

# DISABILITY LAW NEWS

## Settlement Reached in Fleeing Felon Case

Fleeing felon issues continue to burden claimants and confound advocates. The SSI “fugitive felon” provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 42 U.S.C. §1382(e)(4)(A) & (B), were extended to the Title II program in 2004. 42 U.S.C. §402(x)(1)(A)(v). These provisions preclude individuals wanted in connection with the commission of felonies or violating terms of their parole or probation from receiving benefits. Consequently, numerous claimants have either been denied benefits because of an outstanding felony or probation/parole warrant, or have had their on-going benefits terminated.

Those individuals within the Second Circuit (residents of New York, Connecticut, and Vermont) found some relief from these draconian rules under the Court of Appeals decision in *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005). The Court ruled that an arrest warrant issued for failure to appear was not a sufficient basis for the Social Security Administration (SSA) to conclude that an individual was “fleeing to avoid prosecution.” See *Acquiescence Ruling (AR)* 06-1(2). Although advocates in the Second Circuit stopped - for the most part - seeing these cases post *Fowlkes*, suspensions and denials continued elsewhere.

Jerry McIntyre of the National Senior Citizen Law Center in Los Angeles, who along with others had litigated *Fowlkes*, filed a nation-wide class action seeking similar relief for the rest of the country. A settlement has been reached in *Martinez, et al v. Astrue*. Under the settlement, the Social Security Administration (SSA) will suspend or deny Title II and Title VIII benefits or Title XVI payments, or prohibit an individual from serving as a representative payee *only if* the individual’s outstanding felony warrant was issued for one of the following three offenses: Escape (offense code 4901), Flight to Avoid prosecution, confinement, etc. (offense code 4902), and Flight-Escape (offense code 4999). These National Crime Information Center (NCIC) Uniform Offense Classification Codes - along with hundreds of others - are found at <http://tinyurl.com/qzjvx2>. Attorneys for the plaintiffs in *Martinez* anticipate that very few people will fall into these three categories.

SSA has already issued an Emergency Message implementing the *Martinez* settlement. EM-09025 can be found at <http://tinyurl.com/dy9914>. Note that the EM specifically supersedes the *Fowlkes* AR 06-1(2).

What does this mean for individuals in New York, Connecticut and Ver-

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## No 2010 COLA Planned



And we are not talking about the tax on sugary soft drinks proposed by New York Governor Paterson as a method for closing the State's budget gap. We are talking about

that sacred cow, annual cost of living adjustments (COLA) in the Social Security programs linked historically to increases in the Consumer Price Index (CPI). The problem is, the CPI has been going down, not up, and this decrease will affect COLAs in government programs in 2010, and probably in 2011 as well.

Federal law stipulates that most Social Security beneficiaries cannot have their Medicare Part B premiums increase by more than the dollar amount of the cost-of-

-living increase in their Social Security checks. As a result, about 75% of beneficiaries' Medicare Part B premiums will remain the same. However, about 25% of Medicare beneficiaries are not protected by this law and could see their premiums increase. Most Medicare beneficiaries pay a monthly Part B premium of \$96.40 in 2009. The basic premium will likely rise to \$119 next year and to \$123 in 2011 for those not protected by the law. In addition, millions of beneficiaries also could experience higher premiums for drug coverage under Medicare Part D because there are no laws that prevent such an increase.

No Social Security COLA and projected increases in drug premiums will create a perfect storm for the first ever reduction in Social Security benefits. Explaining this one to retired parents on Social Security will not be a pleasant task!

## Fleeing Felon Case—Continued

(Continued from page 1)

mont? Those few individuals whose warrants were issued under one of the three codes listed above may still be subject to suspension. On the other hand, people who were suspended or denied between 1/1/00 and 12/5/05 will be notified of the change in policy and of their potential current eligibility. In addition, there may be some individuals with SSI overpayments still being recouped as the result of pre-*Fowlkes* suspensions that will now benefit from not having to pay back what remains of their overpayments.

That is the good news – and kudos to Jerry and his team for this great settlement. The not so good news, however, is that, like *Fowlkes*, the *Martinez* settlement does not affect SSA's policy or procedures for cases involving outstanding parole or probation violation warrants (*e.g.*, offense codes 5011 and 5012).

Jerry, however, along with attorneys from Proskauer Rose and the Urban Justice Center, has challenged that policy in another nation-wide class action filed in the Southern District of New York. As previously reported in the November 2008 *Disability Law News*, the District Court Judge awarded summary judgment to SSA in *Clark v. Astrue*, 2008 WL 4387709 (S.D.N.Y. 2008). Plaintiffs have appealed to the U.S. Court of Appeals for the Second Circuit. The Empire Justice Center, along with a number of other programs from across the country, filed an *amicus* brief in support of the plaintiffs. A decision in *Clark* is not anticipated for several months.

In the meantime, DAP advocates continue to pursue creative ways to overcome suspensions based on outstanding probation or parole violations. See the Administrative Decisions section of this newsletter for more on how to tackle these problems.

## Stimulus Payment Queries



We have heard many questions about how Social Security's one time \$250 stimulus payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will be treated in other need based programs. The checks have started to go out.

ARRA authorized the offset of these payments to collect delinquent debts owed to state/Federal government agencies. The payments issued by SSA will not be subject to offset to collect a debt owed to SSA. However, the payments issued by the Railroad Retirement Board (RRB) or Veterans Administration (VA) will be subject to offset to collect an SSA debt, if the debt is in the Treasury Offset Program (TOP). In terminated cases, SSA delinquent debts are referred to TOP and are subject to offset. <https://s044a90.ssa.gov/apps10/poms.nsf/lrx/0202820070>.

New York's Office of Temporary and Disability Assistance (OTDA) posted GIS 09 TA/DC090 - "Treatment of the One-Time \$250 Stimulus Payments from the American Recovery and Reinvestment Act (ARRA) of 2009," which confirms that OTDA will exclude these payments as income and will exclude them as resources in the month of receipt and for the following nine months for TANF and Safety Net cases. In addition, the payments will not be income for food stamp purposes. For "non-categorically eligible" households under the food stamp program, the monies will not be counted as a resource in the month received or the following nine months. The same treatment afforded under the Temporary Assistance (TA) programs will apply to HEAP.

Medicaid will also not count the payments as income and will exclude them as a resource in the month of receipt and for the following nine months. Additional guidance with regard to Unemployment Insurance

Benefits (UIB) and Transitional Medicaid (TMA) is promised. The GIS is available at: <http://www.otda.state.ny.us/main/gis/2009/09dc009.pdf>

There has also apparently been some confusion over whether nursing home residents can keep their \$250 Social Security/SSI stimulus payment, or whether they have to turn it over to the nursing home. The stimulus payment should be going to the nursing home resident, *not to the facility*. Good informational pieces on this subject are available from the National Council on Aging (client flyer) [http://www.ncoa.org/userfiles/file/250\\_payment\\_rf.pdf](http://www.ncoa.org/userfiles/file/250_payment_rf.pdf) and the Center for Medicare Advocacy (article) [http://www.medicareadvocacy.org/SNF\\_09\\_04.30.StimulusChecks.htm](http://www.medicareadvocacy.org/SNF_09_04.30.StimulusChecks.htm).

Also, at state option, these payments could be intercepted to recover past due child support. New York's OTDA has elected **not** to exercise this option since the federal government (HHS) would not let them separate SSI and OASDI recipients. So, the stimulus payment should be safe from interception for past due child support.

Lastly, SSA is concerned that unscrupulous scam artists may be targeting recipients of the stimulus payment. SSA has put out information clarifying that all Social Security and SSI beneficiaries who are eligible for the special one-time recovery payment will have their payment issued in May; that the payment is automatic; no action is required; and there are no requests to make, no applications to complete and no fees to pay.

SSA warns recipients not to pay anyone to help them receive their payment payments of \$250. It also has a website for more information about the stimulus payment. [www.socialsecurity.gov/payment](http://www.socialsecurity.gov/payment)

### State Supplement Saved

As we told you in the January and March 2009 *Disability Law News*, New York State proposed to reduce the state supplement payable to SSI recipients as a budget cutting measure. We are happy to report that this proposed \$84 million cut was restored in the Governor's budget, so **no** reductions in the state supplement will occur in 2009.

## SSI Group Home Residents May Be Owed Food Stamps



Any SSI recipient who received Food Stamp (FS) benefits while residing in a group home at any time between January 1, 2005, and September 30, 2008, may be owed a substantial amount of FS benefits.

During this 45 month period, New York State and local departments of social services (DSS) provided fixed amounts of FS benefits to group home residents under a federally-approved pilot project called the Group Home Standardized Benefit Program (GHSBP). In the case of *Matter of Graves v. Doar*, 2007 NY Slip Op 33147(U) (Sup. Ct. Nassau Co. October 1, 2007) [[http://www.courts.state.ny.us/reporter/pdfs/2007/2007\\_33147.pdf](http://www.courts.state.ny.us/reporter/pdfs/2007/2007_33147.pdf)], State Supreme Court Justice Michelle M. Woodard declared that the GHSBP was operated illegally because of the lack of any properly promulgated state regulations.

Rather than promulgating regulations to comply with the *Graves* decision, the New York State Office of Temporary and Disability Assistance (OTDA) chose to abandon GHSBP and replace it with a more favorable budgeting methodology, as proposed by plaintiffs' co-counsel, Peter Vollmer and John Castellano. Effective October 1, 2008, most group home residents saw their monthly FS benefits rise dramatically. But SSI group home residents remain deprived of substantial amounts of FS benefits for the 45 month period from January 2005 through September 2008.

Under GHSBP, the monthly amount of FS benefits was based on a group home resident's source of income, not the amount of income. Consequently, even though the Public Assistance (PA) grant for group home residents is identical to the SSI payment rate, SSI group home residents received less than half the amount of FS benefits awarded to PA recipients. Justice Woodard subsequently declared that this disparate treatment violated the equal protection guarantees of the federal and state constitutions. *See, Graves*, 2009 NY Slip Op 30750(U) (Sup. Ct. Nassau Co. March 31, 2009) [[http://www.courts.state.ny.us/reporter/pdfs/2009/2009\\_30750.pdf](http://www.courts.state.ny.us/reporter/pdfs/2009/2009_30750.pdf)].

Nevertheless, plaintiffs' motion for certification of a statewide class of SSI group home residents was denied. Oral argument on the denial of class certification in *Graves* was heard in the Appellate Division, Second Department on April 14, 2009.

Recognizing that OTDA "does not intend to apply this Court's decision to other food stamp recipients who are similarly situated to petitioners/intervenor in the absence of additional legal action," and noting the "regional, statewide and national crisis in the provision of civil legal representation to poor persons," Justice Woodard authorized "eight identified individuals, and others similarly situated, to seek leave to intervene herein."

Accordingly, plaintiffs' co-counsel in *Graves* are hoping to intervene as many of the estimated 18,700 SSI group home residents across the state as possible. Retroactive FS benefits could average more than \$50.00 per month. But short of a certified class, it will be necessary for each SSI group home resident to intervene in order to claim these restored FS benefits.

Please distribute the accompanying Intervenor Referral form to all clients who have resided in any state-certified group home, such as a "community residence" certified by the New York State Office of Mental Health (OMH) or Office of Mental Retardation and Developmental Disabilities (OMRDD), or a drug/alcohol treatment center certified by the New York State Office of Alcoholism and Substance Abuse Services (OASAS). Please also forward the screening form to any organizations that provide services to group home residents.

Thanks to Gene Doyle for alerting us to this important decision and the steps necessary to intervene in the *Graves* case.

## SSA Commissioner Blasts State Cuts



A recent *New York Times* article cites SSA Commissioner Michael J. Astrue as blaming the governors for increasing the delays at Social Security. According to Astrue, furloughs and lay offs of employees at the state Disability Determination Services (DDSs) under contract to SSA, are “illogical.” Astrue said that “governors are hurting their own states, their own citizens, and increasing the backlog of claims” by furloughing workers who make disability decisions.

According to Patrick P. O’Carroll Jr., the inspector general of the Social Security Administration, California, Connecticut, Maryland, Massachusetts and Oregon have decided to furlough some disability workers, freeze hiring or impose other restrictions. These five states account for 15 percent of all disability cases. At least ten other states were taking or considering similar actions.

New York Governor David A. Paterson has announced lay-offs of up 8,700 state workers, although he has not indicated whether any will be from the Division of Disability Determinations. A spokesman for the governor has said that Paterson “is aware of the concerns raised by the Social Security Administration and will act carefully.”

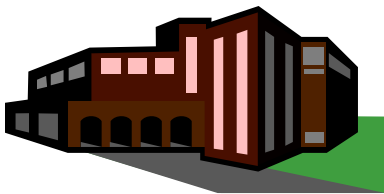
Robert Pear’s April 12<sup>th</sup> article is available at [http://www.nytimes.com/2009/04/13/us/13benefits.html?\\_r=2&emc=tnt&tntemail1=y](http://www.nytimes.com/2009/04/13/us/13benefits.html?_r=2&emc=tnt&tntemail1=y).

Speaking of “blasts” by the Commissioner, a “Broadcast” issued by Commissioner Astrue to SSA and DDS employees on March 11, 2009, paints a rosier picture of SSA than seen for awhile. The Broadcast lauds increases in the federal budget to SSA. In addition to an increase in appropriation, the Commissioner announced the receipt of \$500 million over the next eighteen months in stimulus money to process workloads and invest in related information technology. The economic recovery act also allotted another \$500 million to SSA to replace its National Computer Center, as well as \$90 million to cover the administrative costs of issuing the \$250 stimulus payments, discussed on page three of this newsletter. The Commissioner also praises President Obama’s 2010 budget, which includes a ten percent increase over SSA’s 2009 appropriation.

Finally, Commissioner Astrue reminds employees to continue laying the groundwork for the anticipated upcoming surge in hiring. He also emphasizes SSA’s commitment to continue its outstanding record of hiring and promoting persons with disabilities, including reaching out to Wounded Warrior transitional programs and Ticket to Work Beneficiaries.

For a different prospective on the current state of SSA, see the article on page seven of this newsletter on the GAO’s latest report.

## Former DAP Advocate Named Dean



Matt Diller, a DAP advocate at the Legal Aid Society in New York City from 1986 to 1993, has just been named the Dean of the Benjamin A. Cardozo School of Law. Matt has had a distinguished career both before and after his stint at Legal Aid. He has taught at Fordham Law School since 1993, and was named the Cooper Family Professor of Law and co-director of the Louis Stein Center for Law and Ethics. A 1985 graduate of Harvard Law School, he

clerked for the late Judge Walter R. Mansfield of the U.S. Court of Appeals for the Second Circuit. Matt has also served on the boards of Legal Services of New York and the National Center for Law and Economic Justice and the executive committee of the poverty law section of the Association of American Law Schools. We wish Matt all the best in his new position.

## REGULATIONS

### SSA Withdraws Proposed Age Definition Changes

In November 2005, the Social Security Administration (SSA) published proposed regulations that would have changed each of the “age” categories by bumping up by two years the applicable definition: a person closely approaching retirement age would have to be 62 years old, up from 60; a person of advanced would be 57, up from 55; a person closely approaching advanced would be 52, up from 50; and younger persons would be aged 47- 51 (up from 45 - 49).

SSA announced on May 8, 2009 that, after receiving over 900 comments on the proposed changes, the agency decided to withdraw the proposed rulemaking while it continues to consider public comments and other relevant data sources. 74 Fed. Reg. 21563.

### NYC DAP Festival Planned

LS-NYC is sponsoring a three day festival of DAP continuing legal education programs on June 1, 2, and 3. All events will be held at the central office, located at 350 Broadway, 6<sup>th</sup> Floor, New York, NY. There is no charge to DAP-funded advocates in New York City and environs, and you can register at [www.legalsupport.org](http://www.legalsupport.org). The full program may not be posted yet, please be patient. A tentative schedule will be posted to the DAP list serve shortly. Trainers include Barbara Samuels, in a reprise performance, Ann Biddle, Kate Callery, Louise Tarantino, Chris Bowes and Ian Feldman.



### Disability Law News Online



As we announced in the March issue, the Disability Law News will only be available online unless you have paid for a paper subscription. Subscription information is included on the last page of this newsletter. The electronic version will be available at [www.empirejustice.org](http://www.empirejustice.org), and will be distributed on the DAP listserv.

## GAO to SSA: Do More to Address Delivery Challenges

The General Accountability Office (GAO) released a report to the Subcommittees on Income Security and Family Support, and House Committee on Ways and Means in March. It addresses the key challenges facing the Social Security Administration (SSA), particularly with respect to the backlog of disability claims, and the steps that SSA is taking to address these challenges.

The GAO acknowledges that two key factors have contributed to the backlog and service delivery challenges that SSA faces: 1) staffing reductions and turnovers, and 2) increased workloads. The GAO also acknowledged that SSA has taken steps to improve its disability claims process, reduce the backlog, and manage its workloads. Some efforts have been hampered by poor planning, however, and others are too recent to be evaluated. It specifically found that the new initiative started in 2006 as part of the Disability Service Improvement (DSI) produced mixed results. As discussed in prior editions of this newsletter and summarized in the GAO reports, many of them, with the exception of such initiatives as the Quick Disability Determination (QDD) process, have been suspended.

While SSA continues to evaluate DSI, it has refocused on reducing the hearing backlog and preventing its recurrence. Current plans include updating SSA's medical eligibility criteria, expediting cases for which eligibility is more clear-cut, improving hearings of-fice capacity and performance, and other actions. The Commissioner also plans to dedicate new funding to improve SSA's electronic processing system. The

GAO, however, has questioned some of SSA's strategies such as shifting and deferring workloads. For example, although shifting some workloads to less busy offices likely contributed to increased productivity, using officer managers to take on duties of lower-graded employees may not. The GAO also expressed concern that SSA is focusing on what SSA considers essential to its "core workloads," such as processing new claims and issuing Social Security cards, while deferring key activities such as change of addresses, direct deposit information and continuing disability reviews.

Ultimately, the GAO expressed concern that SSA has not effectively developed, as previously recommended, a detailed service delivery plan that anticipates implementation challenges by involving key staff in design and implementation, establishing feedback loops, and performing periodic evaluations to ensure that reforms are executed effectively. SSA has indicated that it intends to consolidate its various planning efforts into a single planning document that will at a minimum include comprehensive plans for expanding electronic services for customers; increasing the centralization of receiving phone calls and working claims from customers while maintaining the network of local field offices; enhancing phone and video services in field offices (where applicable) and piloting self-service personal computers in the reception areas of those offices; and continuing to assess the efficiency of field offices.

GAO -09-511T can be found at <http://www.gao.gov/cgi-bin/getrpt?GAO-09-511T>.



## COURT DECISIONS

### The Second Circuit Speaks

When the Second Circuit Court of Appeals speaks, we all tend to lend an ear and listen closely. We wish, though, that we heard better news of late. The Circuit Court issued three unfavorable decisions so far in 2009.

In January, the court issued a decision in *Brown o/b/o JK v. Astrue*, 2009 WL 59167, affirming a Northern District of New York ruling by District Court Judge Gary Sharpe. In this child's SSI case, the parent argued that the Administrative Law Judge (ALJ) failed to find that the child's learning disorder was a severe impairment and that the child's combined impairments were functionally equal to a Listing. The child also suffered from ADHD, obesity and migraine headaches. Although the Court of Appeals agreed that the ALJ erred in finding that the learning disorder was not severe, the Court found that a remand was not required because the learning disorder was only relevant to the domain of acquiring and using information, not to the domain of attending and completing tasks.

The Court noted, "JK's learning disorder affects his ability to read, not his ability to attend to tasks. Therefore, the ALJ's possible failure to consider the impact of JK's learning disorder did not infect his consideration of whether JK had a 'marked' limitation in attending and completing tasks." The Court went on to find that the substantial evidence supported the ALJ's finding of a less than marked limitation in this domain, citing a school psychologist's observations and a consultative psychologist's report.

One hopes that the fact that this was a summary order will lessen its precedential value. Also it was issued before the publication of SSA's new childhood Social Security Rulings (SSRs) discussed at length in the March 2009 edition of *Disability Law News*. Those SSRs emphasize, contrary to the court's opinions, the extent to which one impairment can affect several domains.

In April, the Second Circuit issued a decision in *Poupore v. Astrue*, ---F.3d---, 2009 WL 1011685, affirming, on rehearing, a Northern District of New York decision from Magistrate David Peebles denying Social Security disability benefits. The Court agreed with the ALJ's decision that Mr. Poupore had the residual functional capacity for light work, although the Court cited evidence from a treating source that indicated an ability "to perform a sedentary, light-duty job, which would involve sitting most of the time, but allow Poupore to get up and move around from time to time if necessary."

The Second Circuit also adopted the government's argument that regulations issued in 2003 [20 C.F.R. §404.1560(c)(2)] abrogated the Court's previous decision in *Curry v. Apfel*, 209 F.3d 117 (2d Cir. 2000), clarifying that there is only a limited burden shift to the Commissioner of SSA at step five of the sequential evaluation: the Commissioner need only show that there is work in the national economy that the claimant can do; he need not provide additional evidence of the claimant's residual functional capacity (RFC).

The Court rejected arguments about the weight to be given to treating source evidence. It also found that subjective complaints of pain were unsupported by objective medical evidence and inconsistent with Mr. Poupore's daily activities such as caring for his one-year-old child, including changing diapers, "sometimes" vacuuming and washing dishes, occasionally driving, watching television, reading and using the computer, and therefore not fully credible.

In the last of the trilogy of recent cases, *Lamay o/b/o KPD v. Astrue*, 562 F.3d 503 (2d Cir. 2009), the Second Circuit issued a decision in April concluding that the statutory disclosures mandated by the Social Security Act with respect to the right to counsel may be salutary, but are not required. This case involved an

*(Continued on page 9)*

## Lawsuit Challenges OCSE Notice

Hardly a newsletter goes by without some mention of the seemingly endless problems our clients face with frozen bank accounts. The July 2008 edition, available at [www.empirejustice.org](http://www.empirejustice.org), reported on New York's new Exempt Income Protection Act (S.6203/A.8527), which will better protect statutorily exempt income from access by creditors. Under the new Act, the first \$2,500 in an account that has had statutorily exempt payments deposited either electronically or by direct deposit in the last 45 days before a restraining notice was served on the bank is protected.

Johnson Tyler of South Brooklyn Legal Services has taken on another back account problem faced by Social Security recipients. He has recently filed a lawsuit in U.S. District for Eastern District of New York challenging the Office of Child Support Enforcement's (OCSE) failure to provide proper notice when freezing the bank accounts of Social Security recipi-

ents who owe child support. Johnson reminds us that Social Security benefits are collectable for child support arrears. New York, however, has a "self-support" reserve that prohibits collection from Social Security recipients who live below the poverty line when the children for whom the support was ordered are grown up (over 21). OCSE's defective notice fails to advise the debtor of this exemption.

The law suit - *O'Brien v. Hansell* - also challenges OCSE's practice of repeatedly freezing the bank accounts of the plaintiff even when it is aware through Johnson's advocacy, as well as through a downward modification hearing, that the plaintiff is living below the poverty line. The complaint is available in the Benefits Law Database section of the Online Resource Center. Kudos to Johnson for his tireless pursuit of these issues. Stayed tuned to these pages for updates on his litigation.

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unrepresented parent at a hearing on a child's SSI claim. After the claim was denied, the parent argued at the District Court that she did not make a knowing and voluntary waiver of her right to be represented because the ALJ did not advise her of the availability of legal services organizations available to assist her, or the possibility of a contingency arrangement with private counsel.

Magistrate Peebles of the Northern District of New York issued a Report and Recommendation (R&R) finding that the parent had knowingly and voluntarily waived her right to representation, and affirming the Commissioner's determination of no disability. District Court Judge Sharpe adopted the R&R in full. Both the Magistrate and District Court judge observed that the Second Circuit had not adopted or rejected the enhanced disclosure requirements set out in *Frank v. Chater*, 924 F.Supp. 416 (E.D.N.Y. 1996).

The Second Circuit took the opportunity to disagree with the Fifth, Seventh and Eleventh Circuits and concluded that the additional disclosures set out in those Circuit Court decisions, and in the *Frank* decision, were not mandatory. It concluded that the language of 42 U.S.C. §§406(c) and 1383(d)(2)(B/D) did not require such disclosures, and those cases were decided before the cited statutes were in effect. The Court determined that the applicable cases appeared "to have been no more than judicially created at-

tempts to ensure, in the absence of statutory instruction, that a waiver of the right to counsel was knowing and voluntary." 562 F.3d at 508. The Court also noted that since the Second Circuit recognized a "heightened duty" on the part of the ALJ to fully develop the record where a claimant proceeds *pro se*, "the limited, yet clear, requirements for notification enacted by Congress seems both sensible and likely adequate." 562 F.3d at 509.

The Circuit Court went on to hold, in a footnote, that the information given to the *pro se* parent in the *Lamay* case was sufficient to meet the statutory requirements. The panel also decided that the claimant suffered no prejudice from proceeding *pro se* because the ALJ fulfilled his heightened duty to develop the record.

Each of these decisions is disturbing to those of us who represent claimants in these cases, especially the *Lamay* ruling. In an effort to make lemonade out of these lemons, we should take the opportunity to turn these adverse decisions into learning occasions for how to build and present our cases at hearings: good decisions turn on good facts; good facts come from adequate development and presentation; and good administrative records give us a better shot at winning arguments. But sometimes, it all comes down to the luck of the draw. Keep listening for more developments on these issues.

## Second Circuit Promulgates New Rules

Advocates practicing in the Court of Appeals for the Second Circuit are all too aware of the intricacies of the Federal Rules of Appellate Procedure. On top of that, the Court has its own local versions of some of these rules. Several new local rules are definitely worth your attention.

As of April 15, 2009, all attorneys admitted to the Second Circuit must renew their admissions every five years. The admission renewal requirements, including the provision for the \$25 renewal fee, are set forth in Interim Local Rule 46.1. All attorneys seeking admission to practice before the Court will be required to use the revised Attorney Admission Application, including the Attorney Admission Oath and Sponsor's Motion for Attorney Admission.

In addition, an attorney who files a case or who otherwise appears on behalf of a party, including as an *amicus*, during the pendency of a matter before the Court must file a notice of appearance in accordance with newly adopted Interim Local Rule 12.1.

The Local Rules, as well as the forms for complying with them, can be found on the Court's website at [http://www.ca2.uscourts.gov/notice%20to%20the%20bar\\_att\\_adm.pdf](http://www.ca2.uscourts.gov/notice%20to%20the%20bar_att_adm.pdf).

Another local rule enacted in January 2009 requires that all documents filed by counsel be submitted in PDF format *in addition to* the required number of paper copies. Note that this requirement is not the same as the electronic filings required by the district courts. For all the many ins & outs of this new Interim Local Rule 25.1, see [http://www.ca2.uscourts.gov/Docs/News/order1\\_9\\_09\\_a.pdf](http://www.ca2.uscourts.gov/Docs/News/order1_9_09_a.pdf).

## NDNY Federal Court Bar Association Starts *Pro Se* Program

The Northern District of New York (NDNY) Federal Court Bar Association (FCBA) has started a *Pro Se* Assistance Program designed to assist litigants who are representing themselves in civil actions in federal court. Assistance will be available for *pro se* litigants in Syracuse, Albany, Binghamton, Utica, Plattsburgh and Watertown, all in the jurisdiction of the United States Federal Court for the Northern District of New York.

The Program employs a *Pro Se* Coordinator, an attorney who will assist *pro se* litigants by providing in-

formation about federal court procedure, assistance in preparing pleadings and other court documents, assistance in accessing information and/or research about legal issues, and referrals to other services, in appropriate cases. According to statistics provided by the FCBA, civilian *pro se* cases make up 7% of the total pending civil docket in the NDNY, with *pro se* litigants filing more than 11 cases per month.

The *Pro Se* Coordinator is Trista O'Hara. Her office is located in Syracuse, and she can be reached at 1-877-422-1011, or by email at [tohara@ndnyfcba.org](mailto:tohara@ndnyfcba.org).

## What Happens If Your Client Dies?

David Ralph of the Elmira office of LAWNY, recently had to learn what to do when, unfortunately, his client passed away while her appeal was pending in U.S. District Court. The client's case involved SSI only, and she had no survivors with legal standing to make a claim for an SSI underpayment. *See, e.g.*, 20 C.F.R. §416.542(b). *See also* the September 2003 edition of the *Disability Law News*, available at [www.empirejustice.org](http://www.empirejustice.org), for more information about which claims survive the death of the claimant and which do not.

David was reluctant to enter into a stipulation to dismiss the claim. Since the claimant had no legal representative and no estate proceeding had been filed, he had no real authority to act to her behalf. He was also concerned that a dismissal would cut off the rights of

the local Department of Social Services (DSS), whose claim for interim assistance does survive the death of the plaintiff. *See* 20 C.F.R. §416.525 and POMS §DI 02101.003

David delved into his Rules of Civil Procedure and, as a result, filed a Rule 25(a) Statement, notifying the Court that the claimant had died and that there were no survivors. He also filed an Affidavit, further notifying the Court of his communications with the local DDS, which had indicated that it did not plan to pursue the claim. The claim was then dismissed by the Court.

Thanks to David for sharing this procedural tip. Let's hope we don't have to use it often!

## State Comptroller Investigates OTDA's CE Contacts

New York State Comptroller Thomas P. DiNapoli and State Inspector General Joseph Fisch have released a report of a joint investigation into the process OTDA (Office of Temporary Disability Assistance) uses to award contracts for consultative examinations for determining medical eligibility of applicants applying for Social Security disability benefits.

The investigation was prompted by allegations from one medical services consulting company (Diagnostic Health Services) that OTDA showed favoritism to-

wards Industrial Medical Associates (IMA). The State Inspector General and the Comptroller's Inspector General determined the allegations were unfounded but did make recommendations to improve OTDA's contract approval process.

The complete report is available at [http://www.osc.state.ny.us/reports/inspectorgeneralcompt/otda\\_med\\_cons\\_contracts.pdf](http://www.osc.state.ny.us/reports/inspectorgeneralcompt/otda_med_cons_contracts.pdf).

## Notice Something Missing?



With this edition of the *Disability Law News*, we have discontinued our Class Actions section. Information about class actions – past and present – will be made available in the near future on the soon to be unveiled new and improved Empire Justice Center website.

## ADMINISTRATIVE DECISIONS

### Subsequent Application Reopens Earlier Claim

Sometimes the past really is prologue. LJ Fisher, an attorney with the Rochester office of the Empire Justice Center, represented a client who suffers from AIDS, hepatitis C, liposarcoma, anxiety and depression. The client had originally filed an application for Disability Insurance and Supplemental Security Income benefits on September 17, 2003, with date last insured (DLI) of December 2005. His application was denied at the initial level on January 21, 2004. He did not appeal until November 17, 2004, long after the 60 days appeal time had run out, partly due to illness, and partly due to his on-going problems with substance abuse.

His appeal was dismissed as untimely on September 18, 2006. The ALJ noted in his dismissal order, however, that the Social Security Administration (SSA) should have advised the client to file new applications at the time he filed his appeal. The ALJ also indicated that SSA had been unable to locate the claimant's file and as a result did not forward his appeal to ODAR to be decided for nineteen months. In light of these circumstances, the ALJ ordered that a new application, if filed within 60 days of his order, would be deemed to have been protectively filed on November 17, 2004.

The client filed an application on November 29, 2006, easily within the 30 days. Unfortunately, that application was not given the protected filing date of November 17, 2004, despite the ALJ's decision. The claimant was approved for SSI benefits only based on his November 29, 2006 application.

Luckily for the claimant, LJ unearthed the 2006 ALJ dismissal order, and helped the client appeal his onset date. She also submitted records covering the 2004 time period, with a schedule showing that he had frequent manifestations of HIV/AIDS with resulting functional limitations. Additionally, she obtained a treating doctor's report indicating that the client's

limitations were first manifested in 2004. The client received an "on the record" decision finding that he met listing 14.08 K back to the protected filing date of November 17, 2004. Not only did he win additional retroactive SSI benefits; he also was found eligible for retroactive and on-going Title II benefits. Congratulations to LJ for righting another wrong!

On a somewhat related note, how many advocates have seen notices from the Appeals Council that grant a protective filing date? In a recent one from Southern Tier Legal Services, the Appeals Council denied the claimant's Request for Review. It also looked at additional medical records that had been submitted and found that because they contained new information about a later time period, they did not affect the decision appealed. The Appeals Council advised the claimant to reapply if he wanted SSA to consider whether he was disabled after the date of the ALJ's decision. It also advised the claimant that if he filed a new application within 60 days of the Appeals Council Order, SSA could use the date of his Request for Review as the date of the new claim. All well and good, but only if one arm of SSA know what the other has offered, as illustrated by LJ's case. A word to the wise: always check with your client about prior applications and appeals!



## Advocates Overcome Probation Warrants

As the lead article of this newsletter outlines, clients with outstanding probation or parole warrants still face suspension and denial of benefits under SSA's "fleeing felon" provisions. Advocates continue to successfully challenge these suspensions, venturing into the world of criminal courts and far away jurisdictions.

Take for example, a case of David Ralph's from the Chemung County Neighborhood Legal Services office of LAWNY in Elmira. David's client, R.B., is a 63-year-old veteran who was arrested in Orange County, Florida in 1987, on shoplifting charges. According to R.B., it was near Christmas, and the judge took mercy on him, and sentenced him to probation, to be served in Colorado. He was separated from his wife, and wanted to return to the Denver area in an attempt to reconcile with her. For a variety of reasons, he never reported to the probation authorities in Colorado

According to David's client, the reconciliation attempt failed. By 1990, he was homeless, a self-employed housepainter or handyman with no address. On May 5, 1990, he was admitted to the Denver Veterans Administration Medical Administration for numbness in his hands bilaterally and shoulders bilaterally. He had a fusion of C5-C6 laminectomy to decompress the spinal cord. He was discharged in mid-June 1990 to a "shelter" and at some point thereafter moved back to his home state of New York. He became eligible for disability benefits at that time and relied upon them until they were terminated in November 2008, based on a warrant that had allegedly been issued in May 1990 in Orange County, Florida. As a result, he was without income and homeless when he sought help from David.

David contacted the Orange County Court in Orlando, Florida, and requested that the warrant be dismissed in the interest of justice, based in part on R.B.'s current dire circumstances. After innumerable phone calls, messages, e-mails and faxes, David finally learned that that the warrant was dismissed on March 9<sup>th</sup>. He tracked down a copy of the disposition, which included a Notice of Hearing for a "violation of probation hearing" set for March 9, 2009, that

noted on its face that "The Defendant Is Not Required To Be Present For The Hearing"; an "Order To Recall Warrant"; a transmission receipt for the warrant recall order to "WARRANTS"; and a memorandum from the Judge's Judicial Assistant to the Orange County Sheriff to return the warrant to the Clerk of the Orange County Clerk, Misdemeanor. He provided all this documentation, along with a printout from the clerk's website to SSA in order to get R.B.'s benefits reinstated.

While David has performed nothing short of a miracle in getting the warrant recalled, his client still faces a potential overpayment. In most of these cases, SSA charges the beneficiary with an overpayment for the benefits paid while the warrant was outstanding. Jerry McIntyre – guru of all things related to fleeing felons – advises appealing these overpayment cases as opposed to simply seeking a waiver. The argument would be that the benefits should not have been suspended in the first place because there has not been an actual determination that the claimant had violated a condition of probation or parole. In other words, the issuance of an arrest warrant does not by itself constitute a determination that the individual is violating a condition of probation. The claimants will thus maintain their status as potential class members in the *Clark* case discussed on page one of this newsletter.

Ellen Bush, an attorney with Legal Services of the Hudson Valley, scored such a victory. Her client, who is 59 years old and has only a seventh grade education, has been unable to work since 1990, when he developed deep vein thromboses in both legs. He was receiving Title II benefits of \$860 each month based on his disability. On March 10, 2008, he was notified by SSA that his benefits would be suspended effective January 2005 through February 2008 due to an outstanding warrant for a probation violation in Florida. Apparently he had been sentenced to probation for three years (June 1983 through June 1986) following his felony conviction for burglary.

On reconsideration, the client supplied SSA with a court document showing that the warrant was "satisfied" on January 23, 2008. According to SSA's

*(Continued on page 14)*

## Appeals Council to the Rescue

Although we often accuse the Appeals Council of merely rubberstamping decisions, occasionally this august body comes through in egregious cases and does the right thing. Andrea Sasala of Nassau/Suffolk Law Services sent us an example of such an intervention.

The claimant applied for benefits in December 2001, alleging an onset date of January 2001. The date last insured (DLI) was December 31, 2002. The first hearing was held in March 2004. The claimant was represented by private counsel. At that time, criminal charges were pending that would likely result in a month or two of jail time for the claimant. The private attorney advised the claimant to accept a closed period. A fully favorable decision was issued for a closed period. The Administrative Law Judge (ALJ) found that there had been medical improvement.

There were two major problems with this scenario. First, the claimant's impairments included severe back injuries. Although the claimant expressed a desire to go back to work, there was no medical evidence to document any change in physical condition that would warrant a realistic possibility of return to work. Second, the claimant did not understand that a closed period determination would result in no continuing benefits should he not be able to return to work, or in this case, when his three month sentence was completed.

The claimant went *pro se* to the Appeals Council and won a remand in July 2005 on the issue of continuing disability. Nassau/Suffolk Law Services represented the claimant on the remand case. A hearing was held on December 7, 2006, before the same ALJ. The ALJ had a medical expert and vocational expert present as

the Appeals Council ordered. Both experts testified favorably. The ALJ issued a "Partially Favorable Decision" in February 2007, based on the same closed period of disability!

An Appeals Council request was immediately filed. After more than two years, the Appeals Council issued a reversal. Once again, it did not agree with the ALJ's finding that the claimant medically improved. The rationale was that in reaching a decision that the claimant could perform light work, the ALJ relied upon the testimony of the medical expert. However, the medical expert testified that, for the pertinent time period, the claimant's impairments limited him to sitting for a maximum of two hours in an 8-hour day, standing and walking for a total of one hour in an 8-hour day, lifting 10 pounds frequently and an avoidance of climbing, bending and stooping. The medical expert further opined that the claimant would miss work more than three times a month and that his condition was permanent.

The Appeals Council noted that the medical expert's report of ongoing significant limitations was consistent with the opinion of the claimant's treating source from whom the representative has submitted new and material evidence, and that the claimant's subjective complaints were found to be credible. The Appeals Council agreed that the claimant was disabled for the closed period, and that the disability continued without medical improvement. A fully favorable decision was issued with benefits to be processed for payment.

Congratulations to Andrea for refusing to take no for an answer and for renewing our hope in the Appeals Council.

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*(Continued from page 13)*

reconsideration notice, the client had told SSA that a court clerk had informed him that the warrant had actually been dismissed years earlier. He was, however, unable to provide proof. Consequently, although his benefits were reinstated, he was charged with a \$27,000 overpayment.

After the client appealed, he came to Ellen for assistance. With Ellen's help, the client prevailed before an Administrative Law Judge (ALJ), who found that

he met the good cause provisions in the POMS. *See* POMS GN 02613.000 *et seq.* & SI 00530.000 *et seq.* Not only did the ALJ find that the underlying offense was non-violent and not drug-related, thus meeting the good cause criteria; the ALJ also found that the warrant was not enforceable. As a result, Ellen's client was found entitled to benefits for the entire period, thus abrogating the overpayment completely.

David and Ellen's hard work certainly paid off for these two clients!

## WEB NEWS

### Just the Facts, Please

A recent article in law.com, *Dive Into Deep Web Research*, provides a number of tips on using the internet to research facts relevant to legal claims. DAP advocates may not need to learn how to search the National Weather Service website for the temperature on a particular day, but there are many instances when we need factual information to support our client's claims. In addition to reviewing some basic searching principles, the article gives pointers on searching meta-search engines, which search multiple search engines at once. It also explores the "Deep Web," that part of the World Wide Web that conventional search engines such as Google and Yahoo cannot access.

<http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1202429965898>

### Settlement, Anyone?

Did you know that Target settled a lawsuit with the national Federation of the Blind for \$6 million? Or that some developmentally disabled Californians recently won a lawsuit? Information on these settlements and many others are available at a private marketing enterprise website that may be useful to us and our clients.



[http://www.lawyersandsettlements.com/settlements\\_category.html?category=Civil%2FHuman+Rights](http://www.lawyersandsettlements.com/settlements_category.html?category=Civil%2FHuman+Rights)

### Too Young for EPIC? Try NYPS

New York Prescription Saver (NYPS) Card is a free prescription discount card that will help people who are under age 65 so are too young for EPIC save on the cost of prescription drugs. The card is sponsored by New York State and the discounts are provided by pharmacies and manufacturers. Unlike EPIC, the discount card doesn't actually PAY for the drug. It simply gives the consumer the benefit of the same discounted price that EPIC negotiates for its members. It can lower the cost of prescriptions by as much as 60 percent on generics and 30 percent on brand name drugs. There is a growing network of pharmacies participating in this program. There are now 4,000 pharmacies in this network, which includes a large percentage of independent drug stores and all major chain stores.

<https://nyprescriptionsaver.fhsc.com/>

### Am I Eligible for Benefits?



The State Office of Temporary and Disability Assistance (OTDA) and Department of Health (DOH) announced that New Yorkers can now determine if they may be eligible for public health insurance programs through a new website.

New Yorkers can now use the site to determine whether they are eligible for Medicaid, Family Health Plus, and Child Health Plus. The website, launched last June, has already allowed people to determine eligibility for a range of programs and benefits, including Food Stamps, the Earned Income Tax Credit (EITC) and other tax credits, the Home Energy Assistance Program, free and reduced-price school meals, and the WIC and EPIC programs.

[www.myBenefits.ny.gov](http://www.myBenefits.ny.gov)

## BULLETIN BOARD

This "Bulletin Board" contains information about recent disability decisions from the United States Supreme Court and the United States Court of Appeals for the Second Circuit.

We will continue to write more detailed articles about significant decisions as they are issued by these and other Courts, but we hope that this list will help advocates gain an overview of the body of recent judicial decisions that are important in our judicial circuit.

### SUPREME COURT DECISIONS

***Barnhart v. Thomas***, 124 S. Ct. 376 (2003)

The Supreme Court upheld SSA's determination that it can find a claimant not disabled at Step Four of the sequential evaluation without investigation whether her past relevant work actually exists in significant numbers in the national economy. A unanimous Court deferred to the Commissioner's interpretation that an ability to return to past relevant work can be the basis for a denial, even if the job is now obsolete and the claimant could otherwise prevail at Step Five (the "grids"). Adopted by SSA as AR 05-1c.

***Barnhart v. Walton***, 122 S. Ct. 1265 (2002)

The Supreme Court affirmed SSA's policy of denying SSD and SSI benefits to claimants who return to work and engage in substantial gainful activity (SGA) prior to adjudication of disability within 12 months of onset of disability. The unanimous decision held that the 12-month durational requirement applies to the inability to engage in SGA as well as the underlying impairment itself.

***Sims v. Apfel***, 120 S. Ct. 2080 (2000)

The Supreme Court held that a Social Security or SSI claimant need not raise an issue before the Appeals Council in order to assert the issue in District Court. The Supreme Court explicitly limited its holding to failure to "exhaust" an issue with the Appeals Council and left open the possibility that one might be precluded from raising an issue.

***Forney v. Apfel***, 118 S. Ct. 1984 (1998)

The Supreme Court finally held that individual disability claimants, like the government, can appeal from District Court remand orders. In *Sullivan v. Finkelstein*, the Supreme Court held that remand orders under 42 U.S.C. 405(g) can constitute final judgments which are appealable to circuit courts. In that case the government was appealing the remand order.

***Lawrence v. Chater***, 116 S. Ct. 604 (1996)

The Court remanded a case after SSA changed its litigation position on appeal. SSA had actually prevailed in the Fourth Circuit having persuaded that court that the constitutionality of state intestacy law need not be determined before SSA applies such law to decide "paternity" and survivor's benefits claims. Based on SSA's new interpretation of the Social Security Act with respect to the establishment of paternity under state law, the Supreme Court granted certiorari, vacatur and remand.

***Shalala v. Schaefer***, 113 S. Ct. 2625 (1993)

The Court unanimously held that a final judgment for purposes of an EAJA petition in a Social Security case involving a remand is a judgment "entered by a Court of law and does not encompass decisions rendered by an administrative agency." The Court, however, further complicated the issue by distinguishing between 42 USC §405(g) sentence four remands and sentence six remands.

## SECOND CIRCUIT DECISIONS

### ***Kohler v. Astrue***, 546 F.3d 260 (2nd Cir. 2008)

In a mental impairment case, the Second Circuit held that the ALJ's failure to adhere to the regulations requiring the application of a "special technique" at Steps two and five of the sequential evaluation constituted grounds for remand. The court agreed with several other circuits in finding remand appropriate where the ALJ's noncompliance with 20 C.F.R. §404.1520a(e)(2) resulted in an inadequately developed record in terms of the four functional areas: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of compensation. The court also criticized the ALJ for focusing in isolation on the treating source's use of the word "stable," and for failing to consider the opinion of the nurse practitioner, where she was the only medical professional available in the very rural "North Country" of New York State.

### ***Burgess v. Astrue***, 537 F.3d 117 (2d Cir. 2008)

The ALJ's finding that there was no objective evidence to support opinion of the treating physician that claimant's back impairment was disabling was unsupported, where both the ALJ and the medical expert on whom he relied erroneously assumed that MRI referred to in other reports was not actually in the file. The court noted that even if the MRI report was not in the exhibit file, the ALJ – once made aware of its existence – would have been obligated to request it. The court also rejected the Commissioner's attempt to argue that the MRI did not support the treating physician's opinion, since the court could not affirm on grounds different than those considered by the agency. Nor was the Commissioner or the District Court permitted to substitute their views for that of competent medical opinion. In remanding for further consideration of the treating physician opinion, the court summarized many of its leading treating physician cases.

### ***Torres v. Barnhart***, 417 F.3d 276 (2d Cir. 2005)

In a decision clarifying the grounds for equitable tolling, the Second Circuit found that the District Court's failure to hold an evidentiary hearing on whether a plaintiff's situation constituted "extraordinary circumstances" warranting equitable tolling was an abuse of discretion. The Court found that the plaintiff, a *pro se* litigant, was indeed diligent in pursuing his appeal but mistakenly believed that counsel who would file the appropriate federal court papers represented him. This decision continues the Second Circuit's fairly liberal approach to equitable tolling.

### ***Pollard v. Halter***, 377 F.3d 183 (2d Cir. 2004)

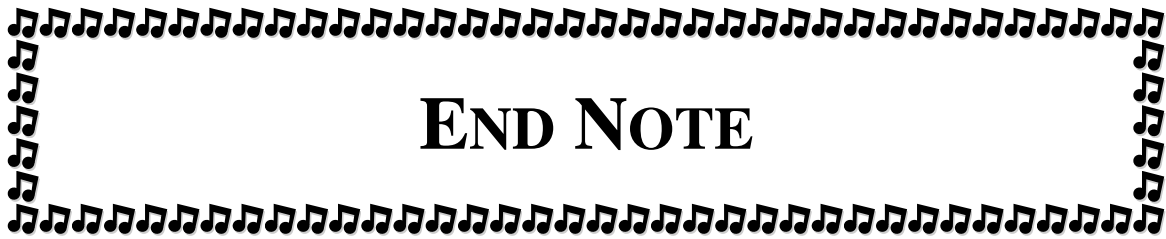
In a children's SSI case, the Court held that a final decision of the Commissioner is rendered when the Appeals Council issues a decision, not when the ALJ issues a decision. In this case, since the Appeals Council decision was after the effective date of the "final" childhood disability regulation, the final rules should have governed the case. The Court also held that new and material evidence submitted to the district court should be considered even though it was generated after the ALJ decision. The Court reasoned that the evidence was material because it directly supported many of the earlier contentions regarding the child's impairments.

### ***Green-Younger v. Barnhart***, 335 F.3d 99 (2d Cir. 2003)

In a fibromyalgia case, the Second Circuit ruled that "objective" findings are not required in order to make a finding of disability and that the ALJ erred as a matter of law by requiring the plaintiff to produce objective medical evidence to support her claim. Furthermore, the Court found that the treating physician's opinion should have been accorded controlling weight and that the fact that the opinion relied on the plaintiff's subjective complaints did not undermine the value of the doctor's opinion.

### ***Encarnacion v. Barnhart***, 331 F.3d 79 (2d Cir. 2003)

In a class action, plaintiffs challenged the policy of the Commissioner of Social Security of assigning no weight, in children's disability cases, to impairments which impose "less than marked" functional limitations. The district court had upheld the policy, ruling that it did not violate the requirement of 42 U.S.C. §1382c(a)(3)(G) that the Commissioner consider the combined effects of all of an individual's impairments, no matter how minor, "throughout the disability determination process." Although the Second Circuit upheld SSA's interpretation, affirming the decision of the district court, it did so on grounds that contradicted the lower court's reasoning and indicated that the policy may, in fact, violate the statute.



## END NOTE

### Stress of Poverty Affects Children's Brains

Chronic stress from growing up in poverty can physiologically impact children's brains, impairing their working memory and diminishing their ability to develop language, reading and problem-solving skills, reports a new Cornell study.

The study, published online March 30 in the Proceedings of the National Academy of Sciences, is one of the first to look at cognitive responses to physiological stress in children who live in poverty.

“There is a lot of evidence that low-income families are under tremendous amounts of stress, and we know already that stress has many implications,” said lead author Gary W. Evans, the Elizabeth Lee Vincent Professor of Human Ecology in the Departments of Design and Environmental Analysis and of Human Development in Cornell's College of Human Ecology. “What these data raise is the possibility that stress is also related to cognitive development.”

Evans and Michele A. Schamber '08, who worked with Evans as an undergraduate, have been gathering detailed data about 195 children from rural households above and below the poverty line for 14 years. They quantified the level of physiological stress each child experienced at ages 9 and 13 using a “stress score” called allostatic load, which combines measures of the stress hormones cortisol, epinephrine and norepinephrine, as well as blood pressure and body mass index.

At age 17, the subjects also underwent tests to measure their working memory, which is the ability to remember information in the short term. Working memory is crucial for everyday activities as well as for forming long-term memories.

Evans found that children who lived in impoverished environments for longer periods of time showed

higher stress scores and suffered greater impairments in working memory as young adults. Those who spent their entire childhood in poverty scored about 20 percent lower on working memory than those who were never poor.

“When you are poor, when it rains it pours,” Evans explained. “You may have housing problems. You may have more conflict in the family. There's a lot more pressure in paying the bills. You'll probably end up moving more often. We know that produces stress in families, including on the children.

“We put these things together and can say one reason we get this link between poverty and deficits in working memory may be from this chronic elevated stress,” he said.

The findings suggest that government policies and programs that aim to reduce the income-performance gap should consider the stress children experience at home.

“It's not enough to just take our kids to the library,” Evans said. “We need to also take into account that chronic stress takes a toll on their cognitive functioning.”

*This article was written by Sheri Hall, assistant director of communications in the College of Human Ecology, and published with permission from the Cornell Chronicle.*





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**Potential Intervenors in Graves v Doar, Index No. 10218/06 (Sup. Ct. Nassau Co.)**

1. Did you reside in a group home at any time between January 1, 2005 and September 30, 2008?	<input type="checkbox"/> YES	<input type="checkbox"/> No
2. Did you receive SSI benefits while living in a group home?	<input type="checkbox"/> YES	<input type="checkbox"/> No
3. Did you receive Food Stamps while living in a group home?	<input type="checkbox"/> YES	<input type="checkbox"/> No

**If you answered “YES” to ALL 3 QUESTIONS, you may be owed Food Stamp benefits.**

We represent SSI group home residents who have won a court case. The court found that they were owed Food Stamps. The court is allowing other SSI group home residents to join the case so that they too can get back Food Stamps.

To find out if you may be owed Food Stamps, please give us the following information and fill out the form on the next page. We will review your case and let you know whether you can join the court case. We will represent you free of charge.

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Your Name: \_\_\_\_\_

Your Address: \_\_\_\_\_

\_\_\_\_\_

A Telephone Number Where We Can Reach You: \_\_\_\_\_

Your Food Stamp Case Number: \_\_\_\_\_

Your Date of Birth: \_\_\_\_\_

STATE OF NEW YORK)

ss.:

COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being duly sworn, deposes and says:  
(Print Your Name)

I hereby authorize John Castellano and Peter Vollmer, plaintiffs' co-counsel in Graves v Doar, Index No. 10218/06 (Sup. Ct. Nassau Co.), to act on my behalf , pursuant to Article 6-A of the Public Officers Law and 18 NYCRR Part 339, in requesting and obtaining the following records from the New York State Office of Temporary and Disability Assistance (OTDA):

All data pertaining to my receipt of Food Stamp (FS) benefits, including a list of FS benefits authorized on my behalf and all notices pertaining to my Food Stamp eligibility.

This authorization shall remain valid and in full force and effect for one year from the date of my signature below, unless I notify OTDA in writing that I have revoked this authorization.

My date of birth is: \_\_\_\_\_.

Signature: \_\_\_\_\_

(Sign in front of a Notary Public)

\_\_\_\_\_  
(To be completed by the Notary Public)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of New York

Notary Stamp: