entirely. 20 CFR § 416.650. In cases where a representative payee has "knowingly and willfully converted such benefit or any part thereof to a use other than for the use of [the beneficiary] […, the payee] shall be fined under title 18, United States Code, imprisoned not more than 5 years, or both." 42 USC § 1383a(a)(4).

A. Application of field preemption principles shows that Congress intends to preempt state action that regulate representative payees and their management of SSI benefits disbursed to them.

Unlike in a guardianship petition, neither federal statute nor regulation require the finding of legal incompetency as a threshold determination for the SSA to appoint a representative payee for a Social Security or SSI beneficiary. See 42 USC § 1383(a)(2)(A)(ii)(I). While a legal guardian for a legally incompetent individual may be appointed as that beneficiary's representative payee, and by regulation legal guardians are the preferred candidate to serve as payee where a guardian exists, it is not a binding requirement on the agency to appoint the legal guardian to that role. See 20 CFR § 416.621(a)(1). Social Security regulation states, "[i]f the beneficiary is a legally incompetent individual, we [meaning the SSA] may appoint the legal guardian ***or some other person*** as a representative payee" (emphasis added). 20 CFR § 416.601(b)(2). Once the representative payee is appointed, they are required to follow the complex statutory and regulatory scheme that governs their duties, monitoring, and removal of representative payees as set by Congress and detailed above. See 42 USC § 1383(a)(2)(B) *et seq*.

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Courts in other states appear to reach different conclusions on the question of federal preemption of state action regulating representative payees depending on whether the state action arises out of civil versus criminal proceedings. The Indiana Court of Appeals recently found field preemption on the regulation payee action in a state civil case. See *Randall v. Woodson*, 2023 Ind. App. LEXIS 183, 2023 WL 4055895 (Ind Ct App, Jun. 19, 2023). In *Randall*, the personal representative of the estate of a deceased Social Security beneficiary sued the decedent's representative payee in state court on claims of "breach of fiduciary duty, fraud, conversion, and unjust enrichment." *Randall*, 2023 Ind. App. LEXIS 183, at *2. Finding no federal statute or regulation that either expressly precluded state court action, or granted concurrent jurisdiction, in such cases, the Indiana Court of Appeals evaluated the existing body of federal laws regulating representative payees and found field preclusion. *Randall*, 2023 Ind. App. LEXIS 183, at *7. The Indiana Court of Appeals reasoned that field preclusion was implied by the "comprehensive scheme directed at preventing, identifying, and rectifying the misuse of benefit funds by representative payees" found under federal law. *Id*. Therefore, the state court claims raised could not proceed.

In contrast, the Court of Appeals of Ohio found in *State v. Wallace*, 160 Ohio App 3d 528; 828 NE2d 125 (2005), that sec. 1383 of the Act, which provides for civil and criminal penalties in cases of knowing and willful conversion of benefit funds by representative payees, does not preempt Ohio theft statute. *Id*. The Court of Appeals of Ohio's decision relied in part on the U.S. Supreme Court's analysis of the federal preemption question in *Hillsborough County v. Automated Medical Laboratories*, 471 US 707, 717; 105 S Ct 2371 (1985). In *Hillsborough*, the U.S. Supreme Court rejected the argument that Congressional intent to pre-empt state action may be inferred from the comprehensiveness of federal agency regulation, because by "their specialized functions,

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agencies normally deal with problems in far more detail than does Congress." *Id*. *Hillsborough* concerns local city ordinances and regulations that expand upon federal statute and regulation of plasmapheresis centers. *Id*. at 710. In finding no field preemption, the *Hillsborough* court noted that the agency in question, the Federal Drug Administration, itself has issued a statement when promulgating the relevant regulations that the agency did not intend for its regulations to be exclusive. *Id*. at 714.

As outlined in *Randall* and above, federal statute and regulations comprehensively detail who is qualified to take on the role of representative payee appointed by the SSA. A beneficiary may challenge the appointment of a representative payee if the beneficiary disagrees. Federal law further outlines a payee's responsibilities, directs specific use of the funds under a payee's management on behalf of a beneficiary, and provides for the payee's removal and penalties in the event of misuse. In contrast to *Hillsborough*, there does not appear to be any statements by Congress, or the SSA, on whether they intend to pre-empt state regulation of representative payees through federal law. Additionally, the differing answers on the preemption question between cases involving civil versus criminal regulation of representative payee may be reconciled by the fact that the field of criminal law is traditionally occupied by the state. Where a field is traditionally occupied by states, there is a presumption that "the historic police powers of the [s]tates were not to be superseded by the [f]ederal [a]ct unless that was the clear and manifest purpose of Congress." *Hillsborough*, 471 US at 715. SSI benefits are federal benefits created under federal law. Therefore, it stands to reason that federal law preempts state regulation of this federal benefits where Congress has either directly, or through delegation of rulemaking powers to the SSA, established a complex regulatory scheme on the appointment of representative payees and their management of Social Security and SSI funds.

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B. Even if there is no field preemption, application of conflict preemption principles shows that Social Security regulations prohibit state action directing the joint ownership of bank accounts between a representative payee and the eligible individual of an account in which SSI benefits are deposited.

Among the duties that representative payees are required to observe, Social Security regulations state:

> A representative payee has a responsibility to—
>
> (a) Use the benefits received on your behalf ***only*** for [the beneficiary's] use and benefit in a manner and for the purposes he or she determines under the guidelines […] to be in your best interest (emphasis added);
>
> (b) ***Keep any benefits received on [the beneficiary's] behalf separate from his or her own funds and show [the beneficiary's] ownership*** of these benefits unless he or she is your spouse or natural or adoptive parent or stepparent and lives in the same household with you […] (emphasis added).

20 CFR §§ 416.635(a)-(b). Joint ownership of a bank account bears legal significance beyond the mere ability to view the bank account information. Under Michigan Law,

> When a deposit shall be made, in any bank by any person in the name of such depositor or any other person, and in form to be paid to either…such deposit thereupon and any additions thereto, made by either of such persons, upon the making thereof, shall become the property of such persons in joint tenants, and the same together with all interest thereon, shall be held for the exclusive use of the persons so name and may be paid to either during the lifetime of both.

MCL § 487.703. Consequently, when an account is jointly held by two or more persons in Michigan, it is presumed that they are equal contributors and equal owners of the deposited funds, absent evidence to the contrary, such that it may be subject to garnishment by the creditor of either. See *Daniel v Lazoski*, 209 Mich App 623; 531 NW2d 799 (1995). The financial institution that honors a withdrawal request by a co-owner is relieved of liability to other persons that have an ownership of the funds in the account. MCL § 487.717(1).

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Social Security regulations at 20 CFR §§ 416.635(a) and (b) require Appellant to only use Ms. Bazakis's Social Security benefits for Ms. Bazakis's needs, and to keep Appellant's own funds separate from the benefits received for Ms. Bazakis and show Ms. Bazakis's ownership of those funds and not Appellant or Appellee. The only exception to that rule is if Ms. Bazakis lives in the same household as Appellant. Here, Ms. Bazakis lives partly with Appellant and partly with Appellee. (Appendix B, 005). Consequently, Ms. Bazakis's living arrangement with Appellant does not fit squarely into the exception prohibiting joint account ownership under federal regulations. In effect the probate court's order would be asking Appellant to violate her responsibilities as a representative payee to Ms. Bazakis under 20 CFR §§ 416.635(a) and (b).

C. Requiring a joint account between Ms. Bazakis and her co-guardians, where Ms. Bazakis's SSI benefits is deposited, conflicts with Appellant's benefit management and reporting duties under federal statute and regulation.

If the probate court's order does indeed require Appellant to place Ms. Bazakis's SSI benefits into a joint account held by both the Appellant and Appellee, the probate court's order interferes with Appellant's directives as representative payee to ensure that Ms. Bazakis' SSI benefits are not misused and to account for the use of those funds. Federal regulations direct Appellant to use Ms. Bazakis's SSI benefits to cover the "costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items" for Ms. Bazakis. 20 CFR § 416.640(a). Any misuse of those SSI benefits would result in civil penalties in the form of repayment of the misused funds to the SSA by Appellant, or worse, fines and imprisonment up to 5 years. See 42 USC § 1383(a)(2)(H)(i); 20 CFR § 416.641; 42 USC § 1383a(a)(4).

Requiring Appellant to add Appellee as a joint owner on Ms. Bazakis's account would mean that Appellee will have equal use and access to Ms. Bazakis's SSI benefits under Michigan law. This arrangement would make it difficult, if not impossible, for Appellant to fulfill her

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fiduciary duty to Ms. Bazakis, and her responsibilities as a representative payee under 42 USC § 1383(a)(2)(A)(iv), in ensuring there is no misuse of Ms. Bazakis's benefits. How can Appellant be expected to appropriate manage funds when others have equal use and access to those same funds? How will Appellant prove that it was not she who misused funds, if there are such allegations, but rather others who also have access? The probate court's order would place Appellant at the mercy of Appellee since Appellant, as representative payee, is the one that must answer to the SSA, and not Appellee.

Notably, federal law permits the appointment of a single representative payee, an aspect of the Representative Payee program to which both parties agree. (Appendix E, 030-031; Tr 4:19-5:16). If Congress's intention is to allow multiple people to access and manage benefits on behalf of a beneficiary, why limit each beneficiary to a single representative payee? Why not allow co-representative payees? Therefore, any order from the probate court requiring Appellant to place Ms. Bazakis's SSI benefits into a joint account held by both the Appellant and Appellee is prohibited by principles of federal preemption as it conflicts with federal mandates placed on Appellant as Ms. Bazakis's representative payee and the intent to hold one person (or organization) responsible for the management of a beneficiary's benefits.

D. Even sharing a username/password may violate Congressional regulation of the actions of Social Security representative payees.

The probate court ordered the co-guardians to share username/password information to the bank account in which Ms. Bazakis's SSI benefits are deposited so they would both have "access" to information about the account. If access is limited to account information, then that may not infringe upon the duties of the representative payee. But if online access to the account gives the other co-guardian the ability to withdraw or transfer money out of the account, then that access infringes upon the duties of the representative payee and is prohibited by federal preemption.

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Whether sharing of username/password information as ordered by the probate court is prohibited may depend on the practices of the bank. If the bank can give "read only" access to the bank account, then that access may be permissible. But if access can only be full access (including control), then the probate court will need to find another way for the parties to share information.

At the hearing on June 8, 2021, counsel for Appellant stated that the representative payee was already providing copies of bank statements to the other co-guardian and paying half of the SSI benefits to him also. (Appendix E, 047-048; Tr 21:24-22:8). And Appellant's counsel also argued that disclosure was not even necessary, as the maximum SSI monthly benefit is a matter of public record on the SSA website and if the Appellant sends Appellee money every month, then Appellee knows if he is receiving half. (Appendix E, 047; Tr 21:6-14).

E. The Michigan Court of Appeals misapplied 20 CFR § 416.1208 in finding that federal law does not preempt the probate court's order directing Appellant to place Ms. Bazakis's SSI benefits into a joint account held by both the Appellant and Appellee.

In its decision, the Michigan Court of Appeals correctly found that Section 407 of the Act preempts the probate court's order directing Appellant to give half of Ms. Bazakis's SSI benefits to Appellee each month. However, it also found that "there is no authority holding that an individual receiving benefits cannot hold a joint account." *In re Bazakis*, 2022 Mich App LEXIS 3705, at *16. The Court of Appeals reasoned that such an ability is contemplated given Social Security regulations provide rules for how monies in joint accounts are to be counted when assessing an individual's eligibility for SSI benefits. *Id*. at 16-17. Social Security regulations state:

> (c) Jointly-held account---
>
> i. Account holders include one or more SSI claimants or recipients. If there is only one SSI claimant or recipient account holder on a jointly held account, we presume that all of the funds in the account belong to that individual. If

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> there is more than one claimant or recipient account holder, we presume that all the funds in the account belong to those individuals in equal shares.

20 CFR § 416.1208. The Court of Appeals is correct in that SSI beneficiaries may have jointly-held accounts, even though they may generate eligibility issues. Such accounts may exist prior to a person's application for benefits under the SSI program or even after the person has begun receiving SSI benefits. However, a clear distinction here is that the SSI beneficiary is not the person who is voluntarily setting up a joint account to which his/her SSI benefits will be deposited, it is the SSI beneficiary's representative payee who is being directed by order of the probate court to do so. In her role as representative payee, federal law imposes responsibilities on Appellant and limits her actions, responsibilities and limitations that are not necessarily imposed on the SSI beneficiary herself. Specifically, 20 CFR § 416.635(b) requires Appellant to keep Ms. Bazakis's SSI benefits separate from Appellant's own finances, and to hold the funds in such as a way as to show Ms. Bazakis's ownership of the funds, not Appellant or them both. Therefore, while federal law does not prevent an SSI beneficiary from holding his/her benefits in a joint account with others if that is his/her choice, federal law does prohibit an SSI beneficiary's representative payee from taking that course of action.

CONCLUSION

In conclusion, for the forgoing reasons, this Court should find that the probate court's August 4, 2021, order was ambiguous on its face, but a review of the relevant hearing transcript shows that the probate court did not intend to order Ms. Bazakis's Social Security benefits into a joint account held by both the Appellant and Appellee. However, if this Court so finds, the probate court's order is prohibited by principles of federal preemption because a review of the relevant

Social Security statutes and regulations shows Congress's implicit intent to preclude state regulation of Social Security representative payees in at least civil proceedings.

Date: July 26, 2023

Respectfully Submitted,

By the Amicus Brief Committee of the
Social Security Lawyers Section
State Bar of Michigan

/s/ Min Jian Huang
Min Jian Huang (P76454)
Committee Member

/s/ Sarah Ryan Schairbaum
Sarah Ryan Schairbaum (P55911)
Committee Chair

/s/ Crystal P. Bui
Crystal P. Bui (P77937)
Committee Member

/s/ Thomas A. Geelhoed
Thomas A. Geelhoed (P35522)
Committee Member

/s/ James R. Rinck
James R. Rinck (P34355)
Committee Member

/s/ Kerry Jane Spencer
Kerry Jane Spencer (P43782)
Committee Member

Attorneys for Amicus Curiae,
Social Security Lawyers Section
State Bar of Michigan

Pursuant to MCR 7.212(B)(3), the Statement of Facts and Argument sections of this brief consists of 9399 words, including footnotes.

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ADDENDUM TO BRIEF
PURSUANT TO MCR 7.212(C)(7)

MCL § 487.703 Deposit in name of joint beneficiaries; payment; receipt sufficient; deposits made payable to survivor; prima facie evidence.

When a deposit shall be made, in any bank by any person in the name of such depositor or any other person, and in form to be paid to either or the survivor of them, such deposits thereupon and any additions thereto, made by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants, and the same together with all interest thereon, shall be held for the exclusive use of the persons so named and may be paid to either during the lifetime of both, or to the survivor after the death of 1 of them, and such payment and the receipt or acquittance of the same to whom such payment is made shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.

When a deposit has been made, or shall hereafter be made, in any banking institution transacting business in this state, in the names of 2 or more persons, payable to either or the survivor or survivors, such deposit or any part thereof or any interest or dividend thereon and any additions thereto, made by any 1 of the said persons, shall become the property of such persons as joint tenants, and the same shall be held for the exclusive use of the persons so named and may be paid to any 1 of said persons during the lifetime of said persons or to the survivor or survivors after the death of 1 of them, and such payment and the receipt or acquittance of the same to whom such payment is made shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.

The making of the deposit in such form shall, in the absence of fraud or undue influence, be prima facie evidence, in any action or proceeding, to which either such banking institution or surviving depositor or depositors is a party, of the intention of such depositors to vest title to such deposit and the additions thereto in such survivor or survivors.

MCL § 487.717 Withdrawals of funds; liability of financial institution; deposits subject to setoff.

(1) Financial institutions shall honor withdrawals of funds pursuant to the withdrawal provisions of the statutory joint account contract. In so doing, they shall be relieved of liability to persons having a claim to ownership of the funds. A financial institution shall not be chargeable with changes in rights of withdrawal due to death or incompetency in absence of actual knowledge thereof.
(2) Deposits in statutory joint accounts shall be subject to setoff for obligations to the financial institution by persons designated in the statutory joint account contract as owners of the funds to the extent of the ownership at the date of setoff.

42 USC § 407 Assignment of benefits – (Excerpt)

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(a) In general. The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 USC § 1381a Basic entitlement to benefits

Every aged, blind, or disabled individual who is determined under part A to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Commissioner of Social Security.

42 USC § 1383 Procedure for payment of benefits – (Excerpt)

(a) Time, manner, form, and duration of payments; representative payees; promulgation of regulations

(1) Benefits under this subchapter shall be paid at such time or times and (subject to paragraph (10)) in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2)

(A)

(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii)

(I) Upon a determination by the Commissioner of Social Security that the interest of such individual would be served thereby, such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's "representative payee") for the use and benefit of the individual or eligible spouse.

(II) In the case of an individual eligible for benefits under this subchapter by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(iii) If the Commissioner of Social Security or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 405(j)(1) or 1007 of this title, the Commissioner of Social Security shall promptly terminate

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payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to an alternative representative payee of the individual or eligible spouse or, if the interest of the individual under this subchapter would be served thereby, to the individual or eligible spouse.

(iv)For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term "use and benefit" for purposes of this clause.

(B)

(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

(I) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Commissioner of Social Security in regulations).

(ii) As part of the investigation referred to in clause (i)(I), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under subchapter II, subchapter VIII, or this subchapter;

(II) verify the social security account number (or employer identification number) of such person;

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(V) obtain information concerning whether such person is a person described in section 1382(e)(4)(A) of this title;

(VI) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), whether the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, and whether certification of payment of benefits to such person has been revoked pursuant to section 405(j) of this title, by reason of misuse of funds paid as benefits under subchapter II, subchapter VIII, or this subchapter, and

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(VII) determine whether such person has been convicted (and not subsequently exonerated), under Federal or State law, of a felony provided under clause (xv), or of an attempt or a conspiracy to commit such a felony.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

(I)such person has previously been convicted as described in clause (ii)(III);

(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(VI), the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or certification of payment of benefits to such person under section 405(j) of this title has previously been revoked as described in section 405(j)(2)(B)(i)(VI) of this title;

(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration;

(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction;

(V) such person is a person described in section 1382(e)(4)(A) of this title,

(VI) except as provided in clause (xvii), such person has previously been convicted (and not subsequently exonerated) as described in clause (ii)(VII), or

(VII) such person's benefits under this subchapter, subchapter II, or subchapter VIII are certified for payment to a representative payee during the period for which the individual's benefits would be certified for payment to another person.

(iv) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this subchapter would be paid to such person pursuant to subparagraph (A)(ii).

(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual;

(II) a legal guardian or legal representative of such individual;

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in

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such facility, and the payment of benefits under this subchapter to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary;

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

(III) no other more suitable representative payee can be found.

(vii) In the case of an individual described in subparagraph (A)(ii)(II), when selecting such individual's representative payee, preference shall be given to—

(I) a certified community-based nonprofit social service agency (as defined in subparagraph (I));

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(III) a State or local government agency with fiduciary responsibilities; or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,

unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(viii) Subject to clause (ix), if the Commissioner of Social Security makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

(ix)

(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (viii) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Commissioner's

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determination, legally incompetent, under the age of 15 years, or described in subparagraph (A)(ii)(II).

(x) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interests of the individual entitled to such benefits.

(xi) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to pay such individual's benefits to a representative payee under this subchapter, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Commissioner of Social Security, and to judicial review of the Commissioner's final decision, to the same extent as is provided in subsection (c).

(xii) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(xiii) Any notice described in clause (xii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (xi) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(xiv) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

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(I) such person is described in section 1382(e)(4)(A) of this title,
(II) such person has information that is necessary for the officer to conduct the officer's official duties, and
(III) the location or apprehension of such person is within the officer's official duties.

(xv) The felony crimes provided under this clause, whether an offense under State or Federal law, are the following:

(I) Human trafficking, including as prohibited under sections 1590 and 1591 of title 18.
(II) False imprisonment, including as prohibited under section 1201 of title 18.
(III) Kidnapping, including as prohibited under section 1201 of title 18.
(IV) Rape and sexual assault, including as prohibited under sections 2241, 2242, 2243, and 2244 of title 18.
(V) First-degree homicide, including as prohibited under section 1111 of title 18.
(VI) Robbery, including as prohibited under section 2111 of title 18.
(VII) Fraud to obtain access to government assistance, including as prohibited under sections 287, 1001, and 1343 of title 18.
(VIII) Fraud by scheme, including as prohibited under section 1343 of title 18.
(IX) Theft of government funds or property, including as prohibited under section 641 of title 18.
(X) Abuse or neglect, including as prohibited under sections 111, 113, 114, 115, 116, or 117 of title 18.
(XI) Forgery, including as prohibited under section 642 and chapter 25 (except section 512) of title 18.
(XII) Identity theft or identity fraud, including as prohibited under sections 1028 and 1028A of title 18.
The Commissioner of Social Security may promulgate regulations to provide for additional felony crimes under this clause.

(xvi)

(I) For the purpose of carrying out the activities required under clause (ii) as part of the investigation under clause (i)(I), the Commissioner may conduct a background check of any individual seeking to serve as a representative payee under this subsection and may disqualify from service as a representative payee any such individual who fails to grant permission for the Commissioner to conduct such a background check.
(II) The Commissioner may revoke certification of payment of benefits under this subsection to any individual serving as a representative payee on or after January 1, 2019 who fails to grant permission for the Commissioner to conduct such a background check.

(xvii)

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(I) With respect to any person described in subclause (II)—

(aa) clause (ii)(VII) shall not apply; and

(bb) the Commissioner may grant an exemption from the provisions of clause (iii)(VI) if the Commissioner determines that such exemption is in the best interest of the individual entitled to benefits.

(II) A person is described in this subclause if the person—

(aa) is the custodial parent of a minor child for whom the person applies to serve;

(bb) is the custodial spouse of the beneficiary for whom the person applies to serve;

(cc) is the custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, for whom the person applies to serve;

(dd) is the custodial court appointed guardian of the beneficiary for whom the person applies to serve;

(ee) is the custodial grandparent of a minor grandchild for whom the person applies to serve;

(ff) is the parent who was previously representative payee for his or her minor child who has since turned 18 and continues to be eligible for such benefit; or

(gg) received a presidential or gubernatorial pardon for the relevant conviction.

(C)

(i) In any case where payment is made under this subchapter to a representative payee of an individual or spouse, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(ii) Clause (i) shall not apply in any case where the representative payee is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(iii) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the representative payee is the institution.

(iv)

(I) Clause (i) shall not apply in any case where the representative payee is—

(aa) a parent, or other individual who is a legal guardian of, a minor child entitled to such payment who primarily resides in the same household;

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(bb) a parent of an individual entitled to such payment who is under a disability who primarily resides in the same household; or

(cc) the spouse of the individual entitled to such payment.

(II) The Commissioner of Social Security shall establish and implement procedures as necessary for the Commissioner to determine the eligibility of such parties for the exemption provided in subclause (I). The Commissioner shall prescribe such regulations as may be necessary to determine eligibility for such exemption.

(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Commissioner of Social Security may require a report at any time from any representative payee, if the Commissioner of Social Security has reason to believe that the representative payee is misusing such payments.

(vi) In any case in which the person described in clause (i) or (v) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (v), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

*****

(H)

(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

*****

(d) Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations

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(1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II.

(2)

(A) The provisions of section 406 of this title (other than subsections (a)(4) and (d) thereof) shall apply to this part to the same extent as they apply in the case of subchapter II, except that such section shall be applied—

(i) by substituting, in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2) [1] the phrase "(as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II made pursuant to section 1320a–6(a) of this title)" for the parenthetical phrase contained therein;

(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase "paragraph (7)(A) or (8)(A) of section 1383(a) of this title or the requirements of due process of law" for the phrase "subsection (g) or (h) of section 423 of this title";

(iii) by substituting, in subsection (a)(2)(C)(i), the phrase "under subchapter II" for the phrase "under subchapter XVI";

(iv) by substituting, in subsection (b)(1)(A), the phrase "pay the amount of such fee" for the phrase "certify the amount of such fee for payment" and by striking, in subsection (b)(1)(A), the phrase "or certified for payment";

(v) by substituting, in subsection (b)(1)(B)(ii), the phrase "deemed to be such amounts as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II made pursuant to section 1320a–6(a) of this title" for the phrase "determined before any applicable reduction under section 1320a–6(a) of this title)"; [2] and

(vi) by substituting, in subsection (e)(1)—

(I)"subparagraphs (B) and (C) of section 1383(d)(2) of this title" for "the preceding provisions of this section"; and

(II)"subchapter XVI" for "this subchapter".

(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under subsection (g) and reduced by the amount of any reduction in benefits under this subchapter or subchapter II pursuant to section 1320a–6(a) of this title), or

(ii) the amount of past-due benefits available after any applicable reductions under subsection (g) and section 1320a–6(a) of this title.

(C)

(i) Whenever a fee for services is required to be paid to an attorney from a claimant's past-due benefits pursuant to subparagraph (B), the

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Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

(ii)

(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed $75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2003 [3] take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant's past-due benefits.

(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

(v) Assessments on attorneys collected under this subparagraph shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this subchapter and related laws.

(D) The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

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42 USC § 1383a Penalties for fraud – (Excerpt)

(a)In general

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this subchapter,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized,

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person, or

(5) conspires to commit any offense described in any of paragraphs (1) through (3),

shall be fined under title 18, imprisoned not more than 5 years, or both, except that in the case of a person who receives a fee or other income for services performed in connection with any determination with respect to benefits under this subchapter (including a claimant representative, translator, or current or former employee of the Social Security Administration), or who is a physician or other health care provider who submits, or causes the submission of, medical or other evidence in connection with any such determination, such person shall be guilty of a felony and upon conviction thereof shall be fined under title 18, or imprisoned for not more than ten years, or both.

42 USC § 1383b Administration – (Excerpt)

(a)Authority of Commissioner

Subject to subsection (b), the Commissioner of Social Security may make such administrative and other arrangements (including arrangements for the determination of blindness and disability under section 1382c(a)(2) and (3) of this title in the same manner and subject to the same conditions as provided with respect to disability determinations under section 421 of this title) as may be necessary or appropriate to carry out the Commissioner's functions under this subchapter.

20 CFR § 416.202 Who may get SSI benefits.

You are eligible for SSI benefits if you meet all of the following requirements:

(a) You are—

(1) Aged 65 or older (subpart H);

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(2) Blind (subpart I); or
(3) Disabled (subpart I).

(b) You are a resident of the United States (§ 416.1603), and—
(1) A citizen or a national of the United States (§ 416.1610);
(2) An alien lawfully admitted for permanent residence in the United States (§ 416.1615);
(3) An alien permanently residing in the United States under color of law (§ 416.1618); or
(4) A child of armed forces personnel living overseas as described in § 416.216.

(c) You do not have more income than is permitted (subparts K and D).

(d) You do not have more resources than are permitted (subpart L).

(e) You are disabled, drug addiction or alcoholism is a contributing factor material to the determination of disability (see § 416.935), and you have not previously received a total of 36 months of Social Security benefit payments when appropriate treatment was available or 36 months of SSI benefits on the basis of disability where drug addiction or alcoholism was a contributing factor material to the determination of disability.

(f) You are not—
(1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);
(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or
(3) Violating a condition of probation or parole imposed under Federal or State law.

(g) You file an application for SSI benefits (subpart C).

20 CFR § 416.601 Introduction – (Excerpt)

(b) Policy used to determine whether to make representative payment.
(1) Our policy is that every beneficiary has the right to manage his or her own benefits. However, some beneficiaries due to a mental or physical condition or due to their youth may be unable to do so. Under these circumstances, we may determine that the interests of the beneficiary would be better served if we certified benefit payments to another person as a representative payee. However, we must select a representative payee for an individual who is eligible for benefits solely on the basis of disability if drug addiction or alcoholism is a contributing factor material to the determination of disability.
(2) If we determine that representative payment is in the interest of a beneficiary, we will appoint a representative payee. We may appoint a representative payee even if the beneficiary is a legally competent individual. If the beneficiary is a legally incompetent individual, we may appoint the legal guardian or some other person as a representative payee.
(3) If payment is being made directly to a beneficiary and a question arises concerning his or her ability to manage or direct the management of benefit payments, we will, if the beneficiary is 18 years old or older and has not been adjudged legally incompetent, continue to pay the beneficiary until we make a determination about his or her ability to

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manage or direct the management of benefit payments and the selection of a representative payee.

20 CFR § 416.621 What is our order of preference in selecting a representative payee for you?

As a guide in selecting a representative payee, we have established categories of preferred payees. These preferences are flexible. We will consider an individual's advance designees (see § 416.618) before we consider other potential representative payees in the categories of preferred payees listed in this section. When we select a representative payee, we will choose the designee of the beneficiary's highest priority, provided that the designee is willing and able to serve, is not prohibited from serving (see § 416.622), and supports the best interest of the beneficiary (see § 416.620). The preferences are:

(a) For beneficiaries 18 years old or older (except those described in paragraph (b) of this section), our preference is—

(1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law, which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for the beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.

(b) For individuals who are disabled and who have a drug addiction or alcoholism condition our preference is—

(1) A community-based nonprofit social service agency licensed by the State, or bonded;

(2) A Federal, State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(3) A State or local government agency with fiduciary responsibilities;

(4) A designee of an agency (other than a Federal agency) referred to in paragraphs (b)(1), (2), and (3) of this section, if appropriate; or

(5) A family member.

(c) For beneficiaries under age 18, our preference is—

(1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;

(2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;

(3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well being;

(4) A relative or stepparent who has custody of the beneficiary;

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(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well being;
(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and
(7) An authorized social agency or custodial institution.

20 CFR § 416.622 Who may not serve as a representative payee?

A representative payee applicant may not serve if he/she:

(a) Has been convicted of a violation under section 208, 811 or 1632 of the Social Security Act.
(b) Has been convicted of an offense resulting in imprisonment for more than 1 year. However, we may make an exception to this prohibition, if the nature of the conviction is such that selection of the applicant poses no risk to the beneficiary and the exception is in the beneficiary's best interest.
(c) Receives title II, VIII, or XVI benefits through a representative payee.
(d) Previously served as a representative payee and was found by us, or a court of competent jurisdiction, to have misused title II, VIII or XVI benefits. However, if we decide to make an exception to the prohibition, we must evaluate the payee's performance at least every 3 months until we are satisfied that the payee poses no risk to the beneficiary's best interest. Exceptions are made on a case-by-case basis if all of the following are true:
(1) Direct payment of benefits to the beneficiary is not in the beneficiary's best interest.
(2) No suitable alternative payee is available.
(3) Selecting the payee applicant as representative payee would be in the best interest of the beneficiary.
(4) The information we have indicates the applicant is now suitable to serve as a representative payee.
(5) The payee applicant has repaid the misused benefits or has a plan to repay them.
(e) Is a creditor. A creditor is someone who provides you with goods or services for consideration. This restriction does not apply to the creditor who poses no risk to you and whose financial relationship with you presents no substantial conflict of interest, and is any of the following:
(1) A relative living in the same household as you do.
(2) Your legal guardian or legal representative.
(3) A facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State.
(4) A qualified organization authorized to collect a monthly fee from you for expenses incurred in providing representative payee services for you, under § 416.640a.
(5) An administrator, owner, or employee of the facility in which you live and we are unable to locate an alternative representative payee.
(6) Any other individual we deem appropriate based on a written determination.

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Example 1: Sharon applies to be representative payee for Ron who we have determined needs assistance in managing his benefits. Sharon has been renting a room to Ron for several years and assists Ron in handling his other financial obligations, as needed. She charges Ron a reasonable amount of rent. Ron has no other family or friends willing to help manage his benefits or to act as representative payee. Sharon has demonstrated that her interest in and concern for Ron goes beyond her desire to collect the rent each month. In this instance, we may select Sharon as Ron's representative payee because a more suitable payee is not available, she appears to pose no risk to Ron and there is minimal conflict of interest. We will document this decision.

Example 2: In a situation similar to the one above, Ron's landlord indicates that she is applying to be payee only to ensure receipt of her rent. If there is money left after payment of the rent, she will give it directly to Ron to manage on his own. In this situation, we would not select the landlord as Ron's representative payee because of the substantial conflict of interest and lack of interest in his well being.

(f) Was convicted under Federal or State law of a felony for: Human trafficking, false imprisonment, kidnapping, rape or sexual assault, first-degree homicide, robbery, fraud to obtain access to government assistance, fraud by scheme, theft of government funds or property, abuse or neglect, forgery, or identity theft or identity fraud. We will also apply this provision to a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

(1) If the representative payee applicant is the custodial parent of a minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, custodial spouse of a beneficiary, custodial court-appointed guardian of a beneficiary, or custodial grandparent of the minor child beneficiary for whom the applicant is applying to serve as representative payee, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(2) If the representative payee applicant is the parent who was previously the representative payee for his or her minor child who has since turned age 18 and continues to be eligible for benefits, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee for that beneficiary. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

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(3) If the representative payee applicant received a Presidential or gubernatorial pardon for the relevant conviction, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

20 CFR § 416.624 How do we investigate a representative payee applicant?

Before selecting an individual or organization to act as your representative payee, we will perform an investigation.

(a) Nature of the investigation. As part of the investigation, we do the following:

(1) Conduct a face-to-face interview with the payee applicant unless it is impracticable as explained in paragraph (c) of this section.

(2) Require the payee applicant to submit documented proof of identity, unless information establishing identity has recently been submitted with an application for title II, VIII or XVI benefits.

(3) Verify the payee applicant's Social Security account number or employer identification number.

(4) Determine whether the payee applicant has been convicted of a violation of section 208, 811 or 1632 of the Social Security Act.

(5) Determine whether the payee applicant has previously served as a representative payee and if any previous appointment as payee was revoked or terminated for misusing title II, VIII or XVI benefits.

(6) Use our records to verify the payee applicant's employment and/or direct receipt of title II, VIII, or XVI benefits.

(7) Verify the payee applicant's concern for the beneficiary with the beneficiary's custodian or other interested person.

(8) Require the payee applicant to provide adequate information showing his or her relationship to the beneficiary and to describe his or her responsibility for the care of the beneficiary.

(9) Determine whether the payee applicant is a creditor of the beneficiary (see § 416.622(e)).

(10) Conduct a criminal background check on the individual payee applicant.

(b) Subsequent face-to-face interviews. After holding a face-to-face interview with a payee applicant, subsequent face-to-face interviews are not required if that applicant continues to be qualified and currently is acting as a payee, unless we determine, within our discretion, that a new face-to-face interview is necessary. We base this decision on the payee's past performance and knowledge of and compliance with our reporting requirements.

(c) Impracticable. We may consider a face-to-face interview impracticable if it would cause the payee applicant undue hardship. For example, the payee applicant would have to travel a great distance to the field office. In this situation, we may conduct the investigation to determine the payee applicant's suitability to serve as a representative payee without a face-to-face interview.

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20 CFR § 416.630 How will we notify you when we decide you need a representative payee?

(a) We notify you in writing of our determination to make representative payment. This advance notice explains that we have determined that representative payment is in your interest, and it provides the name of the representative payee we have selected. We provide this notice before we actually appoint the payee. If you are under age 15, an unemancipated minor under the age of 18, or legally incompetent, our written notice goes to your legal guardian or legal representative. The advance notice:

(1) Contains language that is easily understandable to the reader.

(2) Identifies the person designated as your representative payee.

(3) Explains that you, your legal guardian, or your legal representative can appeal our determination that you need a representative payee.

(4) Explains that you, your legal guardian, or your legal representative can appeal our designation of a particular person to serve as your representative payee.

(5) Explains that you, your legal guardian, or your legal representative can review the evidence upon which our designation of a particular representative payee is based and submit additional evidence.

(b) If you, your legal guardian, or your legal representative objects to representative payment or to the designated payee, we will handle the objection as follows:

(1) If you disagree with the decision and wish to file an appeal, we will process it under subpart N of this part.

(2) If you received your advance notice by mail and you protest or file your appeal within 10 days after you receive the notice, we will delay the action until we make a decision on your protest or appeal. (If you received and signed your notice while you were in the local field office, our decision will be effective immediately.)

20 CFR § 416.635 What are the responsibilities of your representative payee?

A representative payee has a responsibility to—

(a) Use the benefits received on your behalf only for your use and benefit in a manner and for the purposes he or she determines under the guidelines in this subpart, to be in your best interests;

(b) Keep any benefits received on your behalf separate from his or her own funds and show your ownership of these benefits unless he or she is your spouse or natural or adoptive parent or stepparent and lives in the same household with you or is a State or local government agency for whom we have granted an exception to this requirement;

(c) Treat any interest earned on the benefits as your property;

(d) Notify us of any event or change in your circumstances that will affect the amount of benefits you receive, your right to receive benefits, or how you receive them;

(e) Submit to us, upon our request, a written report accounting for the benefits received on your behalf, and make all supporting records available for review if requested by us;

(f) Notify us of any change in his or her circumstances that would affect performance of his/her payee responsibilities; and

(g) Ensure that you are receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits (see § 416.994a(i))

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if you are under age 18 (including cases in which your low birth weight is a contributing factor material to our determination that you are disabled).

20 CFR § 416.640 Use of benefit payments.

(a) Current maintenance. We will consider that payments we certify to a representive payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items.

Example: A Supplemental Security Income beneficiary is entitled to a monthly benefit of $264. The beneficiary's son, who is the representative payee, disburses the benefits in the following manner: Rent and Utilities $166 Medical 20 Food 60 Clothing 10 Miscellaneous 8 The above expenditures would represent proper disbursements on behalf of the beneficiary.

(b) Institution not receiving Medicaid funds on beneficiary's behalf. If a beneficiary is receiving care in a Federal, State, or private institution because of mental or physical incapacity, current maintenance will include the customary charges for the care and services provided by an institution, expenditures for those items which will aid in the beneficiary's recovery or release from the institution, and nominal expenses for personal needs (e.g., personal hygiene items, snacks, candy) which will improve the beneficiary's condition. Except as provided under § 416.212, there is no restriction in using SSI benefits for a beneficiary's current maintenance in an institution. Any payments remaining from SSI benefits may be used for a temporary period to maintain the beneficiary's residence outside of the institution unless a physician has certified that the beneficiary is not likely to return home.

Example: A hospitalized disabled beneficiary is entitled to a monthly benefit of $264. The beneficiary, who resides in a boarding home, has resided there for over 6 years. It is doubtful that the beneficiary will leave the boarding home in the near future. The boarding home charges $215 per month for the beneficiary's room and board. The beneficiary's representative payee pays the boarding home $215 (assuming an unsuccessful effort was made to negotiate a lower rate during the beneficiary's absence) and uses the balance to purchase miscellaneous personal items for the beneficiary. There are no benefits remaining which can be conserved on behalf of the beneficiary. The payee's use of the benefits is consistent with our guidelines.

(c) Institution receiving Medicaid funds on beneficiary's behalf. Except in the case of a beneficiary receiving benefits payable under § 416.212, if a beneficiary resides throughout a month in an institution that receives more than 50 percent of the cost of care on behalf of the beneficiary from Medicaid, any payments due shall be used only for the personal needs of the beneficiary and not for other items of current maintenance.

Example: A disabled beneficiary resides in a hospital. The superintendent of the hospital receives $30 per month as the beneficiary's payee. The benefit payment is disbursed in the following manner, which would be consistent with our guidelines: Miscellaneous canteen items $10 Clothing 15 Conserved for future needs of the beneficiary 5

(d) Claims of creditors. A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

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Example: A disabled beneficiary was determined to be eligible for a monthly benefit payment of $208 effective April 1981. The benefits were certified to the beneficiary's brother who was appointed as the representative payee. The payee conserved $27 of the benefits received. In June 1981 the payee received a bill from a doctor who had treated the beneficiary in February and March 1981. The bill was for $175. After reviewing the beneficiary's current needs and resources, the payee decided not to use any of the benefits to pay the doctor's bill. (Approximately $180 a month is required for the beneficiary's current monthly living expenses—rent, utilities, food, and insurance—and the beneficiary will need new shoes and a coat within the next few months.) Based upon the above, the payee's decision not to pay the doctor's bill is consistent with our guidelines.

(e) Dedicated accounts for eligible individuals under age 18.

(1) When past-due benefit payments are required to be paid into a separate dedicated account (see § 416.546), the representative payee is required to establish in a financial institution an account dedicated to the purposes described in paragraph (e)(2) of this section. This dedicated account may be a checking, savings or money market account subject to the titling requirements set forth in § 416.645. Dedicated accounts may not be in the form of certificates of deposit, mutual funds, stocks, bonds or trusts.

(2) A representative payee shall use dedicated account funds, whether deposited on a mandatory or permissive basis (as described in § 416.546), for the benefit of the child and only for the following allowable expenses—

(i) Medical treatment and education or job skills training;

(ii) If related to the child's impairment(s), personal needs assistance; special equipment; housing modification; and therapy or rehabilitation; or

(iii) Other items and services related to the child's impairment(s) that we determine to be appropriate. The representative payee must explain why or how the other item or service relates to the impairment(s) of the child. Attorney fees related to the pursuit of the child's disability claim and use of funds to prevent malnourishment or homelessness could be considered appropriate expenditures.

(3) Representative payees must keep records and receipts of all deposits to and expenditures from dedicated accounts, and must submit these records to us upon our request, as explained in §§ 416.635 and 416.665.

(4) The use of funds from a dedicated account in any manner not authorized by this section constitutes a misapplication of benefits. These misapplied benefits are not an overpayment as defined in § 416.537; however, if we determine that a representative payee knowingly misapplied funds in a dedicated account, that representative payee shall be liable to us in an amount equal to the total amount of the misapplied funds. In addition, if a recipient who is his or her own payee knowingly misapplies benefits in a dedicated account, we will reduce future benefits payable to that recipient (or to that recipient and his or her spouse) by an amount equal to the total amount of the misapplied funds.

(5) The restrictions described in this section and the income and resource exclusions described in §§ 416.1124(c)(20) and 416.1247 shall continue to apply until all funds in the dedicated account are depleted or eligibility for benefits terminates, whichever comes first. This continuation of the restrictions and exclusions applies in situations where funds remain in the account in any of the following situations—

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(i) A child attains age 18, continues to be eligible and receives payments directly;
(ii) A new representative payee is appointed. When funds remaining in a dedicated account are returned to us by the former representative payee, the new representative payee must establish an account in a financial institution into which we will deposit these funds, even if the amount is less than that prescribed in § 416.546; or
(iii) During a period of suspension due to ineligibility as described in § 416.1320, administrative suspension, or a period of eligibility for which no payment is due.

20 CFR § 416.641 Who is liable if your representative payee misuses your benefits?

(a) A representative payee who misuses your benefits is responsible for paying back misused benefits. We will make every reasonable effort to obtain restitution of misused benefits so that we can repay these benefits to you.
(b) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that a representative payee misused benefits and the representative payee is an organization or an individual payee serving 15 or more beneficiaries. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.
(c) Whether or not we have obtained restitution form the misuser, we will repay benefits in cases when we determine that an individual representative payee serving 14 or fewer beneficiaries misused benefits and our negligent failure in the investigation or monitoring of that representative payee results in the misuse. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.
(d) The term “negligent failure” used in this subpart means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but did not follow established procedures in our investigation or monitoring. Examples of our negligent failure include, but are not limited to, the following:

(1) We did not follow our established procedures in this subpart when investigating, appointing, or monitoring a representative payee;
(2) We did not investigate timely a reported allegation of misuse; or
(3) We did not take the steps necessary to prevent the issuance of payments to the representative payee after it was determined that the payee misused benefits.

(e) Our repayment of misused benefits under these provisions does not alter the representative payee's liability and responsibility as described in paragraph (a) of this section.
(f) Any amounts that the representative payee misuses and does not refund will be treated as an overpayment to that representative payee. See subpart E of this part.

20 CFR § 416.650 When will we select a new representative payee for you?

When we learn that your interest is not served by sending your benefit payment to your present representative payee or that your present payee is no longer able or willing to carry out payee responsibilities, we will promptly stop sending your payment to the payee. We will then send your benefit payment to an alternative payee or directly to you, until we find a suitable payee. We may suspend payment as explained in § 416.611(c) if we find that paying you directly would cause

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substantial harm and we cannot find a suitable alternative representative payee before your next payment is due. We will terminate payment of benefits to your representative payee and find a new payee or pay you directly if the present payee:

(a) Has been found by us or a court of competent jurisdiction to have misused your benefits;
(b) Has not used the benefit payments on your behalf in accordance with the guidelines in this subpart;
(c) Has not carried out the other responsibilities described in this subpart;
(d) Dies;
(e) No longer wishes to be your payee;
(f) Is unable to manage your benefit payments; or
(g) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information we request.

20 CFR § 416.665 How does your representative payee account for the use of benefits?

Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year (except for certain State institutions that participate in a separate onsite review program). We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to make accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required reports, we may require your payee to receive your benefits in person at the local Social Security field office or a United States Government facility that we designate serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or our past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

(a) Where you lived during the accounting period;
(b) Who made the decisions on how your benefits were spent or saved;
(c) How your benefit payments were used; and
(d) How much of your benefit payments were saved and how the savings were invested.

20 CFR § 416.906 Basic definition of disability for children.

If you are under age 18, we will consider you disabled if you have a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months. Notwithstanding the preceding sentence, if you file a new application for benefits and you are engaging in substantial gainful activity, we will not consider you disabled. We discuss our rules for determining disability in children who file new applications in §§ 416.924 through 416.924b and §§ 416.925 through 416.926a.

20 CFR § 416.1100 Income and SSI eligibility.

You are eligible for supplemental security income (SSI) benefits if you are an aged, blind, or disabled person who meets the requirements described in subpart B and who has limited income

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and resources. Thus, the amount of income you have is a major factor in deciding whether you are eligible for SSI benefits and the amount of your benefit. We count income on a monthly basis. Generally, the more income you have the less your benefit will be. If you have too much income, you are not eligible for a benefit. However, we do not count all of your income to determine your eligibility and benefit amount. We explain in the following sections how we treat your income for the SSI program. These rules apply to the Federal benefit and to any optional State supplement paid by us on behalf of a State (§ 416.2025) except as noted in subpart T and in the Federal-State agreements with individual States. While this subpart explains how we count income, subpart D of these regulations explains how we determine your benefits, including the provision that we generally use countable income in a prior month to determine how much your benefit amount will be for a month in which you are eligible (§ 416.420).

20 CFR § 416.1208 How funds held in financial institution accounts are counted.

(a) General. Funds held in a financial institution account (including savings, checking, and time deposits, also known as certificates of deposit) are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can use the funds for his or her support and maintenance by looking at how the individual holds the account. This is reflected in the way the account is titled.
(b) Individually-held account. If an individual is designated as sole owner by the account title and can withdraw funds and use them for his or her support and maintenance, all of the funds, regardless of their source, are that individual's resource. For as long as these conditions are met, we presume that the individual owns 100 percent of the funds in the account. This presumption is non-rebuttable.
(c) Jointly-held account —

(1) Account holders include one or more SSI claimants or recipients. If there is only one SSI claimant or recipient account holder on a jointly held account, we presume that all of the funds in the account belong to that individual. If there is more than one claimant or recipient account holder, we presume that all the funds in the account belong to those individuals in equal shares.

(2) Account holders include one or more deemors. If none of the account holders is a claimant or recipient, we presume that all of the funds in a jointly-held account belong to the deemor(s), in equal shares if there is more than one deemor. A deemor is a person whose income and resources are required to be considered when determining eligibility and computing the SSI benefit for an eligible individual (see §§ 416.1160 and 416.1202).

(3) Right to rebut presumption of ownership. If the claimant, recipient, or deemor objects or disagrees with an ownership presumption as described in paragraph (c)(1) or (c)(2) of this section, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure as described in paragraph (c)(4) of this section, which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Successful rebuttal establishes that the individual does not own some or all of the funds. The effect of successful rebuttal may be retroactive as well as prospective.

Example: The recipient's first month of eligibility is January 1993. In May 1993 the recipient successfully establishes that none of the funds in a 5-year-old jointly-

held account belong to her. We do not count any of the funds as resources for the months of January 1993 and continuing.

(4) Procedure for rebuttal. To rebut an ownership presumption as described in paragraph (c)(1) or (c)(2) of this section, the individual must:

(i) Submit his/her statement, along with corroborating statements from other account holders, regarding who owns the funds in the joint account, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent;

(ii) Submit account records showing deposits, withdrawals, and interest (if any) in the months for which ownership of funds is at issue; and

(iii) Correct the account title to show that the individual is no longer a co-owner if the individual owns none of the funds; or, if the individual owns only a portion of the funds, separate the funds owned by the other account holder(s) from his/her own funds and correct the account title on the individual's own funds to show they are solely-owned by the individual.

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CERTIFICATE OF SERVICE

On July 26, 2023, I filed via MiFILE, **Amicus Brief of the Social Security Lawyers Section of the State Bar of Michigan** and **Amicus Curiae Social Security Lawyers Section of the State Bar of Michigan's Appendices**, which will automatically send a copy to counsel for the parties who are registered MiFILE users. A copy of the documents filed was not served on attorney Marisa Copes, who is the last known counsel for Ms. Anna-Marie Margaret Bazakis but has since withdrawn her representation pursuant to Saginaw Probate Court Order dated May 9, 2023. At the time of the filing of the documents referenced above, there is no record of a new attorney for Ms. Anna-Marie Margaret Bazakis:

VIA MiFILE

PICARD & MCLEOD, P.L.L.C.
CHRISTOPHER A. PICARD (P35538)
Attorney for Andrew Bazakis
820 N. Michigan Avenue
Saginaw, Michigan 48602
(989) 753-4441
krpicard84@hotmail.com

CURTIS C. WARNER
CURTIS C. WARNER (P59915)
Attorney for Christy Bomba
65 Denison Parkway E. #168
Corning, NY 14830
(607) 438-3011
cwarner@warner.legal

PHOEBE J. MOORE, PC
PHOEBE J. MOORE (P56054)
Attorney for Andrew Bazakis
243 North State Street
Caro, MI 48723
(989) 672-4255
phoebe@phoebejmoorepc.com

LIPSON NEILSON P.C.
C. Thomas Ludden (P45481)
Attorney for Invited Amicus Curiae Probate & Estate Planning Section of the State Bar of Michigan
3910 Telegraph Road, Suite 200
Bloomfield Hills, MI 48302
(248) 593-5000
tludden@lipsonneilson.com