

The Elderlaw Forum: Social Security direct deposit places seniors at risk

by Professor_Michael_Myers

Social Security direct deposit became mandatory in 1999, unless a beneficiary opts out. Only 20 percent of beneficiaries have opted out.

Increasingly, it appears to be in a beneficiary's best interest to opt out; receive monthly checks directly and maintain personal control over the proceeds. Here is why:

Although federal law exempts Social Security and Veteran's benefits from attachment or garnishment, debt collectors realize the law has no enforcement mechanism. Hence, they obtain court orders that instruct banks to freeze and withhold monies in the checking account of a debtor, without regard to where the monies came from.

Bill collectors contend they have no obligation to determine whether or not the monies came from Social Security. Court administrators are passive intermediaries and unwilling to assume such a burden. Banks contend they must comply with court orders and they should not be expected to trace the source of deposits.

That leaves the Social Security beneficiary in a position similar to that of a USD Senior Legal Helpline caller who discovered he was unable to withdraw any of his \$890 monthly benefit that had been electronically deposited in his account. A hospital had obtained a \$1,100 judgment on a four-year-old ambulance bill and had served the bank with a garnishment notice that immediately froze the account.

I advised the caller to file an "exemption claim" with the hospital and its bill collector and send a copy to the bank, advising that all deposits in the account are Social Security benefits and entitled to exemption from garnishment. Typically this requires the assistance of an attorney.

Also I advised him to opt out of the direct deposit program. Collectors routinely query bank systems whether an individual has an account anywhere in the United States. If a direct-deposit Social Security account is identified, the collector can immediately garnish it. The debtor must then file documents proving the benefits are exempt.

Such unlawful garnishments are inflicted upon our poorest and most vulnerable seniors. Most often they are related to debt produced by the healthcare and credit card industries both of which prey upon the weak and the elderly. They will take your last dollar, even if it's a Social Security dollar.

(Pro bono legal information and advice is available to persons 55 and older through the USD Senior Legal Helpline, 1-800-747-1895; mmyers@usd.edu).

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