

3. The benefit paid on behalf of the petitioner is about \$382.00 per month. The mother believes she pays taxes on this income but according to information she presented from her tax consultant, the income is "not taxable" although she was required to include it when applying for her "Act 60 Probate". The mother considers these Social Security checks as money paid to her to help support her children but not earmarked as belonging to her children.

4. The petitioner's mother has been receiving checks from the Social Security Administration made out in her name but qualified as "for her daughter" for over a year. The petitioner did not know that the Social Security check sent to her mother was considered her income by DCF and did not report it as her income although it was reported as the mother's income. She has been paid a monthly RUFA benefit of over \$500 for many months that did not include the Social Security benefit in the calculation.

5. During a routine "tape match" of Social Security numbers for Reach Up recipients, DCF discovered that the petitioner was listed as a Social Security recipient. That discovery prompted DCF to notify the petitioner on January 18, 2005 that her Reach Up income would decrease to \$191.82

per month beginning in February of 2005 due to the unearned Social Security income which was counted as hers.

6. The petitioner has also been told that she will likely be found to have been overpaid during the preceding year although she has yet to receive any formal notification of such an overpayment. She feels this is unfair because this income is her mother's and not hers.

ORDER

The decision of the DCF counting the Social Security income as the petitioner's is affirmed.

REASONS

Under its Reach Up regulations, DCF includes in the definition of countable income, any unearned income such as Social Security, which is paid to a recipient. W.A.M. § 2250, 2252(A). Under the Social Security regulations, the person entitled to dependent Social Security benefits (the beneficiary) is the insured person's child. 20 CFR § 404.350. The actual payee of the check for a person under eighteen is usually a "representative", preferably the parent. 20 CFR § 404.2010(b), 404.2021(b)(1). The "representative payee" is required under law to expend the

money "only for the use and benefit of the beneficiary." 20
CFR § 404.2035.

From the above regulations it must be concluded that the petitioner herself is the owner of the Social Security benefits, not her mother. Those benefits must be expended solely for the petitioner's needs. The petitioner would have received these benefits as a dependent of her disabled father whether or not her mother sought child support on her behalf. The court's styling of these benefits as paid "in lieu of child support" does not change the legal nature of these benefits. In other words, they do not become the mother's property and they cannot be spent on anything other than the needs of the petitioner.

As the petitioner owns these Social Security benefits, DCF was correct in counting them as totally available to meet her needs. If the petitioner's mother misunderstands her obligation with regard to spending the money solely on her daughter or misunderstands her own responsibility to pay taxes as the payee for her daughter, she is urged to consult both her tax accountant and her lawyer for advice on this matter.

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