

Justice Quarterly

a publication for advocates from the staff at
Vermont Legal Aid, Inc.
and our partner agency, Legal Services Law Line of Vermont, Inc.

Spring 2005

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Health

Dentures and the Dental Cap - Vermont Legal Aid and the Health Care Ombudsman continue to have success challenging DCF's refusal to pay for dental services that are over the cap in certain types of cases. Dental services under Medicaid are limited to a \$475 cap. Examples of clients who may be able to get dental services above the cap include those who have a medical condition that requires a certain diet and/or the ability to chew, suffer from serious infections due to decayed teeth, or have physical problems such as jaw deterioration. Other conditions can be evaluated on a case-by-case basis. Persons who need assistance in obtaining dental services above the cap should contact the Health Care Ombudsman at 1-800-917-7787.

VHAP - Clients who are income eligible for VHAP may be found to be ineligible if they have had other private health insurance within the previous 12 months. One of the exceptions to this is if the client loses employer-provided insurance due to job loss. In a case that expands the law around job loss coverage, VLA obtained a decision that an employee's voluntary reduction in hours to part-time, which resulted in loss of his employer insurance, was a job loss within the meaning of the DCF regulation and therefore the 12-month rule did not apply and the client was eligible for VHAP. (Fair Hearing No. 19,327.) Vermonters who need assistance in obtaining VHAP coverage should contact the Health Care Ombudsman at 1-800-917-7787.

State Health Care Program Premium Implementation Changes - Beneficiaries will now be paying their state health care program premiums prospectively. Effective May 1, 2005, premium bills will be mailed out on or around the first of the month. Payment will be due by the 15th of that month. The premium payment will be applied to coverage for the following month. For example, premium notices were mailed on or around May 1, 2005, and are due by the 15th of May for June health care benefit coverage.

Termination notices for non-payment of premium will be sent to beneficiaries who have not paid their premiums by the 15th of the month. *However, in actuality, beneficiaries have until the first business day of the following month to get their premium payment in and processed to receive continued coverage.*

If the premium is processed after the first business day, coverage begins the first of the month after the payment has been processed. For example, the premium is due May 15 for June coverage. If the payment is not received and processed until June 3, the beneficiary has no coverage for June – coverage starts July 1.

Call the Office of Health Care Ombudsman at 1-800-917-7787 if you need further information or have clients who lose their benefits or do not understand their current coverage status.

Disabilities

Vermont Career Start Project - For students with disabilities, transition to life after the school environment can be daunting and not infrequently unsuccessful. Vermont has been chosen by the U.S. Department of Labor Office of Disability Employment Policy as one of only eight states to receive federal funding to improve transition outcomes for youth with disabilities moving from school to employment, post-secondary education, independent living and community participation. Community-based multi-year projects have been established in four areas: Bennington, Randolph, Springfield and Chittenden County. Six additional communities have received one-year funding to pilot creative approaches to improve transition experiences for students with disabilities. It is expected that the projects and pilot programs will provide community-based responses that can be replicated around the state.

The Vermont Human Resources Investment Council, Department of Employment and Training, Division of Vocational Rehabilitation, and Department of Education are partners in the four-year project. For more information about Career Start, contact Renee Kievit-Kylar, Career Start Director at Renee.Kievit-Kylar(ATsymbol)dail.state.vt.us or 802-241-4683. For information about the transition process for students with disabilities receiving special education services, contact the Vermont Parent Information Center at 1-800-639-7170 or visit their web site www.vtpic.com. For information about legal assistance in obtaining appropriate transition services, contact the Disability Law Project of Vermont Legal Aid at 1-800-747-5022.

SSDI Pilot Project Improves Finances for Working People With Disabilities - Vocational Rehabilitation and the Social Security Administration are piloting a research project to help determine if people receiving Social Security Disability Insurance will work more if they are able to keep more of their benefits when working. Under this study, which begins July 2005, all SSDI recipients who work and apply for the program at VR will be randomly assigned to one of two groups. In one group, the rules all stay the same. In the other group, after the Nine Month Trial Work Period, recipients who earn more than \$830 a month will be able to keep \$1 of their benefits for every \$2 that they earn. This is a considerable financial improvement. Additionally, these recipients will not undergo continuing disability reviews during the pilot project. For more information contact James Smith, program developer at VR, 802-241-4480 or James.Smith(ATsymbol)dail.state.vt.us

Housing

Evictions - In April 2005, the Vermont Supreme Court reversed a lower court judgment in

favor of a landlord on technical grounds. The tenant who represented himself (*pro se*) in the lower court proceedings, filed a motion to dismiss the case claiming that the termination notice was no good. The court failed to rule on his motion and instead set the case for immediate trial. As a result, the tenant never got to fully litigate his case in court and he lost. The major issues addressed by the Supreme Court were 1) the failure of the lower court to clearly rule on the tenant's motion to dismiss before proceeding to trial and the failure to adequately inform a *pro se* litigant of how the court process worked; and 2) that the issuance of multiple termination notices by the landlord was confusing and ultimately reinstated the lease agreement causing the entire action to fail on technical grounds. This case is a significant expansion of tenant rights. As always, tenants with termination notices should contact Vermont Legal Aid for assistance by calling the statewide toll free number at 1-800-889-2047.

Discrimination - In a case that has received nationwide publicity, Vermont Legal Aid and the Women's Rights Project of American Civil Liberties Union settled a federal civil rights action after a federal judge in Brattleboro ruled that victims of domestic violence are protected by the federal Fair Housing Act. The female plaintiff in this case alleged that her landlord discriminated against her, because of her sex, when her landlord attempted to evict her and her young children just 72 hours after the woman was criminally assaulted by her husband and obtained an order of protection. The ruling is important because female victims of domestic violence who seek to terminate a battering relationship are often threatened with eviction as a result. A woman who is attempting to end an abusive relationship should not have to worry about eviction and possible homelessness. According to the Department of Justice, women living in rental housing experience intimate partner violence at three times the rate of women who own their homes. Other studies show that domestic violence is a primary cause of homelessness for women and children and that one in four women returns to her abuser because she has nowhere else to stay. Advocates with clients who are victims of violence and who face an eviction as a result should contact Meris Bergquist at 1-800-769-9164 or [mbergquist\(ATsymbol\)vtlegalaid.org](mailto:mbergquist(ATsymbol)vtlegalaid.org).

Seniors

Class Action Suit Rescinds Medicaid Waiver Cuts - The Senior Citizens Law Project challenged two changes to the Home and Community Based Waiver Program as of April 1, 2005, which imposed an absolute weekly limit of 5.5 hours of assistance with "Instrumental Activities of Daily Living" (i.e., housekeeping, laundry, shopping, and transportation) and eliminated coverage for bathing assistance for clients who received Medicare home health. The court ruled that these changes were invalid because the cuts were made informally without public notice and comment. In response, the Department of Aging and Independent Living has recently sent a letter to all waiver participants rescinding the cuts and providing for a review of any individual whose services have been reduced as a result of the April 1st changes. Clients with problems with these cuts in services and other waiver issues should be referred to the local Vermont Legal Aid office.

Taxes

Earned Income Credit Audits - Filing season is over and the IRS has already begun sending out notices of audits for those who the IRS feels have incorrectly claimed the Earned Income Credit (EIC). Issues with the EIC arise regularly for our clients because information on who can claim a child for these purposes is confusing and complicated. Many professional tax preparers do not understand the law and give clients incorrect advice. Clients who receive notice of an EIC audit should be referred to VLA's Low Income Taxpayer Project at 1-800-889-2047, or if they are in Washington, Lamoille or Orange Counties, to the Central Vermont Community Action Council's Low Income Taxpayer Project at 1-800-639-1053.

Interpreters

Courts - The Court Administrator's Office has issued a memo to court clerks clarifying when interpreters must be made available for court hearings and who is responsible for paying the costs. Individuals who need interpreters will be provided with them, upon request and at court expense, in all criminal, juvenile, relief from abuse and traffic cases. In all other family and civil matters (such as divorce, parentage, evictions), the interpreter will be provided at court expense for all court proceedings but costs may be charged against one of the parties at the end of the case if the court decides that the plaintiff is able to pay some or all of the costs. This determination will be made using the same standards that apply to waiver of the filing fees and service costs. This is called *In Forma Pauperis* or (IFP). If a client receives welfare assistance (RUFA, SSI, Food Stamps or other forms of assistance that are a substantial source of support for their family) or is at or below 150% of poverty, they are eligible for a complete waiver of interpreter and other costs. Working clients are also eligible for waiver of some or all of the costs if they can show they are unable to pay the fees or costs without spending income or liquid resources (like money in a bank account) that is needed for day-to-day living expenses. There is an appeal process if clients are denied. Clients who meet these criteria and have problems obtaining an IFP for interpreter costs or who have difficulty obtaining interpreter services should contact Vermont Legal Aid at 1-800-789-4195.

Online Help

www.vtlawhelp.org - This website provides information for the public about Vermont law in an easy-to-read format. VTLawHelp is a joint project of Legal Services Law Line of Vermont and Vermont Legal Aid. Included there are court and administrative forms and instructions, information about where to get free legal help, and links to social services.

New on VTLawHelp:

- I'm Being Abused. What Can I Do?

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- I Want to Leave My Abuser But I Can't Afford To. What Can I Do?
- Custody and Visitation (Parental Rights and Responsibilities)

Coming soon:

- Health Law
 - How to Get a Relief from Abuse Order
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Contact the Legal Aid office in your area for information and advice on individual cases or to refer clients. While we are not able to take every case, we can offer information to callers; and we always need to know what kinds of problems Vermonters are experiencing. We welcome feedback about this newsletter. Send comments and suggestions to [randy\(ATsymbol\)vtlegalaid.org](mailto:randy(ATsymbol)vtlegalaid.org) or contact one of our offices.

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www.vtlegalaid.org

Projects

Poverty Law Project
Senior Citizens Law Project

Disability Law Project
Mental Health Law Project
Medicare Advocacy Project

Health Care Ombudsman
Long Term Care Ombudsman

Offices

Burlington (800) 747-5022
Montpelier (800) 789-4195

Rutland (800) 769-7459
St Johnsbury (800) 769-6728

Springfield (800) 769-9164
Waterbury (800) 265-0660

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30 Elmwood Avenue
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(800) 639-8857

(For free legal advice from Law Line, call Vermont Legal Aid at (800) 747-5022 for a referral.)

www.vtlawhelp.org