

# The **ADVOCARE**

March 2010

## From the Executive Director

Independence is a precious value in American culture; something we expect to have and even fight wars to retain. The Declaration of Independence states, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness". It is impossible to imagine how anyone could obtain these rights without exercising self determination, the most basic component of independence. Self-determination is being free to choose your own actions without anyone else forcing you to make the choices they have decided are best for you. That means you have the right to be free from abuse and neglect, and to choose where you live, who you live with, who you vote for, what kind of work you do, who provides services to you if you decide you need them, where you shop and what you buy. You have the freedom to take risks, try new things and learn from your successes and mistakes. Nowhere is it written you lose these rights because you are a person with a disability or because you receive support services from a government funded program. Sadly, in reality, access to independence and self determination is something people with disabilities have to fight for every day and they don't always win.

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A Publication of:



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

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## ... Continued from Cover

Why is that the case?

People with disabilities as a group lack political power. Independence and self-determination are very closely connected to political power. Politicians do not usually take people with disabilities seriously. The best model I know of to prove that this can be changed is senior citizens. Federal and state legislators throughout the country live in fear of losing the senior vote. One of the most powerful voting blocs in the country, seniors have the power to influence the outcome of elections. It should be noted that

seniors, a group of people who have experienced great cultural stigma, it is not cool to get old in America, have still been able to band together and with help from AARP shape themselves into one of the most powerful grassroots lobbies in the country. Why? BECAUSE THEY VOTE!! Do you vote? If not, why not? It is free and you can do it without leaving your home and you don't have to have a computer. It is the one single tool available to almost everyone with a disability and yet it is usually ignored by them. I believe some very positive and powerful changes could be created if the disability community would learn from the senior citizens and

band together and develop into a voting force to be reckoned with. A powerful self-advocacy tool, voting increases personal power and changes lives. Elected and appointed officials, including judges, have tremendous control over your life. Are you using your right to self determination to make sure that they understand disability issues from your point of view? When enough people with disabilities vote and begin to make sure their elected officials know they vote then they will enjoy political power. Until then they will be ignored. Are you willing to create the change that you want to become? Or do you prefer to remain where

## Editorials

West Virginia Advocates is currently accepting editorials and letters to the editor. We will sort through submissions and will choose one to print in our next edition of the *Advocate*. The subject should be disability related. 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](mailto: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.

you are and wish things were different?

Independence and self-determination are also directly connected to income. A person with SSI as their only income lives \$2,742 below the federal poverty level. People with disabilities live in poverty at a rate two to three times higher than the rest of the population and as a group account for a larger share of those in poverty than people in all minority ethnic and racial groups combined. Yet policy debate and research about poverty in the United States is largely silent about disability. That was clearly visible in Governor Manchin's recent State of the

State address. For the second year in a row the word disability was never spoken. I believe it was an honest reflection of the failure of policymakers to recognize people with disabilities as full citizens with equal rights. Many of the critical issues the Governor discussed impact very directly on people with disabilities, but they were not included in the changes the Governor proposed. This is a year in which there are major changes on the horizon in some Medicaid programs, especially the Title XIX MR/DD Waiver program. As I write this, there are at least two behavioral health providers at risk of losing their licenses to operate because of serious life

safety violations. It is essential that people pay attention to what is happening in the programs they depend on because things definitely are not business as usual. There may be new opportunities offered, but there may also be opportunities lost. Make sure you fully understand the impact of the changes that occur in the programs you use specific to your situation. Do not assume that what was yesterday will be the same tomorrow. Ask questions until you get answers. Speak up when you are being denied your right to self-determination. It is hurtful to be ignored, but much more damaging to be invisible.

## Who is West Virginia Advocates?

West Virginia Advocates, Inc (WVA) is a private non-profit agency dedicated to protecting and advocating for the legal rights of West Virginians with disabilities. We are designated as West Virginia's Protection and Advocacy System (P&A). Every State is mandated by the Federal government to have a P&A.

WVA works to ensure that West Virginians with disabilities have access to the same opportunities afforded all members of society, and can live full, productive lives totally integrated into their communities with as much self-direction and independence as possible.

WVA collaborates to promote systemic and policy change to increase access to services, promote equality, and protect legal rights.

**WVA services are confidential and free of charge.**

## Update of Hartley Case

West Virginia Advocates participated in evidentiary hearings in the case of E. H. v. Matin, or, as it is more popularly known, "Hartley," before Judge "Duke" Bloom in the spring of 2009. The first hearing was held in April 2009 to explore the problem of overcrowding at the state hospitals and the lack of community supports provided by the Department of Health and Human Resources (DHHR) for people with mental illness, while a later hearing dealt with resources for people with traumatic brain injuries (TBI). (*The hearings and consequent order dealing with the TBI issues are addressed in a separate summary.*)

WVA attorneys helped prepare and present witnesses at the hearings, and after they were over, Judge Bloom ordered the parties to mediation, and WVA also participated in that.

The parties met several times for mediation, each session lasting several hours, until finally two agreed orders were hammered out by the parties and signed by Judge Bloom.

One order, dated July 2, 2009, dealt with the provision by DHHR of community integration resources for people with mental illness and improvements the State was to make in the conditions at the State hospitals, and in that order the parties agreed to following:

- In the first year following the Order, the addition of 35 care coordinators throughout the state; the addition of five group homes; the development of 39 residential program slots and three day treatment centers. These numbers will increase in subsequent years;
- Greater utilization of crisis stabilization units to divert people with mental illness from the commitment process, and for use as "step-down" facilities for individuals leaving in-patient care;
- Creation of the Highland Hospital Assessment and Evaluation Center, to provide intensive assessment and referral services for 72 hours prior to commitment for individuals in crisis, also as an attempt to divert peo-

ple from commitment;

- DHHR will pay for a person in the Ombudsman's office (now the Court Monitor's office) to track commitments to public and private facilities;
- Increases in salaries for psychiatrists, nurses, and direct care staff at William R. Sharpe, Jr. Hospital and Mildred-Mitchell Bateman Hospital, and restrictions on over-time which can be demanded of employees at those facilities;
- Employment of five additional security guards at Bateman;
- Creation of a unit for patients with dual diagnosis at Bateman Hospital;
- Development of a formal process to ensure consistent prescribing practices between inpatient and outpatient physicians, including a doctor-to-doctor handoff protocol and a state regulation or policy statement.

There were some issues unresolved even after the

mediation: the restoration of mental health services for Medicaid eligible patients, including those with Mountain Health Choices, to traditional levels; the modification of utilization management guidelines to maximize the availability of these services, consistent with federal regulations; and reimbursement under Medicaid for clinic and rehabilitation services through telemedicine. In accordance with the Court's directions, the Court Monitor is gathering information regarding Mountain Health Choices by surveying all licensed behavioral health centers in West Virginia. He will file a report with recommendations to the Court.

A nationally recognized expert has been hired to review utilization management guidelines, and it is expected that this review will have an impact on the telemedicine issue as well.

Of the improvements and changes DHHR is required to make in accordance with the Court's Order, DHHR is in compliance with only two, according to the report of the Court Monitor dated January 27, 2010: salaries have been increased at the hospitals, and a special assistant has been hired to track commitments, although the hospitals have not made all necessary information available to her.

Judge Bloom, having received the Court Monitor's report describing DHHR's failure to meet the timelines he imposed in his Order of July 2, 2009, scheduled a hearing date for February 26, 2010, to hear an explanation for the slow progress. At that hearing, the representative from DHHR explained that DHHR personnel were working intensively with the providers to get the facilities and services in place. Meetings and discussions were listed in some detail, and Judge Bloom indicated that, although most of the timelines set out in his order of July 2009 had not been met, adequate efforts were being made to meet them at this point.

## TBI Hartley Order

At a hearing held May 22, 2009 in the Circuit Court of Kanawha County, Judge Louis "Duke" Bloom heard evidence on the Department of Health and Human Resources failure to comply with Consent Orders entered in 2001 and 2007. This testimony focused on DHHR's failure to develop a system of care for individuals with TBI and apply for a TBI waiver.

Judge Bloom subsequently ordered the parties to engage in mediation, but after a lengthy mediation process, those efforts to resolve the issues were unsuccessful. In an Order entered on August 7, 2009, Judge Bloom found that DHHR had violated the 2001 and 2007 Consent Orders because it had not engaged in good faith efforts to secure funding for a TBI waiver or

applied for a TBI waiver. Judge Bloom ordered DHHR to apply for a TBI Medicaid waiver and develop a plan for funding a TBI Trust.

On August 31, 2009, DHHR filed a Motion to Stay the August 7, 2009, Order pending an appeal to the West Virginia State Supreme Court of Appeals.

Following a hearing on September 24, 2009, Judge Bloom denied DHHR's "Motion to Stay" his order regarding Enforcement of Traumatic Brain Injury Consent Order. In an Order entered September 30, 2009, Judge Bloom stated:

"...[i]ssuance of a stay would delay implementation of the Court's Order for at least a year until the next budget cycle. This delay would lead to further violations of the Consent Orders and continued denial of services to individuals with TBI, strongly mitigating against issuance of the requested stay."

On October 8, 2009, the West Virginia Supreme Court of Appeals also denied DHHR's "Motion to Stay Enforcement" of the August 7, 2009 Order pending their appeal. DHHR filed a Petition for Appeal with the West Virginia Supreme Court of Appeals in December 2009. While that petition for

appeal is pending, however, DHHR must continue to follow the directives contained in Judge Bloom's order, which include applying to CMS (the Centers for Medicare and Medicaid Services) for a TBI waiver and developing a TBI trust fund.

In a Report to the Court and Parties dated January 27, 2010, the Court Monitor stated that the Department failed to submit a TBI waiver application to the Court Monitor by November 22, 2009, or to the Centers for Medicare and Medicaid Services (CMS) by January 2010, and thus those timelines set by the Court were not met. The Court Monitor also noted that a strategic plan for securing funding for a TBI trust fund was developed, although not by the target date of October 7, 2009.

At a hearing on February 26, 2010, Judge Bloom heard testimony on the Department's

progress towards developing a TBI waiver and trust fund. He expressed his dissatisfaction with the length of time it is taking the Department to submit a waiver application to CMS and stated that he is interested in "results, not arbitrary dates", and wanted to see "operable programs by July 1." He subsequently ordered the parties to schedule meetings at which they are to develop a specific and realistic timetable to correspond with the Department's testimony about how long it is reasonable to expect the waiver application and submission process to take.

Meanwhile, the Department's petition for appeal of the entire Hartley case remains pending before the West Virginia Supreme Court of Appeals. However, on February 11, 2010, the Court refused the Department's Motions for Stays of Judge Bloom's Orders pending appeal.

## WV Special Education Forum

If you have questions regarding Special Education in West Virginia, please register for WVA's Special Education Forum at <http://seforum.wvadvocates.org/>

# Your Opportunity to Vote is Coming!

Elections are quickly approaching; the Primary Election is on May the 11th and the General election on November 2nd. You have the right and responsibility of voting! It is an exciting time because you get to have a say in laws, services and policies through the candidates you vote for.

One of the most important things to think about while preparing to vote is getting to know the candidates. Doing your research and being prepared is key. Think about how your beliefs and what you want compares to what each candidate states is important to them.

One way you can do your research is online. Search for the candidates by name and you can find out what they believe in and say is important to them. Look up what they say they plan on doing or their

“platforms”. You can also learn more about the candidates through television or radio news programs. Often there are debates held between the candidates that you can watch. Newspapers are another great way to get more information about what candidates care about. Sometimes candidates will mail or distribute information door to door. There are many ways to learn about the individuals running for office and you may want to discuss them with friends and family. Remember, your vote is ultimately up to you!

In order to vote you must be registered. You must be registered by April 20, 2010 to vote in the primary election, and by October 12, 2010 to vote in the general election. You also must know where to go to vote; call your county clerk’s office to find out where

your voting site is. Make sure that you have your voter registration card with you when you go to vote. You should also bring valid photo identification in case it is needed. You can request an absentee ballot if you are not able to go to the polls. Your county clerk’s office must receive the application for an absentee ballot by May 5, 2010 for the primary election or by October 27, 2010 for the general election. Contact your county clerk’s office for details on how to apply for an absentee ballot. A list of contact information for the county clerk’s offices can be found at <http://sos.wv.gov> or by calling (866) 767-8683.

Remember, voting is a celebration of your opportunity to have a say in the policies, laws and services that affect you every day!

**Happy voting everyone!**

**Primary Election - May 11, 2010**

**General Election - November 2, 2010**

## Employment Conference

West Virginia Advocates invites you to join us for a day of exploring the endless possibilities the world of work can offer you! On April 22, 2010, we are presenting a conference at Stonewall Resort in Roanoke, WV. Focused on youth transitioning from high school to adult life, it will provide the opportunity to explore many education and employment options.

Featured keynote speakers are Kathleen Martinez, Assis-

tant U.S. Secretary of Labor, Office of Disability Employment Policy and Gary Guller, adventurer, Mount Everest summit climber, and film producer. In addition, the Dancing Wheels Company, a professional modern dance company, will perform.

Exhibits rooms open all day will include:

- a college fair, featuring various colleges, universities and trade schools

- an assistive technology room with AT devices available to try out
- a fine arts display, showcasing artwork from the West Virginia University Center for Excellence in Disability Fine Arts Program (ROMPP)

Organizations from around the state will have displays about their programs and services.



**Kathleen Martinez** was nominated by President Barack Obama to be the third Assistant Secretary for Office of Disability Employment Policy. Ms. Martinez advises the Secretary of Labor and works with all DOL agencies to lead a comprehensive and coordinated national policy regarding the employment of people with disabilities. She was appointed Executive Director of the World Institute on Disability in 2005. In 2002, Ms. Martinez was appointed by President Bush as one of 15 members of the National Council on Disability, an independent federal agency advising the President and Congress on disability policy.

Blind since birth, Ms. Martinez has a background as an internationally recognized disability rights leader specializing in employment, asset building, independent living, international development, diversity and gender issues.



**Gary Guller** is both a world-renowned, record-setting mountaineer and a professional motivational and inspirational speaker. In 2003, Gary was leader of the largest ever cross-disability group to reach Mt. Everest Base Camp, at 17,500 feet. After setting this record, he went on to scale the peak, reaching the summit on May 23, 2003, and becoming the first person with one arm to summit Mt. Everest.

Gary uses his extraordinary experiences to share with his audiences the importance of equality, determination, team-work and integrity, and how these traits lead to personal and professional success. An inspirational speaker, he encourages audiences to look deep into themselves, motivating them to set goals to maximize their potential, placing fear and doubts aside to achieve success in business and life. His presentations, which are full of vivid images and real-life stories, inspire and connect with his audiences. He is active internationally advocating for the potential of all people, but especially those living with a disability.

Break-out sessions will explore such subjects as:

- starting your own business
- supported employment services
- work incentives available to people receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits as well as affordable health insurance available through the Medicaid Work Incentive Network (M-WIN)
- transition planning while you are in high school
- services from the West Virginia Division of Rehabilitation Services
- preparing for college including testing requirements

and applying for financial aid

- customized employment
- employment rights under the Americans with Disabilities Act, as amended
- job interviewing tips including mock interviews
- an instructional workshop by the Dancing Wheels Company

Join us and learn more about your employment possibilities. Help us develop a dialogue among people with disabilities interested in working. Learn how you can enrich your life by planning and working towards a future that includes employment of your choice!

Register now! The conference is free, and registra-

tion includes a continental breakfast, lunch, refreshment breaks, and conference materials. You can register for the conference on-line at <http://wva-ep.eventbrite.com> or call Brittany Given at (800) 950-5250.

Financial assistance for lodging and travel expenses is available for people with disabilities and their family members.

We look forward to seeing you on April 22, 2010!

## WV has an Exciting New Voting Program!

During a Special Session in November 2009, the WV Legislature unanimously passed House Bill 406, The Uniformed Services and Overseas Voter Pilot Program. For the May 11, 2010 primary election a pilot for this program is being tested.

Participating counties (Jackson, Kanawha, Marshall, Monongalia, and Wood counties) will set up an online system where the military or overseas voter receives a security code to go online to a secure website and access a ballot. After the individual votes it is

transmitted back to the county to a secure computer.

After the effectiveness of this pilot is evaluated it could be expanded to voters with disabilities. We will keep you posted as developments arise.

## Community Corner

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

### **16th Annual Family Leadership Conference**

*Family Leadership First*

When: April 16 - 18, 2010

Where: Canaan Valley, Davis, WV

Cost: Free

Contact: (304) 421-0915

Some topics that will be offered at the conference: Perfect Board Member, Veterans Support, Veterans Family Deployment Support, IEPs, Internet Safety, Family Literacy, Coping with a Disability in the Family, Benefits for People with Disabilities and the Changes that Affect those Benefits, Diversity Awareness, WV Family Leadership First and WV LINKS, How to Deal with Annoying People, Making Connections, etc...

### **IEPs from Start to Finish**

*Family Leadership First*

When: April 29, 2010

Where: Erickson Alumni Center, Institute, WV

Cost: Free, Stipends available for travel expenses

Contact: (304) 421-0915

The agenda for the workshop will include an Overview of IEPs, Choosing Options and Accommodations for Children (COACH), Rights and Responsibilities and How to File a Complaint, and Benefits Planning and Work Incentives.

### **2010 Disability Caucus**

When: July 26 - 28, 2010

Where: Charleston Marriott, Charleston, WV

Cost: Stipends are available to assist people with disabilities and their families attend

Contact: (304) 766-4624

# Protection and Advocacy for Assistive Technology

## Do You Have the Assistive Technology (AT) or Related Services You Need?

### PAAT assists people with disabilities who:

- Need and/or have been denied  
AT Devices or Related Services

### PAAT Staff Provide Advocacy Services Including:

- Advocacy Education and Training
- Information and Referral
- Technical Assistance
- Problem Resolution
- Representation at Meetings
- Representation at Hearings
- Legal Representation

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