



Protecting Social Security and Other Public Benefits From Unlawful Garnishment: Michigan's New Court Rule Encourages Separate Accounts

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Legal Hotline for Michigan Seniors

Increasing collection efforts by creditors has resulted in growing concern over the illegal garnishment of social security and other public benefits. Although these benefits are exempt from the claims of judgment creditors, seniors and others regularly drawing these benefits, by direct deposit, have unfortunately sometimes lost them because of a garnishment. This situation has prompted a subtle but significant change in Michigan law. Under recent amendments to Michigan Court Rule 3.101, Michigan banks and other financial institutions are now expressly prohibited from freezing funds in accounts where only exempt funds are direct deposited and are clearly identifiable as such. The law is intended to

encourage financial institutions to carefully review accounts for exempt funds – direct deposit Social Security, Supplemental Security Income, Railroad Retirement, Black Lung, or Veterans’ Assistance -- before simply granting a garnishment request. In so doing it is hoped individuals who may rely heavily, if not exclusively, on these exempt benefits for daily living will be protected. The law also encourages individual beneficiaries to keep their benefit payments in a separate account where these exempt benefits can be easily identified.

Those receiving protected public benefits should understand the importance of keeping these accounts separate. Currently, “comingling” (mixing together) these benefit dollars with non-exempt funds is commonplace and the results can be costly. Last year two-thirds of the nation’s 12 largest banks violated the law by garnishing over \$30 million from accounts containing government benefits from social security, disability, veterans’ and survivor payments , according to the Social Security Administration’s inspector general.

Legally, benefits are exempt from garnishment except where debts involve alimony, child support, federal taxes or another federal agency. Once an individual

has received payment of a public benefit these funds are still protected in an account but only if they are kept separate from non-exempt assets. The most foolproof way of doing this is to chose direct deposit of these funds to an account designated for these funds only, such as an exclusive checking or savings account, or the new Social Security Benefit Card account designed expressly for direct deposit of Social Security benefits and available to any benefit recipient.

The United States Treasury Department has contracted with Comerica Bank to provide what is called the Direct Express Debit Mastercard to eligible persons in all 50 states. In addition to streamlining the process and instantly safeguarding benefits, the Treasury Department hopes to save millions of dollars with this program. Benefit recipients who sign up for the card will have their SS retirement, disability and survivor benefits as well as SSI benefits automatically loaded on the card on a designated payment day.

The Benefit Security Card program is optional. You can still receive your benefit by check through the mail. Those who wish to enroll in the new program

can do so easily by calling the enrollment center toll-free at (877)212-9991 or visiting the website at www.USDirectExpress.com.

In the past, when financial institutions were served with a garnishment they typically froze accounts for the duration of the garnishment procedure which can take weeks, often resulting in bounced checks and unexpected fees. Frequently, exempt funds were incorrectly transferred to judgment creditors and the garnishee was left with the expense and hassle of recovery. When a money judgment is entered against you, creditors may seek to garnish funds you have in a bank account. Now the financial institution is required to determine whether the account in question contains money derived solely from exempt funds. If that is the case, the institution may not freeze the account. The institution must also provide affected debtors with a copy of the notice of garnishment as well as its response to the court concerning the nature of the funds in the account. If this procedure is not followed a debtor is entitled to file an objection to a garnishment. It is anticipated there will be many less objections filed because of the new law. The Legal Hotline

for Michigan Seniors can provide help to you if you need to object to a garnishment, including forms, printed information and legal advice.

The Hotline receives many calls from clients wondering if their Social Security or other benefits can be taken from them. In some cases it is the only income they have. Generally, our attorneys stress the importance of keeping separate accounts but do tailor each response to a client's individual situation. If you are interested in learning more about garnishment or have other legal concerns you can contact the **Legal Hotline for Michigan Seniors** toll-free at 1-800-347-5297.