

West Virginia Advocates' **ADVOCARE**

Winter 2003

In This Issue

**Traumatic
Brain
Injury Grant** 2

**TTY/TDDs part
of Interstates** 5

**Ticket to Work:
Increases work
options for
beneficiaries** 6

**WVA Works
with Division
of Juvenile
Services** 8

**Enforcement of
MR/DD Waiver
Services: Who's
Responsible** 10

Terry Pickett, Editor
Craig Duff, Production
Litton Bldg., 4th Floor
1207 Quarrier Street
Charleston, WV 25301
(800) 950-5250
(304) 346-0847
(304) 346-0867 Fax
wvainfo@wvadvocates.org
www.wvadvocates.org

A Saga of Special Education In Pocahontas County

They wanted to put her classroom under a stairwell. When that didn't work, they called the police. Herein is a saga of special education in Pocahontas County and WVA's involvement:



Susan Given (left) and Shirley Skaggs (right) discuss the case

Mallory (not the child's real name), who has autism, was enrolled in Pocahontas County Middle School last year. She was supposed to receive special education services as legally mandated in her duly adopted Individual Education Plan (IEP).

In January 2003 Mallory was suspended from school for 10 days for alleged disruptive behavior. Her parents called West Virginia Advocates. Susan Given, Assistant Program Director, advised them that the school had the right to suspend a special education student for 10 days without providing services. However, after that time the school was obligated to provide services specified in the IEP. She told the parents to call back if their child was suspended again so that WVA

Special Education (Continued on page 3)

Special Announcement

West Virginia Advocates is updating the **Advocare** mailing list. If you wish to make sure you continue to receive the **Advocare**, please see the insert located at the center of this issue.

The West Virginia Protection and Advocacy System

Message from the Executive Director

Due to an explosive growth in Medicaid Fair Hearings and in assisting special education clients, WVA finds itself in a budget crunch in our PADD (Protection and Advocacy for the Developmentally Disabled) program. When WVA ended fiscal year '02 there were considerable, unspent carryover funds from previous fiscal years. However, when we finished fiscal year '03 our carryover funds, as well as our '03 federal allocation, were exhausted. While we are most pleased that we were able to serve more and more clients during the last fiscal year, we are sorry to report that we may be forced to limit acceptance of PADD cases in order to stay within the current budget.

We are constantly reviewing our program operations to economize wherever possible. We are reviewing our case selection criteria and becoming more stringent regarding cases that are selected. We are also trying to collect legal revenue wherever and whenever possible. We just want our clients and the general public to know that we are doing all we can to serve as many clients as possible and stay within our limited financial resources.



WVA Gets TBI Grant

West Virginia Advocates recently received a federal grant to provide protection and advocacy services to individuals with Traumatic Brain Injury (TBI). This grant will allow WVA to serve individuals with TBI who were not eligible to be served under our other federal grants by virtue of their age when they were injured.

For instance, an individual whose brain injury occurred at the age of 30 would not be eligible for our Protection and Advocacy for Developmental Disabilities (PADD) grant, which covers individuals whose developmental disability was evident before the age of 22. Therefore, having the new Protection and Advocacy for Traumatic Brain Injury (PATBI) grant will afford us the opportunity to provide increased advocacy services to a previously unprotected population.

The Regional Advocate working with this grant will assist those clients who meet WVA's Priorities and Objectives. In addition, the Advocate will work with other advocacy groups to identify gaps in services and to provide outreach and education to clients/family members/providers regarding the rights of individuals with TBI. The Advocate also will work collaboratively to improve services to individuals with TBI in West Virginia.

"We are excited about the possibilities this grant brings to WVA and, more importantly, to our potential client," said Debbie Mitchem Toler, WVA Program Director. "Should you have questions or concerns, please contact our office at 1.800.950.5250."

Special Education *(Continued from page 1)*

could ensure the correct process was followed.

In March Mallory was again suspended. The school administration wanted to send her to an alternative school that was lodged in the high school. The plan was to set up a classroom for Mallory under a stairwell. Mallory's parents believed that the placement would be detrimental to both their child's education and well being.

The parents once again called WVA. WVA made sure a Manifestation Determination meeting was held. Such a meeting is mandatory whenever a change of placement for a special education student is being considered. Its purpose is to determine if a student's behavior is a result of her disability.

Mallory's parents, school administration and staff, and Susan Given and attorney Shirley Skaggs from WVA were present at the Manifestation Determination meeting. During the proceedings they found that: Mallory's Behavioral Plan and IEP had not been fully implemented, Mallory had been stuck in a room in another building with a minimally trained, unsupervised aide and received practically no teaching from the special education teacher.

Then, several things happened in quick succession:

- The team at the Manifestation Determination meeting developed a crisis plan in which additional school personnel would have to assist with Mal-

lory. This lasted for only one day, because...

- ...the Superintendent of Pocahontas County Schools struck down the plan saying the additional position needed Board approval. He said that since the student's needs couldn't be met at school she should be homebound and that her mother could supervise the aide, who would provide direct instruction. This was in clear violation of special education law.

At this point Susan Given called the West Virginia Department of Education, Office of Special Education (OSE) to see if they could work something out with the Pocahontas County Special Education Director. They told her that, in a random

monitoring of the county's special education program, they had uncovered a pattern of bad performance. The OSE had issued a plan of corrective action and were continuing to monitor the county's special education program.

Susan received the consent of Mallory's parents to keep the OSE informed of the progress of their case with WVA. Any incidents of non-compliance with Mallory's IEP could help the OSE know where to look when monitoring compliance with the IEPs of other special education students.

- The IEP team then met again to develop a plan to transition Mallory back to school. Mallory returned to school but nothing was in place to correct and/or control her behavior. Predictably, she acted out again. The school called the police in and filed a juvenile

Mallory had been stuck in a room in another building with a minimally trained, unsupervised aide and received practically no teaching from the special education teacher.

Special Education *(Continued on page 4)*

Special Education *(Continued from page 3)*

...the West Virginia Department of Education, Office of Special Education (OSE) ...[said that] in a random monitoring of the county's special education program, they had uncovered a pattern of bad performance.

petition, a criminal complaint, against her.

- The parents hired an attorney (WVA is not allowed to take criminal cases, although it can provide technical assistance to the client's attorney) who, in turn, contacted the county prosecutor to determine if the child was culpable – that is, if her behavior was due to her disability or not. The prosecutor concluded that Mallory was not culpable and the school agreed to drop the petition; however, they failed to inform the parents.

Although the juvenile petition was dropped, Mallory's parents feared more retaliation from Pocahontas County Schools and decided to have Mallory placed back on homebound instruction. Her parents filed for a due process hearing to get the needed services. The independent hearing officer found that Poca-

hontas County Schools had not provided a free and appropriate education for Mallory. He ordered that another meeting be held to develop an IEP that would provide appropriate services, and that the illegal suspensions be expunged from Mallory's educational record.

The school continued its refusal to write an appropriate IEP for Mallory. Consequently, the parents filed a State Complaint with the OSE to enforce the hearing officer's findings.

In the meantime, WVA staff continued to work with the OSE, which found that Pocahontas County Schools was not following its corrective action plan. This past summer the office issued a memo that they were taking over the county's special education program. The OSE subsequently hired a liaison to assist in cleaning up the disastrous situation for students needing special education services in the county.

Because an appropriate IEP had not been developed, Mallory was unable to return to the classroom in August. Nor could she receive homebound instruction as specified in her interim IEP since no teachers were made available.

Another IEP meeting was held for Mallory this past October. Three representa-

Special Education *(Continued on page 5)*

**WEST VIRGINIA ADVOCATES
HAS A NEW WEBSITE.**

THE ADDRESS IS:

<http://www.wvadvocates.org>

WE INVITE YOU TO CHECK IT OUT.

Special Education *(Continued from page 4)*

tives from the OSE attended along with WVA advocates, Mallory's parents and Pocahontas County school personnel. Mallory's IEP now specifies the services she needs to benefit from her education, including a classroom with fewer students and an additional part time special education teacher. Almost a year after Mallory was first suspended she will finally receive the special education services to which she is entitled.

It cost Pocahontas County more than \$18,000 in private attorneys' fees alone in their attempt to deny Mallory appropriate special education services. That doesn't include the many hours of school staff and administration time involved. And, unfortunately, this is not an isolated case. The emotional, financial and educational costs to Mallory and her family, and others similarly treated throughout West Virginia, are incalculable.



TDD/TTYs Become Part of WV Interstate System

By the end of January 2004 all interstate rest stops and welcome centers under West Virginia Department of Highway (WV DOH) control will have telecommunications devices for the deaf/teletypewriters (TDD/TTYs) by judicial order of the WV Human Rights Commission.

In December 2002 West Virginia Advocates, representing the complainant Elizabeth Leisure, filed a complaint with the WV HRC alleging that the failure of the DOH to install and maintain TDD/TTYs at interstate rest stops and welcome centers under DOH control "constituted discrimination on the basis of her disability, deafness, in violation of the West Virginia Human Rights Act".

After a series of meetings, hearings and mediation sessions held throughout the year, a settlement was reached. On October 20, 2003, Robert Wilson, Administrative Law Judge with the HRC, and Ivin B. Lee, HRC Executive Director, signed the closing order for the agreement. The TDD/TTYs are to be installed within 90 days of the order being signed.

"Our client believes that she and other people who are hearing impaired received what they are entitled to with this settlement," said Tim Murphy, Legal Director of WVA. "If there should be a breach of this settlement, the client can seek remedies and sanctions provided by law. But I don't foresee that being necessary."

Ticket to Work: An Overview

The Ticket to Work program, a federal initiative designed to expand job options and remove barriers to employment for people with disabilities, went into effect in West Virginia in November. It will enable SSI and SSDI beneficiaries to phase more easily into the workforce, with the aim of becoming self-supporting, without losing their benefits in the process.

“This is the first time Social Security has really looked at the possibility of helping their beneficiaries become employed,” said Mike O’Brien, WVA regional advocate with the PABSS (Protection and Advocacy for Beneficiaries of Social Security) program. “For some it provides a way to get off SSI or SSDI, or at least become less dependent on public benefits.”

Beginning in November every SSI and SSDI beneficiary in the state between 18 and 65 will receive a voucher, or ticket, sent out at monthly intervals. That is, individuals whose Social Security Number (SSN) ends in 1 will be sent their ticket in November; in 2, their ticket will be sent out in January (December will be skipped), in 3, the ticket goes out in February, and so on through September 2004. Beneficiaries who want their ticket before their assigned date may contact the Social Security office for a ‘Ticket on Demand’.

The Ticket to Work Program is voluntary. If the recipient would like to return to work, or go to work for the first

time, he or she may take the ticket to an Employment Network (EN) of his or her choice.

What Is an Employment Network?

An EN is a qualified organization, agency or business approved by the Social Security Administration (SSA) that provides services to beneficiaries participating in the Ticket to Work Program. There is no cost to the beneficiary; Social Security pays the bills. Some of the ENs in West Virginia include the Division of Rehabilitation Services, Goodwill Industries and Pretera. Along with the ‘ticket’, beneficiaries will receive a letter explaining the program and a brochure with a list of ENs participating in the program.

The EN is responsible for making sure the beneficiary receives the services and supports necessary to enter the workforce, breaking down barriers to employment as much as possible. Such services and supports include job training, job placement, rehabilitation, assuring appropriate accommodations in the workplace, transportation, daycare for family members, and health care.

The ticket user and EN work together to develop an Individualized Work Plan (IWP) for the individual to follow while in the program.

A Network for the Ticket

O’Brien has traversed the state end to end spreading the word about Ticket

to Work. "I've probably gone to every Center for Independent Living, every sheltered workshop, every DRS office, every One-Stop Center, and every Social Security office in the state telling people about the program," said O'Brien. He's also spoken to church groups, focusing on minority populations, Family Support Programs, consumer groups, health agencies and to individual MR/DD Waiver families.

"I've also done a lot of outreach in the business community," said O'Brien. "I've spelled out the advantages of hiring people in the Ticket to Work program, from tax incentives to the availability of an untapped, excellent workforce."

How is Ticket to Work Different?

Several things differentiate the Ticket to Work program from earlier 'employment' programs for SSI and SSDI beneficiaries:

- More options, flexibility and comprehensiveness. The DRS is no longer the only game in town for training and services. The beneficiary has other options, other Employment Networks to choose from. And, whichever EN the beneficiary chooses, the services must be comprehensive.
- Maintaining health care coverage. Beneficiaries will continue to receive health care benefits for most of the time they participate in Ticket. Although part of the push by the SSA is to get beneficiaries off cash benefit programs, that should happen only

when the beneficiary works enough to be self-supporting. Even then, the beneficiary will have the option to purchase Medicaid coverage or maintain Medicare coverage.

- Deferral of Continuing Disability Reviews and Expedited Reinstatement of Benefits. While a beneficiary is 'using the ticket' medical Disability Reviews will be discontinued. Also, if a person's disability benefits have ended because of earnings from work, but the person has to stop working for medical reasons related to his or her disability, the individual can request reinstatement of benefits without filling out another application and may receive temporary benefits in the interim.

WVA Protects and Advocates

"If people in Ticket to Work aren't getting the services they need or run into employment barriers, they can call West Virginia Advocates for help," said O'Brien. "But we have such a strong network in place now, we should be able to get over the barriers through talking, negotiation and mediation...though we'll go further if we have to. Most of us throughout the state are working together to achieve the best for each person."

Numbers to Call:

Ticket to Work:

1.800.642.8207

West Virginia Advocates:

1.800.950.5250 (voice/TDD)

WVA to Collaborate with Division of Juvenile Services

West Virginia Advocates and the Division of Juvenile Services (DJS) have begun a collaborative effort to help children discharged from a DJS facility successfully re-enter their communities.

At a recent training at Jackson's Mill, sponsored by the DJS, staff from WVA gave a presentation outlining the agency's capabilities and services that could dovetail with selected DJS programs. After further discussion and meetings between representatives of the two agencies, it became apparent that a collaboration between WVA and DJS in the latter's Aftercare Program could be especially beneficial.

"The staff of the Aftercare Program follow each child for one year after that child is released from a DJS facility," said Debbie Mitchem Toler, WVA Program Director. "They try to help the child successfully re-integrate into the community. Because WVA has Regional Advocates located around the state, we can provide the Aftercare Coordinators with valuable information about resources, supports and services that will help them do their job more effectively."

"This is an exciting endeavor for both agencies," said Toler. "We look forward to establishing a working relationship with the Aftercare Coordinators on behalf of youth with disabilities."

WVA'S PROGRAM ADVISORY COUNCIL WANTS YOU!

You CAN MAKE A DIFFERENCE IN CHAMPIONING THE RIGHTS OF AND INFLUENCING POLICY TOWARDS PEOPLE WITH DISABILITIES. WEST VIRGINIA ADVOCATES IS RECRUITING MEMBERS FOR ITS **PROGRAM ADVISORY COUNCIL (PAC)**. THE PAC ADVISES AND MAKES RECOMMENDATIONS TO THE **WVA BOARD OF DIRECTORS** ON A BROAD RANGE OF DISABILITY ISSUES, EXCLUDING MENTAL ILLNESS WHICH IS THE CHARGE OF THE **PAIMI (PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS) ADVISORY COUNCIL**. **TWO-THIRDS** OF PAC MEMBERS MUST HAVE A DISABILITY OR HAVE A FAMILY MEMBER WITH A DISABILITY.

PAC MEMBERS ARE APPOINTED FOR THREE-YEAR TERMS. THEIR ROLE IS TO HELP WVA CARRY OUT ITS MISSION OF PROTECTING AND ADVOCATING FOR THE RIGHTS OF INDIVIDUALS WITH DISABILITIES. TO FULFILL THAT ROLE COMMITTEE MEMBERS WILL MAKE RECOMMENDATIONS TO THE **WVA BOARD OF DIRECTORS** REGARDING AGENCY PRIORITIES AND OBJECTIVES, BRING COMMUNITY DISABILITY ISSUES TO THE ATTENTION OF THE **BOD**, AND TAKE ACTION, SUCH AS WRITING LETTERS AND MEETING WITH KEY PEOPLE, TO ADVANCE THE AGENCY MISSION AND PRIORITIES.

THE PAC WILL MEET QUARTERLY. PAC MEMBERS MUST NOT BE CURRENT MEMBERS OF THE **WVA BOARD OF DIRECTORS** OR **PAIMI ADVISORY COUNCIL** AND MUST MEET THE CRITERIA SET FORTH IN THE **WVA BOARD OF DIRECTORS CONFLICT OF INTEREST POLICY**. SERVICE PROVIDERS ARE INVITED TO APPLY AS NON-VOTING MEMBERS.

FOR MORE INFORMATION, OR TO APPLY, PLEASE CALL SUSAN GIVEN AT 1.304.346-0847 OR 1.800.950.5250.

WVA on the Conference Circuit

Since September WVA has participated in the following conferences:

People First, September 3-5 at Canaan Valley.

The main theme of the conference was 'Shifting the Power'; that is, helping people with developmental disabilities learn strategies and techniques to achieve self-determination. Regional Advocate Mike O'Brien, along with WVU Centers for Excellence in Disabilities (CED) staff, facilitated a 'Knowing Yourself' workshop. The next day O'Brien and Special Projects/Communications Coordinator Terry Pickett, again with CED staff, facilitated a two-session workshop on Self-Advocacy with more than 30 participants in each session. Topics were 'Communication and Assertiveness' and 'Problem Solving'.

"It was a bit surprising but gratifying to see how much the participants didn't see themselves as victims," said O'Brien. "Quite a few people had very definite ideas about how to advocate for themselves. Also, many wished there were more opportunities to socialize with so-called 'normal' people. It was a wonderful experience and an eye-opener."

Regional Advocate Ed West spoke on 'Finding Your Right: Ways to Complain That Get Results' the last day of the conference in front of the more than 150 attendees. He discussed what we all have in common, what our rights provide us, what we need to succeed and people's right to complain. Ken Ervin with ADAPT WV joined West part way through his presentation.

PATHS Assistive Technology Conference, September 17-19 in Charleston.

Regional Advocate Todd Rundle gave several demonstrations in the PATHS conference Exhibit Hall about advocating for assistive technology devices. He reached about 80 people. He informed people about what they need to do to get assistive technology devices if they've been denied them. Rundle demonstrated what is involved in the appeals process, showing how to build a case, file for a hearing, and what documentation is needed to effectively support a case.

West Virginia Adult Basic Education Conference, November 5-7 at Stonewall Jackson Resort.

Regional Advocate Mike O'Brien presented a workshop on 'Overcoming Barriers to Employment'. More than 20 people, mostly professionals involved in Social Security and other employment and educational programs for adults, attended his session. O'Brien discussed what some barriers to employment are, the 'Ticket to Work' program, self-advocacy techniques, and what WVA's role is in helping people overcome barriers to employment.

Enforcement – Who’s Responsible?

You, your child, or your friend has been on the MR/DD Waiver waiting list for 6 months. You finally have a Fair Hearing and the hearing officer rules in your favor; you will be able to stay in or near your community, not an institution, with needed services paid for by Medicaid. You search for providers for the services you need, but can’t find anyone. Or, you find a provider, but the services provided are poor, inadequate to harmful. What can you do?

To date, the answer is ‘not much’. The Department of Health and Human Resources (DHHR) says they’ve done their job, they’ve given you a Medicaid Waiver. Now it’s up to you. They say it’s not their responsibility that services are bad or non-existent.

West Virginia Advocates is challenging that assumption. WVA recently filed two cases in State Circuit Court on behalf of clients on the MR/DD Waiver and will soon file a third. In one case no providers were available to furnish needed services; in the other the services provided were of poor quality.

“The question is whether DHHR is violating the Medicaid law,” said WVA attorney Tim Murphy. “Is it their responsibility as the Medicaid funding agency to ensure that people on the MR/DD Waiver get the services they’re entitled to as specified in the waiver program? We think so and are pursuing these cases, but recent court decisions have not set a clear precedent. The statute is ambiguous on this point.”

If WVA wins any of these court cases, it could lead to the establishment of a clearer tool for enforcement of Medicaid fair hearing decisions. It might also pave the way for better enforcement of decisions in other areas.

Other Legal News

DHHR has excluded Asperger’s Disorder, a condition similar to autism, as a diagnosis entitling an individual to be eligible for the MR/DD Waiver. WVA has filed a case in circuit court disputing that exclusion.

“There is nothing in the Medicaid regulations that would allow a categorical exclusion of any condition for MR/DD Waiver,” said Martha Barber, WVA attorney. “Briefs have been submitted by both the parties and a decision is pending.”

FOR YOUR INFORMATION....

Tina Maher is the new Olmstead Coordinator in the Office of the Ombudsman for Behavioral Health, Department of Health and Human Services. Her primary role is to advocate for people of any age who have disabilities and are covered under the Olmstead decision. For information and/or assistance, call **304.558.1827**.

There's help for anyone with a Developmental Disability who lives in a family setting (that includes someone living with a friend, parent or sibling, but not living independently or in a group home). If you or your family member need respite services, home modifications, a wheelchair ramp, help with paying utilities or almost anything else necessary to keep a family together, call the **WV Family Support Program at 304.558-0627**. Or, you can contact the Coordinator of the Program, Scott Miller, directly by e-mail at: smiller@wvdhhr.org

Special Announcement

West Virginia Advocates is updating the **Advocare** mailing list. If you wish to make sure you continue to receive the **Advocare**, please see the insert located at the center of this issue.

*All issues of **THE ADVOCARE** are available on audio cassette and in large print. Please call 1-800-950-5250 if you would like to have a tape or large print version sent to you.*



THE ADVOCARE is published quarterly by the West Virginia Advocates. Publication of news items and articles does not imply endorsement by the Editor, the West Virginia Advocates, the Board of Directors or its individual members, or DHHS. Funding for this publication is provided by the U.S. Department of Education, Office of Special Education and Rehabilitative Services; U.S. Department of Health and Human Services, Public Health Services; U.S. Department of Health and Human Services, Administration on Developmental Disabilities, Social Security Administration, U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau. Letters to the Editor and news items should be sent to WVA, Litton Building, 4th Floor, 1207 Quarrier Street, Charleston, WV 25301 or WVAinfo@wvadvocates.org.

WEST VIRGINIA ADVOCATES HAS A NEW WEBSITE.
THE ADDRESS IS: <http://www.wvadvocates.org>
WE INVITE YOU TO CHECK IT OUT.

The Advocate
West Virginia Advocates
1207 Quarrier Street
Litton Bldg, Suite 400
Charleston, WV 25301

Non-Profit Org.
U.S. Postage
PAID
Permit No. 2353
Charleston, WV

West Virginia Advocates

Advocare, Winter 2003

We would love to hear from you!
Please contact us with any Questions or Comments.

Management

Robert Peck, Executive Dir
Debbie Toler, Program Dir
Barbara Criner, Administrative Dir
Susan Given, Asst. Program Dir
Timothy Murphy, Interim Legal Dir

Administrative

Terry Pickett, Communications
Mark Dolin, Data-Report Specialist
Beverly Gragg, Executive Assistant
Craig Duff, Receptionist
Karen Jones, Records Clerk

Legal Staff

Martha Barber, Staff Attorney
Shirley Skaggs, Staff Attorney
Jennifer Akers, Staff Attorney
Wendi Stover, Legal Secretary

West Virginia Advocates
1207 Quarrier Street
Litton Bldg, Suite 400
Charleston, WV 25301

800.950.5250

304.346.0847
Fax: 304.346.0867

E-mail: wwainfo@wvadvocates.org

Web Site: www.wvadvocates.org

Intake Advocates

Vince Thomas
Heather Conley
Christine DiVita
Kay Basham

Regional Advocates

Jodi Calissie
Susan Edwards
Fred Ewing
Clarice Hausch
Linda Leasure
Mike O'Brien
Todd Rundle
Zineta Sahuric
Richard Sisley
Ed West

800.950.5250

www.wvadvocates.org