



from Connecticut Legal Services

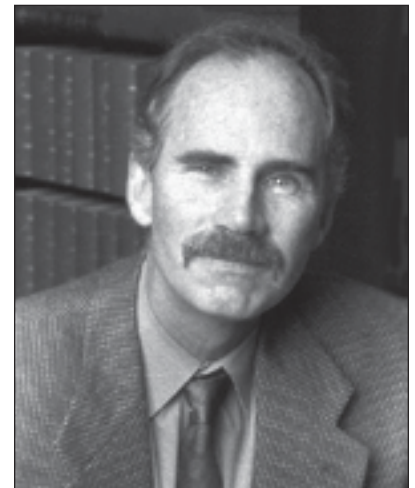
CLS Fights for Medical Care

Agreement on Providing Durable Medical Equipment to Disabled People

Low-income people who need medical equipment to cope with serious disabilities have plenty of problems. They certainly don't need an arcane argument about which rules govern whether the state must pay for such equipment. Until recently, however, the state was telling disabled people eligible for Medicaid that they couldn't get the equipment they needed because it wasn't on an authorized list, although federal law required that the equipment be provided.

In a win-win development, Connecticut Legal Services attorneys representing low-income disabled people, working with attorneys

Spotlight: Jerry O'Malley



E. Jerome (Jerry) O'Malley is a man of conviction. Fortunately for Connecticut Legal Services and its clients, he backs up his convictions with action—he has served as the New London County co-chair for the CLS Campaign for Justice since 1994. (See "CLS Campaign for Justice Sets New Record," page 7.) He also speaks on behalf of CLS with local funders of grants that benefit low-income residents of southeastern Connecticut.

O'Malley believes that the cornerstone of a fair society is a justice system open to all.

(see Care, page 2)

(see O'Malley, page 3)



(Care, continued from page 1)

from New Haven Legal Assistance, have reached an agreement with the state Department of Social Services (DSS) and the Office of the Attorney General regarding the rules governing Medicaid coverage of durable medical equipment. The agreement settles a lawsuit filed as a class action in Federal Court, which has been ongoing for the past year.

“Fundamentally, we have agreed that when low-income people seek Medicaid coverage for medical equipment, they must have evidence that the equipment is needed because of their medical condition and meets the Medicaid definition of durable medical equipment. Bottom line, if they can show that the equipment is durable medical equipment that is medically necessary and appropriate, then DSS will authorize Medicaid coverage,” said Attorney General Richard Blumenthal in describing the agreement.

Kevin Brophy, an attorney and the director of the CLS Elder Law Unit, agreed. “Our clients have to prove that the equipment prescribed for them is covered by Medicaid and medically necessary. But the state was denying payment for the equipment, even though our clients had proved eligibility and need for the equipment. This agreement solves that problem. It will benefit disabled people who are truly eligible for durable medical equipment.”

The equipment needed by the original plaintiffs in the case included the following:

- a stair glide for an elderly man who had to crawl up the stairs of his apartment to get to his bathroom and bedroom
- an electronic device that operates a quadriplegic individual’s hospital bed and allows him to

- control the temperature, use the telephone, and open the door
- a specialized bed for an individual with a spinal cord injury who suffers from excruciating back pain.

All the named plaintiffs have received the equipment they requested under the Medicaid program.

“Low-income disabled people were denied necessary equipment under the old policy,” Brophy noted. “This agreement should help them continue living independently, which in the long run should save the state money.”

CLS Helps Child Fight for Medically Required Orthodontia

A 15-year-old low-income Connecticut child must continue her two-year fight for state Medicaid coverage of urgently needed orthodontic treatment, although a state judge has already ruled that the DSS decision to deny her coverage was wrong.

Judge George Levine ruled in December 2003 that low-income children covered by the Medicaid program should not be denied orthodontic treatment when it is proven medically necessary. He ordered DSS to use the correct standard under federal Medicaid law to decide coverage. However, DSS appealed that decision in an effort to continue using its own narrower standard and avoid providing such treatment to the 15-year-old and thousands of other children.

“The state’s refusal to cover this treatment is unconscionable,” said Randi Faith Mezzy, the CLS staff attorney who represents the child. “This child is poor, and her family cannot pay for the treatment she really needs and for which she clearly qualifies under Medicaid rules. While she waits, her dental problems remain unfixed.”

DSS requested that Judge Levine’s order be stayed until an ap-

pellate decision is rendered. At a recent court hearing, the judge noted the ongoing harm to the child and denied the state’s request for a stay. DSS is therefore required to hold a new administrative hearing to reconsider the child’s eligibility for braces, this time using the court-ordered correction of the standards for coverage. “I am optimistic that my client will prevail at the new hearing because Judge Levine ordered DSS to use the correct rules this time,” said Mezzy.

The child on whose behalf the case was filed was 13 years old when an orthodontist diagnosed her need for treatment. In 2001, her mother took the child for a dental checkup; the dentist, concerned about her tooth and jaw alignment, urged that an orthodontist see the child. After examining the child, the orthodontist said that it was clear the child’s overbite was putting too much pressure on her teeth. That puts her at high risk for gum disease and jaw problems, which the requested orthodontia treatment is likely to prevent. Because the state employed a standard to deny coverage that ultimately was found to be impermissibly narrow, this child has had no treatment during the intervening two and a half years.

“The Department of Social Services has been given a responsibility by the U.S. government—to administer Medicaid and other social service programs in order to help the poor families of Connecticut. It is shocking that the state would expend so many of its resources and all these years fighting against my client to keep her from getting the treatment she needs. No one should need a lawyer in order to get medical treatment under a wonderful program like Medicaid,” said Attorney Mezzy. “The law is crystal clear, but the state refuses to acknowledge it.”

CLS Attorney Elected to National Organization

Steven Kilpatrick, an attorney in the Connecticut Legal Services Elder Law Unit, has been elected to the board of directors of the National Citizens' Coalition for Nursing Home Reform (NCCNHR). Kilpatrick was nominated by the Connecticut Citizens' Coalition for Nursing Home Reform.

Based in Washington, D.C., NCCNHR was formed in 1975 by advocates working for Ralph Nader and the National Gray Panthers to address public concern about substandard care in nursing homes. NCCNHR represents 200 member groups and more than 1,000 individual members. The 20-member board includes residents of nursing homes as well as advocates for the elderly.

NCCNHR advocates for amending federal and state laws and regulations to improve the lives of residents of nursing homes and other long-term care facilities. Current priorities include raising staffing levels at nursing homes, working to guarantee residents' rights, and minimizing the use of restraints on nursing home residents.

On February 24, 2004, Kilpatrick testified in front of the Select Committee on Aging at the Legislative Office Building in Hartford in support of Raised Bill No. 318—An Act Concerning Nursing Home Staffing Levels. The bill would require all nursing facilities in

- Connecticut, beginning in January 2008, to follow the NCCNHR-recommended minimum direct-care nursing staff to resident ratios.
- Currently, the Connecticut Public Health Code prescribes a 23-year-old nursing home staffing level that ranks Connecticut 33rd in the nation. According to Kilpatrick, "To put it simply, more direct-care nursing home staff leads to better quality of care for residents, and Connecticut's staffing level is seriously outdated and dangerously low."

Kilpatrick has been a CLS attorney since 1999 and has worked on behalf of elderly people in the Bridgeport, Norwalk, and Stamford areas. His work has included a special focus on the rights of the elderly when nursing homes close. He also edits the CLS elder law Web site (www.CTElderLaw.org) and the *Connecticut Elder Law Newsletters*.

"I'm honored and excited to have this opportunity to broaden my work on behalf of low-income seniors," says Kilpatrick. "NCCNHR is an important organization—the only one of its kind in the country—and its goals are a great fit with the Elder Law Unit at CLS. In both roles, I hope to continue improving the lives of elderly people who reside in nursing homes and other facilities."

(O'Malley, continued from page 1)

"As lawyers, we have a greater responsibility than society at large to ensure that the poor and disadvantaged have equal access to justice," he says. "When I learned about the legal services that CLS provides, I realized how very valuable CLS is, not only to its clients but to the legal profession as well."

The lawyers at his firm, Tobin, Carberry, O'Malley, Riley & Selinger, P.C., share O'Malley's beliefs about equal justice. "Providing necessary legal services to low-income people with serious life problems is something we all support," O'Malley says. He also explains that the work his firm does for numerous hospitals throughout the state includes assisting patients of those hospitals qualify for federal and state medical benefits, which benefits the patients as well as the hospitals.

O'Malley's efforts on behalf of low-income clients include pro bono work. He takes several pro bono referrals each year from Statewide Legal Services, including matters such as foreclosures and wrongful evictions. (Statewide Legal Services is a telephone-based service that is an essential entry point for clients of the legal services network in Connecticut.)

Jerry O'Malley doesn't rest on his laurels, though. "There's a lot of support for CLS among New London County lawyers," he notes, "but my hope is that every lawyer in the area will see the importance of this program and become a contributor."

Tobin, Carberry, O'Malley, Riley & Selinger, P.C. was founded in 1963. The firm's legal specialties include commercial transactions, criminal defense, personal injury litigation, estate and tax planning, zoning and land use issues, and government affairs counseling.

CLS Receives New Grants

Impact Fund Provides Support In Case Brought for Disabled Children

The Impact Fund has awarded Connecticut Legal Services a grant to help defray litigation costs in *W.R. et al. v. Connecticut Department of Children and Families* (DCF). The case seeks compliance with legal requirements that would compel the state to offer non-institutional placements to severely mentally ill children in its care.

CLS represents children in the care of DCF who suffer from mental illnesses that cause severe behavioral problems and the parents of these children. Currently, these children languish in institutional settings, although community-based placements would better meet their needs. According to CLS attorney Catherine Williams, "Research shows severe risks associated with institutional treatment, including learning antisocial or bizarre behavior and being victimized. Connecticut needs to make a commitment to these children and youth, not only because it's the right thing to do but also because a full continuum of care in the community is less expensive than institutional care."

The state Office of the Child Advocate has joined CLS in this case. Says Jeanne Milstein, the child advocate who is a co-plaintiff,

"An ineffective mental health system takes a tremendous and often irreversible toll on children." Funds from the grant pay for expert witnesses, deposition costs, and transcript costs. "This is an important case for indigent, emotionally disabled children," notes CLS Children at Risk and Litigation Unit Director Anne Louise Blanchard, "but it's complex. The expert testimony required is expensive, and it's hard for a non-profit organization like CLS to pay the costs up front. We're immensely grateful that the Impact Fund has agreed to help with these expenses."

Anthem Foundation Funds Statewide Planning of Medical Rights Advocacy

CLS, along with other members of the statewide legal services community, has embarked on a planning process for its medical rights advocacy. A grant from the Anthem Foundation of Connecticut funds the effort.

"After welfare reform, medical coverage has been the next target for budget cutbacks affecting the poor," says CLS Deputy Director Steve Eppler-Epstein. "Although we cannot prevent all the cuts, we have been able to obtain court enforcement to ensure that cutbacks do

not violate the law. But there is a growing consensus that everyone, including low-income people, needs access to quality health care. The ability to limp into an emergency room with an urgent illness isn't adequate and certainly isn't cost-effective. We're delighted to do some work beyond reaction, to have the opportunity to look forward and see where we're headed."

Eppler-Epstein is joined in the planning process by staff from Greater Hartford Legal Aid, New Haven Legal Assistance, and the Legal Assistance Resource Center of Connecticut. They have been soliciting input from medical rights advocates and other experts across Connecticut and the nation. The final report is expected to be completed by late spring.

Melville Charitable Trust Supports Housing Rights in Bridgeport

The Melville Charitable Trust "concentrates on finding and fighting the causes of homelessness." To that end, the trust has awarded CLS a grant to address three housing-related needs of people in Bridgeport.

- In recent years, CLS litigation has resulted in the provision of hundreds of housing subsidy vouchers for low-income families in Bridgeport. Many of those

families, however, have found that a subsidy does not translate into quality housing because some property owners illegally discriminate against voucher holders. Some discriminate on the basis of race or ethnic background, some illegally refuse to accept housing subsidies or state security deposit guarantees, and others refuse to make accommodation for applicants with disabilities. Under this grant, CLS lawyers will represent applicants for housing who have lost rental opportunities because of illegal discrimination.

- CLS lawyers will help tenants of a large, federally subsidized apartment building whose owner is trying to convert it to a private apartment building. Some tenants may wish to remain, and CLS will help make sure they are not illegally forced out. Some may wish to use their subsidies for new housing; CLS will help ensure that they are not discriminated against in the housing market.
- CLS lawyers will establish “housing roundtable” to bring representatives of the Bridgeport Housing Authority and key social service agencies together on a regular basis to solve problems relating to public housing tenants. This project is modeled on a successful roundtable that CLS has coordinated with the Stamford Housing Authority for several years.

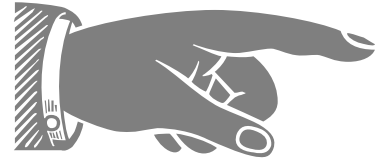
CLS Executive Director Marvin Farbman expressed gratitude: “We are very thankful to the Melville Charitable Trust for supporting CLS efforts to help low-income families and individuals in Bridgeport escape worst-case housing situations and/or homelessness.”

CLS Advocates Selected for Fellows Program

John Spilka, a regional director for Connecticut Legal Services, and Deborah Witkin, the CLS director of development, were recently elected to the James W. Cooper Fellows Program of the Connecticut Bar Foundation (CBF).

Spilka has led the CLS Disability Team, which helps low-income claimants establish eligibility for supplemental security income and Social Security disability benefits, since 1986. He began his work as a disability law attorney, for VISTA, in 1974 and joined CLS in 1976. Spilka has represented clients at more than 800 hearings and handled more than 150 appeals before the Appeals Council and the Connecticut District Court. He frequently serves as a trainer at Connecticut Bar Association and other Continuing Legal Education disability law events. He has also helped edit and write various law desk books about disability, Law Works for People materials about disability, and the CLS *Disability Advisor*. Spilka is an occasional guest lecturer at the Quinnipiac Law School Health Law Clinic.

In addition to her work on CLS fund-raising operations, Witkin is the regional director of the CLS Eastern Local Services Team. A CLS attorney since 1986, she has worked in the CLS Housing, Family, Benefits, and Children at Risk Units.



From 1994 to 1998, Witkin was on loan to two area law schools. She spent a year at the University of Connecticut School of Law, where she worked to expand the Poverty Law Clinic. As a visiting clinical professor at the Quinnipiac University School of Law (QUSL), Witkin designed and directed the Health Law Clinic. She is an adjunct law professor at QUSL, teaching an introductory course on representing clients. She is also a member of the QUSL Strategic Planning Committee for Clinics and Externships.

The Fellows Program, created by the CBF in 1994, works to promote a better understanding of the legal profession and the judicial system among Connecticut citizens. Nominations to the program are based on the superior quality of candidates' work, their service to their communities and the public, and their efforts to improve the legal system.

Spilka and Witkin join other James W. Cooper Fellows from CLS: Executive Director Marvin Farbman, Deputy Director Steve Eppler-Epstein, Children at Risk and Litigation Unit Director Anne Louise Blanchard, and Regional Director and Family Law Task Force Director Claudine Siegel.

State Agrees to Correct Erroneous Automatic Medicaid Cutoffs

Connecticut Legal Services lawyers have fought for years against misapplication of the “fleeing felon” rule in public assistance. Nationwide computer matching identifies recipients of public assistance who have missed a court date regarding pending charges. The system has long been rife with problems. Beyond the issue of whether people accused—but not convicted—of a crime should be penalized, the rule has resulted in the loss of benefits for people whom authorities have no intention of prosecuting.

Federal law specifies, however, that the cutoff rule is not to be applied to Medicaid benefits. This rule is particularly important because CLS lawyers have found that many clients subject to the rule have serious physical or mental health problems.

Recently, CLS attorney Randi Mezzy found that Department of Social Services (DSS) computers had been programmed to cut off

Medicaid benefits automatically at the same time accused fleeing felons lost food stamps and other benefits. The erroneous Medicaid cutoffs were corrected only for people who recognized and complained of the error or whose DSS caseworker recognized that a correction was needed.

Mezzy immediately contacted DSS Commissioner Patricia Wilson-Coker. After reviewing the situation, Wilson-Coker agreed to establish a new system to centralize the implementation of cutoffs and ensure that Medicaid recipients were not affected.

“We file litigation when we have to,” Mezzy commented, “but litigation is very time consuming. Given the unmet needs of our clients and the limited number of staff, we’d rather solve problems in other ways. We are pleased when a state official recognizes an error and takes prompt action to correct it.”

Update: CLS Wins Federal Appeal, Extending Health Care Benefits for Working Families

The Federal Second Circuit Court of Appeals has ruled that Connecticut illegally cut HUSKY A program medical benefits for thousands of working parents. The cuts were approved as part of a state budget package in 2003. Representing the families relying on Husky A, attorneys from Connecticut Legal Services, Greater Hartford Legal Aid, and the New Haven Legal Assistance Association challenged the cuts. The Second Circuit had ordered benefits restored while the appeal was pending.

The families, who earn between 100 and 150 percent of the federal poverty guidelines, were targeted for termination of HUSKY A Medicaid coverage to save money in the state budget. The state’s action denied eligibility to additional families who earn more than 100 percent of the federal poverty guidelines, but the termination of families already enrolled was judged illegal.

“There is a crisis of people without medical insurance in Connecticut and around the country,” says Sharon Langer, an attorney for



CLS. “We took this case to the Second Circuit because health care coverage is so important for working families and because Congress had promised to continue providing medical coverage if they worked their way off welfare. We are gratified that the Court agreed that the state’s action violated federal law.”

The litigation was funded in part by grants from the Anthem Foundation of Connecticut and the Connecticut Health Foundation.

CLS Campaign for Justice Sets New Record



The Connecticut Legal Services 2003 Campaign for Justice received a record \$198,955 in contributions from 432 donors. "This is a very exciting mark to reach," notes CLS Board Chair Bob Dolian. "With the help of our supporters, next year we'll take the Campaign over the \$200,000 level. The Campaign pays for hundreds of cases we open each year for very needy people, so it's very important that the support continue to grow."

Funding for much of the help CLS provides comes from the generosity of private organizations and individuals. Please continue to support our work on behalf of low-income individuals and families who face harsh legal problems. Please see page 8 for information about how you can contribute to CLS.

CLS greatly appreciates the efforts of the 2003 Campaign volunteers listed below. They will be joined this year by Rick Slavin, a partner with the Bridgeport firm Cohen and Wolf, P.C. and chair of the CLS Board of Directors Fund-Raising Committee.

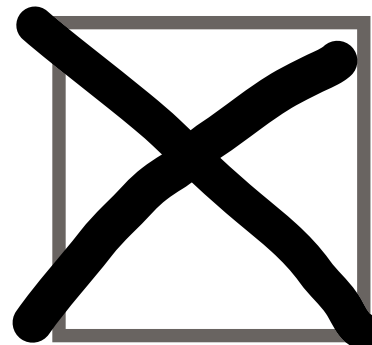
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LEAVE YOUR MARK FOR FUTURE GENERATIONS



Connecticut Legal Services is a participating organization in Leave a Legacy Connecticut (LAL), a statewide public-awareness effort to promote charitable bequests. LAL's campaign encourages people to make gifts from their estates to their favorite nonprofit organizations and urges people to discuss their intentions with financial and estate planners who specialize in this field. Many estate-planning professional organizations take part in LAL's collaborative efforts, as do more than 500 Connecticut nonprofit organizations.

According to LAL published statistics, Connecticut is in general a generous state. Each year, 72 percent of residents give money to charities. Only 5.7 percent of Connecticut residents leave charitable bequests in their wills, however. The number-one reason for this seeming discrepancy: Most people say they were never asked or didn't think about it.

"Everyone can help, regardless of income, and each gift makes an impact," says Lyn Walker, co-chair of Leave a Legacy Connecticut and a partner at Day, Berry & Howard LLP.

Leave a Legacy Connecticut and Connecticut Legal Services urge people to consider including charitable organizations such as CLS in their wills. To find out more, visit the Leave a Legacy Web site at <http://www.ctphilanthropy.org/lal> or call the United Way Infoline at 211. For more information on making charitable bequests to CLS, contact Development Director Deborah Witkin at (860) 344-0447 x 113.

Please consider putting CLS in your will—your bequest will make a difference for low-income Connecticut residents.

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I want to help CLS open doors for Connecticut's low-income population.

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