

Law Services News



FEBRUARY/MARCH 2010

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Adult Home Operator Cannot Raise Rent for SSI Residents

Residents in adult homes face especially tough times these days as many homes have closed in recent years and the availability of affordable beds is scarcer than ever. Law Services' Adult Home Project works to protect residents in these homes and sometimes this involves litigation.

In July 2007, when the Babylon Beach House (a state licensed adult home) decided that it wanted to "go private", instead of changing their admissions policy prospectively for new applicants, they decided to evict 41 of their current residents whose source of income was Supplemental Security Income

(SSI). Out of the 41 residents who were given notice, Law Services attorney, Carolyn McQuade, represented eight residents who were interested in fighting their eviction.

Relying on case law and the Personal Needs Allowance Statute (SSL 131-o), we argued that an adult home operator could not charge an SSI recipient more than the SSI rate. The adult home's attorneys initially argued that they were not bound by the Social Services Law. The district court judge (J. Barton) disagreed and granted our

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This issue is dedicated in memory of **Dianne Arrue** as Law Services mourns the loss of a dedicated and valued intern of the PAIR/PADD Unit.

SPECIAL POINTS OF INTEREST:

*Our next issue will be an email issue **ONLY***

- **Hodgepodge Updates**
- **Welfare News**
- **PLAN'S Mission**
- **Vol. Atty. Recognized for His Work**
- **Pro Bono- Raising the Bar**
- **Law Services in the Community**
- **NLSL 2010 Spring Training Schedule**
- **Staff Anniversaries**
- **Message from the Executive Director**

DSS Work Rules Can be Harsh

Noncompliance with Public Assistance and Food Stamps work rules can have dire consequences for individuals and families who are dependent on benefits, especially those who are unable to work due to a disability.

The State (Office of Temporary and Disability Assistance(OTDA) recently issued 09 ADM-20 which clarifies how strictly the rules must be applied. For those found to have *willfully and without good cause* failed to comply with work requirements (job search, employment assessment, re-

duction or termination of employment), the "sanction" will cause benefits to be reduced for a fixed time period (eg based on 1st, 2nd, 3rd "offense") proportionate to family size. So for example, a family of 3 would experience a 1/3 reduction in benefits. The first offense for TANF families lasts "until willing to comply" and this can be cured rather easily. Subsequent offenses and Safety Net sanctions for individuals are strictly enforced for a designated time period and CANNOT be lifted if they are not

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Make sure to give us your email address by going to www.nslawservices.org and look for the "Sign up for our newsletter field". Our Spring issue will ONLY be going out to our email list in order to save mailing costs. Tell your friends and colleagues!



United Way of Long Island

Adult Home—SSI Resident

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motion to dismiss the petition on procedural grounds deciding that the adult home violated SSL 461-h because it failed to file proof of service on each of the residents' next of kin by mail and On the appropriate government Department. Unfortunately, despite the residents' victory in Court, many of the SSI recipients living in the home felt pressured and left "voluntarily" or had family members that were willing to supplement their rent and pay the higher rate.

In 2008, the Home again commenced eviction proceedings against the only remaining SSI recipient. Our motion to dismiss was denied and the District Court Judge (J. Hackeling) presided over a trial relating to the various defenses we raised on behalf of our client. We argued that according to the Social Services Law and the adult home regulations, adult home operators cannot charge more than the adult home rate and home operators can only involuntarily evict residents in certain circumstances: i.e., when the residents need a higher level of care, when the residents are not making the payments they agreed to make, and certain other limited circumstances. We also argued that pursuant to the admission agreement, the Home can only unilaterally raise the rent when it had incurred increased costs of maintenance and operation. After a trial, the District Court agreed with us and again dismissed the petition, holding that the Home had failed to show an increase in costs to justify the "extravagant" increase that it sought (from \$884 at the date of her admission in 2005 to \$2,400 per month less than 3 years later).

In 2009, the Home tried yet again to evict the only remaining SSI recipient in the Home for her failure to pay their rent increase of \$1,742 per month. We again raised the same defenses and after two days of trial testimony during which the Home entered evidence from their Administrator, their Managing Partner and their Accountant, the Court again decided in favor of our client. Judge Ukeiley held that Petitioner again had failed to demonstrate that the rate increase charged was due to an increase in "maintenance and operation costs," which is the only way the Home can unilaterally increase the rent pursuant to its own admission agreement. The Court also held that pursuant to case law and Social Services Law 131-o (the Personal Needs Allowance statute), our client could not be required to pay for ser-

vices or supplies with her PNA and that the Home's administrator had testified that the rate increase was used to pay for such items as services, supplies, housekeeping, food and supervision. In light of this testimony, the Court held that the Home could not terminate our client's admission agreement due to her failure to pay the rent increase.

DSS Work Rules Can be Harsh

(Continued from page 1)

appealed in time. Requesting fair hearings on employability assessments and work rules sanctions is critical for those who dispute DSS' determination that they can work.

The ADM states that once the sanction is over, the individual must demonstrate his/her willingness to comply with the rules before benefits will be restored, retroactive to the date that the person has demonstrated a willingness to comply (presumably in a written statement). For Public assistance and Food Stamp recipients, a new application is not necessary unless a single-person case had been closed as a result of the sanction. For Food Stamps cases ONLY, those who are exempt due to a disability may have the sanction lifted during the course of the sanction if they later document the medical basis for the exemption. Public Assistance benefits cannot be restored **if a fair hearing has not been requested timely** and the sanction will run for the duration of the offense regardless of whether the individual later proves a disability.

Therefore, it is of utmost importance that if a client believes they should be exempt from the work rules due to a medical condition, that they provide this documentation early in the application process, especially at the time of employment assessment. If the recipient does not agree with the employability determination, (s)he must request a fair hearing within **10 days** of the date of the notice. If a timely hearing is not requested, the recipient will be required to participate in work activities as a condition of receiving public assistance. Then if they willfully and without good cause fail to participate in work activities, they may have their benefits reduced or discontinued. However, if the recipient requests a timely hearing to challenge the employability determination, then (s)he is exempt from work activities until a fair hearing decision is rendered which determines that the recipient is no longer exempt.

Deinstitutionalization and Medicaid Home Care

This article will discuss various issues related to the provision of “home care” services under the New York State Medicaid program and the role the program plays in deinstitutionalizing persons with disabilities enabling them to live in the community.

Medicaid is a program that provides medical assistance, jointly funded by the federal, State, and county governments, to individuals whose income and resources are insufficient to meet the costs of medical care. Many Medicaid recipients are also disabled and require Medicaid services to avoid institutionalization. The program is specifically intended to assist eligible individuals to, “... attain or retain capability for independence or self-care...” (42 U.S.C. §1396-1) This goal closely parallels the Americans with Disabilities Act (ADA) mandate to provide government services in the most integrated setting. See *infra*

Because Medicaid is a government program and service, it must comply with requirements of Title II of the ADA. (42 U.S.C. §12132) Title II Regulations require that government services be administered in the most integrated setting appropriate to the needs of qualified individuals with disabilities. (28 C.F.R. §35.130[d]) The United States Supreme Court upheld the application of the “integration mandate” of the ADA in a case brought on behalf of mentally ill persons hospitalized in Georgia claiming they were capable of living in the community if provided appropriate assistance. *Olmstead v. Zimring*, 119 S.Ct. 2176, 2185-2188 (1999); see also, *Disability Advocates, Inc. v. Paterson*, 598 f.Supp.2d 289 (E.D.N.Y. 2009); Memorandum & Order, dated September 8, 2009, unnecessary confinement of persons with mental illness in institution-like adult homes rather than more independent community based settings violates the integration mandate of the ADA.

In *Helen L. v. Didario* 46 F3d 325, 337-339 (3rd Cir. 1995), the Third Circuit applied the integration mandate in the context of Medicaid home care holding that the State of Pennsylvania was required to fund the plaintiff in the community with the homecare program available in the State despite waiting lists rather than funding her placement in a nursing home. The *Helen L.* decision has been incorporated into federal Medicaid policy. See July 29, 1998 U.S. Dept. Health and Human Services (USDHHS) Health Care Financing Administration (HCFA) Memo

However, the integration mandate of the ADA

cannot be used to fundamentally alter government programs, including Medicaid home care programs. (See 28 C.F.R. §35.130[b][7]) The Second Circuit has held that New York’s Medicaid Personal Care Services (PCS) program did not have to provide PCS for safety monitoring for persons with mental disabilities because safety monitoring was not provided to anyone in the program. *Rodriguez v. DeBuono*, 197 F.3d 611, 619 (2d Cir.1999)

New York’s Medicaid program provides for an array of home care programs. This article explores the requirement that Medicaid be administered in the most integrated setting through a variety of cases brought to ensure that clients receive home care in lieu of an institutional placement. We will also explore the most integrated setting concept applicable to Medicaid in the context of maximizing community access for Medicaid recipients through modification of New York State Medicaid policy.

In *Sizse & Ornstein v. DeBuono*, CV 97-5715 (E.D.N.Y.), plaintiffs challenged the failure of Suffolk County to implement a Consumer Directed Personal Assistance Program (CDPAP) and to permit recipients of Medicaid PCS to travel outside the home with their aides to obtain services authorized on the recipients’ care plans. CDPAP is clearly the most integrated example of a home care program because it is designed to permit the recipients of services to hire and train their home care aides and manage their program. Significantly, it permits CDPAP aides to be trained to perform tasks only performed by nurses or home health aides in other home care programs. With respect to engaging in community activities such as shopping and other essential errands, traveling outside the home with the PCS aide clearly falls within the integration mandate of the ADA. The settlement in this case required the County to set up a CDPAP program, to send notice to all home care recipients advising of its availability, and required the State to adopt reasonable procedures for PCS recipients to travel with their aides to receive services outside the home.

In *Regan v. Wing*, CV 00-6245 (E.D.N.Y.), plaintiffs challenged State and County

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HODGEPODGE UPDATES

TPS for Haitians Expands Benefits

Temporary Protected Status (TPS) is a temporary immigration status granted to eligible individuals of a certain country designated by the Department of Homeland Security because of serious temporary conditions in that country. On January 14, 2010 the United States determined that individuals from **Haiti** warranted TPS because of the devastating earthquake that occurred there. This gives undocumented Haitian residents, who were living in the U.S. on January 12, 2010, protection from forcible deportation and allows them to work legally. (The U.S. also grants TPS to individuals from other countries including individuals from El Salvador, Honduras, Nicaragua, Somalia and Sudan.)

TPS applicants residing in New York are eligible for Medicaid and Family Health Plus as long as they also meet the income requirements for these programs. Individuals may apply for public health insurance with facilitated enrollers at community-based organizations or at local offices of the Department of Social Services. To reach the enrollment facilitators call the Health and Welfare Council at 516 483-1110 or the Nassau Suffolk Hospital Council at 631 656 9783.

Nassau County Residents Can Now Apply for Food Stamps Online



The State Office of Temporary and Disability Assistance recently announced that Nassau County residents can now apply directly for food stamps online through the State's website, www.mybenefits.ny.gov. This new service will enable individuals to apply directly for food stamps from any computer with Internet access, at any time convenient for them. Nassau is one of 11 counties that offer this capability, with more counties expected to join in the coming months.

Changes in Credit Card Terms

On February 22, 2010 major changes in credit card terms took effect. This federal legislation is supposed to make credit card agreements and state-ments easier to understand and limit certain practices which created greater costs for usage.



The benefits of this new law include:

- More time to pay monthly bills
- Prohibition against retroactive interest rate hikes
- Advance notice of change in credit card terms with an opportunity to opt out of term changes
- Interest rate hikes limited, e.g. on new transactions only after the first year. Significant changes in terms with 45 day notice
- Right to "Opt Out" of existing credit card balances with 45 day advance notice of change
- Limited credit to young adults
- Highest interest balances credited first

But in the meantime, many consumers are seeing immediate hikes in interest rates as the credit card companies try to hedge against the cost they say this new legislation will create.

Other criticisms of the effects of this new law include more costly cards, inaccessible credit for low income families and those with bad credit, routine annual fees, fewer grace periods and fewer reward cards. Also, there is no cap on how high interest rates can go and new fees that are not banned by the law can be imposed.

For more information see www.creditcards.com

Settlement Conferences in Foreclosures

Settlement conferences, a mandatory requirement for some residential foreclosures in New York since late 2008, have now been expanded to include all foreclosure proceedings involving owner-occupied homes from one to four family units pursuant to recent legislation. The new law mandates settlement conferences for all foreclosure actions commenced after January 15, 2010. Prior to this date, settlement conferences were only mandated in subprime or nontraditional mortgage cases. The purpose of these conferences is to seek a settlement that will keep the borrower in their home. Both the lenders and the courts have an affirmative obligation to send notices to the homeowners, advising them of the availability of free, non-profit housing counselors.

In recognition of the overwhelming number of foreclosure actions brought on Long Island, approximately 18,000 alone in 2009, both the Nassau and Suffolk County Bar Associations have set up foreclosure task forces for pro bono attorneys to provide *limited* assistance at these settlement conferences. In this effort, the task forces supplement the full representation provided for homeowners by Nassau/Suffolk Law Services.

The Mandatory court settlement conferences are being held in **Nassau** Supreme Court at 11 am and 2pm on Wednesdays and Thursdays, and 9:30 on Fridays. Volunteer attorneys represent the homeowners for that day only. Housing counselors from Nassau County are in attendance as well to assist with loan modifications. For more information call the **Nassau County Bar** at 516 747-4070. Settlement conferences in **Suffolk** are held on Mondays 9a.m. & 2p.m. in Patchogue, Tuesdays 9:30a.m. & 2:30p.m. in Riverhead, and Tuesdays 9:00a.m. & 2:00p.m. in Ronkonkoma. Call the **Suffolk County Bar** at 631 234-5577 for assistance at these settlement conferences. The Suffolk Bar also sponsors foreclosure consultations at Touro Law School once a week on Wednesdays.

Nassau/Suffolk Law Services Foreclosure Unit, in cooperation with the community housing counseling agencies, provides comprehensive legal representation for homeowners, based on the likelihood of preventing the foreclosure and the availability of staff resources. Call 631 232-2400 or 516 292-8100.

IMPORTANT INFORMATION ON UTILITY ASSISTANCE! PLEASE READ!

Though we reported in our last issue that **Suffolk Department of Social Services** will not deny utility assistance in the 2009-10 heating season based on failure to repay prior assistance agreements, we have learned that there is some misinformation among the DSS Centers.

Please be advised that Suffolk County DSS HAS waived the requirement that applicants for utility assistance satisfy their prior repayment agreements. That means that applicants for utility assistance in Suffolk should not be seeing denials based on failure to repay on prior agreements. This information is especially critical as families face increasing hardship. Unfortunately, Nassau County DSS has not similarly decided to waive this requirement. Please inform us immediately if your Suffolk clients are being denied utility assistance on this basis.

Note: For information on the Middle Income HEAP Program, please see page 9.

PUBLIC ASSISTANCE FAMILIES BENEFIT FROM CHILD SUPPORT COLLECTION

Good news! Where DSS collects child support on behalf of active public assistance recipient children, the amount collected for child support payment is factored in the household budget and "passed through" to the household.

In July, 2009, DSS Child Support pass through payments and disregards were increased to \$100. Effective January, 2010, families with two or more children can receive up to \$200 in child support pass through money.

Deinstitutionalization and Medicaid Home Care

(Continued from page 3)

policy prohibiting receipt of Medicaid homecare in homeless shelters and Nassau County's discriminatory policies for placing home care recipients who become homeless. The settlement provided for appropriate community placements including handicapped accessible motel and shelter settings where home care aides could assist and reasonable accommodations such as the use of cash cards for accessing benefits rather than obtaining them at the Social Services center. The case ended a County policy of placing home care recipients in a nursing home if they became homeless.

A number of cases were brought around the issue of shortages of home care workers in the State's various programs- PCS (18 N.C.R.R. §505.14 *et sec.*), Home Health Care (HHC) [18 N.Y.C.R.R. §505.21 *et sec.*], and Private Duty Nursing (PDN) [18 N.Y.C.R.R. §505.8 *et sec.*]

In *Bayon v. Novello* CV 00-7200 (E.D.N.Y.) & *Mayorga v. Novello* CV 01-6625 (E.D.N.Y.), plaintiffs challenged a Suffolk County requirement that family members sign back-up agreements as a condition of eligibility for PCS recipients, done to ensure services were provided by family members when aides were unavailable. In addition to abolishing the procedure and using case management and safety plans to ensure the safe provision of services, the State and Suffolk County agreed to a policy for paying an enhanced rate for Medicaid PCS to ensure that the required services were, in fact, provided.

A similar problem of staff shortages occurred in the home nursing programs in Nassau and Suffolk County which was addressed in the *Scholtz v. Novello*, CV 02-4245 (E.D.N.Y.) & *Bacon v. Novello* 02-4244 (E.D.N.Y.) cases. A number of remedies were settled upon including the payment of an enhanced rate for Medicaid nursing services when care is unavailable, for nursing agencies to provide case management, and for Medicaid home care recipients to have the right to combine CDPAP with traditional programs such as nursing and HHC.

The enhanced rate for nursing services had to be addressed again when Nassau and Suffolk County stopped administering the program and application had to be made to the New York State Department of Health (DOH). In *Leon v. Novello*, plaintiff, who was severely disabled and required various medical procedures in order to remain home with her mom, lost

CDPAP services because plaintiff's mom returned to work. Suffolk County determined that mom had to be in the home when medical procedures were administered even though mom appropriately trained the CDPAP aide to perform the necessary procedures. Attempts by plaintiff's parent to apply for home nursing services while awaiting administrative review of the CDPAP denial proved futile as no procedure was in place to accomplish this. A settlement with DOH resulted in the establishment of procedures for applying for nursing services which were widely publicized and for an enhanced rate State-wide in the event nurses can not be secured. Reasonable policies were established regarding the extent to which a self-directing other must be present to supervise the provision of CDPAP to a non-self directing recipient. Plaintiff was also able to return to the CDPAP program.

A shortage of staff in the HHC program which threatened and prolonged institutional care for persons with disabilities was addressed in the *Cassidy & Arcuri v. Novello*, CV 02 3373 (E.D.N.Y.) case. The case was settled by DOH establishing policies to better ensure applicants of HHC services are processed for eligibility by a Certified Home Health Agency (CHHA) in a timely manner and recipients receive care authorized on their care plans.

All of these Medicaid home care programs implicate both the ADA and Medicaid law as any loss of or inability to access Medicaid home care is likely to result in inappropriate institutional care notwithstanding a person's ability to function in a community setting.

Robert Briglio, Esq, PAIR/PADD Unit

NEW MEDICAID/FHP ELIGIBILITY RULES MAKE IT EASIER TO GET COVERAGE

Medicaid eligibility rules no longer require a resource test as of January 2010 for certain categories of applicants and recipients. Those who are 65 or older, or certified blind or disabled, are still required to provide information about their assets, but all others including children and non-disabled adults under 65 who are applying for Medicaid or Family Health Plus, will not be asked about their assets according to GIS 09 MA/027. Disabled applicants who also have minor children in the house (and are therefore potentially eligible in the ADC-related category) can have their eligibility assessed without the resource test if this would be more advantageous.

WELFARE NEWS

Employment Limitations and Welfare

In a recent fair hearing decision, Law Services' attorney, **Bill Stuber** was successful in having a public assistance case reopened after the Department of Social Services discontinued assistance. The case had been closed when DSS claimed that the appellant's spouse had failed to submit documentation proving his employment limitations.

Although our client's husband had previously been assessed as employable, he later claimed an impairment and was directed to submit a physical assessment with a specific medical diagnosis. When he failed to submit the documentation on time, the case was closed. At the hearing, Stuber argued that DSS cannot close a case for a recipient's failure to prove exemption from work activities unless it is the initial claim of impairment or a continuing claim for a person already determined to be exempt from work activities. This client fit neither category and so should not have had his case closed, especially since he continued to comply with his work assignment. Stuber was awarded Fair Hearing of the Month by the Empire Justice Center for this decision. Congratulations!

Getting DSS to Help with Documents

Securing a birth certificate for a client's application for benefits can often be a long and arduous process, especially when the client has lost their birth certificate or, due to a disability, is not helpful in producing this important document. A General Information System memo, GIS 07 MA/023, provides form letters that can be used to request a copy a birth certificate from the New York State or New York City Bureau of Vital Statistics so that the Department of Social Services worker can assist in procuring this document. It is important to understand that the DSS worker has an obligation to assist the applicant or recipient in securing documentation when he or she requests assistance due to difficulties in obtaining the information. (See 93 ADM-20 and 18 NYCRR 351.5.) This includes hard-to-get birth certificates, immigration documentation, etc.

In the case of an immigration document, it is often easier to have the worker request the document directly from Immigration authorities using their G-845 Document Verification Request transmittal. An applicant/recipient's written request to the DSS worker for documentation assistance in this regard shifts the burden in most cases to the worker to assist in obtaining the required document. Furthermore, denial or termination of assistance may be successfully defended if the worker has not followed through in response to the client's request. In many cases, requesting a fair hearing may resolve the problem and/or call Law Services for further advice.

Suffolk DSS Takes Action to Streamline The Fair Hearing Wait



We are pleased to report that Suffolk DSS has agreed to set up a designated Fair Hearing window at the Smithtown Center. This action should severely reduce the waiting time experienced by fair hearing appellants and their advocates who previously had to wait on the long public assistance lines to sign in, despite the fact that they were scheduled for a fair hearing or had an appointment to review files. This change should also enable DSS Fair Hearings to start proceedings at 9:00 as scheduled.

Substance Abuse Sanction Overturned for Employable Public Assistance Recipient

Regan Serlin, staff attorney in the Hempstead Welfare Unit has recently settled an Article 78 proceeding in the Matter of Harrison v. Paolucci et al. (Index # 017743/09) on terms totally favorable to our client. She initially obtained a temporary restraining order enjoining the Department of Social Services from discontinuing her client's Safety Net benefits for failing to document her compliance with a substance abuse treatment program.

The client had already successfully completed a treatment program and was trying to find work. Serlin claimed in the hearing that only if a public assistance recipient or applicant is unable to work because of alcohol or substance abuse problems, can DSS impose a "drug or alcohol sanction" upon a person who fails to take part in and complete an appropriate rehabilitation program. In this case, DSS had previously determined that the petitioner was able to work despite her history of alcohol and substance abuse problems, and the petitioner agreed! Consequently, there was no basis in the law to simultaneously require compliance with drug and alcohol treatment and employment.

According to the terms of the stipulation of settlement, DSS agreed to withdraw its notice of intent to discontinue the petitioner's public assistance benefits, and the Office of Temporary and Disability Assistance agreed to withdraw the fair hearing decision that affirmed the discontinuance of benefits. The County also agreed to note in the petitioner's case file that the sanction was withdrawn.

PLAN Project's Mission to Assist those Living with Cancer

Nassau/Suffolk Law Services Committee Inc., **Permanency Legal Assistance Needs (PLAN) Project**, was initiated with a grant funded by the New York State Department of Health Cancer Support Services, to provide free legal assistance to individuals and their families living with cancer in Nassau and Suffolk County. The Project was originally staffed by one attorney, who was responsible for covering both Nassau and Suffolk Counties. Thanks to a generous grant from the Greater New York City Affiliate of Susan G. Komen for the Cure®, Nassau/Suffolk Law Services Committee was able to expand the PLAN Project by hiring a second attorney to focus on individuals in Nassau and Suffolk Counties that have been diagnosed with breast cancer.

The PLAN Project deals with many of the problems associated with a cancer diagnosis including insurance company disputes, Medicare and Medicaid, SSI and Social Security Disability matters, long term disability problems and issues involving public assistance. Another major focus is to assist families to develop a legally enforceable long-term plan for the care of children, and to assure that the client's own wishes, regarding end of life decisions, are carried out through the designation of health care proxies, powers of attorneys and wills.

- In a recent case, Mrs. A., a breast cancer patient, contacted the PLAN Unit because she was very concerned that her health care wishes would not be carried out as she wished. In addition, Mrs. A. wanted to ensure that her personal property, that held great sentimental value to her, was properly disbursed among her son, daughter and granddaughter after her death. Mrs. A. met with a PLAN Unit attorney and a Health Care Proxy and Last Will and Testament were executed. Mrs. A. was so appreciative of the assistance of the PLAN Unit. "I could not afford a private attorney and now I'm reassured that my wishes will be carried out."
- Ms. B., also a breast cancer patient, was having difficulty accessing her Social Security Disability payments despite her disability. As a last resort she was struggling on welfare, had been evicted from her home, and was sleeping on the couch at a friend's house. The PLAN Project attorney advocating on behalf of the client, was successful in cutting through the complications, and got the Social Security Administration to release her benefits that were being held up. After resubmitting all the required documents on behalf of the client, Ms. B. received her back payment of \$19,000, which allowed her to move back to her own apartment and get off welfare.
- Mr. R., was being treated for leukemia and was awaiting a bone marrow transplant. The social worker at the hospital referred him to the PLAN Unit for assistance with his Medicaid. Mr. R. had moved from Brooklyn to Nassau County to be close to his medical doctors and treatment center, however he was experiencing great difficulty in getting his Medicaid coverage transferred. The PLAN Unit attorney worked with the Brooklyn Medicaid Office and the Nassau County Department of Social Services to ensure that there would be a transfer of his Medicaid coverage without further interruption. Mr. R. is currently in the hospital for his bone marrow transplant and no longer has to worry about the bills being paid.
- Ms. B. was being treated for cervical cancer and was having difficulty paying for her medical care. Her parents, who were living on a limited income, were attempting to pay for her medical care out-of-pocket but they had run out of funds and had to choose between paying their rent and monthly living expenses or for her medical care. Ms. B. and her parents believed that she was no longer being covered by Medicaid. After investigating the matter, it was determined that the client was approved for the Medicaid Buy-In Program but did not understand how it worked. A Supplemental Needs Trust was set up to ensure that all her medical bills would be paid for by Medicaid. In addition, the past medical bills that were paid for out-of-pocket, were submitted for reimbursement.

The PLAN Project makes a big difference in the lives of Long Islanders living with cancer and our clients are very grateful. We are very proud to count the compassionate PLAN Project staff among the valuable programs offered here at Nassau Suffolk Law Services.

“Middle Income” (M.I.) HEAP IS BACK

Suffolk County DSS is once again offering HEAP assistance to eligible residents to defray heating costs. In addition, The Middle Income Home Energy Assistance Program (MHIHEAP) assists those households who are in need, but whose incomes are too high to qualify for HEAP. Only households that have an actual heating expense will be considered.

- M.I. HEAP began taking applications on November 30, 2009 and will continue to do so until the funds are exhausted.
- Call 631 853-8825 for an application or get one online at:
<http://www.suffolkcountyny.gov/upload/dss/pdfs/miheapp2009.pdf>
- Completed applications must be **mailed (walk-in applications will not be permitted)** to
M.I. HEAP Unit
Suffolk County Department of Social Services
200 Wireless Blvd
Hauppauge, NY 11788
- Once the application is received by M.I. HEAP, the applicant will notified by mail as to the determination of their application.
- If a household's income falls under the MIHEAP income levels below, they may also be eligible for HEAP, so they should apply for regular HEAP first. Households that are HEAP eligible, will not be eligible for M.I. HEAP.

M.I. HEAP Eligibility Guidelines

Family Size	Household Gross Monthly Income
1	\$2,031-\$2,742
2	\$2,655-\$3,584
3	\$3,280-\$4,428
4	\$3,904-\$5,270
5	\$4,529-\$6,114
6	\$5,153-\$6,957
7	\$5,270-\$7,115
8	\$5,387-\$7,272
9	\$5,504-\$7,430
10	\$5,621-\$7,588
11	\$6,030-\$8,141



Earned Income Tax Credit

It's tax time! And for many of our clients the Earned Income Tax Credit (EITC), is an important credit offering tax discounts and refunds to working families and individuals. The EITC anti-poverty initiative created by the Federal government helps to bring financial stability via significant tax credit resulting in refunds. For example, a family with 3 children and maximum income of \$48,000 can get a maximum federal refund of over \$5,000, while a single individual with income up to \$13,000 can get a maximum refund of over \$400. As many as % of eligible taxpayers are not filing for this credit! To help with tax filing Volunteer Income Tax Assistance Sites (VITA) are set up all throughout Long Island. Find the closest site by going to www.aarp.org/taxaide or check out your local library.



BE A FRIEND

Nassau/Suffolk Law Services needs your help now. Your donation will support our programs and this newsletter, which, for years, has been sent to you free of charge. You will also be demonstrating your support of the valuable legal services we offer tenants, senior citizens, people with physical and mental disabilities, persons with HIV/AIDS, homeless individuals and families, Adult Home residents, and people who need help dealing with complex systems such as those operated by Department of Social Services or the Social Security Administration. Help us bring access to the system of justice to low income Long Islanders. Your contribution will make a real difference.

Mail your contribution today or go to www.nslawservices.org and click on "Donations" in the left margin. Thank you.

Yes! I want to invest in Nassau/Suffolk Law Services. Enclosed is my gift of :

\$50 ___ \$100 ___ \$250 ___ \$500 ___ Other ___

Name Phone Fax

Agency or Business

Address City State Zip

Please make your check payable to Nassau/Suffolk Law Services
One Helen Keller Way, Hempstead, New York 11550. Attention: Maureen Marmero



Volunteer Attorney Recognized for His Work



Stuart P. Gelberg, a bankruptcy attorney practicing in Nassau County, spreads his pro bono largesse throughout Long Island. It was not enough for him to participate actively in Nassau's bimonthly Bankruptcy Clinics. As a member of the Suffolk County Bar Association as well as the Nassau County Bar Association, he joined the Pro Bono Project's bimonthly Bankruptcy Clinics as well. In the latter program alone he has amassed more than 226 hours in 131 cases since joining in September 2002. For this excellent record he has been named Pro Bono Attorney of the Month for November 2009.

Clients may attend a Bankruptcy Clinic only after the PBP staff finds them eligible for pro bono representation under federal poverty standards. At the Clinic, the participating attorneys interview the chosen clients to determine the particulars of their current financial situation. After all the afternoon's interviews have been completed, the attorneys meet to discuss the cases and decide which ones warrants a Chapter 7 bankruptcy. Although most of the cases are referred to other Bankruptcy Panel members for continuing representation, from time to time the Clinic attorneys take cases themselves as Mr. Gelberg would do.

Mr. Gelberg was taken aback by one case that he brought back to his office. As usual he had instructed the clients, a couple whom he knew collected Social Security disability, to bring in a list of their creditors so he could prepare the papers for court. When in due course the husband came to the office with an old brown bag full of mail—including junk mail--Mr. Gelberg realized that the couple's mental disabilities made them incapable of helping themselves. The office paralegal, who has a special needs child, recognized the man's limitations, took the bag and organized its contents so that Mr. Gelberg could file the bankruptcy.

Mr. Gelberg graduated from the State University of New York at Albany in 1977, having spent a semester studying at the University of Copenhagen. He then entered the SUNY-Buffalo School of Law, graduating in 1980. In his first associate's position after taking the bar examination he concentrated on the areas of foreclosures and bankruptcies. Among several appeals he took to the United States District Court for the Second Circuit was *In re Taddeo*, which remains influential and is often cited on the rights of a foreclosing mortgagee and debtors in Chapter 13 bankruptcy. For over twenty years he served as a trustee for the United States Bankruptcy Court, both the Eastern District and Southern District of New York.

In addition to his membership in SCBA and NCBA, Mr. Gelberg is a member of the New York State Bar Association, the National Association of Chapter 13 Trustees, and the Capital Region Bankruptcy Bar Association. He has lectured extensively for SCBA, NCBA, NYSBA, the United States District Court Eastern Division of New York, the Brooklyn Bar Association, and the Bar Association of the City of New York.

Mr. Gelberg has been honored for his pro bono activity before. In February 2005 he was the NCBA Volunteer Lawyers Project's Pro Bono Attorney of the Month and in 2008, NCBA's Pro Bono Attorney of the Year. This year, for the third time in a row, superlawyers.com has included him in its annual "New York Super Lawyers: Metro Section," published as an advertising supplement in the New York Times Magazine on October 4, 2009. The Pro Bono Project is proud to add to these well-deserved encomiums by naming Stuart P. Gelberg Pro Bono Attorney of the Month for his work in Suffolk County.



Pro Bono: Raising the Bar

-----Linda Raphan, Esq. Suffolk County Pro Bono Coordinator

“Pro Bono: Raising the Bar” is a newly adopted mantra for Suffolk County’s *pro bono* legal community. These words accurately reflect our practitioners’ view of *pro bono* service as the cornerstone of our profession. Suffolk lawyers generally do not ask “if” *pro bono* services should be performed, but rather “how” their expertise could best serve the local, unrepresented population.

The Suffolk County Pro Bono Action Committee, under the leadership of the Hon. H. Patrick Leis III, and in cooperation with the Suffolk County Bar Association, Nassau/Suffolk Law Services and Touro College, Jacob D. Fuchsberg Law Center, continues to collaboratively design new *pro bono* programs. These programs offer mutual benefit to the client and the practitioner. The ultimate goal is to provide representation to the financially disadvantaged, who cannot afford to bear the cost of legal fees. However, the programs also serve to expand counsel’s training, award CLE credits, and provide networking opportunities and self-fulfillment.

In the past six months, over 120 additional Suffolk County attorneys have volunteered for *pro bono* work in other areas, such as matrimonial, guardianship and bankruptcy matters. Suffolk’s Pro Bono Action Committee continues to explore methods to maintain a high quality of legal services to the unrepresented. Accordingly, the Committee has implemented mentor programs which serve to ensure knowledge and confidence in the volunteer attorney. This one-on-one program allows a free flow of ideas in an informal setting. From the comfort of their own homes and offices, volunteer attorneys can discuss procedural and substantive areas of the law, as well as appropriate and creative legal strategies with seasoned counsel who also serve on a *pro bono* basis.

Moreover, Suffolk County’s Administrative Judge, H. Patrick Leis III, has recently implemented the formation of subcommittees to the Pro Bono Action Committee in matrimonial and guardianship matters. The matrimonial subcommittee is exploring the concept of early neutral evaluation. If implemented, a panel of experienced local matrimonial attorneys will advise litigants, as to the likely outcome of the equitable distribution, and if support and custody would likely be resolved, if adjudicated. The process is being examined by the subcommittee as a means to curtail unnecessary and costly matrimonial litigation. The guardianship subcommittee is exploring issues of public guardianship. Its agenda, also, includes addressing issues of additional training and mentor opportunities for professional and lay guardians under Mental Hygiene Law Article 81 proceedings.

While Suffolk County’s *pro bono* programs have met with much success, we have no intention of resting on our laurels. The collaborative, ongoing efforts of all the members of Suffolk County’s *pro bono* legal community will continue to raise the level of the bar.



LAW SERVICES IN OUR COMMUNITY



Law Services continues its strong ties within the community in an effort to collaborate with various agencies and insure that low income Long Islanders receive the services they so desperately need. If you happen to see any of our Law Services' staff at a community event, please stop by to introduce yourself and say hello. We'd love to meet you, and as always we thank you for your support!

We are pleased to announce that Nassau Suffolk Law Services was recently chosen as an honoree by the Islip Town Branch (ITB) of the NAACP!

On December 10, 2009 Law Services was honored at the "10 in 10 Dinner Dance" for the work we do "to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination."



We were also pleasantly surprised when we received a citation from Congressman Israel at this event!

Jeffrey A. Seigel, Executive Director, attended the NAACP event with his wife, Lorraine and were joined by Law Services Board and staff.

On February 11, 2010, **Maria Dosso, Esq.**, Director of Communications staffed an information table at Nassau Suffolk Coalition for the **Homeless Candlelight Vigil for the Homeless** at Farmingdale University. Despite the bad weather, over a thousand advocates and homeless Long Islanders gathered to raise awareness about the plight of the homeless in our community. Donations were distributed on site at the event. Maria observed "it's a rare experience when donors can witness firsthand the gratitude on the faces of recipients."

On January 16, 2010, **Denise Snow**, staff attorney on the **PLAN Project** participated in a workshop co sponsored by Fighting Chance and the Leukemia and Lymphoma Society entitled "*Understanding and Managing Your Legal Needs and Issues: A Workshop and Q & A for People Treated for Cancer and Their Families*" held at the Riverhead Library. Ms. Snow presented and answered questions regarding health care proxies, power of attorney, health insurance coverage and transferability, housing, wills, permanency planning and other legal issues.

Michael Wigutow, Senior Staff Attorney, spoke to a Greenlawn Knights of Columbus group on March 5, 2010, about the work we do at Law Services with special emphasis on our Foreclosure Prevention Project. The Knights were interested in ways they could support our programs and Law Services, as always, welcomes the opportunity to partner with community groups.



Law Services is proud to announce that **Scott M. Karson** of Lamb & Barnosky, a dedicated member of our Board of Directors, received the **2009 Directors' Award of the Suffolk County Bar Association**. He was also selected for inclusion on the **New York Super Lawyers list for 2009** in the Appellate Law Practice areas based on peer nominations, blue ribbon panel review and independent research. Congratulations, Scott!



Jeffrey Seigel, Executive Director and **Liz Wolf**, Director of Social Work presented on a panel at Molloy College Dept. of Social Work and Gerontology Program's Diversity Day on March 2, 2010. The theme of the day was *Poverty and Homelessness: Restoring Hope and Changing Society*. With over 100 attendees including social work, nursing and psychology students, social work faculty and community agency representatives, the focus was on collaborations - working for the common good.



CONGRESSMAN BISHOP HOSTS COMMUNITY EXPOS

On March 1, 2010 volunteer attorney **Karen Ferrare** attended the Housing and Mortgage Assistance Expo at the Coram Fire Department. This event sponsored by Congressman Bishop sought, to disseminate information on foreclosures. Law Services was proud to participate and help to educate the community about our services, including the Foreclosure Project. See p. 5.

Steve Alpert, formerly with Law Services, continues to serve Long Islanders in need. He attended Congressman Bishop's recent Senior Expo at the Smithtown Senior Center as a representative of Law Services. He staffed an information table and spoke to the seniors, many on fixed incomes, about their needs and concerns in this sluggish economy.

Recently, **Sheila Johnson**, Director of Government Affairs attended a community forum sponsored by Congressman Bishop on the census. Law Services has agreed to join in the effort as a community sponsor. The census is important effort and can mean significant federal aid to the Long Island Community.



Marcia Vogel, paralegal in the PADD Project, will be participating in the **Resources to Results Educational Conference** on March 18, 2010 at Molloy College. This conference sponsored by East Suffolk Perkins 4 Consortium, will take a collaborative approach to attaining successful outcomes for individuals with disabilities. For more information, please contact the Long Island Parent Center at 631 603-3300 or visit www.icc.viviti.com

Sheila Johnson, Director of Government Affairs and **Linda Raphan**, Pro Bono Coordinator in Suffolk, attended Touro's Public Interest Job Fair on February 9, 2010 where they spoke to law students about Law Services' mission and available internships



AT THE NASSAU COUNTY BAR...



Maria Dosso and **Roberta Scoll**, attorney in the Nassau Volunteer Lawyers Project, presented to the Nassau County Bar Association's District Court Committee on March 5, 2010. They spoke to an interested group of attorneys and judges about the services that Law Services provides and acknowledging their support in the pro bono effort. Many of the Committee's members serve as volunteer lawyers in landlord tenant court in cooperation with the Volunteer Lawyers Project.

Maria Dosso presented at the *Using the Law to Help Constituents* conference on March 5, 2010 at the Nassau Bar Association. The meeting was attended by Nassau County elected officials and their staff who were educated about the various non profit legal services programs provided to the Nassau community. Maria co-presented along with representatives from other groups including the Nassau Coalition Against Domestic Violence.



Spring 2010 Training Schedule

We will be conducting trainings at our Suffolk site: 1757 Veterans Hwy, Suite 50, Islandia To pre-register, please call the Training Line at 631 232-2400 Ext 3357, fax 631 232-2489 or you may e-mail Cathy Lucidi at clucidi@wnylc.com. The fee is \$30 per person per training session and is payable to "Nassau Suffolk Law Services". To confirm your phone reservation or e-mail reservation please mail your payment in advance of the training date with the registration form below. For weather advisories and rescheduling, call ahead to confirm at the number above. Space is limited so register early.

Medicaid Overview- The training will include an overview of the different Medicaid programs, Medicaid eligibility, application procedure, appeals, and an update on Medicaid eligibility and applications. Something for everyone! Presenter **Maria Dosso, Esq. Wednesday, April 7, 2010 9:30-12:30**

Rights Under the Americans With Disabilities Act:The Americans with Disabilities Act (ADA) is a powerful tool that can be used by advocates, case managers, and clients to obtain a wide range of accommodations from DSS for applicants and recipients with disabilities. All too often, however, accommodations are not provided, and clients are unaware of their right to accommodations. The training will teach advocates and case managers about the range of accommodations required by the ADA, discuss how to request accommodations and what to do if they are not provided. It will also discuss DSS' current ADA policies and discuss attendees' experiences with Nassau and Suffolk DSS. As this aims to be an interactive session, all registrants will receive a list of discussion questions before the session. Presenter **Ellen Krakow**, staff attorney in our Protection and Advocacy Project, funded by the Commission on Quality of Care for Persons with Disabilities, will discuss the Project's work in serving persons with disabilities and her involvement in community task forces. **Cary LaCheen, Esq.** is our featured guest speaker from the National Center for Law and Economics. **Tuesday, April 13, 2010 9:30- 12:30 Islandia \$30 Fee**

Fair Hearing Skills Training : Fair Hearings are administrative appeals that provide clients with an important due process right if they are being denied or terminated from public benefits or Medicaid. Douglas Ruff, Senior Staff Attorney of the Welfare Unit with over 30 years experience in this area, will offer expert, practical training to prepare advocates for the fair hearing "experience" **Thursday, April 22, 2010 9:30-12:30 Islandia Fee \$30**



Training Registration Form

Name _____

Agency Affiliation _____

Phone Number _____

Email address _____

Title of Trainings _____

Amount Enclosed _____

Or Will be sent at a later date or on the date of the Training _____

Please return this form with applicable fee to: Nassau/Suffolk Law Services, 1757 Veterans Highway, Suite 50, Islandia, N.Y. 11749 Attn: Cathy Lucidi. This form may also be faxed to Cathy at (631) 232-2489



From the Executive Director

I want to thank the Long Island community for its generous support to our holiday campaign aimed at preserving our Suffolk Domestic Violence Project, *Give Peace a Chance*.

The donations gave us hope and the means to make it possible to continue domestic violence services far beyond the termination of funding in October 2009. Although we were successful in raising over \$12,000 in the campaign, it was not sufficient to keep services going beyond late January 2010. As we explained in our appeal, much more was needed to make it possible to continue uninterrupted services through the summer of 2010 while we sought other options. Though we have made several emergency appeals to government and private foundations, in these tough economic times we were not able to secure the balance needed to operate the Project without interruption.

The community's generous donations were used for the purpose of extending legal services to domestic violence victims as long as our budget would allow, but sadly the services were necessarily terminated due to our funding constraints. We remain committed to this critical service working with our community domestic violence partners and continue to seek every avenue for alternative funding. Your past and future support will always be remembered and appreciated.