



# CeDAR NEWS

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## CeDAR's Office Renovation



*New receptionist and copy areas*

adding two new offices, and removing walls to conjoin the old



*Sample of Armando's work*

Avenue in Manhattan. For more information, visit the Fountain Gallery website at [www.fountainhouse.org](http://www.fountainhouse.org), or call (212) 262-2756.

Architect Frank Pizzurro can be reached at (917) 754-7503 or [f.pizzurrojr@worldnet.att.net](mailto:f.pizzurrojr@worldnet.att.net).

CeDAR's mailing address remains the same; however, people coming to visit CeDAR should now enter through suite 604.

In an effort to better serve its ever-growing list of clients, and having long ago outgrown its small office, CeDAR expanded its space at 841 Broadway earlier this year by taking over the vacant neighboring office.

Frank Pizzurro, a local architect and friend to CeDAR, created all the plans for the new space, which consisted of designing a new and larger waiting area for clients, creating a new receptionist work area, adding two new offices, and removing walls to conjoin the old space with the new one. Frank then contracted Bowers Construction Company to complete the work, and, within a few weeks, the new space was complete.



*New client waiting area*

On Friday, May 16th, 2003, CeDAR reopened its doors and celebrated its new space with an office warming party. Armando De Montes Oca, a professional artist and a former CeDAR client, graciously adorned the new walls with an installation of his paintings and drawings. Armando's work can be found at the Fountain Gallery at 702 Ninth



*Copy and filing areas*

For more information, including archived past issues of **CeDAR News**, please visit our website:

[www.cedarlaw.org](http://www.cedarlaw.org)

## Encarnacion Case Update

### Court Rejects Challenge to Children's SSI Regulations But Leaves Door Open

Despite the best efforts of CeDAR's attorneys and the phenomenal and vigorous efforts of *pro bono* counsel Jeffrey Trachtman and Michelle Duran of Kramer Levin Naftalis & Frankel, LLP, and Matthew Chachere and Ken Rosenfeld of the Northern Manhattan Improvement Corporation, the Second Circuit Court of Appeals rejected plaintiff's challenge to SSA's policy of refusing to consider the combined effects of less than marked functional limitations. See *Encarnacion v. Barnhart*, 331 F. 3rd 78 (2d Cir. NY, 2003) and *CeDAR News* Spring 2003 for more description of the case.

There is a silver lining, however. The Court agreed with plaintiffs' principal argument that SSA's policy of giving no weight to less than marked functional limitations violated the requirement of 42 U.S.C. § 1382c(a)(3)(G) and that the commissioner must consider the combined effects of all of an individual's impairments, no matter how minor, "throughout the disability determination process." However, and much to the bewilderment of all concerned, the court felt that CeDAR's attorneys had not adequately pleaded that issue sufficiently to obtain relief. The court then invited plaintiffs to file a second lawsuit to re-plead the matter, and on September 2, 2003, CeDAR re-filed the case. Stay tuned for more details.

### Pro Bono Recruitment In Children's SSI Disability Cases

In October 2002, the Federal Bar Council recognized CeDAR's efforts to match *pro se* child claimants with private attorneys willing to devote considerable time and energy to their cases. As we previously reported, the success has been outstanding. The following story is yet another example of a successful outcome.

Alize Cabrera was born in December 1998, and shortly thereafter, doctors discovered that she was suffering from several significant medical problems. Alize had an enlarged heart and was diagnosed with congestive heart failure, her right kidney was severely underdeveloped, and she suffered from both inferior vena cava thrombosis and renal hypertension.

All of these conditions were present when Alize's mother applied for SSI/Disability benefits, seeking to help offset some of the many expenses of caring for a severely disabled child. However, in spite of Alize's many medical conditions, some of which required twice daily injections, the Social Security Administration denied the Cabrera family's claim, forcing Alize's mother to plead her daughter's case at an administrative hearing.

Upon hearing the claim, the administrative law judge failed to fully grasp the severity of Alize's symptoms. Instead, the ALJ focused on treatment notes indicating that Alize was "doing well" and had "improved since prior examination," and he discounted evidence of Alize's functional limitation, failing to take into consideration that these comments were made in the context of Alize's baseline condition. Failing to understand that physician comments such as "Alize gets short of breath while crawling" pointed to a disabling cardiovascular limitation in an infant child, the judge again denied the Cabrera's claim.

In April 2001, Alize's mother filed a *pro se* complaint in federal district court. Upon receipt, the *pro se* clerk's office forwarded the complaint to CeDAR, at which time, CeDAR partnered with James Bernard at Stroock Stroock & Lavan to contact both Richard Rothman and Natalia Porcelli at Weil Gotshal & Manges. CeDAR attorneys and Richard and Natalia quickly agreed upon a roadmap for litigation. Following their letter demands outlining the ALJ's errors, SSA quickly agreed that there were numerous infirmities with the administrative hearing and conceded that a remand for additional proceedings was required. Richard and Natalia then pressed to expedite the cases's handling, which resulted in a fully favorable decision within just a few months.

Thanks to Richard and Natalia's efforts, Alize's mother now has \$575 per month in monthly SSI income to assist her in meeting the increased costs of caring for her daughter. She also has over \$18,000 in a dedicated savings account that can be used toward Alize's medical and/or educational expenses.

### DAP Gets Additional Funding

The New York State Disability Advocacy Program (DAP) has been slated to receive an additional \$1 million in funding for fiscal year 2003-2004 to serve the Temporary Assistance for Needy Families (TANF)-eligible disabled population. From the New York State budget A.2106-b/S.1406-b, page 324:

**"...up to \$1,000,000 shall be made available for services and expenses of a program providing legal representation of individuals whose federal disability benefits have been denied or may be discontinued..."**

Currently, CeDAR is still awaiting notification of their fiscal year 2003-2004 DAP allocation, so stay tuned.

# SSA Waives Overpayment in Bizarre Turnaround

What would you do if the IRS sent you a letter that because of an error (albeit an honest one) on your taxes for the last three years you had underpaid your taxes by \$15,000 and had to pay the debt immediately? That's the grim reality for many New York elderly and individuals with disabilities receiving subsistence SSI benefits from the Social Security Administration. SSA sends letters telling them that they have been overpaid thousands of dollars in SSI benefits for the previous several years and that the debt must be repaid immediately.

Representing those claimants charged with an overpayment of benefits is one of the more vexing aspects of practicing disability law. To the average person, the matter appears cut and dry: you were paid too much money, now you should pay it back. But anyone who has dealt with SSA knows the true reality: claimants receive benefits under confusing circumstances, with assurances of entitlement from SSA, the benefits are spent, and then the SSA expects the claimant to pay the money back.

An example of this is the case of Alvin Peralta, a minor, whose mother applied for disability benefits on his behalf in 1994 and was found eligible. However, in 1997, Alvin's mother was notified by SSA that he was no longer eligible for benefits. She appealed and was advised that she could continue receiving benefits until a final decision had been made. Ultimately, SSA determined that Alvin was not in fact disabled, and his benefits were discontinued. The family was then told that they would be responsible for repaying over \$4,853 in benefits that were paid.

Ms. Peralta sought relief from the overpayment by requesting that SSA waive the overpayment. Under a 1997 SSA policy known as EM 97-110, which addressed just this type of circumstance, SSA should have focused on whether Mrs. Peralta's appeal of the disability denial was made in "good faith."

Under the facts of her case, Ms. Peralta would have been able to demonstrate good faith quite easily. Instead, SSA focused on the outdated policy, which precluded waiver under most, if not all, circumstances. Applying the incorrect policy, SSA then denied the request for waiver at all levels.

Ms. Peralta worried day and night about how she would manage to repay a \$4,853 debt to SSA. She then appealed the SSA's decision in a *pro se* complaint in federal court, and the court assigned *pro bono* counsel to represent Ms. Peralta. But amazingly, all parties concerned (SSA, SSA's lawyers, the judge, and *pro bono* counsel) were still not yet aware of the new rules regarding waiver. Applying the old standard, the court upheld the denial of the waiver in June 2002.

Following the 2002 decision, CeDAR's attorneys noticed the case on Lexis and immediately realized that a disastrous error had been made. Not only had Ms. Peralta been denied the benefit of the correct policy, but the decision was also being formally published in the federal supplement as a correct statement of the law regarding waivers and overpayments. CeDAR's attorneys then contacted the *pro bono* counsel and offered their assistance in appealing the matter.

Of course, the first step was to advise SSA of what appeared to be an obvious error and oversight on their part. However, SSA refused and forced Ms. Peralta to appeal to the Second Circuit Court of Appeals, at which point SSA made a startling discovery: they had already waived the overpayment in 2001 but had failed to issue a formal notice announcing the waiver. Thus, all the court proceedings and time involved in this case turned out to be a learning experience for all involved.

CeDAR has since asked the Court to vacate its June 2002 waiver denial, and, at this point, we are still awaiting a formal decision.

## My Experience As A Summer Associate

by Mike Seaton

While working as a summer associate at Kramer Levin Naftalis & Frankel LLP, I had a chance to represent a CeDAR client in a Social Security hearing before an Administrative Law Judge. The case was an excellent opportunity for me to conduct litigation from the initial stages of gathering evidence and developing arguments, to finally presenting the case before the ALJ.

CeDAR provided me with the assistance I needed to help make the case a very valuable learning experience. Early in the summer, I attended a training session where I learned about the law and procedure surrounding social security claims, and after I began the case, I checked in periodically with Chris Bowes at CeDAR, who gave me suggestions on improving my arguments and finding the most effective evidence.

Not only was it especially exciting to appear before an ALJ and present a case as a summer associate, but I also found that getting to know my client throughout the process and then advocating on his behalf was a very rewarding and fulfilling experience. I am grateful to CeDAR for making this experience possible, and I would advise any law student interested in litigation or public interest work to take advantage of the opportunity to try a case with CeDAR.

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CeDAR News  
Designed and edited by  
Will Fleming

## CeDAR Needs Your Help

CeDAR, the Center for Disability Advocacy Rights, needs your help. As a not-for-profit organization established to serve the legal needs of low-income people living with a disability, we have served over 1,500 individual clients since we opened our doors in March of 1997. This past year alone we have assisted over 200 individual clients with their cases before the Social Security Administration and various branches of the New York State Department of Social Services. Most importantly, CeDAR gets results: We succeeded in 93 percent of our cases.

Have you ever had a dispute dealing with a large bureaucracy? Whether it is an HMO, the IRS or perhaps a bank, you know just how incredibly difficult it can be to get things done. Add to that problem poor health and no income, and you begin to have an idea of the adversity facing CeDAR's clients. The Social Security laws are often incredibly complex: "[the] Act is a maze of complicated terms and cross references which can easily confuse the practicing attorney, much less the widow and child or other untrained beneficiaries." *Burrow v. Finch*, 431 F.2d 486, 493 (8th Cir. 1970). CeDAR's experienced lawyers stand up for these individuals to ensure that they are not marginalized and otherwise lost in the system. We take on complex cases that other advocates find too difficult. Most importantly, we get results and ensure that those eligible for benefits realize the promise of financial security.

CeDAR continues working hard to bring about important policy changes while still remaining dedicated to helping many individual clients at the same time. But as everyone knows, these are trying times and it is becoming increasingly difficult to raise funds for this crucial work. This is why we need your help. We ask that you please give as generously as you are able so that we may continue to serve this deserving and underserved community.

Thank you for your support!

**YES, I want to help CeDAR continue to grow and serve the community. Enclosed please find a check in the amount of:** \_\_\_\_\_

**SORRY, I can't help CeDAR, Inc. at this time, but please keep me on your mailing list.**

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**\*\* Donations are tax deductible to the full extent of the law. CeDAR is a 501(c)(3) organization recognized by the IRS.**

CeDAR would like to give special thanks to all who made donations to the Center for Disability Advocacy Rights. Their contributions have greatly assisted us in serving our clients. A complete listing of our donors may be found on cedarlaw.org.

*CeDAR provides legal and social services to New York City's most vulnerable residents: impoverished persons with disabilities, including seniors, children, immigrants and persons with mental illness. Our programs help stabilize clients' lives by accessing public benefits and other services to meet basic needs such as food, housing and health-care. Our advocacy efforts and impact litigation help protect the rights of disabled persons and seniors both in New York City and throughout the country.*