

**“Hey, those are mine!”—  
Collectability of a Decedent’s Future Social Security Benefits**



**by Leigh Anne Wilson**

Imagine a hard-working father and husband who has worked for 30-odd years. Imagine this worker had contributed to the Social Security fund but had not reached the age of eligibility for Social Security benefits. What happens to his Social Security benefits if he dies unexpectedly? Surely his family would be entitled to his benefits upon his untimely death, correct? Similarly, surely a family could recover those “lost benefits” as monetary damages from an alleged tortfeasor, correct?

Not so fast! The United States Supreme Court has recognized that all rights in Social Security benefits depend on the statutory scheme of the Social Security Act. The Court has stated, “[b]roadly speaking, eligibility for benefits depends on satisfying statutory conditions as to (1) employment in covered employment or self-employment; (2) the requisite number of ‘quarters of coverage’ . . .; and (3) attainment of retirement age.”<sup>1</sup> Once a worker has met these three statutory requirements, the Social Security Administration considers the worker “fully insured.” The Social Security Act provides that one who is fully insured, has attained the requisite retirement age, and has filed an application in the proper manner is entitled to benefits. Entitlement to benefits

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<sup>1</sup> *Flemming v. Nestor*, 363 U.S. 603, 608, 80 S. Ct. 1367, 1371 4 L.Ed.2d 1435 (1960) (internal citations omitted).

is so dependent on fulfilling the statutory requirements, the Third Circuit has even held that where the wage earner was qualified to receive benefits but failed to file application prior to death, no one was entitled to the benefits that might otherwise have been payable had he lived.<sup>2</sup>

**I. The Social Security Act provides for a decedent's widow and children with survivors' benefits.**

The Social Security Administration has a plan for widows and children who are dependent on a decedent worker, namely, survivors' benefits. Under the Social Security Act, survivors may qualify for their own benefits following the untimely death of a Social Security contributor whose rights had not vested. Eligible family members may be able to begin receiving survivors' benefits beginning the month that the decedent with dependent family members died. Survivors' benefits are based on the earnings of the person who died. The more money the decedent with dependent family members paid into the Social Security fund, the higher the benefits would be.

According to the Social Security Administration, certain family members of a decedent worker may be entitled to receive monthly survivors' benefits. Such family members include a widow aged 60 or older (age 50 or older if disabled), a widow of any age who is caring for the deceased's child who is under age 16, or an unmarried child of the deceased who is younger than age 18.<sup>3</sup> For example, a widow of any age who cares for a child under age 16 may receive 75% of the benefits for which decedent would have been eligible. However, while survivors' benefits are for the support of surviving widows and children, they are distinguishable from the anticipated "future benefits" of a decedent.

**II. Social Security benefits are not property rights.**

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<sup>2</sup> *Coy v. Folsom*, 1228 F.2d 276 (3rd Cir. 1955).

<sup>3</sup> 42 U.S.C. § 402 (e).

It is settled that Social Security benefits are not vested in a property sense, regardless of what contributions a worker may have made.<sup>4</sup> The United States Supreme Court recognized that the non-contractual interest in Social Security does not vest a property right.<sup>5</sup> The Court noted that “. . .[e]ach worker’s benefits are not dependent on the degree to which he was called upon to support the system by taxation. It is apparent that the noncontractual interest of an employee covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments.”<sup>6</sup> Moreover, the Court asserted that engrafting a concept of accrued property rights on the Social Security system would deprive it of its flexibility to adjust to changing conditions, such adjustments and alterations being reserved to Congress.<sup>7</sup>

**A. No legal process may affect Social Security benefits.**

The Social Security Act itself places limits on the right to benefit payments and prohibits the interference of “legal process” on Social Security benefits. “The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment or other legal process. . .”<sup>8</sup>

The United States Supreme Court has interpreted the meaning of the phrase “other legal process” as used in the Social Security Act. “[O]ther legal process” has been interpreted to require utilization of some judicial or quasi-judicial mechanism by which control over property

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<sup>4</sup> *Flemming*, 363 U.S. at 608.

<sup>5</sup> *Flemming*, 363 U.S. at 608.

<sup>6</sup> *Id.* at 609-10 (emphasis added).

<sup>7</sup> *Id.* at 610-11.

<sup>8</sup> 42 U.S.C. § 407(a).

passes from one person to another in order to discharge or secure discharge of some allegedly existing or anticipated liability.<sup>9</sup> In regard to the Social Security Act, the Supreme Court affirmed its earlier jurisprudence that “[t]he answer to such inquiries must come from Congress, not the courts.”<sup>10</sup> In addition, state Supreme Courts have recognized the preeminence of the federal statute and Congress’s sole ability to change or amend it.<sup>11</sup>

Put simply, any legal process that affects a future right in Social Security benefits must be granted by Congress; it cannot be established by the courts. The silence of Congress in regard to a civil remedy to collect future payable benefits is unmistakable evidence of its legislative intent. This silence must be interpreted as affirmation of the current federal statute as it stands.

**B. Anticipated Social Security benefits are not collectable at a decedent’s death or as a remedy in a tort claim.**

Moreover, the Federal Tax Coordinator (FTC) ¶ R-2053 states, “[u]nder the Social Security Act an employee has no control over the designation of beneficiaries or the amounts payable to them and has no property interest in the funds at the time of his death.” The decedent may not bequeath Social Security benefits in a will. As noted previously, the right of any person to any future payment is not transferable or assignable.

Therefore, the family of a worker who contributed to the Social Security fund is not entitled to the worker’s anticipated “future benefits.” Similarly, in a medical malpractice case, “future Social Security benefits” or “lost Social Security benefits” cannot properly be sought as monetary damages from an alleged tortfeasor because a remedy has already been provided (survivors’ benefits) under the Social Security Act.

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<sup>9</sup> *Washington State Dept. of Social and Health Services v. Guardianship Estate of Keffeler*, 123 S. Ct. 1017, 537 U.S. 371, 154 L.Ed.2d 972, on remand 88 P.3d 949, 151 Wash. 2d 331, reconsideration denied.

<sup>10</sup> *Flemming*, 363 U.S. at 611 (affirmatively quoting *Helvering v. Davis*, 301 U.S. 619, 57 S. Ct. 904 (1937)).

<sup>11</sup> *Olson v. Olson*, 445 N.W.2d 1, 5 (N.D. 1989).

Nevertheless, the Social Security Act is remedial and humanitarian in nature. Its purposes necessitate that it be construed broadly and applied liberally.<sup>12</sup> Given its liberal construction, the Social Security Act aims to provide for widows and children who are dependent on the support of a decedent. The Act provides ongoing benefits to mitigate the anticipated support a parent or spouse would have given if a death had not intervened.<sup>13</sup>

## **Conclusion**

For the reasons discussed herein, survivors' benefits are the sole remedy for the family members of a decedent worker in regard to Social Security benefits. Family members may not recover anticipated Social Security benefits of a deceased worker, nor are these "future Social Security benefits" available as a remedy in a tort claim. The proper remedy for family members of a decedent worker is survivors' benefits as provided under the Social Security Act, regardless of the length of time a worker contributed to the Social Security fund or the viability of a tort claim related to a decedent's death.

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<sup>12</sup> *Gold v. Sec'y of Health, Educ. and Welfare*, 463 F.2d 38, 41 (2 Cir. 1972).

<sup>13</sup> *Adams v. Weinberger*, 521 F.2d 656 (1975).