

## LEGAL FACT SHEET

### FEDERAL BENEFITS FOR DEPENDENT GRANDCHILDREN: SOCIAL SECURITY WILL PAY FOR GRANDCHILDREN\*

State public assistance is the most commonly used source of financial assistance for kinship caregivers. But for grandparents, federal Social Security benefits are an additionally possibility and should not be overlooked. While Social Security is commonly regarded as being available for children of retired parents, the availability of such benefits to grandchildren of retired grandparents is less well known and could be of substantial benefit to grandparent caregivers.

#### Social Security Old Age, Survivor's and Disability "Child's Benefits" for Grandchildren

The Federal Social Security Administration will pay "Child's Benefits"<sup>1</sup> under particular conditions to dependent<sup>2</sup> grandchildren of grandparents who qualify for Federal Old Age, Survivor's or Disability Insurance (Social Security),<sup>3</sup> if benefits are not payable on the work record of a parent.<sup>4</sup>

#### Natural Grandchildren

If a dependent child is not receiving benefits from a parent when the grandparent retires, becomes disabled, or dies, the grandchild may then be able to qualify for benefits if certain conditions are met. To meet the basic conditions, the grandchild must be unmarried and be either, a) under 18, b) disabled since before age 22,<sup>5</sup> or c) a full-time student.<sup>6</sup>

To be eligible as a grandchild, the natural or adoptive parents **must have been either deceased or under a disability** at the time the grandparent became entitled to old-age or disability benefits or died; or if the grandparent had a period of disability that continued until he or she became entitled to benefits or died, at the time the period of disability began.<sup>7</sup>

To be considered dependent on the grandparent, the grandchild must have begun living in the territorial United States with the grandparent before age 18<sup>8</sup> and received at least one half of his or her support from the grandparent for the year before the month the grandparent became entitled to retirement or disability insurance benefits, or died. Another way would be if the qualifying grandparent had a period of disability that lasted until he or she became entitled to benefits or died, for the year immediately before the month in which the period of disability began.<sup>9</sup> Also, the natural parent(s) of the child must not be making regular contributions to his or her support; "substantially all" of the support must come from the grandparent.<sup>10</sup>

<sup>1</sup> 20 CFR §§404.350-404.368

<sup>2</sup> 20 CFR §404.364

<sup>3</sup> A grandparent or any other person generally qualifies upon application when they are over retirement age 62 and have at least 40 quarters of direct employment work history, or suffer from a disability. (20 CFR §404.110.)

<sup>4</sup> A step grandchild may also qualify for benefits under these circumstances. All references here to grandparents and grandchildren include step-grandparents and step-grandchildren.

<sup>5</sup> Also known as Social Security Disability Insurance (SSDI), which requires that drug or alcohol addiction was not a contributing factor in causing the disability. (20 CFR §350(b).)

<sup>6</sup> 20 CFR §404.350

<sup>7</sup> 20 CFR §404.358

<sup>8</sup> 20 CFR §404.364(a)

<sup>9</sup> 20 CFR §404.364(b)

<sup>10</sup> 20 CFR §404.364(c)

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Generally, if the biological parents of the child are not deceased or disabled, the grandchild must be legally adopted by the grandparent (or in the process of adopting). If the grandparents are already receiving old age or retirement benefits, they also would need to adopt the child for him or her to qualify for benefits.

To be considered dependent, the child must not have attained age 18 when adoption proceedings were started or if the child reached 18 before adoption proceedings were started, they would have had to be living with or receiving at least one-half of their support from the insured for the year immediately preceding the month in which the adoption order was issued.<sup>11</sup>

### Great Grandchildren

Generally, Social Security rules draw the generational line at grandparents. Social Security Amendments of 1972,<sup>12</sup> which added paragraph (3) to section 216(e) of the Act extending meaning of word "child," for social security purposes, to include grandchild or step grandchild of grandparent or step grandparent, was not intended to include great-grandchild or step greatgrandchild claiming benefits on earnings record of great-grandparent or step great-grandparent. For purposes of entitlement to child's insurance benefits under section 216(e)(3) of the Act, the term "child" does not include great-grand child or step great-grandchild claiming benefits on the earnings record or a great-grandparent or step great-grandparent.<sup>13</sup> Nothing is clearly established for other kin caregivers, such as siblings, uncles or aunts.

### How much can you get?

Generally, a child's monthly benefit is equal to one-half of the insured person's primary insurance amount if he or she is alive and three-fourths of the primary insurance amount if he or she has died.<sup>14</sup>

### Summary

To summarize, in order for a grandchild to collect social security benefits based upon the grandparent's eligibility, four conditions must be met:

- Child must live with grandparent at least six months before the grandparent is eligible for benefits
- Grandparent must be the caregiver
- Grandparent must be eligible for social security benefits
- Parents must be deceased or disabled

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<sup>11</sup> CFR §404.362 (b)

<sup>12</sup> Public Law 92-603

<sup>13</sup> Old-Age and Survivors Insurance Family Relationship Ruling SSR 73-41

<sup>14</sup> 20 CFR §404.353(a)