

## Economic Justice Workgroup Priorities

### Disability Rights

- Enforce and protect the rights of the mentally ill and disabled in situations not covered by other priorities.

### Education

- Denials of access to free and appropriate public education as required by law, including civil rights laws;
- Special education services: initial and/or continuing eligibility, inappropriate placement, manifestation determination review issues, and due process hearing complaints; and
- Truancies, suspensions, and/or expulsions.

### Employment

- Discrimination claims (Title VII, ADEA, ADA, PDA, etc.);
- Fair Labor Standards Act, Arkansas Minimum Wage claims, and Family and Medical Leave Act claims will be reviewed to determine whether immediate acceptance, referral to the private bar, or referral to the appropriate department is more appropriate:
  - FLSA and FMLA claims may be referred to the U. S. Department of Labor;
  - Wage theft claims of \$2,000 or less may be directed to the Arkansas Department of Labor.
- Trafficking cases, subject to available workgroup expertise;
- Unemployment claims: denials, terminations, and/or overpayments;
  - Unemployment denials in which Legal Aid did not represent the claimant at the hearing level will be considered if the denial implicates an issue that could significantly affect our wider client population (e.g. transportation, pregnancy, employers absent from hearings, etc.).
- Violations of the NLRA will be referred to NLRB, with assistance in preparing the affidavit to be determined according to merit and, if the NLRB decides to file suit, subsequent assistance at trial to be determined according to merit.
- Defense of CNA registry license cases

### Healthcare

- Denials of access to health services required by law, including civil rights laws;
- Community-based services and supports: denial of services and supports including mental health, long-term care, assistive technology, independent living and home and community-based services; and
- Issues with health care access under the Affordable Care Act.

### Public Benefits

- Medicaid/Medicare: denials, terminations, or reductions of coverage, services, equipment, and/or medications; overpayments;
- Social Security retirement and dependent (survivor, spousal, child, widow) benefits cases will not receive extended services unless (1) there is clear evidence of a wrongful denial,

reduction, or determination of benefit amount; (2) the amount in question is significant; (3) the case is otherwise meritorious; and (4) brief services would not adequately address the issue.

- Social Security (SSI/SSDI) overpayments will not receive extended services unless (1) there is clear evidence of a wrongful determination of an overpayment or of a meritorious basis for waiver; (2) the amount in question is significant; (3) the case is otherwise meritorious; and (4) brief services would not adequately address the issue.
- Social Security cessations and child-to-adult redetermination cases.
  - As a threshold requirement for merit evaluation, which involve lengthy CD, reviews, applicants will be required to (1) be receiving ongoing medical treatment; (2) be compliant with all treatment or have defensible reason for non-compliance; and (3) on the basis of the intake interview, appear to have a meritorious case.
- SSI/SSDI Cases to Establish Initial Eligibility (adults):
  - Adult initial eligibility applications awaiting hearing before an Administrative Law Judge will be referred to the private bar unless:
    - a. the applicant is (1) homeless, (2) a veteran (with adequate AmeriCorps resources available to assist the applicant); (3) a patient of an MLP partner clinic; or (4) so obviously disabled with cognition or mental health (in screening or interview) that the private bar is unlikely to adequately serve her; and
    - b. the case is meritorious.

\*\*\*All callers with SSI/SSDI eligibility cases will be screened at the eligibility phase, and callers not meeting the criteria will not speak with an advocate.

  - Adult initial eligibility applications at the initial or reconsideration stages will not be accepted unless:
    - a. the applicant is a patient of an MLP partner clinic with a supportive provider; AND
    - b. the case is meritorious.
- SSI Child Cases:
  - Child initial eligibility applications awaiting hearing before an Administrative Law Judge will be accepted if the case is meritorious. Child initial eligibility applications at the initial and reconsideration stage will not be accepted. Extensive advocate experience has shown that cases based on ADHD, unspecified learning disabilities, and/or asthma generally lack merit, and such cases will be evaluated with this previous experience in mind.
    - a. As a threshold requirement for merit evaluation, which involve lengthy CD, reviews, applicants will be required to (1) be in treatment (in mental health clinic or in school services); (2) taking any

medications prescribed; and (3) on the basis of the intake interview, appear to have a meritorious case.

- b. Receiving services through IDEA or Section 504 will also be considered for the threshold issue, though the workgroup acknowledges that lack of services may be understandable, either due to a recently-developed issue, lack of parent request, or wrongful school district practice.
- o Child cessation cases will be accepted if the case is meritorious. Extensive advocate experience has shown that cases based on ADHD, unspecified learning disabilities, and/or asthma generally lack merit, and such cases will be evaluated with this previous experience in mind.
    - a. As a threshold requirement for merit evaluation, which involve lengthy CD, reviews, applicants will be required to (1) be in treatment (in mental health clinic or in school services) and (2) taking any medications prescribed.
    - b. Receiving services through IDEA or Section 504 will also be considered, though the workgroup acknowledges that lack of services may be understandable, either due to a recently-developed issue, lack of parent request, or wrongful school district practice.
- State benefits (TEA, SNAP, childcare, and Work Pays): denials, terminations, reductions, and/or overpayments;
  - Veterans' benefits: denials, terminations, reductions, and/or overpayments, subject to the availability of AmeriCorps veteran resources;
  - Benefits available to kinship families, including foster care board payments, subsidized guardianships, and adoption subsidies.

## **2017 Goals**

To guide acceptance decisions within the priorities above, the Economic Justice workgroup will focus on the following goals for 2017:

**1. Health Access.** Continue and deepen Medicaid advocacy, including (1) opposing widespread denial of Medicaid-funded in-home care services by the Arkansas Department of Human Services through affirmative litigation (if feasible pre-litigation negotiation fails), administrative advocacy, client education, and, if applicable, commenting on proposed regulations; (2) facilitating access to Affordable Care Act coverage for eligible clients with legal issues (as opposed to issues within an assister's purview) with initial applications, renewals, or terminations through advice or brief services at the enrollment stage, full representation in the event of application processing delays, and case-specific determinations about level of involvement where application delays have led to billing issues or collection efforts; and (3) investigating service-related issues under both traditional Medicaid and Private Option, including benefits available to children through ArKids A and ArKids B (with special attention to Early and Periodic Screening, Diagnosis, and Treatment).

**2. Continue Existing SNAP and Education Advocacy.** We will continue two of 2016's focus areas of (1) SNAP cases involving ABAWD (Able Bodied Adults Without Dependents) and fraud issues and (2) school advocacy for districts suspected of extensive issues with excessive use of suspensions and/or expulsions and improper denial of special education services. With respect to education, we note widespread district resistance to recognizing and accommodating autism spectrum disorders.

**3. Evaluate Opportunities for Meaningful Employment Law Advocacy.** Prior experience has shown a dearth of private bar resources available for discrimination, wage theft, and NLRA claims below \$30,000. The workgroup has had some significant successes filling this gap and has settled multiple employment cases, though such success often requires significant investment of staff time. Outside of NLRA claims, however, settlements are likely to be confidential, meaning that the casework may not benefit other clients. Also, all employment case types require extensive time to properly vet, and we have found proper vetting often reveals facts that undermine merit. The workgroup must continue to navigate these competing factors to determine whether and when to accept employment cases. We are mindful of the need for advocacy while noting the limited workgroup capacity. Brief services to draft EEOC complaints and/or extended representation in initial negotiations may be worthwhile.

**4. Build advocates' skills and ability to identify/undertake higher-impact projects.** This will involve training on (1) litigation skills and best practices (including discovery, subpoenas, preservation, due process concepts, etc.); (2) affirmative litigation concepts (standing, mootness, exhaustion, preclusion, etc.); and (3) discussion of recurring substantive issues. The goal is to attune advocates to cases that present opportunities to effect systemic change on problematic issues and then to undertake such cases as appropriate, preferably with opportunity to work on impact cases spread among workgroup advocates. In line with this, the workgroup will ensure that new and longstanding group members have ample opportunity for training, mentorship, feedback, and professional development.

**5. Regulation Review and Commenting.** State-based regulations relating to the Medicaid and SNAP programs impact client lives, yet the interests of clients are generally unrepresented in the promulgation process. The workgroup will endeavor to monitor such regulations, offer comments as appropriate, and evaluate whether such comments make any meaningful difference.

**6. Other (time permitting).** Other issues or activities of interest to the workgroup include expanded outreach and education, language access, general low-wage worker support, and integration of law school and pro bono resources. However, the workgroup acknowledges that these goals will be secondary to the goals outlined above.

**Note:** In 2016, each workgroup member reduced her caseload to roughly 40 cases to allow time for more in-depth advocacy. The group aims to maintain this reduced caseload, provided that the reduction enables more impactful work.