

BY MELANIE A. BRAY



DISABILITIES AND EVERYDAY BARRIERS

FOCUS ON ACCESSIBILITY TO LEGAL SERVICES



Individuals with disabilities may have a need for assistance and may benefit from services to remain living in a community setting, but they can come at a cost. The processes for individuals with disabilities or other neuro-divergent conditions to obtain needed services and or access to tools that aid in accessibility are often cumbersome and rife with roadblocks. Attorneys are often the answer to removing the hurdles to accessibility and, as a profession, attorneys should be educating themselves to be the advocates for their clients' needs. Some common areas where attorney intervention could be valuable include Medicaid or waiver eligibility, financial planning and reasonable accommodations in employment.

Waivers, Medicaid Services, Barriers to Approvals

Medicaid Eligibility Generally

Individuals with disabilities or other neuro-divergent conditions may be eligible for a variety of Medicaid paid services and programs to meet needs and address barriers to accessibility, enabling people to remain living in a community setting. For many individuals, simply qualifying for Medicaid coverage can present barriers. In Louisiana, individuals are automatically eligible for Medicaid if they receive a social security benefit, Supplemental Security Income (SSI).¹ If

not, individuals may still be eligible if they have a disability, according to the Social Security Administration's definition;² have corrected vision no better than 20/200; are a low-income parent of a child under age 19; are a child under age 19; are pregnant; have no insurance and need treatment for breast and/or cervical cancer; receive Medicare coverage and are low-income; or are between 19-64, meet income requirements and do not already qualify for Medicaid or Medicare.³

Some of the pitfalls in Medicaid eligibility deal with the income and asset limits.

Medicaid Waiver Programs

For individuals with disabilities and older adults, they may qualify for services through Louisiana's Medicaid waiver programs. A Medicaid waiver is a program that allows for a change in eligibility requirements for Medicaid in order to receive home- and community-based services (HCBS). These HCBS waiver programs are intended to meet the needs of individuals so they may live the life they choose in an integrated setting. For individuals with developmental disabilities, the waiver options include the Residential Options Waiver (ROW), the New Opportunities Waiver (NOW) and the Supports Waiver. For children, there is the Children's Choice Waiver (CCW). Each waiver option offers a different package of services and limits to service hours, intended to provide only the necessary level of services that an individual needs.

The first step to receiving services under one of the developmental disability waivers is to qualify for those services with the Office for Citizens with Developmental Disabilities (OCDD). Individuals will need to demonstrate they meet the definition of a developmental disability to qualify for waiver services, found in La. R.S. 28:451.2 (11). Frequently, individuals are found ineligible for services due to a failure to demonstrate they met a piece of the criteria such as a qualifying diagnosis made by an appropriate medical or mental health professional. A common hurdle for adults seeking eligibility is having records that show they have been diagnosed with a qualifying intellectual or physical impairment before the age of 22. Additionally, individuals diagnosed with autism face challenges when they have not received the diagnosis from a qualified professional,

as defined by the Louisiana Department of Health.

Once an individual is found eligible to receive waiver services, the next hurdle to clear is finding a provider able to staff the hours that have been approved to provide the services the individual needs. Providers have historically been challenged to employ enough staff to meet the needs of all the clients they have, in part due to the low rates of pay they offer to the direct care workers. The COVID-19 pandemic exacerbated the worker shortage.

What Can Lawyers Do to Help?

Lawyers can assist individuals by representing them in appeals for denials of eligibility to receive waiver services. The process can be confusing and technical for a layperson to follow. The entire foundation of a lawyer is created by untangling and understanding the confusing and technical. Lawyers can also assist by appealing provider discharges, particularly when the discharge does not follow legal requirements and may be deemed invalid.⁴

Financial Planning and Considerations to Protect Benefit Eligibility

Individuals with disabilities or other neuro-divergent conditions need to take precautions when financial planning to ensure they aren't putting their eligibility for necessary public benefits at risk. While eligibility for waiver services is not tied to income and resources, general eligibility for Medicaid coverage is. As of June 2024, there were 1,674,556 individuals enrolled in Medicaid benefits in Louisiana.⁵ These individuals have to meet specific criteria for the program that they are eligible for under Medicaid. For an adult in Louisiana, without Medicare, the monthly income limit is \$1,732, or \$20,030 annually before taxes, to qualify for Medicaid coverage.⁶ In addition to income, Medicare also considers resources, such as property ownership, when determining eligibility. A primary residence, one vehicle and life insurance policies with a combined face value of \$10,000 or less are not counted as assets for Medicaid eligibility.⁷ Anything else is counted and could cause the individual to be denied eligibility.



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So what happens if an individual suddenly comes into a sum of money, such as an inheritance or back payment of social security benefits? An individual will need to spend down the amount of money that exceeds eligibility limits. Alternatively, an option such as an Achieving a Better Life Experience (ABLE) account or a Special Needs Trust (SNT) may be appropriate.

An ABLE account is a tax-advantaged savings account for people with disabilities and their families to save and invest money for qualified disability expenses.⁸ It is a beneficial option for families who want to provide financial assistance to an individual with a disability on a regular basis, without endangering the individual's eligibility for public benefits such as Medicaid or social security benefits. An annual total of \$18,000 may be added to an ABLE account.⁹ The money in an ABLE account may be used by the individual with a disability for education, food, housing, transportation, employment training and support, assistive technology, personal

support services, health care expenses, financial management and administrative services and other expenses which help improve health, independence, and/or quality of life.¹⁰

A SNT is a type of trust that provides financial support for people with disabilities, without impacting eligibility for public benefits.¹¹ A SNT may be a smart option if an individual receives a large asset, such as property from a succession or a payout from a lawsuit. When the amount is greater than could be spent down in the allowable time period and it is a one-time acquisition of the asset, placing that asset into a SNT will ensure the resource is available to the individual with the disability without endangering eligibility of necessary benefits and services.

Knowing the financial and asset limitations for eligibility is the first step in planning for economic stability for an individual with a disability. Knowing the tools and resources available to protect the individual's public benefits, while still ensuring they have access to financial means to provide a more substantial quality of life, is the role lawyers can play.

Employment and Reasonable Accommodations

Individuals with disabilities or other neuro-divergent conditions may need reasonable accommodations in the workplace to engage in competitive employment. A reasonable accommodation (RA) is any change to the application or hiring process, to the job, to the way the job is done, or the work environment that allows a person with a disability who is qualified for the job to perform the essential functions of that job and enjoy equal employment opportunities.¹² An accommodation is considered "reasonable" if it does not create an undue hardship on the employer.¹³ While

it isn't required under the Americans with Disabilities Act (ADA) for an RA request to be in writing, best practice is for a formal letter to be submitted to the employer. If an employer refuses to provide a reasonable accommodation, that is discrimination under the ADA.¹⁴ You do not need to say specifically what diagnosed disabilities you have. The individual only needs to describe the ways that the disability interferes with work and how the requested accommodation would assist. The employer may request verification of a disability from the individual's doctor.

When an individual submits a request for a reasonable accommodation, the employer is required to engage in an interactive process to talk about all the possibilities and alternatives if the requested accommodation is not available. It is important to note that an individual may not be entitled to a specific requested accommodation if an alternative is available that poses a lesser burden on the employer.

Attorneys can assist at all stages of this process, including helping individuals in drafting an appropriate letter requesting an accommodation so they have proof of the request in writing, assisting with employer negotiations if they allege the requested accommodation is burdensome, or assisting with filing an EEOC complaint if the employer unlawfully refuses an accommodation or terminates the individual following the request.

Conclusion

The programs and services that are intended to assist individuals with disabilities or other neuro-divergent conditions can sometimes be complicated, burdensome and time-consuming. As lawyers, we can assist individuals in navigating these barriers to ensure they have access to what they need to enable them to live an integrated life in the community, safeguard their financial interests, and secure or maintain gainful employment.

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FOOTNOTES

1. <https://ldh.la.gov/page/about-medicaid>, last visited July 18, 2024.

2. www.ssa.gov/benefits/disability/qualify.html#anchor3, last visited July 18, 2024.

3. <https://ldh.la.gov/page/about-medicaid>, last visited July 18, 2024.

4. See Louisiana Administrative Code Title 48, Part I, Chapter 50, §5037; https://ldh.la.gov/assets/medicaid/hss/docs/HCBS/HCBS_regs_as_of_3-14-22.pdf, last visited July 18, 2024.

5. https://ldh.la.gov/assets/medicaid/MedicaidEnrollmentReports/EnrollmentTrends/EnrollmentTrends_202406.pdf, last visited July 18, 2024.

6. <https://ldh.la.gov/page/medicaid-eligibility-income-limits>, last visited July 18, 2024.

7. See www.medicaidplanningassistance.org/medicaid-eligibility-louisiana/, last visited July 18, 2024.

8. See www.ablenrc.org/what-is-able/what-are-able-accounts/, last visited July 18, 2024.

9. www.ablenrc.org/able-account-contribution-limits-2023/, last visited July 18, 2024.

10. www.ablenrc.org/what-is-able/what-are-able-accounts/, last visited July 18, 2024.

11. See www.lsba.org/documents/Members/DisabilityResourcePamphlet.pdf, last visited July 18, 2024.

12. <https://adata.org/factsheet/reasonable-accommodations-workplace>, last visited July 18, 2024.

13. *Id.*

14. www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada#general, last visited July 18, 2024.