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State Funding for Civil Legal Services: Historic Break Through

By Anne Erickson

Unlike in prior years when funding for civil legal services was eliminated from the Executive Budget and subject to a last minute add-back by the Assembly Majority, the 2008 State Budget offered a number of historic "firsts" -

- Chief Judge Judith S. Kaye included funding in her Judiciary Budget for the first time when she submitted her spending plan to in-coming Governor Eliot Spitzer last December.
- Governor Spitzer included funding for civil legal services in his first Executive Budget marking the first time this funding was included in the initial budget submission.
- The Senate Majority joined with the Assembly Majority for the first time in restoring the base funding for civil legal services in the final budget.
- The Senate Minority, as a body, wrote to Governor Spitzer applauding him and urging him to expand and strengthen the new investment in civil legal services.

After "carrying" civil legal services in the state budget since 1993, Assembly Speaker Sheldon Silver and Judiciary Chair Helene Weinstein finally had the partnership

needed to take a desperately needed leap forward.

The Results and Next Steps

When the dust finally settled after an intense rollercoaster of a frantic four final days of the budget negotiations, the state budget included:

- Restoration of \$4.6 million in the base line item support for civil legal services;
- Allocation of funding from the Legal Services Assistance Fund for a combination of civil and criminal legal assistance;
- A new appropriation of \$5 million in the OCA budget as requested by the Judiciary;
- A new appropriation of \$3 million in the Executive budget for civil legal services; and
- An additional \$4 million in spending authority for IOLA to increase its grant making if its interest earnings increase.

In the end, core state funding is stabilized and overall state funding is more than double what it has been for the last decade or more. The two new appropriations in OCA and the Executive will be distributed based on a yet-to-be-determined process.

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State Funding—continued

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Not only were there historic break-throughs on the funding front, by the new Executive is committed to creating a more policy-based approach to funding civil legal services in New York. The current “system” is fragmented and ad hoc, relying for years on the Assembly Majority to restore funding and create new opportunities where it could.

It is anticipated that in the coming months a new approach and process will be developed to put civil legal services more squarely within the state’s investment priorities.

In moving forward, the legal services community is recommending that the new unallocated funding for civil legal services be:

- used to strengthen and expand the current delivery system while ensuring access to legal assistance in all forums;
- allocated equitably across the state, using county by county poverty data;

- distributed in an open process and in a way that streamlines the application and reporting process; and
- distributed on a statewide basis for both direct services and for training, support and backup services.

The community is urging the Governor and Legislative Leaders to consider creating more of an institutional “home” for state funding for legal services in New York. Such an office or unit of state government would work to ensure that state funding is included in the state budget each year, periodically undertake needs assessments, identify emerging legal needs and help the community in reviewing and strengthening the statewide delivery system.

The discussions are on-going – which in itself is a dramatic change. Previously, once the budget was finalized the discussions were over for the year.



Some Big Wins and a Few Losses for Low Income New Yorkers in State Budget

By Susan Antos

Medicaid & Child Health Plus

The best news for low income New Yorkers in this year's budget is the eligibility expansion for Child Health Plus from 250% of the federal poverty level to 400% of the poverty level. This expansion is subject to federal approval, but state officials have already submitted the state plan amendment and are hoping that the new eligibility levels will be in place sometime next fall. Under the new eligibility levels, the majority of New York's 400,000 uninsured children would be eligible for free or subsidized health care.

The budget also includes two significant streamlining provisions for New York's Medicaid program. First, beginning in January of 2008, Medicaid beneficiaries will be able to self-attest to resources and residency during recertification. Eligibility workers will verify the information given by beneficiaries using existing state information systems. If a discrepancy appears, beneficiaries will be asked to provide documentation.

Second, the budget provides adults applying for Medicaid with 12 months of guaranteed, continuous eligibility, which is already provided to children applying for public health insurance in New York. Federal law allows states to provide continuous coverage guarantees to children, but not adults. Therefore, this provision of the budget, like the Child Health Plus eligibility expansion, will require approval by the federal government before it is implemented in New York.

Also requiring federal approval is language that was included in the budget as a result of litigation brought by the Empire Justice Center and Legal Services of Central New York that restores the medically needy program's income eligibility level for households of one and two to the same level of income afforded to SSI recipients. Although the budget language represents an important step toward resolving this problem, final resolution of the issue is still several months off.

Finally, the Legislature approved more than \$900 million of the \$1.3 billion in health care spending cuts requested by Governor Eliot Spitzer. Unlike prior years, none of the proposed cuts were aimed at cutting benefits or restricting access to services. In the end, the cuts include a reduction in Medicaid reimbursements to pharmacists; a freeze in premiums the state pays to insurance companies that provide coverage for Medicaid beneficiaries; and about \$82 million in cuts to nursing home and hospitals, which were accomplished by reducing the trend factor used to boost rates annually and redistributing some of the funds set aside for graduate medical education and worker retention and recruitment.

Child care out of the Flex Fund, but overall increase in funding is small

Governor Spitzer had proposed \$533 million dollars in child care funding in his budget consisting of federal Child Care Development fund monies and the required State and local shares. In addition, Governor Spitzer's budget had proposed to continue a funding device first implemented by Governor Pataki in last year's budget - the Flexible fund for Family Services - also known as the Flex Fund. This fund put the Temporary Assistance to Needy Families (TANF) block grant money that had previously gone to child care into a block grant, putting the availability of these funds for child care at risk since the county could choose to fund a variety of programs with these funds - programs such as child welfare, employment demonstration and drug screening and treatment.

The final budget removed child care from the Flexible Fund for Family Services, but the amount of TANF funds that were added for child care was \$356.3 million dollars, only 4.3 million dollars more than was spend by the counties out of the Flex Fund last year. The Assembly had proposed an increase to \$417 million dollars which would raised

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State Budget—continued

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the total amount of funding to \$950 million.

Significant expansion of Pre-Kindergarten

Governor Spitzer has promised Universal Pre-kindergarten for New York State within the next four years, and this year's budget offered a significant down-payment, adding \$149 million in new dollars from Pre-K. This brings the total of all Pre-K funding in New York to \$438 million dollars. The New York State Universal Pre-kindergarten (UPK) program was established under Chapter 436 of the Laws of 1997. During the 2004-05 school year, 192 districts (224 eligible) served approximately 57,000 students. This increase will allow significantly more students to be served.

No public assistance grant increase

After the Governor proposed his budget in January, the Assembly put a proposal in their Article VII bill that would have raised the public assistance grant by 10% over two years. This proposal did not make it in to the final budget. However, the Assembly has pledged to hold hearings on the adequacy of the public assistance grant this fall so there may be some movement on this issue next year.

Child care and child support

Obtaining a child support order continues to be an eligibility requirement for the receipt of a child care subsidy for low income families who are not on public assistance. The Assembly had proposed language in its Article VII bill which would have required districts to encourage families to obtain child support orders, but would not have required that parents obtain orders as a condition of receiving assistance with child care. Unfortunately, because of resistance from the Senate, this language did not make it in to the final bill.

Executive Order to Establish a Children's Cabinet

Outside the budget process, Governor Spitzer has announced his intention to sign an Executive Order which will establish a Children's Cabinet which will be chaired, by the Director of State Operations, Olivia Golden, who was formerly the assistant secretary for children and families at the Department of Health and Human Services. The press release announcing the Cabinet also states that Dennis Whelan, the Governor's Deputy Secretary for Health and Human Services and Manny Rivera, the Governor's Deputy Secretary for Education will co-chair the Cabinet. The first two tasks of the children's commission will be the implementation of Universal Health Insurance for children and the implementation of Universal Pre-Kindergarten.



Congressional Hearing Highlights Delays

By Kate Callery & Louise Tarantino

For our Social Security clients, waiting is always the name of the game. They wait for an initial decision, usually a denial; they wait for a hearing date, sometimes close to two years in some upstate ODARs (Office of Disability Adjudication and Review); they wait for a hearing decision; if it's unfavorable, they wait for an Appeals Council decision. Some die before decisions are issued; all get older and sicker.

The House Social Security Subcommittee held a hearing on February 14, 2007. NOSSCR (National Organization of Social Security Claimants Representatives) provided oral and written testimony focusing on the stories of claimants and the hardships they have endured while waiting for a decision. According to Nancy Shor, these stories made an impact on the Subcommittee members at the hearing.

Particularly interesting to Chairman Mike McNulty was a story involving a client from his district in Troy, New York. Ms. C is a 49 year old single mother who lives in Troy, and applied for Social Security disability benefits on May 2, 2005. She previously worked for ten years as a keyboard operator for the State of New York. Ms. C has not worked since December 2003. She was denied benefits in February 2006, nine months after her application was filed. Ms. C requested a hearing in April 2006.

Since filing for benefits in May 2005, Ms. C and her children were evicted from their apartment. Unable to provide a home for her children, she lost custody and the children now live with their father. For four months, Ms. C lived in a homeless shelter in Troy, and was finally able to leave just last week. She was recently hospitalized for depression because of the multiple stressors in her life. Ms. C also has a borderline IQ and bilateral neural stenosis in her cervical spine. She is in treatment for a depressive disorder at a local mental health clinic.

Ms. C calls her attorney every month to check on

the status of her appeal. There is currently an 18-month wait for a hearing at the Albany hearing office. Her attorney asked to have this case decided "on the record," without the need for an in-person hearing. However, the request was denied. Assuming the 18-month processing time, Ms. C can expect to have her hearing in November 2007. Her attorney has been told by the Albany hearing office that the wait will only get longer: two administrative law judges (ALJs) have retired in the last two years; one ALJ is set to retire in May 2007; and one ALJ is now the Acting Regional Chief ALJ. There has been only one ALJ replacement.

This was just one of the numerous delay scenarios that Subcommittee members heard about during the hearing. Unfortunately, the stories are typical of what's happening across New York and the nation.

The goal of NOSSCR's testimony was to support the need to provide SSA with increased and adequate funding, especially to hire ALJs and ODAR support staff. Without more funding, backlogs and delays are expected to grow; there will be fewer staff; a hiring freeze may be in place; and other workloads will not be given proper priority.

According to Nancy Shor, the solution is simple: the SSA must be given enough funding to get disability decisions made in a timely manner. As required by law, the Commissioner of Social Security submitted a budget request separate from the President's request. This request indicates that the agency needs \$10.44 billion in administrative funding for FY 2008 for its administrative expenses, known as SSA's Limitation on Administrative Expenses (LAE). This is almost \$1 billion more than the President requested. What can we do to combat ongoing SSA delays? Advocates can play an important role because they know the hardships their clients experience. Decisions about funding for federal agencies begin now for fiscal year (FY) 2008,

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Refugees Continue to Lose SSI Benefits

By Kate Callery & Louise Tarantino

Prior editions of this newsletter have included articles on the devastating problems faced by refugees who arrived in the United States after August 22, 1996, and whose SSI benefits are being terminated under SSI's seven-year time limit. See, e.g., the January 2007 edition of the *Disability Law News*, available at <http://www.empirejustice.org/content.asp?contentid=2074>.

A recent article published by the Center on Budget and Policy Priorities presents a compelling argument for why Social Security should eliminate its draconian policy preventing refugees from receiving benefits beyond seven years. According to the report authored by Zoë Neuberger and entitled *LOSS OF SSI AID IS IMPOVERISHING THOUSANDS OF REFUGEES: Congress Could*

Prevent Further Hardship, over 12,000 refugees and other humanitarian immigrants have already lost SSI benefits and another 40,000 such needy individuals will lose benefits over the next decade. The author advocates for Congressional elimination of the time limit. At the very least, she argues that as a stop-gap measure, Congress should extend the deadline. The full article is available at <http://www.cbpp.org/pubs/recent.html>.

Of note, President Bush's FY 2008 budget actually calls for a one-year extension of the current seven-year limit for SSI eligibility period for refugees, asylees and other humanitarian immigrants.

Congressional Hearing—continued

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which begins on October 1, 2007. If SSA is going to receive the funds it needs to reduce the backlogs at the hearing level, it is imperative that the House and Senate Budget Committees make provisions in the "Budget Resolution" to ensure that SSA will receive \$10.44 billion to fund the agency's administrative budget. The House and Senate Budget Committees will vote on their versions of the Budget Resolution in early to mid March.

It is important that every Member of Congress urge the Chairman of their respective Budget Committee to include sufficient funding in the Budget Resolution to appropriate funds for SSA's

Limitation on Administrative Expenses at the level requested by the Commissioner of SSA: \$10.44 billion for FY 2008.

This is an opportunity to describe the impact of the delays on your clients and your experience with the lengthy processing times in hearing offices. This "puts a face" on the problem and will help build the case for increased funding for SSA. As disability advocates and private citizens, we can contact our New York Congressional delegation, particularly Congressman McNulty, and urge their support for adequate funding for SSA to do its job effectively and efficiently.

New SSA Commissioner Sworn In

By Kate Callery & Louise Tarantino

Michael Astrue was sworn in as the new Commissioner of Social Security on February 12, 2007. <http://www.ssa.gov/pressoffice/pr/astrue-pr.htm>. See also the November 2007 edition of the Disability Law News. Advocates should note that Commissioner Astrue should now be substituted for Ms. Barnhart, or Acting Commissioner Linda S. McMahon, in all federal court pleadings pursuant to Fed. R. Civ. P. 25(d)(1).

At his confirmation hearing before the Senate Finance Committee on January 24, 2007, Commissioner Astrue touted his background with the disability programs, noting that he ended SSA's non-acquiescence policy. He also shared with the Committee his own experience of helping his father apply for disability benefits in the mid-1980s.

In response to questions about implementation of SSA's new Disability Service Improvement initiatives, Commissioner Astrue stated that he plans to revisit the new process, and will explore whether some of the "least controversial" aspects can be rolled out nationwide. He also asserted that like Commissioner Barnhart before him, he

intended to stay out of the Social Security privatization debate. Finally, he described himself as an "incrementalist," who is unlikely to make any sweeping organizational changes in the agency in the short term.

Despite Commissioner Astrue's reticence to jump on board DSI, former Commissioner Joanne Barnhart, as one of her last acts before her term ended, made appointments to the Decision Review Board (DRB), which will be replacing the Appeals Council. Appointments to the DRB Review Panel include both ALJs and AAJs (Administrative Appeals Judges who are current Appeals Council members. ALJs appointed are: Blanca de la Torre, Paula Garrety, Steve Hubbard, David Stephens. AAJs include: Barbara Johnson, George Lowe, Dorothea Lundelius, Richard White. Appointments were also made to the Advisory Panel, which is "to study the disability determination process, identify issues that impede consistent adjudication at all levels of the process and recommend improvements to that process." Appointees include: David Hatfield, Michael Heitz and Mary Kunz (ALJs); and Chris Field, Robert Johnson and Mark Millet (AAJs).

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By Michael Mule'

You have received PDF's and know Adobe Reader is the program that opens them, but maybe you do not know how to make a PDF document. There are a few ways to make a PDF and two types commonly created, image and text.

Image PDF's = Free but no Text

Some people make a PDF by placing a document on a scanner or a copy machine that sends the document to your network. The PDF opens up but you cannot highlight the text and copy and paste it, this is an image PDF.

Text PDF's = Have to Pay for Best Quality

Two programs used to make PDF's are Corel Word Perfect and Adobe Acrobat. With Word Perfect you can open a Word or Word Perfect document and then save the document as a PDF. In Adobe Acrobat, open any word processing document or other office document and you can save it as a PDF. These are text PDF's documents, you can select text and use it in other documents. You also have to buy the programs, Word Perfect Office X3 is \$269 and Adobe Acrobat 8.0 starts at \$299.

ZAMZAR = Very Good Quality Text PDF's for Free

With Zamzar, you do not need to buy a program, for free you can convert any document into PDF, including Excel worksheets and any web pages. Go to Zamzar.com, browse and pick the file you want, select what type of file you want to convert it to, then enter you email. In a few minutes you will receive an email with a link to the converted document, click it and download the document. Zamzar also can change PDF documents back into Word documents, and convert digital images and movies from one type of file to another.



Continuing Legal Education Credits Now Available Through On-line Trainings

By Tom Karkau, Western NY Law Center

The Western New York Law Center (Buffalo, NY) and the Empire Justice Center (Rochester, Albany, White Plains, NY) have joined together to make 14 trainings in various aspects of civil law available for viewing over the web by attorneys and staff. Additionally, experienced attorneys viewing these presentations may receive New York State Continuing Legal Education (CLE) credit (subject to NYS Unified Court System guidelines).

Included on the following pages of this issue of the Legal Services Journal are descriptions of the trainings, names of presenters, length of the presentation, and amount of CLE credit. Included with each training are course materials that can be viewed online or downloaded at the viewer's discretion. Most of these trainings are already available for viewing. All trainings will be available by May 15, 2007.

If you are an attorney practicing law outside of New York State and you wish to receive CLE credit, check with your state or local Bar Association as to whether or not CLE credit from New York State is recognized in your state.

Why not live trainings?

While no one will dispute the advantages of attending a training in person, the expense, lost time and inconvenience of travel to attend a training can be more of an issue than the cost of tuition or actual training time. Many times, travel expenses and lost productivity due to travel are significantly greater than the tuition and/or the actual time spent receiving the training. By viewing the training via the web, there is no lost productivity due to travel and there are no travel costs.

Another big advantage of viewing trainings via the web is convenience: It can be viewed from any location with sufficient bandwidth at any time of day, or day of the week. Presentations can be rewound, paused, stopped, restarted, or viewed again in their entirety.

Tips & Advice for Viewing

Dialup connections won't work. You must have an Internet connection capable of handling at least 160Kbps. If you are unsure of the connection speed at your location, start up your web browser and go to <http://www.speakeasy.net/speedtest/>. Under the caption "CHOOSE A SERVER:" are 8 cities. Click on the one that is closest to your location and the speed test will automatically start. When the test finishes, if the "Download speed" is greater than 160 Kbps, your Internet connection is fast enough to handle the webstream.

If more than one person is planning to watch a presentation in office, it would be a better use of bandwidth for everyone to watch together since every computer connection to the webstream will consume 160Kbps of your office's bandwidth. Having problems with the presentation? Please check out the Star Watch article "Improve Your Webstreaming Experiences" that can be found at this link: <http://www.wnyc.net/pdf/star-watch/Mar-Apr06.pdf>. It provides a tools and techniques to diagnose and solve problems with viewing webstreamed presentations.

Empire Justice Center has been certified by the New York State Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York

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On-line Trainings—continued

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To view the trainings...

Start up your web browser and go to this location: <http://onlineresources.wnyc.net>

On the left side of the screen, click on "Online Training"

Click on the desired training; a registration form will be displayed

Fill out the registration form; then click on "Submit form"

A link to the presentation will be sent to the email address provided in the registration form

If you are an attorney and wish to receive CLE credit, you must fill out the course evaluation and attorney affirmation forms and mail it to the address on the form along with payment for processing of the CLE credit request. New York State Bar Association rules require that the forms be mailed. They cannot be submitted electronically.

Course Descriptions

Listed below are descriptions of the trainings offered, presenters, viewing times, CLE credits for attorneys, and cost for processing the CLE credit request. If you are not an attorney or you do not wish to receive CLE credit for viewing the training, no payment is required.

Child Care and Child Support

This course covers the fundamentals of the child support requirements for applicants and recipients of child care assistance. Discussions include the active pursuit of child support; good cause exception and determinations; failure to cooperate by applicant or recipient; the child support order; treatment of child support as income; what happens if the non-custodial parent stops paying support; practical difficulties and legal issues that may be raised by petitioners and respondent. Presenter: Susan Antos, Esq., Empire Justice Center; Viewing time: 1 hour 25 minutes

CLE Credits: 1.5 Profession Practice

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys

Emergency Assistance 101

This course provides an overview of the emergency assistance programs in New York State: Emergency Assistance to Families, Emergency Safety Net Assistance, and Emergency Assistance to Adults. The training reviews the situations that constitute an emergency, and the financial and categorical eligibility requirements for receipt of emergency assistance, and pays special attention to shelter and utility emergencies. Date of original presentation: 10/27/2005; Presenter(s): Susan Antos, Esq., Empire Justice Center; Charles Brennan, Public Utilities Law Project; Viewing time: 1 hour 33 minutes

CLE Credits: 1.5 Professional Practice

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys

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On-line Trainings—continued

(Continued from page 10)

Food Stamps 101

This course will cover the rights of individuals to apply for food stamp benefits; the financial and non-financial eligibility requirements of the program, including a brief summary of immigrant rules; a basic look at the food stamp budgeting methodology, including how to read a food stamp budget, and the food stamp recertification process. Date of original presentation: 11/20/2006; Presenter: Barbara Weiner, Esq., Empire Justice Center; Viewing time: 2 hours 19 minutes

CLE Credits: 2.5 Professional Practice

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys

Introduction to Language Access Rights

Language Access for Limited English Proficient (LEP) is a half day training for advocates and attorneys that work with LEP communities. Participants will be given an overview of the state and federal protections for LEP individuals, as well as specific information on the following topics:

- LEP individuals access to public benefits, focusing on access to Food Stamps
- LEP access to hospitals and medical services
- LEP individuals interaction with law enforcement
- LEP access to interpreters in court and when seeking legal services

Date of original presentation: 02/01/2007; Presenter: Michael Mule', Esq., Empire Justice Center; Viewing time: 3 hours 6 minutes

CLE Credits: 3.0 Professional Practice; .5 Ethics

Cost for CLE credit: \$90.00 Not-for-Profit Agencies; \$150.00 Private Practice Attorneys

Navigating Medicare Part D: Strategies for Assisting Clients with HIV & Other Medicare Eligible Clients

This one day training is presented in a series of modules. The first session covers the nuts and bolts of the new Medicare Part D benefit and information on choosing a plan. The second session focuses on issues that arise when using a plan, particularly the exceptions and appeals process. Participants will gain experience with advocacy strategies through sessions using hypothetical client scenarios. Attorneys must complete both sessions for CLE credit. Date of original presentation: 03/23/2006; Presenter(s): Trilby deJung, Esq., Empire Justice Center; Valerie Bogart, SelfHelp Community Services; Greg Otten, Gay Men's Health Crisis; Viewing time: 2 Parts -- 1 hour 51 minutes; 1 hour 44 minutes

CLE Credits: 3.5 Professional Practice

Cost for CLE credit: \$90.00 Not-for-Profit Agencies; \$150.00 Private Practice Attorneys

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On-line Trainings—continued

(Continued from page 11)

Navigating the New Medicare Part D Appeals Process

Nuts and bolts of the Medicare Part D appeals process, including strategies for representing clients with prescription coverage denials, appeals of denials for the low-income subsidy, and issues related to New York's Medicaid wrap-around coverage. This session was originally offered during the New York State Bar Association's Legal Services Partnership Conference. Date of original presentation: 06/06/2006' Presenter(s): Trilby deJung, Esq., Empire Justice Center; Valerie Bogart, SelfHelp Community Services; Viewing time: 1 hour 38 minutes.

CLE Credits: 1.5 Professional Practice

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys

Public Assistance 101

This training, which is geared for those new to welfare work, will provide an overview of the different cash public assistance programs (Family Assistance, Safety Net Assistance, special grants and Emergency Assistance) and the basic eligibility rules of each program. The training will also cover clients rights during the application process, and special rules that apply to minors. Participants will learn how to read a welfare budget and calculate benefits for their clients. Date of original presentation: 04/03/2007; Presenter(s): Susan Antos, Esq., Empire Justice Center; Viewing time: 2 hours 1 minute.

CLE Credits: 1.5 Professional Practice; .5 Skills

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys

Reentry: Criminal Law 101: What Every Poverty Lawyer Must Know About the Criminal Justice System

More than one in three New Yorkers have a criminal record. The legal and practical consequences reach far into every practice area. Avoiding these collateral consequences, however, requires advocates to have a basic knowledge of criminal justice system. This session will give a crash course in law and practice in the criminal justice system, including the path of a criminal case, warrants, types of offenses, juvenile proceedings, criminal records and sealing, certificates of relief from disabilities, and what services are permitted under LSC restrictions. It will also introduce a new online tool that provides proven solutions to overcoming collateral consequences. This session was originally offered during the New York State Bar Association's Legal Services Partnership Conference. Date of original presentation: 06/06/2007. Presenter(s): Presenters: McGregor Smyth, Bronx Defenders; Nancy Rosenbloom, Legal Aid Society; Alan Rosenthal, Center for Community Alternatives. Viewing time: 1 hour 34 minutes

CLE Credits: 1.5 Professional Practice

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys

Sequential Evaluation: Developing Mental Impairment Cases at Step 3

This training is designed to be an introductory course for those new to Social Security Disability Law. It begins with an overview of Social Security Disability and the sequential evaluation process with a focus on Step 3 (the "Listings") for mental impairment cases. Participants will learn how to develop strong evidence and how to make winning arguments at Step 3, particularly in mental impairment cases.

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On-line Trainings—continued

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Date of original presentation: 12/01/2005 Presenter(s): Louise M. Tarantino, Esq. and Catherine M. Callery, Esq., Empire Justice Center Viewing time: 1 hour 48 minutes

CLE Credits: 2.0 Professional Practice

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys

Sequential Evaluation: Developing Mental Impairment Cases at Steps 4 and 5

This course builds upon the sequential evaluation process at Step 3. It focuses on Step 4 (past relevant work) and the Step 5 application of the Grid Rules. Participants will learn how to get off the grids and the use of vocational expert testimony in disability cases. Date of original presentation: 12/02/2005; Presenter(s): Louise M. Tarantino, Esq. and Catherine M. Callery, Esq., Empire Justice Center; Viewing time: 1 hour 43 minutes.

CLE Credits: 2.0 Professional Practice

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys

SSI Non-Disability Eligibility

This training covers the fundamentals of SSI eligibility, including: income and resources, living arrangements, deeming, transfer of assets and other penalties, non-citizen restrictions, residency and more. This training is broken up into three parts because of its length. Attorneys must complete all 3 parts for CLE credit. Date of original presentation: 03/16/2006. Presenter(s): Louise M. Tarantino, Esq. and Catherine M. Callery, Esq., Empire Justice Center; Viewing time: 3 parts – 1 hour 33 minutes; 1 hour 52 minutes; 1 hour 32 minutes.

CLE Credits: 3.5 Professional Practice; 1.5 Skills; .5 Ethics

Cost for CLE credit: \$90.00 Not-for-Profit Agencies; \$150.00 Private Practice Attorneys

Strategies for Maximizing Access to Health Care Services for People with HIV: Navigating the Maze of Eligibility Criteria in New York's Public Health Care Programs

This training will provide case managers and other client advocates with basic information about the public health care programs in New York State that are key for people living with HIV/AIDS, including Medicaid, ADAP, Child Health Plus and Family Health Plus. Topics will include eligibility criteria, fair hearings and some of the common barriers and obstacles clients face when trying to access health care services. This training will prepare participants to apply eligibility criteria, identify potential legal issues, present legal references to county workers and make referrals to legal services when necessary. Date of original presentation: 02/16/2006. Presenter: Trilby deJung, Esq., Empire Justice Center; Viewing time: 1 hour 34 minutes.

CLE Credits: 1.5 Professional Practice

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys

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On-line Trainings—continued

(Continued from page 13)

Strategies for Maximizing Access to Health Care Services for People with HIV

This training, sponsored in conjunction with the Legal Action Center, will provide case managers and other client advocates with basic information about the public health care programs in New York State that are key for people living with HIV/AIDS, including Medicaid, ADAP, Child Health Plus and Family Health Plus. Topics will include eligibility criteria, fair hearings and some of the common barriers and obstacles clients face when trying to access health care services. This training will prepare participants to apply eligibility criteria, identify potential legal issues, present legal references to county workers and make referrals to legal services when necessary. CLE credit is not available for this webcast. Date of original presentation: 03/23/2007; Presenter: Trilby deJung, Esq., Empire Justice Center; Viewing time: 1 hours 28 minutes.

CLE Credits: 1.5 Professional Practice

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys

Work Rules 101

This training will begin with an overview of public assistance programs in New York and discuss how advocates can use local employment and child care plans to assist their clients. This session will include a basic overview of Public Assistance work rules, including drug and alcohol screening, exemptions, employability plans, hours of participation, countable work activities, and the rules governing sanctions, voluntary quit and conciliation. Finally, the session will discuss the new federal TANF regulations and their impact on work programs in New York State. Date of original presentation: 11/20/2006; Presenter: Susan Antos, Esq., Empire Justice Center; Viewing time: 2 hours 15 minutes

CLE Credits: 2.0 Professional Practice; .5 Ethics

Cost for CLE credit: \$60.00 Not-for-Profit Agencies; \$90.00 Private Practice Attorneys



Regulatory Roundup

By Susan C. Antos

Regulatory Round Up reports on administrative rule making of interest to public benefits specialists. The rulemaking described below appeared in the New York State Register from February 14, 2007 to April 18, 2007. All references are to 18 NYCRR, unless otherwise indicated. If you are interested in reading the text of a proposed rule or the summaries of public comment and the response regarding an adopted rule, please contact Connie Wiggins (cwiggins@empirejustice.org). Any comments submitted by Empire Justice Center on proposed regulations, are available at www.empirejustice.org. From the "Issue Areas" bar, click on the "Public Benefits" section, go to "Cash Assistance" and then "Comments on Regulations."

Notice of Proposed Rule Making

Date of Filing	Last Day to Comment	Regulations Affected	Summary
4/18/07	6/1/07	10 NYCRR 400.23 763.13(b) 766.11(f) 18 NYCRR 505.14(d)(4)(i)	Criminal History Record Check: This proposed regulation is being promulgated by consensus rulemaking, replaces the regulations on criminal history record checks for prospective employees of licensed and certified home health agencies, nursing homes, and long term home health care programs. These entities must request that the Department of Health request a criminal records check for any prospective employee defined in Chapter 769 of the Laws of 2005, as amended by Chapter 331 of the Laws of 2006.
4/11/07	5/25/07	9 NYCRR Part 171	Residential Youth Facilities - Mail, Phone and Visiting Privileges: This proposed regulation expands the rights of residents of youth facilities to have contact with the outside world. It defines authorized visitors and explicitly states that visits by the resident's attorney, law guardian or ombudsman shall be unrestricted, and that each resident shall have an authorized visitors list. Outgoing mail may not be read, censored or rejected except under limited circumstances. Telephone calls are permitted between residents and immediate family members and those in a parental relationship to a resident. Calls to the Office of the State Ombudsman must be at state expense.

Notice of Proposed Rule Making

Date of Filing	Last Day to Comment	Regulations Affected	Summary
3/28/07	5/12/07	452.10(c)	Domestic Violence Shelter Address Confidentiality Provisions: This regulation, which was promulgated pursuant to 459-(g) of the Social Services Law, requires that the location and address of domestic violence shelters which are disclosed in applications or other documents submitted to state or local agencies may not be released in response to a freedom of information act request, and may only be released pursuant to a Court order or where expressly authorized by statute or regulation.

Notice of Adoption

Date of Filing	Effective Date	Regulations Affected	Summary
3/27/07	4/11/07	352.8(b)(4)	Congregate Care Level 3 Enhanced Residential Care: This regulation authorizes an allowance for temporary assistance recipients living in congregate care level 3 facilities, based on the rates provided to SSI recipients. This regulation was necessary because level 2 adult homes and enriched housing programs have been classified as level 3 facilities.
3/16/07	4/4/07	360-3.2(j)	Conditions of Citizenship and Immigration Eligibility: This regulation brings the Department of Health regulations into compliance with the decision of the Court of Appeals in <i>Aliessa v. Novello</i> , 96 N.Y. 2d 418 (2001), which held that Social Services Law 122, which denied Medicaid to certain immigrants who were lawfully residing in New York State, was a violation of Article 17 and the equal protection clause of the New York State Constitution. The legislature has not amended Social Services Law 122 to comply with the <i>Aliessa</i> decision.
3/7/07	3/7/07	421.16 443.2	Medical Examinations for Prospective Adoptive and Foster Families: These regulations permit medical exams required for certification approval f adoptive or foster families to be performed by nurse practitioners in addition to physicians.

Notice of Adoption

Date of Filing	Effective Date	Regulations Affected	Summary
2/28/07	2/28/07	358-2.2(a)(14)	Home Energy Assistance Program (HEAP): This consensus rulemaking requires that a notice regarding a HEAP payment is deemed to be adequate only if it has a copy of the budget or basis for the computation included as part of the notice. This regulation is a result of the decision in <i>Kapps v. Wing</i> , 404 F.3d 105 (2nd Cir. 2005).
2/21/07	2/21/07	Parts 426, 427, 428 & 431	Standards for Reimbursement of Foster Care Maintenance or Adoption Assistance: These regulations bring state regulations into compliance with Federal regulations regarding the conditions for eligibility for foster care and adoption expenses and the definition of a special needs child.

Emergency Rule Making

Date of Filing	Rules Expires On	Regulations Affected	Summary
4/18/07	6/25/07	357 421 428 430 441, 443	Home Studies for Adoptive and Foster Placement: This emergency rule, which was previously promulgated on an emergency bases on October 1, 2006 and December 28, 2006, has not yet been promulgated as a proposed rule. It permits foster children who are being released into their own care to get their medical and education records at no charge. It requires child protective services information inquiries to other states when a person applying to be an adoptive or foster parent has resided out of state within 5 years of the application. It establishes time frames for the completion of home studies.
4/18/07	6/25/07	Part 421, 443	National Criminal History Records Check: The federal Adam Walsh Child Protection Act of 2006 (PL 109-248) and Chapter 668 of the Laws of 2006 amending Social Services Law §378-a-(2) require that effective January 11, 2007, national criminal history record checks through the FBI of all persons applying for certification or approval as foster or adoptive parents and all persons over the age of 18 residing in the homes of such applicants. Refusal to sign a consent for the FBI check will result in a denial of the application. The regulations also require that all such persons be fingerprinted. This emergency rule was previously filed on an emergency basis on December 28, 2006, and has not yet been promulgated as a proposed rule.

Emergency Rule Making

Date of Filing	Rules Expires On	Regulations Affected	Summary
2/21/07	5/15/07	11 NYCRR Part 52	<p>Minimum Standards for the Form, Content and Sale of Health Insurance (Timothy's Law): This emergency rule requires insurers and HMOs to provide written notification to policy holders and members of the mental health benefits available under Timothy's Law (Chapter 748 of the Laws of 2006) which was effective January 1, 2007. This regulation requires that such notices be sent by February 15, 2007 and include a toll free number for questions. The explanation accompanying this regulation explains that this rule will not be promulgated as a proposed rule, but is intended to provide notice of the benefits under Timothy's Law until the usual approval process for new forms and rates has taken place</p>
3/9/07	6/6/07	11 NYCRR 362-2.5 362-2.7 362-3.2 362-4.1 362-4.2 362-4.3 362-5.1 362-5.5	<p>Healthy New York: These regulations have been repeatedly filed on an emergency basis over the last year, making a number of changes to the Healthy New York program, including deleting co-payments for well child visits, allowing a lower cost plan option which does not include prescription drugs, defining <i>de minimus</i> contributions for purposes of determining whether small employers qualify to participate, exempting child support received as income, and deleting the requirement that supporting documents be required upon recertification. These regulations were finally filed as a proposed rule on November 1, 2006</p>

A Matter of Racial Justice: The Alarming Disparities of Lead-Poisoning Rates In New York State

By Michael Hanley

Lead poisoning may be color blind, but it is by no means an “equal opportunity” menace. Although lead-based paint can poison *any* child, regardless of race or ethnicity, the shameful truth is that in New York State lead-paint hazards pose a *far* greater threat to Black and Latino children than to their White, non-Latino counterparts. Worse yet, our public health and legal systems are failing to respond effectively to that inequity. In fact, the progress that has been made in fighting lead poisoning in the population at large over the last two decades is now typically presented by state and local health agencies as a great success story. That story, however, masks the degree to which lead poisoning *remains* at crisis levels in the neighborhoods that are home to a stunning proportion of the children of color in our state. What once may have been primarily a public health issue has now become a matter of racial justice. This is not simply a question of minorities suffering because they may be at the bottom of the economic ladder. This is a situation in which a remedy is at hand, the state is failing to act, and those suffering as a result are overwhelmingly children of color.

First, the troubling facts:

Outside of New York City, a Black child under age five in our state is 8.5 times more likely to live in a neighborhood linked to high incidences of lead poisoning than is a White, non-Latino child. There is a link between lead-poisoning and poverty, of course, but the inequity in the risks of lead-poisoning isn't due simply to the higher percentage of minority children living below the poverty level. In fact, in sheer numbers there are more white children living in poverty than non-white children. It's time to admit a harder truth -- although the highest risk areas were identified by the state nearly a decade ago, and although during that time we have also known the techniques that are effective for finding and removing lead-paint hazards, we have nonetheless failed to make a concerted effort to prevent children in the highest risk areas of the state from becoming poisoned

when we could have done so simply by inspecting the housing in those neighborhoods and making it lead safe. Not surprisingly, most of those neighborhoods in which lead hazards were lurking were areas that were then and are now overwhelmingly Black and Latino. No one would seriously believe that we would have reached this same result had those same high incidence rates been found in an equivalent proportion of the more affluent, non-minority, neighborhoods of the state.

Under the Pataki administration, the state Health Department and housing agencies (the Department of State and the Division of Housing and Community Renewal) did not have any plan for systematically inspecting housing for lead paint hazards – at least until it was already too late for the child living there. That is, no health or building official would go out to inspect a house or apartment for lead hazards until *after* a child had already become poisoned and had become permanently impaired by lead.

State Health Department data shows that in 2001 over 41% of the children poisoned in the state (outside of New York City) lived in only 36 of the state's nearly 1700 zip codes. The Department of Health labeled these areas as “high incidence rate” zip codes. In a way, that should have been really good news. It meant that we should have been able to attack the problem without trying to inspect every one of the more than seven million housing units in the state.

The situation is even more egregious in light of the unfulfilled promise made by state officials when they identified these high risk areas in 2001. At that time they said the state would pursue a plan for “primary prevention.” That's the term used for the strategy of finding lead-hazards in buildings before children are poisoned. But, despite the lip service paid to primary prevention in each annual report from the Department of Health, the Division of Housing, and the Department of State, the state has never actually taken the steps needed to make

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Lead-Poisoning Rates—continued

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those inspections happen, or for that matter, even made any effort to lay the groundwork for primary prevention inspections other than on a voluntary basis or in connection with *federally* funded lead hazard elimination grant programs.

Whether intentional or not, by failing to embark on any building inspection initiative while simultaneously holding out to the public that lead poisoning incidence rates have been dropping, the state has masked the severity of the problem. Eager to highlight the progress that has been made (which many attribute to the continuing effects of the federal elimination of lead from gasoline in 1974, and for newer homes, the elimination of lead in paint in 1978), the state has simply failed to take the next critical steps. The state continues to maintain in its most recent major document on the subject, "Eliminating Childhood Lead Poisoning in New York State by 2010" that "[t]he statistical models indicate that incidence rates in NYS, exclusive of NYC, will have decreased by the year 2010 to very low levels." Reading this report, you would think that the problem is well on the way to being solved.

Unfortunately the overall (i.e. statewide) drop in the incidence rate for lead poisoning has not been reflected in the high risk areas now populated by minority children. It is cold comfort, even if the current statewide incidence rate of 2 to 3% drops below 0.5% as projected when you are living in a neighborhood in which the incidence rate may still be more than forty times that level. And that's what the case would be when you live in a neighborhood with a 20% incidence rate, meaning that one child in five who has been tested is found to be poisoned by lead. The lead paint that was put on the walls of the housing in those neighborhoods in most cases is still on the walls, just as it was when a different generation, the baby-boomers, grew up playing on those same floors and porches. But the risk of hazards in those units has increased dramatically. That housing is now nearly a half century older, and as the years have gone by, the paint in those houses has become more and more likely to peel and flake off. Once owner-occupied properties have now become rental properties that are less likely to be well-maintained. And, like the boomers

themselves,

the infrastructure isn't what it used to be. Roofs and windows have deteriorated, adding to the flaking and peeling of the paint, and creating lead new lead poisoning hazards.

In the absence of a mandate or guidance from the state, however, none of the housing in these neighborhoods has ever been routinely inspected for lead paint hazards. Perhaps local health officials saw building inspections as a "housing" problem, and local building inspectors saw it as a "health" problem. At any rate, no one apparently has seen it as his or her job. State officials simply never addressed the administration gap.

In most municipalities, the presence of lead-paint hazards is not even a building code violation. Although hazards *can* be cited under the state Public Health Law (see PHL §1375), as far as we know, no local building officials have been designated (as the state law allows) to enforce the Public Health Law. It was not until the City of Rochester adopted a local ordinance requiring inspections in high risk areas, that there was *any* requirement for the routine inspection for lead paint hazards in *any* of 36 the zip codes identified by the state as "high incidence rate" zip codes. Consequently, lead hazard inspections occurred only after it was too late, that is, *after* a child had been poisoned.

In addition to the direct impact on the children poisoned by lead, there is a severe impact upon older cities and urban neighborhoods. Out of the 36 zip codes identified by the state in 2001, *nine* were in Buffalo; *six* were in Rochester; *five* were in Syracuse; and *five* were in Albany. Lead poisoning has had a devastating social and economic impact upon these cities, imposing overwhelming burdens on their schools and criminal justice systems.

Consider this: even if we were to get the poisoning rate in a city the size of Rochester down to 500 children per year that would still mean that, over the twelve years a child takes to go through school, there would be 6,000 children in the school system who are

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Lead-Poisoning Rates—continued

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permanently diminished in their intellectual capacity and exhibiting aggressive and distracting behaviors.

But certainly it is children, particularly minority children, who continue to be most directly in harm's way. According to the 2000 census data, the 36 high risk areas identified by the state are home to over 91% of the Black children under age 5 living in the city of Buffalo; over 87% of those in Albany; nearly 80% of those in Rochester and over 65 % of those in Syracuse.

The numbers are nearly as high for Latino children. Almost unbelievably, over 33% of ALL of the Black children under age five in New York State (outside of New York City) lived in one of the 36 zip codes identified by the Department of Health as a high incidence rate zip code.

Our new Governor, Eliot Spitzer and his Executive agencies can act immediately to address this problem. In fact, this should be a top priority for the newly appointed Children's Cabinet. What better challenge to tackle than the future health of our state's most vulnerable and highest risk children. Talk about investing in the future.

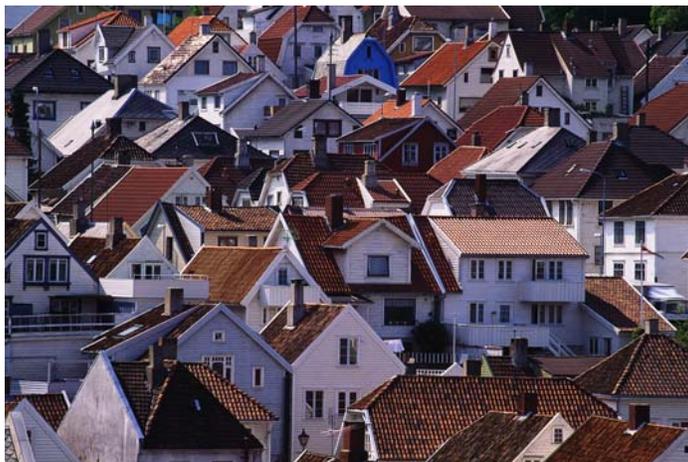
Several steps can be taken administratively, essentially with the stroke of a pen. State training for local building officials to learn how to identify lead-paint hazards needs to be increased and the state needs to designate local building inspectors to cite owners for lead paint hazards under the

existing

Public Health Law. Similarly, the state can require county health officials to work, with assistance from the state, to develop true primary prevention plans targeted to the highest risk areas. Updated data should be made available to the public, on an ongoing basis, in order to assure the transparency that is needed to monitor progress.

Additionally, legislation is needed not only to secure the guarantee that the state, regardless of who is sitting in the Governor's office, will be vigilant in protecting children from lead poisoning, but also to provide the economic assistance to building owners to remove lead hazards safely.

A new Senate bill, S. _____ by Senator Bill Perkins, would require the Department of Health to each year identify the neighborhoods where the lead poisoning risks continue to be the highest. The legislation will then require the Department of Health to give local health and building officials in those communities the help that they need to develop effective "primary prevention plans." And, to make sure the housing gets fixed, the bill provides financial assistance to property owners, in the form of tax credits, to make sure they have help to eliminate lead-paint hazards. Comprehensive, strategically targeted legislation such as this is critical to eliminate lead-paint hazards in *buildings* before *children* are poisoned and *before* their lives are ruined – regardless of their color.



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