

Social Security

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Program Operations Manual System (POMS)

Effective Dates: 06/22/2009 - Present

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TN 13 (02-05)**GN 03920.035 Title II Past-Due Benefits Subject to Withholding****A. Policy - General**

If the claimant's representative is an attorney, or (beginning February 28, 2005) a non-attorney representative eligible for direct payment and has not waived a fee or waived direct payment, SSA withholds 25 percent of a claimant's title II past-due benefits for possible direct payment of:

- all or part of a representative's authorized fee for administrative proceedings, and, if applicable,
- all or part of an attorney's authorized fee for court proceedings.

(See [GN 03920.017C](#), Direct Payment to Representatives – Title II Cases, [GN 03920.030](#), Representative's Fee – Title II Past-Due Benefits, and [GN 03920.060B.3.](#), Past-Due Benefits Withheld).

NOTE: If a Federal court awards a fee in addition to the fee, if any, SSA authorizes for proceedings at the administrative level, SSA withholds a maximum of 25 percent of past-due benefits for payment of fees, whether authorized by SSA, a court, or both.

SSA also may withhold 25 percent of an affected auxiliary beneficiary's(ies') past-due benefits for possible direct payment of all or part of the primary claimant's representative's authorized fee for administrative proceedings and an attorney's authorized fee for court proceedings (for rationale see Social Security Ruling 68-61c).

If the auxiliary beneficiary is individually represented, see [GN 03920.035B.](#), Policy - Withholding From Auxiliary Beneficiary.

SSA withholds 25 percent of a claimant's past-due benefits under these circumstances:

- a party has filed a request for administrative review, or

- the Federal court issued a decision and the attorney has not waived his/her fee.

If all proofs are present; there is no court involvement and no request for administrative review; and there is no concurrent title XVI claim, or there is a concurrent title XVI claim but 25 percent of the claimant's and auxiliary beneficiaries past-due benefits equals or exceeds the specified dollar amount (see [GN 03940.003B.3.](#)):

- For fee agreement cases processed via the Manual Adjustment Credit and Award Data Entry (MACADE) system, the benefit authorizer (BA) or benefit technical examiner (BTE) withholds only the authorized fee amount.
- For fee agreement cases processed via the Modernized Claim System (MCS), commencing with the implementation of the Title 2 Redesign Release 3 (T2R3) on June 21, 2004, the system withholds only the authorized fee amount.

NOTE: Prior to the implementation of T2R3, MCS withheld a full 25 percent of past-due benefits for fee agreement cases.

NOTE: Prior to February 28, 2005, there was no withholding provision for any non-attorney representative. The non-attorney representative looked to the claimant to pay the authorized fee.

B. Policy - Withholding From Auxiliary Beneficiary(Ies)

1. Auxiliary Beneficiary(ies) Individually Represented

If an auxiliary beneficiary has appointed a representative, SSA will:

- Withhold that auxiliary beneficiary's past-due benefits for possible direct payment of his/her representative's fee if his or her representative is eligible for direct fee payment.
- Use the auxiliary beneficiary's past-due benefits to determine the auxiliary beneficiary's representative's fee under the fee agreement process.

If an auxiliary beneficiary has appointed a representative, SSA will not withhold that auxiliary beneficiary's past-due benefits for possible direct payment of the primary claimant's representative's fee or use that beneficiary's past-due benefits to determine the primary claimant's representative's fee

under the fee agreement process.

2. Auxiliary Beneficiary's(ies) Effective Filing Date Same As Primary Claimant and Auxiliary Was Not Individually Represented

If the auxiliary beneficiary's effective filing date is the same as the primary claimant's, in the absence of indication to the contrary (e.g., the auxiliary has appointed his/her own representative), SSA considers the representative of a primary claimant to be acting in the interest of auxiliary beneficiaries as well. Except in the situations described in [GN 03920.035B.2.a.](#) and [GN 03920.035B.2.b.](#), when calculating past-due benefits, SSA will withhold the benefits of an affected auxiliary beneficiary(ies), if the auxiliary beneficiary's (ies') effective filing date (including the protective filing date) is no later than the date SSA effectuates the primary beneficiary's decision.

NOTE: Past-due benefits for auxiliary claimants are calculated based on the effectuation date of the primary beneficiary regardless of the date of effectuation of the auxiliary claimant(s). See [GN 03920.030B.1.](#) and [GN 03920.030D.](#)

a. Fee Petition Process

Under the fee petition process, if SSA has not authorized the representative's fee, SSA will withhold past-due benefits from the auxiliary(ies).

If SSA already has authorized the representative's fee and if the amount SSA withheld from the primary beneficiary is sufficient to pay the representative the authorized fee, SSA will not withhold past-due benefits from the auxiliary(ies) unless there is a request for administrative review or a court case is pending.

b. Fee Agreement Process

For a title II only claim, with no request for administrative review and no court case pending, the following auxiliary withholding policy applies.

- Prior to the Implementation of T2R3 on June 21, 2004

Under the circumstances described, if the amount SSA could withhold from the primary beneficiary was sufficient to pay the attorney the maximum fee allowable under the approved fee agreement, withholding from the auxiliary(ies) depended on the household status.

- SSA did not withhold past-due benefits from the auxiliary(ies) if all auxiliaries lived in the same household with the primary claimant.

- SSA did withhold past-due benefits from an auxiliary(ies) who lived in a household separate from the primary claimant.
- Beginning With the Implementation of T2R3 on June 21, 2004

With implementation of the MCS T2R3 changes, SSA withholds funds from the primary claimant's past-due benefits to the maximum extent possible, to pay the authorized fee.

- If the amount SSA withholds from the primary beneficiary is sufficient to pay the representative the maximum payable fee, SSA does not withhold past-due benefits from any affected auxiliary(ies).
- If the amount SSA withholds from the primary beneficiary is not sufficient to pay the representative the maximum payable fee based on the approved fee agreement, SSA withholds and prorates the difference between the maximum fee and the amount withheld from the primary claimant, between or among all auxiliary claimants, based on each auxiliary's past-due benefits amount, independent of the household status (i.e., single or multiple family units).

EXAMPLE 1: After the implementation of T2R3, an Administrative Law Judge issued a fully favorable decision on the claimant's application for disability insurance benefits and approved the fee agreement between the claimant and his attorney. Twenty-five percent of the primary claimant's past-due benefits exceeded \$5,300 (see [GN 03940.003B.3.](#) for the current specified dollar amount); therefore, SSA withheld \$5,300 for direct payment to the attorney. Because the amount SSA withheld from the primary claimant's past-due benefits was sufficient to pay the maximum allowable fee, SSA did not withhold from the past-due benefits due either of the two auxiliary beneficiaries, one who lives in the primary claimant's household and one who lives in a separate household.

EXAMPLE 2: After the implementation of T2R3, the Disability Determination Services determined that the claimant was disabled as alleged and SSA approved the claimant's fee agreement with his representative, who is eligible for direct fee payment. Twenty-five percent of the primary claimant's past-due benefits was \$4,200. The primary claimant has 2 affected auxiliary children beneficiaries, 1 of whom lives in his household and one who lives in a separate household. The amount of the fee SSA will deduct from each auxiliary's past-due benefits is calculated as follows:

Maximum (See GN 03940.003B.3. for the current specified dollar amount)	\$5,300
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Amount payable by primary claimant	\$4,200
Difference	\$1,100
Past-due benefits for each C	\$2,200
Percentage in fee agreement	X.25
Maximum withholding for each C	\$550
Total possible withholding from Cs	\$550 + 550 = \$1,100
Percentage of possible withholding for each C	\$550/1,100 = .50
Withholding for each auxiliary	\$1,100 X .50 = \$550.00 C1
	= \$550.00 C2
Total withholding for Cs	\$1,100.00

NOTE: If there is a request for administrative review or a court case is pending, SSA must withhold the full 25 percent from the past-due benefits of any affected auxiliary beneficiary(ies) who is not individually represented. This is the case even when 25 percent of the primary beneficiary's past-due benefits equals or exceeds the applicable specified dollar amount (see [GN 03940.003B.3.](#)) in a fee agreement case or equals or exceeds the amount of the authorized fee in a fee petition case.

3. Auxiliary Beneficiary's(ies) Effective Filing Date After Primary Claimant's

If the auxiliary beneficiary(ies) did not file an application for benefits until after the primary beneficiary's favorable determination, and the auxiliary beneficiary(ies) was not mentioned in the represented claimant's application, SSA will not:

- attribute the past-due benefits of the auxiliary beneficiary(ies) to the represented primary claimant's representative's services; or
- use the auxiliary beneficiary's (ies') past-due benefits for direct payment of the represented primary claimant's representative's fee.

C. Policy - Withholding From Lump-Sum Death And Survivor Benefits

SSA will withhold from a lump-sum death payment and the past-due benefits of survivors if one of the survivors is represented by a representative eligible for direct fee payment and such representation results in:

- entitlement for the survivor(s) on the Social Security record of the deceased wage earner (e.g., the representative is involved in establishing death, insured status, relationship of the survivor(s) to the deceased); or
- an increase in the benefits of the other survivors (e.g., a subsequent claimant appoints a representative and the representative's efforts result in a higher primary insurance amount (PIA), thereby raising the benefits of the survivors already on the benefit rolls).

Survivors on the rolls are not liable for the fee of a representative appointed by another survivor whose entitlement occurred after the other survivors, unless that representative's efforts increased the other survivors' benefits.

D. Policy - Auxiliary Beneficiary(ies) Objects To Withholding

If a representative's effort on behalf of the primary claimant establishes an otherwise unrepresented auxiliary beneficiary's(ies') entitlement to benefits and that beneficiary's effective filing date is the same as the primary claimant's, SSA will withhold from that auxiliary beneficiary's past-due benefits to potentially pay the fee of a representative who is eligible for direct payment (for rationale see SSR 68-61c). If the auxiliary beneficiary(ies), who has not appointed his/her own representative, objects to the withholding of his/her benefits for payment of the primary claimant's representative's fee and he/she alleges that the representative did not represent him/her, SSA will advise the auxiliary beneficiary(ies) that the representative in the case provided services that helped establish benefits for all beneficiaries on the record. Therefore, SSA must withhold from the auxiliary beneficiary's(ies') past-due benefits amount.

If the auxiliary beneficiary(ies) who has appointed his/her own representative objects to the withholding of his/her benefits for payment of the primary claimant's representative's fee, SSA will advise him/her that we will continue to withhold but that the withheld amount will be used only to calculate the auxiliary's representative's fee, if the fee agreement process is being used, and to directly pay the auxiliary beneficiary's representative the authorized fee under either the fee agreement or fee petition process.

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Batch run: 08/18/2018

Rev:06/22/2009

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