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Legal Aid Submits Comments on Proposed ACS Policy that Fails to Protect the Social Security Benefits of Children in Foster Care

Attorneys Call for Improvements to Put Children Exiting Foster Care Onto a Path Toward Future Economic Stability

(NEW YORK, NY) - The Legal Aid Society submitted [comments](#) on a [proposed policy](#) from the New York City Administration for Children's Services (ACS) that [fails](#) to protect the Social Security Disability Benefits (also known as Supplemental Security Income or "SSI") of disabled children in foster care - most of whom are Black and Latinx children from impoverished communities.

Legal Aid also called on ACS to amend current policy in order to ensure that foster youth whose Survivors Benefits ACS has already collected and kept are retroactively made whole.

Background

In 2022, ACS Commissioner Jess Dannhauser [acknowledged](#) that "This is their [benefits-eligible children in foster care] money and they deserve to use it as they see fit."

Disability Benefits:

However, the draft policy opts to pause SSI benefits for many eligible children in care or decline to apply for them altogether - even when ACS knows a child has a disability. For others, ACS intends to function as the representative payee and use the child's benefits to help pay for the foster care system in general - instead of conserving the funds or using them to support the individual child for whom the benefits are intended.

[Specialized savings accounts](#) exist to protect SSI benefits from the federal social security benefits cap and preserve them for current or future needs of a disabled child. These accounts were created specifically to allow disabled individuals to maintain their independence, pay for their disability-related expenses, and climb out of poverty. However, ACS's draft policy ignores the existence of these types of accounts, limits children in foster care to \$2,000 in savings - and only upon discharge from care, and does not inform families about accounts that they could use to legally and safely save up to \$102,000.

ACS contends that they are limited to saving \$2,000 by federal regulation - but jurisdictions, including [Arizona](#), [Washington D.C.](#), and others, use these specialized accounts to ensure that disabled children can use the benefits to which they are entitled.

Survivors Benefits

Survivors Benefits are a federal insurance program all wage earners automatically pay into intended to stabilize a child's future if a parent dies. However, for over a decade, ACS identified children who entered foster care eligible for Survivors Benefits, had itself automatically assigned as their representative payee and kept their money.

ACS also identified children who tragically lost their parent/s while in foster care, applied for benefits on their behalf, and kept that money as well.

While ACS reformed this abhorrent practice in 2022, its new policy does not create any mechanism for children and families to recoup previously taken money nor does it allow youth currently eligible for benefits to access those benefits to meet their needs while they are in foster care.

ACS must create a system to allow children whose Survivors Benefits were acquired while they were in foster care to seek grants or obtain funds back from ACS directly to make themselves economically whole - as intended by the Survivors Benefits program.

Case Examples

Disability Benefits

- Shirley was eligible for Disability Benefits between 2018 - 2021. During this time, ACS collected almost \$28,000 of her Disability Benefit and the agency kept these funds to pay themselves for providing care. Meanwhile, Shirley is homeless and staying in a shelter, even though she is still technically in foster care. Had her benefits been conserved, she would not face daily financial insecurity while struggling with a disability.

Survivor Benefits

- Ms. Alyssa Snow recently found out from the SSA office that ACS had taken tens of thousands of dollars from her child while the child was in foster care, and continued to take funds for a year and a half after the child had been discharged from care. Ms. Snow advocated for the return of the funds directly with ACS. While ACS has promised to return the money collected after the child was discharged, it has refused to return any of the money that it collected while the child was in foster care.
- Another client was a toddler when his parents died and he was placed in foster care. ACS collected Survivors Benefits due to him. His foster parent hoped to keep him in the daycare he attended prior to placement, in order to maintain some continuity in his life. The private daycare provider did not accept ACS vouchers for payment, and the foster parent was unable to afford the cost. Had the Social Security benefits been used for the benefit of the client, they could have subsidized the cost of the daycare.

Recommendations:

There are critical changes that must be made to this policy to ensure an equitable, non-racist, non-classist system. Specifically, the ACS must:

1. stop diverting the Disability Benefits intended for many children and using the money to pay itself for providing foster care. Instead, utilize available and commonly used accounts to save money on the children's behalf;
2. conduct early screening and application for benefits on behalf of all possibly-eligible children, even those eligible for other federal benefits;

3. permit and encourage family and kin, who are prioritized by the SSA itself, to serve as the representative payee for a child when appropriate;
4. permit children to use their benefits to address current needs not met through foster care;
5. assist and encourage older youth to serve as their own representative payees when appropriate;
6. provide meaningful financial training and counseling for children and families about how to utilize and conserve benefits, including information on savings accounts commonly used by disabled people to save more than the assets cap;
7. provide meaningful written notice to children and families about their rights, including their right to propose an alternative representative payee to SSA for consideration, as well as their right to open and utilize savings accounts to hold their own money;
8. reimburse children whose Survivors Benefits were previously taken and used to pay for foster care.

“ACS must make significant changes to its policy to ensure economic justice for children pulled into the foster care system,” said **Dawne Mitchell, Chief Attorney of the Juvenile Rights Practice at The Legal Aid Society** “By incorporating our recommendations as well as those submitted by other advocates, and by collaborating with youth, families, advocates and financial experts, ACS and New York City can lead the nation in rectifying the inherent unfairness of making children pay for foster care.”

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