

Alaska Must Tell Foster Youth About Benefits, Court Rules

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Judge Curbs Alaska's Practice of Claiming Foster Youths' Federal Benefits

By Martin Macías, Jr.

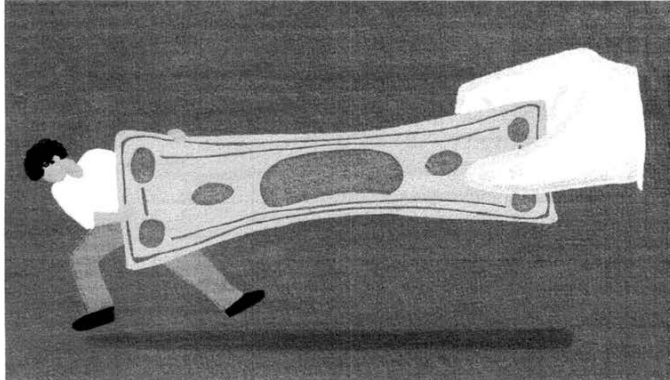


Illustration by Christine Ongjoco.

Last year, foster youth in Alaska won the right to be notified when the state seized their federal disability and survivors' benefits, money that has been quietly folded into government coffers. And this fall, the judge on the case finalized his earlier ruling, granting the children and their families greater authority over who should manage the monthly payments.

Along with other states, Alaska has long applied for and retained the benefits for foster youth, without alerting the young people or offering them a chance to select another payee, such as a relative or trusted adult.

"The judge's ruling affirms a basic principle in our Constitution which is the right to notice before your property is taken," said Jim Davis, Jr., a civil rights attorney with the Northern Justice Project. "That should be true even if it's a foster kid."

Twenty-year-old Mateo Austin Jaime is among the beneficiaries of a years-long fight in court for more direct Social Security payments, money provided by the federal government after a parent dies, or due to a disabling condition.

Jaime, a student at University of Alaska Anchorage, said if he'd received his federal benefits directly while he was still in foster care, he would have been better equipped to buy a car, keep a job and maintain independence.

What's more, "I could've moved away from all the abusive situations," he told The Imprint.

In 2020, Alaska Superior Court Judge William F. Morse ordered the Office of Children's Services (OCS) not only to provide notice to the foster youth of the benefit and allow them to pick a payee, but to explain the consequences of the child welfare agency receiving the funds in their names.

The state agency fought the ruling, arguing the federal government — not local officials — is responsible for notifying children of benefits eligibility. Alaskan officials also argued compliance with the order would force the state to violate privacy laws because notices might reveal a child's foster care status or eligibility for benefits.

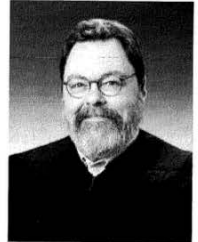
But in the order issued Oct. 22, Judge Morse rejected the state's argument, saying Alaska should notify all children in its custody that it will apply for benefits payments if a child becomes eligible. The payments range from \$700 to \$2,000 a month and are based on parents' Social Security contributions.

Morse's ruling also clarified that the state should send written notices about benefits eligibility directly to foster children, their relatives or close friends.

The state's Office of Children's Services, the defendant in the ongoing class-action lawsuit filed on behalf of foster children, appealed the ruling to the state Supreme Court on Nov. 23.

"It's a disgrace that the state would appeal the ruling and ask to go back to the old days when they could steal that money," said Davis.

In an emailed statement, Aaron Sadler, spokesperson for the Alaska Department of Law, said Judge Morse's updated ruling allows the state to comply with both the court's prior order and federal privacy laws. But he conceded that, for the meantime, "OCS will be required to



Alaska Superior Court Judge William F. Morse. Photo via courts.alaska.gov.

notify all children in its custody that it will apply to be the representative payee for eligible children's benefits and to provide general information about that without identifying which children specifically are eligible."

For years, Alaska had applied for and claimed foster youths' Old-Age, Survivors and Disability Insurance and Social Security Supplemental Income, money that advocates say should have gone directly to the young people to meet their often-lacking basic needs, like winter clothes, school supplies and transportation.

According to court documents, the state has not used the money for such necessary extras, even when the federal benefits being received in the child's name exceeded what the state paid to house and care for them.

The long-simmering issue came into bold relief in May following an investigation by NPR and The Marshall Project that framed the issue as children being forced to pay for their own time in foster care. Reporters examined the practice nationwide and published research showing at least 49 states and Washington, D.C., seized foster children's benefits. In 2018 alone, that amounted to more than \$165 million, collections supported by for-profit private companies such as Maximus Inc., according to the joint investigation.

While the Social Security Administration allows people to manage their own benefits, foster children under age 18, children who are disabled, or children whose parents have died typically have benefits paid to them through an individual or institution called a representative payee.

Agencies such as the Office of Children's Services — housed within Alaska's Department of Health and Human Services — should be last on the hierarchy of preferred payees, according to federal law cited in court documents. Under the law, before such an agency can be selected as the payee, biological or adoptive parents, other relatives and even close friends of the child must be notified the child is eligible for benefits and be considered as potential recipients.

Of the roughly 3,000 foster children in Alaska in 2019, an average of 250 had their social security benefits claimed by the Office of Children Services each month that year, according to a January 2020 deposition provided by Brooke Katasse, who managed federal benefits and Medicaid for the state agency. Katasse's sworn testimony is part of the record in the landmark class-action lawsuit that began in 2014.

The case brought by 160 Alaska foster youth took aim at the state's behavior, and sought both recovery of siphoned Social Security funds and a requirement that the state notify children about their federal benefits.