

# Exchange

A quarterly newsletter of Michigan Protection and Advocacy Service, Inc.  
(MPAS)  
WINTER 2012

## MPAS goes Public on Maggots Found in Michigan Nursing Home Residents' Trachea and Catheter

### Report Issued that Shows Abuse and Neglect in Counties across State

After reviewing nursing home surveys collected by the Department of Licensing and Regulatory Affairs (LARA) – the state department responsible for licensing and oversight of nursing homes in Michigan – Michigan Protection and Advocacy Service (MPAS) found that many nursing home residents have experienced severe neglect and abuse – sometimes resulting in death.

Due to the seriousness of the cases and to draw attention to the fact that abuse and neglect is system wide, MPAS went public by contacting media throughout the state. (See media reports on MPAS Facebook.)

One of the cases drawn from the LARA surveys described how a woman from a nursing home in Washtenaw County had been complaining of itching and burning around her catheter. She was not ambulatory and could not attend to her own personal hygiene without help. She had refused showers due to complaints of pain in her hip area although she consented to bed baths which, according to the survey, were not routinely provided.

Upon closer examination of the resident's vaginal area, maggots were found to be infesting in and around the catheter area. The survey also indicates that a registered nurse manager was instructed by clinical corporate staff to document the discovery as *debridement* (dead tissue) rather than *maggots*. The resident was later treated at a local hospital and also found to have a hip fracture that was causing her severe pain.

Similar surveys from a nursing home in Oakland County indicated that a resident who used a trachea had been coughing more than usual but she was not immediately assessed because staff was "rushed." The resident's condition became so severe that emergency medical services were called to the facility where they found her airway obstructed by maggots. As they began suctioning her throat and airways, they found very active maggots, estimated to be in the first to second stage of development.

### Abuse and Neglect Must be Reported

"Nursing home staff **and** the owners and administration of these nursing homes absolutely need to be held accountable for their negligence," says Elmer Cerano, executive director of MPAS. "The failure is system wide and the people of Michigan have been short-changed by regulatory agencies, health departments, licensing, and those who are responsible for reporting and pressing charges against those who tolerate such abusive conditions.

The multiple layers of agencies and regulatory safeguards to protect the residents have failed miserably. Our goal is to eliminate abuse and neglect of people with disabilities in

all settings. Increasing the public outrage of the conditions in some nursing homes is only our first step.”

LARA responded by saying that the department was aware of the maggot cases since late last summer due to complaints filed by the Bureau of Health Systems. According to LARA, the nursing homes have been fined, penalized and required to bring their facilities into compliance.

Cerano says, “Paying fines and re-training personnel is simply not enough to ensure patient safety and quality of life. The problem of substandard care is system wide and extends far beyond one or two facilities. Systemic problems require systemic remedies. The current regulations and laws (mandatory reporting) already in place should be enforced on a consistent basis and to the fullest extent possible. All parties should be held accountable and, if the infractions rise to the level of criminality, they should be reported to law enforcement and prosecuted just like any other crime.”

He went on to say, “In addition, nursing home owners and operators of persistently poor performing facilities should not be allowed to do business in the state of Michigan. While LARA is working within the present system – investigating, requiring a plan of correction, and follow-up visits – the current system does not address the failures of systems that should be in place to prevent abuses from happening in the first place.”

Such incidents often go unnoticed or unreported by nursing home staff, hospitals, and emergency personnel, even though such *mandatory reporters* are required by law to report incidents of abuse or neglect. Many cases are never brought to justice simply because required reporters fail to comply with the law and report these crimes to law enforcement.

All health care personnel are considered *mandatory reporters* and are required by law to report cases of suspected abuse, neglect or exploitation to adult protective services. Under Michigan law, nursing home personnel who fail to report suspected cases could be found in violation and subjected to prosecution. In addition, employees who report cases to nursing home supervisors are protected from retaliation.

### **State’s Background Check Legislation Must be Strengthened**

Michigan currently has a background check process for all nursing home employees who have been convicted of abuse, neglect, or exploitation of residents within those facilities. MPAS is concerned that the current registry is not effective because not all employees who should be reported for violations of abuse, neglect or exploitation are on the list and are still working within nursing homes. MPAS is working to close that loophole in the law by supporting a series of bills that would expand the Background Check process.

In mid November, MPAS released a comprehensive public report highlighting numerous examples of abuse and neglect of individuals in nursing homes throughout the state. The report included recommendations on what must be done to stop the abuse and neglect of Michigan’s nursing home residents. To review the report, go to [www.mpas.org](http://www.mpas.org).

The mission of MPAS is to advocate and protect the legal rights of people with disabilities and, in doing so, strongly believes that the confidentiality of those who have been abused and neglected should be protected at all costs. Abuse is not the victim’s fault, and the **focus of all investigations should be on the abuser, not the abused.**

Any individual who suspects abuse or neglect against an elderly or vulnerable adult should report to Adult Protective Services, the Michigan Long-Term Care Ombudsman, or local law enforcement.

## **U.S. Department of Education Coming to Michigan in November 2011**

*Mark, Director, I&R and Education Services*

The Office of Special Education Programs (OSEP) of the U.S. Department of Education has scheduled a *verification visit* to Michigan in November 2011.

Past verification visits have focused on the state's ability to conduct effective general supervision, collect necessary data, and spend federal funds appropriately. For example, OSEP monitors may look at the state's ability to identify and correct legal violations by local districts in such a way that promotes student achievement. The monitors may also look at the state's ability to collect valid and reliable data that accurately reflects the real experiences of students and families.

Your input to the federal reviewers will be critical in shaping how special education services and supports are provided, overseen, measured, and funded in Michigan. Please contact MPAS at **800.288.5923** for more information on how to provide information to the OSEP reviewers when they come to visit.

## **The Equal Employment Opportunity Commission: a Guide to Filing a Charge in Michigan**

*by Nicole, Staff Attorney*

If you believe that you have been discriminated against by your employer on the basis of a protected status, such as disability, before you can file a federal lawsuit you must file a charge with the Equal Employment Opportunity Commission (EEOC). But once you have filed a charge, the charge takes on a life of its own, beyond you and your allegations. This article explains the process of filing a charge, how the EEOC handles charges, and what happens after the EEOC completes its investigation.

### **Filing a charge**

In Michigan, the first step you must take is filing a charge **within 300 days** of the alleged discriminatory act. The two best ways to file a charge are by:

- ◆ Making an appointment with the Detroit Field Office for an in-person intake
- ◆ Mailing the EEOC an Intake Questionnaire via Certified Mail

People who live within reasonable driving distance are encouraged to file their charge in person. People who live further away can simply mail the questionnaire.

You should be prepared to explain what happened and why you believe the alleged act was discriminatory. You should include any and all potential claims against the employer—it is important to be over, rather than under-inclusive to avoid missing the

opportunity to pursue a claim. Though it may sound like *filing a charge* means that your allegations have been vindicated in some way, it is important to bear in mind that filing a charge has nothing to do with the merits of the case. Filing a charge merely means that the EEOC is now officially aware of your allegations.

### **What happens when the EEOC receives a charge?**

The EEOC can take any number of actions when it receives a charge, and there is no telling how long the process may take. A reasonable guess is between three months and one year. The EEOC has the authority to stop an investigation at any time, but it may also continue an investigation long after the charging party simply wants to settle the matter. This is because the EEOC's job is ending discrimination in the workplace, not satisfying the person making the charge.

If the EEOC believes that a claim has no merit based on the facts in the charge, it may end the investigation almost immediately and issue a *Right to Sue* letter to you. A *Right to Sue* letter means that you are now allowed to file a lawsuit. You then have 90 days to file. Likewise, after 180 days, you can request the *Right to Sue* letter from the EEOC rather than waiting for the EEOC to complete its investigation.

If the EEOC believes that the claim, on its face, likely has merit and can be resolved quickly, it may attempt to arrange a mediation or settlement before or while investigating the matter. This has the benefit to both parties of being a cheap, quick, and effective method of resolving a dispute. Both parties must agree to mediation or settlement, and the EEOC is not required to offer it.

If the EEOC sees potential for remedying systemic issues with a problem employer that go beyond a single charging party, it may not allow the parties to quickly mediate the issue. Instead, it may conduct a thorough investigation into the employer's practices, making a decision later regarding how to resolve the charge. Again, once you have filed a charge, the charge takes on a life of its own, beyond you and your allegations.

As a part of the investigation process, the EEOC engages in fact finding. For example, the investigator may request position statements from the respondent-employer. The investigator may also request that all parties come together for a fact finding meeting. At this meeting, each party will have a chance to share its side of the story and the investigator will have a chance to ask questions and test credibility in determining how to proceed.

### **Making a determination**

If the matter is not resolved through mediation or settlement, the EEOC will make a determination regarding the merits of the charge.

If the EEOC determines that there is no reasonable cause to believe that discrimination occurred, it will issue you a letter called *Dismissal and Notice of Rights* that tells you that he or she has 90 days to file suit in federal court. You have a right to see all the evidence as presented to the EEOC investigator, including position statements from the other party. This can be invaluable in determining whether to bring suit or to drop the matter.

If the EEOC determines that there is reasonable cause to believe discrimination has occurred, both parties will be issued a *Letter of Determination* stating that the EEOC did find cause. The EEOC will then invite the parties to resolve the charge through an

informal mediation-like process called conciliation. Like mediation, this is a relatively quick and effective process, but the charging party has the bargaining advantage of having a Letter of Determination. If the parties do not reach an agreement through conciliation, you have the right to pursue action in federal court within 90 days.

### **Pursuing the charge in the name of the EEOC**

In a limited number of cases, the EEOC may decide to bring a federal lawsuit against the employer in the name of the EEOC. Unfortunately, the staff is limited and must refuse many meritorious cases. If the EEOC decides to pursue litigation, and if you do not already have an attorney, you should consult one about whether to proceed as interveners in the case.

### **Conclusion**

Each charge takes a path different from the last. Going into the process with open eyes and patience will save you frustration. The EEOC has a great number of resources on its Web site that can help you navigate the specifics of your charge. While filing a charge may seem like an unnecessary administrative hurdle, the process provides you with free discovery and a path to an effective settlement. Please note that you may be able to file suit under state law without pursuing a claim with the EEOC.

## **Understanding your Individualized Plan for Employment (IPE)**

*by Elham, Employment Team Advocate*

If you have applied for Vocational Rehabilitation Services and are in the process of writing your Individualized Plan for Employment (IPE), you might ask yourself the following questions:

- ◆ What type of job do I want?
- ◆ What assistance do I need to obtain a job?
- ◆ What further training do I need to become employable?
- ◆ What services or accommodations do I need to maintain a job?

The answers to these questions can be found through working with your vocational rehabilitation counselor to develop your IPE. Once you and your counselor have agreed on an employment goal, you are ready to write your Individualized Plan for Employment (IPE). This is a document where you will list the specific services that you will require to make your employment goal work. All of the services in your IPE must relate to your employment goal. It's important for you and your counselor to agree on the services required for successful employment. Your counselor will suggest any services that he or she feels you should have in your IPE. Many services are available to you at no cost, such as: vocational counseling, disability assessment, and/or placement assistance. Some services will be provided with the lowest cost available but still meet your job related needs. These services could be job coaching, on-the-job training, and/or tools to do a job. If the services are based on your ability to pay, you may be asked to contribute to the cost of services.

You and your counselor can work together to write all or part of your plan. However, you may choose to arrange for someone, other than your counselor, to help you write your plan. Your plan should be submitted to your counselor for review, and the counselor will

then decide whether or not it can be approved. Once your plan has been approved, the counselor will make it official and write your plan on the IPE form. Once the IPE form is complete, you will be asked to read it, make comments on the form itself, and sign the form. Services cannot begin until a signed copy is returned to the counselor.

If your plan is not approved, your counselor will contact you and explain why. You may need to provide additional information or consider other work goals or services. If you disagree with your counselor's decision and are unable to resolve your issues, you may request an appeal in writing.

You may also request assistance from the Client Assistance Program (CAP) to help resolve any disagreements with your counselor.

## **Services for Students with Disabilities Transitioning into Adulthood**

*by Elham, Employment Advocate*

The legal definition of transition services is defined under the Individuals with Disabilities Education Act (IDEA) as “a coordinated set of activities for a student, designed within an outcome-oriented process that promotes movement from school to post-school activities, including post secondary education, vocational training, integrated employment (including supported employment), continuing adult education, adult services, independent living, or community participation. The coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests including instruction, community experience, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and functional evaluation.” (IDEA PL101-476, 34 CFR 300.18)

There are many people who should coordinate and share in the responsibility of the transition services planning process. This should include the student, parents or guardians, teachers, school counselors, community service providers, and Michigan Rehabilitation Services (MRS) or, if the student is legally blind, a counselor from Michigan Commission for the Blind (MCB). IDEA mandates that each student with an identified disability must have an Individualized Education Plan (IEP) which includes a statement of appropriate transition services. These services may be provided in general vocational training, career preparation for post-school activities, assistive technology services, and equipment for use during school activities.

The school has the primary responsibility for transition services prior to high school graduation. However, each student's unique needs will determine when MRS/MCB becomes involved. Students are encouraged to begin transition planning as early as possible. The MRS/MCB counselor may attend a student's IEP as early as age 14, which provides the counselor and the student ample opportunity to discuss and prepare for vocational rehabilitation services after high school. MRS regulations do not mandate transition services for all students at age 14; however, a statement of needed transition services must be included in the IEP after age 16. The MRS counselor may also function as a career counselor, consultant, or service coordinator during this time. After graduation, the counselor will become more directly involved with the student and take the lead role in assisting the student toward achieving his/her employment goal.

The transition for students with disabilities to adult life can be an overwhelming process. It is important for an MRS counselor to work closely with teachers and school personnel to identify long-range goals and facilitate appropriate referrals so that a student may transition successfully from high school to adult life. Generally, those students who desire employment and who need rehabilitation services to achieve that goal, can be referred to MRS.

## **Protection and Advocacy Network Helps Social Security Administration Monitor Organizational Rep Payees**

*by Andrea, Employment Advocate*

What's a representative payee? It is an individual or organization appointed by SSA to receive Social Security and/or SSI benefits for someone who cannot manage or direct someone else to manage his or her money. The payee is then responsible for making sure the money is used to meet the individual's needs.

A 2009 investigation of Henry's Turkey Farm, an Iowa company that employed and housed individuals with developmental disabilities, uncovered serious legal violations sparking outrage not only within the disability community, but hitting a chord throughout the country. It was equally surprising to learn that the employer was also a representative payee under the Social Security Administration (SSA). Currently, the law allows employers to become representative payees and manage a person's cash benefits.

Congress and SSA were appalled when learning about the allegations against Henry's Turkey Farm and were concerned that other payees might be abusing their legal responsibilities, leaving individuals with disabilities vulnerable to abuse, neglect, and exploitation. SSA recognized their inability to adequately monitor employer representative payees for compliance under the law; so it reached out to the National Disability Rights Network (NDRN) for assistance. A partnership was formed with the Social Security Administration enlisting the aid of the state-designated Protection and Advocacy (P&A) system to complete reviews so that payees would be monitored more frequently. Michigan Protection and Advocacy Service is one of many state-designated P&A's that took on the project.

Social Security's efforts have not gone unnoticed. Over the past two years, the national P&A network has monitored and reviewed over 700 representative payees and interviewed over 2,550 beneficiaries. There have been 20 major issues along with another 90 minor issues identified with beneficiaries and payees this year alone. Most issues discovered have involved poor record keeping, fraudulent history of a payee, and/or failure to maintain bank accounts as required by SSA. The partnership between SSA and NDRN has continued to grow and expand in an effort to reach other types of payees and beneficiaries, no longer limited to employer representative payees.

So how does it work in Michigan? The Social Security Administration (SSA) audits and reviews representative payees for compliance in Michigan but is unable to monitor these payees as frequently as it would like. So SSA gives MPAS a list of payees each quarter that it wants the agency to review. MPAS investigates by conducting reviews of payees and their records. MPAS also meets with beneficiaries, often in their place of employment or residence. MPAS then submits a report on each payee to SSA. SSA

reviews each report and determines whether or not an issue requires intervention or further follow-up. The number of payees assigned to MPAS varies each quarter, yet continues to increase over time. SSA's interest in increasing the P&A role in reviewing payees highlights the level of concern it has for the wellbeing of its beneficiaries, as well as the unique qualifications of the P&A system.

As always, if you have disability-related questions or concerns, please contact MPAS at **800.288.5923**.

## **Help us Reach our Goal: Become a Fan of MPAS Facebook**

Many regular readers of Exchange know that Michigan Protection and Advocacy Service (MPAS) is now on Facebook. It's a great way to connect with others like you who are interested in disability issues and want to keep up on the latest news and legislation affecting the disability community.

If you haven't already, MPAS would like to challenge *Exchange* readers to join Facebook. Get your friends to join, too!

## **Enter the Annual Disability Advocacy Essay Contest**

Do you have a disability?

Do you have a story you'd like to share about how you faced a particular challenge head-on and won?

Michigan Protection and Advocacy Service (MPAS) is looking for *real, motivating* stories about people with disabilities who have successfully advocated for themselves or others. In 500 words or less, describe how you overcame barriers and achieved success.

**First Prize: \$300.00**

**Second Prize: \$200.00**

**Third Prize: \$100.00**

Entries must be submitted no later than **January 3, 2012**, and will be judged on:

- ◆ Authenticity
- ◆ Content and appeal of the advocacy story
- ◆ Impact the story has had on the life of the individual or the lives of other people who have disabilities
- ◆ Impact the story has had on the priorities within Michigan Protection and Advocacy Service

### **Rules of Entry:**

- ◆ Entries are limited to 500 words or less and can be submitted in writing or audiotape.
- ◆ Entries will be judged by the MPAS Essay Contest committee.
- ◆ Decisions of the judges are final.

- ◆ Late entries will not be considered.
- ◆ Employees of MPAS, volunteers, board members, and members of MPAS PAIMI Advisory Council and their immediate families are not eligible to win.
- ◆ Prizes will be presented to the author (subject) of the story.
- ◆ All entries become the property of MPAS and will not be returned to the author.
- ◆ Entries, in part or in total, may be used by MPAS in publications.
- ◆ Actual names will be used **only** with written permission from the individual. The stories, without identifying information, may be used by MPAS.
- ◆ Prizes will be awarded to the person about whom the story is written, and not the author (if different).

Winners will be notified by mail and announced via the Spring 2012 *Exchange* newsletter and MPAS Web site [www.mpas.org](http://www.mpas.org).

**All entries must be received by January 3, 2012.**

You may submit your entry through the MPAS Web site at [www.mpas.org](http://www.mpas.org) or by fax at **517.487.0827**. Those wishing to mail their entry may do so to:

MPAS Essay Contest  
4095 Legacy Parkway, Suite 500,  
Lansing, Michigan 48911-4263

**Be sure to include your name, address, phone number, and email address so we can contact you if you are a winner!**

## **Successes in Fully Integrated Community Employment for People with Disabilities**

**Employment of people with disabilities in the private sector is not a disability agenda. It is a good business agenda.**

How are we doing on assisting people with disabilities to find and retain good paying employment in fully integrated settings? *We* are not doing so great, but private business is moving forward.

There are some very promising employment initiatives in the works, but surprisingly, they are not coming from the traditional disability field. The real innovations are coming from progressive private sector employers who are looking for ways to reduce the high costs associated with continually hiring new people.

Over the past several months, I have written about the challenges and obstacles in helping people with disabilities find and maintain meaningful, well paying jobs in the community. Erroneously in the past, employment options for people with disabilities have been aligned with the nature or the degree of a disability. Closer study reveals, however, that the nature or degree of disability may have little to do with the potential employment success. In other words, it was assumed that people with *significant* disabilities (whatever that means) are not as employable as people with less significant disabilities.

All of that erroneous rationale simply falls apart when we start with a presumption of the individual's competence and we design employment options that fit the individual's skills, interests, and preferences. Add technological innovations to the mix and a whole new understanding of what is possible unfolds.

Remember when it was thought to be unreasonable to expect that a person with a visual impairment could fly an airplane? Although not quite there yet, some modern aircraft are guided by technology instead of the visual acuity of the pilot. Such innovations were never designed to address the employment needs of people with disabilities. The innovations were designed to decrease human error in flying and to make flying safer for everyone. The applicability of this, perhaps exaggerated, example for people with disabilities is obvious.

Innovations like this, that may positively impact the lives of people with disabilities are happening all over – but they are happening totally outside of a traditional *disability agenda*.

Employment of people with disabilities in the private sector is not a disability agenda. It is a good business agenda.

Innovative employers found that they can reduce their high costs associated with continually hiring new employees, by doing a better job of hiring the right person for the right job. The correctness of the job match coupled with an expectation of competence and the correct blend of accommodations, technology, and supports increases the odds of recruiting and retaining good employees – thereby reducing the costs of staff turnover. This applies to all employees – those with and those who do not yet have a disability.

I recently had an opportunity to meet with Human Resources Manager Lisa Kertchaval, Supply Chain and Manufacturing at the Meijer Corporation (Meijer is a huge retail company based in Grand Rapids, Michigan).

Lisa told me about a group of human resource professionals from: Meijer, Best Buy, Bank of America, TJX Company (Home Goods, TJ Max and Marshall's) The Sears Holding Company (Sears and K-Mart), Lowe's and Walgreen's. They are meeting regularly to share ideas on successful strategies in building diverse workforces, with a focus on people with disabilities. The group self identifies as *The Knowledge Exchange*.

These innovative HR professionals began to notice that with the slow, but inevitable return of manufacturing jobs in the U.S. economy, many of the employees of retail and service companies are returning to their previously held manufacturing jobs. As a result, there is a growing need to improve staff retention and recruitment techniques in retail and service jobs, in order to successfully compete for dependable and qualified employees and reduce the high cost of staff turnover. These companies needed to find better ways to recruit and retain the right people and to be competitive with manufacturing in wages and benefits.

From my limited information of *The Knowledge Exchange*, the participating companies are not involved in this initiative to do anything but improve how they build and maintain a workforce that helps the company be successful.

Lisa told me, “This is not charity. We simply need good employees and we found that by actively recruiting people with disabilities and, more importantly, providing the proper job match, we are beginning to measure improved morale, increased job satisfaction, and better staff retention. This measurable success is for the company as a whole and not only for people with disabilities. We see improvement in these areas with all of our employees. We have begun to see our cost for new hires decrease because job retention and job satisfaction has improved. We learned that better job matching techniques for people with disabilities has also improved our job matches for all of our employees.

It works both ways. Techniques we have used to improve productivity for people without disabilities, works the same for people with disabilities. The reverse is also true. Some of the job accommodations and job matching techniques used for people with disabilities are also applicable to employees without disabilities.

The bottom-line for our business is reduced costs associated with recruitment and retention and increased profits for the company. Improved morale and job satisfaction for the employees is simply good business.”

Lisa went on to say, “I must admit, prior to my employment with Meijer and my partnering with Peckham, Inc., (a community rehabilitation program in Lansing, Michigan), on how to do better job matching, I was hesitant to hire people with disabilities in any job that required consistent production levels in a manufacturing setting. I understand now that with creative job matching and by providing the appropriate supports, a whole new approach to building a qualified, diverse labor force for our company has evolved.”

For far too long, those of us who advocate on behalf of people with disabilities have only talked to each other and not to people in the real world where employment really happens. With the right supports, attitudes, and opportunities, people with disabilities can be valued employees of existing and emerging industries. No *pity parties* no *make-work* jobs, and no charity – just an honest opportunity and a fair chance for people with disabilities to contribute.

Congratulations to Meijer, Peckham, Inc., and the other six companies participating in *The Knowledge Exchange* for recognizing the value of helping all of their employees to become productive participants in the American workforce.

## **Applying for State Vocational Rehabilitation Services**

*Andrea, Employment Advocate*

Michigan Rehabilitation Services (MRS) and Michigan Commission for the Blind (MCB) are both state vocational rehabilitation agencies designed to assist individuals with disabilities prepare for, secure, and maintain employment. Each agency has created its own policies and procedures in order to comply with state and federal law. There are times when the staff working for these agencies may make mistakes or not follow these policies. Therefore, it is very important that you know and understand your rights. Listed below are just a few concerning application and eligibility:

- ◆ You have the right to apply for MRS/MCB services. Neither agency can deny you the right to apply simply because you can't produce medical documentation of a disability or because you have been served in the past.
- ◆ Once you have applied, you have the right to a decision on eligibility. If you are denied eligibility, you must be informed in writing of that decision. Along with that eligibility decision, you must be provided with written information on your appeal rights.
- ◆ You have a right to challenge an ineligibility decision and any other decision made by the agency in the form of an appeal.

### **I think I should qualify for services, but I am not sure**

If your disability creates barriers for you at any stage of your employment process, MRS or MCB are a good place to start. There is no fee for their services, unlike many private rehabilitation programs. The first thing you are required to do with MRS or MCB is to complete an application. You should ask for an application if your counselor does not have you complete one at the beginning of your request for services. Many timelines depend upon the date you sign your application, so it is very important that the application be completed immediately. Once you submit an application, MRS or MCB will have to decide whether or not you qualify for services. Listed below are the policies that each agency is required to follow when they determine your eligibility.

### **MRS eligibility is based on the following three criteria:**

- ◆ You have a mental or physical impairment that creates a substantial barrier to employment,
- ◆ You require vocational rehabilitation services to help you prepare for, secure, retain, or regain employment consistent with your strengths, resources, priorities, concerns, abilities, capabilities, and interests, and
- ◆ You can benefit from MRS services (which is presumed).

MRS has 60 days (from the date of your signed application) to determine your eligibility. If you are receiving Social Security (SSI) benefits, you are presumed eligible. This means that MRS will still gather information, but now presumes that you meet all categories of their eligibility criteria.

### **MCB eligibility is based on:**

- ◆ You must have a visual impairment defined as:  
  
Visual acuity with best correction of 20/200 or worse in the better eye or visual fields must subtend an angle of less than 20 degrees in each eye, or visual acuity with best correction 20/100 or worse in the better eye, with a prognosis of rapid deterioration,
- ◆ The impairment results in a substantial barrier to employment and/or independent living,

- ◆ You require vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment that is consistent with your strengths, resources, priorities, concerns, abilities, capabilities and interests, and
- ◆ You can benefit from services (which is presumed).

MCB must determine your eligibility (from the date of your signed application) within a reasonable time, not to exceed 60 days. As with MRS policy, if you are receiving Social Security (SSI) benefits, you are presumed eligible.

### **I have applied, but I was turned down, now what?**

If MRS or MCB tells you that they cannot open a case for you, cannot help you, or say you're ineligible for services, they are required to provide you with this decision in writing, along with information on your appeal rights. You have the right to challenge this decision by filing an appeal and/or contacting the Client Assistance Program (CAP).

Contact the Client Assistance Program (CAP) anytime you have questions regarding your rights as a customer of MCB or MRS at **800.288.5923**.

## **When Will MPAS Represent Me?**

### ***Mission and Guiding Principles***

The mission of Michigan Protection & Advocacy Service, Inc. (MPAS) is to advocate and protect the legal rights of people with disabilities.

We work to fulfill our mission by (1) working toward systemic changes that advance the rights of all people with disabilities and (2) advocating for individual rights when a case meets our board adopted priorities and case selection criteria.

***Due to limited resources, it is not possible for MPAS to provide legal services or direct representation to everyone who calls for assistance; however, MPAS provides several different levels of support and assistance.***

MPAS believes that, as a person with a disability, you are your own best advocate when armed with accurate information and advice. Therefore, when appropriate, MPAS will provide you with information, training, advice, and written materials that can assist you in speaking for yourself.

**MPAS' systemic advocacy work is designed to protect and advance your rights as a person with disabilities so that:**

- ◆ You are legally protected from abuse, neglect, and exploitation.
- ◆ You can choose where and with whom you live and can determine for yourself what supports you need.
- ◆ You have equal employment opportunities.
- ◆ Communities are accessible and inclusive.

- ◆ All children with disabilities are provided a quality education with all supports and accommodations needed to develop marketable skills.
- ◆ You have equal access to affordable, quality health care.
- ◆ You and all other individuals with disabilities fully enjoy the rights, benefits, and privileges the law guarantees you.

### ***MPAS Services Provided***

Anyone may call the MPAS Information and Referral Service when they have a rights or advocacy question related to their disability. When appropriate, MPAS will provide information, referrals, or short-term technical assistance.

You may be referred for MPAS direct advocacy and/or legal representation if you are eligible and if your disability issue falls into one of the agency priorities listed on the following pages. ***MPAS is not, however, able to take every case for direct representation.*** MPAS reserves the right to select cases that:

- ◆ are in accordance with the MPAS mission
- ◆ have sound legal merit
- ◆ have the potential for effecting broad policy or systemic change and
- ◆ are consistent with legal ethical standards.

***MPAS will not be able to take your case if you have other advocacy assistance, if you have other legal counsel, or you have the right to appointed counsel.***

We periodically redefine the priority issues that allow us to directly represent you after gaining input from consumers, advocates, and family members. Reviews of disability research, local and national trends, and data analysis also help us determine our priority issues.

### ***Priority Issues Considered for Direct Representation***

#### **Priority #1 - Eliminate abuse/neglect**

##### **Objectives:**

1. Individuals will not be subjected to restraint or seclusion.
2. Individuals will not have staff working with them who have abused or neglected someone.
3. Individuals with disabilities will not be subjected to abuse or neglect.

##### **Types of possible cases:**

- ◆ Investigations into allegations of abuse/neglect including all deaths involving a person with a disability in school, nursing homes, child caring institutions, juvenile detention and jails.
- ◆ Investigation and representation into complaints of inappropriate or excessive use of restraint or seclusion.
- ◆ Investigation and representation into complaints of bullying directly linked to disability, resulting in injury (physical or emotional).

#### **Priority #2 - Improve the rights protection systems**

##### **Objectives:**

1. Individuals will not be deprived of their rights as a result of guardianship.
2. Individuals will have access to independent and effective rights protection systems.

#### **Types of possible cases:**

- ◆ Calls from an individual who wants to challenge his/her guardianship order due to abuse/neglect, financial exploitation, or forced treatment.
- ◆ Calls alleging a violation of a right identified in Chapter 7 of the Michigan Mental Health Code, the Public Health Code, licensing rules, etc.
- ◆ Calls regarding a client who has filed a complaint with the Office of Recipient Rights and is:
  - Dissatisfied with how the complaint was handled
  - Dissatisfied with the outcome of the investigation or
  - Informed that the office would “intervene” (instead of investigate) on their behalf.

### **Priority #3 - Eliminate employment barriers and enforce rights**

#### **Objectives:**

1. Improve access and rights to services within vocational rehabilitation and centers for independent living.
2. Individuals will assert their employment rights under the ADA and/or Section 504, as well as other employment laws.
3. Individuals will have access to Social Security work incentives.

#### **Types of possible cases:**

- ◆ Individuals who have been denied services through Michigan Rehabilitation Services, Michigan Commission for the Blind, and Centers for Independent Living.
- ◆ Calls from individuals in sheltered employment settings or community based employment who are not compensated fairly, as required by law.
- ◆ ADA eligible individuals who are unable to request an accommodation or file a complaint on their own.
- ◆ Calls regarding work related overpayments.

### **Priority #4 - Improve access to necessary services**

#### **Objectives:**

1. Individuals will have access to services that support them in their community and prevent institutionalizations.
2. Governmental entities and providers of critical services will be accessible and provide needed accommodations.
3. Individuals will have access to services that support them in institutional/facility settings in order to promote discharge and community inclusion.

#### **Types of possible cases:**

- ◆ Calls regarding a denial or termination of a public service (e.g. Community Mental Health, Human Services).
- ◆ Denial or need of an accommodation in order to remain in current home/setting.

- ◆ Calls regarding a resident having difficulty accessing community based services and supports or an individual who has been waiting 30 days or more for discharge from a facility to a less restrictive setting.
- ◆ Individuals who have been denied access to a polling site, access to a critical service, or assistive technology accommodations in order to access a critical service.

## **Priority #5 - Ensure the right to high quality education**

### **Objectives:**

1. Students will be identified and evaluated for special education.
2. Eligible students at risk of discipline or push-out due to disability related behavior will remain in school.
3. Assure effective transition planning as students move from education entitlements to post education and full community participation.

### **Types of possible cases:**

- ◆ Calls regarding children who are experiencing or at risk of school failure because of disability related behavior.
- ◆ Calls regarding failure to evaluate or provide appropriate transition activities in the least restrictive environment.

## **New Representative Payee Program Reveals Poor Record Keeping and Fraud**

*by Andrea , Employment Advocate*

A 2009 investigation of Henry's Turkey Farm, an Iowa company that employed and housed individuals with developmental disabilities, uncovered serious legal violations sparking outrage not only within the disability community, but hitting a chord throughout the country. It was equally surprising to learn that the employer was also a representative payee under the Social Security Administration (SSA). Currently, the law allows employers to become representative payees and manage a person's cash benefits.

Congress and SSA were appalled when learning about the allegations against Henry's Turkey Farm and were concerned that other payees might be abusing their legal responsibilities, leaving individuals with disabilities vulnerable to abuse, neglect, and exploitation. SSA recognized their inability to adequately monitor employer representative payees for compliance under the law; so it reached out to the National Disability Rights Network (NDRN) for assistance. A partnership was formed with the Social Security Administration enlisting the aid of the state-designated Protection and Advocacy (P&A) to complete reviews so that payees would be monitored more frequently. Michigan Protection and Advocacy Service is one of many state-designated P&A's that took on the project.

What's a representative payee? It is an individual or organization appointed by SSA to receive Social Security and/or SSI benefits for someone who cannot manage or direct someone else to manage his or her money. The payee is then responsible for making sure the money is used to meet the individual's needs.

Social Security's efforts have not gone unnoticed. Over the past two years, the national P&A network has monitored and reviewed over 700 representative payees and interviewed over 2,550 beneficiaries. There have been 20 major issues along with another 90 minor issues, identified with beneficiaries and payees this year alone. Most issues discovered have involved poor record keeping, fraudulent history of a payee, and/or failure to maintain bank accounts as required by SSA. The partnership between SSA and NDRN has continued to grow and expand in an effort to reach other types of payees and beneficiaries, no longer limited to employer representative payees.

So how does it work in Michigan? The Social Security Administration (SSA) audits and reviews representative payees for compliance in Michigan but is unable to monitor these payees as frequently as it would like. So SSA gives MPAS a list of payees each quarter that it wants the agency to review. MPAS investigates by conducting reviews of payees and their records. MPAS also meets with beneficiaries, often in their place of employment or residence. MPAS then submits a report on each payee to SSA. SSA reviews each report and determines whether or not an issue requires intervention or further follow-up. The number of payees assigned to MPAS varies each quarter, yet continues to increase over time. SSA's interest in increasing the P&A role in reviewing payees highlights the level of concern it has for the wellbeing of its beneficiaries, as well as the unique qualifications of the P&A system.

As always, if you have disability-related questions or concerns, please contact MPAS at **800.288.5923**.

## **Legislative Happenings at the State Capitol**

### **Anti-Bullying Bill**

As this edition of *Exchange* is going to print, the Michigan Senate adopted Senate Bill 137 (S-4) on November 2, 2011 by a vote of 26 to 11. The substitute contains a provision that would excuse bullying behavior if the "statement of a sincerely held religious belief or moral conviction of a school employee, school volunteer, pupil or a pupil's parent or guardian."

MPAS does not support this added language and will be working with other groups to remove this language as the debate continues in the Michigan House of Representatives.

### **Repeal of the Motorcycle Helmet Law**

On November 2, 2011, the Michigan House of Representatives by a vote of 69 to 39 approved repealing Michigan's mandatory helmet law (Senate Bill 291). The bill now moves over to the Senate to concur with changes made by the Michigan House of Representatives.

### **Auto No-Fault Reform**

House Bill 4936 passed the House Insurance Committee on October 13, 2011. MPAS has partnered with the Coalition to Protect Auto No-Fault. As passed, House Bill 4936 will:

- ◆ Cap auto injury benefits, which could increase Medicaid costs
- ◆ Provide less reimbursement than the full rate for auto injury services

- ◆ Place a dollar amount within the bill which would block voters from placing the issue on the ballot
- ◆ Provide no provision that would require auto insurance rates to decrease

As this edition of *Exchange* goes to press, the bill is still waiting to be voted on by the Michigan House of Representatives.

To be updated on these bills and other issues affecting persons with disabilities, become a Fan of the Michigan Protection and Advocacy Service Facebook page.

## Update on Education Advocacy

*Mark, Information & Referral and Education Director*

MPAS began surveying parents of children with disabilities in November 2010, through our information and referral service. We asked parents if their children were having problems related to behavior, including problems that could suggest future behavior challenges such as academic struggles, retention, or multiple absences.

MPAS callers have completed 713 surveys since April 2011. Nearly two-thirds reported that their children were having behavior problems in school. More than half reported more than one type of problem. More than a quarter were calling about children 10 years old or younger.

More than a third reported that their children had had more than 10 office referrals in a year. Forty-four percent reported they had been called to pick their children up from school, and 30 percent reported their children had been suspended from school 10 or more times. Twelve percent reported their children had been placed on a partial school day, and seven percent reported their children had been placed on homebound instruction.

MPAS received more than seven surveys on 14 school districts – a total of 183 surveys (about 26%) came from these districts. Individual survey responses have also been used to screen and identify cases for investigation for possible complaints. As of September 30, 2011, MPAS had over 100 cases under investigation. Through August 2011, MPAS had filed 23 state complaints and closed five with either positive negotiated resolutions or corrective actions.

The survey is not intended to produce scientifically valid data but is designed as an informal measure of the scope of current or possible future behavior issues facing students with disabilities in Michigan. Stay tuned as we continue to collect behavior-related disability data throughout the year.

## Ask the Advocate

*by Phil, Employment Advocate*

**Q: I receive Social Security Disability Insurance (SSDI) and I got a letter from Social Security saying they have paid me too much and I have to pay it back because I worked! What do I do now?**

**A:** If you receive anything from Social Security, **don't ignore it!** Most of the Social Security Administration (SSA) notices have a time limit for you to respond. If you respond within the limit, the SSA will usually continue your benefits until you and the SSA can resolve the matter. With large overpayments, SSA does not always expect you

to be able to pay within 30 days. They simply want to get your attention. If you fail to respond, the SSA assumes you agree with the overpayment and begins to recover the funds from your benefit. SSA will usually expect you to pay the amount within 36 months, but sometimes payments can extend longer if paying it back within three years is a hardship. Regardless of the amount, MPAS advocates are sometimes able to help eliminate or reduce the overpayment. An advocate may also assist in setting up a payment plan that works within your budget.

Before we get into what to do about your overpayment, let's define and explain some of the Social Security Disability Insurance (SSDI) rules. For you to be able to receive SSDI, you or your parents must have worked and paid into the system. This is the same pot of money that pays retirees and survivors of people who worked and paid into the Social Security system. The disability program has specific rules regarding the impact of employment on your payments. Let's consider what happens if you have a disability, are receiving SSDI, and return to work.

SSA has Work Incentives designed to encourage you to test out your ability to work while you are still due your benefits. The first of these is the Trial Work Period (TWP). The Trial Work Period gives you nine months during which you can test your ability to work. During these first nine months, you can earn any amount and still have your benefits. You use one of your nine Trial Work Period months if you have earnings over \$720.00 in a month in 2011 or 2012. You use the Trial Work Period completely when you have nine months over the Trial Work Period earnings limit within a five-year period. You don't have to use these nine months consecutively. Once you use all nine months of the Trial Work Period, you enter the next phase of SSDI work incentives, the Extended Period of Eligibility (EPE).

The EPE is a 36-month protection. It runs consecutively. During this three-year period, you fall under different rules. The most important rule is the amount the Social Security Administration uses as a guideline to determine if a person is performing Substantial Gainful Activity (SGA). If your gross earnings in a month are more than \$1,000 in 2011, and you are not blind, the SSA may consider this work to be Substantial Gainful Activity. The SGA guideline is \$1,640 in 2011 if you are blind. The levels change to \$1,010 in 2012 for people who are not blind and \$1,690 for blind beneficiaries. Part of the definition of disability under the Social Security program is that the person is unable to perform Substantial Gainful Activity. If you do, and you can sustain it, the SSA may suspend your payments after a three-month grace period. During the Extended Period of Eligibility, however, you can return to payment status if you are no longer able to continue to work at that level. If you earn under the allowable SGA amount for that month, then you are eligible for a benefit check for that particular month. If you do not report your earnings to SSA, and you are not due a payment that SSA sends you, you may have to pay it back. If this goes on for a long time, you may owe the SSA a lot of your benefits back, so reporting work and understanding your benefits is very important.

If your earnings are below the Substantial Gainful Activity level throughout the Extended Period of Eligibility, your payments continue as long as you are not performing Substantial Gainful Activity, and you continue to have a disability. If your earnings are above the Substantial Gainful Activity level, though, your payments should stop. If they don't, you may be overpaid. SSA receives earnings information from the IRS, and uses it to review individual cases. If the SSA finds that you have earned over SGA and benefits have continued, the overpayment can be very large.

When you have an overpayment, you have several options. You can pay it back in full or work out a plan with SSA to pay it back slowly if paying it back is a financial hardship. You can disagree with the reason for the overpayment and ask the SSA to look again at the situation by requesting a Reconsideration. If you feel the overpayment was not your fault, you can request a Waiver of the overpayment. If SSA approves the request, you would not have to pay the overpayment back. Whatever the amount of the overpayment, contact SSA or Michigan Protection and Advocacy Service (MPAS) and request assistance to begin addressing the situation.

If you disagree with the reason for the overpayment, the first step in addressing the overpayment is to file a Request for Reconsideration. You must file this request within 60 days of the date of your overpayment letter. If you file the Request for Reconsideration within 30 days of the overpayment letter, you can ask the SSA to stop any efforts they have in place to recover the overpaid amount from your payments so that your benefits can continue without a break. Even if you make the request between thirty and sixty days, you can still ask SSA to stop their recovery of the overpaid benefits, but there may be a gap in your payments. Filing a Request for Reconsideration is your chance to say that you disagree that you have an overpayment. If SSA denies the Reconsideration, SSA will begin collecting the overpayment unless you make another appeal.

If you contact MPAS and begin working with an advocate, we will look at other possible work incentives available through SSA that could affect the amount of the overpayment. These work incentives include checking to see if you have an Impairment Related Work Expense (IRWE). For example, if you need to take medications to control your disability, or any impairment you have that affects your ability to work, SSA can deduct the amount of your out-of-pocket expenses from your gross earnings at the month's end, possibly determining that your work is not Substantial Gainful Activity. We will also see if you have other expenses that may reduce the overpayment amount.

Subsidy is another work incentive. This is when an employer is paying someone with a disability the same amount as a person without a disability, but the employer gives special supports to the person, or the beneficiary is less productive due to the disability. This may include allowing you to take extra breaks, work at a slower rate, or get extra attention from your supervisor.

Recently, MPAS helped a beneficiary eliminate a \$20,000 overpayment by using the Subsidy and Special Conditions work incentive. The advocate assisted the client in obtaining the SSA Work Activity Questionnaire found at [www.ssa.gov](http://www.ssa.gov). The client then gave the SSA form to his supervisor who completed and submitted it to SSA. Once the SSA knew about the Subsidy, they were able to eliminate the overpayment.

You can request a Waiver at any time. Requesting a Waiver means that you understand the reason for the overpayment, but it was not your fault. You also can't afford to pay it back. You have to meet both of these conditions for the SSA to approve the Waiver. If the SSA denies the waiver, then the SSA offers you a chance for a personal conference with a claims representative. During this meeting, you will have a chance to explain in person why you think the overpayment is not your fault. If the SSA denies the request at the Personal Conference level, you have the right to appeal this decision. If the SSA denies your Request for Reconsideration or Request to waive the overpayment at the Personal Conference level, you have the right to request a hearing in front of an Administrative Law Judge.

There is no guarantee MPAS can help eliminate an entire overpayment, but we can try to help reduce it or set up a plan you can pay without a financial hardship. The most important thing to remember is this: **DO NOT ignore** notices from Social Security! If you have questions regarding your Social Security benefits or if you receive a notice from the SSA, contact MPAS at **800.288.5923**, and an advocate can help you understand the correspondence.

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