

# Reimagining Tax Administration: Due Process

Jen Burdick

Community Legal Services of Philadelphia

[jburdick@clsphila.org](mailto:jburdick@clsphila.org)

# Due Process & Social Security Disability Benefits

- Although the Supreme Court has not conclusively ruled on this topic, it has expressed support for, and many lower courts have found that applicants for federal benefits enjoy due process protection.
- This includes in the Social Security disability context, where courts have held and applicants do enjoy due process protections. See Gonzalez v. Sullivan, 914 F.2d 1197 (9<sup>th</sup> Cir. 2002) (“An applicant for Social Security benefits has a property interest in those benefits”); Torres v. Chater, 125 F. 3d 166 (1997)

# What does that mean?

Applicants are entitled to *reasonably calculated notice* if they are being denied Social Security Benefits.

What is reasonably calculated notice?:

- At least must include the broad reasons for denial (either substantial or procedural);
- Any right to appeal, the deadline, and how to do that.

# Example SSI

- My client applies for SSI benefits. The claim is denied, and the client is sent **written notice, by mail**, advising him of the denial.
- The notice includes
- (1) the reason for the termination (broadly, procedural or substantive);
  - “Based on a review of your health problems you do not qualify for benefits on this claim. This is because you are not disabled or blind under our rules.”
  - Also notes the evidence reviewed.
- (2) explains the appeal process (you can request a hearing); and
- (3) highlights the appeal deadline (60 days).
- The notice also lists information about free legal assistance.

# Example SSI

- After my client was denied, he received a denial letter explaining how to appeal. He sent in a request for appeal, which entitled him to a hearing before an Administrative Law Judge (ALJ) (usually in person, but now are also happening over video and phone). The hearing is recorded and the claimant can be assisted by counsel. The client can also review what evidence SSA has received on his behalf, and submit evidence.
- This process is inquisitorial, not adversarial: SSA is mandated to assist the claimant in getting evidence to support their claim, including by requesting records and issuing subpoenas.
- Benefits recipients who are facing termination receive even more process, including an initial reconsideration review before the hearing.
- *See: <https://procedurallytaxing.com/the-importance-of-notice-and-hearing-rights-for-the-advanced-child-tax-credit/>*

# CTC Case Study 1: Ms. A.

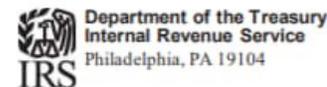
- Mom has two children, 10 & 4, who live with her
- She has informed IRS about her children and the IRS has confirmed they are aware of this relationship:
  - She received all three stimulus payments, including payments for her children
  - She filed her 2020 tax return in March 2020, claiming her children.
- Her 2020 tax return *was* processed—she received a refund of \$6000
- She is has not gotten a single Advanced Child Tax Credit payment



# CTC Case Study 1: Ms. A

## Notice

- On May 24, 2021, IRS sent her a Notice 6416 indicating she *may* be eligible for AdvCTC and an estimate of the benefit. That was the last notice sent to her about AdvCTC.
- She has not any other notices from the IRS about the AdvCTC.
- **She is not getting AdvCTC payments and has no idea why (either do we).**
- She also has not received any notice explaining what steps she should take for redress.



Date:

You may be eligible to receive advance payments of the Child Tax Credit (CTC). If you're eligible for advance CTC payments and want to receive these payments, you don't need to take any action. You will receive a letter with more details.

The American Rescue Plan, signed into law in March, made important changes to the CTC for most taxpayers in 2021. The credit amounts increased for many taxpayers, and the credit is fully refundable, which means taxpayers can benefit from the credit even if they don't owe any income taxes. The credit also includes qualifying children who turn age 17 in 2021. The American Rescue Plan directs the IRS to make advance monthly payments of half the estimated annual CTC. The IRS will make payments from July through the end of this year.

For tax year 2021, the advance CTC payments will be half of the estimated CTC. The maximum annual CTC will be \$3,000 per qualifying child between the ages of 6 and 17, and \$3,600 per qualifying child under age 6, at the end of 2021. In general, qualifying children must live with the taxpayer in the United States for more than half the year.

The maximum credit is available to taxpayers with a modified Adjusted Gross Income of:

- \$75,000 or less for single taxpayers,
- \$112,500 or less for head of household,
- \$150,000 or less for married couples filing a joint return and qualifying widow(er)s and
- the maximum credit phases out for higher income taxpayers.

**If you don't wish** to receive advance CTC payments, instructions on how to unenroll from these payments will be available by the end of June. Please continue to check [www.irs.gov/childtaxcredit2021](http://www.irs.gov/childtaxcredit2021) for additional information about these advance CTC payments.

# CTC Case Study 1: Ms. A

- She contacted her Congressional representative. A constituent service representative contacted IRS, who could not explain why she wasn't getting the AdvCTC payment.
- She came to legal aid for help (and is co-represented by CLS and PLA). In August, I helped her use the IRS Child Tax Credit Update Portal. It took an hour and forty minutes because it's challenging to get through the ID.me process.
- Her CTC eligibility is listed as "pending" → no other explanation.
- We pulled her tax transcript—no obvious reason she is not getting it
- Called IRS Practitioner Hotline:
  - Won't address specific CTC questions → require you to go to CTC hotline where they won't look at tax info
  - Have not identified any other issues that might delay the return, except that her return is flagged to have its Unemployment Compensation adjusted.

# CTC Case Study 1: Ms. A

- **Next steps:** (unclear)
  - She never received any notice explaining what to do if she did not get these payments (including that she can claim them on her 2021 tax return)
  - There are no current procedures that would allow Ms. A. to complain, protest, or even appeal the fact she has not gotten the first 4 AdvCTC payments.
    - \* Indeed, the Tax Payer Advocate Services will not provide direct assistance to people not receiving their payment, but, if Ms. A knew to reach out them, there have created a form to help people keep track of what they are owed:  
[https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/08/AdvCTC\\_Tracker080521-final-fillible-blank-8-10-21.pdf?utm\\_source=IRS\\_web&utm\\_medium=web&utm\\_campaign=Advance\\_Child\\_Tax\\_Credit&utm\\_content=text\\_link](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/08/AdvCTC_Tracker080521-final-fillible-blank-8-10-21.pdf?utm_source=IRS_web&utm_medium=web&utm_campaign=Advance_Child_Tax_Credit&utm_content=text_link)
  - She can claim the missing benefits on a 2021 return.

## CTC Case Study 2: Ms. T

- SSI recipient who has four children living with her: 4, 13, 15, 17.
- She received stimulus payments for herself, but none of the EIP dependent payments for her children.
- She did not realize she could receive stimulus or AdvCTC for her children until she received affirmative outreach from legal aid to explain that she might be eligible for CTC.
- September 22, 2021, CLS helped her complete the **GetCTC App** to claim her four children.

## CTC Case Study 2: Ms. T.

- Ms. T. immediately got a rejection via text with code R0000-507-01, meaning one of the children on her return was already claimed.

- A pop up explained the following:
- That her claim would be rejected because one of the dependents is already on another return.
- **“If you want to receive some payments now, you can remove the dependent from your tax return and resubmit it to the IRS. If you do this, then you would *\*not\** get CTC or stimulus checks for that dependent, but you *\*will\** get any other credits you are eligible for, including payments for yourself or other dependents.** If you'd like to resubmit your tax return without the dependent, click “Correct my information” below. Click “edit” next to the dependent you would like to remove, click “Remove this person” and click “Resubmit my tax return” once it’s ready to go.”

“If you think you know the family member or guardian who mistakenly claimed your dependent, perhaps you can work directly with them to split the money they received or ask them to file an amendment to their return.”

“If you are sure you should be able to claim this dependent and you want to continue trying to claim them, you can do so. **First, you’ll have to mail a paper copy of your return to the IRS. Next, the IRS will begin a process to determine who is allowed to claim this dependent.** This process can be difficult for you and for whoever else claimed your dependent. If you want to pursue this process, see here for more info: <https://www.irs.gov/identity-theft-fraud-scams/identity-theft-dependents>. You may seek assistance from a Volunteer Income Tax site (<https://www.irs.gov/individuals/find-a-location-for-free-tax-prep>) or the Taxpayer Advocate Service (<https://www.irs.gov/taxpayer-advocate>) in completing this process.”

# CTC Case Study 2: Ms. T.

- She was able to file and register one child for AdvCTC.
- Notice?
  - She did not receive the 6416 (she is a non-filer, so she never communicated to the IRS she has dependent children)
  - Since using the GetCTC app, she has not received any notices from the IRS about the claimed child, or the other three.
  - Per the ARP, she is entitled to a notice in January that will indicate what AdvCTC payments she already received.
  - As Nina also pondered in a recent [blog](#) post, **Do the communications from GetCTC App regarding the claimed children constitute notice?**
- Hearing/Recourse?: Ms. T. can file a paper return to seek the other three children, or file for the complete CTC payment on her 2021 return. Either way, IRS may need her to prove that they are her qualified dependents. This process will likely occur via correspondence.

# Role of Apps & Notice

- Historical non-filers have attempted to register for EIPs and CTC via the IRS Non-filers portal in 2020 & 2021, and now the GetCTC App in 2021.
  - **IRS Non-Filers Portal:** Anyone who applied on that portal would receive an email indicating whether their claim was accepted or rejected. If it was rejected, they'd receive a numerical rejection code. The code could be decoded by looking at IRS's website.
  - **GetCTC App:** Applicants received a text or email (their preference) after they submit indicating whether the claim is accepted or rejected. GetCTC App also informs applicants if their claim is rejected. GetCTC's rejection includes a plain language explanation about why, and possible next steps (i.e., you may need to file a paper return or can seek this next year).
- How do we classify these communications?
- Are they timely, and adequate?
  - Are rejection codes reasonably calculated to “apprise interested parties of the pendency of the action” and “afford them an opportunity to present their objections”? (*Mullane v. Central Hanover Bank*).
  - What about the GetCTC App notifications?

# Role of FAQs

- FAQs have been used liberally in the EIP and CTC context to disseminate information
- IRS released an update on FAQs – lots of interesting takes on this developments in Procedurally Taxing's Series: [Part 1](#), [Part 2](#), [Part 3](#), [Part 4](#)
- Oct. 15, 2021, IRS issued an FAQ to explain that a tech issues prevented 2% of CTC from being delivered and in some cases resulted in people receiving too much. It noted
  - Payments have gone out to affected individuals
  - Families who received too much will get slightly less in Oct., Nov., and December
  - **IRS will send letters to the affected individuals (acknowledging a practical need, if not legal right, to notice when benefits were stopped).**
  - **(*why hasn't IRS sent letters to other who got CTC payments, and then they were stopped?*)**

# House Ways and Means Proposal

- Directs creation of limited adjudication process (this was not in the BBB text released 10/29/2021)
- Directs the Secretary to create procedures to “expeditiously adjudicate” competing claims of presumptive eligibility for the same child. This process must include a “expedited process” as well as procedures to appeal an adverse decision.
- What don’t we know?
  - What sort of notice will be sent to competing claimers? Will it be reasonably calculated?
  - What sort of process is provided? Correspondence, conference, hearing?
  - Who is the decider? How will a decision be communicated?
  - Process for appeal?
  - How do you appeal issues *other than* competing claims?
  - Congress did not direct this process to be inquisitorial, will it be adversarial?

# 9 Recommendations

- (1) Ensure people get plain language notices of approval, denial, termination or reduction of AdvCTC benefits, with the reason for the approval, denial, termination or reduction of the payment. These notices may include the emails generated in response to e-filing applications on the various portals or IRS's e-filing system.
- (2) Notices provide a clear deadline to protest (or appeal) an adverse action (denial, reduction, termination), with an additional explanation that if the taxpayer disagrees they can still file a tax return claiming the CTC, which would be subject to deficiency procedures
- (3) With each notice of payment denial, reduction, or termination, a plain language worksheet and sample affidavits to show claimants how to easily file a written protest, and ensure there are not requirements for \*magic words\* to appeal;

- (4) Ensure creation of a appeals conference (in person or over the phone) with an impartial officer, which must be scheduled promptly after the receipt of the protest
- (5) A plain language notice to appellants with the conference information, including its time and date, information about what to have on hand, what to expect, and how to reschedule;
- (6) The ability to attend the conference virtually or by phone, plus an in-person option if public health measures allow;
- (7) Information to appellants detailing their right to an authorized representative of their choice (including an LITC representative) via phone or video conferencing;
- (8) Written procedures for conduct of the conference, including use of interpreters and assistive technology;
- (9) Appeals to issue a decision within 30 days of the conference, as well as notification making it clear that the denial does not mean the underlying CTC is decided, and does not prevent the tax-payer from seeking it through a subsequent tax return.