

# What To Do If the IRS Challenges Your Dependency Exemptions or Child-Related Tax Credits

By Tamara Borland\*



The first rule is don't panic! The IRS sends out different types of notices and letters about dependency exemptions and child-related tax credits. The IRS uses computer programs to look for common mistakes made on returns. Some returns are flagged because more than one person claimed the same dependent. The IRS also selects some returns at random to review. The key is figuring out the root of the problem.

## Who can be a dependent?

Dependency exemptions are allowed for a "qualifying child" or a "qualifying relative." The definitions of qualifying child and qualifying relative impact who can claim children or other relatives as dependents - and who cannot.

Each dependency exemption lowers a taxpayer's taxable income by a set amount. For the 2011 tax year, the amount is \$3,700.

Rules for claiming dependents can be complicated. This is especially the case in families where parents are divorced or never married, or when many generations of one family live together. Special rules apply to dependents who are married. This article explains the basics but does not explain everything. There are some special rules and exceptions to the rules not discussed here. More information about these can be found in Publication 501 at [www.irs.gov](http://www.irs.gov).

## How to Find Out if a Child is a "Qualifying Child" for a Dependency Exemption

### QUALIFYING CHILDREN in general must meet every one of these six tests:

- TEST 1: RELATIONSHIP** The qualifying child must be a son/daughter, sister/brother, stepchild, child of taxpayer's sibling, grandchild or adopted child as long as the child lived with taxpayer for more than six months in 2011. Foster children placed with the taxpayer more than six months of the year by an authorized government or private placement agency also qualify.
- TEST 2: CHILD'S AGE** The qualifying child must be:
- under age 19, OR
  - under age 24 if the child is a full-time student, OR
  - a child with a total and permanent disability (of any age)
- TEST 3: TAXPAYER'S AGE** The qualifying child must be younger than the taxpayer unless the child is totally and permanently disabled.
- TEST 4: RESIDENCE** The qualifying child must have lived with the taxpayer more than half the year.
- TEST 5: SUPPORT** The child must not have provided more than half his or her own support.
- TEST 6: TIE-BREAKER** If the child is the qualifying child of more than one person, the taxpayer must be the one who meets the tie-breaker test.

## How to Find Out if a Relative is a "Qualifying Relative" for a Deduction

In general, to be a "QUALIFYING RELATIVE" a person must meet every one of these four tests:

- TEST 1: NOT A QUALIFYING CHILD** The person who is the taxpayer's qualifying relative cannot be anyone else's qualifying child.
- TEST 2: RELATIONSHIP OR RESIDENCE** The person must be related to the taxpayer in one of the ways listed above and be a U.S. citizen, U.S. National or live in the U.S., Canada or Mexico, or have lived with the taxpayer for the entire year.
- TEST 3: GROSS INCOME** The person must have gross income of less than \$3,700 for the year. (The dollar amount may change each year.)
- TEST 4: SUPPORT** The taxpayer must provide more than half the person's total support for the year.

## What is the Tie-Breaker Test?

Under the tie-breaker test, the IRS will grant the qualifying child to a taxpayer in the following order:

1. The parents, if they file a joint return;
2. The parent, if only one of the persons claiming the child is the child's parent;
3. The parent with whom the child lived the longest during the tax year, if the child's parents do not file a joint return and are considered unmarried;
4. The parent with the highest Adjusted Gross Income (AGI) if the child lived with each parent for the same amount of time during the tax year, and the parents do not file a joint return;
5. A non-parent with the highest AGI, who is otherwise eligible to claim the qualifying child, if the child is not a qualifying child of either of the child's parents;
6. A person who is otherwise eligible to claim the qualifying child and who has a higher AGI than either of the parents when the parents have chosen not to claim the child as a qualifying child.

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Publication 3524a

## What main tax credits involve children?

The main tax credits involving children are:

- the Earned Income Tax Credit,
- the Child Dependent Care Credit, and
- the Child Tax Credit.

Each credit has different rules but for all the credits the person who can claim the dependency exemption is the only one eligible to claim the credits.

The Earned Income Credit (EITC) is a "refundable" tax credit. A refundable tax credit may result in the taxpayer getting money back from the IRS. For the 2011 tax year, the EITC could be worth as much as \$5,751 for a low-income working family with children. It could be worth \$464 for a low-income working single person or married couple without children. In order for a child to be a qualifying child for the Earned Income Tax Credit:

- Both the child claimed and the parents must have social security numbers that qualify the individuals for employment.
- Taxpayers cannot file *Married Filing Separately*.

The Dependent Care Credit is a "non-refundable" credit. A non-refundable tax credit can reduce taxes owed but doesn't result in the taxpayer getting any money back like can happen with the Earned Income Credit. It is available for a taxpayer who pays child care expenses for a qualifying child which allows the taxpayer to work or look for work. The child must be under the age of 13 unless the child is incapable of self-care due to physical or mental disabilities. This credit is available only to the custodial parent. (Note: The dependent care credit can also be available to a taxpayer who pays for care for another adult dependent or spouse who is incapable of self-care.)

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# Affordable Care Act Reforms Currently Working For You

By Mike Tulis\*

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act. The law creates many new health insurance reforms that are scheduled to roll out between 2010 and 2014. Many of them are already in place. Listed below are some of the reforms already in place, along with the date they became effective.

## Putting Information for Consumers Online.

The law provides for an easy-to-use website where consumers can compare health insurance coverage options and pick the coverage that works for them (<http://www.healthcare.gov>). *Effective July 1, 2010*

**Ending Insurance Companies' Practice of Refusing to Cover Children with Pre-Existing Health Conditions.** The health care law includes new rules to prevent insurance companies from denying coverage to children under the age of 19 due to a pre-existing condition. *Effective for health plan years beginning on or after September 23, 2010* (Note: Insurance companies will be prohibited from refusing to cover adults with pre-existing conditions in 2014).



**Providing Access to Insurance for Uninsured Adults with Pre-Existing Conditions.** The Pre-Existing Condition Insurance Plan (PCIP) provides new coverage options for adults who have been uninsured for at least 6 months because of a pre-existing condition. More information about Iowa's Pre-Existing Condition Insurance Plan (PCIP) can be found at <http://hipiowafed.com/index.htm> *National program effective July 1, 2010*

**Extending Coverage for Young Adults.** Under the law, young adults are allowed to stay on their parents' health care plan until they turn 26 years old. Check with your insurance company or employer to see if you qualify. *Effective for health plan years beginning on or after September 23, 2010*

**Prohibiting Insurance Companies from Ending or Withdrawing Coverage.** In the past, insurance companies could search for an error, or other technical mistake, on a customer's application and use this error to deny payment for services when he or she got sick. The health care law makes this illegal. *Effective for health plan years beginning on or after September 23, 2010*

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### Dependency Exemptions or Child-Related Tax Credits Continued from Page 1

The Child Tax Credit is available for children under age 17 who live with a taxpayer for more than half of the tax year (see Divorced, Separated or Never Married exception below). The Child Tax Credit can be up to \$1,000 per child. If the credit exceeds the amount of tax owed, a part of the credit may be refundable and is called the additional child tax credit. The taxpayer needs to have more than \$3,000 in earned income to qualify for this credit.

### Divorced, Separated or Never Married Exception

When parents are divorced, separated, or never married, the custodial parent can sign over the dependency exemption to the non-custodial parent. The non-custodial parent may claim the dependency exemption and, if qualified, the child tax credit. The custodial parent may claim the EITC and the Child Dependent Care Credit if the parent meets all the qualifications even if the custodial parent has assigned the dependency exemption to the non-custodial parent. The easiest way to sign over the dependency exemption is to use IRS Form 8332.

### What If More than One Person provides support and want to claim a deduction?

At times, a child is the qualifying child of more than one person. Sometimes more than one taxpayer will provide support for a qualifying relative. If more than one person has the same qualifying child or qualifying relative, the persons may be able to legally agree who will claim either the qualifying child or the qualifying relative. Discussing who can/should claim a dependent when both taxpayers can legally claim a dependent is good tax planning.

It is *not* okay to “borrow or lend” dependents to other taxpayers. Some bad tax preparers promote this practice. A neighbor or friend’s child who didn’t live with the taxpayer for the entire year and who the taxpayer didn’t support cannot be a dependent. If a preparer suggests something like this, the taxpayer should walk away and consider reporting the tax preparer to the IRS.

### Common Situations Where the IRS Disallows or Reviews Returns Claiming a Dependent

*My tax preparer says my return was rejected because someone else claimed my child. What can I do?*

Custodial parents of a child can request a paper version of the return. The parent will need to sign, date and mail it in to the IRS. It may be a good idea to reach out to the other parent if there is a reason to think the other parent claimed the child and is confused about whose turn it is to claim the child or whether the non-custodial parent has the right to claim the child at all. If this is a problem that has happened more than once, the parent entitled to claim the child may wish to file as soon as he or she has all the tax information for the year. The first return filed is most likely to be successfully electronically filed and processed. The parent who files the electronic return will usually get the refund 3-4 weeks faster than when a paper return is filed.

Non-custodial parents who have a signed release (such as a form 8332 mentioned above) can mail in a signed and dated paper copy of the return with a copy of the release attached.

Non-custodial parents without a release that satisfies the IRS rules will likely be denied the dependency exemption and child tax credit. He or she will have to try to work out the situation with the custodial parent. If the other parent won’t cooperate and there is a court order in place, there may be a need to return to court to enforce the order.

The parent who claims a child without being legally entitled to the exemption or credit risks having problems with the IRS. Additional tax, interest and penalties can make such a claim a costly error and an unnecessary headache for everyone.

If you suspect a stranger has stolen your child’s information, you can contact the IRS Identity Theft unit. Ask what options there are to try to prevent the stranger from using your child’s identification. You can also file a report with your local police department. Keep a copy of any police report or forms you are asked to file. You may wish to pull your child’s credit record on a regular basis to help ensure someone is not using the child’s Social Security number for other purposes.

### How should I respond to an IRS letter?

Your response depends upon the type of letter. If more than one person claims a dependent on a tax return, both individuals may receive a letter from the IRS. The IRS letter may ask the taxpayer to review the return and file an amended return if the taxpayer was not entitled to claim the dependent. With this type of letter, the IRS does not require taxpayer to do anything if the taxpayer believes he or she was correct in claiming the child.

Another letter a taxpayer might receive will explain that the IRS is auditing the return. When this letter is issued, the taxpayer will have to gather evidence to prove that the taxpayer is entitled to the dependency exemption and/or child related tax credits. It is very important for the taxpayer to read what types of proof the IRS wants, keep a copy of everything sent to the IRS and respond by the deadlines or ask for more time. The IRS can hold all or part of the taxpayer’s refund.

If you have tax troubles, you may be able to get help from Iowa Legal Aid’s Low-Income Taxpayer Clinic. Call 1-800-532-1275.

*The information included in this article is not intended or written to be used and cannot be used to avoid penalties under the Internal Revenue Code.*

*\*Tamara Borland is Project Manager of Iowa Legal Aid’s Low-Income Taxpayer Clinic.*



## FREE LEGAL TAX HELP

- Claim The Earned Income Credit
  - Get Assistance With Tax Controversies
- Call Iowa Legal Aid for details on the **Low-Income Taxpayer Clinic.**

**1-800-532-1275**

### Affordable Care Act Reforms Currently Working For You

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#### Eliminating Lifetime Limits on Insurance Coverage.

Under the law, insurance companies are prohibited from imposing lifetime dollar limits on essential benefits, like hospital stays. *Effective for health plan years beginning on or after September 23, 2010*

#### Regulating Annual Limits on Insurance Coverage.

Insurance companies’ use of yearly dollar limits on the amount of insurance coverage a patient may receive are restricted for new plans in the individual market and all group plans. In 2014, the use of yearly dollar limits on essential benefits will be banned for new plans in the individual market and all group plans. *Effective for health plan years beginning on or after 9/23/2010*

#### Appealing Insurance Company Decisions.

The law provides consumers with a way to appeal coverage determinations or claims to their insurance company, and establishes a review process outside of the insurance company. *Effective for new plans beginning on or after September 23, 2010.* The Iowa Insurance Commission handles the outside appeal process to review insurance company decisions – more information can be found here: [http://www.iid.state.ia.us/external\\_review](http://www.iid.state.ia.us/external_review)

#### Providing Free Preventive Care.

All new plans must cover certain preventive services such as mammograms and colonoscopies without charging a deductible, co-pay, or coinsurance. *Effective for health plan years beginning on or after September 23, 2010*

#### Requiring Nonprofit Hospitals to Establish a Written Financial Assistance Policy.

Nonprofit hospitals are required to establish a written financial assistance policy which includes:

- a. eligibility criteria for financial assistance, and whether such assistance includes free or discounted care;
- b. the basis for calculating amounts charged to patients;
- c. the method for applying for financial assistance;
- d. the actions the nonprofit hospital may take in the event of nonpayment, including collections action and reporting to credit agencies;
- e. requirements to widely publicize the policy; and
- f. requirements that nonprofit hospitals offer patients an opportunity to apply for financial assistance prior to engaging in collection activities.

*Effective March 23, 2010*

#### Prohibiting Nonprofit Hospitals from Charging Uninsured Patients Higher Prices than Insured Patients.

In the past, nonprofit hospitals have negotiated lower rates for goods and services with insurance companies while charging uninsured patients higher prices. The new law prohibits nonprofit hospitals from charging uninsured patients higher prices. The new law requires that uninsured patients be charged either (a) the lowest negotiated rate; (2) the average of the 3 lowest negotiated rates, or (3) the Medicare rate. *Effective March 23, 2010*

#### Offering Prescription Drug Discounts to Seniors on Medicare Part D.

Seniors who reach the “donut hole” will receive a 50% discount when buying Medicare Part D covered brand-name prescription drugs. Over the next eight years, Seniors will receive additional savings on brand-name and generic drugs until the “donut hole” is eliminated in 2020. *Effective January 1, 2011*

#### Offering Women Access to a Full Range of Free Recommended Preventive Services.

Women will have access to a full range of recommended preventive services without cost sharing, including well-woman visits; screening for gestational diabetes; human papillomavirus (HPV) testing for women 30 years and older; sexually transmitted disease and (HIV) screening and counseling; FDA-approved birth control methods and counseling; breastfeeding support, supplies, and counseling; and domestic violence screening and counseling. *Effective for health plan years beginning on or after August 1, 2012*

The Affordable Care Act is currently being challenged in the courts. The U.S. Supreme Court is scheduled to rule on whether the law is constitutional. A decision is expected by June 30, 2012. If the Supreme Court decides the law is unconstitutional, all or part of the reforms listed above may be ended. If it is upheld as constitutional, they will remain in place. The Supreme Court can also choose to strike down certain parts of the law as unconstitutional and uphold other parts of the law as constitutional.

Iowa Legal Aid provides help to low-income Iowans when legal problems block access to quality and reliable health care. To find out if assistance is available for a health law issue, call 1-800-532-1275.

*\*Mike Tulis is a senior staff attorney at Iowa Legal Aid’s Southwest Iowa Regional Office in Council Bluffs.*

## PUBLIC NOTICE

**Meetings of the Iowa Legal Aid Board of Directors are open to the public. We encourage the public to attend.**

**The next meeting of the Board of Directors is scheduled to take place on Saturday, August 11, 2012. The Board of Directors meets at least four times each year. For details on the next meeting of the Board, call toll-free:**

**1-800-532-1275**

# Outstanding Iowans Honored by Board of Directors at Annual Meeting

The Annual Meeting of Iowa Legal Aid’s Board of Directors, held on Saturday, May 5, 2012, was followed by the Annual Awards Luncheon. In recognition of the 35<sup>th</sup> anniversary of Iowa Legal Aid, Deputy Director Chris Luzzie and Managing Attorney Jan Rutledge used a 24-foot timeline of historic program developments to review landmark cases of clients represented by Iowa Legal Aid.

Excellence in Service and Outstanding Client Service Award recipients are pictured at right with information on each. Award recipient Kellie Droessler was unable to attend the event but in a letter extended her heartfelt gratitude to Iowa Legal Aid and Managing Attorney Carrie O’Connor of the Northeast Iowa Regional Office:

*“Without her help, I do not know where my children or myself would be today...things have only gotten better and better. We are both thriving. My son excels in his kindergarten class, and has taken up ice skating and hockey, which he loves and does very well at.*

*As for myself, it has been a journey. For the last three years, I have not only sat as an Advisory Council Member, but also shortly after my divorce was final, I enrolled in college classes at Northeastern Iowa Community College with Mrs. O’Connor’s encouragement. I have been inducted into Phi Theta Kappa, as well as Alpha Beta Gamma honor societies, and will graduate this May at the top of my class with my Paralegal Associates degree. In addition, I will be attending the University of Dubuque in the fall of 2012 to obtain my bachelor’s degree.”*

Congratulations to all these Iowans for demonstrating dedication and commitment to the goals and priorities embraced by Iowa Legal Aid throughout 35 years of work for hope, dignity and justice.



Excellence in Service Award recipients Ana Clymer and Rae Ann Barnhard represented the Partnership for Safe Families. The Partnership’s work included coordinating services to low-income families affected by the 2008 flooding in Cedar Rapids.



Excellence in Service Award recipient Julia Dodds was honored for her services as a volunteer at the Iowa City Regional Office. She completed a paralegal degree through Kirkwood Community College and an internship with Iowa Legal Aid.



Outstanding Client Service Award recipient Sarah Clark is a member of the advisory council of the North Central Iowa Regional Office. Since she first came to Iowa Legal Aid, Sarah has kept working at her goals in the face of many obstacles and challenges. She has gone back to college while maintaining employment and establishing a safe and loving home for her children.



Outstanding Client Service Award recipient Jeffrey Schneider with members of his family. Left to right, Travis, Sharon, Jeffrey and Andrya. Despite personal losses from the flood of 2008 including the family business plus losing their home to foreclosure, Jeff has worked tirelessly on behalf of other flood victims. He was honored for his selflessness and concern for others.

# Rights of People in Civil Commitment

By Frank Tenuta\*

A person who is “mentally ill” and “dangerous” can be made to get mental health treatment. There are specific rules about forcing a person to have mental health treatment. This kind of court case is called “civil commitment.”

There are a number of technical things that must be done in a commitment case. This article will explain how it works in general. It will not cover every technical point.

## When can a person be “committed”?

A person can be committed if a judge decides that the person is “seriously mentally impaired.” Seriously mentally impaired means that the person:

- has a mental illness;
- is not able to make decisions about getting treatment; and
- is likely to hurt him or herself or others.

## How does a “civil commitment” case start?

Someone who believes that a person is “seriously mentally impaired” can file a paper with the clerk of court asking that the person be committed. Normally, there has to be another person sign a paper also. When that is done, a commitment case will be filed. The case will be confidential. That means that the public will not be able to see the file.

## What happens after papers are filed?

A judge will look at the papers and decide what to do. The judge could dismiss the case if

there is not a good reason to commit the person. If there is a good reason, the judge will set a hearing date. The judge will probably order that the person be picked up. The person will then be taken to a hospital for an examination and held until the hearing. The judge will also appoint a lawyer for the person.

The papers will be given to the person and the person’s lawyer. The county attorney will also get copies of the papers.

## What happens during the hearing?

The hearing may be informal. The hearing may be held in a courtroom, an office, or a room in the hospital. The hearing might be held other places also. The hearing is not open to the public. Normally, the person will be at the hearing. If the person agrees to being committed, the hearing will be very informal and short. If the person does not agree, the hearing will be longer.

At the hearing, the county attorney will present the evidence about why the person needs to be committed. The lawyer for the person will present the evidence about why the person should not be committed. The judge will get a report from the doctor who examined the person. The doctor may also testify by telephone or in-person. There may be other witnesses.

## What happens after the hearing?

After the hearing, the judge will make a decision. The judge might dismiss the case or order that the person be committed for treatment. The decision of the judge can be appealed. If the judge who decided the case was a “magistrate” or “referee,” an appeal can be filed to a district court judge within ten days. A decision of a district court judge can be appealed to the Iowa Supreme court within 30 days.

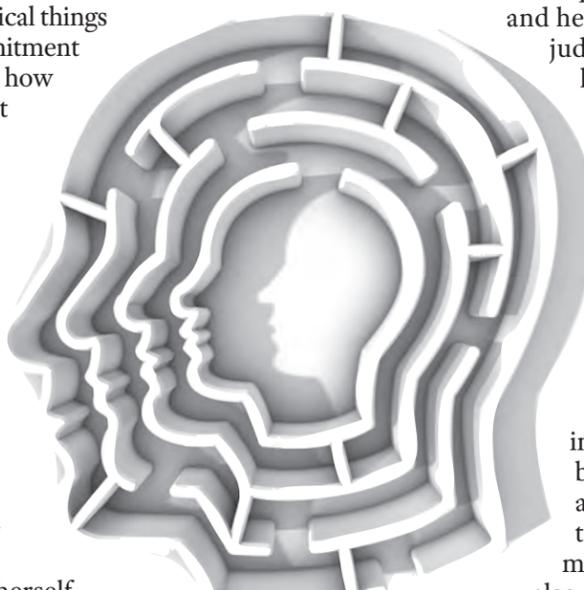
## What rights does a person have after he or she is committed?

After the person has been committed, the medical officer of the hospital will need to file regular reports. These reports should tell the judge whether the person needs more treatment. The reports should also say if the person can be released or needs to go to a different place. Any time there is an order about placement, a notice should be given to the person under the commitment. The person then has the right to ask for a hearing on the placement.

A person who has been committed has the right to ask to be released. To do this, a paper is filed with the court. This paper is called, “A Petition for Writ of Habeas Corpus.” When the paper is filed, the court should schedule a hearing. At the hearing, the court will consider whether the person should be released.

A person who has been committed has a number of other rights. When a person receives notice or is picked up under a commitment, he or she should talk to the attorney who has been appointed. That attorney will explain the person’s rights.

*\*Frank Tenuta is a Managing Attorney II with Iowa Legal Aid and is at the Northwest Iowa Regional Office in Sioux City.*



# Someone Took My Identity – What Should I Do?

By Brooke Chesney\*

Many people deal with the results of identity theft. Here are 4 steps you can take to recover from identity theft. By following these steps, you will end up with an Identity Theft Report. This report will be helpful in getting fraudulent information removed from your credit report, stopping companies from collecting on debts that resulted from identity theft and getting information from companies about accounts the identity thief opened or misused.



## Step 1: Contact the consumer reporting agencies

Consumer reporting agencies keep track of your credit score and what debt you have. If your identity is stolen, you will need to contact the fraud departments of the consumer reporting agencies. They need to know your identity was stolen. You can also find out if there are fraudulent charges in your name that you did not make. Here are the 3 agencies:

- ▶ Equifax – 1-800-525-6285  
P.O. Box 740241  
Atlanta, GA 30374-0241
- ▶ Experian – 1-888-397-3742  
P.O. Box 2104  
Allen, TX 75013-2104
- ▶ Trans Union – 1-800-680-7289  
P.O. Box 2000  
Chester, PA 19022-2000

These agencies can help stop further problems. You can ask them for help in placing a “Fraud Alert” or “Credit Freeze” on your credit report. Here’s what these mean:

- **Fraud Alert**
  - ▶ This requires other companies to take reasonable steps to verify that you are the consumer before allowing credit to be given in your name.
    - You make a call to only one of the above agencies asking them to place an alert on your credit.
    - This usually lasts for 90 days and should not cost you any money.
- **Credit Freeze**
  - ▶ This means no one is granted credit in your name, including you.
    - You write a letter to all three agencies asking them to freeze your credit.
    - There is the possibility of fees, as this will last until you write to end it.

## Step 2: Contact the companies that extended credit to you

You may find out about the fraud because there is a charge you didn’t agree to on your account. Call the fraud department of the companies where fraud was committed. If you have an active account with the company and want to keep that, you should ask to freeze the account. If you do not want an account with the company, you should ask them to close the account.

## Step 3: File a complaint with the FTC

You will need to file a complaint with the Federal Trade Commission (FTC). You can do this online at their

website – [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or call them at 1-877-438-4338.

Making a complaint will create an “identity theft affidavit.” Print it out. This is very important paperwork. Keep it in a safe place until you complete Step 4.

## Step 4: File a police report

After you have the identity theft affidavit, you should go to your local police station. Ask them to file a police report about fraudulent charges in your name. Be sure to get a copy of the police report for your records.

## Identity Theft Report

Once you have followed Steps 1-4, you should have some paperwork. The Identity Theft affidavit from the FTC and the police report together make an “Identity Theft Report.” Some creditors will require proof that a crime was committed. You can send this report to the creditors’ fraud departments. The report proves to creditors that you are not responsible for certain credit taken out in your name. You should also send them a written letter disputing the charges.

Mail a copy of the report to the consumer reporting agencies listed in Step 1. Within 4 business days of accepting the report, the agencies should remove the identity theft-related information from your credit report.

## Resources

The FTC website ([www.ftc.gov/idtheft](http://www.ftc.gov/idtheft)) has a lot of information to help those dealing with identity theft.

\*Brooke Chesney is a staff attorney in Iowa Legal Aid’s Intake Unit.

# Iowa Legal Aid helps low-income Iowans

Did you know... After calling what looked like a local number for “legal aid” in the phone book, some Iowans got return calls from somewhere in Georgia?



Don’t be misled ...

- Iowa Legal Aid provides **FREE** legal assistance to those who qualify.
- Iowa Legal Aid helps low-income Iowans with civil legal problems including:
  - Domestic violence
  - Housing
  - Public Benefit Programs

The intake number for Iowa Legal Aid is 1-800-532-1275

Iowans age 60 and over, call Iowa Legal Aid’s Legal Hotline for Older Iowans at

1-800-992-8161

Visit us online at [iowalegalaid.org](http://iowalegalaid.org)

The Equal Justice Journal is published four times a year by Iowa Legal Aid. The Equal Justice Journal is free to low-income people in all counties of Iowa. All others must pay a \$10.00 annual subscription fee. The EJJ is available in a larger print edition upon request.

All correspondence should be sent to:

The Equal Justice Journal  
Iowa Legal Aid  
1111 9th Street, Suite 230  
Des Moines, Iowa 50314-2527



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Note: Photographs in this newsletter are produced independently of text and bear no relationship to cases or incidents discussed herein (except where noted below a picture).

# DISASTER DOCUMENTS CHECKLIST

Do not risk your life to collect these items at the last minute.

Gather them in advance in case you must leave your home because of a flood or other disaster. Keep them safe and with you in a waterproof container.

**Identification.** Driver’s license, passport, photo ID, green card, visa, etc.; recent photos of you and your family.

**Medical.** Medications, current prescription bottles, inhalers, oxygen, shot records, blood type cards, eyeglasses, etc. for you and your family. Make a list of medication needs and doctors for each of you. Keep with the medications.

**Proof of address.** Deed, lease, recent utility bill to prove your address so that you can apply for benefits. These also may be needed so that you can return to your home if law enforcement blocks entry to the disaster area.

**Insurance.** Life, medical, vehicle, tenant, homeowner and other property insurance policies; medical, Medicaid, Medicare cards for you and your family.

**Legal documents.** Birth certificates, adoption papers, child custody documents, orders of protection, divorce decrees, wills, powers of attorney, etc.

**Cash and banking items.** Cash; credit, debit and ATM cards; checkbooks, bank books, account documents; deeds and leases; mortgage and other loan documents.

Remember, ATM machines will not work and electronic transfers will not be possible if there is no electricity. You will need cash.

**Pets. Tag your pets.** Prescriptions, shot records, pet photos.

**Cell phones and chargers, address and phone books** to contact family and friends. Keep phones fully charged.

**Bills.** List of your bills (with account numbers) and mailing address for each.

**Other important items.** Keys, recent pay stub, Social Security card, veteran’s or military ID, food stamp and other benefit eligibility documents, etc.

**Recent pictures of your home.** Whether you own or rent, take photos before the flood or other disaster of all areas, inside and outside, of your home and property, including basement, garage, barns, outbuildings, yard, etc. Get the photos developed immediately with date stamps. Keep them in your waterproof container.

**Personal Items.** Family photos and precious items that cannot be replaced.

Prepared by Mid-Missouri Legal Services

The information in this newsletter was correct as of the date it was printed. The laws may have changed. **DO NOT ASSUME THAT THE INFORMATION IS CORRECT AFTER THE DATE PRINTED ON THE FIRST PAGE.**

You should see a lawyer to get complete, correct, and up-to-date legal advice. Do not rely on the general information in this newsletter for your specific case. If you need a lawyer but can’t afford one, contact Iowa Legal Aid. You may be able to get free legal help. Call or write Iowa Legal Aid.

**AS YOU READ THIS NEWSLETTER, REMEMBER IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.**

**Plan Ahead!**

*Continued from Outside Front Cover*

**Planning Ahead In Case I Can't Make Decisions On My Own**

- Make a health care/medical power of attorney appointment to name someone whom you want to make health care decisions for you when you are unable to do so.
- Make a general/financial power of attorney appointment to name someone whom you want to manage your finances for you when you are unable to do so. This can include paying your bills, applying for assistance, and selling property.
- Make a "Living Will" if you do not want to be kept alive with medical "life sustaining procedures" if you are terminally ill.

You can end or make new power of attorney appointments or change your living will in the future if needed.

- Make sure your spouse, partner, or the person you appointed as general power of attorney has access to your legal documents and knowledge about your accounts, investments, and property.
- Make plans for long-term care should you need to go to a nursing home. Long-Term Care insurance is one option to consider.

*"Planning ahead is based on your specific goals, property, resources, relationships, health, and so forth. Do not base your plans on what someone else has done. Their situation may be much different than yours."*

**Planning Ahead for After Death**

- Is your spouse or partner the joint owner of your home "with right of survivorship"? This would mean that the home passes automatically to your spouse or partner without the need to open a "probate" court action to transfer the home.
- Do you have beneficiaries named for your bank accounts, retirement accounts, pensions, investments, and life insurance? This allows money or assets to pass to the beneficiary without the need to open a "probate" court action.
- Do you have a plan for burial or cremation and for your funeral? Have you pre-paid these costs? Planning and paying ahead means that your loved ones can focus on the memories. Irrevocable, pre-paid funeral plans are not counted as a resource should you need to apply for Medicaid assistance for care.
- Have you made clear who is to make decisions about your burial and funeral? You can name this person with a

DECLARATION OF DESIGNEE FOR FINAL DISPOSITION. *This form must be attached to your health care power of attorney form.* If you have not named someone to make these decisions, Iowa law has a list of your relatives to make the decisions. First on the list is your surviving spouse.

- Have you made a "will" or do you have a "trust" to list what happens to your property after you are gone? Your will may need to be "probated" depending on the property and amount of money that you have. Probate is the court action to carry out your will. Trusts do not need probate.

There are different kinds of trusts that can be used for different reasons. You should review wills and trusts with an estate planning attorney.

If all your property passes to beneficiaries or joint owners of your property, a will or trust may not be needed. **You cannot give away property in a will or trust that already goes to a surviving joint owner or a beneficiary.**

If you don't have a will (or trust), then under Iowa law the property would go to your heirs. This would usually be your surviving spouse unless you have children from other

marriages. If you have no spouse, your property would go to your children. If you have no spouse or children, then it would go to other relatives.

- **If your spouse dies or there are changes in your family or relationships, you need to review your planning.** You should review your plans regularly to make sure they still meet your needs. Planning documents that are out of date need to be destroyed and new ones made. **JUST WRITING IN CHANGES ON YOUR OLD DOCUMENTS WILL NOT WORK.** You need to follow legal rules to make the changes. Talk to an attorney for help with making the changes.

This is some basic information about planning ahead. Planning for the possibility of long term care or to pass resources on to your loved ones can be very complicated. Planning ahead is based on your specific goals, property, resources, relationships, health, and so forth. **Do not base your plans on what someone else has done. Their situation may be much different than yours.** In illness or death you will not be in a position to correct your planning. This important planning is best done with an attorney who practices in the area of estate planning and also understands the Medicaid rules.

Contact Iowa Legal Aid or the Legal Hotline for Older Iowans for more information about these advance planning issues.

*\*Fred Nelson is a staff attorney with Iowa Legal Aid's Legal Hotline for Older Iowans.*

**The Pension Corner - Answers to Important Questions on Pension Issues**

*By Bill Nassif\**



**Question:** *I am going through a divorce. My spouse works for a company that has a pension plan. I am working but don't have a pension. Do I have a right to part of my spouse's pension?*

**Answer:** A pension earned during marriage is considered a joint marital asset. In addition, a pension or retirement plan is often the most valuable asset in the marriage and it is very important that this asset be divided fairly. During a divorce, special steps must be taken to divide a pension. If you don't take the proper steps, you may lose your right to share in the pension. Because dividing a pension is complicated, you should talk with an attorney.

The first step for you or your attorney is to send a written request for information to your spouse's pension plan. Once you have information about the plan, your attorney can tell you the best way to divide the pension. If your spouse has more than one pension, the divorce settlement must refer to each one. You will also need a special court order for each plan. This order is called a qualified domestic relations order (QDRO).

Your attorney will need to get information from the pension administrator on the pension's QDRO procedures. This is important because the pension plan must approve the QDRO before you ask for court approval. When the settlement and QDRO terms are worked out and the court issues the divorce decree and QDRO, copies must be sent to the pension plan administrator. All pension issues and QDRO terms must be settled before the court finalizes your divorce. If the divorce decree gives you a share in your spouse's pension, but you do not get a QDRO, you will have to go back to court. This can be expensive and may cause you to lose part or all of your share in the pension.

Receiving a share of your spouse's pension is often a complicated process. It is important to get help from an attorney with expertise in these issues. For free help on pension issues, contact the Iowa Legal Aid's Pension Rights Project at 800-992-8161.

*\*Bill Nassif is a staff attorney at Iowa Legal Aid's Legal Hotline for Older Iowans.*



**FREE  
Legal Help**

**1-800-992-8161  
(282-8161 in Des Moines)**

**The Legal Hotline  
for Older Iowans  
(60 & Over)**

**An Iowa Legal Aid Project**

**Iowa Legal Aid Helps With Pension Problems**

Iowa Legal Aid provides FREE help with your pension issues! You can call our toll-free number at 1-800-992-8161. Des Moines area residents can also call 282-8161.

The **Pension Rights Project** provides help with employer, union and government pensions. This includes traditional defined benefit plans as well as plans like 401(k)'s. Our services include:

- Contacting pension administrators on your behalf;
- Finding "lost" pension funds when companies merge or go out of business;
- Helping you apply for your benefits;
- Helping with appeals if your pension is denied;
- Getting survivor benefits;
- Checking benefit calculations;
- Assisting with pension issues in divorces;
- Sending out information about pension issues.

The **Pension Rights Project** is partially funded by the U.S. Administration on Aging. Services are free to all Iowans without regard to age or finances.

# Avoid Housing Schemes

By Laura Jontz\*

## If a Real Estate Deal Sounds Too Good To Be True, Call Iowa Legal Aid

Housing is expensive. Many Iowans struggle each month to come up with enough money to pay the mortgage or rent. If an individual gets the chance to buy a house for a very small amount of money or sell a house for a large amount of money, that individual should always take advantage of the opportunity, right?

Wrong.

Many real estate deals that seem too good to be true really are too good to be true. The number of Iowa homes in foreclosure has been high for several years, and homeowners experiencing foreclosure can be easy victims. The following scenarios are not all scams – but these situations likely will not be a “good deal” for individuals buying or selling homes. Individuals experiencing any of these situations should be extremely cautious and should contact attorneys at Iowa Legal Aid before selling or purchasing real estate.

### Selling Real Estate in Foreclosure

#### An out-of-state attorney offers to “save your house” for a fee

Homeowners who have received court papers for a foreclosure lawsuit may get many mailings from attorneys or organizations offering representation for a fee. The attorney may state “legal representation is necessary to save the house” and guarantee he/she will be able to save the home.

Many of these solicitations from out-of-state attorneys and organizations are not legitimate. If an attorney or organization claims to have the ability to end a foreclosure for a fee, do NOT pay the fee. A foreclosure lawsuit cannot be resolved with a one-time fee – the process involves a close examination of the homeowners’ current income and lengthy negotiations. In addition, many of the attorneys who solicit homeowners in foreclosure are not based in Iowa. If an attorney is not licensed to practice in Iowa, that attorney likely does not have the ability to represent and assist with an Iowa foreclosure lawsuit.

If you have received mail from an organization or attorney that you believe is not legitimate, contact the Iowa Attorney General’s Office or Iowa Legal Aid. You likely will not be able to recover money you paid to the organization, but you may be able to prevent others from being taken advantage of. If you receive foreclosure papers, you should contact Iowa Legal Aid or the Iowa Mortgage Help Hotline.

#### You receive mail from an individual who buys homes in foreclosure

After receiving foreclosure papers, many homeowners receive handwritten notes with offers to buy the home. The notes typically have only 1-2 sentences such as, “Contact me at 555-5555. I buy homes cheap.”

The individuals or companies buying homes in foreclosure may have the ability to offer you a small amount of money for your home. However, these individuals likely will NOT be able to explain your rights under Iowa law. After you receive foreclosure papers, you likely will be able to reside in your home for at least 8-12 months. If you agree to sell your home at an extremely low price, you may be forced to move soon after the foreclosure begins. You will not make any money from the sale, and you will be forced to rent other housing after you move out of the home.

#### A third party wants you to sign a quit claim deed or warranty deed to your home

A third party may agree to loan you money if you sign over the deed to the home. Unless you have discussed the situation with an attorney or real estate professional, DO NOT sign a quit claim or warranty deed and give the deed to a third party. Signing a quit claim or warranty deed gives ownership of your

home to the third party. After you sign the deed, you will no longer own your home.

#### You want to sell your home in a “short sale” to avoid foreclosure

Foreclosure lawsuits are stressful and scary. You may decide to sell your home in a short sale to end the foreclosure as soon as possible. A short sale involves selling your home to a buyer at a price less than the amount you owe the mortgage company. Your mortgage company will need to approve a short sale. However, even if your mortgage company approves a short sale, a short sale may not be the best financial decision. If you sell your house in a short sale, you will have to move soon after the sale, and you will not receive any money from the sale. If you remain in your house during the foreclosure lawsuit, you likely will not have to make monthly mortgage payments for several months. Therefore, you may be able to save money by remaining

in your home during the foreclosure lawsuit. After most foreclosure sales in Iowa, you will not owe any more money on the foreclosed mortgage. Even if the house sells for less than what you owe on the mortgage, you will often not owe any more money on the mortgage. In that way, a foreclosure sale may be like a short sale. However a foreclosure sale often takes several months longer than a short sale. Therefore, you can continue to live in your house for several extra months. However, you should contact Iowa Legal Aid or the Iowa Mortgage Help Hotline if you are facing foreclosure. You can only receive complete and accurate legal advice by allowing an attorney to review your foreclosure papers.

### Purchasing Real Estate

A foreclosure will lower your credit score, and it will be very difficult to get other mortgage companies to approve a mortgage. The creditors who may be willing to loan you money will likely only do so at an extremely high interest rate. Therefore, renting a home or apartment is usually the best option after a foreclosure.

Individuals with a recent foreclosure or poor credit history may look at the following methods of purchasing real estate. These methods of buying real estate can be risky and may not be good financial decisions.

## Resources to Help Deal With Housing Schemes

**Iowa Attorney General  
Consumer Protection Division.....515-281-5926  
1-888-777-4590  
Fax: 515-281-6771**

The Consumer Protection Division protects consumers from fraud and ensures fair competition in the marketplace. The Division enforces a number of laws that protect the buying public from false or misleading advertisements or sales practices. It also enforces laws that make sure consumers get information to help them make important decisions, like credit disclosure laws that help consumers compare loan offers.

#### **Iowa Mortgage Help Hotline... 1-877-622-4866**

Attorney General Tom Miller urges Iowans to call the Iowa Mortgage Help Hotline if they are having trouble making mortgage payments, or if they think they may have trouble in the near future. You can also reach the Hotline at [www.iowaMortgageHelp.com](http://www.iowaMortgageHelp.com). Call! You may be able to avoid losing your home. The Mortgage Help Hotline is free, confidential, and open to anyone.

#### **Iowa Legal Aid..... 1-800-532-1275**

Free legal help for eligible clients. Information on topics including housing and consumer issues can be found at [iowalegalaid.org](http://iowalegalaid.org). To apply for help from Iowa Legal Aid, call during intake hours. Hours for telephone intakes are from 9 to 11 a.m. and 1:30 to 3:30 p.m., Monday through Friday, except Thursday afternoon. Emergencies are taken during regular office hours.



#### A home is listed on Craigslist at a very low price

Craigslist may be a great place to buy and sell small items, but Craigslist is usually not the best place to buy or sell a home. Individuals selling real estate on Craigslist may not own the title to the house. If you buy a home from an individual who does not have the legal right to sell the home, you will have no legal right to the home you just purchased. Before purchasing a home on Craigslist, contact Iowa Legal Aid or another attorney or real estate professional.

#### A person living in another country wants to sell real estate in Iowa

This may sound like an outrageous situation, but this situation has occurred in Iowa. An individual from Africa claimed he needed to sell his property in Iowa. The property was reasonably priced, so the individual assumed she was getting a good deal. However, the “seller” did not really own the property. If the buyer had given money to the seller, she would not have received legal rights to the home and likely would not have been able to get her money back. If you are contacted by a seller from another country, contact Iowa Legal Aid before signing papers or giving money to the seller.

#### Seller will sell real estate to you if you waive the inspection

If a seller agrees to sell real estate to you only if you waive an inspection, you should assume the home has major defects the seller does not want to reveal. After you purchase a home, you are responsible for major repairs such as roofing, electrical, sewer, and foundation repairs. You may not notice the need for these repairs during a walk-through, but an inspector should be able to tell you which areas of the house are in need of repairs.

#### Seller will only sell real estate on contract

Individuals who cannot get a good mortgage may be able to purchase a home on contract. However, buying a home on contract can be riskier than buying a home with a mortgage. Contracts may contain terms that are not favorable to buyers, and buyers can be “forfeited” out of contracts and lose equity they had in the home. Homeowners who are buying on contract can often be evicted from their homes quite quickly if the seller forfeits the contract. A contract can often be forfeited if the buyer falls more than thirty days behind on payments. Homeowners buying on contract have fewer rights than homeowners with mortgages. You should contact a real estate attorney or Iowa Legal Aid before signing a real estate contract.

In every sale and purchase of real estate, it is important to know what you’re signing. If you don’t understand the terms of the mortgage or contract – don’t sign the paperwork. The individuals assisting with the purchase or sale should be able to explain the documents. If they are not willing or able to answer your questions, contact Iowa Legal Aid or private attorney.

*\*Laura Jontz is a staff attorney at Iowa Legal Aid’s Central Iowa Regional Office in Des Moines.*

# Attorney General Foreclosure Settlement: What Does It Mean To You?

By John Gianola\*

You may have heard about an important nationwide agreement between the Attorneys General of most states and the top banks that service mortgages. Many months of investigation by the states into the bad foreclosure practices by the banks led to this agreement. It is very long and detailed but has some important benefits and protections. Iowans who may have lost their homes to foreclosure or are currently at risk of foreclosure should know about this agreement. It applies to mortgages serviced by these banks: Ally/GMAC, Bank of America, JP Morgan Chase, Citi, and Wells Fargo.

Here are some highlights of the agreement:

• **Help for “underwater” borrowers**

An “underwater” borrower is not yet behind on mortgage payments, but owes much more on a home than it is worth. If this is your situation, you may be eligible for help from programs under the agreement. These programs allow for one of two options:

- ▷ Reduce some principal on your mortgage OR
- ▷ A better chance to refinance your mortgage for a lower rate and payment.

Your bank should be contacting you if you are eligible for these programs. However, you may also contact Iowa Mortgage Help for details about these programs. The phone number is 1-877-622-4866. Iowa Mortgage Help is a free service.

• **Payments to foreclosure victims**

If you already lost your home by a foreclosure and it happened after January 1, 2008, you may get a notice from the bank of your right to file a claim. If you were not properly offered a loan

modification before the foreclosure, you may get some payment up to \$2,000. You should also contact Iowa Mortgage Help for details if you think you are eligible for this program.

• **Protections for active military servicemembers**

The agreement has many special protections and benefits for active military members or those recently been released from active duty. These include:

- ▷ independent reviews to ensure foreclosures of servicemembers comply with the Servicemembers Civil Relief Act (SCRA),
- ▷ special trained consultants to work with servicemembers who need help with their mortgage,
- ▷ restrictions on foreclosures,
- ▷ modification (changes to your mortgage loan) and other programs to avoid foreclosure.

You may contact Iowa Mortgage Help or Iowa Legal Aid if you have questions about rights and benefits for military personnel.

• **Better ways to modify loans plus loan servicing protections**

The agreement has many new benefits and protections to provide better opportunities to avoid foreclosure and modify mortgages. The major protections include:

- ▷ No foreclosure filing or sale before a decision is made on a borrower’s request to modify a loan (depending on when the request is made).
- ▷ Assign an easy-to-reach Special Point of Contact (SPOC) at the bank to each borrower. Borrowers can contact their SPOC about difficulties with a mortgage or for help with any question or a request to modify a loan.

*Iowans who may have lost their homes to foreclosure or are currently at risk of foreclosure should know about this agreement.*



- ▷ Banks must provide detailed notices when denying requests to modify loans. Borrowers have the right to appeal (under certain conditions) any denial.

This is just a summary of the many benefits and protections under the Attorney General’s agreement with the banks. You may be a homeowner facing foreclosure, at risk of foreclosure, or have other questions about how you may benefit from this agreement. Free and experienced housing counselors are available to talk to you. You may contact Iowa Mortgage Help for counseling help (877.622.4866). You may also find out more on these topics on the National Mortgage Settlement website: [nationalmortgagesettlement.com](http://nationalmortgagesettlement.com).

*\*John Gianola is Managing Attorney of Iowa Legal Aid’s Foreclosure Defense Project.*

# What Happens When People Getting Social Security Disability Benefits Have Earned Income

By Joe Basque\*

**Can I work while receiving Social Security Disability benefits from Social Security?**

Not everyone who gets disability benefits from Social Security is disabled forever. Social Security has work incentive programs for people who want to try to work again while still keeping their benefit payments and medical coverage. The programs are helpful, but they can also cause problems if the rules are not followed carefully. Social Security Disability benefits have different work incentives than Supplemental Security Income (SSI). This article will only discuss the work incentive programs for Social Security Disability. It is important to know which rules apply based upon the type of benefits you receive.

**Are there any Social Security programs to help me find work?**

The “Ticket to Work” program is for anyone receiving disability benefits. It is a program designed by Social Security to provide vocational, rehabilitation, training and job referral. It can also be used for employment support services when you get a job or if you already are working. All of the services are free. On top of other program work incentives, if you are in the “Ticket to Work” program and making progress, Social Security will not review your case to see if you are still disabled.

**Do I have to tell Social Security if I decide to try to work?**

It is your responsibility to immediately report any changes in work activity that could affect your benefits. This means you must inform Social Security right away if:

- you start or stop work,
- you already reported your work, but your duties, hours, or pay have changed; or
- you start paying for expenses that you need in order to work because of your disability.

It is important that you report all changes in your work activity to Social Security promptly to avoid an overpayment.

**What happens when I start working while on Social Security Disability?**

The Social Security Disability program has incentives so that you can try to return to work without affecting your benefits. It all begins with the “Trial Work Period.” The trial work period lets you try to work for at least nine months (not necessarily all in a row). In 2011 and 2012, any month your total earnings were more than \$720 counts as a trial work month. You can work up to nine trial work months within a 60 month period. During a trial work period, you get your full disability benefit no matter how much your income is as long as you report the work to Social Security and still have a disabling impairment. If you have nine trial work months in a sixty month period, Social Security may check to see if you are disabled, or whether you can go back to work.

**How does Social Security decide if I can work?**

If you are earning over a certain amount each month of work (over \$1,010 for 2012), and you can keep doing it for months, Social Security may decide you are not disabled. This amount is called “Substantial Gainful Activity” or SGA. If you are not able to earn Substantial Gainful Activity for at least three months, it is considered an “unsuccessful work attempt.” If you are able to earn Substantial Gainful Activity for more than three months, Social Security will look at your work to see if they think you can keep at it. If you earn Substantial Gainful Activity for 6 straight months, Social Security will assume you can return to work. You can have more than one unsuccessful work attempt. If you are unable to stay on the job earning at Substantial Gainful Activity because of your disability, your benefits continue.



**Are there any exceptions if my earnings are over the allowed amount?**

Social Security only uses earnings that represent the real value of the work you perform when deciding if your work is at Substantial Gainful Activity level. Some people with disabilities get special supports at work. These are called subsidies. A subsidy may apply to you if, for example, you have a job coach who helps you perform some of your work, or you have fewer tasks to complete than other workers doing the same job for the same pay. If you get these types of support, Social Security may not consider your entire pay check as earnings. Also, if you pay for things so that you can work, such as medications, treatment, adaptive equipment, these are “impairment related work expenses” that can also lower your earnings for Social Security purposes. Be sure to keep receipts for everything, including what you spend on co-pays and for over the counter medications. It is important to discuss these options with Social Security before assuming you qualify for these exceptions.

**What happens if Social Security decides that I can do Substantial Gainful Activity?**

At the end of a “Trial Work Period,” a 36-month “Extended Period of Eligibility” automatically begins. During those 36 months, you get your benefits in any month you are below “Substantial Gainful Activity.” You do not get a check if you earn Substantial Gainful Activity. If you earn less than Substantial Gainful Activity, you get your full benefit check.

**I made more than Substantial Gainful Activity and I didn’t get a benefits check. Does this mean I am no longer disabled?**

No. Benefits cannot be terminated during an Extended Period of Eligibility. As long as you are in an Extended Period of Eligibility, you will get a check if your income for the month is less than Substantial Gainful Activity. The first time you earn Substantial Gainful Activity in your extended period of eligibility will result in a “cessation month,” which is followed by two “grace period months.”

*Continued on Back Page...*

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# EQUAL JUSTICE JOURNAL

Visit us on the Web at [iowalegalaid.org](http://iowalegalaid.org)

## Don't Make Things Difficult For Those You Love—Plan Ahead!

By Fred Nelson\*

It is important to plan ahead for your family and loved ones to help in illness or to deal with issues after your death. Yet it is something that is often put off. The delay in planning ahead can make it very difficult for those we love. The time to make plans is when we are healthy and thinking clearly about the future. It may be too late after a stroke, illness or Alzheimer's disease has affected our ability to make decisions.

If you have not made clear legal plans naming someone to make decisions for you in illness it may be necessary for your family or friends to go to court to appoint a guardian to make these decisions. A court-appointed guardian can make decisions about your personal needs. A court-appointed conservator can make decisions about managing your money and property. This takes time and costs money.

If you have not made clear legal plans about what happens after your death, your spouse, partner, children or friends may not be able to pay your funeral expenses. They may not get the property or money that you wanted them to have. In particular, not making legal plans may create problems if you are re-married, if you have children from different relationships, if you are unmarried and living with a partner, or want to leave things to certain family members, friends or organizations.

**If you want your partner or a friend to make decisions for you or to get your property after your death, you need to make legal plans for this to happen.**

The planning is best done if you have first carefully thought through your needs and goals. Here are some things to consider as you make your plans.

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What Happens When People Getting Social Security Disability Benefits Have Earned Income

Iowa Legal Aid is a not-for-profit organization providing free legal help to low-income lowans, receiving financial support from a wide range of sources including federal, state, and local governments as well as individual donors and private organizations. Iowa Legal Aid's services are supported by contributions from many United Way Agencies in Iowa.



**LOW-INCOME READERS OF THE EQUAL JUSTICE JOURNAL...**

If you have a question about something you read in this newsletter, call **THE EJJ HOTLINE** at 1-800-992-8161. When your call is answered, tell the receptionist you want **The EJJ Hotline**. Your call will be transferred to a staff member who will be able to respond to inquiries from persons who are eligible for free legal help from Iowa Legal Aid.

### Social Security Disability Benefits and Earned Income continued from page 7...

After that, you only get benefit checks when your countable wages are below Substantial Gainful Activity. After your extended period of eligibility, your benefits terminate after your first month of Substantial Gainful Activity. If you have not used your cessation and grace period months, they are used here.

### What if my benefits terminate, but after a while I find out I cannot keep working?

If your benefits are terminated because Social Security finds that you can work, and you become unable to work again within 5 years, you can ask Social Security to start your benefits again. You do not have to file a new disability application and Social Security should start your benefits right away while they decide if you are still disabled. This is called "Expedited Reinstatement." You always have the right to file a new application for benefits, too. Social Security can help you choose the best option for you.

### What about medical benefits?

If you don't get a benefits check because you make more than Substantial Gainful Activity, but you are also still disabled, you are still eligible for Medicare Part A (hospital) coverage for free. You would be responsible for paying the Medicare Part B (medical) premiums each quarter. That lasts for 93 months after your Trial Work Period ends. After that, if you are still disabled, you can buy in to the Medicare program and continue receiving health care. Remember that the state may be able to help you pay your Medicare premiums under the Qualified Medicare Beneficiary (QMB) and Specified Low-income Medicare Beneficiary (SLMB) programs. Your local Iowa Department of Human Services office can tell you if you qualify.

### What happens at the end of my Extended Period of Eligibility?

After the Extended Period of Eligibility, you will stop being eligible for Social Security benefits the first month you make more than Substantial Gainful Activity. This may happen right away, or it may not happen for a few months.

If you have problems with work incentive programs or benefit overpayments, Iowa Legal Aid may be able to help. Call 1-800-532-1275. Hours for telephone intakes are from 9 to 11 a.m. and 1:30 to 3:30 p.m. Monday through Friday, except Thursday afternoon.

*\*Joe Basque is a senior staff attorney at Iowa Legal Aid's Southwest Iowa Regional Office in Council Bluffs.*

**IN THE NEXT ISSUE OF THE EQUAL JUSTICE JOURNAL: What people who get SSI benefits need to know about earned income.**