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Testimony in Support of LD 2078 - An Act to Increase Participation by the Department of Health and Human Services Regarding Federal Benefits for Which Children in the Custody of the Department Are Eligible

TO: Committee on Health and Human Services
FROM: Amy Harfeld, National Policy Director, Children's Advocacy Institute
DATE: January 30, 2024

My name is Amy Harfeld and I serve as the National Policy Director for a children's rights nonprofit organization, the Children's Advocacy Institute, based at the University of San Diego School of Law. We work to strengthen the rights of vulnerable youth, children in and aging out of foster care and to increase accountability within child welfare systems and beyond. Thank you for allowing me to provide testimony in support of LD 2078, to protect the benefits of foster children.

I have been engaged in efforts to preserve the federal benefits and assets of foster youth for close to 20 years, when I had a 17-year-old client, Jasmine, who I was helping emancipate early from foster care. She had already been accepted into college with a partial scholarship and had worked at her uncle's deli for several years, saving nearly \$13,000 for school and other transitional costs. When she went to withdraw her tuition deposit from the bank, she was told that her account had been frozen, with only \$2000 of her savings available to withdraw- an insufficient amount for her tuition deposit. She implored me to help her recover her hard-earned savings. After some research, I learned that the foster care agency had applied for disability benefits on Jasmine's behalf when she entered care due to a mental health disorder related to the cause of her placement- without ever informing her or her attorney of having done so- had then appointed itself to receive her checks, and had deposited every last dollar of her benefits in state general funds to supplant their own obligation to pay the cost of her care. To add insult to injury, they had indeed frozen all but \$2000 of her savings supposedly in order to preserve her eligibility for these SSI benefits which she never knew about or saw a dollar of. She was

shocked and devastated to learn that the very agency that was supposed to protect and look out for her had been taking her money behind her back, and that I would not be able to get it back for her. She was not able to pay her tuition deposit. She deferred enrollment in college and began looking for alternate housing, as the dorms had been her housing plan.

In Maine, as in many states, the agency routinely applies for and intercepts Social Security benefits, Veteran's survivor benefits and other assets from eligible foster children and uses those benefits in a manner which does not benefit the child at all, but is rather used to offset the cost of their care. With SSI benefits for children amounting to over \$900/month, this valuable resource can accumulate quickly. This taking of children's benefits and assets almost always happens with no notice to either the children or their parents or their attorneys, providing no opportunity to challenge the assignment or use of these funds.

There is no asset cap or limitation for youth receiving survivor benefits. For youth receiving SSI disability benefits, conserved benefits can be placed in ABLE accounts or Special Needs Trusts without needing to be spent down or implicating the \$2000 asset cap. These accounts are explicitly for the purpose of saving assets for disabled youth to cover future expenses such as education, housing, child care, or health needs. Goodness knows disabled foster youth desperately need access to their benefits.

Charging disabled and orphaned youth for their own care- behind their backs- while the state pays the tab for all other foster children is not only contrary to state and federal law and rules, it is predatory, self-serving, and contrary to the best interests of the very children the agency exists to support.

100% of these funds- the undisputed property of the child or youth- should be conserved and used for services or supports which *exceed* the existing obligations of the agency- as the Social Security Administration phrases it, for unmet current needs or foreseeable future needs. For children receiving disability benefits this could be a unique therapy or piece of medical equipment not covered under Medicaid or by the agency. For recipients of survivor benefits conserved funds could be drawn down for participation in a school trip or competitive sports league, the purchase of a car or computer, or other items beyond the means of the agency. The conserved funds not needed during the duration of foster care could then help youth aging out of care attain stable housing, food security, quality child care, and education. These multiply marginalized children need every opportunity to succeed, and certainly access to their own existing assets.

In considering this bill, Maine joins a large and growing chorus of states across the country who have acknowledged that this practice is unjust, imprudent, and predatory. Since a groundbreaking [investigative series published by NPR and the Marshall Project](#), I have led a multifaceted national campaign to end this practice. As of January 22, 2024, 26 states and jurisdictions have taken action to ensure proper access and use foster youth's federal benefits.

Within the last year, [Arizona](#) and [Washington D.C.](#) passed comprehensive legislation covering each of the elements of a model law. To varying degrees, legislative or policy reform like Maine's has also advanced in [Maryland](#), [Connecticut](#), [Nebraska](#), [New Jersey](#), [Alaska](#), [Illinois](#), [Oregon](#), [California](#), [Hawaii](#), [New Mexico](#), and [Washington](#), as well as in [New York City](#), [Los Angeles](#), and [Philadelphia](#). States with prospective or pending legislation include [Tennessee](#), [Missouri](#), [Massachusetts](#), [Michigan](#), [Minnesota](#), [Colorado](#), [New Hampshire](#), [Kansas](#), [Virginia](#), and [Texas](#). Oregon and Minnesota went so far as to propose a path to financial restitution for impacted youth, which would establish a new gold standard. After all, what other civil or criminal context involving the improper taking and use of someone's property does not aim to return the property to the rightful owner?

Parents work hard to set their children up for success. When Maine serves as the legal parent of abused and neglected children, it should work towards, not undermine, that same goal. This bill will begin the process of ensuring youth's due process rights are protected and sets up a scenario where disabled and orphaned foster youth can actually benefit from their benefits and begin the already perilous journey to self-sufficiency with greater security. Instead of footing the bill for exponentially more expensive ancillary public services later on, I respectfully urge you to advance LD 2078.

I want to express gratitude to sponsors Representatives Amy Roeder and Laura Supica for sponsoring this bill, and the other champions of innovation and justice who helped get this in front of you. Thank you for your consideration of LD 2078 on behalf of the thousands of Maine's foster youth who stand to have a better chance to thrive.

Sincerely,

A handwritten signature in cursive script that reads "Amy Harfeld".

Amy Harfeld

Washington Must Step Up to Protect Foster Youths' Benefits

8/17/2022 6:21am

By Ian Marx



When I was 11 years old, I lost my mother and my father was arrested for second-degree murder. With no relatives able to care for me, I was placed in foster care, where I stayed until I aged out at 18.

While other 11-year-olds were worried about video games and homework, I was grieving my parents, terrified of living with strangers, and anxious about how I would survive. I never felt so alone. I was in therapy for over a decade to help deal with the trauma, eating and behavioral issues I faced after going into foster care. Some of that trauma haunts me to this day.

I had one reason to hold onto hope. My mom honorably served in the Navy at Guantanamo Bay, and because of her death, I became eligible for her Veterans Pension benefits. This money could have been the key to helping me pay for my bachelor's degree from the University of Notre Dame, or for my law degree at Emory University, where I am entering my second year. It could have helped me secure safe housing, stable transportation and do normal things like go on debate trips and participate in extracurricular sports.

But I never saw a red cent of my mother's survivor benefits, or the Supplemental Security Income benefits I became eligible for after coming into care. These benefits, which my social worker bluntly told me I shouldn't bother to pursue, would Ian Marx have totaled over \$1,000 a month.

My faith in the system that was supposed to care for me was shattered as I realized I was in the midst of an Orwellian nightmare: government agencies pocketing money from children who were orphaned or disabled, with no accountability or transparency.

As Congress and the Biden administration just affirmed, we take care of our veterans and their families. This is a hole in that net. The financial security my mother meant to be my legacy after her proud service slipped right by me and into the hands of my new legal parent—the foster care agency—who was ultimately more concerned about its bottom line than my best interests.

I've learned that I was not alone in this experience. An estimated 10%-20% of foster children are eligible for such benefits. And like me, most never see a dollar. Almost every state screens children in care for benefits, some even contracting for-profit companies to advance a "revenue maximization" framework for their system. Once they identify an eligible youth, the agency applies for their benefits. This would all be fine if they used or saved the child's money in the child's best interest as they are supposed to do. But after benefits are awarded, the agencies appoint themselves to receive the checks, and keep the money. In 2018, states netted at least \$165 million by taking benefits from over 25,000 foster children who were counting on them to prioritize their well-being.

Perhaps most shocking of all, this financial scheme all happens without ever informing the child or their lawyers of their eligibility, application or award of their benefits. Most beneficiaries in care never know they had any benefits. This money is the child's property under federal law, and could be a lifeline for youth like me who are already facing tough odds.

If it seems hard to believe this practice is legal, that's because it may not be. States claim they use kids' benefits to pay for their own foster care, but foster children have no duty to pay for their own upkeep, and their benefits are supposed to cover unmet needs or be saved for their future. In fact, federal and state laws explicitly require foster care agencies to pay for all kids' care — including those who have been orphaned or are disabled — and only allow states to manage foster kids' accounts as a last resort.

Some states are working to correct this injustice, but most are flagrantly flouting the law and violating kids' rights by taking their money with no notice, no accountability, and no consideration of their actual best interest. The feds have yet to step in to set things right, but a bipartisan group of congressional leaders recently said they are concerned about "reports that benefits are being used to help state budgets instead of children."

Over the last year and a half, I have had the opportunity to meet repeatedly with the Biden administration's teams at the Children's Bureau at the Administration for Children and Families (ACF) and the Social Security Administration (SSA). I explained to them how my benefits were kept from me and could have helped pay for tuition, housing, therapy and medication.

Along with other advocates and allies, I made direct requests to these agencies to clarify and enforce their rules, and to issue policy that taking foster kids' benefits behind their backs to pay for their own foster care is not OK and will no longer be allowed. Officials I met with promised this issue was a priority for the administration. They repeatedly stated that joint guidance from both agencies was imminent.

But so far those promises have gone unfulfilled, and when pressed by a reporter, neither agency would even commit to a timeline for action. We know that the ACF can fix this if they want — because they just did so to reverse their similarly counter-intuitive policy to charge parents for foster care. With the political will, they can issue parallel policy and guidance to no longer allow agencies to charge children for their care either. SSA also has an important role to play, a set of pending requests, and the power to get on the right side of this.

While the administration delays action, some members of Congress are moving forward. Rep. Danny Davis (D-Ill.) and other champions are working on a federal bill building on a previous version sponsored by Biden’s own Secretary of Health and Human Services, Xavier Becerra. This bill will be an important step to complement executive action and I hope will reflect some of the recommendations I made to Congress while working with the Congressional Coalition on Adoption Institute.

We must hold agencies accountable for providing youth and their attorneys notice of any actions on their “behalf” related to their benefits, and protecting both their physical and financial interests. Give foster kids a chance to weigh in on who manages their money and how it is spent. Stop charging them for their own care. Young people like me know exactly how our benefits could be used in our best interest now or saved for our futures, and who we trust to help us do so. Now is the time for the administration to establish clear federal leadership to preserve the rights and assets of this particularly vulnerable population of foster youth. Its own priorities and mission statement to promote equity and economic justice for children can guide the way.

About the Author

Ian Marx

Ian Marx spent 8 years and then aged out of Louisiana's foster care system. He served as a foster youth intern at the Congressional Coalition on Adoption Institute after graduating from the University of Notre Dame and is now a second-year law student at Emory University.

📍 imprintnews.org/opinion/washington-protect-foster-youth-benefits/67187