DAP Advocate, Mentor, and Friend Retires

Louise Tarantino’s name is practically synonymous with New York’s Disability Advocacy Program (DAP). She was hired as a DAP State-Wide Coordinator at the Empire Justice Center (then the Greater Upstate Law Project) back in 1987, and has worked to ensure the success of the program ever since. But all good things must come to an end - and Louise has announced that time has come. She will retire at the end of July.

When Louise started with DAP, Ed Lopez was the State-Wide Coordinator. As Ed says, “Louise is a wonderful, caring human being; she will be missed by the DAP community.” Peter Racette of the Legal Aid Society of Northeastern New York (LASNNY) shared similar sentiments. Louise came to DAP the same time Peter started at North Country Legal Services. He has treasured Louise as a colleague and a sounding board. To Peter, Louise is in many ways the embodiment of the DAP program. She took responsibility for every aspect: training, consulting, handling federal court appeals, organizing task force meetings, dealing with reports, and advocating with our funder. She promoted the great sense of camaraderie that makes DAP so special. According to Peter, Louise is one of the prime reasons DAP has remained so well-organized and so cohesive.

Long-time DAP advocate and NYC Coordinator Ann Biddle has admired Louise’s unfailing professional courtesy and poise in the courtroom, particularly in the august Court of Appeals for Second Circuit. Ann has also appreciated - as have so many others - Louise’s personal support and friendship. And Ann has particularly enjoyed spending time with Louise in NYC or at conferences, exploring new places, trying new restaurants, and sharing Prosecco.

Giovanna Ferdenzi of Nassau-Suffolk Law Services adds that when she met Louise 18 years ago, she was quickly impressed by Louise’s knowledge and professionalism. But Gio was most impressed by how Louise treated her. Louise acted as if they had known each other years, although Gio admits that bonding over Italy and Italian food will do that. She also fondly remembers serving as a GPS for Louise and Kate before the days of GPS. She was glad to be able to provide guidance to someone who has provided so much knowledge and guidance to so many.

Louise has served a mentor to newer DAP advocates as well. Mike Telfer, a DAP attorney at LASNNY, is grateful for Louise’s mentorship over the years. He has encouraged him to (Continued on page 2)
DAP Advocate Retires - Continued

(Continued from page 1)

train at the Partnership Conference and at DAP Task Force meetings. She has been a valuable resource for the DAP unit at LASNNY over the years, whether as co-counsel or offering invaluable advice.

Louise has also been an invaluable colleague outside the DAP community, as reflected in Kirsten Keefe’s poetic tribute re-printed at the end of this newsletter. And Louise’s influence has reached beyond the legal services world. Louise has wowed audiences at innumerable NOSSCR’s conferences with her knowledge and straightforward manner. Attorney Steve Modica of Rochester noted Louise’s many years of distinguished service in a critically important area of the law. According to Steve, she has made a difference in the lives of many, including private sector lawyers like him. Attorney Kristen King of Albany considered Louise a mentor for many years, serving as a moral sounding board when Kristen confronted ethical quandaries in her practice. Kristen also turned to Louise when she had questions regarding the minutia of social security regulations.

And of course the very flappable other half of the Louise and Kate show will be lost, both literally and figuratively, without the unflappable Louise.

Louise has indeed left an indelible mark on DAP. We are grateful for all she has done over the past thirty plus years to help continue and increase funding, to streamline reporting requirements, and generally to smooth over all bureaucratic concerns.

We appreciate all Louise has done to raise the level of competence and professionalism of the advocates around the state and beyond, and to help shape the law in this ever changing area of practice. And she has done it with grace and good cheer. We all join in wishing Louise a long, happy, and healthy retirement as she moves to the next chapter of her life.

Louise with two of her soon to be four grandchildren.
She anticipates enjoying more time with them now that she has retired as DAP Coordinator
Emilia Sicilia Named New DAP Coordinator

Who better to replace Louise Tarantino than Emilia Sicilia? Emilia will become a DAP Coordinator this fall. Emilia is a graduate of the University of Wisconsin Law School. She has been a DAP advocate at the Urban Justice Center in NYC since 2006, serving as Director of Disability Benefits Advocacy since 2012. She is well-known to the DAP community, having served as a trainer at various Partnership Conferences and other events.

Emilia comes to the Empire Justice Center with substantial litigation experience, in both individual claims and impact cases. She is currently co-counsel in Amin v. Colvin, a lawsuit pending against the Social Security Administration for its failure to docket non-disability appeals. She worked on the successful Padro litigation, a class action against SSA for systematic denial of due process. And she worked with co-counsel on Martinez v. Astrue, a national class action against SSA for automatically denying and suspending benefits based only on a warrant. She also has invaluable experience advocating with SSA, including on issues involving SSA’s evaluation of trauma in disability claims.

Emilia’s colleagues praise her for attributes strikingly similar to those of her predecessor Louise Tarantino. She is warm, friendly, thoughtful, and willing to listen. She is well-organized and a hard-worker. And above all, she is a smart and fierce advocate.

Emilia is honored to take over Louise’s role and hopes to follow in her footsteps. According to Emilia, she has been the beneficiary of much support and guidance from Louise. In particular, Emilia recalls the time Louise was tasked with introducing her at a large conference session. Emilia’s co-presenter fell ill at the last minute, leaving Emilia as a lone speaker. Without missing a beat, Louise took a seat next to Emilia for the rest of the session, offering her support and wealth of knowledge.

Emilia will work out of the Yonkers office of the Empire Justice Center. We look forward to her joining State-wide Coordinator Kate Callery of the Empire Justice Center and NYC Coordinator Ann Biddle of LSNYC.

New SSA Commissioner Appointed

On June 4, 2019, the Senate voted to confirm Andrew Saul to be Commissioner of the Social Security Administration (SSA) for the term expiring January 19, 2025. Saul becomes SSA’s first time confirmed Commissioner since 2013.

Commissioner Saul previously served as Chairman of the Federal Retirement Thrift Investment Board, which manages the retirement Thrift Savings Plan for federal employees. He was also Chair of the Manhattan Transportation Authority (MTA) in New York City and served on the board of the Manhattan Institute. President Trump originally nominated Saul in 2018. See the April 2018 edition of this Newsletter. The Senate did not confirm the nomination in 2018, so he was re-nominated on January 16, 2019, for the remainder of the term that ended on January 19, 2019, as well as for the following six-year term.

Not much is known about the new Commissioner’s positions since he has not previously worked with SSA. At his October 2018 confirmation hearing, Mr. Saul emphasized he would undertake a “top to bottom” review of many of SSA’s policies, including the disability programs and IT modernization plans. Mr. Saul has professed his role as Commissioner of Social Security would be to manage the agency; the issues of Social Security solvency should be taken up by the Treasury Department and the legislative branch.

Commissioner Saul is now the proper defendant in Social Security cases and, under Fed. R. Civ. P. 25(d)(1) and 42 U.S.C. § 405(g), is automatically substituted in pending actions.
REGULATIONS

New Social Security Ruling on Obesity Issued

SSA published Social Security Ruling (SSR) 19-2p on May 20, 2019. The new Ruling will apply to all new applications filed, or to any claims pending, on or after that date. SR 19-2p rescinds and replaces the previous obesity ruling, SSR 02-1p.

According to the Ruling, SSA establishes obesity as a medically determinable impairment (MDI) based on “measured height and weight, measured waist size, and BMI measurements over time.” Specifically, a BMI of 30 or higher or a “waist size greater than 35 inches for women and greater than 40 inches for men” will generally establish an MDI of obesity. All these measurements, however, must show a “consistent pattern of obesity.”

In determining whether obesity is a severe impairment, SSA will follow the analysis listed in the regulations for making a finding of severity. This includes evaluation of all evidence from all sources, and all symptoms, including pain or fatigue that could limit functioning. No specific weight, BMI, or description of the level of obesity (e.g., severe, extreme, or morbid) is needed to establish severity. Rather, SSA will conduct “an individualized assessment of the effect of obesity on a person’s functioning when deciding whether the impairment is severe.”

Unlike prior SSR 02-1p, the new Ruling gives no specific guidance on finding medical equivalence to a listing. SSR 19-2p does offer some specific information related to how SSA considers obesity when assessing a claimant’s residual functional capacity (RFC). For example, SSR 19-2p states that obesity “may contribute to limitation of the range of motion of the skeletal spine and extremities” due to the increased stress of weight bearing joints. In addition, obesity may also affect a person’s ability to manipulate objects if there is adipose (fatty) tissue in the hands and fingers, or the ability to tolerate extreme heat, humidity, or hazards.” (Remember “King-Size” Homer Simpson?)

The Ruling acknowledges that “people with an MDI of obesity may have limitations in the ability to sustain a function over time,” explaining that “fatigue may affect the person’s physical and mental ability to sustain work activity.” SSR 19-2p also recognizes that “the combined effects of obesity with another impairment may be greater that the effects of each of the impairments considered separately,” using obesity and arthritis as examples.

As a whole, SSR 19-2p offers much less specific guidance and useful instructions than the previous SSR 02-1p. SSA notes the new Ruling reflects “advances in medical knowledge.” Sceptics might wonder if it is designed to further curb claims based on obesity.

Contact Us!

Advocates can contact the DAP Support attorneys at:

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Ann Biddle: (347) 592-2214, abiddle@lsnyc.org
Changes Proposed for Digestive System and Skin Disorders Listings


SSA proposes, in a single Notice of Proposed Rulemaking, overhauls of both

"SUMMARY: We propose to revise the criteria in the Listing of Impairments (listings) that we use to evaluate claims involving digestive and skin disorders in adults and children under titles II and XVI of the Social Security Act (Act). According to SSA, the proposed revisions to both the adult and children’s listings “reflect our adjudicative experience, advances in medical knowledge, and comments we received from experts and the public in response to two advance notices of proposed rulemaking (ANPRM).”

The announcement contains, in addition to the actual text of the proposed revised Listings, a side-by-side comparison of the current Listings headings and the proposed Listings headings. There is not, however, a side-by-side comparison of the current content of the Listings and the proposed revised content. You will have to pull up the current listings to see how the language is proposed to be changed.

Comments are due by September 23, 2019.

Study Finds Outstanding SSI Underpayments

A recent study by the Social Security Administration’s Office of the Inspector General (OIG) found that the Administration failed to identify and properly resolve underpayments on prior Supplemental Security Income (SSI) records in a significant percentage of cases studied. See OIG A-07-18-50676 - Underpayments on Prior Supplemental Security Income Records.

The OIG reviewed a sample of cases in which a prior Supplemental Security Record (SSR) had been terminated because, for example, the claimant had not been in pay for more than one year. In these situations, if the claimant becomes eligible again, SSA creates a new SSR. If an underpayment exits on the old SSR, SSA Field Office staff must take manual action to insure the underpayment is resolved, either by offsetting it against outstanding overpayments or refunding it.

Despite findings and recommendations by the OIG in 2007 and 2013, and new SSA software in 2014, the OIG found SSA did not identify or resolve outstanding underpayment in ninety percent of the 114 SSRs reviewed. According to the OIG, underpayments totaling $503,000 should have paid to recipients, offset against outstanding overpayments, or removed from prior records. Based on its sample, the OIG estimates that between May 2011 and April 2018, 70,000 prior SSRs were terminated, leaving outstanding underpayments of $173 million.

The OIG recommended that SSA correct the SSRs of the 103 claims it identified. It also recommended that SSA review and correct its software, and establish timeliness goals for employees to diary and process underpayments on prior SSRs.

Given the OIG findings, advocates should be on the lookout for outstanding underpayments based on prior SSRs. And of course, advocates should always be on the lookout for any prior claims or allowances where benefits were subsequently terminated for non-disability reasons. SSA often fails to obtain or consider the evidence in prior files on which the claimant was previously found disabled. See the December 2013 edition of this newsletter for more on this important issue of prior files.
The U.S. Supreme Court issued several decisions this term affecting Social Security disability claimants. In January, the Court issued a decision in *Culbertson v. Berryhill*, 139 Ct 537 (2019). The Court held that 42 U.S.C § 406(b)(1)(A)’s 25% cap applies only to attorney fees for court representation and not to the aggregate fees awarded under §§ 406(a) and (b). In April, the Court decided *Biestek v. Berryhill*, which was summarized by Andrew Spink in the April 2019 edition of this newsletter. The Court declined to adopt a categorical rule that the VE’s supporting data must be provided in order for the testimony to constitute substantial evidence. Finally, in May, the Court decided *Smith v. Berryhill*, 139 S.Ct. 1756 (2019), deciding an Appeals Council dismissal of a request for review is a final decision subject to judicial review.

Petitioner Ricky Lee Smith’s claim for disability benefits under Title XVI was denied at the initial determination stage, upon reconsideration, and on the merits after a hearing before an Administrative Law Judge (ALJ). The Appeals Council later dismissed Smith’s request for review as untimely. Smith sought judicial review of the dismissal in U.S. District Court, which held it lacked jurisdiction to hear the claim. The Sixth Circuit affirmed, maintaining that the Appeals Council’s dismissal was not a “final decision” subject to federal-court review. On review, the Supreme Court unanimously held that where the SSA’s Appeals Council has dismissed a request for review as untimely after a claimant has obtained a hearing from an ALJ on the merits, the dismissal qualifies as a “final decision . . . made after a hearing” within the meaning of 42 U.S.C § 405(g).

The Court recognized the tension stemming from SSA’s regulations imposing deadlines for seeking review at each stage of the administrative review process. Pursuant to 20 C.F.R. § 416.1471, the Appeals Council may dismiss a request for review of an ALJ decision if the claimant misses the deadline and does not demonstrate good cause. And according to 20 C.F.R. § 416.1472, a dismissal is considered “binding and not subject to further review.” The Court nonetheless relied on the strong presumption for judicial review of administrative action to find the dismissal qualified as a final decision subject to review.

The Court distinguished its earlier decision in *Cali-fano v. Sanders*, 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977), which held that SSA’s denial of a claim to reopen was “a matter of agency grace” that could be denied without a hearing. It emphasized that in this case, as opposed to a denial of a request for reopening, there had been a decision by an ALJ on the merits of the plaintiff’s claim. It such a case, the Court concluded, it appeared Congress favored more oversight by the courts. The Court reiterated that the statute was designed to be unusually protective of claimants. It noted, however, a more difficult question would be presented if the claimant’s request for a hearing had been dismissed as untimely and then sought Appeals Council review. Citing precedent that a hearing is not always required, the Court nonetheless declined to address that situation, as it was not before the Court.

The Supreme Court specifically restricted its review in this case to the procedural grounds that were the basis for the Appeals Council dismissal and remanded for the agency to address the substantive questions at issue in the claim.
Second Circuit Reaffirms Treating Physician Rule

As advocates should be aware by now, the Social Security (SSA) has promulgated regulations eliminating the preferential weight previously afforded treating physician opinions. But in claims filed prior to the effective date of March 27, 2017, courts continue to vacate ALJ decisions and remand when the ALJs fail to comply with the Second Circuit’s long-standing treating physician rule. [See the July 2018, January 2019, and April 2019 editions of this newsletter.] A recently published, and thus precedential, Second Circuit decision suggests the treating physician rule may not go quietly in this Circuit. In *Estrella v. Berryhill*, 925 F.3d 90 (2d Cir. 2019), the court endorsed in strong terms the value of treating source evidence and affirmed its prior cases on the topic.

In *Estrella*, the Second Circuit remanded the claim, finding the ALJ committed procedural error in failing to “explicitly” apply the factors laid out in *Burgess v. Astrue*, 537 F.3d 117 (2d Cir. 2008). The court reiterated its mandate, rooted both in regulation and precedent, for ALJs to follow specific procedures and adequately explain their reasoning:

> An ALJ’s failure to “explicitly” apply the *Burgess* factors when assigning weight at step two is procedural error…If the ‘the Commissioner has not [otherwise] provided ‘good reasons’ [for its weight assignment],’” we are unable to conclude that the error was harmless and consequently remand for the ALJ to comprehensive set forth [its] reasons.”…If, however, “a searching review of the record” assures us “that the substance of the treating physician rule was not traversed,” we will affirm.”

The ALJ in *Estrella* had cited two normal mental status examinations. The court found these were cherry-picked findings, made without an attempt to “‘reconcile’ or ‘grapple with’ the apparent longitudinal inconsistencies,” a failure “especially relevant” in a mental health claim. *Id.* at 97. The ALJ also cited a GAF score of 70 as indicative of only mild difficulties. This was similarly rejected. Finally, the ALJ relied on the consultative examiner’s findings of only mild limitations. The court cited *Selian* to find it was not a good reason to assign little weight to a treating source, warning that ALJs “should not rely heavily on the findings of [CEs] after a single examination.”

What does *Estrella* tell us about the future of treating physician evidence? Is this a last hurrah for the treating physician rule? Or a sign that some form of the rule will survive in this Circuit?

The new regulations governing the evaluation of evidence differ from the old rules in that they speak of “persuasiveness” and not about assigning specific weight. See 20 C.F.R. §§ 404.1520c(a) & 416.920c(a). It is encouraging to see the Circuit has not backed away from the principles underlying the rule, and that it takes seriously both the value of treating source opinions and the need for “explicit” reasoning that would permit meaningful judicial review. This is particularly helpful since the new rules do require adjudicators to articulate how they consider various factors, including the relationship to the source.

Time will ultimately tell just how SSA will apply the regulations and how the courts will respond to the changes. Please be sure to share with us your experiences as these cases proceed on appeal.

Congratulations to Carolyn Kubitchek on this great result. And thanks to Emilia Sicilia of the Urban Justice Center for her summary. Starting in the fall, Emilia will be the new DAP Coordinator and a regular contributor!
WDNY Issues Trio of Remands

The Empire Justice Center received a series of remands from the Western District of New York in recent months.

In Lawrence v. Commissioner of Social Security, 2019 WL 2491920 (W.D.N.Y. June 14, 2019), Magistrate Judge Jonathan Feldman agreed that the ALJ erred in failing to consider the claimant’s non-exertional limitations. At Step two of the Sequential Evaluation, the ALJ concluded the claimant suffered from multiple sclerosis (MS) and cervical spondylitis, but found her allegations of a mental impairment were not consistent with the evidence of record. The court disagreed, finding that the claimant had clearly met the de minimus burden at Step two. Magistrate Feldman cited to evidence of record paying tribute to the fact that the claimant experienced typical and debilitating symptoms of MS, including blurry vision, headaches, cognitive impairments, loss of balance, and fatigue. He also acknowledged her symptoms of depression, another typical result of an MS diagnosis.

The Magistrate rejected the Commissioner’s argument that the ALJ’s failure to incorporate any non-exertional limitations into the residual functional capacity (RFC) assessment was harmless. The court found it was “simply not credible to argue that by limiting plaintiff to unskilled or light work the ALJ has adequately addressed the nature and severity of Lawrence’s documented non-exertional limitations. Plaintiff’s non-exertional limitations go far beyond having trouble with concentration, persistence and pace.” Nor was there any support for the Commissioner’s arguments that the ALJ accounted for the mental limitations in the rest of his decision. The ALJ had expressly given “little weight” to the opinions of the treating sources based on the non-exertion impairments. Because the ALJ had failed to consider the limitations throughout the decision, remand was required.

In Vosburgh v. Commissioner of Social Security, 2019 WL 2428501 (June 11, 2019), Magistrate Judge Marian Payson found that evidence submitted to the Appeals Council should have been considered new and material. She held that the Appeals Council erred in summarily rejecting the evidence submitted simply because it was generated after the ALJ’s decision. She remanded the claim for reconsideration of the new evidence.

Magistrate Payson considered the new evidence under 20 C.F.R. §§ 404.970(a)(5), (b) & 416.1470(a) (5),(b), which instructs the Appeals Council to consider additional evidence if the claimant can show good cause for not submitting it to the ALJ; it is new, material, and relates to the period on or before the ALJ’s decision; and there is a reasonable probability it would change the outcome. The new evidence submitted to the Appeals Council consisted of treatment notes from the claimant’s treating physician dated eight days after the ALJ issued his decision. The court found the plaintiff had good cause for failing to submit the evidence to the ALJ as it did not exist before the decision was issued.

The Magistrate Judge also found the treatment notes were not merely cumulative. The ALJ had found at Step two of the Sequential Evaluation that fibromyalgia was not a medically determinable impairment and thus not severe. As a result, the ALJ did not credit any of the claimant’s statements regarding her fibromyalgia-related symptoms or consider their potentially functional limitations. But the treatment notes corroborated the claimant’s complaints. The notes also verified relevant diagnostic criteria for fibromyalgia set forth in SSR 12-2p. According to the court, had the treatment notes been properly considered, they could have affected the ALJ’s Step two determination, as well as the remaining steps of the sequential analysis.

The court specifically held that evidence generated after an ALJ decision should not be rejected solely because of its timing. It cited Second Circuit case law for the proposition that new evidence may shed considerable light on the seriousness of a claimant’s condition. See, e.g., Pollard v. Halter, 377 F.3d 183, 193 (2d Cir. 2004); Lisa v. Sec’y of Dep’t of Health & Human Servs. of U.S., 940 F.2d 40, 44 (2d Cir. 1991). And it found that the timing of the treating physician’s evaluation – a mere eight days after the decision – made it unlikely the doctor was assessing new

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WDNY Issues Trio of Remands- Continued

(Continued from page 8)

symptoms that had developed after the decision. It concluded the claimant had good cause for not submitting the evidence sooner; the evidence was new, and material; and it gave rise to the probability it would change the outcome.

In Anderson v. Commissioner of Social Security, 2019 WL 2295404 (W.D.N.Y. May 30, 2019), U.S. District Judge Frank Geraci found the ALJ erred in failing to incorporate the claimant’s limitation in maintaining a schedule into his residual functional capacity (RFC). Judge Geraci criticized the ALJ for assigning “some weight” to the various medical opinions in the record, but omitting any limitations offered by the providers regarding the claimant’s ability to maintain a regular schedule. The ALJ had used portions of the various opinions to find limitations on the claimant’s ability to deal with stress and interact appropriately with others. But he rejected the scheduling limitations offered in at least two of the opinions. The court observed that when an ALJ uses a portion of a given opinion to support a finding, while rejecting another, the ALJ must have a sound reason for the discrepancy. The ALJ failed to offer a rational for how he reconciled the conflicting opinions despite allegedly assigning them all some weight, which Judge Geraci found “frustrates this Court’s ability to undertake meaningful review of the ALJ’s decision.”

The court also criticized the ALJ for confusingly citing evidence that appeared to support the claim, while failing to reconcile any alleged inconsistencies in the opinions. This failure was particularly harmful because the vocational expert who testified at the hearing established the scheduling limitations (i.e., off task 10% of the day or absent more than one day per month) would render the claimant unemployable. Had the ALJ credited the portions of the opinions indicating the claimant could not maintain a regular schedule, he may have found her disabled. Since he failed to do so, or explain why, remand was required.

US Treasury Required to Advise Student Loan Debtors of Disability Discharge

Each year, over 100,000 disabled Americans are needlessly endangered with homelessness, utility shut-offs, and hunger when their Social Security benefits are reduced to repay ancient student loans. Many could avoid the loss of these safety net payments by applying for a disability discharge. The problem is they are never told this option.

In Rodriguez v. DeVos, (2016-cv 5476, E.D.N.Y.), Johnson Tyler of Brooklyn Legal Services addressed this dilemma. Now the U.S. Department of Treasury is required to tell borrowers to call an 800 number to apply for a disability discharge in the same letter that warns them of the impending Social Security garnishment. (A copy of the new notice and the old, unconstitutional notices are available as DAP # 596). Mr. Rodriguez and the other plaintiffs will get a full refund ($23,000) of the Social Security payments that were unconstitutionally taken. In addition, the government agreed to send the notice to the disability recipient’s current address (usually the address on file with the Social Security Administration.) The past policy was to send all notices of garnishment to the last address provided to the IRS in a tax return. Such addresses were often old and wrong, given that most disability recipients with student loan debts are poor and hence are not required to file taxes. The government also paid attorney fees of $50,000.00.

Congratulations to Johnson and Brooklyn Legal Services. Johnson is a former DAP advocate and has been a tireless defender of consumer rights for low income and disabled New Yorkers. We applaud his success in this case, which was recognized in the media.
SSDI Application May Estop Subsequent ADA Claim

A recent Louisiana district court case illustrates how an employee can be judicially estopped from succeeding in a claim for disability discrimination under the Americans with Disabilities Act (“ADA”) if he applied for social security disability benefits for the same time period.

The plaintiff in Tanner v. BD LaPlace, LLC, No. CV 17-5141, 2019 WL 1382302 (E.D. La. Mar. 27, 2019), was fired from his job as a crane operator for refusing to submit to a mandatory fitness for duty evaluation (“FFDE”) following several complaints about his workplace behavior. In response, Mr. Tanner filed a complaint with the Equal Employment Opportunity Commission (EEOC), alleging that BD LaPlace discriminated against him on the basis of a believed disability when it fired him for refusing to submit to the FFDE. Mr. Tanner affirmed in this filing that he did “not have a disability but employer fired [him] for refusing to submit to a medical examination (both physical and mental) without cause or concern.” Id. at *2.

Seven months later Mr. Tanner submitted an application for social security benefits, in which he affirmed he was disabled and had stopped working on March 1, 2016, due to his disability caused by neck, ankle, and tissue injuries. The Social Security Administration (SSA) found that Mr. Tanner was disabled for social security purposes and awarded him benefits retroactive to February 10, 2016, one month before his refusal to submit to the FFDE. While he was awaiting SSA’s determination, Mr. Tanner brought the action against BD LaPlace.

The court found that Mr. Tanner had conceded in his deposition he was unable to perform the essential tasks of a crane operator due to his disabling condition. ADA plaintiffs cannot survive a motion to dismiss if they previously affirmed that they were too disabled to work and then contradictorily claim to have been fully qualified for all the requirements of their positions without a sufficient explanation. The Supreme Court has held “pursuit, and receipt, of [social security disability] benefits does not automatically estop the recipient from pursuing an ADA claim[,] nor does the law erect a strong presumption against the recipient’s success.” Cleveland v. Policy Mgmt. Sys. Corp., 526 U.S. 795, 797-98 (1999). [DAP advocates with be familiar with this Supreme Court case for its holding that SSA must decide whether individuals are disabled without any regard to their capabilities when given reasonable accommodations. Id. at 805. See Social Security Ruling (SSR) 00-1c.]

If plaintiffs can sufficiently explain the discrepancy, they may still be successful in ADA claims that encompass the same time periods in which SSA has determined them to be disabled. But they “cannot simply ignore the apparent contradiction that arises out of the earlier [social security] total disability claim.” Id. at 806. The Tanner court found the plaintiff had failed to give any explanation for the contradiction in his affirmations and accordingly dismissed his ADA claims against BD LaPlace.

Thanks to summer law intern Lyssa Pedersen for her excellent summary of this disability conundrum.
Problems Obtaining Medical Records?

Since 2017, New York law has allowed disability claimants to obtain medical records from providers at no cost. See the October 2017 edition of this newsletter for more details on Public Health Law §§ 17 & 18.

Apparently some records providers, particularly CIOX, are creating hurdles for advocates. Requests are being refused or ignored if the advocate fails to note in the original request (1) that the patient is requesting the records for the purpose of supporting the patient’s application, claim or appeal for [specific government benefit here] and (2) the request is made pursuant to Public Health Law §§ 17 & 18.

Michelle Spadafore of the New York Legal Assistance Group, one of the architects of the new law, has created a template for making the requests. As Michelle advises, it takes a lot more work to fix this issue on the back end, so please use her template. The letter is available as DAP # 597.

EmpoweredNYC Offers Financial Counseling

Citibank, the City of New York, and the National Disability Institute (NDI) have teamed up to launch Empowered Cities, a national initiative to improve financial access, stability, and opportunity for lower income people with disabilities and their families. The first municipal program, EmpoweredNYC, is built on New York City’s existing Financial Empowerment Centers model and now offers free, specialized financial counseling and coaching designed and tailored to meet the specific needs of households with disabilities.

EmpoweredNYC is an initiative designed to assist people with disabilities better manage finances and become more financially stable. Free one-on-one financial counseling is available by appointment. And Empowerment ED offers free monthly webinar series for service providers, caseworkers, other professionals who work with people with disabilities to better understand and address the unique financial situations of people with disabilities.
Since the percentage of Appeals Council reversals or remands are in the single digits, it is always notable when advocates are successful in convincing the Appeals Council to do anything other than affirm. Two advocates recently had the pleasure of receiving good decisions from the Appeals Council.

The Appeals Council granted a Request for Review, and, surprisingly, issued a rare partially favorable Appeals Council decision in a case handled by Nicholas Parr of the Legal Aid Society of Northeastern New York.

Nick’s client, who turned age 55 in November 2017, suffered from orthopedic impairments and was limited to light work by the Administrative Law Judge (ALJ). The ALJ denied the claim because the client was deemed capable of her past relevant work as a factory worker. The ALJ pointed to the client’s work experience from January 2006 - March 2006. During this time the client worked for a temporary employment agency, which placed her in several factories and warehouses sorting products such as clothing and other apparel items.

Nick argued to the ALJ the position was not past relevant work (PRW) as it was not substantial gainful activity (SGA) since earnings did not exceed the 2006 SGA amounts. Nick also pointed out that she had been placed in several different work sites doing different work tasks at each site and that no one placement lasted long enough to be considered past relevant work. See POMS DI 25005.015 - Determining If Work Experience Is Relevant. The ALJ did not respond to Nick’s arguments and, using boilerplate language, found “the claimant performed this job within the past 15 years, performed it long enough to learn and performed at substantial gainful activity levels.”

Nick renewed his argument at the Appeals Council, pointing out the client earned only $1,666.38 during the three months in question and averaged $555.46 per month at a time when the SGA level was $860 per month. Unlike the ALJ, the Appeals Council did respond toNick’s argument and found his contentions persuasive. Citing the testimony of the vocational expert at the hearing, the Appeals Council agreed the client could not perform any other past work if limited to light work, and found the client could not perform past relevant work at Step 4. The Appeals Council then adopted the ALJ’s education and past skill level findings to find the client disabled under the Grid on her 55th birthday.

The client is now receiving ongoing Supplemental Security Income (SSI) and State Supplemental Payments (SSP) benefits, and received over $4,000 retroactive benefits after interim assistance recovery.

In another case, Rochester attorney Jere Fletcher won a remand from the Appeals Council because the ALJ failed to consider additional evidence submitted post-hearing. Jere advised the ALJ that there were multiple requests for outstanding records from a health care provider. After the hearing but prior to the issuance of a decision, Jere submitted the outstanding evidence. The ALJ issued the decision without reflecting an evaluation of the evidence, which was also not made part of the record.

The Appeals Council acknowledged that Jere had complied with his obligation under 20 C.F.R. § 404.935 to submit or inform the ALJ about the evidence at least five business days prior to the hearing. The Appeals Council also pointed out that the hearing office failed to develop the record itself in accordance with 20 C.F.R. §§ 404.1512(b) & 416.912(b), and HALLEX I-2-5-13. On remand, the Appeals Council directed the ALJ to consider the additional evidence.
Appeals Council Remands - Again!

Attorney Mike Telfer of the Legal Aid Society of Northeastern New York in Albany has proven once again that persistence pays off. Following a remand from the U.S. District Court in the Northern District of New York, the same Administrative Law Judge (ALJ) again denied the claim. Mike returned to the Appeals Council, which agreed with Mike’s arguments and remanded the claim to a new ALJ.

The Appeals Council found that the hearing records from previous claims were not consolidated, despite its 2017 Order. It also determined the ALJ had not adequately considered the opinion evidence of two treating therapists. The ALJ only acknowledged one joint opinion, but the record contained several others that described significant limitations. Further, the ALJ misapprehended the report he did consider, erroneously concluding the therapists had identified moderate limitations, when in fact they had indicated marked limitations.

Mike also raised an Appointments Clause argument, claiming the ALJ was not properly appointed under the U.S. Constitution, citing Social Security Ruling (SSR) 19-1p. See the April 2019 edition of this newsletter for a discussion of SSR 19-1p and the Appointments Clause post the U.S. Supreme Court decision in Lucia v. SEC, 138 S.Ct. 2044 (2018). The Appeals Council determined that any Appointments Clause defect was cured by its remand to a different ALJ.

Kudos to Mike for his persistence.

Appeals Council Surprises- Continued

(Continued from page 12)

and, if necessary, obtain supplemental evidence from a vocational expert based on the new evidence.

Of note, this is not the first time the Appeals Council has remanded based on an ALJ’s refusal to consider evidence about which an advocate timely informed the ALJ. See the April edition of this newsletter.

Congratulations to both Nick and Jere. The successful results of Appeals Council advocacy in their cases emphasizes that every detail of the client’s case is important. Be sure to document efforts to obtain evidence, submit relevant evidence to the Appeals Council, and never give up the fight!

Send Us Your Decisions!

Have you had a recent ALJ or court decision that you would like to see reported in an upcoming issue of the Disability Law News?

We would love to hear from you!

Contact Kate Callery, kcallery@empirejustice.org
ALJ Approves Waiver

Jennifer Karr of the Rochester office of the Empire Justice Center, received a favorable ALJ decision in an overpayment waiver case. The claimant had been overpaid $20,000 because the Social Security administration (SSA) failed to offset Title II disability and survivor benefits before paying the SSI retroactive benefits. The claimant filed for waiver.

Although SSA agreed the claimant was not at fault in causing the overpayment, it refused to waive the overpayment. SSA found the claimant had met the first part of the waiver standard of 20 C.F.R. § 404.506 in that she was without fault. But SSA refused to find she met the second prong: that recovery would defeat the purpose of the Social Security Act or be against equity or good conscience. The claimant submitted all of the documentation SSA requested at the time of the overpayment, including bank statements and expenses. SSA nonetheless found the claimant could afford to repay the overpayment and began collecting $250 per month to recover the overpayment.

At the hearing, the claimant testified she could not meet her monthly expenses after SSA deducted $250 per month for the overpayment. The ALJ agreed, and determined recovery of the overpayment would defeat the purpose of Title II of the Social Security Act because the claimant needs substantially all of her current income to meet “ordinary and necessary living expenses.” The ALJ concluded the claimant is not able to repay the overpayment and granted waiver. Since SSA had deducted $250 per month for several years while the waiver request was pending, the claimant will be receiving a refund of over $11,000. See, e.g., POMS GN §§ 02250.310 & 02250.370, requiring SSA to refund benefits withheld after waiver is approved.

Thanks to Jenna’s help, her client no longer has to suffer as a result of SSA’s own error.

ALJ Issues Favorable Decision on Remand

Jennifer Karr of the Rochester office of the Empire Justice Center recently received a favorable decision from an Administrative Law Judge (ALJ) following an Appeals Council remand. The Appeals Council had found that the ALJ had not fully considered opinion evidence, and had not offered “a complete rationale.” The Remand Order detailed multiple failures by the ALJ, including her failure to consider a medical source statement and a listing letter by the client’s nurse practitioner. The ALJ also failed to consider the claimant’s vision limitations though he had only “very minimal light perception” in one eye. Finally, the Appeals Council determined the ALJ failed to consider restrictions caused by chronic prostatitis with anti-biotic resistance, including urinary frequency and incontinence.

At the remand hearing, the ALJ acknowledged the prior decision was in error, took minimal testimony from the claimant, and posed a Residual Functional Capacity (RFC) to the vocational expert that resulted in “no jobs.” But the ALJ’s fully favorable decision cannot undo the damaging effects of the earlier erroneous decision. During the five years the claimant waited to be found disabled, he emptied his retirement savings, incurring tax liability and a loss of interest income. His health continued to deteriorate: his vision worsened and his eye was removed. His apartment became infested with bedbugs. He lost most of his belongings.

On the bright side, the claimant received over $50,000 in retroactive benefits, which he reinvested in a retirement fund with the help of a financial advisor. And the ALJ’s decision unambiguously determined the claimant is legally blind. He should now be eligible to earn at the higher SGA rate for individuals with visual impairments. Just prior to the second hearing, the claimant connected with an organization for the visually impaired and is being trained to work there.

Kudos to Jenna for helping this client through his long ordeal.
Congress Requests Study of Social Security Medical Reviews

A recent series by the Tennessean, a local Tennessee newspaper, has brought to light the downfalls of using contracted doctors to perform medical reviews for determinations of disability. The investigation in Tennessee has prompted Congressman John B. Larson, Chairman of the Ways and Means Social Security Subcommittee, to request that the U.S. Government Accountability Office (GAO) conduct a study of the quality of the medical reviews performed by doctors used by the Disability Determination Service (DDS). DDS is a state agency that performs eligibility determinations on behalf of the Social Security Administration (SSA).

In requesting the study, Chairman Larson states that “[b]eyond Tennessee, little is known about the extent to which DDS offices . . . use contracted medical consultants, how these consultants are compensated and overseen, how quality is measured, and in what ways, if any, the use of contracted medical consultants affects determination accuracy.”

The series revealed that the Tennessee DDS mostly contracts independent doctors who are paid a flat rate for each application they review. These doctors work fast, being incentivized by the flat rate pay. The state also employs a few staff doctors who are paid a salary not based on how many applications they review. These doctors, without the flat rate incentive, work slower and more accurately. The Tennessee DDS, however, plans to terminate all doctors on salary and rely solely on contract physicians.

The federal standard for reviewing claims is 1.5 cases per hour. One Tennessee review physician featured in the series pumped out an average of five case reviews per hour, spending an average of 12 minutes per case. He earned $420,000 for reviewing 9,088 applications in the year ending on June 30, and has made $2.2 million since 2013. Around 80% of the applications he reviewed were denied under his recommendation. The Tennessean reported that one in five contract doctors doubled the federal standard pace. Experts and both former and current state employees have stated that it is impossible to review cases at these rates without making mistakes.

Tennessee has one of the highest denial rates for disability applicants in the country, rejecting 72% of applications, 6% higher than the national average. The state has reported an average of 95.8% accuracy since 2016 and received a “Phoenix Award” for its performance in 2017. But those numbers are based on SSA’s review, as required by law, of at least half of all the eligibility approval determinations. There are no specific requirements for review of denials. As a result SSA has reviewed fewer than 2% of all rejections, according to an analysis by the National Organization of Social Security Claimants’ Representatives. Thus, Tennessee’s accuracy rate is based almost entirely on its approval determinations.

According to Jeffrey Price, the former legislative director for the National Association of Disability Examiners, approximately half of the state disability offices in the country use a model similar to that of Tennessee. Of note, New York’s DDS, the Division of Disability Determinations (DDD), apparently employs its Medical and Psychological Consultants. Advocates are currently questioning, however, if they comply with federal standards.

According to Chairman Larson and others, a GAO study of the quality and quantity of case reviews by DDS doctors is sorely needed. Summer law intern Lyssabeth Pedersen provided this summary of Chairman Larsen’s request and the Tennessean series.
Social Security Scams are on the Rise

The Federal Trade Commission (“FTC”) has issued a notice warning people that scammers pretending to be from the government are on the rise. FTC’s Data Spotlight reports that nearly 1.3 million complaints about government imposter scams have been recorded since 2014. The data shows this number is rapidly increasing each month. The previous monthly record for reported complaints was 38,400, recorded in September of 2016. Recent reports indicate 41,400 reported complaints in March, 39,600 in April, and a whopping 46,600 in May of 2019.

Nearly all (96%) of the people who reported government imposter scams from January 2018 through May 2019 were contacted over the phone. These calls can be quite convincing as they usually involve a threat from an apparent government authority. The vast majority of the imposters claim to represent the Social Security Administration (“SSA”), spouting frightening lies like “your Social Security number has been suspended, we need you to verify your Social Security number before we can ensure your money is safe.”

The FTC offers these tips to protect against the government imposters:

- Do not trust any caller from a government agency who asks for money or personal information (especially a Social Security number).
- Do not trust caller ID; the phone number and name can be faked.
- Never pay with a gift card or a wire transfer over the phone.
- Always check with the actual Agency to see if it is really trying to contact you.

Thanks to summer law intern Lyssabeth Pedersen for this helpful information.
HIPAA Resources Available

You have the right to privacy concerning information about your health, medical care, and how your care is paid for. This right comes from a federal law called HIPAA (Health Insurance Portability and Accountability Act). Although HIPAA regulates many other areas, the main impact it has on most people is the Privacy Rule, which determines how health care providers and health insurance companies can disclose Protected Health Information (PHI). More detailed information about HIPAA release forms and other valuable resources are available on the Western New York Law Center’s Health page. http://www.wnylc.com/health/entry/118/

Know Your Rights! Conoce Tus Derechos!

Several legal services programs, including the National Immigration Project of the National Lawyers Guild, and Georgia Latino Alliance for Human Rights, have developed “know your rights” materials in English and Spanish. This information is helpful for all of us and our clients.


Access HEAP Cooling Benefits

Now that summer’s hot days are upon us, remember that older adults are particularly susceptible to extreme temperatures. Those who are HEAP eligible and have a medical need may be eligible to receive an air conditioner—including installation—free of charge. Information on this program can be obtained from one of New York’s 59 county offices for the aging (https://aging.ny.gov/NYSOFA/LocalOffices.cfm) or from the local department of social services (http://otda.ny.gov/programs/heap/contacts/). Information can also be obtained by calling NY Connects at 1-800-342-9871.

Two New Websites on Family Court Issues Launched

Commission on Parental Legal Representation (Hon. Karen Peters, Chair): The Commission’s public website, containing the Interim Report, a list of members and transcripts of the four public hearings convened last year, is available at: http://www.nycourts.gov/ip/Parental-Legal-Rep/

Advisory Council on Immigration Issues in Family Court (Hon. Ruben Martino, Supervising Judge of Family Court, Bronx County, and Prof. Theo Liebmann, Clinical Professor of Law and Director of Clinical Programs at Hofstra Law School, co-chairs): In addition to the list of members and links to other resources, the site includes the Council’s series of guidance memos regarding Special Immigrant Juvenile Status, U-visa certifications, adverse impact of immigration proceedings and service of process. The Council’s public website is available at: http://nycourts.gov/ip/Immigration-in-FamilyCourt/index.shtml
BULLETIN BOARD

This “Bulletin Board” contains information about recent disability decisions from the United States Supreme Court and the United States Court of Appeals for the Second Circuit. These summaries, as well as summaries of earlier decisions, are also available at www.empirejustice.org.

We will continue to write more detailed articles about significant decisions as they are issued by these and other Courts, but we hope that this list will help advocates gain an overview of the body of recent judicial decisions that are important in our judicial circuit.

SUPREME COURT DECISIONS


In a 6-3 decision, the Court declined to adopt a categorical rule that a vocational expert’s supporting data must be provided in order for the testimony to constitute substantial evidence. But the majority acknowledged that in some cases it may be possible to draw an adverse inference against a VE who refuses to provide supporting data.


The Supreme Court upheld SSA’s determination that it can find a claimant not disabled at Step Four of the sequential evaluation without investigation whether her past relevant work actually exists in significant numbers in the national economy. A unanimous Court deferred to the Commissioner’s interpretation that an ability to return to past relevant work can be the basis for a denial, even if the job is now obsolete and the claimant could otherwise prevail at Step Five (the “grids”). Adopted by SSA as AR 05-1c.


The Supreme Court affirmed SSA’s policy of denying SSD and SSI benefits to claimants who return to work and engage in substantial gainful activity (SGA) prior to adjudication of disability within 12 months of onset of disability. The unanimous decision held that the 12-month durational requirement applies to the inability to engage in SGA as well as the underlying impairment itself.

**Sims v. Apfel,** 120 S. Ct. 2080 (2000)

The Supreme Court held that a Social Security or SSI claimant need not raise an issue before the Appeals Council in order to assert the issue in District Court. The Supreme Court explicitly limited its holding to failure to “exhaust” an issue with the Appeals Council and left open the possibility that one might be precluded from raising an issue.


The Supreme Court finally held that individual disability claimants, like the government, can appeal from District Court remand orders. In **Sullivan v. Finkelstein,** the Supreme Court held that remand orders under 42 U.S.C. 405 (g) can constitute final judgments which are appealable to circuit courts. In that case the government was appealing the remand order.

**Shalala v. Schaeffer,** 113 S. Ct. 2625 (1993)

The Court unanimously held that a final judgment for purposes of an EAJA petition in a Social Security case involving a remand is a judgment “entered by a Court of law and does not encompass decisions rendered by an administrative agency.” The Court, however, further complicated the issue by distinguishing between 42 USC §405(g) sentence four remands and sentence six remands.
SECOND CIRCUIT DECISIONS

Lockwood v. Comm’r of SSA, 914 F.3d 87 (2d Cir. 2019)

The Court of Appeals remanded because the ALJ had not met his affirmative obligation under SSR 00-4p to inquire about any possible or apparent conflicts between vocational testimony and the Dictionary of Occupational Titles (DOT). The court found the ALJ did not meet his burden simply by asking the vocational expert if her testimony was consistent, especially where the ALJ found the plaintiff could not reach overhead, but the three jobs to which the VE testified all required frequent or occasional reaching.

Lesterhuis v. Colvin, 805 F.3d 83 (2d Cir. 2015)

The Court of Appeals remanded for consideration of a retrospective medical opinion from a treating physician submitted to the Appeals Council, citing Perez v. Chater, 77 F.3d 41, 54 (2d Cir. 1996). The ALJ’s decision was not supported by substantial evidence in light of the new and material medical opinion from the treating physician that the plaintiff would likely miss four days of work per month. Since the vocational expert had testified a claimant who would be absent that frequently would be unable to work, the physician’s opinion, if credited, would suffice to support a determination of disability. The court also faulted the district court for identifying gaps in the treating physician’s knowledge of the plaintiff’s condition. Citing Burgess v. Astrue, 537 F.3d 117, 128 (2d Cir. 2008), the court reiterated it may not “affirm an administrative action on grounds different from those considered by the agency.”

Greek v. Colvin, 802 F.3d 370 (2d Cir 2015)

The court remanded for clarification of the treating source’s opinion, particularly as to the claimant’s ability to perform postural activities. The doctor had also opined that Mr. Greek would likely be absent from work more than four days a month as a result of his impairments. Since a vocational expert testified there were no jobs Mr. Greek could perform if he had to miss four or more days of work a month, the court found the ALJ’s error misapplication of the factors in the treating physician regulations was not harmless. "After all, SSA's regulations provide a very specific process for evaluating a treating physician's opinion and instruct ALJs to give such opinions 'controlling weight' in all but a limited range of circumstances. See 20 C.F.R. § 404.1527(c)(2); see also Burgess, 537 F.3d at 128." (Emphasis supplied.)

McIntyre v. Colvin, 758 F.3d 146 (2d Cir. 2014)

The Court of Appeals for the Second Circuit found the ALJ’s failure to incorporate all of the plaintiff’s non-exertional limitations explicitly into the residual functional capacity (RFC) formulation or the hypothetical question posed to the vocational expert (VE) was harmless error. The court ruled that “an ALJ’s hypothetical should explicitly incorporate any limitations in concentration, persistence, and pace.” 758 F.3d at 152. But in this case, the evidence demonstrated the plaintiff could engage in simple, routine tasks, low stress tasks despite limits in concentration, persistence, and pace; the hypothetical thus implicitly incorporated those limitations. The court also held that the ALJ’s decision was not internally inconsistent simply because he concluded that the same impairments he had found severe at Step two were not ultimately disabling.

Cichocki v. Astrue, 729 F.3d 172 (2d Cir. 2013)

The Court held the failure to conduct a function-by-function analysis at Step four of the Sequential Evaluation is not a per se ground for remand. In affirming the decision of the district court, the Court ruled that despite the requirement of Social Security Ruling (SSR) 96-8p, it was joining other circuits in declining to adopt a per se rule that the functions referred to in the SSR must be addressed explicitly.

Selian v. Astrue, 708 F.3d 409 (2d Cir. 2013)

The Court held the ALJ improperly substituted her own lay opinion by rejecting the claimant’s contention that he has fibromyalgia despite a diagnosis by his treating physician. It found the ALJ misconstrued the treating physician’s treatment notes. It criticized the ALJ for relying too heavily on the findings of a consultative examiner based on a single examination. It also found the ALJ improperly substituted her own criteria for fibromyalgia. Citing the guidance from the American College of Rheumatology now made part of SSR 12-2p, the Court remanded for further proceedings, noting the required finding of tender points was not documented in the records.

The Court also held the ALJ’s RFC determination was not supported by substantial evidence. It found the opinion of the consultative examiner upon which the ALJ relied was “remarkably vague.” Finally, the court agreed the ALJ had erred in relying on the Grids to deny the claim. Although it upheld the ALJ’s determination that neither the claimant’s pain or depression were significant, it concluded the ALJ had not affirmatively determined whether the claimant’s reaching limitations were negligible.
An Ode to Louise

An ode to our colleague Louise, for upon retiring some reminiscing is due,
It’s been a long and wonderful course, with praise and tribute to go through.

Louise grew up in Rochester, raised to be a fine ragazza,
A strong work ethic, brains and compassion, she most certainly had lotsa.

First gen American to go to college, to Nazareth for degree number one,
Then onto Buffalo for her second, where hard work and studying would be done.

She began at Neighborhood Legal Services, then moved to Washington, D.C.,
Starting out in public interest law, where her career would always be.

Winding her way through different issues, top consumer lawyer one legacy,
Then coming to GULP in ‘87, where disability law would be her true destiny.

Building her family while doing appeals work, for many Louise compassionately served,
She worked hard and built a fine practice, winning for clients the money they deserved.

A leader of the most esteemed club, a dedicated Dapper discerning and true,
With Kate and so many she’s built an empire, its funding and support an annual coup.

Louise has helped hundreds if not thousands, directly and diffusely through her deeds,
A noble career to be proud of representing, and training those helping others in need.

But now that Louise is retiring, her life is about to turn,
She’ll wake up to easier days now, when fighting wrong decisions is no longer a concern.

She’ll certainly start to play more, teaching her grans the joy of skiing,
Enjoying family, travel and the north country, hunkering down with a novel and just being.

We’ll miss Louise’s guidance, willing always to pick up the phone and share.
We’ll miss Louise’s wisdom, astute and generous and given with care,

So all please share in our toast, to our good friend and co-worker Louise,
Thank you for doing for Empire Justice Center, and for all the lives she’s put at ease.

By Kirsten Keefe
Empire Justice Center, Albany Office