

## ADVOCACY REPORT

### OFFICE OF CLIENTS' RIGHTS ADVOCACY

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**Summer 2005**

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#### **BENEFITS**

##### **SSI Overpayment Waived.**

S.W. was admitted to a skilled nursing facility (SNF) due to a chronic medical condition. The Social Security Administration (SSA) mailed S.W.'s SSI check to her home. S.W.'s sister spent S.W.'s check. While at the SNF, S.W. received a notice of action stating that she was overpaid because she received benefits and her SNF placement costs were also paid. OCRA interviewed S.W. at her new retirement home but due to S.W.'s condition, she was not able to assist in her own advocacy.

OCRA advised S.W.'s service coordinator to assist S.W. to file for reconsideration or waiver due to the fact that S.W. was not at fault for the overpayment and had no ability to pay back the money. OCRA provided technical assistance in drafting the request for reconsideration. After considering the facts of the case, the SSA granted the request and waived overpayment. Leinani Neves, CRA, Valley Mountain Regional Center.

##### **SSI Benefits Awarded To 18-Month-Old.**

F.A., an 18-month-old diagnosed with Rubinstein-Taybi syndrome (RT), was denied SSI eligibility. RT is a rare disorder characterized by unique physical characteristics and developmental delays. In response to F.A.'s parent's request for assistance, the CRA reviewed F.A.'s file and agreed to represent at an eligibility hearing for SSI benefits. Following the hearing, F.A. received a fully favorable decision granting eligibility, including retroactive benefits to December, 2003. Arthur Lipscomb, CRA, Gloria Torres, Assistant CRA, San Andreas Regional Center.

**Social Security Withdraws Fraud Claim, Waives Overpayment.**

O.M. called OCRA and reported that the SSA had accused her of fraud in the receipt of her SSI benefits for not reporting her recent marriage. SSA was also charging O.M. an overpayment of \$1,000.

OCRA gathered and reviewed all available records and researched the applicable law, establishing that not only had O.M. reported her marriage to SSA but she had fired her representative payee for advising her not to report the marriage. OCRA helped O.M. complete her waiver application and write her declaration. As a result, the SSA withdrew its allegation of fraud and waived the overpayment. Bernadette Bautista, CRA, Alba Gomez, Assistant CRA, San Diego Regional Center.

**OCRA Negotiates Reduced APP Repayment.**

The parents of C.T., a minor diagnosed with cerebral palsy, contacted OCRA for assistance in reducing the parents' Adoption Assistance Program (AAP) monthly repayment amount. The county was going to deduct \$500 per month from their AAP payment, which constituted a significant hardship for the family. The CRA contacted the county, which agreed to reduce the AAP re-payment amount to \$440/month. Veronica Cervantes, CRA, Beatriz Reyes, Assistant CRA, Inland Regional Center.

**IHSS Denial Reversed On Appeal.**

R.A., a 3-year-old diagnosed with mental retardation, was denied In Home Supportive Services (IHSS) because the county said R.A. had the same care needs as those of a child without disabilities. OCRA contacted R.A.'s primary physician, who documented needs beyond those of normally developing children R.A.'s age. This included bowel and bladder care as well as two other areas of additional needs.

OCRA was the authorized representative at hearing. On the day of the hearing, the county appeals representative offered a conditional withdrawal that committed the county to reassess care needs. A new notice of action authorized services that met A.R.'s needs and included retroactive benefits totaling over \$1400.00 in past due wages to R.A.'s father as provider. Doug Harris, CRA, Redwood Coast Regional Center.

**IHSS Protective Supervision Increased To Maximum Level.**

T.R. is an unconserved adult living with a family. Her IHSS protective supervision was substantially less than that provided for by law. The family contacted OCRA to ask for help.

The family member appealed with OCRA as the authorized representative. Prior to the hearing, the county appeals representative contacted OCRA and agreed to increase the protective supervision to the maximum allowed by law, retroactively to three months prior to the date of appeal. Doug Harris, CRA, Redwood Coast Regional Center.

**IHSS Protective Supervision Services Granted.**

J.V. and his mother received written notice dated in November, 2004, from L.A. County that effective July 1, 2004, J.V.'s IHSS hours would increase from 186.8 to 205.2 hours a month. The IHSS worker did not consider J.V.'s primary physician's recommendation of 20.41 hours per week for paramedical services. The IHSS worker made the decision to only authorize 11.41 hours of paramedical services.

J.V.'s mother contacted OCRA for assistance. The CRA provided J.V.'s mother and the regional center service coordinator with PAI's IHSS self-assessment packet. The CRA explained how to track the time providing the necessary care for J.V. and suggested the mother start a log on a daily basis of needed care. OCRA explained the benefits of protective supervision. The CRA reviewed J.V.'s regional center files, and assisted in filing for hearing on the number of IHSS hours authorized.

Based on documentary evidence and testimony from J.V.'s mother and the regional center service coordinator at the hearing, the ALJ ordered the county to grant the maximum IHSS hours of 283.0 per month effective July, 2004. Tim Poe, CRA, North Los Angeles County Regional Center.

**OCRA Helps Family Successfully Defend against an IHSS Reduction and Obtain Protective Supervision in the Process.**

D.B. is an adult living with his mother, who also serves as D.B.'s personal care assistant. After the county social worker conducted an in-home re-assessment of D.B.'s IHSS needs, D.B. received notice that his authorized

amount of services would decrease from 155 to 151 hours per month. The county based the reduction on its belief that D.B. no longer required medical transportation. D.B.'s brother and mother filed for hearing and contacted OCRA.

OCRA met with D.B.'s mother and brother and provided the brother with copies of the regulations the county must follow when assessing IHSS needs. OCRA explained how social workers are supposed to document IHSS need under the regulations. OCRA recommended that D.B.'s regional center documents be obtained for use as exhibits at hearing in order to contrast the county's and the regional center's different assessments of D.B.'s functional limitations. OCRA provided D.B.'s mother with PAI's IHSS Self-Assessment Packet. OCRA reviewed the mother's written account of D.B.'s protective supervision needs and advised her to emphasize some examples of D.B.'s behavior that were consistent with the need for protective supervision.

At the hearing, D.B.'s mother had her self-assessment prepared, which substantiated the original hours authorized and documenting protective supervision needs. Regarding the protective supervision need, D.B.'s mother explained that D.B. constantly wanders away from the house, but the mother is usually able to get to him before he injures himself. The ALJ said D.B.'s mother should lock the door and hide the key. D.B.'s brother raised the concern of what would happen if there was an emergency. The ALJ not only restored the reduction in hours, but awarded protective supervision, bringing D.B.'s monthly IHSS award to 283 hours. Brian Capra, CRA, Westside Regional Center.

### **OCRA Helps Take on California Children's Services' Appeals Process.**

J.F. is a young girl who receives physical therapy (PT) through California Children's Services' (CCS') Medical Therapy Unit (MTU). J.F. is also a recipient of full scope Medi-Cal as a result of her participation in the DD Waiver program. J.F. has been receiving PT two times per week since October, 1998. In January, 2004, the MTU physician decided to reduce J.F.'s PT to one time per week for three months, followed by termination of services. No notice of action was provided to J.F.'s mother explaining the basis for the decision. J.F.'s mother appealed and aid paid pending was provided. CCS sent a letter containing a list of experts comprised of orthopedists and physiatrists from which to choose for a second opinion.

CCS stated that a selection from the expert list was necessary to resolve the dispute regarding the amount of PT that J.F. would receive.

J.F.'s mother requested that J.F.'s treating pediatric neurologist be appointed as the expert to render the second opinion because the basis for J.F.'s CCS qualifying condition was neurological in nature. In May, 2004, the medical director for Los Angeles County's CCS program rejected this choice and J.F.'s mother was directed to the previously sent list. The county's CCS medical director also wrote that the law applicable to CCS MTU units was governed by specific Medi-Cal regulations applicable to adults, not children.

J.F.'s mother appealed to the Acting Chief of the Children's Medical Services Branch for California. The Acting Chief sent a written response to J.F.'s mother in July, 2004, affirming CCS's actions. Upon receipt of the letter, J.F.'s mother filed for an administrative hearing, which was continued until May, 2005, with services continuing at the original rate. J.F.'s mother called OCRA for assistance with her hearing.

OCRA assisted J.F.'s mother in filing a motion for remand with the hearing office. The remand request raised three arguments: 1) that a proper notice of action was required under state regulations and federal Medicaid law; 2) that a reassessment was required using the EPSDT standard instead of the strict and inapplicable adult standard; and 3) if after proper re-assessment, CCS maintained its position, then a properly impaneled set of experts would contain pediatric neurologists.

The Department of Health Services (DHS), on behalf of CCS, assigned an attorney from its Office of Legal Services to respond. The DHS attorney asserted that the hearing office had no jurisdiction to hear the matter because, according to CCS, J.F.'s MTU physician was the physician responsible for the medical supervision of J.F. Therefore, it was concluded that no notice of action was necessary and the appeal process was limited to a second opinion by a CCS expert, which had to be an orthopedist or physiatrist given that there were few qualified pediatric neurologists. Further, the DHS attorney argued the EPSDT medical necessity standard did not apply and even claimed that physical therapy was not an EPSDT supplemental service in California.

In preparation for a reply to the DHS attorney's opposition for remand, J.F.'s mother obtained the rulemaking documents behind the CCS appeal

regulations through a Public Records Act Request, per OCRA's advice. In response to one commentator, DHS made clear that a notice of action is not necessary *unless* the MTU physician is also the child's primary medical supervisor. When a child has a separate, supervising, primary physician and the MTU physician orders a change in services, a notice of action is required. DHS reasoned that the limited instances provided in regulation where a notice of action would not be necessary are circumstances in which the client or family should already know about or have been informed of the change by the client's supervising physician.

J.F.'s mother submitted the rulemaking documents with her reply brief. The ALJ ruled CCS's reduction premature because no proper notice of action was sent. The Chief ALJ signed a cover letter stating the decision was executed on behalf of DHS. J.F. continues to receive physical therapy services through the MTU two times per week. Brian Capra, CRA, Meriah Harwood, Assistant CRA, Westside Regional Center, Marilyn Holle, Senior Attorney, Protection and Advocacy, Inc.

**SSI Benefits Reinstated.**

A.M. is a 20-year-old man who is non-verbal and diagnosed with severe autism. A.M. needed to establish a special needs trust with funds from a private settlement from the school district in order to avoid having excess resources for government benefits. OCRA reviewed the records and determined that the original account had not been established in a manner that would protect A.M. from loss of his public benefits.

OCRA requested that A.M. be provided with an attorney to amend the original account and to develop a special needs trust as required by law. A new attorney was funded by the school district and all benefits were restored. Leinani Neves, CRA, Filomena Alomar, Assistant CRA, Valley Mountain Regional Center.

**Client's Medi-cal Untangled from Mandatory Managed Care.**

I.B. lives with his mother. I.B. has been on the DD Waiver since November, 1996, and has always had zero share of cost Medi-Cal. Until recently, I.B. was a SSI recipient and received Medi-Cal linked to SSI. However, I.B.'s mother returned to work and her earnings were such that it caused I.B.'s SSI to terminate.

I.B. then qualified under a different Medi-Cal program. I.B.'s mother received an enrollment packet from Health Care Options (HCO), an agency that contracts with the Department of Managed Care (DMC) to enroll Medi-Cal beneficiaries in managed care health plans. I.B.'s mother contacted HCO and was informed that I.B. was mandatorily enrolled in managed care and that I.B.'s mother had to select a health plan or else one would be assigned to I.B. I.B.'s mother chose the health plan in which I.B.'s treating physician retains membership and sought a medical exemption for I.B. by having his physician fill out an exemption form. When HCO denied the exemption request, I.B.'s mother called OCRA for assistance.

OCRA advised I.B.'s mother to request a fair hearing. OCRA further advised I.B.'s mother to contact the DMC's Ombudsman's Office. While the ombudsman allowed for a temporary 30-day disenrollment pending the fair hearing, it supported HCO's decision to enroll I.B. in a managed care health plan. When OCRA contacted the ombudsman for clarification, OCRA was informed that I.B. had been assigned an aid code of "82," which required enrollment unless he could obtain an exemption. The aid code "82" is assigned to Medi-Cal recipients who are medically indigent. I.B. was not indigent because his countable income after deeming from his mother was significant enough to cause his SSI benefits to be stopped.

OCRA contacted the county's Medi-Cal eligibility worker assigned to I.B.'s case. The eligibility worker stated he requested income verification from the mother and she never complied, a claim I.B.'s mother firmly disputes. When the eligibility worker did not receive the requested information, he placed I.B. under an aid code "82" medically indigent status by default. OCRA explained that I.B. has been a DD Waiver client for many years and the DD Waiver aid code assignment would have been more appropriate. OCRA faxed I.B.'s mother's paychecks and I.B.'s most recent DD Waiver recertification documentation to the eligibility worker, who placed I.B. under another aid code that, in Los Angeles County, confers voluntary enrollment status in managed care. Once the aid code for I.B.'s newly assigned program appeared in the computer system, DMC sent its position statement to OCRA rescinding mandatory enrollment for I.B. and requesting dismissal of the hearing. I.B. can continue to see his treating physician on a fee-for-service basis. Brian Capra, CRA, Meriah Harwood, Assistant CRA, Westside Regional Center.

**Appropriate Eligibility Assessment Ordered for IHSS.**

A.R., a minor, was found ineligible for IHSS. A.R.'s mother filed an appeal and requested a hearing. A.R.'s mother contacted OCRA for assistance. Because a hearing date had already been scheduled, time was of the essence. The CRA agreed to investigate and assess A.R.'s case. The CRA believed there was enough evidence to prevail at hearing and agreed to represent A.R. at his IHSS hearing.

At the hearing, OCRA argued that the county had not conducted an adequate assessment. The hearing officer agreed and ruled that the county must conduct an appropriate assessment. C. Noelle Ferdon, CRA, Far Northern Regional Center.

**CRIMINAL LAW**

**OCRA Advocates for Client Safety in Criminal Justice System.**

J.R. has had numerous interactions with the criminal justice system. She recently went to court for an arrest for hit and run and being drunk in public. J.R. was picked up on a bench warrant from another county because she missed a hearing. Neither the regional center nor her supported living staff (SLS) knew where she had been taken or what was going to happen. They were especially concerned because J.R. did not have her medication with her.

OCRA called several police departments and finally located the officer who transported J.R. to the county jail. OCRA went to the jail and met with J.R. and spoke with the nurse. Arrangements were made for the SLS staff to bring J.R.'s medication that evening or early the next morning. The nurse at the county jail agreed to facilitate an inter-county transfer of J.R. back to her catchment area.

The arrangements did not work. J.R. could not be located for many hours. She was riding around on the bus as jail personnel picked up other prisoners. OCRA reached the clerk at the facility where J.R. was later being held. OCRA was able to intervene with the jail and the regional center to prevent

J.R. from being released with no money and no medication. After much negotiating, J.R. was met at the jail by her staff and driven home.

OCRA continues to be involved with J.R.'s case by giving technical assistance to J.R., her public defender, the regional center and her SLS program. Katy Lusson, CRA, Golden Gate Regional Center.

### **Traffic Court Waives Fine.**

K.K. is a 27-year-old man with mild mental retardation. K.K. likes to ride his bike around his neighborhood and hang out with friends. One day, the Los Angeles Police Department cited K.K. for not having a license for his bicycle. He was not worried about the citation until he received a notice that the fine was \$147.00. This is nearly a quarter of his monthly income.

K.K. called his service coordinator, who in turn contacted OCRA. OCRA researched the issued and discovered that all bicycles in Los Angeles City must be licensed. The licenses can be obtained for a nominal fee at police departments and bike shops. OCRA also discovered that the municipal code is rarely enforced.

K.K., with the help of his SLS, obtained the requisite license and attended traffic court. K.K.'s service coordinator used arguments prepared by the CRA and the judge treated the citation as a "fix it" ticket waiving the \$147.00 fine. Katie Casada Hornberger, CRA, Harbor Regional Center.

## **HEALTH**

### **OCRA Advocates for Medication Change for Client.**

J.R. is 50-years-old and diagnosed with mild mental retardation and psychiatric disabilities. J.R. called OCRA and expressed concern that his anti-anxiety medication was harming his liver. The CRA attended a meeting with J.R. and his psychiatrist at which J.R.'s concerns were related. Although the psychiatrist assured J.R. that the medication in question was not harmful, the psychiatrist agreed to prescribe a different medication that could not affect J.R.'s liver. Arthur Lipscomb, CRA, Gloria Torres, Assistant CRA. San Andreas Regional Center.

### **OCRA Assists in Having Pharmacist Sanctioned.**

A.O.'s mother, notified by the school that A.O. had had a seizure and vomited, discovered that the incident was due to A.O.'s pharmacist providing twice the prescribed dose of Tegretol, an anti-convulsive medication. The CRA helped A.O.'s mother file a complaint with the California State Board of Pharmacy, resulting in the pharmacist being cited and fined. A.O.'s mother was pleased, knowing that this action decreased the chance that someone else would be harmed by a similar mistake in the future. Lynne Page, CRA, Redwood Coast Regional Center.

## **HOUSING**

### **Eviction Prevented.**

M.P., who is a regional center consumer, his brother, and mother were due to be evicted from their apartment. The mother alleged that the apartment complex wanted to evict her because she requested a downstairs apartment for M.P. She requested the downstairs apartment as a reasonable accommodation due to her son's disability; he had tried to climb out of the upstairs patio. Mother had a letter from M.P.'s doctor verifying the need for the accommodation. His mother tried to pay the rent but the apartment complex would not accept the money. The CRA represented at a court trial for unlawful detainer. The opposing counsel requested time to file a brief. The CRA filed a brief in response and successfully argued that the 3-day notice was invalid because it overstated the amount due. The judge ruled in M.P.'s family's favor. Enid Perez, CRA, Central Alley Regional Center.

### **OCRA and Regional Center Join Forces.**

N.E., a 19-year-old with mental retardation was homeless. She contacted OCRA asking for help with issues concerning her SSI benefits and housing. The CRA attended an IPP meeting with N.E. at which the service coordinator agreed to help N.E. reapply for SSI and also found emergency housing in an adult residential facility. Arthur Lipscomb, CRA, Gloria Torres, Assistant CRA, San Andreas Regional Center.

**OCRA Helps Client Move to a New Apartment.**

D.M. received a 30-day notice to quit from her apartment management. The CRA contacted D.M.'s service coordinator, with whom she worked to make the transition less traumatic for the client. With the assistance of the CRA, the regional center funded movers and a U-Haul truck, a transporter for client and an Independent Living Skills worker to set up D.M.'s utilities in her new apartment. Veronica Cervantes, CRA, Beatriz Reyes, Assistant CRA, Inland Regional Center.

**OCRA Assists Consumer with Move from Abusive Home.**

J.P. lived in a care home for over eleven years. OCRA was contacted regarding the living situation at the care home,. There were allegations that J.P. had been physically abused. OCRA immediately met with J.P. at his day program. Following the meeting, OCRA contacted the regional center on behalf of J.P. He was moved from the home the following day.

The care home has been under investigation and criminal charges have been filed against the owner regarding another consumer. Yulahlia Hernandez, CRA, Cristina Bravo Olmo, Assistant CRA, North Bay Regional Center.

**PERSONAL AUTONOMY**

**OCRA Assists Consumer in Expressing Personal Choice.**

G.E. is an elderly unconserved gentleman. G.E. became ill and had to be hospitalized. During the hospitalization, G.E.'s family decided that he should not return to his previous care home. The family did not get along well with the provider and felt that G.E. could receive better care in a Skilled Nursing Facility (SNF). G.E. had lived in the care home for over five years and he was happy there. The decision to move G.E. to a SNF was made without his input.

OCRA was contacted to determine whether G.E. wanted to continue to reside in his former care home. OCRA went to visit G.E. in the hospital and spent several hours discussing the situation with G.E. Once G.E. made his

decision, OCRA informed the family. G.E. is now back at the care home. Yulahlia Hernandez, CRA, Cristina Bravo Olmo, Assistant CRA, North Bay Regional Center.

### **Self-Advocacy Works!**

R.V. has attended the same day program for many years. He lives with his mother and sister who have disabilities. When R.V. broke his foot, he could not attend his day program for several months. When R.V.'s doctor and physical therapist finally cleared him to return to his day program, his sister said that he could not attend his day program anymore.

The day program staff went to see R.V. at home. He said he wanted to attend the program. He also said that he was not getting enough to eat. A report was filed with adult protective services and OCRA was called. After much negotiating with the family, R.V.'s sister said R.V. could attend the day program one day per week. This was not what R.V. wanted.

OCRA went to the day program to meet with R.V., the day program staff, and his regional center case manager. R.V. was very clear that he wanted to be at the program four days per week and requested assistance. OCRA agreed to speak with R.V.'s sister. R.V. was very happy when he left the meeting that his wishes were going to be heard and expressed to his sister.

The next day, OCRA received a call from the day program. R.V. had shown up at the day program without any further intervention by OCRA. R.V. had advocated for himself with his sister. He was very proud that he had accomplished his goal and to be at his day program. Katy Lusson, CRA, Golden Gate Regional Center.

### **OCRA Assists Client in Accessing a Blocked Account to Purchase an Adaptable Vehicle.**

R.R. is a non-ambulatory adult woman who lives with her elderly parents. Several years ago, R.R. was involved in an accident when being transported from her day program. R.R.'s family settled a lawsuit and an award of approximately \$7,000 was put into a Minor's Account for R.R., even though R.R. was not a minor. The court ordered the funds into this blocked account that could only be accessed through a court-approved petition.

Over the years, R.R.'s family has tried to get a disbursement from the account to pay for repairs to the family's sole vehicle, which is used daily to transport R.R. to and from her day program. While the Probate Department of Superior Court, which administers Minor's Accounts, has granted small disbursements for R.R.'s wheelchair repairs, each time it has denied the family's petitions for transportation expenses, stating the family's transportation needs are not R.R.'s responsibility. Because the family could not get repair funding for its previous vehicle, the family was forced to purchase an old truck that has proven difficult to transport R.R.

In the last two years, R.R.'s father's own physical health began to decline and he started experiencing significant difficulties in lifting R.R. and her wheelchair in and out of the truck on a daily basis. The father reports that on several occasions he has nearly dropped R.R. while trying to place her in the truck. Given the risks, the father has minimized taking R.R. out in the community, which is something that R.R. greatly enjoys.

OCRA reviewed R.R.'s regional center file and discovered that she was a participant in the DD Waiver program. The DD Waiver provides funding for lifting equipment for vehicles capable of adaptation as a means to help keep its participants in the community and avoid institutional placement. OCRA advised the family to obtain a physical therapist assessment from Westside Regional Center and to request that R.R.'s individual program plan (IPP) be amended to include the need for an accessible vehicle, as prerequisites for DD Waiver funding.

OCRA wrote an opinion letter that was submitted along with a petition requesting a complete disbursement of the Minor's Account. OCRA attached documents verifying the limited income and resources of the family, a doctor's statement describing the declining physical health of R.R.'s father, R.R.'s current DD Waiver beneficiary status, vehicle adaptation funding information through the DD Waiver, the physical therapist assessment report substantiating R.R.'s and her father's physical limitations, R.R.'s revised IPP identifying R.R.'s transportation needs, and case notes reflecting WRC's efforts to obtain vehicle adaptation funding. The letter opined that a refusal from the Probate Department to disburse the remaining funds from R.R.'s account would violate the principles of the Americans with Disabilities Act, as set forth in the United States Supreme Court's Olmstead decision.

After receiving verification of R.R.'s father's current auto insurance and good driver standing through the Department of Motor Vehicles, and a non-binding quote from an auto dealer, the court permitted the bank to release the remaining funds. Brian Capra, CRA, Meriah Harwood, Assistant CRA, Westside Regional Center.

**OCRA Assists Client in Claiming Property from the State Controller.**

P.C. is an adult consumer who, for many years, lived independently with the assistance of independent living services (ILS). One of the skills P.C. was learning years ago was banking. The ILS instructor working with P.C. during this time had P.C. open a checking account so that he could learn how to deposit money and write checks to pay for his living expenses. P.C. receives SSI and, at one time, required a representative payee to ensure that he handled his benefit payments accurately. P.C. established a joint checking account with the ILS instructor, who also served as P.C.'s SSI representative payee. The ILS instructor stopped working for P.C. and her whereabouts are unknown.

The last activity on the bank account occurred in March, 1997. The dormant account was referred to the State Controller's Bureau of Unclaimed Property in October, 2000. In March, 2003, the State Controller paid only one-half of the account to P.C., after he filed a claim for the entire amount. Despite P.C. and his current ILS instructor's repeated efforts, the State Controller would not disburse the account's balance in full, maintaining that the remaining balance belonged to the former ILS instructor, as the additional owner. The State Controller sent P.C. notice in February, 2005, stating that in order for P.C. to receive the unpaid money, he needed to obtain from the former ILS instructor a completed and signed affirmation form, a copy of her photo ID, and documentation verifying her Social Security number. P.C.'s current ILS worker contacted OCRA for assistance.

OCRA contacted the State Controller evaluator assigned to P.C.'s claim. OCRA reminded the evaluator of the State Controller's published policy as posted on its website for claims of property jointly held, which allows for payment of the entire amount to whomever files a claim when the property is listed as "and/or." With P.C.'s consent, OCRA explained why the account was established in that way to begin with and that it would be impossible for P.C. to satisfy the State Controller's current claim requirements because the additional owner's whereabouts are unknown. The evaluator requested

documentation verifying the former ILS worker's employment for P.C. to complete the claim. OCRA had P.C.'s service coordinator write a letter in response to the evaluator's request. Shortly thereafter, P.C. received the rest of his money. Brian Capra, CRA, Westside Regional Center.

## **REGIONAL CENTER**

### **OCRA Assists Family in Receiving Out-of-Pocket Expenses from Regional Center.**

Y.P. is a youngster who was moved from her family home into a residential setting. There was a two-month period when Y.P. first moved in which SSI paid the rate they had been paying while she was at home. Then Y.P.'s father began paying the difference to the residential placement out of his own money.

Following an unsuccessful SSI appeal, OCRA contacted the regional center. The regional center was sent all of the paperwork from the SSA. It was argued that since the appeal had been denied, the regional center should pay father for the out-of-pocket expenses he had incurred. After meeting with the regional center, the father and OCRA received a call from the regional center agreeing to pay for the out-of-pocket expenses. Katy Lusson, CRA, Golden Gate Regional Center.

### **OCRA Representation Secures 5<sup>th</sup> Category Eligibility.**

P.S., a near life-long foster care child, could no longer rely on his elderly foster care parents to care for him following his high school graduation. With the help of an agency that provided independent living training for former foster care children, P.S. applied for regional center services. Following the regional center's denial of eligibility, the agency's director asked OCRA to represent P.S. at hearing.

OCRA's neuropsychologist assessed P.S., concluding that his disability would prevent him from functioning in various areas of self-care and recommending that P.S. should be considered for 5<sup>th</sup> category regional center eligibility. The agency director, meanwhile, helped P.S. to qualify for SSI and IHSS. The combination of the neuropsychologist's clinical findings

and the personal experience testimony of the IHSS workers persuaded the administrative law judge (ALJ) that P.S. needed regional center support to function in the community. The ALJ found PS eligible under the fifth category. Matt Pope, CRA, Eastern Los Angeles Regional Center.

**J.S. Will Receive In-Home Behavioral Services from the Regional Center.**

J.S.'s mother contacted OCRA for assistance in obtaining behavioral services for her son. The CRA attended an IPP meeting and negotiated with the regional center for in-home applied behavioral analysis (ABA) services to be provided to J.S., and helped develop a comprehensive IPP to address all of J.S.'s service needs, including summer programs and transportation. Emma Hambright, CRA, Lanterman Regional Center.

**Regional Center Allows a Family Member to Provide Respite.**

C.K.'s father called OCRA on behalf of C.K., a 36-year-old diagnosed with mental retardation. C.K.'s father explained that he and his wife, who are C.K.'s caregivers, were planning a 3-week trip and had been granted respite for someone to care for C.K. in the parents' absence. While C.K. wanted his older sister to provide the temporary care, because C.K. was close to the sister, the regional center required that one of its vendors provide the service.

OCRA explained the law and appeal procedures, and sent the family informational publications. Shortly thereafter, C.K.'s father reported that the regional center authorized C.K.'s sister to provide the respite. Bernadette Bautista, CRA, Alba Gomez, Assistant CRA, San Diego Regional Center.

**W.T. Is Found Eligible For Regional Center Services.**

W.T. is a 21-year old recently diagnosed with autism, who was denied eligibility for regional center services. OCRA agreed to represent W.T. at an administrative hearing. The regional center argued that W.T. did not qualify for services because W.T. had a solely psychiatric disorder.

OCRA obtained a psychological evaluation by the Autism Diagnostic Clinic at UCLA. OCRA also obtained a speech and language evaluation from UCLA. One day prior to the hearing, the regional center agreed to settle the case and find W.T. eligible for regional center services based on autism.

Katherine Mottarella, CRA, Jacqueline Phan, Assistant CRA, Tri-Counties Regional Center.

**A.A. Gets More Services.**

A.A. is a dually diagnosed client of the regional center. A.A.'s mother wanted additional in-home services for A.A. because of his increase in behaviors. A.A.'s mother wanted A.A.'s respite worker to provide more respite care because A.A. responded well to him. A.A.'s mother requested additional respite hours. The regional center would not agree to this. A.A.'s mother wanted to keep A.A. in the home and not place him out of the home.

A.A.'s mother contacted OCRA for assistance. OCRA agreed to attend an IPP meeting with A.A.'s mother. At the IPP meeting, the regional center agreed to provide in-home behavior support services, additional day care hours, and additional respite hours. The regional center also agreed to assist A.A.'s mother in obtaining services from county mental health. Maria Bryant, CRA, Jacqueline Gallegos, Assistant CRA, Alta California Regional Center.

**Consumer to Move into His Own Apartment.**

D.D. has been living in group homes since he left his parents' home several years ago. He had a series of failed placements because of behavior problems associated with his autism. D.D.'s latest placement was in a Level 3 group home. It has been the longest stay he has achieved in several years. He has formed a strong and positive relationship with the group home owner and some of the staff. However, D.D. recently received a 30-day discharge notice because of problem behaviors. The staff at the group home felt they could not appropriately meet his needs with the level of funding the home was receiving. As a result of the 30-day notice, the regional center felt that D.D. required a Level 4 group home where D.D. would have more intensive behavior intervention services and increased staffing.

D.D. and his mother contacted OCRA for assistance because they did not want D.D. moved to a more restrictive setting. D.D. and his mother felt that being with other consumers with severe behavior problems might lead D.D. to mimic and adopt even worse behavior. Instead, D.D. wanted the regional center to supplement the rate paid to his existing provider, so that the home could fund the additional staffing and behavior specialist services that might help improve D.D.'s behavior. The regional center refused the client's

request and searched for Level 4 group homes to which D.D. might be transferred.

OCRA met with D.D., his family, and his existing provider and reviewed his records. OCRA suggested that D.D. might be better served in a supported living setting. OCRA helped D.D. make the written request for supported living services and worked with the group home provider to draft a preliminary supported living services plan to present at an IPP meeting. OCRA represented D.D. at his IPP meeting. After hearing D.D.'s proposed plan, the regional center agreed that placement in a restrictive, Level 4 home was not appropriate and approved his move into supported living. D.D. will be able to move into his own apartment with live-in staff and supplemental behavior services within a couple of months. Eva Casas-Sarmiento, CRA, Jacqueline Miller, Interim CRA, Lupe Moriel, Assistant CRA, Regional Center of Orange County.

**Regional Center Issues Bus Pass for Medical Appointments.**

M.P.'s ILS worker called OCRA on behalf of M.P, a 46-year-old man diagnosed with mental retardation. The regional center denied M.P.'s request for a bus pass that he needed to get to his medical appointments. The regional center relied on its internal purchase-of-service policy which allows a bus pass only when a consumer's need falls under one of these categories: "for work; to attend a day/work program and/or to attend school or college."

OCRA explained to M.P. that the purchase-of-service policies were not law and advised him of the appeal procedures and applicable Lanterman Act law. A few weeks later, M.P. called OCRA and said that the regional center granted him the bus pass for his medical visits. Bernadette Bautista, CRA, Alba Gomez, Assistant CRA, San Diego Regional Center.

**Regional Center Ordered to Fund Dance Instruction.**

X.B. became a regional center consumer in November, 2003, due to a "fifth category" developmental disability. X.B. has a history of hydrocephalus, non-verbal learning disorder, borderline diabetes, and scoliosis. X.B.'s dream is to become a professional dancer and teach dance to children with disabilities.

In April, 2002, claimant enrolled in dance classes at the Lula Washington Dance Center. Due to difficulties she had in the classes, her instructor

recommended that X.B. receive one-on-one private lessons so that she could attain the proficiency she needed to keep pace with the students in the group session. X.B. continued one-on-one private dance classes until her mother could no longer afford to pay for the lessons. X.B.'s mother exhausted additional generic resources prior to her request for funding from the regional center.

X.B.'s annual IPP was held in September, 2004. Her stated hopes and dreams involved continuing her dance lessons, attending college after graduating from high school, and becoming a dance teacher. Her IPP also identified how dance benefits X.B. in many areas, including self-esteem, mental outlook, socialization, physical well-being, coordination, spinal alignment, and motor planning processing. X.B.'s mother again requested funding from the regional center for private lessons to assist X.B. to achieve her IPP goals.

In response to X.B.'s mother's request for "dance therapy," the regional center consulted with an occupational therapist. The interdisciplinary (ID) team assumed that the medical condition it was to address was X.B.'s scoliosis. Based on this assumption, the ID team concluded that "dance is not equivalent to or a substitute for a specific physician prescribed medical intervention for scoliosis." In November, 2004, the regional center sent a letter denying this funding request stating; "dance therapy" was outside its purchase guidelines, the therapy would not address the needs or problems associated with the claimant's developmental disability, parents are expected to fund the cost of social/recreational activities and dance therapy is considered a form of recreation. X.B.'s mother filed for a fair hearing and contacted OCRA for assistance.

OCRA staff agreed to provide information on the fair hearing process and to assist X.B.'s parent to prepare for the hearing.

X.B. was represented by her mother at a fair hearing on March 3, 2005. X.B. testified on her own behalf and the ALJ identified her as "a delightful, sincere, and motivated adolescent who has her sights set on a future objective that involves dancing." The ALJ concluded that the regional center's assessment of dance "therapy" as a therapeutic modality for X.B. was not complete in that it addressed her underlying medical condition, scoliosis, but did not address her specific developmental disability. The ALJ ordered that the regional center fund a comprehensive re-assessment of X.B.

within 60 days and hold an interdisciplinary team meeting at the earliest possible date after the re-assessment for the purpose of determining if X.B.'s IPP should be revised to include dance therapy services and supports.

The regional center requested an informal meeting with X.B., her parent/representative and regional center staff. In April, 2005, the regional center agreed to fund X.B.'s private dance lessons at \$70 per week without re-assessment. Christine Armand, Associate CRA, for Anastasia Bacigalupo, CRA, South Central Los Angeles Regional Center.

**Regional Center Grants Supported Living Services.**

J.B.'s mother called OCRA and complained that the regional center, after delaying an assessment for ILS for one year, denied the program because it was too expensive. J.B., a 46-year-old man diagnosed with mental retardation, had been in an adult residential facility from which he was removed due to issues with the facility. J.B.'s mother explained that he had missed the deadline to appeal the regional center's decision.

OCRA investigated and advised J.B.'s mother to call the regional center and request an extension of the appeal deadline. OCRA provided technical assistance, explained appeal procedures and applicable law, and sent informational publications. Following B.J.'s filing for due process, his mother called OCRA to report that the regional center's designee granted the Supported Living Program at the informal meeting that preceded the due process hearing. Bernadette Bautista, CRA, Alba Gomez, Assistant CRA, San Diego Regional Center.

**Client Obtains Increased Level of Care.**

A county social worker called OCRA for assistance with an Adoption Assistant Program (AAP) case regarding C.F. Although C.F. had been released from the hospital into a level IV-I placement, the regional center assessed him at a level II for AAP purposes. Because county counsel was representing C.F. at hearing, the CRA explained the criteria necessary to meet the various service levels and provided PAI's AAP packet and a sample brief, which explained how to determine the level of care at which consumers should be placed into the community. Before the hearing, the regional center increased C.F.'s level of care to IV. Veronica Cervantes, CRA, Beatriz Reyes, Assistant CRA, Inland Regional Center.

## **SPECIAL EDUCATION**

### **A.R. Gets a New Teacher and Improved DIS Services.**

A.R.'s mother contacted OCRA for assistance in developing a comprehensive IEP for her daughter with Los Angeles Unified School District. A.R.'s mother is a monolingual Spanish-speaker who felt that the school employees were excluding her from participating in the educational process including the development of the IEP. The CRA attended the IEP meeting and ask to exclude the general education teacher from the meeting after she informed A.R.'s mother that she was unable to ask questions at the IEP meeting because it would delay the process due to the need for translation.

After excluding the general education teacher and replacing her with the principal, the IEP team, including A.R.'s mother, was able to work as a team to develop the IEP. The team agreed on A.R.'s service needs, including the school's agreement to fund a functional behavioral assessment. Emma Hambright, CRA, Lanterman Regional Center.

### **Special Education Dispute Settled Through a Compliance Complaint.**

A.S was left at a bowling alley during a school class field trip. A.S's mother requested a copy of the school's incident report. The school informed A.S's mother that it did not have to provide the incident report, citing that the requested document was protected by the attorney-client privilege.

A.S's mother contacted OCRA. The CRA filed a compliance complaint on behalf of A.S., arguing that the school was out of compliance with an education law giving parents access to their children's educational records. The State Department of Education agreed to investigate and concluded that the incident report is a student record and should be provided. C. Noelle Ferdon, CRA, Far Northern Regional Center.

### **School District Reverses Decisions Following OCRA Intervention.**

While Q.C. and his family were traveling in another country, the school district held an IEP. The district decided that Q.C. should attend school

three days per week instead of five and that his occupational therapy (OT) hours should be reduced.

OCRA intervened. OCRA was successful in asserting that Q.C. was entitled to a five-day educational program despite the district's assertions that the three-day program was less restrictive. In addition, OCRA successfully argued that Q.C. was entitled to three 30-minute individual sessions of O.T. per week, as well as collaborative time with the teacher during the summer. The IEP team will reconvene in the fall to discuss Q.C.'s ongoing need for O.T. Katy Lusson, CRA, Golden Gate Regional Center.

### **Full Inclusion for B.G.**

OCRA was contacted by B.G.'s parents when the school told the parents that it did not feel full inclusion was a good idea for B.G., due to his low IQ score. B.G.'s parents felt that B.G.'s IQ score was not reflective of his abilities but rather, a result of the effects of his autism. B.G.'s parents also wanted B.G. to repeat first grade because the parents felt that B.G. could be working at grade level if he was allowed to repeat a grade. The school did not agree with the parents and wanted B.G. to go to a second grade SDC class. The parents felt that if B.G. was fully included in the regular first grade classroom with 1:1 aide support, B.G. would be successful.

The Associate CRA attended several IEP meetings on behalf of B.G. The school agreed to place B.G. in the regular first grade classroom with a 1:1 aide. B.G. has made great progress and is doing much better academically. Lorie Atamian, Associate Clients' Rights Advocate, Far Northern Regional Center.

### **OCRA Helps Parent Successfully Mediate a Settlement after School District Filed for Due Process.**

B.T.'s father disagreed with the special education services proposed by Panama-Buena Vista Union School District. The district did not offer a trained 1:1 aide and failed to provide a program that was designed to meet B.T.'s unique needs. B.T.'s father declined to sign the IEP. The district filed for due process and asserted it was providing a free appropriate public education. B.T.'s father filed a motion for continuance and informed the district that he was seeking legal counsel. OCRA provided B.T.'s father with technical assistance in preparation for mediation. B.T.'s father went to

mediation and obtained a 1:1aide trained to work with people with autism. The district also agreed to review B.T.'s special education program in February, 2006, to see if it is meeting B.T.'s needs. Eulalio Castellanos, CRA, Kern Regional Center.

**OCRA Enforces Client's Right To Certificate of Completion.**

D.W., who is 18-years old and has autism, had a transition plan that provided a certificate-of-completion track and an extended post-secondary educational program. The school district unilaterally, and in violation of the IEP, transferred D.W. to a diploma track without either an IEP meeting or notice to the parents. The CRA, after attending an IEP meeting at which the district refused to reconsider its actions, filed for due process. At the resulting mediation, the district relented and reinstated the certificate track and post-secondary program.

In the same case, D.W. received a favorable decision on a compliance complaint alleging that the district violated state law by failing to convene an IEP within the legally required time period. Arthur Lipscomb, CRA, Gloria Torres, Assistant CRA, San Andreas Regional Center.

**OCRA Advocates for ABA Services for 5-Year-Old Client.**

The school district denied B.N., a 5-year-old child diagnosed with autism, applied behavior services (ABA), as recommended in a private assessment. The district argued that B.N. was performing adequately in his special day class. OCRA, in response to B.N.'s father's request for help, attended an IEP meeting at which the IEP team agreed to place B.N. in a special class for students with autism in which ABA services would be provided. Arthur Lipscomb, CRA, Gloria Torres, Assistant CRA, San Andreas Regional Center.

**School Agrees to Change in Placement.**

OCRA was contacted by the regional center service coordinator and M.G.'s mother regarding school placement. Both the regional center and M.G.'s mother believed that M.G.'s current educational placement was not appropriate. M.G. needed additional services and supports.

The CRA went over the IEP process with the service coordinator and M.G.'s mother. M.G.'s mother did not want to attend the IEP on her own. OCRA agreed to attend M.G.'s IEP. At the IEP, the school agreed to the placement that M.G.'s mother wanted for M.G. Maria Bryant, CRA, Jacqueline Gallegos, Assistant CRA, Alta California Regional Center.

**School Fails To Implement IEP.**

J.K., the son of recent Korean immigrants, is in the 8<sup>th</sup> grade and is diagnosed with autism. J.K.'s mother pointed out the discrepancy between J.K.'s IEP and what the school district was actually delivering. The discrepancy resulted in J.K.'s failure to achieve goals and objectives in the areas of reading, social skills, and speech. OCRA went to an IEP, at which it was agreed that the school district would commit to a written plan of tasks to finish the transition of J.K. into high school. The school also promised better communication and a "transparent" process in which J.K.'s mother would be invited to every meeting. Jim Stoepler, CRA, Redwood Coast Regional Center.

**A.D. Receives Appropriate Services to Transition to High School.**

A.D. is in mainstream classes and is an excellent student with a very high grade point average. A.D. wanted to attend the high school in his district with additional advanced placement courses and honors courses. He was accepted through the, "school of choice" program. At the initial IEP, A.D. was told that because he chose not to attend his home school, the school would not provide transportation. After negotiating with the district, A.D. was awarded home to school transportation.

A.D., like many students his age, is graduating from junior high school and is very nervous about attending high school. A.D. uses a wheelchair and requires assistance for many personal tasks. OCRA attended two IEP meetings with A.D. and his parents. At these meetings, OCRA was able to secure an aide to assist A.D. with note-taking, retrieving items from his back and side packs, toileting, and changing for physical education. The district also agreed to have the program specialist walk through A.D.'s classrooms prior to school starting, to ensure that the rooms were wheelchair accessible and that A.D. could readily participate in all of his courses. Katie Casada Hornberger, CRA, Harbor Regional Center.

**B.T.'s Mother Becomes a Confident and Prepared Advocate.**

B.T.'s mother was extremely nervous about his transition from Early Start to school district. B.T.'s mother was afraid of not knowing how to ask for services and being denied services by the district and unaware of many of the timelines and laws associated with the transition. B.T.'s mother called OCRA for assistance. The CRA met with B.T.'s mother and also assisted her by providing her with her rights, timelines, and tips for a successful transition to school services. The CRA helped B.T.'s mother put things into perspective and encouraged her to be an active participant at the IEP meeting.

B.T.'s mother reported back that her daughter's first IEP was a success and she felt prepared and confident requesting services. The mother also felt she was successful in getting the proper services and placement for her daughter. B.T.'s mother's has improved advocacy skills and she is now much more confident and outspoken regarding her son's needs. Aimee Delgado, CRA, Nadia Villafana, Assistant CRA, San Gabriel/Pomona Regional Center

**OUTREACH**

**OCRA Conducts SSI Presentation to Imperial County Parents and Regional Center Vendors.**

On April 20, 2005, OCRA conducted a Spanish presentation to 25 parents and vendors of regional center consumers in Imperial County. The presentations contained an "Introduction to OCRA" and "An Introduction to SSI". Topics ranged from the types of services OCRA provides to SSI Eligibility and Overpayments.

On May 26, 2005, OCRA again conducted another Spanish presentation in Imperial County. This presentation contained an "Introduction to OCRA" and "An Introduction to IHSS". Topics ranged from the types of services OCRA provides to IHSS eligibility and the new Plus Waiver Program. Bernadette Bautista, CRA, San Diego Regional Center.