



University Legal Services, Inc.

THE PROTECTION & ADVOCACY NEWSLETTER FOR D.C. RESIDENTS WITH DISABILITIES

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ULS-P&A FILES LAWSUIT AGAINST CRF PROVIDER



*By Sandra Bernstein, Esq.,
Staff Attorney*

University Legal Services-Protection and Advocacy (ULS-P&A) filed a lawsuit in federal court last July on behalf of a senior citizen with a vision impairment who was taken advantage of by his group home provider. Russell Dickens* moved into a community residential facility for people with mental illness (CRF), operated by Alphonso and Patricia Capers, because his disability made it difficult for him to live alone. Almost immediately after he moved into the Capers' CRF, the lawsuit alleges, the Capers purchased a vehicle in Mr. Dickens' name, emptied Mr. Dickens' bank account which contained his retirement fund and used credit cards issued in Mr. Dickens' name for their own use. When ULS-P&A became aware of the Capers' illegal behavior, we notified the D.C. Department of Health and requested that they investigate this matter and move Mr. Dickens to a new home. After time passed and the D.C. Department of Health failed to move Mr. Dickens to a safe home, ULS-P&A, with the assistance of the D.C. Long-Term Care Ombudsman Program, located a new residence for Mr. Dickens. Although the D.C. Department of Health has the responsibility of monitoring the Capers' home and their investigation found that the Capers had committed illegal and possibly criminal acts, they have denied any wrong-

doing in this matter.

The lawsuit, filed with co-counsel Harvey Williams, was filed against Alphonso and Patricia Capers. The suit seeks the award of monetary damages so that Mr. Dickens can restore his pension plan, his credit and be compensated for the emotional pain and suffering the Capers' illegal activity caused. The Federal Bureau of Investigation is also investigating this matter and ULS-P&A is hopeful that criminal charges will soon be brought against the Capers. In addition to suing the Capers if the authorities find that such charges are warranted, ULS-P&A also wants to ensure that the Capers are not able to operate another home for people with disabilities in the future if they are found guilty of malfeasance. And it is of utmost importance that the Department of Health and the Commission on Mental Health Services (CMHS) effectively monitor the providers of such homes to ensure that consumers are provided quality services and protected from harm. Although Mr. Dickens was not a CMHS client, the other residents in the Capers' CRF were CMHS clients. If you believe you or a family member has been victimized by a group home provider in the District of Columbia or are interested in more information about this lawsuit, please contact ULS-P&A.

*Mr. Dickens has consented to the publication of this story, as well as the use of his name.

ULS' WHOLISTIC ADVOCACY - A CASE IN POINT

*By Vivi Smith,
PAIMI Advocate*

University Legal Services-P&A (ULS) received a referral regarding the case of a young man who was diagnosed with Mental Retardation at an early age and who was homeless. Additionally, this client's Supplemental Security Income (SSI) benefits had recently been interrupted, and he was not receiving any services from the Mental Retardation and Developmental Disabilities Administration (MRDDA). ULS-P&A immediately intervened on behalf of this individual to provide advocacy in getting him connected to the various agencies that ought to be involved with him.

ULS-P&A first made all the necessary referrals on behalf of the client to the appropriate agencies, including referrals to MRDDA, and the Social Security Administration. We also filed a request for a Due Process Hearing with the District of Columbia Public School system (DCPS).

After several months of advocacy from ULS-P&A, the client finally began to receive all the community services and public benefits to which he was entitled. First, the client's Social Security benefits were reinstated, and a back payment is due to him. Secondly, after mediation with DCPS, the Rehabilitation Services Administration became involved with the client and they are prepared to assist the client in continuing his education.

Because of advocacy from ULS-P&A, MRDDA initially provided the client with an emergency respite residential placement, however, MRDDA is now providing the client with a permanent residential placement. Also, through MRDDA, the client was connected with the Capitol Hill Day Program where he is enrolled in a job-training program. Subsequently, the client was offered an interview for a full-time job within the federal government doing the type of work the client expressly indicated to all involved with him, that he would like to pursue.

CLIENT ASSISTANCE PROGRAM-UPDATES

*By Joseph Cooney, Esq.,
CAP Director*

A client of the Rehabilitation Services Administration has a right to appeal a reduction in services as well as termination of services. CAP has heard that some clients of the Rehabilitation Services Administration of the District of Columbia have had their maintenance amount (to cover transportation and lunch expenses) reduced without written notice of the reasons for the action or notice of their right to appeal the decision. This is contrary to federal regulations. Consequently, please notify the ULS-CAP office if you or someone you know has had their maintenance reduced or terminated.

The Center for Independent Living (CIL) is a recipient of funds from the Department of Education under the Rehabilitation Act. Accordingly, applicants and clients of the CIL have due process rights according to the Federal law. Applicants or clients of the District's Center for Independent Living must be informed by the Center of their rights and responsibilities. Upon denial, reduction or termination of services to an applicant or client, the Center must inform the person of their appeal rights and the availability of the Client Assistance Program.

New federal legislation may have significant impact on persons with a disability seeking employment. Called the "Ticket to Work and Work Incentives Improvement Act", it di-

rects the Social Security Administration to establish a Ticket to Work and Self-Sufficiency program, which would provide SSDI and SSI disability beneficiaries with a ticket they may use to obtain vocational rehabilitation (VR) services, employment services, and other support services from an employment network of their choice. The law provides for interagency cooperation between the Social Security Administration, the Rehabilitation Services Administration, the Department of Labor and the Health Care Finance Agency. The law provides that its effective date begins with the first month following 1 year after enactment. Since December 17, 1999 when the President signed the Act, the federal regulations for these programs have been in development, so they can begin directing the program in January 2001.

Among other provisions, the Act provides that individuals with a disability, whose prior entitlement to disability and health care benefits had been terminated as a result of earnings from work activity, may request reinstatement of benefits without filing a new application with Social Security. The benefits will be reestablished without going through the long eligibility process. Since this is a new program (the regulations have not been issued yet), all members of the disability community should learn all they can about the program and decide for themselves whether it is right for them.

WHEN MRDDA CONSUMERS ARE ALSO MEDICAID BENEFICIARIES

*By Regan Bailey, Esq.,
Staff Attorney*

Many of you or your family members who received services from MRDDA also have a Medicaid card, or are eligible for Medicaid. This article is a short overview of some of the federally-protected rights you enjoy as a Medicaid beneficiary, and how they may impact the services you get, or would like to get, from MRDDA. Further, SSI recipients are Medicaid-eligible, so if you are getting SSI, chances are that you are also either on Medicaid or could be.

APPLICATION FOR SERVICES FROM MRDDA

If you are already receiving services from MRDDA, and you have Medicaid coverage, you may seek additional or different services. For example, if you are currently living in a nursing home and you would like to be receiving skill-developing services in a intermediate care facility (ICF/MR), you may apply for a transfer to an ICF/MR. To do this, you should ask your case

manager to order a new Level of Care to be done. A Level of Care is an evaluation which the Medicaid office uses to make sure that an ICF/MR will meet your individual needs. It is your right under federal law to seek and apply for Medicaid services. Medicaid services which you seek may be a change to a different type of treatment facility (nursing home, ICF/MR, hospital), or adaptive equipment (wheelchair, communication device, etc.), or specific services (mental health services, dental treatment, physical therapy, occupational therapy, etc.).

The only agency in the District that can currently decide if you get those additional services is the Medicaid office—not MRDDA, and not the case manager. The case manager's role is to assist you in applying for the service. After your application is made, you will receive notification from the Medicaid office telling you whether or not it will approve the service. This notice should come within ninety days of application.

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GROWING CONCERN OVER CONSERVATORSHIP SYSTEM

*By Jesse Stein, Esq.,
Staff Attorney*

ULS-P&A is increasingly alarmed by what we believe is the Superior Court's non-responsiveness to the urgent needs of vulnerable people who have court-appointed conservators. We have recently encountered several cases where vulnerable individuals, or others on their behalf, have been refused complete accountings of their assets from conservators. The Court's role in condoning the poor performance of conservators has compelled ULS to seek appellate review of one case.

While investigating a condemned house, ULS found an individual whose conservator managed a large amount of money for the client, but did not use the money to the client's benefit. Even though this individual had almost \$16,000.00 in his account and also received several hundreds of dollars a month in benefits, the conservator was giving the individual only \$15.00 a week for spending money. In addition, rather than helping the client find clean, comfortable, safe housing, and using the money to help improve the client's quality of life, the conservator held the client's money and let the client live in condemnable conditions.

The conservator helped to arrange for housing by contacting a social worker who found the client housing. Every month,

the conservator paid the landlord over \$400.00 so the consumer could stay in the dangerous house. The house was infested with rats, mice and cockroaches, was filled with exposed wiring, lacked a fire extinguisher and other safety equipment and lacked heat during the fall and winter months.

It was even reported that the landlord not only failed to prepare meals for the residents, as she was required to do, she locked the consumer in the home during the day by using a padlock and chain on the front door. In order to leave the housing during the day, the consumer had to climb out of the window on the second floor because the first floor had bars over the windows. The house was in such poor condition that it was eventually condemned by the District of Columbia. On the day the house was closed, the Metropolitan Police Department could only get into the house by cutting the bicycle chain off of the front door.

A conservator is an individual who is appointed by a court to manage another person's property or estate. Sometimes the property or estate in question is real property like a house a parent or other family member leaves to their child when they die. In other cases, the property is simply money. In both cases, conservators are required by law to manage the

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ULS/P&A MEDICAID AND HOUSING SUCCESS STORY:

By Sunny Kim Dubois, Esq.
Staff Attorney

University Legal Services, Protection and Advocacy program (ULS/P&A) recently represented an individual whose AIDS-related neurological damage made it difficult to walk. His treating physician, a specialist in infectious diseases, recommended that the patient receive a Medicaid-funded motorized scooter. A Medicaid fair hearing was narrowly avoided when ULS/P&A successfully convinced the Medical Assistance Administration (MAA) to reconsider their initial denial of a Medicaid-funded motorized scooter. Following ULS/P&A's intensive coordination efforts with MAA, the Medicaid vendor, the treating physicians and the client, ULS/P&A was able to obtain a final decision to approve the purchase of this durable medical equipment. Within two weeks after this decision, the client received his motorized scooter.

Despite this "success," ULS/P&A's efforts were not yet over. ULS/P&A learned that this same client lived in an inaccessible apartment building. Because of the presence of several steps leading to the front of the building, the client knew that he would not be able to utilize the motorized scooter once he received it. ULS/P&A investigated the building and confirmed that certain simple structural modifications would need to be done. After legal research regarding the application of the federal Fair Housing Act and local fire code regulations, ULS/P&A was able to negotiate successfully with the client's landlord to make the building accessible for the client.

AN OPEN LETTER TO CMHS RECEIVER, DENNIS JONES, FROM ULS-P&A

Prepared by Celeste Valente, MSW,
Senior PAIMI Advocate

October 13, 2000

Dennis Jones, MSW, MBA
Office of the Receiver
4301 Connecticut Ave., N.W., #310
Washington, D.C. 20008

Dear Mr. Jones:

As you may know, ULS-P&A spends considerable time investigating conditions in the Chapter 38 CRFs in the District of Columbia. We observe environmental conditions in the homes, interview individual mental health consumers, review records, and interview staff. It is from this vantage point that we see significant numbers of mental health consumers who are for all intents and purposes, being warehoused in mini-institutions.

As advocates in the mental health community, we call on you to end warehousing by taking the following steps:

1. Call for an immediate review of the placements of all mental health consumers who have been residing in CRFs for more than five years;
2. Develop treatment plans to address residents' needs who

are ready to move to more independent settings;

3. Sponsor regular housing forums for CMHS consumers so that they can see and discuss housing options available in the community outside the context of the treatment team;
4. Examine less restrictive housing models used in other states. Provide training and resources to CMHS staff and contractors about how to create and sustain independent living models;
5. Elicit ideas and feedback from mental health consumers;
6. Provide rehabilitation for CRF residents who wish to live more independently but need more assistance at present.

University Legal Services-P&A looks forward to working with you and your staff to create less restrictive residential options for mental health consumers in the District of Columbia!

Sincerely,

University Legal Services
PAIMI Program

(When MRDDA Consumers Are Also Medicaid Beneficiaries....Continued from page 3)

Just like with an initial application, any denial of services must be in writing and include the reason why the service was denied, the specific regulation which led to the denial, and an explanation of your right to a hearing if you choose to challenge the denial.

DELAYS OR DENIALS OF MEDICALLY NECESSARY SERVICES

You may request a Medicaid Fair Hearing if you have sought services covered by Medicaid and you have been denied, or your request has not been acted upon. For example, if you have requested a wheelchair and submitted the application to Medicaid (generally through your case manager), and more than ninety days have passed, then you may want to seek a Medicaid Fair Hearing because the Medicaid office has not acted with "reasonable promptness" on your request. Also, you may seek a Medicaid Fair Hearing if you think that the Medicaid office was wrong in denying your application (acted erroneously). If you are living in a nursing home or ICF/MR, and you are told that you are to be discharged or transferred, but you believe that the decision to transfer you or discharge you is erroneous, you may seek a Medicaid Fair Hearing.

OTHER RIGHTS UNDER THE MEDICAID ACT—FREEDOM OF CHOICE

One very important federal right you have as a Medicaid beneficiary is the right to pick the health care provider of your choice. Your choice is limited to those providers who are "qualified" by the Medicaid office. This means that you may choose between day program providers, residential providers, dental services providers, etc., so long as they are Medicaid vendors. This is a federal right which falls under the general administrative requirements for the District to operate its Medicaid program. Only people in managed care programs under Medicaid are excluded from this provision. If you are under a managed care program, you are not able to choose between providers. This right may be enforceable under the Fair Hearing Process if it relates to a change in type or amount of services.

The District of Columbia has a Home and Community Based Waiver Program, which is a community-based alternative to ICF/MR facility-based services. The program itself is just getting off the ground, and hopefully will be expanded in the coming year. Medicaid beneficiaries have the right to apply for this program, and to choose between an ICF/MR placement or a Home and Community Based Services program. To learn more about the Home and Community Based Waiver programs in the District, please call Steve Lutzky, at the Office of

Disabilities and Aging, Medical Assistance Administration, 202/442-9076. If the program looks like something you would be interested in, you should ask your case manager for an application. You have a right to apply for this service. Not everyone who applies will qualify, but currently, the only office that can decide if you qualify or not is the Medicaid Office (MAA). You should insist a formal application be made on your behalf to MAA.

REQUESTING A HEARING

To request a Medicaid Fair Hearing, you may tell your case manager that you want a Fair Hearing, or contact the Income Maintenance Administration, or directly contact the Office of Fair Hearings, One Judiciary Square, 441-4th Street, N.W., Washington, D.C. 20001; 202/724-5477. The first step is an administrative review of your concern. You have a right to be represented by an attorney or lay person (friend) at the administrative review, and at the Fair Hearing—but at the administrative review level, your representative can only advise you and cannot represent you. You should receive a notice of the result of the review, and if you are not satisfied with the result, the hearing you had sought will be held if you request one.

If you are facing a termination or reduction of services, and you seek a Medicaid Fair Hearing to challenge this change, generally the agency may not terminate or reduce services until a decision is rendered after the hearing (but you have to act quickly to lock in your services).

YOUR PROCEDURAL RIGHTS AT A MEDICAID FAIR HEARING

You have a right to examine the content of your case file, and all documents and records to be used by the District or Provider at the hearing. You have the right to bring witnesses, to establish all pertinent facts and circumstances (put on your case); present your argument without undue interference (such as people cutting you off, or threatening you); and question any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses (you can ask questions of the government's witnesses, which would include the agency who decided you wouldn't get the service).

WHO CAN HELP YOU?

You can go through the Fair Hearing process without a lawyer. However, the person who helps you should understand your rights and be able to make a good argument on your behalf. Legal Services organizations in the District may be able to assist. They may have income guidelines and such, but as a Medicaid recipient, you most likely qualify. You may contact University Legal Services at 202/547-0198 for referral information.

(Growing Concern Over Conservatorship System...Continued from page 3)

property for the real owner of the property and to the benefit of the vulnerable individual. Conservators can be professionals like attorneys or other persons like family members or friends.

The law in the District of Columbia places strict rules on what a conservator can do with the person's property and requires a conservator to make regular written reports to the court as to how the money or property is being managed or spent. Every twelve months following the appointment of a conservator, the conservator is required to file such reports with the court which show that the conservator can account for all of the property and is managing the property properly.

In this case, ULS-P&A began an investigation and found that not only did this conservator help place the client in an environment that was neither therapeutic nor safe, the conservator had not filed a single report with the court in nearly 5 years. ULS-P&A also discovered that the client was so concerned about his money that he was making frequent trips to banks to inquire about his funds. Because the conservator failed to make the regular filings and communicate with the client, neither the client nor anyone else had any way of knowing whether the conservator was managing his money properly.

ULS-P&A filed a petition and brought the conservator to court. We asked the court to remove the conservator and appoint another individual to manage the client's money. After ULS-P&A filed its petition, the court appointed another attorney, called a guardian ad-litem, to investigate the claims. In his report, the guardian ad-litem stated that the conservator should be removed because she did not make any filings for the previous 5 years. The guardian ad-litem also felt the conservator did not use enough care when she made the arrangements for the client to live in the house that was condemnable and continued to allow the client to live in the home after she should have known that it was not a safe place for him to live.

Unfortunately, the judge did not agree with either ULS-P&A or the independent and unbiased report of the guardian ad-litem and, as yet to be explained, refused to remove the conservator. ULS will appeal this decision to the Court of Appeals because the Court's decision does not appear to have been based on law or the facts of this case. ULS-P&A continues to investigate and work with other organizations to ensure that conservators are not taking advantage of individuals with mental illness.

Conservators are just one example of legal relationships where third parties manage funds for consumers and the possibility for financial abuse and neglect exists. Other examples are representative payees or people who manage public benefits. In both of these situations, consumers should know that there are several things you can do to protect yourself from financial abuse and neglect.

1. Ask your representative to give you copies of the account statements. They should be able to provide you with monthly account balances that show every transaction that occurred on the account within the preceding month.
2. If you need an explanation, ask your representative, case-manager, family member or friend to explain the statement so that you can be sure the representative or conservator is handling your money or property properly.
3. If you have any questions about the statement, ask your representative if they will show you receipts for all transactions.

If you think you have a problem with either a conservator or a representative payee, or just have a question about how your finances or property are being managed, call University Legal Services at (202) 547-0198.

SPECIAL EDUCATION ADVOCACY

*By Vivi Smith
PAIMI Advocate*

In a recent special education case, University Legal Services-P&A (ULS) was successful in obtaining a unique form of compensatory services from the District of Columbia Public School system (DCPS) on behalf of a child client. What is so exceptional about this particular case is that DCPS agreed to fund the compensatory services, not in the form of just tutoring or extended school year services, but in the form of wrap-around, or home and community-based services for the child involved.

Earlier this year, ULS-P&A received a referral regarding a child who was not receiving a Free and Appropriate Public Edu-

cation from DCPS. The referral also indicated that although another attorney was previously involved with this client's special education case, he nevertheless remained in an inappropriate DCPS placement where he was receiving no appropriate educational services.

After receiving the referral for this case and determining that the other attorney had resigned, and after conducting an initial investigation, which included interviewing the client and other relevant parties, and reviewing school and medical records, ULS-P&A immediately requested a Due Process Hearing and/or Mediation on behalf of this client. DCPS and ULS-

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PETTIES V. D.C.: THE SPECIAL EDUCATION TRANSPORTATION & PAYMENT ACTION

By Elizabeth Greczek, Esq.,
Staff Attorney

In March 2000, ULS was asked to join lead counsel Beth Goodman of Goodman & Johnson as co-counsel in the class action lawsuit *Petties v. D.C.* The *Petties* case began in 1995 due to the District of Columbia Public Schools' (DCPS) failure to maintain the placements of special education students in D.C. The court orders in *Petties* require that when DCPS utilizes the services of private schools or private related-service providers to provide appropriate services for DCPS students the payments to those schools and providers must be timely and adequate. In addition, *Petties* mandates that special education children be transported to and from school (and in some cases to and from their related-services) in a safe and appropriate manner.

On August 7, 2000, the Court signed a Consent Order in which the defendants agreed to retain a special education transportation administrator. The administrator position was created to at last reform the DCPS transportation system and ensure that students are transported safely and appropriately to and from school. On October 2, 2000, the parties introduced the new transportation administrator to the Court. His name is David Healy and he recently was involved in positive changes to the Houston Public School system's transportation system. Additionally, by the Consent Order, the defendants agreed to hire an auditor to complete a full managerial, programmatic and financial audit of the transportation system. The auditor has been selected and the audit process formally began on November 6,



2000.

The Court Orders in *Petties* require DCPS to follow certain standards and policies when transporting special education students. Some of those standards and policies are as follows:

- A. D.C. must transport students to and from school within certain time limits (one hour if the student lives in D.C. and goes to school in D.C.);
- B. There must be an attendant on every bus;
- C. Each driver and each attendant must complete 40 hours of training;
- D. The bus must arrive to school no later than 10 minutes before the school day begins and no earlier than 30 minutes before the beginning of the school day.

If a student is transported by DCPS or a company that transports students for DCPS and there are any problems on the bus or in relation to the bus ride, parents/guardians or interested parties should contact the DCPS Parent Center at 202-576-6171. We also ask that anyone reporting a problem to the DCPS Parent Center report the problem as well as how DCPS resolved the situation, to University Legal Services at 202-547-0198. Please ask to be connected to the "*Petties* voicemail." Anyone who witnesses wrongdoing regarding a DCPS bus may call and be connected to the voicemail. Someone will return your call as soon as possible.

In addition, if you are a parent/guardian, private school or service provider and there are problems with payments from DCPS, please call the above number and ask to be connected to the "*Petties* voicemail," likewise your call will be returned as soon as possible. If you have any questions, please contact Elizabeth A. Greczek at University Legal Services, 202-547-0198.

NEED ACCESSIBLE HOUSING?

If you are a wheelchair rider who is currently on a waiting list or transfer list for accessible public housing in the District of Columbia, we would like to speak with you.

Please call: Bobby Coward, at

ADAPT, at (202) 397-1668 —or—
Marjorie Rifkin, at ULS-P&A at (202)
547-0198.

Si Ahora Usted Usa Una Silla De
Ruedas Y Esta En Una Lista De Espera
Para Una Casa O Apartamento Publico

Que Sea Accesible En El Distrito De Co-
lumbia, Queremos Hablar Con Usted.

Por Favor, Llame a Marjorie Rifkin,
(202) 547-0198.

HUMANITARIAN AWARD

University Legal Services is proud to have Joseph Cooney on our side! Joe was honored on October 19, 2000 by Mayor Anthony Williams for his consistent and passionate advocacy on behalf of those in need. Following is an excerpt from the 19th Annual Awards Program of the Mayor's Committee on Persons with Disabilities.

Joseph Cooney, Esq., is the Director of the Client Assistance Program (CAP) at University Legal Services, the designated protection and advocacy system and CAP program for the District of Columbia.

He is also one of the founders of University Legal Services (ULS). In February 1968, Mr. Cooney and two other priests, who were associated with the Catholic University Law School, founded University Legal Services to provide a variety of free legal services to low-income residents in the District of Columbia.

His commitment to this novel idea was evident in the many hours he dedicated to University Legal Services. During the day he worked as a civil rights attorney for the Federal Government, and at night he provided free legal services to clients of ULS. In addition, he altruistically contributed his government salary to pay the salaries of the ULS staff, and other organizational expenses, which continued for years until adequate funds were received for this program.

Attorney Cooney has an aggressive and compassionate concern for those in

need. When he was a Catholic priest, he worked in the rural south with the Southern Christian Leadership Conference, and during the riots of 1968, assisted residents in securing food and running errands.

Mr. Cooney has dedicated 33 years of faithful services to his fellow man. In his current position, Joe advocates on behalf of individuals with disabilities seeking education and training opportunities to obtain gainful employment. He is committed to ensuring that the rights of people with disabilities are fulfilled. Joe goes far beyond the call of duty in the fight for the rights of others.



His many years of experience in civil rights work and legal services, as well as his innate compassion, have been instrumental in setting up

and running the new programs at ULS. Besides working full-time at ULS, he maintains his commitment to less-fortunate city residents by serving as free legal counsel for Transformation Outreach, a non-profit organization he helped incorporate which transforms the lives of men and women recovering from various addictions and other emotional distress.

Joseph R. Cooney's life is exemplary of a man of honor, servitude and compassion—the Mayor's Committee on Persons with Disabilities salutes - A great humanitarian!

EVANS LITIGATION RESULTS IN CREATION OF INDEPENDENT NON-PROFIT "QUALITY TRUST FOR INDIVIDUALS WITH DISABILITIES"

*By Kelly Bagby, Esq.,
Managing Attorney*

Before the end of 2000, the District, the counsel for the Plaintiff class, and the United States Department of Justice hope to file a Compliance Plan in Evans v. Williams in which the District will commit to pay millions of dollars for independent monitoring, advocacy and legal representation services for individuals with developmental disabilities.

Since February, 1999, University Legal Services P&A has been co-counsel for the plaintiff class of Evans v. Williams, a 24 year old lawsuit involving all former residents of Forest Haven, the District's now closed institution for individuals with developmental disabilities. Over the past year, the District has admitted that it is chronically out of compliance with most of the orders in this case. In hopes of remedying the harms suffered by individuals as a result of the long deterioration of the system and with a goal of advancing both the collective and individual interests of all persons in D.C. who have developmental disabilities, the parties in the Evans litigation have been engaged in intensive negotiations for well over a year. The District has now agreed with the Plaintiffs and the Department of Justice in Evans that systemic, independent monitoring and advocacy is required to ensure

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CMHS SPENDING PRACTICES: A PSYCHIATRIST SPEAKS OUT

The author of this opinion, is Dr. Robert Kiesling, M.D., Medical Director, Unity Healthcare. The opinions reflected in the article are not necessarily those of University Legal Services, P&A.

The District of Columbia public Mental Health System is the most expensive in the country, spending \$363.00 per out-patient visit. However, the private non-profit mental health providers in D.C. receive only \$68.00 per out-patient visit from Medicaid. These non-profits are serving individuals who have not been successfully treated in the public system. The non-profits are having success moving people into jobs, housing and treatment without assistance from the D.C. Mental Health System.

Many of the District's non-profit mental health providers have 99% of their patients on the newest psychotropic medications, whereas less than 50% of the District's public patients are on the newest medications. Yet the Commission on Mental Health Services Receiver claims that he cannot afford these medications out of his \$223 million budget. The Commission spends only 5% of its mental health budget on pharmaceuticals as compared with 8% of the budget spent by Maryland. Instead, D.C.'s CMHS spends money on, pay raises for the bureaucrats, new offices and office furniture. Yet, they cannot afford an EKG machine for one of their Community Mental Health Centers.

Spending has increased during the Receivership from \$180 million per year to \$223 million per year. A 23% in-

crease. Yet, the number of patients in treatment has actually gone down. Not counting the 800 outpatients who have not been seen in more than 90 days, there are now fewer than 7000 active patients on the rolls costing an average of \$31,000.00 per patient per year.

The receiver has said he needs to put a new structure in place before reforms can be implemented. Yet, the Robert Wood Johnson Foundation funded a multimillion-dollar, multi-year, multi-city study which demonstrated that there was no relationship between structural changes at the top and improved patient outcomes at the bottom.

Assertive Community treatment teams work. A program in Rochester, N.Y. reduced the cost of treating mentally ill persons coming out of the jail from \$75,000.00 per person per year to \$15,000.00 per person per year by keeping those people out of jail and out of the hospital.

We need to fund programs that get results and those that do not. We do not need to reorganize the bureaucracy for the 15th time in 30 years. We need to fund the private non-profits that are providing effective services to mentally ill persons. Downsize the bureaucracy. Close programs that are ineffective. Do it now.

"We need to fund programs that get results and refund those that do not".

HOME & COMMUNITY BASED WAIVER

*By Vivi Smith,
PAIMI Advocate*

The Mental Retardation and Developmental Disabilities Administration is now utilizing a Medicaid approved Home and Community Based Waiver (HCB) program. The HCB waiver program is comprised of home and community-based services that are designed to be made available to certain Medicaid-eligible individuals who otherwise would be institutionalized in hospitals, nursing care facilities or intermediate care facilities for individuals with mental retardation (ICF/MR). The desired effect of the HCB waiver is to deinstitutionalize the treatment and care of individuals with mental retardation who receive services from the District of Columbia.

Some of the services offered through the Home and Community Based Waiver are: Attendant Care Aid Services, Day Habilitation Services, Homemaker Services, Personal Care Aid Services, Respite Care Services, Speech Hearing and Language Services, Supported Employment Services and Transportation Services. Having an effective, accessible HCB waiver in place is extremely important because without the Home and Community Based Waiver program, Medicaid law gives states, including the District of Columbia, very limited options for using Medicaid funds to pay for non-institutional long-term care services. The HCB waives should provide D.C. residents more consumer-centered individualized services because of the more flexible funding options.

To apply for the D.C. HCB Waiver programs, contact Steve Lutsky at the Office of Disability and Aging at MAA (202) 442-9076 or call ULS for more information at (202) 547-0198.

(Special Education Advocacy...Continued from page 6)

P&A subsequently agreed on Mediation regarding this case.

As a result of the Mediation process, DCPS agreed to immediately place and provide funding and transportation for the client in an appropriate school setting, which was obtained with the assistance of ULS. Additionally, to compensate for the time this client was not receiving any educational services whatsoever, DCPS agreed to provide funding for the following home and community-based services: Case Management Services in the client's home; Mentoring services for the client and; Placement at a computer summer camp for one Summer. These services are but a few of the home and community-based or wrap-around services available to children in the District of Columbia.

If you would like more information on methods of obtaining wrap-around services for children in the District of Columbia, especially those in danger of being admitted to residential treatment centers, please contact ULS at (202) 547-0198.

(Evans Litigation Results in Creation of Independent Non-Profit "Quality Trust for Individuals with Disabilities"...Continued from page 8)

that class members and non-class members will eventually be provided an opportunity to live full, safe, happy and healthy lives.

In his press conference on January 19, 2000, Mayor Anthony Williams admitted that the District has been out of compliance with the orders in Evans and that the system overall is "incapable of providing quality services." The Evans orders require, among other things, that the District provide every person who was ever placed in the District's institution for individuals with developmental disabilities with appropriate residential and day-treatment services in the least restrictive, least separate, most integrated setting. In addition, the orders require that every class member be protected from harm, and that they receive all medical, dental and adaptive equipment services that they require. The orders further require that all class

members' funds be safeguarded and accounted for by the District.

After over a year of negotiations, the District has agreed to pay into a trust, an initial lump sum to a newly-created, permanent, independent, non-profit organization that will be responsible for providing advocacy, legal representation and intensive monitoring services to the entire developmental disabilities community in the District. The exclusive mission of this organization, which is called the *Quality Trust for Individuals with Disabilities*, will be to advance the individual and collective interests of people in the District of Columbia with mental retardation and other developmental disabilities, including rebuilding the internal infrastructure that is responsible for providing services and supports.

A TRULY TERRIFIC VOLUNTEER!

By Patricia Millerioux, Esq.

Group Homes which are providing poor care to residents with mental retardation had better watch out. JEANETTE HUGHES has been volunteering her time with ULS' P&A program for some time now, and is an extraordinary monitor. During a recent trip to a day treatment program, she examined five residents of one group home. She found that they were arriving at the program in badly soiled clothes, and were not provided with a change of clothes or diapers by the home. Ms. Hughes had the nurse examine the feet of one man who kept taking his shoes off, and found that he

was doing so with good reason, as the skin on his feet was cracked and each foot had layer upon layer of dead skin on them. None of the residents had been bathed at the home, as they reeked with foul body odor. Some were wearing shoes that were clearly too small, while others had shoes on that were much too big. Day treatment program staff reported that the residents of the home were usually seen wearing clothes worn by another resident on the preceding day.

Because of her observations, ULS-P&A will be in a position to take action against the group home provider, and ensure the safety and good health of these vulnerable residents.

JEANETTE HUGHES has a particular interest in this type of volunteer work, since she is the adoptive mother of severely developmentally disabled children. We count ourselves, and the people with disabilities who she visits and cares for, as very lucky.

Do you know of a group home or day-treatment programs providing poor quality care to people with disabilities, call ULS at (202) 547-0198.

"ALAN J. BLUME SELECTED AS OUTSTANDING ADVOCATE"

*By Sandra Bernstein, Esq.,
Staff Attorney*

Alan J. Blume has been selected as an outstanding advocate for his work on behalf of people with disabilities. Alan has been a volunteer with the Washington Metro Area Transit Authority (WMATA) for eight years. When WMATA needs to assess whether a new site is accessible or to ensure that new equipment is usable by people with disabilities, Alan is called to duty. For example, Alan tested new equipment on the metro that was made to lessen the gap between the platform and the metro cars. This equipment is important since many wheelchair users' wheels have gotten stuck in this gap,



which can be very dangerous. Since the metro is an important means of transportation for many people with disabilities, Alan's hard work is especially appreciated. Last year, Alan was honored for his outstanding service to WMATA with the Beatrice Campbell Community Service Award, given by the Mayor's Committee on Persons with Disabilities. In addition to his work with WMATA, Alan often advocates for himself and other wheelchair users when he travels throughout the city. He ex-

plains to business owners the changes that should be made to their business establishments to make them accessible to people with disabilities and compliant with the Americans with Disabilities Act. Since Alan travels throughout the city on a regular basis, he reaches many different businesses. ULS-P&A thanks Alan for all of his hard work on behalf of people with disabilities!

ULS-P&A WELCOMES NEW STAFF

ULS welcomes new staff attorneys Jesse Stein, Elizabeth Greczek and Marjorie Rifkin.

Jesse Stein has been a staff attorney at University Legal Services since September 1999. Prior to working at ULS, Jesse practiced law in New York City. Jesse graduated from New York Law School in 1998 and moved to the District in 1999. Although he primarily practiced real estate law following law school, in the past he also worked for both the City and State of New York. As a law student, Jesse worked for the New York City Law Department, the Corpora-

tion Counsel for the City of New York and for the Mental Hygiene Legal Services. At NYCLD, Mr. Stein assisted staff attorneys as they defended the city in civil rights actions. At MHLS, Jesse assisted attorneys representing individuals facing civil commitment to a mental hospital, in annual review hearings and in the protection of consumers' rights while receiving in-patient services at the Manhattan Psychiatric Center and Kirby Forensic Hospital located on Wards Island in Manhattan. Before he went to law school, he worked at University of Pittsburgh Medi-

cal Center, Western Psychiatric Institute and Clinic, an acute care hospital located in Pittsburgh, PA.

Elizabeth received her J.D. degree from Cleveland-Marshall school of law in 1997. She has been practicing special education law since 1998 in the Washington, D.C. Metro area. She has handled cases in Maryland and the District of Columbia and continues to practice in the District of Columbia at University Legal Services. Her experience includes class action litigation, issues involving assistive

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*(ULS-P&A Welcomes New Staff...Continued
from page 11)*

technology (special education and otherwise) and other individual special education cases.

On November 1, 2000, Marjorie Rifkin joined ULS as a staff attorney. Marjorie will work closely with Capital Area ADAPT on Olmstead litigation, seeking home and community-based Medicaid services for people with disabilities in the District who are at risk of, or already placed in, nursing homes, ICF-MRs and other institutions. She will also seek to enforce

the Rehabilitation Act to increase the number of wheelchair-accessible public and subsidized housing units in the District. Prior to joining ULS, Marjorie was with the American Civil Liberties Union National Prison Project. She received her law degree from Columbia University and master's degree in social research from Hunter College in New York City.

We need your help! ULS is a non-profit, 501(C)(3) organization. Your tax-deductible gift will enable us to continue to provide advocacy services by experienced staff for people in our community with disabilities. Your gift will enable us to maintain excellent services as well as expand into areas where there are needs but fewer resources to meet them. Please make your check payable to University Legal Services and send it to the attention of Jane Brown, University Legal Services, 300 I Street, N.E., Suite 202, Washington, D.C. 20002.

IMPORTANT ULS PROGRAM CONTACT NAMES

Jane M. Brown, Esq. - Executive Director
Patricia Millerioux, Esq. - Deputy Director
Cheryl A. White - Newsletter Editor/Design Specialist
Kelly Bagby, Esq. - Managing Attorney (all programs)*
Joseph R. Cooney, Esq. - Client Assistance Program Director
Celeste Valente, LICSW - Senior PAIMI Advocate
Sandy Bernstein, Esq. - Staff Attorney, PAIMI, PAIR and Developmental Disabilities Programs
Sunny Kim Dubois, Esq. - Staff Attorney, Developmental Disabilities and Assistive Technology Programs
Jesse Stein, Esq. - Staff Attorney, PAIMI, PAIR and Developmental Disabilities Programs
Elizabeth Greczek, Esq. - Staff Attorney, Assistive Technology and Developmental Disabilities Programs
Marjorie Rifkin, Esq. - Staff Attorney, PAIR, PAIMI, Developmental Disabilities, and Assistive Technology Programs
Vivi Smith - Advocate/Law Graduate, PAIMI and Developmental Disabilities Programs
Alicia Johns, Program Manager - Assistive Technology Program (non-legal)
Antoinette Tillman, Outreach Specialist - Assistive Technology Program
Gilan Shamir, Information Specialist - Assistive Technology Program
Sonia Vega, Administrative Secretary - Assistive Technology Program
Cheryl Brown, Secretary/Intake Specialist - P&A Programs
William Findlan - Clerk
Michelle Beard - Receptionist

*Protection & Advocacy for Individuals with Mental Illness (PAIMI)

*Protection & Advocacy for Individual Rights (PAIR)

*Client Assistance Program (CAP) - Vocational Rehabilitation