

the deceased individual may be paid to a survivor found guilty by a court of competent jurisdiction of intentionally causing the underpaid recipient's death.

[40 FR 47763, Oct. 10, 1975, as amended at 58 FR 52913, Oct. 13, 1993; 60 FR 8149, Feb. 10, 1995; 61 FR 67206, Dec. 20, 1996]

§ 416.543 Underpayments—applied to reduce overpayments.

We apply any underpayment due an individual to reduce any overpayment to that individual that we determine to exist (see § 416.558) for a different period, unless we have waived recovery of the overpayment under the provisions of §§ 416.550 through 416.556. Similarly, when an underpaid recipient dies, we first apply any amounts due the deceased recipient that would be payable to a survivor under § 416.542(b) against any overpayment to the survivor unless we have waived recovery of such overpayment under the provisions of §§ 416.550 through 416.556.

Example: A disabled child, eligible for payments under title XVI, and his parent, also an eligible individual receiving payments under title XVI, were living together. The disabled child dies at a time when he was underpaid \$100. The deceased child's underpaid benefit is payable to the surviving parent. However, since the parent must repay an SSI overpayment of \$225 on his own record, the \$100 underpayment will be applied to reduce the parent's own overpayment to \$125.

[58 FR 52913, Oct. 13, 1993]

§ 416.544 Paying benefits in installments: Drug addiction or alcoholism.

(a) *General.* For disabled recipients who receive benefit payments through a representative payee because drug addiction or alcoholism is a contributing factor material to the determination of disability, certain amounts due the recipient for a past period will be paid in installments. The amounts subject to payment in installments include:

(1) Benefits due but unpaid which accrued prior to the month payment was effectuated;

(2) Benefits due but unpaid which accrued during a period of suspension for which the recipient was subsequently determined to have been eligible; and

(3) Any adjustment to benefits which results in an accrual of unpaid benefits.

(b) *Installment formula.* Except as provided in paragraph (c) of this section, the amount of the installment payment in any month is limited so that the sum of (1) the amount due for a past period (and payable under paragraph (a) of this section) paid in such month and (2) the amount of any current benefit due cannot exceed twice the Federal Benefit Rate plus any federally-administered State supplementation payable to an eligible individual for the preceding month.

(c) *Exception to installment limitation.* An exception to the installment payment limitation in paragraph (b) of this section can be granted for the first month in which a recipient accrues benefit amounts subject to payment in installments if the recipient has unpaid housing expenses which result in a high risk of homelessness for the recipient. In that case, the benefit payment may be increased by the amount of the unpaid housing expenses so long as that increase does not exceed the amount of benefits which accrued during the most recent period of nonpayment. We consider a person to be at risk of homelessness if continued nonpayment of the outstanding housing expenses is likely to result in the person losing his or her place to live or if past nonpayment of housing expenses has resulted in the person having no appropriate personal place to live. In determining whether this exception applies, we will ask for evidence of outstanding housing expenses that shows that the person is likely to lose or has already lost his or her place to live. For purposes of this section, homelessness is the state of not being under the control of any public institution and having no appropriate personal place to live. Housing expenses include charges for all items required to maintain shelter (for example, mortgage payments, rent, heating fuel, and electricity).

(d) *Payment through a representative payee.* If the recipient does not have a representative payee, payment of amounts subject to installments cannot be made until a representative payee is selected.

(e) *Underpaid recipient no longer eligible.* In the case of a recipient who is no

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longer currently eligible for monthly payments, but to whom amounts defined in paragraph (a) of this section are still owing, we will continue to make installment payments of such benefits through a representative payee.

(f) *Recipient currently not receiving SSI benefits because of suspension for non-compliance with treatment.* If a recipient is currently not receiving SSI benefits because his or her benefits have been suspended for noncompliance with treatment (as defined in §416.936), the payment of amounts under paragraph (a) of this section will stop until the recipient has demonstrated compliance with treatment as described in §416.1326 and will again commence with the first month the recipient begins to receive benefits.

(g) *Underpaid recipient deceased.* Upon the death of a recipient, any remaining unpaid amounts as defined in paragraph (a) of this section will be treated as underpayments in accordance with §416.542(b).

[60 FR 8150, Feb. 10, 1995]

§416.545 Paying large past-due benefits in installments.

(a) *General.* Except as described in paragraph (c) of this section, when an individual is eligible for past-due benefits in an amount which meets the formula in paragraph (b) of this section, payment of these benefits must be made in installments. The amounts subject to payment in installments include:

(1) Benefits due but unpaid which accrued prior to the month payment was effectuated;

(2) Benefits due but unpaid which accrued during a period of suspension for which the recipient was subsequently determined to have been eligible; and

(3) Any adjustment to benefits which results in an accrual of unpaid benefits.

(b) *Installment Formula.* Installment payments must be made if the amount of the past-due benefits including any federally administered State supplementation, after applying §416.525, equals or exceeds 12 times the Federal Benefit Rate plus any federally administered State supplementation payable in a month to an eligible individual (or eligible individual and eligible spouse).

These installment payments will be paid in not more than 3 installments and made at 6-month intervals. Except as described in paragraph (d) of this section, the amount of each of the first and second installment payments may not exceed the threshold amount of 12 times the maximum monthly benefit payable as described in this paragraph.

(c) *Exception—When installments payments are not required.* Installment payments are not required and the rules in this section do not apply if, when the determination of an underpayment is made, the individual is (1) afflicted with a medically determinable impairment which is expected to result in death within 12 months, or (2) ineligible for benefits and we determine that he or she is likely to remain ineligible for the next 12 months.

(d) *Exception—Increased first and second installment payments.* (1) The amount of the first and second installment payments may be increased by the total amount of the following debts and expenses:

(i) Outstanding debt for food, clothing, shelter, or medically necessary services, supplies or equipment, or medicine; or

(ii) Current or anticipated expenses in the near future for medically necessary services, supplies or equipment, or medicine, or for the purchase of a home.

(2) The increase described in paragraph (d)(1) of this section only applies to debts or expenses that are not subject to reimbursement by a public assistance program, the Secretary of Health and Human Services under title XVIII of the Act, a State plan approved under title XIX of the Act, or any private entity that is legally liable for payment in accordance with an insurance policy, pre-paid plan, or other arrangement.

[61 FR 67206, Dec. 20, 1996]

§416.546 Payment into dedicated accounts of past-due benefits for eligible individuals under age 18 who have a representative payee.

For purposes of this section, amounts subject to payment into dedicated accounts (see §416.640(e)) include the amounts described in §416.545(a) (1), (2), and (3).