



The Independent

2015

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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 March 12, 2015.



*Pictured L-R:
Janet Sharma,
Jessica Limbacher,
Theresa McGrath,
Jerome Keelen,
Arnold Valentin,
Sue Marticek, and
Zachary Rynar*

Super Storm Sandy — Cases and Issues

This session discussed various cases and issues that have resulted from the devastation of Super Storm Sandy, which continues two years after the storm.

MODERATOR—Jerome Keelen, Esq., Attorney, CHLP

PANEL—Jessica Limbacher, Esq., Staff Attorney, Volunteer Lawyers for Justice; **Sue Marticek**, Executive Director, Ocean County Long Term Recovery Group; **Zachary A. Rynar, Esq.**, Advisor to US Senator Bob Menendez; **Janet Sharma**, CEO, Volunteer Center of Bergen County and Chair, Bergen County Long Term Recovery Committee; **Arnold Valentin, Jr.**, Assistant Program Director, Catholic Charities; **Theresa McGrath**, Disaster Case Manager, Catholic Charities

WORKSHOP 1—Managed Long-Term Services and Support: Care for the Chronically III This workshop discussed the issues involved in the consolidation of several Medicaid waivers into one program that provides medical and support services to the chronically ill living in the community.

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Law & Disability Issues Conference

MODERATOR—**Kimberly Salomon**, Senior Staff Advocate, CHLP

PANEL—**Lowell Arye**, Deputy Commissioner, New Jersey Department of Human Services; **Jennifer Langer Jacobs**, Vice President, LTSS Operations, Amerigroup New Jersey; **Susan Saidel, Esq.**, Senior Staff Attorney, Disability Rights New Jersey

WORKSHOP 2—Affordable Care Act and Medicaid Expansion: Second Year Status This workshop spoke of the current state of and efforts to enroll New Jersey residents in the marketplace and the new Medicaid Expansion Program under the Federal Affordable Care Act (ACA).

MODERATOR—**Laura Bagwell**, Supervising Advocate, CHLP

PANEL—**Thomas M. Bane**, LMSW, Centers for Medicare & Medicaid Services (CMS)/Consortium for Medicare Health Plan Operations (CMHPO); **Wardell Sanders, Esq.**, President, New Jersey Association of Health Plans; **Robin Stockton**, ACA Certified Navigator, Center for Family Services; **New Jersey Division of Medical Assistance and Health Services Invited**

WORKSHOP 3—Supportive Housing—Community Housing with Support for People with Disabilities: Current Issues and Next Steps This workshop presented some of the key components of supportive housing including capital funding, delivery of supportive services and the critical need for housing vouchers or other subsidies to enable those of very low income to access affordable housing units. The system's move to Medicaid fee for service, the recently established Department of Human Services' Office of Housing and the rules associated with these transitions were discussed from both a provider and state perspective.

MODERATOR—**Harold B. Garwin**, President/Executive Director, CHLP

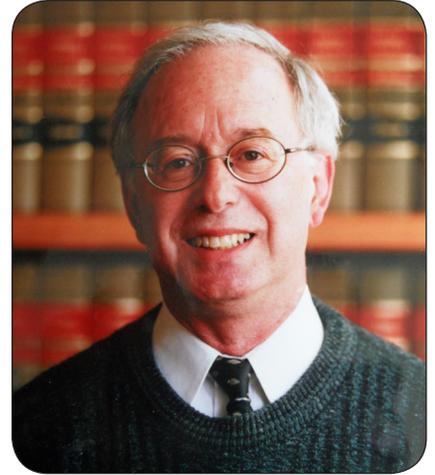
PANEL—**Valerie Mielke**, Assistant Director, New Jersey Division of Mental Health and Addiction Services; **Krystal L. Odell**, President/CEO, PennReach and Supportive Housing Association Board of Trustees; **Leslie Stivale, MA, CPRP**, Executive Director, Triple C Housing, Inc.



*Pictured L-R:
Kimberly Salomon, Lowell Arye,
Jennifer Langer Jacobs, and
Susan Saidel*

Message from the Executive Director

The past fiscal year has seen New Jersey's economic situation improve, but not to the degree that other states have. In fact, New Jersey has lagged behind its closest neighbors. The state has continued to suffer from loss of jobs, transit issues, an increasing number of people fell into the lowest income brackets, and the continuing loss of affordable housing. These losses are especially dire for our residents who live with substance abuse addictions, and disabilities, our seniors, and the many who are still recovering from Superstorm Sandy.



The Community Health Law Project (CHLP) has continued its important role - assisting New Jersey's most vulnerable residents. During this past year, we completed the majority of our efforts as a federally certified Navigator under the Affordable Care Act. We reached thousands of people, informing them about health insurance and how to enroll. Staff assisted hundreds of uninsured or under-insured individuals to enroll in the Federal Health Insurance Marketplace or in NJ Family Care, the state's Medicaid program.

Our attorneys and advocates have also provided information, counsel, and representation in a variety of matters to individuals and families still devastated by Sandy. Staff have helped to connect people to state and federal assistance programs, and helped to address housing issues such as tax reductions, mortgage foreclosure settlements, landlord disputes, and litigated matters related to contractor work or contracts.

We have continued our services to help persons living in the community who are receiving home health services including personal care assistance, private duty nursing, and durable medical supplies, and to help resolve issues concerning the amount of care received and continuation of care.

The above-mentioned efforts are only a small part of the overall activities of the CHLP. Over 4700 persons were served this fiscal year. Staff represented 2600 individuals in various civil legal matters including public benefits eligibility, family issues, housing, and consumer problems.

Our five regional offices and four satellite offices allow our staff to be accessible throughout the state and to serve our clients in their local area.

We are proud and pleased that the CHLP continues to be a valued, successful, and important part of the safety net. The Law Project's Board and staff remain dedicated to assuring that the rights and entitlements of New Jersey's residents living with disabilities have a strong voice acting on their behalf.

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 28th Annual Ann Klein Advocate Awards

On Thursday, October 22, 2015, 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, Diane Sugrue, Esq., presided over the presentation of awards to five recipients who were nominated by their colleagues as individuals who have made extraordinary contributions to improving the lives of people with disabilities. The 28th Annual Ann Klein Advocate Awards honorees were:

Kathy Collins, LCSW, Executive Director, MonmouthCares, Inc.

John V. Jacobi, Dorothea Dix Professor of Health Law & Policy, Seton Hall Law School

Denise J. Pipersburgh, Esq., Chiesa Shahinian & Giantomasi PC

Wardell Sanders, Esq., President, New Jersey Association of Health Plans

Janet Sharma, Chair, Hurricane Sandy Long-Term Recovery Committee; and

CEO (Retired), Volunteer Center of Bergen County

Jim Thebery, MA, CSW, The Mike Leone 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:

Award Sponsor: New Jersey Association of Health Plans

Gold Sponsor: Verizon

Silver Sponsors: Chiesa Shahinian & Giantomasi PC; Columbia Bank; Gibbons, P.C.; Johnson & Johnson Law Department; New Jersey Housing and Mortgage Finance Agency

Bronze Sponsors: Employers Association of New Jersey; Mutual of America; Nukk-Freeman & Cerra, P.C.; Starr, Gern, Davison & Rubin, P.C.; Trenk, DiPasquale, Della Fera & Sodono, P.C.



*Pictured L-R:
Melissa Salimbene accepting on behalf of
Denise Pipersburgh, Kathy Collins,
Janet Sharma, Wardell Sanders, Mike Leone
Accessibility Award Recipient Jim Thebery, and
John Jacobi*

**The 29th Annual Ann Klein Advocate Awards will take place on
Thursday, October, 27, 2016, at The Wilshire Grand in West Orange.
If you would like to attend, please call Martha Prezuhy at CHLP, 973-275-1175.**

TO YOUR HEALTH

- Private duty nursing services had been provided to client for a period and then were terminated by United Healthcare. Client has a continued need for skilled nursing care due to his complex medical history. He is an 11 year old male whom the Children’s Hospital of Philadelphia has followed since shortly after birth for a chromosome difference, inverted duplication and deletion of chromosome 8. This caused significant developmental delays, cognitive impairment, hypotonia, horseshoe kidney, hearing loss, poor weight gain, short stature, agenesis of the corpus callosum, and hip subluxation. He also has chronic ulcerative reflux, and obstructive and central sleep apnea. He is non-verbal and non-ambulatory. One of his doctors noted that without continued nursing care his health would be compromised. He required constant monitoring of oxygen saturation levels and repositioning the body at night. He is at risk for frequent hospitalizations. Skilled nurses also provide medications and treatments for ulcerative colitis and immune disorder.

CHLP filed a Stage 2 appeal with United Health Care (UHC), which was denied within about one day. CHLP requested a fair hearing, also enclosing six letters from physicians from Advocare Pediatrics and from the Children’s Hospital of Philadelphia supporting the continued need for home nursing care. CHLP also requested the continuation of services while the appeal was pending. Services continued. CHLP received many supportive records in response to its many requests to various departments of the Children’s Hospital of Philadelphia, treating physician, and even the Department of Children and Families. CHLP requested an independent appeal and evaluation through the New Jersey Department of Banking and Insurance. The reviewing agency, Permedion, made a decision to overturn the UHC decision, ordering that private duty nursing services continue at the same rate and gave UHC 10 days to respond as to how they will comply. UHC subsequently indicated that they would follow the order of NJ DOBI and services continued at an unreduced level. CHLP subsequently withdrew the request for the fair hearing. Private duty nursing services have since continued uninterrupted.

- CHLP assisted a client who had multiple sclerosis, diabetes, suffered a stroke and used a wheelchair. She came to us with her Medicaid benefits already terminated and she was becoming concerned about running out of medications. She had been separated from her husband and was living with her son, and when her care needs exceeded what her son could provide, she moved back with her husband. It was not a pleasant or ideal situation as they had a strained relationship, he was battling cancer, and she needed a lot of care, including bathing, transferring, dressing, etc.. It was then that she received the Medicaid termination due to her husband’s income. We assisted in getting her Medicaid active once again while we appealed the termination. It was apparent that client would benefit from Managed Long Term Services and Supports Medicaid, however, no one had discussed this option with her. After arranging with Medicaid for our client to apply, she was at first turned away by Medicaid and not allowed to apply, however, we pursued the matter at a hearing and worked out with the Medicaid worker to hand transfer the case to MLTSS and start the application process and that client’s Medicaid would continue. We assisted with providing financial documentation – which at one point the case was closed due to client’s lack of timely response to a request – and then shepherded case through the clinical assessment. At the time of closing, our client was found eligible for 40 hours of very necessary home care services under MLTSS, and she is getting a lift as well as a new wheelchair.

INITIATIVE INVOLVING BOARDING HOMES AND RESIDENTIAL HEALTHCARE FACILITIES

- The Community Health Law Project has been at the forefront in trying to ensure that the rights of individuals living in boarding homes (BH’s) and residential health care facilities (RHCF’s) are protected so that they are provided with safe and decent housing. Most recently, the Law Project along with the Mental Health Association in New Jersey, the Supportive Housing Association of New Jersey, and other members of the New Jersey Mental Health Coalition, are working on a critical initiative in trying to change the laws to give the residents of RHCF’s the same rights to due process in eviction matters as individuals living in BH’s. Residents of RHCF’s can currently be discharged on 30 days notice without judicial oversight which leaves them more vulnerable to ouster and potential homelessness. BH residents, on the other hand, can only be evicted through Court process with a right to present a defense before a judge. Since BH’s and RHCF’s are similar facilities providing similar services to residents, the Law Project and its partner agencies are working tirelessly to ensure that their rights to due process in eviction matters are also aligned.

SPECIAL EDUCATION

- Staff represented the parents of a high school student with multiple disabilities to negotiate a settlement agreement with her school district that will take her through age 21 and places her in a college program for students with disabilities. Our attorney also helped the client get approved for Supplemental Security Income benefits after an initial denial so that she would have income and Medicaid eligibility, which will allow her to continue to receive Division of Developmental Disabilities services as an adult. Lastly, the attorney executed a Durable Power of Attorney for this client so that her parents could continue to assist her when needed. It was tailored to her specific needs and the parents and client were in agreement, it avoided the need for a costly guardianship that was not necessary for this young lady.

HOUSING

- Ms. Q, age 57, suffers from post-traumatic stress disorder and bi-polar disorder, and lives with her four children. The New Jersey Department of Community Affairs (DCA) terminated Ms. Q's Section 8 housing voucher, alleging that she intentionally failed to report a \$29,000 lump sum child support payment. Ms. Q received this payment after her ex-husband got this money from a relative who won the lottery. Due to Ms. Q's extremely limited English proficiency and her disability, she did not immediately notify the Section 8 office of this payment. Without the Section 8 voucher, Ms. Q could not afford the apartment. After an informal hearing at the Section 8 office which upheld the termination of Section 8 benefits, CHLP requested a hearing at the Office of Administrative Law (OAL). We made several arguments. First, the lump sum child support payment was sporadic, and non-recurring and thus not "income". Further there was no intention by Ms. Q to purposely avoid reporting this back child support. Also before the informal hearing, we requested a reasonable accommodation based on Ms. Q's mental illness which prevented her from strictly following the complex regulations that govern the Section 8 program. Finally we argued that the DCA field office did not comply with rules and regulations pertaining to its procedure for advising tenants on reporting responsibilities when the tenant is not English speaking. Prior to the hearing going into its third day, DCA offered to settle the case by reinstating Ms. Q's Section 8 voucher. As a result, a client struggling with mental illness and homelessness is now on the road to being reunited with her four children in a new home.

SUPERSTORM SANDY

- CHLP attorneys have represented Superstorm Sandy victims in many types of cases, including contractor fraud, contract breach, appeal of grant denials, FEMA recoupment, landlord/tenant cases and property tax appeals, among other matters. Pleading the Consumer Fraud Act, together with counts for breach, unjust enrichment and negligence, CHLP has been able to get judgments and collect damages, including punitive damages, for many clients. Currently, CHLP is also assisting Sandy contractor fraud victims to concisely organize their complex and often voluminous files for consideration by appropriate authorities for prosecution.

In an interesting case, CHLP was able to overcome a finding by the Administrative Law Judge (ALJ) that our client was not eligible for the state's RREM (home rehabilitation grant) program based on the determination that the home she lived in since childhood still belonged to her mother's estate and that she was not the lawful heir. Homeownership is a requirement of the state's program. Rather than appealing that determination to the Appellate Division, CHLP filed a Verified Complaint with the Probate Court and got a Declaratory Judgment that our client had been the owner of her home since 1999. The state then deemed her eligible for its Sandy grant programs.

WELFARE EMERGENCY ASSISTANCE

- Staff represented a 95 year old client who is receiving SSI, Social Security Retirement and a small pension. She has been on the HAP Program and received a number of months of temporary rental assistance. She is one of the rare individuals who is receiving SSI and also on-going temporary rental assistance. Staff appealed a decision by the county to terminate her assistance. The matter was heard by an ALJ who reversed the county's termination of the client's emergency assistance. The judge stated that she has an application pending for senior housing and that at this time, a denial of the assistance extension would result in extreme hardship.

SOCIAL SECURITY

- The client is from another country and English is her second language. She came to us in November 2013. Her Social Security disability benefits had been terminated retroactively because the earnings from her part-time job had exceeded the income guidelines for substantial gainful activity. Social Security allows disabled beneficiaries to attempt to return to work. They are allowed a 9 month trial work period, after which they enter into what's called an Extended Period of Eligibility (EPE) which lasts for 36 months. As long as one's earnings do not exceed certain gross limits (\$1130 for 2016), a disabled beneficiary can continue to receive benefits and work.

Our client had exceeded the limit in an extra paycheck month, and her EPE had ended, so her benefits were terminated and she had an overpayment totaling \$13,184.00. We helped her get reinstated under Social Security's expedited reinstatement process and advised her regarding the rules of working and receiving benefits. We filed a waiver request asking that she not be required to pay back the overpayment because it wasn't her fault and she couldn't afford to repay it. In a hearing the judge agreed on the record that the rules are confusing enough for any reasonable person, let alone someone who has a psychiatric impairment and is not a native speaker of English. She is of course ecstatic that she won't have her check garnished to repay the overpayment.

EMERGENCY ASSISTANCE PROGRAM

- The Emergency Assistance (EA) program is a safety net program to help individuals with the most limited income, including people with disabilities, pay for housing for up to 12 months so that the recipients can look for viable, permanent alternatives. Unfortunately, the high cost of housing in New Jersey and the very low income of these individuals make that task nearly impossible. The state had responded to this by adopting a series of pilot projects to provide additional extended benefits for the most vulnerable people, including those with disabilities. While this system was not perfect, it was an essential protection that kept several thousand out of homelessness.

However, the most recent pilot programs (the "24-month Housing Assistance Program" and the "Housing Hardship Extension") ended last July. According to an article in The Star-Ledger, over 3,000 people were in jeopardy of losing their rental assistance as a result.

CHLP has been working diligently with other advocacy groups to persuade the State to rectify this. We have testified at public hearings and met with legislators and as well as the Commissioners of the Department of Human Services and the Department of Community Affairs. Currently, we are supporting a bill pending in the Legislature to eliminate fixed limits on the number of months available to individuals who are doing everything in their power to find affordable and accessible housing. We are hopeful that this will be enacted and become the law of the land.

FEE-FOR-SERVICE

The Community Health Law Project (CHLP) has initiated a Fee-for-Service (FFS) representation program for individuals with disabilities whose income exceeds CHLP's income guidelines to obtain free legal representation or for those individuals with disabilities for whom CHLP has no funding to provide free legal representation. Under the FFS program, CHLP bills its legal services on a sliding scale, from \$125 to \$175 per hour, depending on the client's income. Legal services are provided in such areas as special education, Social Security, special needs trusts, health insurer's denial of coverage or services, guardianships, expungements, name changes, wills, living wills, powers of attorney, fair housing and ADA issues, and certain other civil law matters.

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South Orange, New Jersey 07079

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North Jersey

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

East Jersey

65 Jefferson Avenue, Suite 402
Elizabeth, NJ 07201
908.355.8282
FAX: 908.355.3369
Email: Elizabeth@chlp.org

35 Journal Square, Suite 831
Jersey City, NJ 07306
201.963.6295
FAX: 201.239.6365

Shore Area

1 Main Street, Suite 413
Eatontown, NJ 07724
732.380.1012
FAX: 732.380.1015
Email: 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
Email: 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
Email: Collingswood@chlp.org

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
Email: chlpinfo@chlp.org