



CeDAR News

Volume 1 Issue 2

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CeDAR Happenings

Thanks to the wonderful response we received from our supporters, CeDAR, the Center for Disability Advocacy Rights, is hard at work. We are pleased to announce the following:

New York Foundation brings Valerie Bogart and the Medicaid Home Care Project to CeDAR

Valerie J. Bogart, highly respected for her groundbreaking work, is coming to CeDAR, part-time, to head the CeDAR Home Care Project (HCP). The HCP, funded by the New York Foundation, will ensure access to adequate Medicaid-funded home care to allow people with disabilities and the elderly to stay in their homes and out of institutions. Valerie will train advocates to do Fair Hearings and, where necessary, bring lawsuits to protect clients' rights.

Stern Family Fund grant supports CeDAR's work

The Stern Family Fund has awarded CeDAR funds to support national

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CeDAR & KRAMER, LEVIN WIN APPEAL RIGHTS FOR MENTALLY ILL PERSONS WHO MISS DEADLINES

All too often, Social Security or SSI disability claimants are too mentally impaired to understand appeal rights. That's what happened to Theresa Stieberger, the lead plaintiff in the class action that bears her name. She was grandfathered onto SSI in 1974 based on a mental impairment. But soon thereafter, Social Security (SSA) claims to have sent notice that she was "not disabled." Ms. Stieberger claimed she lacked the mental capacity to understand and act on - appeal - the notice.

In 1995, after an ALJ hearing pursuant to Social Security Ruling 91-5p (which sets standards for "good cause" determinations), SSA refused to extend her appeal deadline. SSA also claimed the District Court couldn't review its decision. But Christopher Bowes of CeDAR, with partner Jeffrey Trachtman and associate Daniel A. Fiore of Kramer, Levin, Naftalis & Frenkel, proved otherwise.

A unanimous panel of the Second Circuit Court of Appeals said SSA was wrong. The Court ruled that, where a sufficient allegation of mental impairment has been made, "notice of denial of disability benefits to an unrepresented claimant who cannot comprehend it because of mental impairment is constitutionally deficient." Stieberger v. Apfel, Docket No. 96-6135. (2nd Cir. Nov. 21, 1997). The Court remanded to the District Court to determine "whether the adverse decision reached by the ALJ at the 91-5p hearing is supported by substantial evidence." Id. •

CeDAR's Home Care Project files *amicus* in "safety monitoring" case

Valerie Bogart's first task as CeDAR's Home Care Project attorney was to write a brief on behalf of the Alzheimer's Association, AARP, National Protection and Advocacy, and a number of other groups in Rodriguez v. DeBuono, a case brought by Cardozo Bet Tzedek Legal Services, New York Legal Assistance Group, and Queens Legal Services for the Elderly. The case challenges New York State Medicaid's decision to stop funding "safety monitoring" for persons with cognitive problems. Safety monitoring means having someone present (often 24 hours a day) to help a mentally impaired person with activities of daily living. As the brief points out, people who have impaired memory, judgment, reasoning, and orientation need physical cuing, verbal reminding, and supervision because behavioral symptoms of their disease can threaten their safety. The federal District Court [Sheindlin, J.] granted a preliminary injunction that required Medicaid to assess the need for safety monitoring and count it as a personal care "task" that is paid for by Medicaid [1997 WL 529054]. New York State appealed and a stay was issued. The case is pending in the Second Circuit Court of Appeals. •

SOCIAL SECURITY AND SSI NEWS

In this column, we provide updated information and "news you can use" for SSI and Social Security advocates. Let us know what you find most useful and keep us informed about your own victories and experiences so we can help you share them with other advocates .

Kenneth S. Apfel is new Commissioner of Social Security

Kenneth S. Apfel was sworn in on September 29, 1997 as the Commissioner of Social Security. His name should be substituted as defendant in your federal court Social Security cases pursuant to Fed. R. Civ. P. Rule 25(d). Mr. Apfel agreed, in his confirmation hearings, to review Social Security's handling of children's SSI cases (see page 3 for update on children's SSI) and has also expressed interest in improving the quality of SSA's service to its limited-English proficient so-called "customers." •

Work Incentives Update: SSA issues new policy on PASS Plans

Plans to Achieve Self Support (PASS Plans) allow disability benefits recipients who want to try to return to work to set aside money toward a work goal. If the PASS Plan is approved by SSA, SSA will not count income or resources protected by the PASS when it determines SSI benefit eligibility and rates. In April 1996, SSA made it much harder to get a PASS Plan approved. Now, however, it

has realized it went too far. On November 28, 1997 SSA issued emergency instructions (EM-97-191) easing the standards for a PASS. Under the new rules, an entry-level position is the earliest point on a career path at which a claimant can earn enough to cover living, medical, and work-related expenses. Also, feasibility of a work goal is evaluated separately from viability of the plan and the SSA employee evaluating the PASS must contact the PASS applicant before denying the PASS Plan. If you would like training on writing PASSes or a copy of EM-97-191, let us know. •

"Fair" equals Marked and "Often" is a significant impairment

Advocates familiar with SSA's forms know the form used by ALJ's called "Medical Assessment of Ability to Do Work-Related Activities (Mental)." The form has space to check for "Fair" which is defined as "seriously limited, but not precluded." Doesn't this definition of "Fair" sound like a "marked" impairment? Well, in Green v. Chater, a District Court Judge agreed with CeDAR that this definition of "Fair" is misleading, and in fact actually supports a finding of disability!

CeDAR also received a decision from the Appeals Council in which it held that a claimant who "often" has deficiencies in concentration, persistence, and pace has a "significant" non-exertional impairment. The ALJ cannot rely on the Grids to deny such a claim.

If you'd like a copy of one or both of these decisions to append to your brief or show to an ALJ, give us a call. •

Immigrants, Children, and Process Redesign

Most of the major happenings affecting our clients since the first issue of CeDAR News have been about immigrants and children and Social Security's "Process Redesign."

Benefits restored for some immigrants.

In the first issue of CeDAR News, we reported on the filing of Abreu, a class action challenge to the Personal Responsibility and Work Opportunity Act's denial of SSI and related Food Stamps to legal permanent residents living here on August 22, 1996, the date the act was passed. The Court ruled in July 1997 that Social Security's application of the new law to deny benefits due for periods prior to August 22, 1996 violated the Social Security Act. About a month later, in response to heavy political pressure and, we believe, to the decision in Abreu, Congress reversed itself, reinstating SSI for most non-citizens who were getting SSI on August 22 and for most people who lived here on August 22 and apply for SSI based on disability or blindness. For folks denied SSI under the old law for periods prior to August 22, 1996, SSA has agreed to apply the Abreu injunction nationwide.

Under the new law, the Balanced Budget Act of 1997, elderly non-citizens who are not blind or disabled are still ineligible for SSI, as are most persons who entered the United States after August 22, 1997 and, after September 1998, PRUCOLS (persons permanently residing in the United States Under Color of Law).

Although Congress did not restore federal Food Stamps for non-citizens who do not fit into the exempt categories, it did pass a law permitting states to buy Food Stamps for non-citizens denied them under federal law. Many states have taken advantage of this provision and are providing state Food Stamps to some or all immigrants.

CeDAR and many other organizations have prepared materials analyzing the changes in immigrant eligibility for public benefits and has helped hundreds of immigrants prove eligibility for SSI and Food Stamps. If you would like materials about how to help non-citizen clients, contact us.

Children fight to retain SSI.

The Personal Responsibility and Work Opportunity Act also targets disabled children by redefining the disability eligibility criteria for children. CeDAR has responded by training *pro bono* lawyers at the Association for the Bar of the City of New York and public interest advocates throughout the City on how to effectively represent and advise children whose SSI disability cases are being reviewed by SSA. CeDAR has represented and advised dozens of parents with disabled children, making sure that SSA does not discourage parents who seek benefit continuation during the appeals process. In a letter to the Regional Commissioner, CeDAR identified those Social Security Offices that had discouraged CeDAR's clients from appealing their cases. Well, apparently, the Commissioner is listening, because we got calls and action right away from several Social Security workers at these offices offering to fix any problems we identified, and we haven't had new problems since. It's good to know that SSA is listening to CeDAR's complaints!

Adjudication Officer Project Update

Manhattan is one of the pilot sites for SSA's Adjudication Officer Project. The purpose of the AO project is to screen cases pending at the hearing level to determine whether a favorable decision can be made without holding a hearing. Until recently, our experience had been that the AO project only made a difference if the claimant was over 50 years old. Well, recently, an AO granted benefits to a 30-year-old college graduate with a mental impairment. CeDAR is pleased to see that the Adjudication Officers are not limiting favorable decisions to folks over 50. •

About CeDAR's Logo

We have received numerous compliments on CeDAR's logo. Well, the credit belongs to Laurie Sandow, director of Nibs Design, Inc. 13-05 44th Avenue, Long Island City, New York 11101. Thanks for the great work Laurie! •

CeDAR Happenings
Stern (Cont. from page 1)

advocacy work CeDAR performs in coalition with other organizations. Among the activities the Stern Family Fund grant will support are CeDAR's participation with the firm of Vollmer & Tanck as class counsel in Ford v. Apfel, No. 94-2736 (EDNY) (Sifton, Ch. J.) a class action challenging SSI notices as constitutionally inadequate; administrative advocacy with a national coalition of legal services providers to improve the quality of service Social Security provides to persons with limited English ability; and ongoing efforts to limit and, where possible, reverse the negative effects of so-called "welfare reform" on persons with disabilities and the elderly, with a special focus on immigrants.

CeDAR seeks matching funds, excellent law grad for NAPIL Fellowship

CeDAR has received tentative approval for a NAPIL Partnership Fellowship. NAPIL is the National Association of Public Interest Lawyers. It helps public interest-minded young lawyers find a place within organizations that do public interest work. CeDAR still must find one or two law firms or corporations willing to match the NAPIL grant and an appropriate person to be a fellow. The fellow will do direct service work in the public benefits field, serving clients with disabilities and the elderly, working under the supervision of CeDAR's experienced attorneys. If you know of corporations or law firms that might match the grant or a potential fellow, please contact us. We seek a diverse pool of candidates for the fellowship. Thanks for your help.

CeDAR serves over 300 clients in Social Security, SSI, Medicaid, Welfare, and Food Stamps cases

Although we have only been in operation a little over ten months, CeDAR has been busy helping clients. We have seen over 300 clients, the large majority of whom we have represented before one or more agencies. While SSI claims are pending and after they are approved, we help clients with problems with other public benefits as well. We do Fair Hearings and some Articles 78s (state court cases) on a variety of public benefit issues. Here is one example of how CeDAR helps its clients:

Ana N is a 49-year-old divorced mother of 3 who has worked since 16 as a housecleaner and factory worker. Since 1989, Ana has had custody of her infant grandchildren. In 1995, she developed severe back pain, which was later diagnosed as a herniated disc at L4-L5. She underwent an laminectomy, but the operation was unsuccessful. After Ana applied for SSI and was denied benefits, CeDAR helped her prepare to represent herself at her administrative hearing by obtaining her medical records and reports from her doctors. Ana won her SSI hearings hands down, but then learned that the cash value of an old life insurance policy made her ineligible for SSI! After discussing the policy with Ana, CeDAR's attorneys learned that this life insurance policy was set up in part as a burial fund. We discussed the matter with SSA officials, and they agreed to treat the life insurance policy as an exempt burial fund. Thanks to careful work, Ana is eligible for SSI, got her "retro", and meets her living expenses with her \$507 in monthly SSI benefits.

CeDAR's clients and staff cheer for Quira Nieves, our office manager

CeDAR could not function without the invaluable help of Quira Nieves, our office manager. She manages to maintain a friendly attitude under extremes of pressure and is always kind and helpful to clients and people who call for advice. One client made a point of asking her name because he wanted to thank her personally for all she has done to make him comfortable whenever he came to CeDAR. Advocates who call regularly also say how pleasant and helpful she always is. We want to thank Quira and let her know how much she is appreciated.

Generous donors and help from Community Resource Exchange help CeDAR grow in its first fiscal year

Like any new organization, CeDAR has had to scramble in its first fiscal year for the funds to keep it afloat. We can't let this second newsletter pass without thanking all of you who have made it possible for us to continue our work. **THANK YOU, THANK YOU, THANK YOU.** You individual donors out there are the life blood of CeDAR. Your faith in us and your support keep us alive. We think and hope we have merited that faith. Let us know what you think.

We also want to thank Holly Delany Cole of Community Resource Exchange for her invaluable assistance with our organizational and fund raising development. The New York Foundation funded CRE to help us learn basic operating and funding skills and Holly has been working with us and our board. We are grateful for her help and that of CRE and for the funding provided by the New York Foundation.