



2014

The Independent

Law & Disability Issues Conference

Every year the Community Health Law Project presents a free conference on law and disability issues. The conference is sponsored by the New Jersey State Bar Foundation and the New Jersey Institute for Continuing Legal Education, with funding from the IOLTA Fund of the Bar of New Jersey. The most recent Law & Disability Issues Conference took place on May 1, 2014.

IN THIS ISSUE

Law & Disability Issues Conference 2014	1-2
We Would Like To Remember.....	2
Message from the Executive Director.....	3
27th Annual Ann Klein Advocate Awards	4
Cases and Issues of Interest.....	5-7

PLENARY SESSION: The Jersey Shore after Superstorm Sandy: An Effort to Assure Barrier-Free Access and to Rebuild for Accessible Design

What are the requirements, and is the reconstruction accessible? How can you help assure that entry to the beach, amusements, and commercial establishments at the shore are properly designed and constructed?



David Lazarus, Moderator

Moderated by David Lazarus, Esq., Director of Litigation, Community Health Law Project, this session was in three parts:

Training on Accessibility Requirements Ed Hoff, Ed Hoff Consulting, provides consultation on the accessibility of facilities and associated services regarding compliance with the New Jersey Barrier-Free Subcode, the Fair Housing Amendments Act of 1988, and the Americans with Disabilities Act.

Evaluating Accessible Construction and Reconstruction Thomas G. Dallessio, AICP/PP, Director, Center for Resilient Design, College of Architecture and Design, New Jersey Institute of Technology (NJIT), along with students and staff of NJIT inspect and evaluate sites and architectural plans to assess municipalities that are centers of entertainment, beach access and recreation for accessibility for persons with disabilities.

(Continued on Page 2)

(Continued from Page 1)

Law & Disability Issues Conference

Legal Aspects of Barrier-Free Accessibility and Construction Code Requirements Edward A. Kopelson, Esq., Law Office of Edward A. Kopelson, specializes in barrier-free access issues, and he is intimately familiar with design requirements, construction codes and state and federal agencies charged with assuring compliance.



*L-R: Thomas Dallessio,
Edward Kopelson, Ed Hoff,
and David Lazarus*

We Would Like To Remember... *Anne Wineland Thompson*

Anne began working for the CHLP in November, 1983, and that turned into a 22-year commitment. She rose from Staff Advocate to Supervising Advocate in our Mercer County office.

Anne was a forceful advocate for her clients and helped initiate the office's new programs which included working with people living with HIV and AIDS, and creating informational and educational brochures and posters about presumptive eligibility for Social Security benefits for persons living with disabilities.

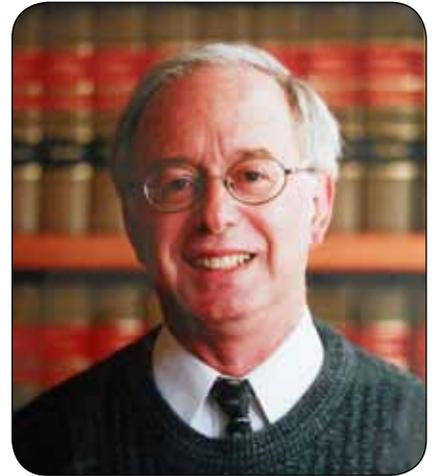
Anne left the Law Project in November, 2004, due to her long struggle with disabling pain from rheumatoid arthritis. She left us with very large shoes to fill.

Sadly, Anne passed away in February, 2014. She truly epitomized the heart and strength of the CHLP Advocate.



Message from the Executive Director

During the past fiscal year, the nation has continued its recovery from the Great Recession. However, in New Jersey we continue to struggle. Our lower income and middle income families have suffered the most during these hard times, especially those persons living with disabilities. Additionally, many of our New Jersey citizens who were affected by Superstorm Sandy two years ago, particularly those who were living in the state's nine storm designated disaster areas, are now facing more long-term issues beyond the past emergency crisis at storm time.



The CHLP is an important partner in the state's effort to assist New Jersey individuals and families still recovering from the storm. Our staff has provided counsel and assisted in helping these individuals and families to obtain the benefits available to them from federal and state programs. CHLP has also worked to enforce their rights in a variety of matters concerning their homes and housing, health coverage issues, and consumer conflicts with vendors and building contractors.

During this last fiscal year, the CHLP has helped many individuals and families with health care issues. Our To Your Health program assisted almost two hundred individuals who sought enrollment in health coverage under the Federal Affordable Care Act, while providing information and awareness of the law to hundreds more. Under the program we also provided advice and counsel, as well as representation to 66 individuals facing reductions, denials, and termination of home health services. These individuals are among the most vulnerable of our citizens who, despite severe disabilities and illness, are seeking to remain in their homes and communities. Our staff has been extremely successful in advocating for these clients, and the vast majority has had their possible loss of service reversed.

Therefore, even with great obstacles facing our staff and clients, over 4,900 individuals have been provided services resulting in significant successes this fiscal year. The CHLP remains an integral facet in New Jersey's safety net for its citizens in need, and has provided important legal and advocacy, counsel and representation to them in various kinds of civil legal matters.

Once again, I wish to give my heartfelt gratitude to our wonderful and supportive Board of Trustees and to our extremely capable and dedicated staff.

Sincerely,

A handwritten signature in black ink that reads "Harold B. Garwin". The signature is written in a cursive style.

HAROLD B. GARWIN
President/Executive Director

The 27th Annual Ann Klein Advocate Awards

On Thursday, October 23, 2014, the Community Health Law Project's annual awards dedicated to the memory of Ann Klein, former Commissioner of the Department of Human Services, were held at The Wilshire Grand in West Orange, NJ. CHLP's Chairperson, Richard Trenk, Esq., presided over the presentation of awards to six recipients who were nominated by their colleagues as individuals who have made extraordinary contributions to improving the lives of people with disabilities. The 27th Annual Ann Klein Advocate Awards honorees were:

Christopher C. Botta, Esq., *Mayor, Borough of Ramsey*

Vicky DeRosa, *Founder & CEO, VWell Health*

Rev. Robert F. Kaeding, *Executive Director & Founder, The Center in Asbury Park, Inc.*

MWW, *Public Relations/Public Affairs*

Krystal L. Odell, *Director of Supportive Services, Pennrose Management Company; President/CEO, PennReach*

Betty Redman, LPN, CPRP, *Manager, Learning Recovery Center of Wildwood, Collaborative Support Programs of New Jersey*

James Weisman, Esq., *The Mike Lione Accessibility Award*

We thank the following sponsors for support of the Ann Klein Advocate Awards and the important work of the Community Health Law Project:

Gold Sponsor:

Verizon

Silver Sponsors:

Columbia Bank; Johnson & Johnson Law Department; Trenk, DiPasquale, Della Fera & Sodono, P.C.

Bronze Sponsors:

Employers Association of New Jersey; Gibbons P.C.; McCarter & English, LLP; Mutual of America; Karen & Ken Rosen; Starr, Gern, Davison & Rubin, P.C.



L-R: Krystal Odell, Rev. Robert Kaeding, Betty Redman, Christopher Botta, Vicky DeRosa, and William Murray accepting for MWW



L-R: Harold Garwin and James Weisman

**The 28th Annual Ann Klein Advocate Awards will take place in
October, 2015, at The Wilshire Grand in West Orange.
If you would like to attend, please call Martha Prezuhy at CHLP, 973-275-1175.**

SUPERSTORM SANDY REPRESENTATION UPDATE

- FEMA has been actively pursuing recoupment of disaster relief funding that it claims recipients were not eligible to receive. Starting in October, 2014, about 1,200 debt repayment notices were mailed by FEMA. Staff have filed appeals of FEMA repayment notices on behalf of several clients, most of whom are elderly or disabled. In one case a client received FEMA transportation disaster assistance to repair his car that was substantially damaged by a falling tree. FEMA appears to have targeted the client for disaster relief because he is an SSI recipient who participated in a government sponsored discount car insurance program that is available to SSI recipients. With FEMA's approval, he had his car repaired. FEMA's share of the \$8,200 bill was about \$6,900. FEMA has since determined that it exceeded its payment limit and that \$2,500 must be returned. The appeal addresses the client's reasonable expectation based on FEMA's approvals, and FEMA's vagueness about the cause of the debt. Because of the client's financial circumstances, a request has been made for compromise or waiver of the debt. Other cases being appealed to FEMA involve recoupment of rental housing assistance, storage facility costs and claims for back rent for staying in FEMA temporary housing after the storm. The amounts being contested range from \$2,500 to \$24,000.

Staff has also filed complaints in Superior Court on behalf of clients who were victimized by storm repair contractors, an engineering firm, a power company and new home contractors. Several of these complaints have already resulted in favorable settlements. Staff has also won an arbitration award with the New Jersey Division of Consumer Affairs directing that our client's full deposit be returned with interest from the date of the award. Staff continue to counsel and represent clients with regard to the State's Superstorm Sandy Disaster Relief programs, especially the Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) program. Additionally, staff has developed expertise in appealing tax assessments for owners of Sandy damaged properties and has successfully appealed assessments in Monmouth and Bergen Counties.

- GH is a single mother of four. Her home was damaged in Superstorm Sandy. When she heard about the RREM and resettlement programs, she quickly applied in order to help restore her home and to get the \$10,000 resettlement grant. She did not anticipate having a problem with her application. However, she was denied for the two programs since she was deemed not to be the owner of the home at the time of the storm. Although she had lived in the home since 1998, the home was still deeded in the name of her grandfather, who had passed away many years ago. With the assistance of the Community Health Law Project (CHLP), she was able to work with a private attorney to re-title the home in the name of GH and her sister, to assist her sister in probating the estate in New Jersey, and to get approved for the resettlement and RREM programs. This allowed GH to continue with her recovery from Superstorm Sandy and work on rebuilding her life.

- We represented a number of Little Ferry residents in real estate tax appeals. All of their homes were significantly damaged by Superstorm Sandy. In order to successfully appeal, a homeowner must prove that the assessed value of the home is "unreasonable" compared to the home's fair market value. If the ratio of assessed value to true value exceeds the average ratio by 15 percent, the assessment is reduced to the "common level range". For our cases, the homeowners obtained the values of recently sold homes otherwise known as "comparable sales" or "comps". With this information, we successfully argued before the Bergen County Tax Board that the assessment of their homes exceeded the "common level range" which led to a reduction in taxes for these residents.

TO YOUR HEALTH

- AN is a 21 year-old client diagnosed with Down Syndrome, Autism, PTSD, sleep apnea, and Patent Ductus Arteriosus. He resides with his parents who are in their 60's and are his guardians. AN had been receiving personal care attendant (PCA) services from a home health agency through his Medicaid insurer for 20 hours per week, plus some additional care provided through the state. The health care insurer, through a new assessment, sought to reduce the amount of care from 20 hours per week to 16 hours per week. Petitioner appealed for a hearing with an

CASES AND ISSUES OF INTEREST (continued)

Administrative Law Judge (ALJ).

Hours provided for PCA services had been maintained at 20 hours per week until there was a resolution of the appeal. An appeal was made and initially a hearing with OAL was scheduled for November, 2014. Many records have been gathered and submitted to the ALJ including a certification by the treating physician supporting the medical necessity of the PCA services. While the standard assessment tool appeared to only support 16 to 17 hours per week of care, CHLP argued that the petitioner, because of his developmental and other disabilities, could be seen to fall within exceptions to the application of the standard assessment tool and that there could well be justification for providing even more hours than the 20 originally provided. CHLP argued that there were exceptions within N.J.A.C. 10:60-3.8 (c) (3) as he is severely functionally limited and requires care to meet activities of daily living (ADL) needs, both in the morning and afternoon/evening and that such placed him outside the normal maximum of hours of care. CHLP also argued other exceptions to the application of the standard assessment including that his parents were aging and sometimes ill and not always as able to participate in adequately providing care, also emphasizing the medical records which demonstrated petitioner's ability to ambulate but his complete unawareness of personal safety as he could easily walk into traffic. Efforts to settle/resolve the matter were not successful. But after a long period of time, the health care insurer reversed its decision to reduce hours of PCA services, concluding the case and enabling the client and family to receive the necessary care.

- A CHLP Senior Attorney represented a 9 year old girl with Spastic Quadriplegic Cerebral Palsy, blindness, seizures, and profound mental retardation. For the past six years, she had been receiving 14 hours per day of private duty nursing, meant to be used through the night. On days when school was closed, her mother was permitted to have the nurse come during the day and then provide care to her child through the night. This enabled her mother to work during the day to support the family. Recently, her managed care organization sent notice that it would be reducing the nursing hours to only 12 hours per day and that the hours could only be used between 6 p.m. and 6 a.m. Day time hours during non-school days would no longer be approved. CHLP filed an appeal and client remained in continued benefits pending the outcome of the appeal. However, only the hours remained the same. The managed care organization still refused authorization of the daytime hours during school holidays.

As Christmas break approached, it seemed that client's mother would have to choose between either taking time off from work, with a likelihood of losing her job, or leaving client with a non-medical professional during the day putting her at serious risk. After exhausting all other options, CHLP staff finally appealed to the managed care organization's attorney informally even though the case was not yet at the hearing level. Staff explained the immediate need and the serious implications if nursing could not be approved for daytime hours and included letters of medical necessity from two of client's doctors. Within twenty-four hours a call was received that, even though no decision had been made on the appeal, the client would be approved for daytime hours over her Christmas break. We are now continuing the underlying appeal as well.

- LD is an administrative assistant at the county prosecutor's office. She has a good job and her employer provides health insurance for her and her husband, but she pays extra for her adult child, MD, who just turned 30. Recently the cost of continuing to cover MD, who has had serious mental health issues and continues to receive much needed treatment for depression, has become unmanageable for LD. LD received Navigator materials from an event and contacted the CHLP soon thereafter. In a series of phone calls with the CHLP, LD noted that she had discussed with her daughter the possibility of her purchasing her own health insurance policy but that this discussion resulted in MD becoming very anxious over having to give up her therapy. MD made an appointment to speak with a CHLP Navigator about her situation. In a series of follow up conversations, staff were able to convince MD to just look at policies. Together they narrowed the list to two policies. Then MD made a list of the doctors she felt she needed to continue to see. We advised her to contact each provider to verify whether or not they would accept the policies that she was thinking of choosing. Despite being very skeptical about the outcome, MD was pleasantly surprised to find that all of her most crucial providers participated in the plan that she was most interested in.

CASES AND ISSUES OF INTEREST (continued)

MD was overjoyed with the fact that she could be independent of her parents and noted that this was an enormous step towards her getting better. She was also relieved that she would be able to continue her therapy with the hope that she might be able to become more independent in the next year if she continued to improve her outlook. Not only did MD's ability to find affordable insurance provide her with the treatment that she needed, it also gave her parents peace of mind. Her mother, LD, also expressed great relief in knowing that her daughter would be able to access the care she needed, without causing a strain on their financial situation, noting that the better MD becomes, the more likely she is going to be able to work full time and become increasingly self-sufficient.

CHILDREN AND YOUTH ADVOCACY

- CHLP represented a disabled 20 year-old at his SSA Office of Disability Adjudication and Review (ODAR) hearing. The claimant was classified for special education and had no past relevant work. He suffers from mental and physical impairments. His mental impairments include: borderline intelligence, attention deficit hyperactivity disorder, psychosis, and pervasive developmental disorder. His physical impairment consists of partial deafness (bilateral sensorineural hearing loss). The claimant's physical impairment compounds his mental impairments. He was treated with medications, speech and language therapy, counseling, and at one point, partial hospitalization. The Law Project sought and obtained additional medical records from the treating providers, educational records from school personnel, and a new psychological evaluation. In addition, we worked with school personnel to draft a statement in support of the individual's claim. Following the submission of the additional records, along with the testimony provided at the hearing, we received a favorable decision from the ALJ and the claimant now receives the benefits he so justly deserves.

- TA is a Department of Children and Families client who had received SSI benefits due to mental health problems and developmental disability. Social Security terminated his benefits after age 18 as they apply a different standard in determining disability for adults than children and alleged that he was no longer disabled. TA's mother appealed and requested a hearing with an ALJ. She did not request continued benefits as Social Security indicated that there would be responsibility for repayment of those benefits if the appeal were lost. CHLP represented TA and indicated to TA's mother that when there is a good faith appeal of a termination of benefits that even if the appeal is lost, any resulting overpayment can be waived upon a showing of good faith in the appeal of the termination.

Numerous times CHLP requested the Social Security district office to continue benefits while the appeal was pending. CHLP requested and supplied to the hearings office a great deal of documentation of TA's disability, including records of mental health hospitalizations, partial care records, records from a Criminal Justice Advocacy Program as TA had some problems with the criminal justice system. While TA had dropped out of school in the 11th grade, CHLP also obtained a teacher questionnaire from the last teacher he had which helped to show his disabilities. While TA had a history of significant problems with drug use, which can be a factor by which Social Security can deny benefits, the ALJ determined that TA was disabled despite his drug use due to independent problems with cognitive delays and mental health problems. TA's Social Security SSI benefits resumed.

HOUSING

- A CHLP Senior Attorney represented a client with mental illness who lives with her teenage son. The client has a Section 8 housing choice voucher to subsidize her rent payments. Without that voucher, she could not afford her housing. Two years ago, she entered into an overpayment-repayment agreement with the Department of Community Affairs. Unfortunately, she fell behind and was notified that her housing subsidy was being terminated. CHLP subsequently negotiated with the agency for the client, who was granted an opportunity to develop an alternate repayment plan. Because of the severity of the client's impairments, CHLP agreed to collect her payments and send them to the State of New Jersey on her behalf. With this assistance, the remaining balance was paid in full and the housing was preserved for the client and her child.

The Independent

A publication of the
Community Health Law Project

COMMUNITY HEALTH LAW PROJECT

185 Valley Street
South Orange, New Jersey 07079

NON-PROFIT ORG. U.S. POSTAGE PAID UNION, NJ PERMIT NO. 19

Community Health Law Project

www.chlp.org

North Jersey

650 Bloomfield Avenue, Suite 210
Bloomfield, NJ 07003
973.680.5599
FAX: 973.680.1488
TTY: 973.680.1116
E-mail: Bloomfield@chlp.org

131 Main Street, Suite 120
Hackensack, NJ 07601
201.996.9100
FAX: 201.996.9422

East Jersey

65 Jefferson Avenue, Suite 402
Elizabeth, NJ 07201
908.355.8282
FAX: 908.355.3724
TTY: 908.355.3369
E-mail: Elizabeth@chlp.org

35 Journal Square, Suite 827
Jersey City, NJ 07306
201.963.6295
FAX: 201.239.6365

1 Main Street, Suite 413
Eatontown, NJ 07724
732.380.1012
FAX: 732.380.1015
E-mail: Eatontown@chlp.org

44 Washington Street, Suite 2C
Toms River, NJ 08753
732.349.6714
FAX: 732.349.6935

Central Jersey

225 East State Street, Suite 5
Trenton, NJ 08608
609.392.5553
FAX/TTY: 609.392.5369
E-mail: Trenton@chlp.org

4 Commerce Place
Mt. Holly, NJ 08060
609.261.3453
FAX: 609.261.8596

South Jersey

Station House Office Building
900 Haddon Avenue, Suite 400
Collingswood, NJ 08108
Phone/TTY: 856.858.9500
FAX: 856.858.9545
E-mail: Collingswood@chlp.org

500 S. Pennsville-Auburn Road
Carneys Point, NJ 08069
856.858.9500

1701 New Road
Northfield, NJ 08225
856.858.9500

Administrative Office

185 Valley Street
South Orange, NJ 07079
973.275.1175
FAX: 973.275.5210
TTY: 973.275.1721
E-mail: chlpinfo@chlp.org