

The **ADVOCARE**

April 2009

Comment on our Fiscal Year 2010 Priorities and Objectives

WVA is seeking public comment on our Fiscal Year 2010 Priorities and Objectives. Our Priorities and Objectives guide our attention and resources towards issues that confront people with disabilities. This is your chance to provide input on the direction WVA takes in providing advocacy services to you.

You are invited to a public forum to get your input on our Priorities and Objectives.

When: May 19, 2009 from 11 AM to 3 PM

Where: Hampton Inn,
Bridgeport, WV
(exit 121, I-79, Meadowbrook Rd.)
(304) 842-9300

You may also provide your comments via:

Mail: 1207 Quarrier St Fl 4
Charleston, WV 25301

E-mail: wvainfo@wvadvocates.org

Phone: (800) 950-5250

Fax: (304) 346-0867

The public comment period is:
May 10 to June 30, 2009.

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A Publication of:



*Protecting and Advocating for
the Human and Legal Rights of
Persons with Disabilities*

1207 Quarrier St Ste 401
Charleston, WV 25301
(800)950-5250

From the Executive Director

*By Clarice Hausch,
Executive Director*

Being a Protection and Advocacy System is always an interesting and challenging experience. Some days it feels like we are Dorothy, traveling the yellow brick road on our way to find the Wizard. Those days contain possibility and promise. Keep at it, do it right, collaborate with honesty and integrity and there will be workable resolutions to the barriers that limit the quality of life for West Virginia's citizens with disabilities. There will be collaboration to prevent unnecessary deaths. There will be a mutual commitment to assure only people who really require it will be committed against their will for psychiatric treatment. The precious resources of the tax-

payers will be spent in ways that maximize the benefit to the citizens and eliminate waste and excessive expense. After all, the Wizard is funded, trained and responsible to do these things. It cares about people's lives, and has the skills and desire to solve the complex problems confronting the behavioral health system in West Virginia. West Virginia Code requires the Wizard to do this; the Wizard is responsible to the WV Legislature and the Governor to perform these functions. Certainly they are just as eager as we are to safeguard and improve the lives of people with disabilities. Certainly, if we can just reach the Wizard the problems can be solved.

The darker and more troubling days are the ones when

we do reach the domain of the Wizard. Like Dorothy and her traveling companions, we discover the Wizard and his domain is built on smoke and mirrors; noise and posturing, indifference and incompetence. Instead of an assurance to meeting our needs, we encounter the spending of huge sums of money to avoid doing what the Wizard promised he could and would do. We meet an arrogant Wizard, defying anyone who would question his actions - including the Courts. We encounter a Wizard with a shocking indifference toward the death or harm experienced by the people he serves.

On those days, the P&A lands right back in Kansas with a disturbing thud. Sadly there is no Auntie Em to welcome us

WV Special Education Forum

WVA is starting an electronic West Virginia Special Education Forum. This will be a place where people can come and ask questions on special education issues in West Virginia. The site will be active on April 15, 2009. You can get to the forum from our site at <http://www.wvadvocates.org/seforum/>

with open arms. Only people with disabilities whose lives are being placed at risk and whose legal and constitutional rights are repeatedly being violated.

In case you haven't guessed, the Wizard in my story is the WV Department of Health and Human Services, Bureau for Behavioral Health and Health Facilities. It is a very powerful Wizard. It is also a very expensive Wizard who is permitted to operate with a deeply troubling lack of accountability. It is a Wizard whose leadership seems to

believe it is above the law and certainly beyond the authority of the Legislature and Courts.

But wait...in the story of Oz, the Wizard told Dorothy and her friends that they already had what they needed. It was within them; they just had to release it.

Is it possible the power needed to change the face of behavioral health services in West Virginia does not belong to the Wizard? Who owns the power to make those changes? Is it the Governor? The Legislature? The citizens? What impact can you have? Are you

powerful or powerless? Reality is that the West Virginia Wizard is miserably failing at his job and will not rescue you from peril. In fact, his actions may cause you peril.

If things are to change in West Virginia we must join Dorothy, the Tin Man and the Cowardly Lion and create the changes we require. Think about what you can contribute to reshape behavioral health in West Virginia. What is inside you waiting to be released for the greater good? The alternative of doing nothing is too frightening to consider.

Editorials

West Virginia Advocates is starting to accept editorials and letters to the editor. We will sort through any submissions and will choose one to print in our next edition of the *Advocare*. The subject should be disability related and professional.

This is a chance to have your voice heard on the issues that affect you. You may submit your editorials and letters to:

WV Advocates
1207 Quarrier St Ste 400
Charleston, WV 25301;

Facsimile: (304) 346-0867; or

E-mail: wvainfo@wvadvocates.org

West Virginia Advocates reserves the right to edit content as WVA deems necessary. By submitting content you authorized WVA to use and print your content, name, and any other information you submit. If you wish to remain anonymous, please indicate this prominently in your submission.

Wrightslaw Special Education Boot Camp Huge Success!

By Susan Given

West Virginia Advocates sponsored a Wrightslaw Boot Camp Special Education training on November 19th & 20th. Pete Wright, nationally known expert in special education law, presented to an audience of 130 individuals at the Ramada Inn in South Charleston.

Pete Wright is an Adjunct Professor of Law at the William and Mary Law School where he and his wife, Pam Wright, teach a course about special education law and advocacy and assist with the Law School's Special Education Law Clinic. They are co-authors of several books published by Harbor House Law Press. Both Pete and Pam Wright travel throughout the United States to train groups on special education law.

Those in attendance at the conference included parents, special education staff from various counties and the West Virginia Department of Education, attorneys and social workers. Some of the comments from the attendees included:

"Honestly, this was the best CLE or training program I have ever attended in my 30+ years as a lawyer, CPA,



Bill Byrne and Pete Wright at the Special Education Boot Camp

banker, and pilot. I would not change anything. The tests were very useful in getting the entire room engaged."

"This program is outstanding. Pete's teaching method is the best I have had the pleasure of attending. I came here for 14 hours of CLE, and I am leaving with so much more. And, the price was unbelievably low. Not since the first grade have I gotten so much out of a course."

"One of the best trainings I have ever attended!"
– Social Worker

"Mr. Wright's knowledge is amazing." – Parent &

Teacher

"The best explanation I've ever heard on 504 v IDEA"
– Advocate

"Mr. Wright is great. Please bring him back in a few years for another training. I will recommend it to parents, teachers, and administrators." – Teacher/Administrator

West Virginia Advocates receives more calls for assistance in special education than any other problem area. With fewer advocacy resources available for individual cases, WVA sponsored the Boot Camp in an effort to educate parents about their child's right under the Individual with Disabilities Education Act.

WVA would like to thank the following agencies for providing stipends to parents so that they could attend this conference:

- WV Developmental Disabilities Council
- The WV Department of Mental Health-Children's Division
- PAIR program – U.S. Department of Education, Rehabilitation Services Admin-

istration, Office of Special Education and Rehabilitative Services.

WVA may consider sponsoring more Wrightslaw Train-

ings in West Virginia in other parts of the state if there is an interest. Also, WVA will be donating copies of some books written by Pete and Pam Wright to many of the libraries

throughout the state to make them available to parents who couldn't attend the conference.

West Virginia Mental Health Services In Crisis

By Ted Johnson

West Virginia Advocates have joined with other advocacy organizations to advocate for improved community-based mental health services.

WVA joined with the West Virginia Mental Health Planning Council, the West Virginia Mental Health Consumers' Association, and the West Virginia Behavioral Health Providers' Association to bring attention to a crisis in community-based mental health services.

The collaborative effort was organized because there is a crisis in community-based mental health services in West Virginia. One speaker at a public meeting compared the crisis to an icicle hanging from a roof eave that builds and builds and then falls from its' own weight. The crisis in mental health services is demonstrated in increased suicide rates, an increase in the number of people in jails and prisons with a mental illness, the country's highest rate of involuntary treatment

commitment, and the increasing number of people who are homeless who have a mental illness.

The State of West Virginia is paying as much as \$120,000 a day to provide inpatient psychiatric care in community hospitals, due mostly to an abundance of involuntary commitments. The Department of Health and Human Resources (DHHR) attributes the over census to the forensic population, which would also be reduced if there were sufficient and appropriate community-based services.

West Virginia's mental health system and behavioral health system have been studied. Officials of DHHR have sufficient recommendations to act and recreate a community-based mental health system. There are sufficient models and approaches in other states to replicate. Ironically, much of what other states are providing as Evidence-Based practice and preferred practice was initially piloted in West Virginia. DHHR has chosen to discontinue funding, or pro-

vide only token funding, for these essential services.

Funding for medication and therapy is essential – but it is not enough. The community support system which enabled West Virginia to deinstitutionalize has disappeared. Community support services help people return to the workforce. They support people in the living environment of their choice. They provide for crisis intervention when necessary. They offer an opportunity to socialize and participate in community life.

The collaborative effort has created a Web site – www.wvcrisis.org – to describe the crisis in more detail and make recommendations for changes to address the crisis. The information there will help provide background information to add your voice to the call for the end of the crisis.

Ted Johnson is President of the Board of Directors of West Virginia Advocates and Chairperson of West Virginia Advocates' PAIMI Advisory Council.

WV State Supreme Court Rules in Favor of Judge Bloom in Hartley and TBI Evidentiary Hearings

By Regenia Mayne

On February 6, 2009 the Supreme Court of Appeals of West Virginia issued an order that is of major importance to citizens of West Virginia with Mental Illness and Traumatic Brain Injury. This order denied a writ of Prohibition to West Virginia Department of Health and Human Resources to block evidentiary hearing regarding the overcrowded conditions at Mildred Mitchell Bateman Psychiatric Hospital in Huntington, WV and the failure of WVDHHR to develop TBI services as required by the Hartley decree.

The purpose for filing the writ was to block evidentiary hearings scheduled by Kanawha County Circuit Court Judge Bloom. In this writ, WVDHHR alleged that Judge Bloom had exceeded his constitutional authority by ordering the evidentiary hearings. Judge Bloom is the judge who has on his docket *E. H. v. Matin*, or, as it is more popularly known, "Hartley." The original writ of mandamus in this lawsuit sought relief for the patients in the WV state hospitals based upon the very basic "Rights of Patients" found in the West Virginia Code at §27-5-9. It was due to the Hartley case that a state-wide

system of community supports was built for the patients as they were released from the state hospitals.

In July 2008, the WV Behavioral Health Ombudsman issued a report and Recommended Order to WVDHHR Secretary Walker regarding Mildred Mitchell Bateman Psychiatric Hospital in Huntington, WV. This report was a very detailed indictment of the long standing and serious problems of hospital overcrowding and the impact of those problems on the lives of the individuals required to rely on this hospital for mental health services. In August 2008, legal counsel for Secretary Walker stated that WVDHHR had chosen not to accept the Ombudsman's recommendations.

The Ombudsman's report resulted in Judge Bloom ordering an evidentiary hearing on the overcrowding at Bateman Hospital. WVDHHR's response to this action by the Judge was to challenge his authority to hold hearings. In essence, WVDHHR took a position that the citizens of WV should be denied the opportunity to inform Judge Bloom of their experiences in receiving these court ordered services in order to preserve the separation of powers between the Executive and Judicial branches of state

government.

Hartley also still contains an order that remains unmet by WVDHHR regarding providing adequate community based services for citizens with Traumatic Brain Injury. These services were ordered approximately ten years ago and still have not been implemented. Judge Bloom had ordered a separate evidentiary hearing on the TBI issue as well. West Virginia Advocates was working with Mountain State Justice to prepare for these hearings when the writ was filed and the hearings were postponed pending action by the Supreme Court.

The Supreme Court heard oral arguments on WVDHHR's request for a writ in January 2009. On February 6, 2009, the Court issued an opinion, refusing to grant DHHR's request for a writ, and sending the case back to Judge Bloom. Judge Bloom has now rescheduled the evidentiary hearings. The hearing on hospital overcrowding is rescheduled for April 24, 2009 at 9:30 AM in Charleston. The hearing regarding TBI services is rescheduled for May 22, 2009 at 9:30 AM in Charleston. WVA and Mountain State Justice are working once again to prepare for them.

WVA Sponsors Legal Training on Employment Discrimination

By Clarice Hausch

West Virginia Advocates has received repeat public input that one area in which there is a lack of trained attorneys willing to represent individuals with disabilities is the area of disability employment law. This seems to be especially true in cases where the discrimination is against individuals with mental illness. In an attempt to improve this situation West Virginia Advocates, sponsored a training on this area of the law.

In October, 100 attorneys and advocates from Charleston, Huntington, Beckley and Morgantown attended a seminar sponsored by West Virginia Advocates on the legal rights of individuals with disabilities in the work place and the legal remedies available to them when discrimination occurs. The seminar, which provided free continuing legal

education units to attorneys, was possible through the generosity of Bill Byrne of Byrne & Hedges who coordinated the event, and Allan Karlin of Allan N. Karlin & Associates, David Morrison of Steptoe and Johnson and Paul R. Sheridan of the WV Office of the Attorney General, all of whom were pro bono presenters. Mr. Karlin is a nationally recognized attorney in the area of employment law who represents clients in West Virginia. Mr. Sheridan is Deputy Attorney General for the Civil Rights Division and has litigated discrimination and harassment cases since 1990. Mr. Morrison is nationally recognized for his work in employment law and has broad experience representing both employers and employees. The presenters each brought tremendous knowledge as well as unique perspectives from their own personal experiences as employment attorneys to the seminar. The interaction

between presenters made for a lively and informative session. We received strong feedback from the attendees that they had gained valuable information from the seminar and felt their skills had been enhanced by attending.

One of the goals West Virginia Advocates set in offering this training was to begin to build a network of attorneys who would consider taking employment discrimination referrals from West Virginia Advocates on a pro bono basis. Six of the attorneys attending have expressed an interest in doing this. If you are a person with a disability and have experienced employment discrimination or discrimination has been a barrier to your obtaining employment and you would like to discuss your issue please contact us at 1-800-950-5250 and ask for our Intake Department.

Save the Date

The WV ADA Coalition will be presenting a seminar –

“Employment Issues for People With Psychiatric Disabilities”

on **July 17, 2009** at the Bridgeport Conference Center in Bridgeport West Virginia. For further information contact:

David Stewart, Coordinator, WV ADA Coalition, 304-925-8622

Parties Agree To Settlement In Benjamin H. Enforcement Action

By Teresa Brown

On March 26, 2008, West Virginia Advocates, Inc. joined with Mountain State Justice, Inc., the National Health Law Program and WV EMS Technical Support Network, Inc. to file a Motion for Enforcement in federal court on behalf of a class of individual Plaintiffs who are placed on the West Virginia Medicaid MR/DD waiver wait list after being determined to be eligible for waiver program services.

The motion filed in the United States District Court in Huntington, West Virginia, asked the Court to find the Defendant, West Virginia Department of Health and Human Resources (DHHR), in violation of a March 15, 2000, Order in Benjamin H. v. Joan Ohl, Secretary, West Virginia Department of Health and Human Resources, which required the State to assure that the West Virginia Medicaid MR/DD Waiver wait list move "at a reasonable pace", defined as having services begin within 90 days of the date eligibility is determined.

The complaint filed on behalf of this group of plaintiffs addressed issues such as the rights of individuals to be aware of the choice of institu-

tional or home and community-based services, the right to apply for Medicaid services, the sufficiency of the Medicaid services provided by the DHHR, and the promptness with which those determined to be eligible for Medicaid services can receive them.

A trial was scheduled to begin in this matter on March 17, 2009. However, the parties reached an agreement at a final settlement conference held on March 16, 2009, and an Agreed Order was entered by Judge Robert C. Chambers on April 8, 2009.

The Order issued by Judge Chambers in part ordered the following:

(1) WV DHHR will develop a single eligibility process for all medical programs that may be utilized by MR/DD Waiver eligible applicants. If an individual is eligible for MR/DD waiver program services, but is unable to receive such services due to no waiver slot being available, WVDHHR shall notify the individual of the other services or programs for which they may qualify. The single eligibility process will include agreed upon time frames for timely eligibility deter-

minations for the other services or programs for which the individual may qualify. Said eligibility process shall be completed and implemented no later than October 1, 2009."

(2) WV DHHR's Bureau for Behavioral Health and Behavioral Health Facilities (BHBF) DD Supports Grant program shall expand its eligibility criteria to include services to children under the age of eighteen.

(3) WVDHHR's Bureau for Medical Services (BMS) shall prepare and file a Medicaid state plan amendment to include the provision of 'personal care services' in the home or community, based on medical necessity criteria, pursuant to 42 C.F.R. 440.167. Said state plan amendment shall be completed and filed within six months of the entry of this Order."

(4) WVDHHR "shall request, pursuant to 42 U.S.C. 1396n(c) and 42 C.F.R. 441.305(a), approval from the Centers for Medicare and Medicaid Services (CMS), for authority to fill MR/DD Waiver slots immediately as they become available during the fiscal

year. Said request shall be completed and filed with CMS within three months of entry of this Order.”

(5) WV DHHR shall make annual budget requests to at least maintain current appropriations and contingent upon such appropriations shall, subject to CMS approval, expand the MR/DD Waiver Program as follows:

a. 150 new MR/DD waiver slots for the waiver period beginning 7/1/2012 (FY2013);

b. 150 new MR/DD waiver slots for the waiver period beginning 7/1/2014 (FY2014);

c. By December 31, 2014, the Defendant shall evaluate the programs’ funding and slot allotment to determine if additional slots are needed, and can be supported based on the cost efficiencies from the MR/DD Waiver program. Any resultant request would be based on such demonstrated need and funds available, not to exceed 150 slots.”

(6) Counsel for the Plaintiffs and the Defendant DHHR and/or her designee “shall meet and confer on a quarterly basis beginning no later than July 1, 2009 to assess the efficiency and adequacy of MR/DD waiver program.”

(7) WV DHHR “shall not object to the payment of reasonable documented attorneys’ fees and costs associated with filing of this enforcement action.”

You can access the complete Order on West Virginia Advocates’ web site.

Self-Advocacy Training The gift that keeps on giving!

West Virginia Advocates recently received this e-mail from someone who visited our web site. It is encouraging to know that the effort and resources West Virginia Advocates puts into teaching parents to be self-advocates for their children is of enormous value for many years to come and can even transcend geography. What a wonderful way of paying it forward!

As I was browsing the internet tonight I “googled” Genevive Fairval’s name to see what had ever become of her. She was the main principal in teaching me how to become a “parent advocate” in 1977. I worked with the original staff for several years before moving to Florida. Oh my, those were interesting days. I still have my certificate from WVADD. I was so proud the night I received it. After I moved to Florida, I “unintentionally” became one of their first “parent advocates”. Talk about years behind - Florida was new “stomping grounds” for me and my learning disabled son. I eventually developed a new and positive relationship with the county and together we were able to greatly improve the educational services for the developmentally disabled. My son, now 42, due to his son’s disabling condition, has become quite the advocate in Pasco County, Florida. He’s not the most popular among the district personnel but his son is receiving an appropriate education. It takes work, lots of hard work and determination, just as it did 30 years ago but the children are worth every effort made or hours spent. I appreciate all the good training I received and am most appreciative that training has extended itself into my grandson’s life in a positive way. So thank all of you for allowing me to be a part of this terrific program....

R. T., Lakeland, FL

WVA's Board of Directors News



The Board of Directors recently presented Stuart May with tribute for his years of service to West Virginia Advocates. Mr. May was the first Executive Director of West Virginia Advocates when they came into existence in 1977. He later returned to serve the organization on the Board of Directors. He completed his term as President of the Board recently. Mr. May has truly been a lifelong advocate for disability rights and we have been fortunate to have his support and leadership.

The Board of Directors recently recognized Mrs. Lolita Crews for her service to West Virginia Advocates. Mrs. Crews served the agency on the Board of Directors, including in the role of President Elect. She also has served as the Chairperson of the PAIMI Advisory Council and continues to be an active member of that Council. Mrs. Crews is also as an advocate for disability rights on a national level, especially the rights of individuals with mental illness.



At their annual Board meeting the Board of Directors of West Virginia Advocates elected their officers for the current year. From left to right: Ted Johnson, Board President and Chairperson of the PAIMI Advisory Council; Robert Hardesty, Secretary; Clifton Clark, Treasurer; and Jamie Bailey, President-Elect.



Community Corner

Community corner is a place in our newsletter for you to read information on disability related organizations, events, activities, etc. in our community. If you know of something disability related from your community and want to see it published in our newsletter, please contact us at (800) 950-5250; wvainfo@wvadvocates.org; or 1207 Quarrier St Ste 400, Charleston, WV 25301.

Morgantown, West Virginia

Compeer Book Club

By Jennifer Vanella

Do you enjoy learning new things and making new friends? Why not join the Morgantown, West Virginia Compeer Book Club? This is a great way to meet new people and discuss interesting topics including mental health. Meetings are the third Tuesday of each month. In May we will meet on Tuesday May 19th at the Bookshelf, 139 Green Bag Road, Morgantown West Virginia at 2:30 P.M.. Meetings generally last an hour and a half. Can't make the meeting but want to support Compeer? Donations of books and other contributions are welcomed with open arms! For Questions contact Chris McClelland at 304-392-5555.

Compeer of Monongalia County is a non-profit organization that began in 1992. It is an affiliate of Compeer Inc. which has programs in 33 states, Canada, Australia and the Netherlands. Compeer of Monongalia County's mission is to address the isolation and loneliness experienced by adults who have mental health concerns, using volunteers in supportive friendships to reduce the stigma of mental illness in the community at large through education. For more information go to www.moncompeer.com.

Jennifer Vanella is a senior at West Virginia University. She chose Morgantown Compeer for her Capstone Volunteer Project.

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WVA, 1207 Quarrier St Ste 400, Charleston, WV 25301

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