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Report Reveals Inadequate Investigation Process for Abused and Neglected South Carolinians with Disabilities

By: Sarah Zovnic and Nikki Fair

On October 27, 2005, Protection and Advocacy for People with Disabilities, Inc. (P&A) released *Unequal Justice for South Carolinians with Disabilities: Abuse and Neglect Investigations*.

The report, based on a two-year study, looked at the entities responsible for investigating and prosecuting allegations of abuse, neglect and exploitation involving people with disabilities. The report includes cases representing individuals in a variety of programs and environments which illustrate the issues arising from the fragmented investigation process. While the process for investigating abuse and neglect of people with disabilities is often described as a system, in fact there is no system at all.

Focus was placed on compliance with South Carolina's Omnibus Adult Protection Act [S.C. Code Ann. §§ 43-35-5 et seq. (OAPA)], internal policies and procedures of the Department of Disabilities and Special Needs (DDSN), and the quality of the investigative responses. The investigative reports were reviewed with attention to the fundamentals of a quality investigation of abuse or neglect.

While the focus of the report is primarily on those adults served by DDSN, it is important to note that similar problems exist with the investigation process of abuse and neglect allegations involving children with disabilities and adults with mental illness. Some of the findings include:

(cont'd)

Report *Continued*

Reporting:

- is often delayed or non-existent.
- documents lack sufficient information to conduct a criminal investigation.
- to law enforcement seldom receives the necessary investigative effort.
- to the local solicitor for case review rarely results in prosecution.

Investigations:

- are conducted by administrators from an administrative perspective.
- definitions which are inconsistent with OAPA impede the investigative process.
- conducted by DDSN contract agencies are seriously flawed.
- lack a process of oversight to ensure they meet a minimum standard and that cases are screened for possible criminal behavior.

Based on the report findings, P&A recommended:

1. Establishment of a state-level investigative entity within the criminal justice system, i.e. the South Carolina Law Enforcement Division, and outside of any agency providing services to vulnerable adults, with responsibility for all reports of abuse involving vulnerable adults in facilities.
2. No longer permit agencies and their contractors to investigate allegations of abuse and neglect within their facilities.
3. Establish separate policies and procedures for administrative and quality control investigations after determining that no criminal abuse or neglect took place.
4. Develop and present adequate training to criminal justice professionals charged with the responsibility of investigating and prosecuting abuse and neglect.
5. Review all agency (DDSN, contractor, and Long Term Care Ombudsman) policies and procedures to insure that they conform to all the provisions of OAPA, including definitions.

The report was disseminated to the South Carolina state legislators, state agencies involved with providing services or conducting investigations involving people with disabilities, and other concerned citizens. It is imperative that corrective action be taken as the current system does little to provide the appropriate protection to South Carolinians with disabilities.

People having knowledge of abuse and neglect of South Carolinians with mental and/or physical disabilities may contact Protection and Advocacy for People with Disabilities, Inc. toll free at 1.866.275.7273 (Voice) or 1.866.232.4525 (TTY) or contact your local law enforcement agency. To access the press release, cover letter and full report electronically, go to <http://www.protectionandadvocacy-sc.org/news.html>.

Ms. Fair and Ms. Zovnic are Advocates with the Conditions in Facilities Team

From the Executive Director...

Dear Readers:

Protection and Advocacy for People with Disabilities, Inc. (P&A) is pleased to provide you with the Fiscal Year 2006 Priorities for advocacy services. These priorities were adopted by the Board of Directors at its September 10th meeting. A copy is inserted in this newsletter.

In order to assure that we are devoting our limited resources to those areas where we can have the greatest impact in protecting the rights of South Carolinians with disabilities, each year P&A Advisory Council members, advocates and attorneys work to formulate priorities. These priorities, strategies and case selection criteria will guide the work we do. Suggestions and comments received from focus groups, callers, clients and you, our readers, are critical to this process.

We especially want to thank those of you who helped by returning feedback forms enclosed in the last issue of *Perspectives* which published the proposed priorities.

We need and welcome your participation throughout the year and appreciate your support. If you have questions about P&A services, the priority selection process or wish additional information, please let us know.

Sincerely,

Gloria M. Prevost

Save the Date....

Celebrating Abilities: An Evening of Jazz and Art



Friday, April 28, 2006 6:00p.m. - 10:00p.m.

*Leaside Conference Center ~ 100 East Exchange Place ~ Columbia, South Carolina 29209
Jazz Band ~ Live Auction ~ Art Auction ~ Annual Awards*

ETHICS SEMINAR HUGE SUCCESS

The ethics conference, *Life Choices for People with Disabilities: Ethical Issues*, held November 18th at Midlands Technical College's Northeast Campus, exceeded all expectations.

The Honorable Jacqueline Belton, Associate Probate Judge of Richland County; Professors Elizabeth Patterson and Nathan Crystal of the University of South Carolina School of Law; Charleston attorney and P&A Board member Harriet McBryde Johnson; and Professor David Orentlicher, M.D., J.D., Samuel R. Rosen Professor of Law and Co-director of the William S. and Christine S. Hall Center for Law and Health of the Indiana University School of Law made excellent, informative presentations examining some of the many ethical issues affecting people with disabilities to over seventy participants, including representatives from the Georgia and Vermont Protection & Advocacy systems and several state agencies. P&A Board member Lillie Hart then moderated a panel discussion with the presenters joined by P&A attorney, Anna Maria Darwin.



Dave Zoellner and Eric Johnsen

Nancy McCormick and Prof. Elizabeth Patterson



Prof. Nathan Crystal and Attendees



Dr. David Orentlicher

Thanks to the Lilly Foundation, Nelson Mullins Riley & Scarborough, Midlands Technical College and the National Disability Rights Network, we were able to present a full day program eligible for six hours of continuing legal education credit. The overall evaluations of the seminar were excellent, with many participants asking for additional seminars on similar topics.



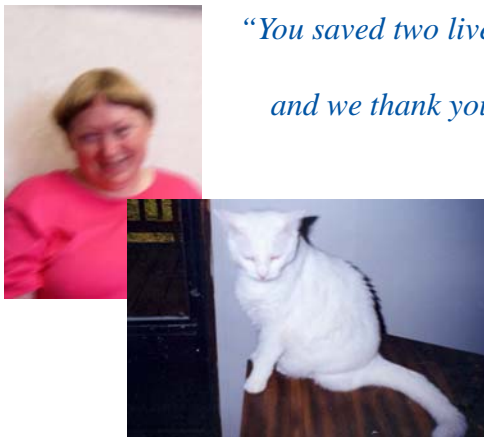
Hon. Jacqueline Belton



NIPPY AND OWNER FIND A NEW HOME!!

P&A advocate Cindy Parker and attorney Pete Cantrell have helped a client obtain housing where she can keep her support animal, Nippy. Kathy Wells' cat provides emotional support for her and provides a warning when she is about to have a seizure. Ms. Wells's lease was not being renewed by her landlord for reasons unrelated to her disability, and she had to be out of her apartment by the end of the month. She needed to find a new place to live that would accept her Section 8 voucher and let her keep her cat with her.

Ms. Wells had recently visited an apartment complex that she thought would work for her. They would accept her voucher but they had a no pets policy, and they refused to modify that policy to allow Ms. Wells to keep Nippy with her.



Pete Cantrell sent a letter to the property manager explaining that the Fair Housing Act requires landlords to make reasonable accommodations when necessary to prevent discrimination against tenants with disabilities. He enclosed a copy of the Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Accommodations under the Fair Housing Act. This statement specifically referred to modification of a no pets policy as Ms. Wells had requested as an example of a reasonable accommodation.

A few days later a spokesman from the management company in charge of these apartments apologized for what happened to Ms. Wells and agreed to waive the no pets policy so that Nippy could stay with her. Over the

next several days he was very helpful in getting the HUD inspections and necessary repairs completed in a very short time so that Ms. Wells could move into her apartment by the last day of the month. After Ms. Wells moved into her new apartment, she sent us a picture of Nippy and a note saying that both she and Nippy thanked us for our help.

CALENDAR OF EVENTS

MROP Advisory Council
January 10, 10:30 a.m.
Central Office Conference Room

PAIMI Advisory Council
January 11, 10:30 a.m.
Central Office Conference Room

PAIMI Advisory Council
March 8, 10:30 a.m.
Central Office Conference Room

Board of Directors
March 11, 10:30 a.m.
Central Office Conference Room

PAIDD Advisory Council
April 7, 10:30 a.m.
Central Office Conference Room

CELEBRATING ABILITIES
An Evening of Jazz and Art
April 28, 6:00 p.m.
Leaside Conference Center

MEDICAID CAN CONTINUE WHEN SSI BENEFICIARIES GO TO WORK

By Pete Cantrell

If I go to work and lose my SSI check will I lose my Medicaid too?

Maybe not! Many people who get an SSI check (Supplemental Security Income) are afraid of going to work because their SSI checks will stop if they earn too much money. They are also afraid that if their SSI checks stop, they will not get Medicaid any more. There is a law that can help them keep Medicaid. The law is called Section 1619(b). The purpose for Section 1619(b) is to encourage people on SSI to go to work by providing continuing Medicaid coverage.

To qualify for continuing Medicaid coverage under Section 1619(b) you must:

- Have received at least one SSI check;
- Meet all of Social Security's other rules for SSI except that your earnings from work are too much;
- Need Medicaid in order to work; and
- Have income from work under what Social Security calls the "threshold amount." In 2005 the threshold amount in South Carolina is \$24,593. If you have high medical expenses, high work expenses, or a Plan for Achieving Self-Support (PASS), you can ask SSA to give you a special, individual threshold amount. This means that you can earn more than \$24,593 and still keep your Medicaid.

For more information:

A benefits specialist at the South Carolina Pathways Toward Employment (SC PTE) or at Walton Options can help you understand how going to work affects your SSI and Medicaid. Their services are free. You may call a benefits specialist in your home county at the numbers below:

SC PTE:

Anderson, Greenville, Laurens, Oconee, and Pickens counties at 864-282-1203 or 866-837-9263 (toll free).

Cherokee, Chester, Kershaw, Lancaster, Lee, Spartanburg, Sumter, and York counties at 803-424-2770 or 866-369-9311 (toll free)

Chesterfield, Darlington, Dillon, Florence, Horry, Marion, and Marlboro counties at 843-317-4095, ext. 328 or 866-837-9262, ext. 328 (toll free)

Berkeley, Charleston, Clarendon, Dorchester, Georgetown, and Williamsburg counties at 843-792-5043 or 866-837-9261 (toll free)

Calhoun, Fairfield, Greenwood, Lexington, Newberry, Orangeburg, Richland, and Union counties at 803-935-5202 or 866-837-9260 (toll free)

WALTON OPTIONS:

Abbeville, Aiken, Allendale, Bamberg, Barnwell, Beaufort, Colleton, Edgefield, Hampton, Jasper, McCormick, and Saluda counties at 803-593-8545 or 877-821-8400 (toll free).

Mr. Cantrell is an attorney and Equal Access Team Leader. Funding for this article is provided through a grant from the South Carolina Department of Health & Human Services.

PUBLICATIONS AVAILABLE

P&A offices have several useful and informative publications free for the asking. This information can be made available in alternative formats (including disc or Braille) or in Spanish. Call our hotline 1-866-275-7273 (Voice) or 1-866-232-4525 (TTY) and ask for any of the following:

FACT SHEETS

Americans with Disabilities Act

Americans with Disabilities Act/Section 504 Rehabilitation Act
Americans with Disabilities Act -Title II: State and Local Government
Americans with Disabilities Act -Title III: Public Accommodations
Accessible Transportation
The Rights of College Students with Disabilities
Department of Justice ADA Mediation Program

Employment Rights

Employment Discrimination and your Rights as an Employee with a Disability
Reasonable Accommodation and your Rights as an Employee with a Disability

Health Information

Your Guide to Mental Health Treatment Review in the Community
Early Periodic Screening, Diagnosis & Treatment (Children's Medicaid)
A Resource Guide for South Carolinians with Traumatic Brain Injury

Children's Education

Education for Children with Disabilities
Assistive Technology and Special Education
Educational Evaluation: Pre-placement Psycho-Educational evaluation
Family Education Rights and Privacy Act
Functional Behavior Assessments and Behavioral Intervention Plans: How to Assess and Address a Student's Problem Behavior
Filing an Education Complaint under Section 504 of the Rehabilitation Act of 1973
Filing a Complaint with the South Carolina Department of Education: An Alternative to Due Process
Mediation: An Alternative to Due Process
Least Restrictive Environment, Inclusion, Mainstreaming: The Individuals with Disabilities Education Act
Prior Written Notice: A Good Strategy for Special Education
Protections for Students not yet Identified as Eligible for Special Education
Related Services: A Very Important Part of Special Education
Taking Tests: True or False?
Expulsion and Manifestation
Meeting Strategies
Bullying

General Information

What Happens When a Child Grows Up? Legal Effects of Becoming an Adult
Tax and Special Benefits for People with Disabilities in South Carolina
Voting Rights for South Carolinians with Disabilities
The South Carolina Assistive Technology Lemon Law

BROCHURES

Making a Difference in the Lives of People with Disabilities (General information about P&A)
Protection and Advocacy for Beneficiaries of Social Security
Being an Advocate for Yourself: 7 Tips
Protection and Advocacy for Voting Access
Protection and Advocacy for Assistive Technology

MANUALS

Resource Manual for Investigating Allegations of Abuse, Neglect, or Exploitation of Individuals with Developmental and Other Disabilities

Protection and Advocacy for People with Disabilities, Inc.

P&A is a private, non-profit, corporation that serves as South Carolina's federally funded protection and advocacy system for people with disabilities. Established in 1977, P&A is authorized by state and federal law to protect the rights of people with disabilities in South Carolina and is a member of the National Disability Rights Network. As required by federal law, P&A is independent of all agencies that provide treatment or other services to people with disabilities.

Please feel free to contact our toll-free helpline, [866/275-7273](tel:8662757273) (Voice) or [866/232-4525](tel:8662324525) (TTY), for updates on any of the issues you have read about in this newsletter or to request service. This newsletter is not intended to be legal advice. We do not discriminate on the basis of disability, race, gender or national origin in the provision of our programs or services. Pete Cantrell is the designated coordinator for Sec. 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

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Mailing List

If you are not on our current mailing list and would like to receive our newsletters, call, write or e-mail us at info@protectionandadvocacy-sc.org to be added to our electronic mailing list. Please visit our website at www.protectionandadvocacy-sc.org to learn more about P&A and the services we provide to South Carolinians with disabilities.

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