
Director of Litigation's Report on PAI's Current Advocacy: Cases and Projects

SPRING 2008 - Work 9/30/07– 01/15/08 – Report No. 51

ABUSE AND NEGLECT

Investigations Unit Meets with Los Angeles Unified School District Regarding Incident of Alleged Child Abuse by Classroom Aide

See previous DOL Reports Winter 2007

In May 2007, PAI's Investigations Unit (IU) was notified of the assault of E.S., a sixteen year old female student, by an aide in her classroom. After E.S. bumped into a rolling cart sending it across the room, nearly striking the aide, the aide responded with a "flying side kick," hitting E.S. in the stomach and knocking her backward to the floor. He then threw two chairs on her as she lay on the ground in a fetal position. When the teacher returned to the classroom and learned of the incident, he immediately alerted the principal and the aide was removed from the classroom.

The principal left a message for E.S.'s parents explaining that, "[E.S.] got hit by a chair today and we noticed a little redness on her back." There was no further description of how E.S. had become injured. The parents were unaware that their daughter had been assaulted until days later when a concerned teacher contacted them confidentially.

Based upon child abuse reports filed by staff witnesses, law enforcement arrived at the school the following day and conducted an investigation. At the time, E.S.'s parents were still unaware that E.S.'s injuries were the result of an assault and were not notified that law enforcement was on campus to interview their daughter related to a report of suspected child abuse.

The school principal also conducted an investigation. The principal eventually acknowledged that the aide's actions "were unreasonable" and directed the aide to "not be in the vicinity of E.S.," suggesting that he remain at the school site, working with other students with disabilities for a period of time.

Protection & Advocacy, Inc.'s (PAI) investigation included reviewing school district policies pertaining to the reporting and investigating of allegations of child abuse and student assault. The district's policy lacked any requirement that parents be notified when a student is the victim of an assault or suspected child abuse. District officials defended this deficiency, claiming that, as many incidents of suspected child abuse involve difficulties in the family home, it was contraindicated to require staff to notify parents of reports of suspected child abuse or when police were posed to interview their child. Furthermore, the district claimed that the failure to fully inform E.S.'s parents of the facts of this assault was an isolated oversight and that their practice, although not memorialized in policy, was to provide parents with better notice of such events. PAI will continue to work with the district to modify their policy to include parent notification of incidents of suspected child abuse when the assailant is a school employee.

Abuse & Neglect Goals and Objectives: Goal 2, Obj. A.

PAI Staff : Leslie Morrison, Pamila Lew, Ricardo Jauregui.

Other Counsel: none.

Grant/Funding Source(s): PADD

Investigations Unit Provides Technical Assistance to Montana Advocacy Program on Seclusion and Restraint Case Involving a California Student

No previous DOL report

In December 2007, the Investigations Unit (IU) began working with the Montana Advocacy Program (MAP) in a case involving the seclusion and restraint of F.K., a 14-year-old California special education student who had been placed in a school in Montana pursuant to AB 3632.¹ According to information received by MAP, staff at the school had slammed doors in F.K.'s face, causing his face to bleed, and punched and kicked him. F.K. also alleged that he had been put in seclusion and/or restraint repeatedly, sometimes for over an hour, was denied medical

¹ AB 3632 (Govt. Code §§ 7570 – 7588) requires state agencies to coordinate and share resources necessary to provide a free and appropriate education to children with disabilities. Special education students can be placed in out of state facilities based on referrals by county mental health services and children's services that have working relationships with local education agencies.

treatment, and was given nothing to stop his bleeding. In October 2007, facility personnel reported to F.K.'s mother that he had been put in restraints for touching his nose. F.K. reported to his mother that his therapist at the school regularly referred to him and other children as "morons."

F.K., a student from a school district in southern California, had been referred in June 2007 to the Montana school by the local California county mental health services agency. MAP's investigation has revealed that the incidents described by F.K. did not take place at the school but at a Psychiatric Residential Treatment Facility (PRTF) run by the school's parent organization where he had been transferred in July 2007. F.K. has since returned to California.

Although Montana's Department of Public Health determined that F.K. had not been abused by staff at the PRTF, MAP is continuing its investigation with ongoing assistance from IU staff. The focus of the IU's investigation is whether the parent organization violated California's Hughes Bill² which prohibits schools from using aversives with special education students, including locked seclusion and certain forms of restraint. This issue, in part, turns on whether the school district waived application of the Hughes Bill provisions when placing F.K. at the school and whether the Hughes Bill extends to F.K.'s placement at the PRTF.

Abuse and Neglect Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Charis Moore, Ricardo Jauregui

Grant/Funding Source(s): PAIMI, Equal Access

BENEFITS

D.J. Qualifies for the Acute Waiver to Get Out of Hospital

D.J. is a 50-year-old man who has been in acute care hospitals for more than a year because of complications from Morquio Syndrome. Morquio Syndrome is a rare genetic disorder caused by the deficiency of enzymes, resulting in the inability of the body to metabolize complex carbohydrates. As a result, bony abnormalities of the head, chest, hands, knees, and spine may occur.

² The Hughes Bill (Ed. Code §§ 56520 – 56524) prohibits the use of aversive behavior interventions and mandates development and implementation of positive behavior intervention plans for special education students with serious behavior problems.

D.J. had done well before with in-home nursing under the Subacute Waiver. However, the progressive character of his disability meant he needed more nursing in order to be able to return to his apartment.

After review, PAI concluded that he met the acute hospital waiver criteria. PAI assisted D.J. and his family in getting a medical report organized in a way that would key into the acute hospital waiver criteria. PAI shared the report with In-Home Operation Staff along with its analysis of why D.J. met the acute hospital criteria. IHO agreed and advised D.J. and family that he was approved. His return to his apartment has been delayed by problems with the initial home health agency. However, D.J. is expected to be back in his apartment soon with the help of a new home health agency.

Benefits Goals and Objectives: Goal 3, Obj. A.

Discrimination Goals and Objectives: Goal 1, Obj. A.

PAI Staff: Marilyn Holle

Grant/Funding Source(s): PAAT

Preliminary Settlement Reached in Laguna Honda Class Action

Mark Chambers et. al. v. City and County of San Francisco

Case No.: C06-06346 WHA, Federal District Court, Northern District of California, Judge William H. Alsup (filed October 11, 2006).

See previous DOL Reports, Issue 47, 48. *See also*, previous DOL Reports for *Davis v. CHSA*, Issues 20, 25, 27, 29, 32, 35, 36, 42, 45, 48.

On November 14, 2007, Plaintiffs and Defendant San Francisco notified federal District Court Judge William Alsup that they had reached a settlement agreement. This Settlement Agreement needs to be formally approved by the Board of Supervisors of the City and County of San Francisco, the City's Health Commission and the Court. A fairness hearing is anticipated to be scheduled early in 2008.

The action was originally filed October 11, 2006 by six residents of Laguna Honda Hospital and the Independent Living Resource Center (ILRCSF) in San Francisco alleging discrimination in the form of unnecessary institutionalization under the Americans with Disabilities Act. These residents prefer, and have been determined to be capable of, living in their own homes and in the community. The purpose of the Settlement Agreement is to enhance community-based living options, through the provision of services and housing, to class members.

The class – which consists of Medi-Cal recipients who reside at LHH, are on the waitlist for LHH, are within two years post discharge from LHH or are patients at SFGH, and are eligible for discharge to LHH – was certified by the Court in July, 2007.

Summary of Settlement Agreement

The Settlement provides for expanded community-based living options for seniors and people with disabilities in San Francisco. The results will be improved coordination of care and greatly increased housing options and other services.

Included in the agreement are:

- Provisions for community-based services for all named class members;
- Commitment from San Francisco to provide access to independent housing and ensure the availability of non-profit agencies to provide Medi-Cal Nursing Facility A/B (NF A/B) Waiver services to eligible individuals;
- Creation of a Diversion and Community Integration Program (DCIP) to provide an integrated approach for individuals referred for admission to, and diversion and discharge from, LHH, with the goal of placing those individuals in the most integrated setting that is appropriate to their needs and preferences;
- Provision of/referral for Case Management and Wrap-Around Services;
- Providing access to affordable, accessible community housing, including through development of a LHH Rental Subsidy Program which will subsidize scattered site, accessible, independent housing for approximately 500 class members who are eligible for community-based services;
- Enhancement of Mental Health/Substance Abuse Services;
- Provision for a smaller Laguna Honda Hospital with the goal that the facility is for short-term, rehabilitative treatment;
- Provision of grievance procedures for Class Members;
- Provision for data collection and reporting to PAI and co-counsel on a regular basis;
- Quality Assurance provided by Defendant San Francisco
- Monitoring of implementation of the Settlement by PAI.

Benefits Goals and Objectives: Goal 3, Obj. A.

Discrimination Goals and Objectives: Goal 1, Obj. A.

PAI Staff: Elissa Gershon, Kim Swain, Elizabeth Zirker

Other Counsel: Disability Rights Education and Defense Fund (DREDF), AARP Foundation Litigation, the Bazelon Center for Mental Health Law, and the law firm of Howrey LLP (pro-bono).

Grant/Funding Source: PAIR, PAIMI, PAAT

ALJ Found that SSDI Recipient Did Not Incur an Overpayment

T.G., a person with developmental and mental disabilities, died in July of 2006, leaving an estate of approximately \$84,000. T.G. had been receiving Social Security Disability Income (SSDI) since approximately May 1982.

In 1991, T.G. began working for an employer that provides supported employment to persons with developmental disabilities. From 1992 and to the time of his death, T.G. worked for another entity that also provided supported employment.

After his death, Social Security sent T.G. an SSDI overpayment notice due to work activity in the amount of \$256,963.00. His mother, who was his representative payee, appealed. This appeal resulted in a reduction of the overpayment to \$131,434.00. Thereafter, mother sought PAI's assistance. PAI agreed to represent T.G.'s estate and his mother, and filed for a hearing before an Administrative Law Judge (ALJ).

PAI obtained a letter from T.G.'s last employer that discussed the fact that he worked under special conditions and what those special conditions were. The employer also discussed the reasons why T.G. received a 50% subsidy.

At the hearing, PAI argued that there was in fact no overpayment because T.G. worked under special conditions and therefore his work did not constitute Substantial Gainful Activity (SGA). If his employment was not SGA, it would not count against his benefits. PAI also argued that T.G. never engaged in SGA if one took into account his subsidy. PAI also argued that T.G.'s mother, as Representative Payee, was not personally liability for the overpayment because she did not misuse T.G.'s benefits. The ALJ issued a decision in favor of T.G. and his mother, finding that T.G. never engaged in SGA because he worked under special conditions.

Benefits Goals and Objectives: Goal 1, Obj. A.

PAI Staff: Maria Iriarte

Grant/Funding Source: PADD

PAI Helps Client Write a Letter to the Social Security Appeals Council

S.W. is a person with Traumatic Brain Injury and mental disabilities. S.W. went to an administrative hearing and requested that an overpayment of approximately \$40,640 be waived. In order to win on a waiver request, a person must show that the overpayment was not the person's fault, and that repayment would cause financial hardship and/or be against equity and good conscience. S.W. provided documentary evidence and testimony with regard to not being at fault and financial hardship.

The Administrative Law Judge (ALJ) made findings of fact and conclusions of law establishing that the client was without fault in causing the overpayment. However, the ALJ denied the request for waiver without making any findings of fact related to the issues as to whether collection of the overpayment would cause financial hardship or be against equity and good conscience.

PAI assisted S.W in submitting a letter to the Appeals Council Review Board. The letter requests that the Appeals Council grant the waiver of the overpayment based on evidence presented at the hearing regarding S.W.'s inability to repay the overpayment and based on principles of equity and fairness.

Benefits Goals and Objectives: Goal 1, Obj. A.

PAI Staff: Crystal Padilla; Daniel Brzovic

Grant/Funding Source(s): PABSS

PAI Helps Client Obtain IHSS Services and Zero Share-of-Cost Medi-Cal

B.B. is a person with visual and physical disabilities. B.B. applied for In-Home Supportive Services (IHSS) in January of 2007 and the county failed to process the application. By law, the application should have been processed within 30 days. Eventually, the county processed the application and denied B.B. IHSS services. B.B. contacted PAI for help and with PAI's assistance, requested a fair hearing. Prior to the hearing, PAI and the county negotiated a conditional withdrawal. The county agreed to rescind its notice of action denying IHSS and reevaluate B.B. for IHSS benefits.

In light of the fact that the county failed to meet the terms of the conditional withdrawal, PAI requested and attended a fair hearing. B.B. received a favorable decision requiring the county to rescind the original notice of action and reevaluate. As a result, B.B. was reevaluated and he received IHSS services

retroactive to January of 2007. In the process, PAI also assisted B.B. in getting Medi-Cal without a share of cost.

Benefits Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Crystal Padilla

Grant/Funding Source(s): PAIR

Medi-Cal Approves Scooter after Denial

J.F. needed a power scooter and so a Treatment Authorization Request (TAR) was submitted to Medi-Cal to obtain payment for the scooter. Medi-Cal denied the TAR on the ground that the scooter was not medically necessary. J.F. appealed and thereafter requested PAI's assistance.

PAI reviewed the TAR and determined that it lacked the detail necessary to establish that the scooter was medically necessary. PAI contacted J.F.'s physician and obtained a new medical necessity letter containing additional details about J.F.'s disability and need for the power scooter. Along with the physician's letter, a new vendor submitted a more specific TAR to Medi-Cal. Medi-Cal approved the TAR. J.F. can now move in his home and community independently.

Benefits Goals and Objectives: Goal 2, Obj. A.

PAI Staff: Andrew Mudryk, Wendy Dumlao, Michelle Porche

Grant/Funding Source(s): PAAT

PAI Enlists the Help of a Public Defender to Vacate Client's Outstanding Warrant

Upon being released from a California prison, F.M., an elderly person with mental and physical disabilities, went to his local Social Security office to reinstate his Supplemental Security Income (SSI) benefits. He was advised that because there is an outstanding warrant in Florida for a violation of probation, he would be unable to receive any benefits until the warrant was vacated and he provided evidence of such. He could not obtain any county General Relief assistance for this same reason.

F.M. was in a prison transition program where he was provided with a place to stay and meals, however, the program was anxious to get him off their rolls. F.M. feared being left homeless, without any money or medications. F.M. sought PAI's assistance.

The “fugitive felon” provisions of the Social Security Act were enacted in the 1996 welfare reform legislation and makes a person ineligible for benefits for any period when a person is: 1) “fleeing to avoid prosecution of a felony, 2) fleeing to avoid...custody or confinement” for a felony, or 3) “violating a condition of probation or parole” for any offense. 42 U.S.C. § 1382 (e)(4)(A). If a court vacates the warrant for arrest... or issues any similar exonerating order, then the person may become eligible for benefits. 42 U.S.C. §§402(x)(1)(B)(iii) & 1382(e)(4)(B). The fugitive felon provisions are also applicable to county General Relief programs (*see* Department of Public Social Services – Bureau of Special Operations – Bureau of Program & Policy – No. 4482).

F.M. wanted to appear before the court in Florida to clear up this matter but was unable to leave California because he was on probation in California for a crime that precluded him from leaving the state. F.M. even turned himself in to local authorities. However, he was kept locked up for approximately 1½ hours before being released because Florida would not extradite him.

After numerous calls and conversations with different government entities in Florida, including the court, the probation officer, the District Attorney’s office, and the Public Defender’s office, PAI was able to get a public defender to go before the Florida court and request that the warrant be vacated in light of F.M.’s inability to leave California (PAI obtained a letter to this effect) and his urgent need for SSI benefits. The Florida court vacated the warrant. F.M. took the court’s order to his local Social Security office and began the process to get his SSI reinstated. With SSI, F.M. will automatically receive Medi-Cal.

Benefits Goals and Objective: Goal 1, Obj. A.

PAI Staff: Maria Iriarte

Grant/Funding Source(s): PAIMI

Social Security Agreed that the Five Year Ban on SSI Benefits did not Apply to Client

Social Security sent G.B., a 22-year-old person with a developmental disability, a notice denying SSI benefits because she had become a lawful permanent resident (LPR) in January 2005 and was banned from receiving SSI/Medi-Cal for a period of five years after becoming an LPR. G.B.’s mother sought PAI’s assistance.

PAI appealed Social Security’s denial arguing that: 1) G.B. was a “qualified alien” (a category under immigration law ; and, 2) the five year ban on receiving

SSI/Medi-Cal did not apply to G.B. because she met an exception to the five-year ban.

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) which among other things, restricted immigrants' access to federal and state benefits. For immigrants who enter the U.S. *on or after* August 22, 1996 and become qualified aliens (such as an LPR) subsequent to entry, there is a five-year ban from the date of becoming a qualified alien on receiving federally funded assistance such as Medicaid (known as Medi-Cal in California) or SSI. However, immigrants who entered the U.S. *before* August 22, 1996 are not affected by the five-year ban if they were *continuously present* in the U.S. until becoming a qualified alien after August 22, 1996. In determining whether a person has been "*continuously present*" in the U.S. one looks at the latest entry prior to August 22, 1996, and continuous presence can be established by presenting documentation such as tax returns, rents and receipts. Brief visits outside the U.S. are allowed. Further, the person need not have entered the U.S. *legally* before August 22, 1996 in order to qualify for this exception.

PAI obtained records from G.B.'s school, Regional Center, and health care providers to establish G.B.'s continuous presence in the U.S. and submitted them to Social Security along with the appeal. Social Security agreed that the five-year ban did not apply. However, since G.B.'s father had sponsored her to the U.S., sponsorship deeming of her father's income and resources made her ineligible for SSI through December 2007. G.B. became eligible for SSI in January 2008, two years earlier than the original determination.

Benefits Goals and Objectives: Goal 1, Obj. A.

PAI Staff: Maria Iriarte

Grant/Funding Source(s): PADD

ALJ Awards Protective Supervision to Client who had been Denied this Service Twice by the County.

P.K., a 20-year-old person with autistic disorder and a mental disability, applied for In-Home Supportive Services (IHSS) including protective supervision. P.K. was given 30.7 IHSS hours per month, but his request for protective supervision was denied. P.K. appealed the denial of protective supervision, and PAI agreed to represent him.

Prior to the fair hearing, PAI agreed to a conditional withdrawal because the County agreed to reevaluate P.K.'s eligibility for Protective Supervision hours.

P.K. was reevaluated and the county once again denied him this service because it was not designed for routine child care or supervision – even though Paul was not a minor.

Psychological/behavioral assessments as well as a psychiatric evaluation were conducted to identify P.K.'s need for protective supervision. The assessments found that P.K. was non-self-directing, confused and mentally impaired (for example, he ran away, was self-injurious, and played with a gas stove). These reports indicated that P.K. had significant impairments in memory, judgment, orientation, self-direction, and the ability to live safely in his own home without constant supervision. The assessments were presented to the Administrative Law Judge (ALJ) at a subsequent hearing. Thereafter, the ALJ issued a decision finding P.K. eligible for 195 hours per month of protective supervision, retroactive to October 2006, the date of application.

Benefits Goals and Objective: Goal 3, Obj. A.

PAI Staff: Siyon Rhee

Grant/Funding Source(s): PADD

PAI Provides Training to Blind Students Learning to Live Independently in the Community

Many students with disabilities are afraid to go to work after the completion of school for fear that they will lose Social Security benefits. PAI was asked to come and provide a benefits training on Social Security Work Incentives to blind students learning to live independently in the community. PAI provided training on Social Security Work Incentives to help these students learn how they can keep their benefits while attempting to enter the workforce.

Benefits Goal and Objective: Goal 4, Obj. B.

PAI Staff: Crystal Padilla

Grant/Funding Source(s): PABSS

DISCRIMINATION

PAI Assists a Mother With a Disability Reunite With Her Youngest Child

PAI was contacted by a mother whose children were removed by Child Protective Services (CPS). The mother was seeking to be reunified with her children but believed that CPS and the courts were discriminating against her on the basis of her mental health disability. PAI agreed to assist the mother by providing her guardian *ad litem* and her attorney with information and guidance about her right not to be discriminated against on the basis of her disability in the family reunification process. PAI assisted the guardian *ad litem* in successfully arguing that the judicial hearing should be postponed until after a disability-sensitive parenting evaluation had been completed, so that the presiding judge could base his decision on the mother's actual ability to parent rather than on assumptions related to her mental health disability. Later, with the help of an opinion letter from PAI, the mother's attorney was able to convince the court that her youngest child should be returned to her because there were not sufficient grounds, that were unrelated to the mother's disability, to keep them separated. PAI is continuing to provide advice and technical assistance to the mother and her attorney pending a judicial determination concerning the potential reunification of the mother with her two older children.

Discrimination Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Pamela Cohen

Grant/Funding Source: PAIMI

Discovery Moves Forward Against the County of San Diego's Discriminatory Childcare Policy

Carter et al. v. Allenby et al.

San Diego Superior Court, Case No. GIC 879152

See previous DOL report, Issue 49.

Plaintiffs have taken a number of depositions of County representatives in their effort to show the discriminatory nature of the County's policy, which defines use of childcare during any absences from welfare-to-work activities as a crime and allows no exceptions based on disability.

Supportive Parents Information Network (an organization of parents on welfare, one of the plaintiffs in the case) has nine or more members who used childcare during non-welfare-to-work time, such as time spent attending doctor's appointments or attending to emergencies related to a parent's or child's disability. In these cases, removing the children from childcare to attend to these matters was impossible. The President of SPIN, Joni Halpern, a lawyer who established an attorney-client relationship with these parents, has refused to release their names in the absence of a protective order because of the fear of criminal prosecution.

Defendants have informed plaintiffs that they will be seeking a motion to compel this information.

Discrimination Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Ann Menasche

Co-Counsel: Dora Luna, Western Center on Law & Poverty

Grant/Funding Source: PAIMI

Plaintiffs Dismiss Appeal as Tactical Move; Litigation on Two Pending Condo Conversion Cases Moves Forward

Affordable Housing Coalition of San Diego County et al. v. City of San Diego

San Diego Superior Court, Case No. GIC 857723, Judge Ronald Prager

See previous DOL report, Issue 50.

As a tactical move, on December 19, 2007 the plaintiffs dismissed their declaratory relief case pending before the Court of Appeal challenging condominium conversions. Last September, the San Diego City Council unexpectedly rejected a settlement that it had previously approved, by failing to adopt an ordinance placing a 1,000 unit per year cap on such conversions that was a condition of the settlement agreement.

Two of the plaintiffs in the case, the Affordable Housing Coalition and the Committee for Responsible Equitable Environmental Development, have two additional cases pending in the Superior Court that will be decided this spring on their merits, challenging specific conversions under CEQA for failure to do environmental review. Since the case on appeal had been dismissed by the Superior Court on a procedural issue and would not be decided on their merits until after the trials of the two other cases, plaintiffs decided that it made sense to focus instead on those two cases.

PAI is not directly involved in the two cases pending in the Superior Court but will be providing assistance to counsel Cory Briggs, as needed.

Discrimination Goals and Objectives: Goal 2, Obj. A.

PAI Staff: Ann Menasche (representing the Affordable Housing Coalition and Aida Reyes)

Co-Counsel: Cory Briggs, Briggs Law Corporation, lead counsel for two organizational plaintiffs

Grant(s)/Funding Source(s): PAIR, PAIMI

Group Home Residents File Suit Against City of Buena Park Regarding Discriminatory Refusal to Allow Use of a Garage as a Recreation Room

Miller et al. v. City of Buena Park

U.S. District Court, Central District of California, Case No. SA CA 07-1002 AHS (ANX)

PAI filed suit on September 6, 2007 against the City of Buena Park on behalf of four persons with developmental and/or psychiatric disabilities residing together as tenants in a group home. The suit challenges the City's refusal to allow the plaintiffs to utilize their two car garage as a recreation room. The City's parking and zoning ordinances require that two car parking spaces be available in a garage. Plaintiffs' claim that the City discriminated against them and refused to provide reasonable accommodation based on their disabilities in violation of fair housing laws and the Americans with Disabilities Act (ADA). The recreation room enhances the quality of the residents' lives by helping to ameliorate the effects of the disability. None of the residents have vehicles.

Defendants have filed a motion to dismiss claiming that plaintiffs have failed to state a cause of action. Defendants claim that the case is not ripe for adjudication because the plaintiffs did not file for a variance. However, the City has no reasonable accommodation procedure available to the tenants; and the variance procedure can only be utilized by the owners. In addition, plaintiffs claim that pursuing this avenue would have been futile.

The motion to dismiss was scheduled to be heard on February 4, 2008. The judge declined oral argument and took it under submission.

Discrimination Goals and Objectives: Goal 2, Obj. A.

PAI Staff: Ann Menache

Co-Counsel: Chris Brancart, Brancart & Brancart

Grant(s)/Funding Source(s): PADD/PAIMI

PAI Assists Individual to Obtain a Ramp to Access Her Home

E.S., a public housing resident, contacted PAI because she needed a ramp installed at her apartment in order to have access with her wheelchair. The Public Housing Authority repeatedly refused to install a ramp for her or alternatively said they would only do so if she would be willing to pay for the installation. PAI contacted the local independent living center and they installed a ramp for the client at no cost to her.

Discrimination Goals and Objectives: Goal 2, Obj. A.

PAI Staff: Bill Hershon

Grant/Funding Source: PAIR

PAI Assists Man to Use His Section 8 Voucher to Live in a Mobile Home He and His Family Own, as a Reasonable Accommodation

J.G.'s sister contacted PAI because J.G. was about to lose his Section 8 housing voucher. Because of his traumatic brain injury, the client had been having great difficulty living in close proximity to neighbors. He had been asked to relocate three times in the last four years. As a solution, his family purchased a mobile home with his name on the title. They placed his name on the title, as the Park prohibited renting to non-owners. The client made no financial contribution towards the purchase.

The PHA, at first, refused to apply any portion of J.G.'s Section 8 voucher payments to his new location. After several phone conversations and some letters sent by J.G.'s sister, with PAI's technical assistance, the PHA relented and agreed to provide a \$400 voucher towards the rent of the space that the mobile home was set on. Though this was a net loss to the family in terms of the client's original voucher, they were pleased that it would help them with some cost deferment.

With PAI's technical assistance, J.G.'s sister sent another letter to the PHA documenting that the client had not actually contributed to the purchase price of the Mobile Home. As a result, the PHA relented and is providing the full \$1,200 per month voucher payment for J.G. to live in peace and quiet in his new Mobile Home.

Discrimination Goals and Objectives: Goal 2, Obj. A.

PAI Staff: Bill Hershon

Grant/Funding Source: PAIR

PAI Joins as *Amicus* in Important Ninth Circuit Case Involving the Statute of Limitations for Design-and-Construction Claims Brought Under the Fair Housing Act

Garcia v. Dennis Brockway, et al. Consolidated Case Nos. 05-35647 and 06-15042; United States Court of Appeals for the Ninth Circuit.

On December 3, 2007, PAI filed a letter seeking the Ninth District Court of Appeal's permission to join in the arguments made by *amicus curiae* Silver State Fair Housing Council et al. in a brief filed in support of Appellants' petition for panel rehearing and for rehearing *en banc* (by the full court) in *Garcia v. Dennis Brockway*. The petition for *en banc* review was granted, and PAI joined a number of disability rights organizations and fair housing advocates in developing an *amicus curiae* (*friend of the court*) brief for the hearing *en banc*. That brief was filed on January 28, 2008.

At issue is the question of when the statute of limitations begins to run in a design-and-construction claim under the Fair Housing Act (FHA). *See*, 42 U.S.C. 3613(a)(1)(A) (authorizing an aggrieved person to file a civil lawsuit within two years of the occurrence or termination of "a discriminatory housing practice"). The term "discriminatory housing practice" is susceptible to at least three reasonable interpretations. It can be defined as either:

1. The affirmative act of not constructing the covered housing in an accessible manner – whereby the statute of limitations would begin to run once construction was complete;
2. The denial of accessible housing to an individual with disabilities – whereby the statute of limitations begins when the person with the disability actually encounters the discriminatory/inaccessible conditions, irrespective of when construction was completed; or
3. The ongoing failure to make the covered housing accessible - whereby the statute of limitations would begin to run when a potential defendant either ceases to have control over accessibility of the housing or brings the housing into compliance with the law.

The first interpretation was adopted by the majority in the current decision. It is the most restrictive option, the option that most overwhelmingly favors defendants and the option that is most likely to weaken the Act's enforcement. In their brief, *Amici* fleshed out each of the three possible interpretations, and detailed for the court how the latter two interpretations – and in particular the second option above – are more consistent with the purpose and intent of the Act.

Discrimination Goals and Objectives: Goal 2, Obj. A.

PAI Staff: Michelle Uzeta, Fred Nisen, Stuart Seaborn

Co-Counsel: Co-amici include: Silver State Fair Housing Council, Inc., Nevada Disability Advocacy and Law Center, Disability Rights Education and Defense Fund, Inc., Disability Rights Advocates, National Disability Rights Network, the Impact Fund, and Law Professors Robert G. Schwemm, Michael P. Seng, and Michael Evans.

Grant/Funding Source: PAIR

PAI Contacts DSS Licensing to Remove Barriers to a Regional Center Consumer's Participation in a Community Program

A consumer works for his regional center three days a week doing computer work with his eye laser scanner. The consumer participates in the Medi-Cal subacute waiver which provides nursing assistance related to his quadriplegia and ventilator use. He wanted to participate in an adult community based day program – Program Without Walls -- run by the United Cerebral Palsy Association (UCPA) – on the other two days. UCPA applied to Dept. of Social Services (DSS) Licensing for a waiver of Title 22, Calif. Code Regs § 80091(a)(3) which excluded participation by persons with “[c]onditions that require 24-hour nursing care and/or monitoring.” The waiver was denied.

PAI reviewed the regulatory scheme – Article 8 (Incidental Medical Services), under Division 6, Chapter 1, §§ 80090 *et seq.*, and concluded that the regulatory scheme focused on tasks to be performed by the licensed program and should not apply to a situation where all the consumer's care needs would be addressed by his Medi-Cal funded nurse. PAI's advocacy efforts obtained a positive response from DSS, which worked with PAI and UCPA to secure a waiver on the ground that the care needs would be addressed by his nurse. The consumer can now participate in the community program.

Discrimination Goals and Objectives: Goal 3, Obj. A.

Lanterman Goals and Objectives: Goal 1, Obj. A

PAI Staff: Marilyn Holle, Michelle Uzeta, Leinani Neves
Grant/Funding Source: PADD

PAI Successfully Challenges Assisted Living Waiver Pilot Project Provider's Discriminatory Exclusion of Individual Based on Medical Status

An individual with multiple disabilities and Hepatitis B and C was accepted to reside in a local Retirement Community facility under the Assisted Living Waiver Pilot Project (ALWPP).

The client was scheduled to move into the facility on November 19, 2007. But, when that day arrived, he was advised that the facility would no longer be accepting him, reportedly on the basis of his status as an individual with Hepatitis.

PAI drafted a demand letter to the facility pointing out that:

- Hepatitis is not a prohibited medical condition under the ALWPP or under the licensing scheme for Residential Care Facilities for the Elderly generally.
- Refusing to serve the client solely on the basis of his status as an individual with Hepatitis, or because of perceived liability or insurance concerns related to such status was discriminatory, and violated federal laws including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and various state statutes.
- The client posed no direct threat to staff or other residents of the facility because of his condition, particularly with the use of universal precautions.

PAI demanded that the facility admit the client immediately. Within days, the client was readmitted to the program.

Discrimination Goals and Objectives: Goal 2, Obj. A.

PAI Staff: Michelle Uzeta

Grant/Funding Source: PAIR

PAI Assists Client in Obtaining Permit Waiver as a Reasonable Accommodation

A woman with multiple disabilities who uses a wheelchair resides in a home owned by a family member. The family decided to lay concrete over the front yard to allow the client to have space to be outside. The family did not seek a permit before doing the construction, and were eventually cited for violating California Building Code requirements. They called PAI for help.

PAI drafted a letter to the City that:

- Asked that the construction done to the lawn of the client's home be approved as a reasonable accommodation for her disability pursuant to federal fair housing law;
- Asked that regular permitting requirements and any associated fees be waived; and
- Asked the City to adopt, as soon as practical, fair housing reasonable accommodation procedures for land use and zoning regulations to comply with its statutory mandate.

The City's Planning Department discussed the matter with PAI staff and the City Attorney's Office. The City eventually agreed to allow the lawn to remain paved and waived the permit requirement and associated fees. The City did ask however, that the property owner file a covenant with the City, under which they would agree to restore the lawn upon sale or transfer of the home, unless the reasonable accommodation was necessary for the new owner/resident.

Discrimination Goals and Objectives: Goal 2, Obj. A.

PAI Staff: Michelle Uzeta

Grant/Funding Source: PADD

PAI Assists Twice Disqualified Law Student to Gain Readmission to Law School

See Prior DOL Reports, Summer 2007, Issue 48; Fall 2007, Issue 49

As reported in a prior DOL Report, PAI was successful in getting the Office for Civil Rights of the Department of Education to open an investigation on behalf of a law student. The student had been denied access to her law school's established

disability grievance procedures and disqualified from her course of study due to poor academic performance caused by her unaccommodated impairments. The student's case was complicated by the fact that she had been previously disqualified from the school for poor academic performance and the fact that the law school's reinstatement policy only allows a student to petition for reinstatement once.

The parties to the OCR complaint agreed to participate in an Early Complaint Resolution process in an effort to resolve the issues raised in the student's complaint. As the result of that process a settlement was reached wherein the student would be provided retroactive access to the disability complaint process, including review of her concerns by the Law School's Committee on Disability.

PAI assisted the student in presenting her complaint to the Committee on Disability. In response to the complaint, the Committee on Disability formally recommended to the Dean of the Law School that the school's reinstatement policies be modified to allow the student to seek readmission a second time. PAI assisted the student in putting together her petition for reinstatement and supporting documents. She was subsequently accepted back into law school for the Spring 2008 semester.

Discrimination Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Michelle Uzeta

Grant/Funding Source: PAIR

PAI Supports California Supreme Court Review of Case Addressing Claims Under the Disabled Person's Act

Urhausen v. Long's Drug Stores California, Inc. et al. (Supreme Court Case No.: A113937).

PAI drafted a letter as *amicus curiae* (friend of the court) in support of Dianne Urhausen in her Petition for Review, filed with the Supreme Court of the State of California on October 29, 2007, in the case of *Urhausen v. Long's Drug Stores*. A number of other disability rights organizations, including DREDF, DRA and DRLC, signed on to the letter.

Through Ms. Urhausen's petition, which involved claims under the Disabled Persons Act and its implementing standards, the Supreme Court was presented with two questions in which the disability rights community took particular interest. The first question concerned the elements that must be shown to support a

cause of action under the Disabled Persons Act. The second question was whether the Disabled Persons Act excluded “personal injury” damages. *Amici* argued on a number of grounds that Ms. Urhausen was entitled to relief under the Act and to damages.

One issue was whether a *complete preclusion of access by every available route* was required to establish liability for damages under the Act, as held by the Court of Appeal. *Amici* pointed out how that decision runs contrary to the plain language of the Act (Cal. Civ. Code § 54.3 (a)), and creates conflict with existing case law, including the recent decision of *Madden v. Del Taco, Inc.*, 150 Cal. App. 4th 294 (2007). In *Madden*, the court held, in accordance with the plain language of the Act, that damages were available to an individual with disabilities whose access to a public place was merely interfered with, not denied.

Amici also stressed to the Court how the Court of Appeal’s position on what is necessary to establish liability conflicts with prior court holdings that an individual with disabilities may recover damages where there is proof that violations *deterred* him or her on a particular occasion from attempting to enter a place of public accommodation.

Finally, *amici* addressed the question of whether the Disabled Persons Act excludes personal injury damages, an issue that had been disputed on the lower court level. *Amici* highlighted the fact that the Disabled Persons Act expressly provides for the recovery of “actual damages” *Civ. Code §54.3(a)*, a term that has been interpreted to include nonquantifiable general damages for emotional distress and pecuniarily measurable special damages for out-of-pocket losses. Unfortunately, on December 12, 2007 the Supreme Court denied the petition for review.

Discrimination Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Michelle Uzeta

Co-Counsel: *Co-amici included:* DRA, DREDF, DRLC

Grant/Funding Source: PAIR

PAI Helps to Keep B.D. in Her Mobile Home with her Grandson as her Live-In Attendant

PAI helped B.D., an older adult with multiple physical disabilities, enforce her right to have her grandson live with her as an attendant in a seniors-only mobile home park. B.D. relies on her 21-year-old grandson for help with mobility, shopping, dressing and other activities of daily living, as well as for emergency

support. The Board of Directors of the park's Homeowner's Association had threatened to evict B.D.'s grandson because he does not meet the park's minimum age requirement of 55. PAI represented B.D. at an informal hearing before the Board of Directors. It also helped to secure a letter from the B.D.'s physician supporting her claim that the threatened eviction would violate state and federal fair housing law, as well as the state mobile home park law. As a result of PAI's advocacy, the Board agreed to allow the B.D.'s grandson to live with her for at least another year.

Discrimination Goals and Objectives: Goal 2, Obj. A.

PAI Staff: Pamela Cohen, Bill Hershon

Grant/Funding Source: PAIR

PAI Helps a Law Student Get an “Administrative F” Changed to a Passing Grade

PAI was contacted by K., a law student whose professor had denied her request for extra time on a take-home exam as a reasonable accommodation for her physical and mental health disabilities. She was given an “administrative F” for not handing the take-home exam in on time, even though the delay was due to a medical emergency. With the help of an opinion letter from PAI, K. was able to negotiate with the law school administration for a passing grade for the course in question.

Discrimination Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Pamela Cohen

Grant/Funding Source: PAIMI

PAI Offers Amicus Support to Medical Marijuana Patient before the California Supreme Court.

In a brief filed in July of 2006, PAI and Equal Rights Advocates provided *amicus curiae* (friend of the court) support in *Ross v. Ragingwire Telecommunications, Inc.* (3d Dist. Ct. App., #C043392, 9/7/05). The California Supreme Court had granted review of the case in December 2005. The case involves Gary Ross, a medical marijuana patient under California's Compassionate Use Act, who was fired by his employer after testing positive for tetrahydrocannabinol (THC) on a workplace drug screen.

The cases raised interesting questions regarding the interpretation of the Compassionate Use Act, its application in an employment discrimination context and its interplay with the provisions of the fair housing act.

PAI's amicus brief addressed, among other things, the following:

- (1) that the State's fair employment laws – and its Constitution – stand against the notion that a private employer may dictate the medical treatment for an employee's disabling condition, overruling the medical judgment of that individual's physician – without any showing of undue hardship; and
- (2) that in recognizing a “right” to use marijuana in appropriate medical treatment (Health & Safety Code § 11362.5(b)(1)(A)), the People of California did not mean to create a situation, where individuals with serious illnesses would not be jailed for pursuing medically appropriate treatment – but could nonetheless be denied the right to earn a living or to live where they please for having done so.

On January 24, 2008 the California Supreme Court upheld Ross' discharge, holding that because the Compassionate Use Act was not intended to “address the respective rights and obligations of employers and employees” and because marijuana use for medical use is still illegal under federal law, both his discrimination and wrongful discharge claims failed.

Discrimination Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Michelle Uzeta

Co-Counsel: *Co-amici included:* Equal Rights Advocacy

Grant/Funding Source: PAIR

PAI Submits Comments on Berkeley Housing Authority's Section 8 Administrative Plan

As part of its efforts to prevent being taken over by HUD, Berkeley Housing Authority (BHA) drafted new housing plans, including its Section 8 Administrative Plan, which set forth the policies of BHA's Section 8 program. PAI reviewed and commented on the plan. PAI's comments focused on how some of the policies had a negative impact on people with disabilities. For example, the draft administrative plan requires that if a person needs a live-in aide and receives In-Home Supportive Services (IHSS), the live-in aide must be an IHSS provider. However, most live-in aides do tasks not covered by IHSS, such as observation and

meeting an unmet need for those individuals that need more hours of care per month than the maximum 283 that IHSS can provide. PAI's comments also focused on the need for the administrative plan to ensure that Section 8 participants and staff know about the reasonable accommodations available to people with disabilities.

Discrimination Goals and Objectives: Goal 2, Obj. B.

PAI Staff: Fred Nisen

Grant/Funding Source: PAIR

PAI Files a HUD Complaint, On Behalf of Itself and a Fair Housing Agency, Against a Housing Provider for Failing to Provide Accessible Units

See DOLs from Fall 2004, Spring 2005 and Summer 2005.

PAI has filed a complaint on its behalf and on behalf of Housing Rights, Inc. (HRI), the fair housing agency which serves northern Alameda County, with the U.S. Department of Housing and Urban Development (HUD) against Mercy Housing California (Mercy Housing) for failing to make an adequate number of units at the Hamilton Apartments accessible for people with mobility disabilities.

Mercy Housing owns an apartment complex for people who are at risk of being homeless, Hamilton Apartments, that was converted from the YMCA in downtown Oakland with funds under the McKinney Homeless Assistance Act (McKinney Act) in 1997.

In 2004, PAI received a complaint from a resident at Hamilton Apartments about the inaccessibility of the unit, even though it was designated as being accessible for people with mobility disabilities.³ In addition, Hamilton Apartments, as a recipient of federal financial assistance, was required to have five percent of the units accessible to people with mobility disabilities and two percent accessible for people with vision and hearing disabilities. At this point, only three of the 92 units were designated as accessible for people with mobility disabilities, while four units were required to be accessible to meet the five percent requirement.

PAI notified Mercy Housing of the violations. In response, Mercy Housing agreed to make one more unit accessible for people with mobility disabilities and another unit accessible to people with vision and hearing disabilities. In addition, Mercy

³ The resident had other issues as well, which were resolved.

Housing agreed to have an architect review all of the accessible units to make sure that they comply with the Uniform Federal Accessibility Standards (UFAS).

Eventually, Mercy Housing contacted Peter Margen, a disability access specialist at Margen and Associates. In a report dated March 6, 2006, Mr. Margen found that the “accessible units” at the Hamilton Apartments did not comply with UFAS in a number of ways, including doors that required too much force, unreachable switches and noncompliant grab bars.

In November of 2006, Mercy Housing agreed to make the modifications that Mr. Margen recommended in his report in order to make five percent of the units in Hamilton Apartments compliant with UFAS. However, in July 2007, PAI called Mercy Housing and spoke with the current manager at Mercy Housing in charge of Hamilton Apartments. She said that Mercy Housing has no intention of fulfilling its agreement and making Hamilton Apartments UFAS compliant because she does not feel that it is required to comply with Section 504 of the Rehabilitation Act.

Regulations implementing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 require that new construction receiving federal financial assistance have at least 5% of the units comply with UFAS. 24 C.F.R. §§ 8.22(b) and 8.32(a).

HRI, as the local fair housing agency, is a second organizational complainant with PAI. *See Fair Housing of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002).

This case has the potential to ensure that 4 units of housing are permanently and effectively accessible to people with mobility impairments or disabled. In addition, since Mercy owns many other buildings it could affect a number of other units.

Discrimination Goals and Objectives: Goal 2, Objs. A and B.

PAI Staff: Fred Nisen

Grant/Funding Source: PAIR

DISCRIMINATION - VOTING

PAI Helps Voting Rights Coalition Advocate on Behalf of Thousands of Voters with Disabilities Facing Potential Disenfranchisement in Los Angeles County

Inka-Vote Coalition

The Inka-Vote Plus voting system used by Los Angeles County combines manual, ink-blot cards with an audio voting component and a key board which are used by voters who are blind or have low-vision disabilities, as well as those who have limited English proficiency. Secretary of State Deborah Bowen decertified the system, citing security concerns, and placed conditions on re-approval of certain touchscreen voting systems used by Los Angeles County to assist voters with disabilities for early voting. Although InkaVote Plus only allows limited voting access for voters with manual dexterity issues, and it is far from perfect, it provides far more access for persons with disabilities than paper ballot voting systems – which are what would be left if the State decertifies Inka-Vote Plus and the County’s early voting touch screen systems.

In order to address the potential dangers of decertification, PAI and a coalition of voting rights groups from around the State wrote a detailed letter to the Secretary of State, encouraging her to temporarily recertify voting systems in Los Angeles County that provide access for persons with disabilities. The letter also urged the Secretary of State to work with the County to implement the recommendations of the July 26, 2007 Accessibility Review Report, which included items such as improving poll worker training, placing voting systems on tables that meet height and width standards for wheelchair accessibility, and running public service announcements.

Upon receipt of the letter, the Secretary of State expressed interest in scheduling a meeting with the members of the coalition. However, to date, the meeting has not been scheduled.

Discrimination (Voting Team) Goals and Objectives: Goal 4, Obj. B.

PAI Staff: Stuart Seaborn, Hillary Sklar, Michelle Uzeta

Other Counsel: Ardis Bazyn, California Council for the Blind; Nicolas Espiritu, MALDEF; Kathay Feng, Common Cause; Steven Hill, New America Foundation; Eugene Lee, Asian Pacific American Legal Center; & Paula Pearlman, Disability Rights Legal Center.

Grant/Funding Source(s): PAVA

PAI Attends Demonstration of AVC-Edge, a New Accessible Voting Machine in San Francisco

PAI attended a demonstration of a new accessible voting machine hosted by the Department of Elections of the City and County of San Francisco. The machine is called AVC-Edge and made by Sequoia. The voter puts a card in the machine

which indicates whether the individual has either a visual or mobility impairment. A poll worker can help the person put the card in and take it out.

For people with mobility disabilities, the machine utilized a touch screen. The screen angle could be adjusted, making it easier for many people with disabilities to use it. After voting, a paper trail comes up on the left so that only the voter can see. Then, s/he can confirm or edit selections. If the ballot is confirmed, it is cast. The paper indicates "accepted" and then rolls up out of sight so the next voter cannot see the previous voter's choices.

For those with vision disabilities, there is a voice feature with a keypad consisting of a square "help" key, round "select" key and two triangles for "previous" and "next." One votes by hitting "select." Then, the machine reads the selection and the voter can confirm or edit his/her selections. If it is confirmed, the ballot is cast and a paper trail is made and then rolls up out of sight so the next voter cannot see the previous voter's choices.

Discrimination (Voting) Goals and Objectives: Goal 4, Obj. B.

PAI Staff: Fred Nisen, Bill Hershon

Grant/Funding Source(s): PAVA

EDUCATION

J.C.'s Expulsion Avoided

J.C. is a seventh grader who receives special education services and who wrote a note in class as part of an exercise which was interpreted by the teacher as threatening to her. The school suspended J.C. for several weeks before PAI was contacted. Generally a school district may not expel a student who receives special education services when the alleged threatening behavior was a manifestation of the student's disability. However, the school district threatened expulsion despite knowing that J.C. received special education services based on ADHD, learning disabilities and other health impairments. The school psychologist wrote an evaluation in response to the issue of expulsion, finding that the note writing was not related to the student's disability despite determining that J.C. might have an emotional disturbance. A neuropsychologist was hired to review records, do testing and give an opinion as to whether J.C.'s note writing was related to a disability. There was a finding that the note writing was related to the student's disability. PAI was ready to file for a due process hearing, but this was not necessary because the school district offered a stipulated agreement with terms that J.C. could meet.

PAI represented J.C. at the negotiation meeting to address the conditions offered and clarified language in the agreement that enabled J.C. to meet the terms. Shortly afterwards J.C. returned to school. Pursuant to the agreement, an Individualized Education Program (IEP) meeting has been scheduled. PAI will represent J.C. in the IEP, utilizing the expert's report to request services to address his emotional disturbance.

Education Goals and Objectives: Goal 1, Obj. A.

PAI Staff: Suzanna Gee, Terry Lindsay, Mike Kluk

Grant/Funding Source(s): PADD

PAI Successfully Advocates for Highly Individualized In-Home Multi-Disciplinary Special Educational Program for Client with Severe Social Withdrawal

D.M. is a 16-year-old boy who is diagnosed with Schizophrenia. He is non-English language proficient. PAI represented him in a due process proceeding in 2006 because he was out of school for more than a year; as a result, the district entered into a negotiated agreement to place client in a bilingual class for students with emotional disturbance at Spectrum. D.M. attended Spectrum a few times and refused to stay there because he could not tolerate the noise level. He tried a special day class vocational program but was also not able to tolerate the amount of stimuli in the class room.

With ongoing advocacy from and negotiation with PAI, the school district agreed to work with a multi-disciplinary team, including a therapist, behaviorist, and bilingual teacher to develop and implement an highly individualized in-home program for the client designed to increase his social skills and ability to tolerate external stimuli and to transition him into a therapeutically enriched classroom. The client has made progress on his behavioral goals. D.M.'s multi-disciplinary IEP team will be meeting the week of February 24, 2008 to determine the next step to transitioning this client back into a classroom setting.

Education Goals and Objectives: Goal 1, Obj. A.

Goal 3, Obj. A.

PAI Staff: Maggie Roberts

Grant/Funding Source: PAIMI

LANTERMAN

Supreme Court Rules for Plaintiffs, Ordering Trial Court to Grant Class Certification

Capitol People First et al. v. Department of Developmental Services et al. v. CASH/PCR

Case No. 2002-038715, Alameda County Superior Court, Judge Robert B. Freedman, (filed January 2002)

See previous DOL report, Fall 2007. *Also see* DOL Report, Spring 2002 for a summary of the case.

Capitol People First was filed as a class action seeking community living arrangements for more than 7,000 Californians with developmental disabilities who are residents of the developmental centers or other large congregate facilities and people at risk of placement in such facilities.

In September 2007, in a resounding victory for plaintiffs, the California Court of Appeal for the First Appellate District ordered the trial court to grant class certification. In January 2008, the California Supreme Court denied the state defendants' and interveners' petitions for review of the Court of Appeal decision. This Supreme Court decision is a victory for plaintiffs; it means that the Court of Appeal's decision is final.

The case will now proceed as a class action on behalf of the thousands of individuals who receive services from regional centers and are either living in state or private institutions, or are at risk of institutionalization. The ruling means that even people with significant disabilities have meaningful access to the courts to vindicate their rights to live as a part of rather than apart from the community.

Discovery in the case, which had been stayed while the class certification appeal was pending, will now proceed. If the parties do not reach a settlement, the case is expected to go to trial in March of 2009.

Background on the case, including legal documents and press coverage can be read at www.pai-ca.org/advocacy/cpfvdds/index.htm

Lanterman Act Goals and Objectives: Goal 1, Obj. A.

Counsel for PAI: Barbara Dickey, Sujatha Jagadeesh Branch, Ellen Goldblatt, Maggie Roberts, Dara Schur, Kim Swain, Elissa Gershon

Outside Co-counsel: William Abrams, James Snell, Chris O'Connor, Bingham McCutchen; Michael Tracy, Anne-Marie Dinius, David Dell, DLA Piper
Grant/Funding Source(s): PADD, PATT, Equal Access

PAI Provides Training to National Association of Councils on Developmental Disabilities (NACDD) on Culture and Disability

In October in San Diego, PAI, in collaboration with Dr. Barbara Wheeler (UCEDD), provided training to approximately 25 members of NACDD, a national organization of leaders in DD advocacy, on issues dealing with the intersection of culture and disability. The training session provided an overview of racial/cultural/linguistic disparities which exist for individuals with DD and their families, latest research on why disparities exist and persist, and how a collaborative response from DD Network partners can play a meaningful role in reducing disparities. Topics included disparities in amount and type of DD service dollars allocated to individuals with developmental disabilities based on race (POS variance); and difficulties in staffing DD Partner agencies in a way which reflects the diversity of the communities served in the DD system.

Lanterman Act Goals and Objectives: Goal 2, Obj. B
Goal 4, Obj. B

PAI Staff: Catherine Blakemore, Tho Vinh Banh

Grant/Funding Source: PADD

PAI Advocates for the Right of Older Man To Move Into Own Home with Supported Living Services, Closer to Family

W.D. is a 60-year-old man with significant intellectual disabilities. He is non-verbal, but enjoys interacting with his family through walks and dinners together, hand-holding and physical games. With less than 24-hours notice, W.D.'s regional center moved W.D. from a congregate facility close to his family County, to a congregate facility more than an hour away from the family, in another county. W.D.'s family, who are W.D.'s limited conservators and authorized representatives, have purchased a three bedroom, two bath house closer to them, where they would like W.D. to be able to live, supported by Supported Living Services (SLS). W.D.'s regional center has refused the family's request, and used it as an example of irrational interference in the regional center's efforts to have the family's limited conservatorship removed, and a more comprehensive public guardian's conservatorship put in place. PAI assisted W.D. in filing a Welf. & Inst. Code

Section 4731 complaint against the regional center related to his move. In response, the Department of Developmental Service found the regional center in violation of W.D.'s due process rights under the Lanterman Act and ordered it to submit a plan of correction within 30 days. PAI also represented W.D. in Probate Court, successfully arguing against revocation of the family's limited conservatorship powers insofar as it was based on the erroneous belief that the services the family has sought for W.D., specifically SLS to live in his own home, are contrary to his best interest. PAI submitted oral and written argument showing that these services represent W.D.'s demonstrated preferences, and seek an outcome that is both supported by the professional community as beneficial to his well-being, and preferred by state and federal law. Through a fair hearing request and Office of Administrative Hearings mediation, PAI also succeeded in having W.D.'s written Individual Program Plan (IPP) changed to reflect his interest in SLS, and in having the regional center fund a SLS assessment by a mutually agreed upon assessor.

Lanterman Act Goals and Objectives: Goal 1, Obj. A.
Goal 3, Obj. A.

PAI Staff: Anna Levine

Other Counsel: None.

Grant/Funding Source: PADD

PAI Contacts DSS Licensing to Remove Barriers to a Regional Center Consumer's Participation in a Community Program

*See this DOL Report, Discrimination
Lanterman, Goal 1, Obj. A.*

MENTAL HEALTH

With Advocacy from PAI, Vocational Services Agency Acknowledges J.A.'s Right to Refuse to Provide Criminal Records

J.A., an individual with a mental health disability, lives in the community. He receives job coaching and other services from a community based agency. J.A. contacted PAI because he felt pressured by the agency to sign a form for him to request his criminal record. J.A. was not comfortable doing this.

PAI contacted the agency via letter and then by phone to discuss J.A.'s concern. PAI used the opportunity to remind the agency of J.A.'s right to withhold his

criminal record. The agency clarified its purpose in requesting J.A.'s criminal record and acknowledged the client's right to refuse to provide his criminal records to the agency.

Mental Health Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Sean Rashkis

Grant/Funding Source: PAIMI

PAI Provides Comments to Office of Administrative Law (OAL) Regarding Underground Regulations at State Hospital

A patient at one of the state hospitals petitioned the Office of Administrative Law (OAL), claiming that the hospital Administrative Directive (AD) on contraband items was an underground regulation because it was written and amended outside of the state regulatory process.

PAI commented on the petition, agreeing with the patient that the hospital's AD on contraband was an underground regulation because the hospital's contraband list included items that did not appear to fall within the legal definition of "contraband" and the hospital was not following the regulatory requirements for a written denial of right to personal property when a patient's personal property was taken. PAI suggested that OAL provide oversight and have a public comment period to ensure that the hospital implements a contraband policy that complies with the law.

Mental Health Goals and Objectives: Goal 1, Obj. A & B.

PAI Staff: Sean Rashkis

Grant/Funding Source: PAIMI

PAI Advocacy Helps Client Secure Community Based Mental Health and Supportive Services

L.C. is a person with a psychiatric disability who has been living in the community but not receiving supports and services to enable her to live as independently as possible. She came to PAI seeking help securing such supports and services. PAI first called a treatment team meeting with L.C. and her county mental health service provider, which led to the development of a written service plan based on L.C.'s individualized goals and objectives. PAI then negotiated and advocated with both the mental health service provider and county representatives to implement L.C.'s service plan. In addition to the services L.C. was already receiving, she is now also benefiting from case management services, information

and referrals on additional housing options and referrals, and a regular exercise program funded by the county. PAI will continue its involvement with L.C.'s case with the goal of helping her to obtain one-to-one rehabilitation services under the Medi-Cal "Rehab" Option.

Mental Health Goals and Objectives: Goal 3, Obj. A.

Benefits Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Matt Fishler

Grant/Funding Source(s): PAIMI

PAI and OCRA Collaborating to Prevent Child's Placement at Porterville Developmental Center

N.M. is a 16-year-old minor and is a dependent of the juvenile court. He has multiple diagnoses, including mental retardation and bipolar disorder. N.M. is a regional center client, and receives mental health services from the County Department of Mental Health. N.M. has been in more than eight placements within the last three year, including group homes, level 4 Regional Center homes, level 14 residential treatment centers and a locked psychiatric facility. On October 30, 2007, N.M.'s Regional Center caseworker sought a Welfare & Institutions Code Section 6500 commitment order in the Superior Court to place N.M. in a developmental center. Neither N.M. nor the juvenile court was notified of these proceedings and N.M. was not represented at the hearing. The Superior Court Judge ordered that the child be moved to Porterville temporarily pending an assessment by the South Coast Regional Project. His caseworker then arranged for N.M. to be placed at Porterville Developmental Center.

In December, 2007, there was a hearing in the dependency unit of the juvenile court regarding the order to send N.M. to Porterville. The juvenile court judge appointed PAI and Office of Clients' Rights Advocates (OCRA) attorneys to represent N.M. at his 6500 proceedings. Presently, an OCRA attorney is lead counsel on this case, and the PAI Regional Office and OCRA are working in conjunction with the public defender to advocate for N.M. In January, 2008, PAI Regional Office and OCRA attorneys attended a status conference with N.M.'s public defender in the dependency unit of the juvenile court. Prior to that conference, PAI Regional Office and OCRA attorneys counseled and assisted N.M.'s public defender in filing a motion to join the Regional Center as a party and to petition for a stay of N.M.'s commitment proceedings pending an independent neuropsychological evaluation. PAI Regional Office and OCRA attorneys also procured an independent neuropsychologist to conduct the assessment. The Court

ordered that the assessment be conducted and stayed N.M.'s commitment proceedings for sixty days. The Court also authorized probate funds for the assessment. The Court additionally ordered a team decision making meeting at which N.M.'s counsel, Regional Center case workers, maternal aunt, and county mental health case worker will meet about his placement and potential services that he may access to remain in the community. Additionally, the Superior Court recently overturned the 6500 petition and transfer.

Mental Health Goals and Objectives: Goal 3, Obj. A

Regional Office Staff: Lauren Giardina

OCRA Staff: Tom DiVerde

Grant/Funding Source: Equal Access Fund, Southern California Children and Young Adult Initiative.

PAI Advocates for A.B. to Receive Increased Community Based Services

A.B. came to PAI originally for assistance in helping her challenge her Lanterman-Petris-Short ACT (LPS) conservatorship and in helping her transition from her placement in a locked Institution for Mental Disease (IMD) to a less restrictive board and care. PAI was successful in advocating with the county Public Guardian to terminate the LPS conservatorship, and advocating with the County Department of Mental Health to arrange a placement for A.B. in an enriched board and care. A.B. then became eligible for and received Mental Health Services Act Full Service Partnership — Transitional Age Youth funding and case management services to help prevent reinstitutionalization and to support independent living. PAI also advocated with the School District to access an additional 400 hours of individualized, behavioral support services that A.B. was entitled to as a result of a settlement in a prior special education matter. These additional service hours, funded by the School District, will be integrated with A.B.'s Full Service Partnership services to maximize her level of community-based support.

Mental Health Goals and Objectives: Goal 3, Obj. A.

PAI Staff: Matthew Fishler, Kevin Bayley

Grant/Funding Sources(s): PAIMI/EA-RIF

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GLOSSARY OF SELECTED TERMS

“A&D FPL PROGRAM” or AGED & DISABLED FEDERAL POVERTY LEVEL PROGRAM (Also referred to as the Medi-Cal 133% Program)

Individuals or married couples whose income is more than SSI levels, but who are still considered low income, may be eligible to receive Medi-Cal with no share of cost under this program. Under this program an individual who needs assistance with personal care and/or housekeeping tasks so they can remain safely in their homes can also receive these services with no share of cost.

AB 2726/3632

Assembly Bills 2726 and 3632 provides referrals to County Mental Health Services for children with special education needs beyond what schools can offer. These services are considered special education services.

“ADHD” or ATTENTION DEFICIT-HYPERACTIVITY DISORDER

Attention deficit-hyperactivity disorder (ADHD) is a neurobehavioral disorder that affects 3-5 percent of all American children. It interferes with a person's ability to stay on a task and to exercise age-appropriate inhibition (cognitive alone or both cognitive and behavioral). Some of the warning signs of ADHD include failure to listen to instructions, inability to organize oneself and school work, fidgeting with hands and feet, talking too much, leaving projects, chores and homework unfinished, and having trouble paying attention to and responding to details. There are several types of ADHD: a predominantly inattentive subtype, a predominantly hyperactive-impulsive subtype, and a combined subtype. ADHD is usually diagnosed in childhood, although the condition can continue into the adult years.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Methods of resolving disputes without official court proceedings. These methods include MEDIATION and ARBITRATION.

AMICUS CURIAE

PAI is often asked to appear as an organizational “*amicus curiae*,” or “*friend of the court*” in court cases raising important issues for people with disabilities.

Appearing as an “*amicus*” means that PAI submits a brief to the court raising issues as an organization, rather than on behalf of individual clients, because the issues are important to us as an advocacy organization or important to people with

disabilities. When PAI appears as an *amicus curiae*, PAI staff usually assists with drafting and revising the brief, and co-signs the brief with other interested parties.

ARBITRATION

When a person that isn't involved in the case looks at the evidence, hears the arguments, and makes a decision. (Compare with MEDIATION.)

BEHAVIOR INTERVENTION PLAN

Plan made by a local educational agency (LEA) as part of an individualized education program (IEP), to change the behavior of students who harm themselves, assault others, or are destructive.

“BPAO” or BENEFITS, PLANNING, ASSISTANCE, AND OUTREACH

The Social Security Administration (SSA), as authorized by the Ticket to Work and Work Incentives Improvement Act of 1999, awarded cooperative agreements to a variety of community organizations called Benefits Planning, Assistance, and Outreach (BPAO) projects. These BPAO projects provide all SSA beneficiaries with disabilities (including transition-to-work aged youth) access to benefits planning and assistance services. The goal of the Benefits Planning, Assistance, and Outreach (BPAO) Program is to better enable SSA's beneficiaries with disabilities to make informed choices about work. Each BPAO Project has Benefits Specialists who will:

- Provide work incentives planning and assistance to SSA's beneficiaries with disabilities
- Conduct outreach efforts to those beneficiaries (and their families), who are potentially eligible to participate in Federal or State work incentives programs; and
- Work in cooperation with Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities.

“BWE” or BLIND WORK EXPENSES

If the Social Security Administration (SSA) considers you statutorily blind, you can have your actual benefit amount increased by up to 100% of all your work expenses, whether or not those expenses are related to your disability. You can claim transportation expenses, the cost of lunch at work, and even the taxes you pay because of earnings. If your SSA Claims Representative agrees that your claimed work expenses can be included in a BWE, you may be able to recover up

to 100% of those expenses by increasing your SSI check up to its maximum. Exactly how much your SSI benefit may increase depends on your living situation, your earned and unearned income, and the amount of your BWE.

CALWORKS

CalWORKS is California's welfare program for people who have children under 19 years old. CalWORKS provides money for children and the relatives caring for them. Work and training is required of most parents. Adults can only get CalWORKS cash aid for five years in a lifetime. If you qualify under the rules, you are entitled to cash aid from the county.

“CDR” or CONTINUING DISABILITY REVIEW

Social Security Administration (SSA) reviews disability cases periodically to see if the person with a disability still meets SSA disability rules. SSA performs two types of reviews, a medical Continuing Disability Review and a work Continuing Disability Review. Under a work review, SSA looks at earnings to determine if an individual is eligible for monthly benefits. A medical review determines if an individual is meeting the medical requirements to collect disability. If the person does not meet the medical requirements, SSA may stop the disability benefits.

“CI” or COUNTABLE INCOME

Countable Income is the amount of your income that is included in calculations to determine your eligibility for Supplemental Security Income (SSI) benefits.

CLASS ACTION

A lawsuit brought by one or more persons on behalf of a larger group where certain individuals (called “class representatives” or “named plaintiffs”) act on behalf of a larger group of people who have similar issues. The court has to determine whether a case can proceed as a class action. If so, certain specific procedures apply relating to how the members of the larger group can get notice of the lawsuit and participate in it.

CONSERVATOR, CONSERVATEE and CONSERVATORSHIP

Conservatorship is a legal proceeding in which an individual or agency (to be known as the “conservator”) is appointed by a court to be responsible for a person who needs assistance in activities of daily living (the “conservatee”). A Conservator of the person must ensure that the conservatee is properly fed, clothed, and housed. A Conservator of the estate is responsible for managing the

conservatee's money and other property. One individual may serve as either conservator of the person or conservator of the estate or both. Conservatorship applies to an adult, i.e., a person eighteen (18) years of age or older.

COURT APPOINTED SPECIAL ADVOCATES (CASA)

These are specially trained volunteers who are appointed by a juvenile court to provide advocacy to children in the foster care system. CASA responsibilities include gathering information regarding the child; advocating for the child in IEP meetings and other forums; and making recommendations to the juvenile court about the child's best interests.

“CYA” or CALIFORNIA YOUTH AUTHORITY

The California Youth Authority (CYA), a California State agency of facilities for youths who have committed serious offenses.

DAMAGES

Money that the losing side must pay to the winning side to make up for losses or injuries. There are three kinds of damages: (1) "compensatory," meaning money to pay for the actual cost of an injury or loss; (2) "punitive" or "exemplary," meaning an amount of money that's more than the actual damages. Acts as punishment or deterrence for willful or malicious acts; and (3) statutory damages, which are specific amounts in the law awarded for specific legal violations.

DECLARATION

A statement that a person writes and files with the court. It tells the judge why the person should win the case. Sometimes, a person signs this under penalty of perjury.

DECLARATORY JUDGMENT

A judgment of the court that explains what the existing law is or expresses the opinion of the court without the need for enforcement.

DEMURRER

A “demurrer” is a specific kind of request filed with the Court in response to a lawsuit. A demurrer alleges that even if the facts are true, there is no legal violation. The court decides on the demurrer at a hearing after both parties present memos and argument to the court.

DEPOSITION

Written or oral testimony given under oath in front of an authorized third person like a court reporter. Depositions take place outside of the court. They allow the parties to get a record of a person's testimony, or to get testimony from a witness that lives far away. They can help the lawyers prepare their court papers called "pleadings." (See also DISCOVERY.)

“DDS” or CA DEPARTMENT OF DEVELOPMENTAL SERVICES

The California Department of Developmental Services (DDS), which funds and oversees services to people with developmental disabilities in California.

“DFEH” or DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

The California Department of Fair Employment and Housing is the state agency that investigates employment and housing discrimination claims and is responsible for enforcing state fair housing and fair employment laws, including disability rights laws in the housing and employment context.

“DHS” or CA DEPARTMENT OF HEALTH SERVICES

The California Department of Health Services (DHS), which funds and oversees health services in California, including nursing home care and home care.

DISCOVERY

The gathering of information (facts, documents, or testimony) before a case goes to trial. Discovery is done in many ways, such as through depositions, interrogatories, or requests for admissions. It can also be done through independent investigation or by talking with the other side's lawyer.

DISMISSAL WITH PREJUDICE

When a court dismisses a case and will not allow any other suit to be filed on the same claim in the future.

DISMISSAL WITHOUT PREJUDICE

When a court dismisses a case, but will allow other suits to be filed on the same claim.

“DMH” or CA DEPARTMENT OF MENTAL HEALTH

The California Department of Mental Health (DMH), which funds and oversees mental health services in California.

“DOE” or DEPARTMENT OF EDUCATION

“DSS” or CA DEPARTMENT OF SOCIAL SERVICES

The California Department of Social Services (DSS) funds and oversees public assistance programs in California, including CalWorks (family assistance) and case management for personal care services.

DYSAUTONOMIA

(Familial) Dysautonomia affects the autonomic nervous system, which controls involuntary actions such as digestion, breathing, tearing, and the regulation of blood pressure and body temperature. This condition also affects the sensory nervous system, which controls activities related to the senses, such as taste and the perception of pain, heat, and cold.

“EA” or EQUAL ACCESS

PAI receives grants from the state Equal Access to Justice Program to serve indigent people with disabilities on specified projects.

ELLIS ACT

The Ellis Act (California Government Code §§ 7600 et seq.) is a California law that bars local governments from enacting regulations, such as condominium conversion ordinances, that would prevent some landlords from leaving the rental housing market.

EN BANC

Court sessions where all the judges of a court participate, instead of the usual number. For example, the U.S. circuit courts of appeals usually use panels of three judges, but all the judges in the court may decide certain matters together. When

that happens, they are sitting "*en banc*" (sometimes spelled "in banc"). It comes from the French language and means "on the bench."

“EPSDT” or EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

The Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) provides health care diagnostic and treatment services to individuals under age 21. Under federal law, California must give people under age 21 specified diagnostic services. They also must provide treatment services to correct or ameliorate defects and physical and mental illnesses and conditions discovered as a result of the diagnostic services.

EXCEPTION PAYMENT

“Exception Payment” is a subsidy above the amount usually allowed.

“EXR” or EXPEDITED REINSTATEMENT

This term is used under The Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs to allow benefits for a person with a disability to be reinstated quickly if they are no longer working. It provides for temporary benefits during a period of evaluation, rather than requiring a new application for benefits.

“EPE” or EXTENDED PERIOD OF ELIGIBILITY

This term is used under the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs to provide additional protections to people whose disabilities may only allow periodic employment. Under these programs, if you stop working you may automatically have your benefits restored without having to reapply.

FAIR HEARING

A hearing in front of an agency or administrative law judge to review an agency decision. People have certain rights in fair hearings such as the right to present evidence, to cross examine and to have findings supported by evidence.

FAIR MARKET RENT (FMR)

The Fair Market Rent (FMR) is the amount that the Housing and Urban Development (HUD) sets for rent. Tenants have to pay extra if rents exceed the FMR, as they usually do because the FMR's are unrealistically low.

“FIFTH CATEGORY” REGIONAL CENTER ELIGIBILITY

A person is eligible for the "fifth category" if he or she has a condition that is similar to mental retardation and/or has treatment needs that are similar to a person with mental retardation.

FORENSIC

A term used by both DDS and DMH and intended to indicate individuals who have had some involvement with the criminal justice system, though sometimes used too broadly for people with aggressive behavioral challenges. The intersection between the mental health system and the criminal justice system is often called “forensic mental health.” In California, there are 6 different commitment categories for people who are involved with the mental health system because of their contact with the criminal justice system.

“G-TUBE” or GASTROSTOMY TUBE

A Gastrostomy Tube (G-Tube) is a tube that is placed on the stomach to vent for air or drainage, and/or is an alternate way for feeding.

GUARDIAN AD LITEM

An adult appointed by a court who represents a minor child an individual who has difficulties in acting on his or her own behalf. Comes from Latin meaning for the "purposes of the lawsuit."

GUARDIANSHIP

A guardianship applies only to minors, i.e., person under the age of eighteen (18) years. The principal purpose of guardianship is to provide protection for a child who has no parent.

HABEAS CORPUS

A “writ of *habeas corpus*” is a judicial mandate to someone who has custody of a person ordering that the person be brought to the court so it can be determined whether or not that person is lawfully confined and whether or not the person

should be released from custody. A habeas corpus petition is a petition filed with a court by a person who objects to the person's own or another's confinement, or to the conditions of confinement. The term comes from latin.

“HHS” or HEALTH & HUMAN SERVICES

HHS is the federal agency overseeing health and human services.

“HIPAA” or HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

The new federal Health Insurance Portability and Accountability Act (HIPAA) protects the privacy of medical records and other confidential health information, and restricts access to records except under specified circumstances.

“HOUSING CHOICE VOICHER” OR “SECTION 8”

Housing Choice Vouchers, often referred to as Section 8 Vouchers, help subsidize rents for lower income tenants, including tenants with disabilities. The local Public Housing Authority (PHA) pays part of the tenant's rent when the tenant rents from a private landlord.

“HUD” or U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The U.S. Department of Housing and Urban Development (HUD) funds and regulates many housing and community development programs for lower income people and people with disabilities, including Section 8.

“ICF-DD-N” or INTERMEDIATE CARE FACILITY DEVELOPMENTALLY DISABLED-NURSING

Intermediate Care Facility-Developmentally Disabled-Nursing (ICF-DD-N) are a category of community facilities licensed by the California Department of Health Services (DHS), which generally house 6 residents.

“IDEA” or INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The Individuals with Disabilities Education Act (IDEA) is the federal statute that requires school districts receiving federal funds to provide all students who have a categorically defined disability with a free appropriate public education (FAPE) in the least restrictive environment. FAPE includes specialized instruction and related

services that meet the state educational standards and are implemented as called for in a student's individualized education program (IEP).

“IEP” or INDIVIDUALIZED EDUCATION PROGRAM

An Individualized Education Program (IEP) describes the educational program that has been designed to meet the unique needs of a child with disabilities. Each child who receives special education and related services must have an IEP, which is an individualized document developed in consultation with the parents, school, advocates, students (as appropriate), and health professionals.

“IHSS” or IN-HOME SUPPORTIVE SERVICES PROGRAM

The In-Home Supportive Services Program (IHSS) helps pay for services to eligible people to enable them to stay in their own homes. To be eligible you must be blind or have a disability or be over 65 and need these services so you can remain safely in your home. IHSS is an alternative to out-of-home care such as nursing homes or board and care facilities.

“IMD” or INSTITUTION FOR MENTAL DISEASE

An IMD is defined in the Code of Federal Regulations at 42 CFR 435.1009 as a facility of more than 16 beds that is primarily engaged in providing treatment services for individuals diagnosed with mental illness.

IMPLIED WARRANTY OF HABITABILITY

The right to get an apartment in good condition.

IN-HOME OPERATIONS HOME AND COMMUNITY-BASED SERVICES (IHO-HCBS WAIVER)

The new IHO HCBS waiver combines several existing waivers, including the NF/AB waiver, to expand the number of slots and services that waiver recipients who would otherwise be institutionalized in a nursing facility, subacute facility or acute hospital can receive in the community.

INDIAN CHILD WELFARE ACT (ICWA)

This is a federal law to protect the integrity of American Indian families. It acknowledges and implements the tribe's right to intervene in state child custody proceedings.

INJUNCTION

An injunction or permanent restraining order is a court order requiring someone to take specific actions or ordering them to stop certain behaviors, based on legal obligations. It is issued after both sides have been heard by the court in a hearing or trial. The court order specifies the specific actions, people and time for compliance.

IN FORMA PAUPERIS (IFP)

A court says a person does not have to pay a filing fee because the person can't afford it. In Latin, means "in the manner of a pauper."

IN PROPIA PERSONA (IN PRO PER)

In Propia is when a person represents himself or herself without a lawyer. This comes from the Latin for "in one's own proper person." (See also PRO PER AND PRO SE.)

INTERROGATORIES

Written questions asked by one party in a lawsuit, which the opposing party must answer in writing.

INTERVENOR

A person who voluntarily participates in a lawsuit or other proceeding brought by other people. The court must approve the participation of the intervenor.

“IOLTA” or INTEREST ON LAWYERS TRUST ACCOUNTS

This is a method of funding for legal services to low income people and people with disabilities. It is also referred to as “Trust Fund”. It is administered by the State Bar Association. PAI receives IOLTA funding.

“IPP” or INDIVIDUAL PROGRAM PLAN

California’s Lanterman Act provides that persons with developmental disabilities are entitled to “IPPs,” or Individual Program Plans that identifies the person’s goals and the services and supports they will get to help them meet their goals. This action plan helps provide community supports to prevent institutionalization of people with developmental disabilities.

“IRWE” or IMPAIRMENT RELATED WORK EXPENSES

This term is used under The Social Security Disability Insurance (SSDI) AND Supplemental Security Income (SSI) programs to refer to out-of-pocket expenses that are needed in order to be able to work. These expenses are deducted from earnings before certain benefit calculations are made.

JUDGMENT (JUDGEMENT)

The judge's final decision in a case.

LANTERMAN ACT

The California law which grants people with developmental disabilities an entitlement to services and supports.

LEVEL 14 GROUP HOME PLACEMENTS

Level 14 refers to a rate classification that reflects the staffing needs of an individual in Community Care Licensing Facilities. 14 is the highest rate available.

“LPS” or Lanterman-Petris-Short ACT

The Lanterman-Petris-Short Act is one of the main California laws governing services to and treatment of people with mental illness. It covers certain conservatorship proceedings as well as establishes that persons are statutorily entitled to individualized treatment that is least restrictive of their personal liberties.

MANIFESTATION DETERMINATION

The manifestation determination meeting is a meeting of the relevant members of the IEP team to determine whether a child with a disability may be expelled or have his placement changed for more than 10 consecutive school days. At the meeting, the IEP team reviews the relevant information from the student's file, including the IEP and any information from teachers and the parents and then decides two things: 1) was the behavior caused by, or did it have a direct and substantial relationship to, the child's disability, and 2) was the behavior the direct result of the school's failure to implement the IEP? If the team answers yes to either question, the child cannot be expelled and a placement change would require the consent of the parent or a hearing officer's order. If the IEP team members representing the school district believe the answer to both questions is “no” and the parent disagrees, the parent can appeal to a special education hearing.

MEDI-CAL (See Medicare)

Medi-Cal is California's program to pay for medical care for many low income people, especially families, children, people with disabilities, and the elderly. Medi-Cal is funded by the state and federal government. There are many Medi-Cal programs with different rules. Depending on which program you qualify for and how much money you make, Medi-Cal may pay for all your medical expenses or only part of them.

MEDICARE (See Medi-Cal)

Medicare is a federal health insurance program which provides benefits for eligible people. There are two parts to the program: "Part A" is hospital insurance and "Part B" is medical insurance. Medicare does not cover everything, and is not free for most people.

MORQUIO SYNDROME

Rare genetic disorder caused by the deficiency of enzymes, resulting in the inability of the body to metabolize complex carbohydrates. As a result, bony abnormalities of the head, chest, hands, knees, and spine may occur.

MOTION

An oral or written request made by a party to an lawsuit before, during, or after a trial asking the judge to issue a ruling or order in that party's favor.

“MSSP” or MULTIPURPOSE SENIOR SERVICES PROGRAM

The Multipurpose Senior Services Program (MSSP), operated by the California Department of Aging, provides case management and a range of services to assist seniors with disabilities to live independently.

NURSING FACILITY WAIVER

The Nursing Facility Waiver allows someone who is otherwise eligible for nursing facility services to instead receive services in the community. It is called a "Waiver" because it waives certain federal Medicaid rules in order to provide different or more services than the State offers to other Medicaid (Medi-Cal) eligible people.

“OCRA” or OFFICE OF CLIENT’S RIGHTS

“ODD” or OP POSITIONAL DEFIANT DISORDER

Oppositional Defiant Disorder (ODD) is a type of disruptive behavior disorder characterized by a recurrent pattern of defiant, hostile, disobedient, and negativistic behavior directed toward those in authority, including such actions as defying the requests or rules of adults, deliberately annoying others, arguing, spitefulness, and vindictiveness that occur much more frequently than would be expected on the basis of age and developmental stage.

OPINION

A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment. A *PER CURIAM* OPINION is an unsigned opinion “of the court.”

“OPR” or OFFICE OF PATIENT’S RIGHTS

ORDER TO SHOW CAUSE

A court order that makes someone go to court to explain to the judge why he or she did not follow the rules.

“PAAT” or PROTECTION & ADVOCACY FOR ASSISTIVE TECHNOLOGY

Beginning in 1998, PAI received limited funds under the Protection and Advocacy for Assistive Technology (PAAT) Act to increase access to assistive devices and equipment.

“PABBS” or PROTECTION & ADVOCACY FOR BENEFICIARIES OF SOCIAL SECURITY

Under the Protection and Advocacy for Beneficiaries of Social Security (PABSS) Act, PAI provides advocacy assistance to Beneficiaries of Social Security Disability or Supplemental Security Income (SSI), and to people who are working and are beneficiaries of Medicare, Medi-Cal or In-Home Supportive Services (IHSS) about securing or requiring employment.

“PADD” or PROTECTION & ADVOCACY FOR DEVELOPMENTAL DISABILITIES

In 1978, PAI became the agency in California responsible for protecting and advocating for the rights of people with developmental disabilities under the federal Developmentally Disabled Assistance and Bill of Rights Act of 1978.

“PAIMI” or PROTECTION & ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS

The Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI) extended PAI’s mandate to people with psychiatric disabilities.

“PAIR” or PROTECTION & ADVOCACY FOR INDIVIDUAL RIGHTS

The Protection and Advocacy of Individual Rights Act of 1992 (PAIR) extended PAI’s mandate to people with physical, learning and sensory disabilities.

“PASRR” or PREADMISSIONS SCREENING AND RESIDENT REVIEW

This is a federally mandated psychosocial, psychiatric and physical evaluation of persons admitted to nursing facilities or at risk of being placed in nursing facilities, funded by the Department of Mental Health and administered by independent contractors. It helps identify the need for specialized services and helps identify appropriate community placements rather than institutionalization.

“PATBI” or PROTECTION & ADVOCACY FOR TRAUMATIC BRAIN INJURY

Protection & Advocacy for Individuals with Traumatic Brain Injury (PATBI) assures that people with traumatic brain injury receive appropriate services and supports within their own communities. PAI promotes the rights of people with Traumatic Brain Injury (TBI) through advocacy assistance, education, and outreach to build TBI community awareness and support for inclusion. This program was established by federal grants from the Department of Health and Human Services.

“PAVA” or PROTECTION & ADVOCACY FOR VOTING ACCESS

Part of the Help America Vote Act of 2002 (HAVA) was the Protection and Advocacy for Voting Access (PAVA) program. PAVA expanded PAI's ability to work for full participation in the electoral process for people with disabilities, including registering to vote, casting a vote and accessing polling places.

PRO BONO

Legal work done for free. From the Latin meaning "for the public good." Private firms often work with PAI "*pro bono*" – without charge to clients.

PRO PER

People who present their own cases in court without lawyers (*See also IN PROPIA PERSONA and PRO SE.*)

PRO SE

People who present their own cases in court without lawyers (*See also PRO PER and PRO SE.*)

PROTECTIVE SUPERVISION

Protective supervision is supervision for individuals who, because of cognitive or mental impairments, need continuous supervision in order to prevent self-inflicted harm while living at home.

PURCHASE OF SERVICES (POS)

Purchase of Services (POS) dollars is money used by people served under the Lanterman Act. It allows the person with a developmental disability to directly pay service providers.

RIESE HEARING

A hearing to determine an individual's capacity to refuse administration of psychotropic medication.

REGIONAL CENTERS

Non-profit corporations which, under the provisions of the Lanterman Act, contract with the Department of Developmental Services to provide service coordination to individuals with developmental disabilities and assist people to obtain the supports they need. There are 21 RCs in California, each serving a different geographical area.

SECTION 8

Section 8 is a federally funded housing assistance program that provides to low income families. The vouchers allow the family to rent any apartment or house where the landlord will accept them, and pay a limited amount of money, generally 30% of the

family's income. Section 8 is operated by local housing authorities and usually has a long waiting list.

SELF-DIRECTED SERVICES

“Self-Directed Services” is a new model for providing services to people with developmental disabilities that allows them to manage their own budgets and gives them more control over providers.

“SELPA” or Special Education Local Plan Area

The Special Education Local Plan Area (SELPA) is an administrative unit under California law that joins together one or more local school districts in a geographic area. This allows districts to share in the coordination, funding, personnel or other administration of services for special education students. School districts with large populations usually stand alone as a single-district SELPA.

“SGA” or SUBSTANTIAL GAINFUL ACTIVITY

Substantial Gainful Activity is the term used by Social Security when evaluating earned income and “work activity” of individuals applying for or receiving disability benefits.

There are two criteria that determine SGA: (1) Substantial activity: work that involves doing significant physical or mental work, or a combination of both, that is productive and for profit. (2) Gainful work activity: work performed for pay or profit; work of a nature generally performed for pay or profit; or work intended for profit, whether or not a profit is realized.

This is a monthly amount that is specified by Social Security for individuals who are employed or self-employed. SGA may be determined by work done or hours worked in a month. Monthly SGA earnings limits are adjusted annually based on fluctuations in the national average wage index.

“SRO” or Single Room Occupancy

Single room occupancy hotels, or residency hotels, provide single room apartments with shared bathrooms for low income individuals. This is an important source of housing for people with disabilities who live on fixed incomes.

“SSI” or Supplemental Security Income

Supplemental Security Income (SSI) is a cash benefit program for low-income people 65 and over and for people of any age, including infants and children, who are blind or have disabilities. CAPI is a similar program for immigrants who do not qualify for SSI.

STATUTE

A law passed by the United States Congress or a state legislature.

STATUTE OF LIMITATIONS

A law that says how much time you have to file a lawsuit after something happens.

STAY

An order by a court that stops any further action in the case for a certain period of time.

SUMMARY JUDGMENT

When the judge decides a case without going to trial. The decision is based on the papers filed by both sides.

TEMPORARY RESTRAINING ORDER (TRO)

A Temporary Restraining Order (TRO) is a court order requiring immediate action. It is an emergency remedy of brief duration issued by a court only in exceptional circumstances, usually when immediate or irreparable damages or loss might result before the opposition could take action.

“TBS” or THERAPEUTIC BEHAVIORAL SERVICES

Therapeutic Behavioral Services (TBS) is a Medi-Cal mental health service. It provides short-term one-to-one assistance to children or youth under age 21 who have behaviors that are too hard for their families or foster placement to handle, such as tantrums, assaultive behavior or destruction of property. TBS can be provided to children at home, in a group home, in the community, during evening and weekends, and at other times and places as needed. The county mental health plan develops a behavior intervention plan and assigns a trained behavior aide to a child/youth for as many hours per day as needed. The county may also authorize another mental health organization to develop the plan and assign the behavior aide.

TRANSCRIPT

A record of everything that is said in a deposition, hearing or trial. Transcripts may be prepared from tape recordings or may be done by certified court reporters who use special equipment to make a word-for-word record of the proceeding.

“TWP” or TRIAL WORK PERIOD

A “Trial Work Period” under Social Security Disability law allows people with disabilities to test their ability to work for at least 9 months without reducing their Social Security Disability Income. During the TWP, an individual will receive full SSDI benefits regardless of how high their earnings might be, so long as they have a disability.

UNRUH CIVIL RIGHTS ACT

This law provides protection from discrimination by all business establishments in California, including housing and public accommodations, because of age, ancestry, color, disability, national origin, race, religion, sex, or sexual orientation.

WRIT

A court order that says certain action must be taken.

WRIT OF MANDATE

A court order to a government agency, including another court, or to a private entity requiring it to follow the law by correcting its prior actions, ceasing illegal acts, or taking certain actions.

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