



CeDAR News

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CeDAR Happenings

Thanks to the continued financial support from our donors, CeDAR, the Center for Disability Advocacy Rights, is proud to report growth in terms that can only be described as “amazing” for our first two years of operation. We have received funding from The New York Foundation, the New York Community Trust, the Stern Family Foundation, National Association of Public Interest Lawyers, Kramer, Levin, Naftalis and Frenkel, the New York Disability Advocacy Project (“DAP”) and IOLA. In addition, CeDAR expects to receive over \$110,000 in Equal Access to Justice Act attorneys’ fees for the fiscal year 1998-99.

NOSSCR Honors Jill Boskey with its 1998 Pro Bono Award

The National Organization of Social Security Claimants’ representatives (“NOSSCR”) has awarded its 1998 Pro Bono Award to CeDAR’s Jill Ann Boskey in recognition of her “unflagging commitment to the poorest members of our society.” The 3,300 member association bestows this honor once a year to the attorney among them who has demonstrated a commitment “above and beyond” the basic *pro bono* obligation all members share. That certainly sounds like our Jill. Congratulations!

National Class Certified in Action Challenging SSA’s Benefit Notices.

Each month, thousands and thousands of SSI recipients throughout the United States receive letters from the Social Security Administration (“SSA”) informing the recipients of reductions in their monthly SSI benefits. Although legally required to provide recipients with an understandable explanation of the change in benefits, the explanations provided in these letters are too often contradictory, based on unstated assumptions about the recipients situation, or simply fail to provide any information from which one can understand the reason for the benefit reduction. These recipients, who are either elderly or suffering from disabling physical and or mental impairments, are told they can appeal the letter, but how can you appeal if you (or your lawyer) cannot understand the notice?

That is the essence of the claim in Ford, et al v. Apfel, a nationwide class action challenging the adequacy of Social Security’s SSI notices. Chief Judge Charles Sifton of the Eastern District of New York certified the national class on September 14, 1998. The named plaintiff Robert Ford, and fourteen other class representatives seek a court order requiring SSA to do what it says it will do in its regulations—provide specific reasons for its determinations and information so that claimants can make a decision whether to appeal.

The class is represented by Peter Vollmer of Vollmer and Tanck, Jill Ann Boskey and Chris Bowes of CeDAR, and new members to the plaintiff’s team, Whitney North Seymour and Craig Landy of Landy and Seymour. Last but not least, Gene Doyle, a brilliant social worker and Director of People for Our Rights (“P.O.O.R.”) is the brains, heart, and soul of the team. The trial starts in late December. Stay tuned!

CeDAR RECEIVES IOLA GRANT

CeDAR has been awarded an IOLA grant of \$10,000 for 1998. IOLA ("Interest on Lawyers Accounts") is a fund created by the interest earned by private lawyers' escrow accounts to assist legal services and not-for-profit programs throughout the state. Since IOLA was created, it has helped scores of programs throughout New York State by providing much-needed funds for advocates and by providing staff attorneys for programs which don't have the funds to add staff. CeDAR's receipt of this new grant was provided in recognition of the important niche it fills in the area of SSI disability law. No other legal organization in New York City exists whose mission is the same as CeDAR's. IOLA's grant has also helped CeDAR leverage other funding from private donations and foundations, thus further diversifying its funding base and spreading the word about its mission throughout the public interest and New York legal communities. **We are very grateful to IOLA for providing this recognition and the funds to assist us in continuing our mission.**

CeDAR Receives Grant from New York Community Trust

In June CeDAR staff received the happy news that The New York Community Trust had awarded us a \$40,000 grant for CeDAR's work on behalf of children with disabilities. The grant will be used to increase our current children's disability caseload by 100 cases per year, in addition to another 200 advice-only cases. The main issues to be addressed include children whose benefits were improperly discontinued pending appeal, children under 18 and others facing continuing disability reviews, those facing complex deeming rules and retroactive benefits deposited in new "dedicated savings accounts", and citizen children of immigrant parents who are afraid to apply for SSI and Medicaid for their children. In addition to increasing its children's caseload, CeDAR will use the new funding to provide additional training opportunities for pro bono and legal services advocates and provide backup advice to those trainees who need it. **Thanks to The New York Community Trust for providing us with the opportunity to increase our work in the much-needed area of SSI children's disability.**

The Stern Family Fund Grant

Throughout 1998, CeDAR's efforts at the national level have been funded through a grant from the Stern Family Fund (CeDAR's first grantor). The grant has permitted CeDAR to participate in monthly conference calls with other lawyers throughout the country who have brought class action challenges to the Welfare Reform Act's restriction against immigrants. It has also enabled CeDAR's lawyers to continue working with the Social Security Administration on service issues facing the Non English Speaking (NES) claimants. And it has provided funding for our efforts in the Ford class action litigation (see page 1). CeDAR is extremely grateful to the Stern Family Fund for its commitment to the public interest and for allowing CeDAR to expand efforts nationally. **Thanks!**

CeDAR Protects SSI Benefits for Children at Risk

When Congress created the SSI program in 1972, it vowed that the program would be "especially protective" of disabled children living in low-income households "in order to see that they become self-supporting members of society." The SSI program provides modest monthly stipends to these children to help them overcome their physical and or mental limitations or simply to make life a little easier to bear. Sometimes, SSA loses sight of that purpose and seeks instead to apply the regulations in a rigid manner at odds with the purpose of the Social Security Act. Christopher Bowes of CeDAR recently scored an important victory in for such a child living with his non-adoptive stepfather. The stepfather, Jorge Florez, agreed to take care of his disabled stepchild long after the child's natural mother abandoned the marriage and the household. SSA nonetheless continued to charge Jorge Florez with providing for the stepchild's support and consequently determined that the stepchild was only eligible for a severely reduced SSI benefit after deeming part of Mr. Florez' earned income to the stepchild. Mr. Florez, with CeDAR as his representative, brought a case to challenge deeming of his income to his stepson, who received a sharply reduced benefit as a result.

In a decision this past September, the Second Circuit Court of Appeals agreed with CeDAR that a non-adoptive stepparent's income should not be deemed in cases where the child resides with the stepparent and the child's natural parent does not live in the home. The Court held that because the stepparent has no legal obligation to support the child and is really acting as a "good samaritan." Florez on behalf of Wallace v. Callahan, 156 F.3d 438 (2nd Cir. September 29, 1998) (Cardamone, J.). Writing for the unanimous Court, Judge Cardamone noted that Mr. Florez, "*in assuming the sole responsibility of caring for his wife's child after she left home, shows himself to be a person who plainly believes that in passing through life, any kindness he can shown must be shown now, and not put off until another day.... to find a stepparent like Florez, who cares for a disabled stepchild long after the natural mother abandoned him, is to find a stepparent casting himself in the role of 'good samaritan' since he is under no legal obligation to seek custody or to take the child into his own home.*" Judge Cardamone agreed with CeDAR that the definition of "spouse" in SSA's income deeming regulations does not include stepparents such as Jorge Florez and that the regulations instead only address those stepparents who live with a child's natural parent. The Court has ordered Social Security to recalculate the child's SSI benefits without considering Jorge Florez' earned income. The Court's ruling is binding on SSA in New York, Connecticut and Vermont and will help similarly situated children become self-supporting members of society.

CeDAR's Home Care Project Reaches Out with Support from The New York Foundation

Since March 1998, seasoned Medicaid advocate Valerie Bogart has been heading up the Home Care Project at CeDAR. Valerie has been training consumers and advocates on the nuts and bolts of law and regulations dealing with eligibility for Medicaid home care. In addition, the Home Care Project filed a joint amicus curie brief on behalf of ten local and national advocacy groups urging the Court of Appeals to affirm a preliminary injunction enjoining New York State from employing a "task based" assessment tool that fails to properly address the needs of individuals who need 24 hour safety monitoring. Valerie's amicus brief provided the Court with critical information about the needs of people with Alzheimer's disease and the devastating impact of the task based assessment on such individuals. Although the Court recently vacated the preliminary injunction, the fight continues in the District Court. Thanks to funding from the New York Foundation, the Home Care Project will continue to be involved in the fight against unwarranted service cutbacks to Medicaid recipients.

CeDAR & Kramer Levin Obtain Successful Outcome in Steiberger District Court Remand

In our last newsletter, we reported that Steiberger v. Apfel, 134 F.3d 37 (2d Cir. 1997) had been remanded to district court by a unanimous panel of the Second Circuit. On August 31, 1998, CeDAR's Christopher Bowes, and Kramer Levin partner Jeffery Trachtman and associate Daniel A. Fiore obtained a successful outcome in the district court remand. Steiberger v. Apfel, 95 Civ. 5622 (LBS) (Sand, J.). Judge Leonard B. Sand held that Ms. Steiberger's medical condition constituted good cause for missing a deadline to request review of SSA's decision to terminate her benefits. As far as we know, it's the first time a Federal Court has reviewed and rejected Social Security's findings in a SSR 91-5p claim. Wow! CeDAR and Kramer Levin's success is a significant victory for mentally ill persons who seek or receive disability benefits. **Thanks to Jeffrey Trachtman for his outstanding dedication and excellent work on this case!**

CeDAR WELCOMES KRAMER LEVIN NAPIL FELLOW MAURA KENNEDY

CeDAR is happy to announce the arrival Kramer Levin NAPIL Fellow Maura Kennedy to its staff this past August. The Fellowship is part of NAPIL's Equal Justice Fellowship program, with a twist. Philanthropist George Soros teamed up with NAPIL and promised to fund half the cost of the Fellowship through his Open Society Institute, provided that the sponsoring organization could find a local matching donor. The purpose is to spur local law firms and corporations into sponsoring more and more Fellowships throughout the country. When we mentioned the idea to Jeffrey Trachtman, the *pro bono* coordinator at Kramer Levin and co-counsel with CeDAR on several cases, he reported back that Kramer Levin was eager to be a matching sponsor the Fellowship over a two year period. We are so proud to be a part of this truly momentous Fellowship program which, according to NAPIL, sponsors 72 Fellows throughout the country and is the largest legal Fellowship class nationwide!

Our excitement over the Fellowship was equally matched and exceeded when we interviewed Maura Kennedy, a 1998 graduate of NYU Law School. Before law school, Maura worked in Ithaca for H.O.M.E.S., Inc., a community-based organization providing direct services to mentally ill adults. At NYU, Maura interned with the Urban Justice Center's Family Violence Project and in the Welfare Workers Clinic. One summer was spent at Redwood Legal Assistance doing research and community outreach in the area of immigrants' eligibility for public benefits, developing a *pro se* manual on domestic violence, and working on housing cases. Another summer she worked in the government benefits unit of South Brooklyn Legal Services.

Maura has amazed us since starting in mid-August 1998. She already has several hard-won victories and works with an inspiring and fierce dedication to her clients. Last week, she also learned that she passed the New York State Bar examination. Way to go Maura!

We are extremely grateful to NAPIL, George Soros and the Open Society Institute, and Jeffrey Trachtman and Kramer Levin for providing the means to add this dedicated and valuable lawyer to our staff for this year. Thank you very much!

CeDAR Serves over 600 Clients in its First 18 Months of Operation

Since CeDAR opened its doors in March 1997, CeDAR has been incredibly busy helping clients. We have met with over 600 clients in our office, the large majority of whom we have represented before one or more agencies (Social Security, Medicaid, Public Assistance, Office of Employment Services, Immigration and Naturalization Service). We have also provided telephone advice to social workers, doctors, the Mayor's Office on Disability, and the staff members of Congressmen and Congresswomen in New York. By keeping our fingers on the pulse of local activity, we are better able to spot emerging problems on the local level and discuss them during our regular meetings with advocates and government officials at the national level.

Our clients include children and adults who live in poverty due to their inability to work and be self-sufficient. Our clients' ages range from newborns struggling with life-threatening heart disease to octogenarians struggling to fight overpayment of benefits caused by having an extra \$100 in their savings account. Our clients speak Spanish, Mandarin, Wolof, Polish, Creole, and Bengali, to name just a few. We represent individuals with diabetes who can no longer work because diabetic retinopathy has stolen their eyesight. We have literally escorted several clients to Sloan Kettering Memorial Hospital for second opinions about the diagnosis and treatment of their cancer. We have (with a lot of work), successfully proved that claimants impairments became disabling decades ago in order to qualify claimants for disability under their parents' Social Security earnings record. Our clients' general unflappable integrity and dignity despite such adversity never ceases to amaze us. As recognized by Judge Cardamone in the Florez case (see page 1), many of our clients, though perhaps poor in fortune, are quite wealthy in virtue.

In addition to our work in class action cases such as Abreu (the challenge to the restrictions on non-citizen receipt of SSI and Food Stamp benefits) and Ford (see page 1), CeDAR has also been incredibly busy representing individual clients in individual actions:

<u>Almonte v. Apfel</u>	1998 WL 150996 (SDNY 1998)
<u>Felicie v. Apfel</u>	1998 WL 171460 (SDNY 1998)
<u>Florez v. Callahan</u>	156 F.3d 438 (2d Cir. 1998)
<u>Gracia v. Apfel</u>	1998 WL 599714 (SDNY 1998)
<u>Green v. Apfel</u>	(unpublished)
<u>Johnson v. Apfel</u>	1998 WL 372406 (EDNY 1998)
<u>Lugo v. Apfel</u>	---F.Supp.2d --- (SDNY 1998)
<u>Madrigal v. Callahan</u>	1997 WL 441903 (SDNY 1997)
<u>Munford v. Apfel</u>	1998 WL 684836 (SDNY 1998)
<u>Stieberger v. Apfel</u>	134 F.3d 37 (2d Cir. 1997)
<u>Stieberger v. Apfel</u>	1998 WL 556156 (SDNY 1998)
<u>Zwick v. Apfel</u>	1998 W.L 426800 (SDNY 1998)
<u>Davis v. Callahan</u>	1997 WL 438772 (SDNY 1997)
<u>Davis v. Apfel</u>	145 F.3d 572 (2d Cir. 1998)
<u>Ellis v. Apfel</u>	147 F.3d 139 (2d Cir. 1998)
<u>Rich v. Apfel</u>	1998 WL 458056 (SDNY 1998)
<u>Rosa v. SSA</u>	1998 WL 106134 (SDNY 1998)

Special Thanks to CeDAR's Staff

CeDAR's successes to date have only been possible due to its dedicated staff members. Quira Nieves, CeDAR's Office Manager, has been a constant source of positive energy and readiness since day one and has kept the office intact through thick and thin. More than a few callers to CeDAR have actually called back just to thank Quira for being so pleasant and helpful. Quira manages to keep us focused on both the forest and the trees and we are so lucky to have her on board our staff roster.

Special thanks also to CeDAR's John Derry, who has over the last year probably copied over 75,000 pages of administrative records for CeDAR's clients so that we can be 100% prepared when we represent our clients at administrative hearings. John's Zen-like approach to his work is truly astounding and we are trying to learn his secret by watching him (which is difficult because he starts very early in the morning). Staffers at Social Security also seem to be watching as they are always commenting on how wonderful and pleasant he is to have around. He's kind of like having a goodwill ambassador and copying service all in one! **Thanks John!**

About CeDAR:

CeDAR is a not-for-profit 501(c)(3) organization providing comprehensive free legal assistance to poor individuals with disabilities seeking advice and representation with their claims for public benefits. Founded in October 1996, CeDAR opened its doors in March 1997. In addition to representing and advising individuals, we provide training and back-up assistance to other lawyers, social workers, and other advocates assisting our targeted population. We also participate in advocacy at the state and national level on issues affecting poor individuals' eligibility for public benefits.

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