

Greetings to Friends and Supporters of the Arizona Center for Disability Law:

This is the second in what we hope will be a regular e-mail update on our activities. It is an opportunity to share with you some of the highlights of our work protecting the rights of individuals with disabilities, as well as letting you know about developments of interest in disability law and policy. I know all of you get too many e-mails as it is, so if this is a list you would prefer to opt out of, let us know and this will be the only e-mail you will receive from us. If you have ideas for updates or issues you would like us to address, let us know that as well.

ACDL Successful in Litigation against AHCCCS for Failure to Provide Home Care Workers for People with Disabilities

On August 13, 2004, United States District Judge Earl H. Carroll issued a decision finding that the State AHCCCS program has failed to assure that recipients of Home and Community Based Services receive their prescribed services. The Judge ordered AHCCCS to make extensive reforms to assure that it “provide[s] each individual who qualifies for its services with those services for which the individual qualifies without gaps in service.” This decision came after a week long trial last fall, where the plaintiffs with disabilities who need these services to get out of bed, get dressed, go to the toilet, testified that despite having a care plan with AHCCCS to provide these services, they were sometimes left stranded in bed with no one to help them. The Judge found the shortage of workers was directly related to the low salaries they were paid and that AHCCCS failure to provide these services violated federal Medicaid law. He has requested the parties file schedules for implementing the Court’s order by September 30, 2004. The Judge’s Decision may be found at <http://www.acdl.com/legalpolicynews.html#HealthCare> by clicking on Ball v. Biedess, and then on Findings of Fact Conclusions of Law.

Settlement reached in ADA Employment Case Alleging Discrimination against five Developmentally Disabled Workers at Tucson Hotel

The Arizona Center for Disability Law (ACDL) and the U.S. Equal Employment Opportunity Commission (EEOC) recently settled a federal lawsuit filed in U.S. District Court for the District of Arizona in Tucson, alleging that the Clarion Hotel discriminated and retaliated against five employees because of their developmental disabilities, which include mental retardation and Down’s Syndrome. Specifically, the lawsuit alleged that a crew of about five developmentally disabled workers satisfactorily performed housekeeping services for the hotel under the supervision of a job coach for several years. Then the hotel hired a new executive housekeeper who did not wish to work with people with mental retardation. The hotel then began reassigning them to different work locations than they were usually assigned to, segregating them from the rest of the housekeeping staff for lunch breaks, excluding them from

staff meetings, altering the tip practices and payment, and denying them reasonable accommodations.

In addition, the lawsuit further alleged that the hotel terminated the contract with the job coaching agency and workers in retaliation when a representative for the workers wrote a letter to the hotel asking them to look into and correct these unfair employment practices.

The Consent Decree, signed by District Court Judge Raner C. Collins on August 30 provides that Clarion pay fifty thousand dollars (\$50,000.00) in compensatory damages to the five crew members and \$13,500.00 to ACDL for attorney fees. In addition the Decree provides that Clarion will enter into another contract to utilize a crew of developmentally disabled workers, under certain conditions. The Decree further provides that Clarion will post a notice, provide training to its employees on disability discrimination and retaliation, designate an employee to be responsible for addressing any claims of discrimination, and develop a disability and anti-retaliation policy. The Consent Decree may be accessed at <http://www.acdl.com/pdfs/EEOC%20-%20Clarion%20Consent%20Decree.pdf>. An article about the case appeared in the Arizona Daily Star at <http://www.dailystar.com/dailystar/allheadlines/38089.php>.

Protection and Advocacy for Beneficiaries of Social Security --- PABSS

Congress enacted the Ticket to Work and Work Incentives Improvement Act of 1999 ("TWWIIA"), PL 106-170, to assist individuals who receive social security benefits (SSI or SSDI) because of disability to enter the workforce. The Act provides a "ticket" which the beneficiary may submit to an employment training program (called an Employment Network) along with other work incentives and protections. Often, disabled social security beneficiaries are afraid to return to work for fear that they will lose health care benefits, fail at work and be unable to get back on social security. Congress realized that disabled social security beneficiaries would need legally-based advocacy to overcome the many obstacles they face as they try to return to work. As a result, Congress authorized the Commissioner of Social Security to "make payments in each State to the protection and advocacy system... for the purpose of providing services to disabled beneficiaries."

In Arizona, this grant was provided to the Arizona Center for Disability Law to:

- Investigate any complaint a client may have against an employment network or other service provider that is helping them return to work;
- Give beneficiaries information and advice about vocational rehabilitation and employment services;

- Inform beneficiaries about the Social Security Administration's work incentives that will help them return to work;
- Provide consultation and legal representation in the effort to secure, maintain or regain employment; and
- Help with problems concerning a work plan under the Ticket to Work program.

Recently, the Arizona PABSS project participated in SSA's Beneficiary Pilot Project by sending out a letter and survey to 1,000 people from the list of the 150,000 individuals in Arizona who chose not to use the Ticket to Work. We developed a survey with 7 questions about the Ticket such as the reason why the person did not use the Ticket, and what would have made the person more interested in using the Ticket. We received approximately 150 responses. Our results included 69 those individuals who said they did not receive the Ticket and 67 who stated that they did not use the Ticket because they are too disabled to work. The complete results of the survey may be found as an attachment to this newsletter.

BASHAS Thanks a Million Program – make your shopping dollars work for the ACDL -- OUR GROUP ID NUMBER IS 27946

Between now and March 31, 2005, if you shop at Bashas' and link our Group Identification Number 27946 to your Thank You Card, Bashas' will donate to the Arizona Center for Disability Law 1% of the total sales attributable to our Group Identification Number. So please put your shopping dollars to work to help us to assist persons with disabilities.

To see upcoming trainings offered by the ACDL around the state:
<http://www.acdl.com/training.html>

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