

## **CPP2**

### **Lesson 9 – The SSA Representative**



In this review segment, we will discuss the rules, rights and regulations used in Social Security disability case representative. There are basically two types of disability representatives, attorney and non-attorney. We will discuss the non-attorney representative, also known as a disability advocate.

**Authorized Representative** - A disability advocate is an example of an authorized representative. The disability advocate is authorized by the claimant to perform all actions under the law associated with the representation of his case.

**Representative Payee** - A person authorized to handle the financial aspects of the claimant's benefit payments.

**Designated Representative** - This is a general term for a person authorized by a claimant to perform individual actions such as review of medical records.

An authorized representative can perform the following duties on behalf of a claimant:

- Accompany claimant to SSA interviews, conferences and hearings.
- Acquire, request and review medical records associated with the claim.
- Request and review information from claimant's Social Security file.
- Request appeals, correspond, submit arguments, and make complaints before SSA.
- Assist both the claimant and his witnesses in preparation for hearings.
- Present a case at a hearing and question any witnesses.
- Represent cases from the Initial to the Appeal Council level.

A Representative May Not:

- Manufacture evidence in a case except under special circumstances.
- Sign documents on behalf of a claimant.
- Mislead SSA in any way.
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SSA will accept an application signed by someone other than the claimant. Most often a close relative's signature would be accepted. This is especially true if the claimant is mentally or physically unable to sign forms for whatever reason.

#### **Non-attorney Representative**

Anyone with a few exceptions (felons) can act as a person's authorized representative. A representative cannot have been disqualified or suspended from acting as a representative

before SSA or otherwise prohibited by law from acting as a representative. The law does not define what good character is, but it most likely means he/she have not been convicted of any serious crime.

## A. Introduction to Representation

The Social Security Act (the Act) directs the Commissioner to authorize the fee a duly appointed representative may charge and collect for services provided to a claimant in proceedings before the Social Security Administration (SSA).

There are two alternative, mutually exclusive processes by which a representative may seek SSA's authorization for any fee he/she wants to charge and collect:

- the fee agreement process and
- the fee petition process.

If a representative knowingly charges, collects, or retains, or makes any arrangement to charge, collect, or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation, the Commissioner may suspend or prohibit the representative from further practice before the Agency.

## B. Fee Authorization Processes

The representative generally selects which of the two fee authorization processes to use. To use the fee agreement process, the representative must file a fee agreement before the date SSA makes the first favorable determination or decision the representative worked toward achieving. If the representative does not file an agreement before that date, SSA presumes he/she will either file a fee petition or waive a fee.

If a representative elects the fee agreement process but SSA does not approve the agreement, either because it does not meet the statutory conditions or an exception applies, and SSA upholds the disapproval of the agreement on administrative review (if applicable), the representative must file a fee petition if he/she wants to charge and collect a fee.

### 1. Fee Agreement

Under the fee agreement process, SSA authorizes a fee based on a fee agreement between the claimant and the representative. A fee agreement is a written statement that the claimant and his/her appointed representative sign. The agreement specifies the fee the representative expects to charge and collect and the claimant expects to pay for services the representative provides in pursuing the claimant's benefit rights in proceedings before SSA.

SSA will not approve a fee agreement that a representative files in a claim on or after the date SSA makes the first favorable determination or decision in the claim that the representative worked toward achieving. For claims at the initial or reconsideration level, the date of the notice to the claimant is the controlling date. For claims decided by the Office of Disability Adjudication and Review, the date of the Administrative Law Judge (ALJ) or Appeals Council (AC) decision is controlling.

A fee agreement submitted to SSA may remain in effect throughout the administrative appeals process of a claim(s) and during the administrative proceeding following a court remand.

When SSA issues a favorable determination or decision, it will approve an agreement signed by the claimant and the representative if the agreement meets the statutory conditions of the Social Security Act and no exceptions apply.

If SSA approves the fee agreement, it will authorize a fee based on the approved agreement in the course of effectuating the favorable determination or decision. If no one requests administrative review for information on administrative review), the fee specified in the agreement is the maximum the representative may charge and collect.

## 2. Fee Petition

A fee petition is a written statement signed by the claimant's representative requesting the fee the representative wants to charge and collect for all the services he/she provided in pursuing the claimant's benefit rights in proceedings before SSA. The representative petitions for a fee after his/her services in the case have ended. Based on the petition, SSA authorizes a "reasonable" fee for the specific services provided.

### C. Informing Representatives of Fee Regulations

If the representative has not submitted a fee agreement and has not waived the right to charge and collect a fee in a written statement, the hearing office (HO) staff must provide him/her with Form SSA-1560-U4 (Petition to Obtain Approval of a Fee for Representing a Claimant

The HO staff may provide Form SSA-1560-U4 to the representative at any time while the claim is pending, or forward it to the representative with his/her copy of the ALJ's decision. If the representative indicates an interest in obtaining the form off the internet, the HO staff will:

- refer the representative to: <http://www.socialsecurity.gov/online/ssa-1560.pdf>, and
- document the file to this effect. In such a situation, it is not necessary for the HO staff to mail the Form SSA-1560 to the representative.

When the AC issues a favorable or partially favorable decision, staff in the Office of Appellate Operations provides the representative with Form SSA-1560-U4.

### D. Administrative Review

When a claimant, affected auxiliary beneficiary, or representative disagrees with SSA's action on the fee agreement or fee petition, he/she may request administrative review of that action. In the fee agreement process, the decision maker who approved the agreement also may request administrative review of the amount of the authorized fee under certain circumstances.

1. Fee Agreement
- 2.

Under the fee agreement process, there are two separate and distinct administrative review processes:

- review of the approval or disapproval of the fee agreement, and

- review of the amount of the fee authorized under the fee agreement.
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The claimant, affected auxiliary beneficiary or representative may request review for any reason. The decision maker may request the Commissioner to reduce the authorized fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest, or of evidence that the fee is clearly excessive for the services rendered. Each party to the agreement and the decision maker have 15 days after receipt of the pertinent notice to request administrative review.

## 2. Fee Petition

The regulations afford the claimant, affected auxiliary beneficiary(ies) and the representative the right to request administrative review of the initial fee authorization. A request for review of a fee authorization under the fee petition process must be filed with SSA within 30 days after the date of the notice of SSA's initial authorization.

## 3. Action on the Request for Administrative Review

Upon completion of the review, the person conducting the review shall affirm or reverse the approval or disapproval of the fee agreement or affirm or modify the amount of the fee authorized under either the fee agreement or fee petition. The decision of the person conducting the review is not subject to further review.

## Most Important Terms

### A. Representative

A representative is the individual, either an attorney or a qualified non-attorney, whom the claimant appointed in writing to act on his/her behalf in pursuing a claim or asserted right before the Social Security Administration (SSA).

### B. Claimant

A claimant is any individual whose asserted rights under titles II, XVI or XVIII of the Act are, or may be, affected by an SSA determination or decision. As used throughout this chapter, the term includes a beneficiary. References to the "claimant" as a party, include any person authorized to act on the claimant's behalf (e.g., parent, legal guardian or representative payee).

### C. Affected Auxiliary Beneficiary

An affected auxiliary beneficiary is a beneficiary, in a life or death case, who has benefited from the representative's services to the claimant who appointed the representative. References to the "affected auxiliary beneficiary" as a party include any person authorized to act on the beneficiary's behalf (e.g., parent, legal guardian or representative payee).

### D. Processing Centers (PCs)

PCs are the six Program Service Centers and the Office of Central Operations (OCO). OCO is comprised of the Office of Disability Operations and the Office of International Operations.

### E. Fee Authorization

Fee authorization is the means by which SSA approves the amount of the fee a claimant's representative(s) may charge and collect for services provided to a claimant in proceedings before SSA.

#### A. Who May Charge a Fee

Only the claimant's duly appointed representative(s) may charge or collect a fee for services he/she provided in a matter before the Social Security Administration (SSA). A claimant must make all appointments in writing, using either a Form SSA-1696-U4 (Appointment of Representative) or Social Security Online.

Representing Clients, <http://www.socialsecurity.gov/online/ssa-1696.html>) or an equivalent statement. If a law firm or other entity is involved, only the duly appointed individual(s) in that firm or entity may file a fee agreement or petition and receive fee authorization and payment for services performed.

#### B. Multiple Representatives

If a claimant appoints more than one representative and the representatives are:

- associated in a firm, partnership or legal corporation:
  - Fee agreement cases: those representatives must sign a single fee agreement unless the representative who did not sign the fee agreement waived charging and collecting a fee.
  - Fee petition cases: each duly appointed individual must file a separate fee petition for the services he/she performed.
- not members of a single firm, partnership or legal corporation:
  - Fee agreement cases: the agreement is excepted from the fee agreement process, unless the claimant and the appointed representative(s) from a single firm, partnership or legal corporation signed the fee agreement and any other appointed representative(s) waived charging and collecting a fee.
  - Fee petition cases: each duly appointed individual must file a separate fee petition for the services he/she performed.
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#### C. Claimant Files for Bankruptcy

##### 1. Background

When an individual begins a bankruptcy proceeding by filing a bankruptcy petition with the bankruptcy court, the filing of that petition gives rise to an automatic “stay.” The “stay” generally suspends:

- the commencement or continuation of nearly all proceedings or actions to adjudicate any claim against the property of the debtor that was or could have been commenced prior to the filing of the bankruptcy petition, and
- any efforts to collect on any claim against the debtor that arose prior to the filing of the bankruptcy petition.
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This stay continues until such time as the bankruptcy court grants relief from the stay; the

stay expires because the bankruptcy case is closed or dismissed; or a discharge is granted.

2. Policy

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a. Initial Processing of a Fee Agreement or Fee Petition After Receiving Bankruptcy Petition Notice

When SSA becomes aware that the claimant has filed for bankruptcy and has listed the representative as an unsecured debtor, SSA stops all actions to:

- adjudicate the representative's claim for fees,
- set the amount of the representative's fee (either initially or in response to a request for administrative review from any party), or
- pay an authorized fee to an attorney representative from past-due benefits.

Accordingly, the decision maker may not issue a notice approving or disapproving a fee agreement after SSA is notified that the claimant filed for bankruptcy and listed the representative as an unsecured debtor. In addition, SSA will not authorize a fee based on a fee agreement or fee petition, if it has not already done so, or issue any payment to the attorney during the bankruptcy "stay."

The automatic stay that follows from the bankruptcy proceeding merely suspends the adjudication or collection of the debt, and does not automatically eliminate the debt. Therefore, for both fee agreements and fee petitions, SSA will continue to withhold the appropriate amount from past-due benefits, pursuant to section 206 of the Social Security Act, for possible future payment to an attorney representative.

A. Payment by Non-Profit Organization or Government Agency

A prime purpose of the Social Security Administration's (SSA's) statutory authority to authorize fees for representation is to protect claimants against unreasonable fees. When a representative provides services to a claimant and a nonprofit organization or government agency pays for those services, the risk of unreasonable fees is eliminated.

Social Security Ruling SSR 85-3 modifies fee authorization provisions by providing that SSA need not authorize a fee if all the following conditions are present:

- the claimant and affected auxiliary beneficiary(ies) are free of direct or indirect liability to pay a fee or expenses, either in whole or in part, to a representative or to someone else;
- the entity which pays the fee and expenses incurred, if any, on behalf of the claimant(s) or beneficiary(ies), is a nonprofit organization or a Federal, State, county, or city agency;
- a government entity provides or administers the funds used to pay a fee or any expenses; and
- the representative submits a written statement to SSA waiving the right to charge and collect a fee and expenses from a claimant or auxiliary beneficiary(ies).

B. Out-of-Pocket Expenses

SSA is not involved in authorizing the amount of out-of-pocket expenses a representative collects. Out-of-pocket expenses are expenses a representative incurs, for which he/she has been paid or expects to be paid. Out-of-pocket expenses include, but are not limited to, the cost of obtaining copies of doctor or hospital reports and a birth and/or death certificate. Therefore, the fee SSA authorizes does not include payment for out-of-pocket expenses.

These expenses are matters for the representative and claimant to settle. However, SSA will question out-of-pocket expenses if it appears that the representative is attempting to circumvent SSA's fee authorization process by designating his/her services as an out-of-pocket expense.

#### C. Court Proceedings

SSA does not consider services in proceedings before State or Federal courts (even if the State court action was to establish relationship or death) to be a proceeding before SSA; therefore, the fee authorization provisions do not apply to court proceedings.

#### D. Legal Guardian or Other Court Appointed Representatives

A legal guardian, committee, conservator, or other State court-appointed representative (hereinafter "legal guardian") may ask the court to approve a fee for services provided in connection with proceedings before SSA. Therefore, if the court orders a fee, SSA's fee authorization is not required.

- If a legal guardian asks SSA for information regarding fees, SSA should advise the individual first to ask the State court to approve a fee for all services, including those provided in connection with proceedings before SSA.
- If a legal guardian files a fee petition, SSA must advise the legal guardian that SSA will not act on the fee request until the State court has acted.
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EXCEPTION: If the legal guardian contacts SSA and states that the court declined to order a fee on the fee request or that he/she is dissatisfied with the fee the court orders, SSA will advise the legal guardian that he/she may file a fee petition with SSA for services provided in proceedings before SSA. If the legal guardian files a fee petition, the legal guardian must furnish SSA:

- copies of his/her accounting to the court; and
- copies of the fee request and the court's declination or any court ordered fee for his/her services as legal guardian.

#### E. Medicare Part A and Part B Cases

- Fee Agreement Process Not Applicable to Medicare Cases The fee agreement process can not apply in Medicare cases because there are no "past-due benefits" from which to calculate a representative's fee. A successful appeal of a claim for payment or service in Medicare results only in a decision to:
  1. pay a provider or supplier directly for items or services already provided or rendered,
  2. reimburse a beneficiary for monies the beneficiary already has paid directly to

- the provider or supplier for an item or service, or
- 3. approve authorization for a request for service.
- Services Below the Hearing Level for Part B Cases
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SSA does not consider services below the hearing level in connection with claims in certain proceedings exclusively before Part B intermediaries or carriers to be services provided in connection with proceedings before SSA; therefore, the fee authorization provisions do not apply to those services.

- Fee Petition Filed by a Representative for Services Provided to the Beneficiary  
ODAR uses the same procedures and regulations it uses in a Social Security case, for the approval of a fee petition filed by a Medicare beneficiary's representative. However, because there are no past-due benefits in Medicare cases, there are no direct pay provisions for attorneys.

- Fee Petition Filed by a Representative of Any Party Other Than the Beneficiary  
The Centers for Medicare & Medicaid Services (CMS) views 20 CFR Part 404, Subparts J and R (42 CFR 405.701(c) and 42 CFR 405.801(d)) to apply only to fee petitions filed by the representative of a beneficiary. Therefore, a fee petition filed by a representative for services he/she provided to any party other than the beneficiary does not require SSA/Office of Disability Adjudication and Review approval.

#### Trust or Escrow Accounts

Pursuant to Social Security Ruling SSR 82-39, a representative may establish a trust or escrow account to ensure the payment of all or part of his/her fee, provided the following conditions are met:

- the claimant willingly enters into the trust or escrow agreement and willingly deposits the money in the trust or escrow account;
- none of the money in the account is paid to the representative unless and until the Social Security Administration (SSA) has authorized a fee and then only in an amount up to, but not exceeding, the authorized fee; and
- the representative promptly returns to the claimant any funds in the account in excess of the authorized fee.

Accordingly, a representative may establish a general trust or escrow account for funds that he/she receives from one or more claimants, and thus ensure at least partial payment of his/her fee after SSA authorizes it. If a claimant agrees to deposit money into a trust or escrow account at his/her representative's request,

- the representative must disclose the amount of money held in the trust or escrow account at the time he/she files a fee request, and
- the representative may not pay funds held in a trust or escrow account to himself/herself until he/she receives notice of the authorized fee amount.

SSA will not honor a request to directly deposit a claimant's first check or any other monies directly into a trust or escrow account or to any account that is not the claimant's. (Refer to



§ 207 of the Social Security Act).

## Definitions

### 1. Direct Payment

Direct payment means SSA's payment of all or part of an authorized fee directly to the representative. SSA makes this payment from benefits SSA withholds from past-due benefits.

### 2. Representative Eligible to Receive Direct Fee Payment

A representative who is eligible to receive direct payment of the fee is either:

- an attorney, or
- a non-attorney whom SSA has determined meets the prerequisites for participation in the demonstration project that extends fee withholding procedures to non-attorney representatives.

### 3. Representative Ineligible for Direct Payment

A representative ineligible for direct fee payment is:

- a non-attorney whom SSA has not determined is eligible for direct fee payment. A non-attorney may be ineligible for direct fee payment because he or she has not applied to be included in the demonstration project on direct pay, because SSA has determined that the non-attorney did not meet the prerequisites for participation in the demonstration project, or because the non-attorney fails to maintain his or her eligibility after being included in the demonstration project; or
- a representative who has withdrawn or been discharged from representing a claimant.

## B. Direct Payment to Representatives -Title II Cases

The Social Security Administration (SSA) withholds (up to) 25 percent of a claimant's and the claimant's otherwise unrepresented affected auxiliary's (ies') title II past- due benefits, for possible direct payment of all or part of a representative's fee for administrative and court proceedings, unless the representative eligible to receive direct fee payment has waived direct payment or waived the fee. (For rationale for withholding from auxiliary beneficiaries see Social Security Ruling SSR 68-61c.

### NOTE:

Section 303 of the Social Security Protection Act of 2004 (SSPA) (Public Law 108-203) expanded the direct payment provisions by authorizing a five-year demonstration project to allow non-attorneys who represent claimants before the Commissioner of Social Security (the Commissioner) under title II and title XVI, the option of fee withholding and direct payment.

The demonstration project is effective for direct payment to eligible non-attorneys of fees for representation in claims for benefits in which the agreement for representation is entered into on or after the date on which the Commissioner submitted notice to Congress of completion of the actions necessary to fully implement this project. The Commissioner sent notice to Congress on February 28, 2005. Therefore, on and after, but not before, February 28, 2005, SSA withholds title II past-due benefits for direct payment of a fee for administrative

proceedings to a non-attorney representative whom SSA has determined is eligible for direct payment.

SSA must make direct payment of an authorized fee (to the extent possible based on the available past-due benefits to a non-attorney representative if:

- the representative and the claimant have entered into an appointment of representative or supplemental appointment of representative on or after February 28, 2005;
- SSA has determined that the non-attorney is eligible to receive direct payment of fees and not determined that the non-attorney's eligibility for direct payment is no longer in effect; and
- the representative has not waived the fee or direct payment of the fee.

An appointment of representative filed on or after February 28, 2005, satisfies the SSPA requirement that the claimant and the representative enter into the agreement for representation after SSA implements section 303.

SSA currently does not have the systems capability to propagate the status of a non-attorney's direct payment eligibility; therefore, SSA strongly encourages eligible non-attorneys to identify themselves to SSA in each case in which they wish to receive direct payment of fees. Non-attorneys who are eligible for direct payment identify themselves by filing Forms SSA-1696-U4 (Appointment of Representative) or equivalent written statements. The following notification guidelines apply when a claimant is represented by a non-attorney who is eligible for direct payment.

- If the claimant and representative signed and submitted an appointment of representative on Form SSA-1696 or comparable statement before February 28, 2005, the SSPA requires that the claimant and the non-attorney representative sign and submit to SSA another appointment of representative to establish an agreement for representation on or after that date.
- If the claimant and representative signed and submitted an appointment of representative on Form SSA-1696 or equivalent written statement on or after February 28, 2005, but before SSA determines that the non-attorney representative is eligible to participate in the direct payment demonstration project, SSA requests that the representative submit a supplemental SSA-1696, on each case on which he or she wishes to receive direct payment, to advise SSA of the change in his/her direct payment status. If the claimant signed an appointment of representative on or after February 28, 2005, it is not necessary for the claimant to sign the supplemental appointment statement the non-attorney submits to notify SSA of his/her status change.

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#### 1. Fee Agreement Cases

The amount that SSA will certify for direct payment to a representative is the amount authorized as a result of the approved fee agreement, less:

- the assessment imposed to cover administrative costs (see 3. below), and
- any funds the claimant put into a trust or escrow account the representative established.

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## 2. Fee Petition Cases

In fee petition cases, the amount that SSA will certify for direct payment to a representative is the lesser of the authorized fee or 25 percent of the claimant's and auxiliary's(ies') past-due benefits, if any, less:

- the assessment imposed to cover administrative costs (see 3. below), and
- any funds the claimant put into a trust or escrow account the representative established.

## 3. Assessment on Representatives

Sections 206(d) and 1631(d)(2) of the Social Security Act require SSA to charge an assessment (or "user fee") not to exceed 6.3 percent of the amount SSA certifies for direct payment to a representative, to recover SSA's full cost for determining and certifying representative fees.

SSA sets the assessment rate based upon the cost it incurs to determine and certify fees. The Commissioner may collect the assessment imposed on the representative by withholding it from the amount of the fee to be certified for payment to the representative from a claimant's past-due benefits. This provision applies to fees SSA directly pays from title II and/or title XVI past-due benefits under both the fee agreement and fee petition processes, and to court-awarded fees that SSA directly pays from title II and /or title XVI past-due benefits.

Effective February 1, 2000, legislation set the assessment rate at 6.3 percent. The assessment rate remained at 6.3 percent through August 31, 2004. Section 302 of the SSPA amended section 206(d)(2)(A) of the Social Security Act by:

- capping the assessment at \$75 or 6.3% of the fee payment, whichever is lower, effective September 1, 2004; and
- adjusting the flat-rate cap based on annual cost-of-living adjustments rounded down to the next lower \$1. (See POMSGN 03920.019 for current and past flat-rate dollar limits, and other subsections for information regarding how the applicable cap is applied.)

For cases SSA favorably decides, SSA will:

- Deduct a user fee from the amount of the representative fee payable if SSA certifies direct payment to the representative.

### NOTE:

If the representative established a trust or escrow account and SSA is notified of the amount in the account before making direct payment, the escrow amount is subtracted from the payable fee amount before the user fee is calculated.

- Pay the representative the remainder (i.e., all or part of the payable fee amount, minus

the user fee). In a fee agreement case, SSA will make direct payment immediately when all development is complete and the fee under the approved agreement can be set.

- Release excess withheld funds, if any, to the beneficiary(ies) except in a concurrent case when offset has not yet occurred or in a case with Federal court involvement.
- Advise the claimant that the representative cannot charge or collect the assessment from him/ her.

#### C. Direct Payment to Representatives -- Title XVI Cases

Prior to February 28, 2005, SSA did not withhold and make direct fee payment in a title XVI only (SSI) case and there was no provision for direct fee payment to non-attorneys. The SSPA:

- in section 302, extended the title II attorney fee withholding and direct payment process to title XVI for a period of five years. This provision applies to fees for representation of claimants in the case of any claim for benefits effectuated on or after the date the Commissioner notified Congress about full implementation of section 303. The Commissioner sent notice to Congress on February 28, 2005.
- in section 303, authorized a five-year demonstration project to allow non-attorneys who represent claimants before the Commissioner under title XVI, the option of fee withholding and direct payment.

For favorable decisions SSA effectuates on or after February 28, 2005, SSA withholds (up to) 25 percent of a claimant's title XVI past-due benefits for possible direct payment:

- of all or part of an attorney's fee for administrative and court proceedings, unless the attorney has waived direct payment or waived the fee, or the attorney withdrew or was discharged from representing the claimant.
- of all or part of a non-attorney's fee for administrative proceedings, if SSA has determined that the non-attorney is eligible to receive direct payment and if the representative has not waived a fee or waived direct payment of the fee.

When SSA effectuates a favorable title XVI decision on or after February 28, 2005, and the claimant is represented by an attorney who did not waive direct payment or waive a fee, SSA will make direct payment of the authorized fee, to the extent possible, to the attorney representative.

SSA must make direct payment of an authorized fee (to the extent possible based on the available past-due benefits) to a non-attorney representative if:

- the representative and the claimant have entered into an appointment of representative or supplemental appointment of representative on or after February 28, 2005;

- SSA has determined that the non-attorney is eligible to receive direct payment of fees and has not determined that the non-attorney's eligibility for direct payment is no longer in effect; and
- the representative has not waived the fee or direct payment of the fee.

SSA currently does not have the systems capability to propagate the status of a non-attorney's direct payment eligibility; therefore, SSA strongly encourages eligible non-attorneys to identify themselves to SSA in each case in which they wish to receive direct payment of fees. Non-attorneys who are eligible for direct payment identify themselves by filing Forms SSA-1696-U4 (Appointment of Representative) or equivalent written statements. The following notification guidelines apply when a claimant is represented by a non-attorney who is eligible for direct payment.

- If the claimant and representative signed and submitted an appointment of representative on Form SSA-1696 or comparable statement before February 28, 2005, the SSPA requires that the claimant and the non-attorney representative sign and submit to SSA another appointment of representative to establish an agreement for representation on or after that date.
- If the claimant and representative signed and submitted an appointment of representative on Form SSA-1696 or equivalent written statement on or after February 28, 2005, but before SSA determines that the non-attorney representative is eligible to participate in the direct payment demonstration project, SSA requests that the representative submit a supplemental SSA-1696, on each case on which he or she wishes to receive direct payment, to advise SSA of the change in his/her direct payment status. If the claimant signed an appointment of representative on or after February 28, 2005, it is not necessary for the claimant to sign the supplemental appointment statement the non-attorney submits to notify SSA of his/her status change.

## Waiver of Fee or of Direct Payment of Representative's Fee

### A. Representative's Options

The Social Security Administration (SSA) assumes that a representative will charge a fee for his/her services. Occasionally, a representative will provide services without expecting payment from either a claimant or any other source (i.e., waive the right to charge and collect a fee). Also, a representative who is eligible for direct fee payment may charge a fee, but waive the right to direct payment of his/her fee from title II and/or title XVI past-due benefits.

The representative's written statement that he/she waives the right to charge and collect a fee constitutes a waiver of any fees for services in the case, whether charged to or collected from the claimant or a third party, such as an insurance company. It does not constitute a transfer or assignment of the right to charge and collect a fee based on those services to another person.

If a representative waives his/her fee and later decides to charge and collect a fee, the

representative must obtain the claimant's concurrence and SSA's authorization.

## B. Waiver Statement

If a representative who is eligible for direct fee payment states that he/she will not charge or collect a fee from any source, or does not expect direct payment of a fee from title II and/or title XVI past-due benefits, the representative must:

- submit a written statement that clearly and unequivocally states he/she is waiving the fee or direct payment of the fee; or
- complete section III or IV (optional use) of form SSA-1696-U4 (Appointment of Representative), as appropriate; or
- sign either the "Waiver of Fee" or "Waiver of Direct Payment" section of the SSA-L1697-U3 (Notice to Representative of Claimant Before the Social Security Administration), as appropriate.

### NOTE 1:

If the representative who is eligible for direct fee payment works for a legal services organization or other organization that routinely waives the fee, a fee waiver statement is not necessary. Contact the representative by telephone and determine if he/she wishes to waive the fee. Document the call with a report of contact and include the report of contact in the claims file.

### NOTE 2:

When a representative completes Part III of the SSA-1696-U4, Waiver of Fee, or the Waiver of Fee option on the SSA-1697-U3, it constitutes a waiver of any fee for services, whether charged to or collected from the claimant or a third party.

### NOTE 3:

If the representative submits any document that contradicts the waiver statement (e.g., the representative waives a fee and also submits a fee agreement), it is necessary to determine and document the representative's actual intent and the claimant's concurrence, if appropriate.

Refer to POMS [GN 03910.090](#), Exhibits 2 and 3, for SSA Forms SSA-1696-U4 and SSA 1697-U3, respectively. Also, Form SSA-1696-U4 is available at <http://www.socialsecurity.gov/online/ssa-1696.html>.

## C. Procedures

If a representative files a written statement that he/she waives the right to charge a fee for services rendered, or a representative eligible for direct fee payment waives direct payment of a fee from the claimant's title II and /or title XVI past-due benefits, the hearing office (HO) or the Office of Appellate Operations (OAO) staff must notify the Office of Central Operations (OCO) or the Program Service Center (PSC), as appropriate, of the waiver. To notify OCO or the PSC, the HO and OAO staff will do the following:

- include the waiver statement in the file;
- check the appropriate box(es) on Form SSA-1128 (Representative Involved) (refer

- to GN 03910.090, EXHIBIT 4, for Form SSA-1128); and
- include the following note on the document that transmits the file: “Do not withhold from past-due benefits for payment of a representative's fee.”

Hearing Office: Use Form HA-L48 (Transmittal by Office of Disability Adjudication and Review).

Appeals Council: Use Form HA-505 (Transmittal by Office of Disability Adjudication and Review).

If the HO or OAO receives a representative's statement waiving direct payment of a fee from the claimant's past-due benefits after the Administrative Law Judge or Appeals Council has issued a favorable decision, the staff will date stamp and fax the waiver to the processing center, using the Fax Cover Sheet at I-1-2-114(B.), or in a title XVI only case, to the servicing FO.

#### D. Erroneous Direct Payment and Assessment

On occasion, SSA pays an authorized fee and imposes the user fee assessment on the direct payment amount despite a representative's waiver of direct payment. Refer to POMS GN 03920.051 for policy on when SSA will and will not refund the assessment to the claimant.

If an representative eligible for direct fee payment contacts ODAR about an incorrect direct payment and imposition of the user fee assessment, use the Fax Cover Sheet at I-1-2-114(B.) to forward to the PC, or in a title XVI only case, to the servicing FO:

- the correspondence from the representative or a report of contact documenting the contact, and
- any information in the hearing or appeal folder that documents when SSA received the waiver statement.

#### NOTE:

If the representative's only complaint pertains to the “fairness” of the user fee assessment, do not forward the correspondence to the PC. Advise the representative that sections 206(d) and 1631(d)(2) of the Social Security Act requires the Commissioner to impose the assessment.

The PC will determine if SSA will refund the assessment to the claimant.

If SSA refunds the assessment to the claimant, it is the representative's responsibility to collect the amount of the assessment from the claimant.