

*Policy and Practice Brief:*

# Practical Legal Research

Tools for the Paralegal, Advocate, and Attorney, with an Emphasis on  
Web-Based Approaches

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This is one of a series of policy and practice briefs written for benefits specialists employed by Benefits Planning, Assistance and Outreach projects and attorneys and advocates employed by Protection and Advocacy for Beneficiaries of Social Security programs. Materials contained within this policy brief have been reviewed for accuracy by the Social Security Administration (SSA), Office of Employment Support Programs. However, the thoughts and opinions expressed in these materials are those of the authors and do not necessarily reflect the viewpoints or official policy positions of the SSA. The information, materials and technical assistance are intended solely as information guidance and are neither a determination of legal rights or responsibilities, nor binding on any agency with implementation and/or administrative responsibilities.

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## I. Introduction

This policy and practice brief is targeted to individuals who work for the two primary advocacy programs now funded by the Social Security Administration (SSA): the Benefits Planning, Assistance and Outreach (BPA&O) and the Protection and Advocacy for Beneficiaries of Social Security (PABSS) programs. Originally, both programs were mandated to serve only individuals with disabilities who received cash benefits under the Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) programs. Now, with the implementation of the Social Security Protection Act of 2004,<sup>1</sup> BPA&O and PABSS programs can also serve the following former cash beneficiaries: individuals who continue to receive (1619(b) Medicaid upon losing cash benefits because of earnings, and individuals who received extended Medicare benefits after losing SSDI cash benefits upon performance of substantial gainful activity.<sup>2</sup>

With the BPA&Os, the individual providing benefits planning services to beneficiaries typically works for a nonprofit agency and may be given any number of titles, including benefits advisor, benefits counselor, benefits advocate, or benefits specialist. In this brief, we will refer to this individual as a benefits specialist. Most often, the benefits specialist is neither a lawyer nor trained paralegal and has received no formal training in legal research. Put simply, we are defining legal research as the search for government law, regulation, and policy that defines a person's rights.

With the PABSS programs, the individual providing advocacy services will most often be employed by an agency designated within a state as the Protection and Advocacy (P&A) program. Typically, the P&A program is a nonprofit agency, but will, in some states, operate as a part of state government. Under a PABSS program, the individual who serves the beneficiary may be an attorney, paralegal, or advocate. In this brief, we will refer to this person as the PABSS attorney or advocate. While the attorney is expected to have considerable skill in legal research, the expectations for the advocate may vary from program to program. On a practical level, often neither the attorney nor advocate will possess all the knowledge and skills to do thorough legal research on the Internet.

In the writer's view, the BPA&O benefits specialist and the PABSS attorney or advocate share a common requirement to be skilled in the methods of practical legal research. In the case of the benefits specialist this is so that the individual can look up the relevant law, regulation, or policy. Typically, the benefits specialist is looking for policies affecting SSI or SSDI benefits, enabling him or her to provide high quality benefits planning services. The PABSS attorney or advocate may be looking for

<sup>1</sup> H.R. 743, Pub. L. 108-203.

<sup>2</sup> See 42 U.S.C. §§ 426(b) (regarding extended Medicare benefits) and the 1382h (regarding 1619(b) Medicaid).

similar SSI or SSDI policy in order to support an appeal before SSA, an activity now permitted by PABSS grant conditions if the issues are work related. The PABSS attorney or advocate's research may also take them into the laws, regulations, and policy governing the Ticket to Work program. Since much of the PABSS advocacy is expected to be adversarial in nature, the fruits of the legal research will often appear in written arguments and briefs that will be presented to various decision-makers, including administrative law judges, and state and federal court judges.

The purpose of this document is to provide a practical framework for all the legal research typically demanded of a BPA&O benefits specialist and a PABSS advocate. In doing so, it should also provide a good framework for most of the lower-level research that will be demanded of a PABSS attorney. This document not attempt to be a legal research treatise to be used by experienced litigators.

In the sections that follow, we will describe the sources of legal authority available, where they can be found, and when it is appropriate to do legal research. Depending on the nature of your position, we will attempt to define how and where you can perform legal research: on your bookshelf, through personal computer access, and in your office library. We will then explore when to access outside resources, including law libraries, public libraries, and back-up centers, including those funded by SSA. Finally, we will provide some tips for efficient use of these resources.

## II. Context for this Discussion

In order to provide a practical context for this brief, we will focus on four substantive areas, all involving government-funded benefits that will be commonly encountered when serving beneficiaries:

- SSI and SSDI benefits
- State vocational rehabilitation agency services
- Medicaid benefits
- Special education services

All BPA&O and PABSS programs will, at a minimum, deal with SSI and SSDI issues. At some time or another, they will also touch upon the other issues to varying degrees. The principles for researching issues involving these topics should have general applicability to other topics. In particular, since the four programs discussed are all operated through federal, state, or local government agencies, this discussion should have the most relevance when looking at rights within other government-sponsored benefit programs.

### III. The Hierarchy of Legal Authority

#### A. The Concepts of Primary and Secondary Authority

At the law school or paralegal school level, students are taught that the body of law, regulations, policies, and decisions interpreting law or policy fall within a broad category called legal authority. Within that broad category, things are then categorized as either primary authority or secondary authority. Students are then taught that primary authority includes laws and regulations which are generally binding on the courts, while secondary authority includes things such as agency policies which are not binding on the courts.

When these students graduate and begin working with real cases, they find that what they learned in school works exactly the opposite way when they are advocating for government benefits through program administrators. The Areal authority<sup>®</sup> or the documents that administrators follow are the agency policies that are part of agency manuals which agency employees must reference daily. By contrast, the laws, regulations, and court decisions that our law professors and paralegal instructors told us were so important are rarely referenced by a local agency administrator.

What does all this mean for the benefits specialist or advocate who is looking to perform “practical” legal research? Many of the government agency policy manuals (i.e., what the legal scholars will classify as secondary authority) are more important to your day-to-day work. That said, it is still important to understand how all this fits into the American legal system.

##### 1. Primary Authority

Primary authority is traditionally described as including the following:

- Constitutions – federal and state
- Statutes or laws – federal and state
- Regulations – federal and state
- Case law – published decisions of the federal and state courts governing the jurisdiction – in question

Constitutions include such things as the right to equal protection of the laws, secured by the Fifth and Fourteenth Amendments to the U.S. Constitution, and the Supremacy Clause of the U.S. Constitution, generally requiring that federal laws and regulations on a subject be considered the final word, as compared to state laws on the same subject. Statutes or laws are enacted by either Congress or the equivalent state legislative body. Regulations are generally written by the federal or state agency responsible for implementing the program in question.

Case law is only binding in the jurisdiction covered by the court in question. For example, the U.S. Supreme Court’s decisions are binding throughout the country.

Decisions of the U.S. Court of Appeals for your circuit are binding in states within that circuit (e.g., the Third Circuit's decisions would be binding in Pennsylvania; the Fifth Circuit's decisions would be binding in Louisiana). Decisions of your state's highest court, typically the state Supreme Court, are binding throughout the state. By contrast, an intermediate appellate Court's decisions are only considered binding precedent for that particular jurisdiction of the state. Decisions of a lower non-appellate court within the federal or a state's system (often referred to as a trial court) are typically not considered binding on other lower courts, even within the same jurisdiction.

What all this means is that the parties in a subsequent case should be able to point to the binding precedents from appellate courts in support of a ruling based on similar facts. Of course, when the attorney is faced with a potentially binding decision that goes against the client's position, the attorney will often argue that their case is different enough that the decision in question should not be a controlling precedent in their case.

## 2. Secondary Authority

Secondary authority is traditionally described as including the following:

- Policies – federal and state
- Administrative hearing decisions
- Court decisions from other jurisdictions
- Comments issued with published regulations
- Legislative history
- Treatises on a topic – law review articles, other scholarly articles, books by recognized authorities

Some may argue that policy manuals and other policy pronouncements from federal and state agencies amount to primary authority. It probably could be categorized as either primary or secondary, depending on the context in which those documents will be considered by a decision maker. More important is whether the pronouncements made in those documents become binding on other decision-makers, an issue we discuss below.

NOTE: We assume that we are only discussing “legal research” in the context of this document. Disability advocates may also need to develop skills in researching medical issues or issues presented by other disciplines (e.g., special education theories, vocational rehabilitation theories). These important areas of research are beyond the scope of this policy and practice brief.

## **B.** Examples: Legal Authority in our Work

Below are the four government benefit programs to be discussed in this brief. Under each we summarize the relevant primary and secondary authority governing each program. We then offer practical comments regarding when each form of authority will matter most.

It is worth noting that of the four, the Social Security programs (SSDI and SSI) are the only programs fully governed by a federal agency and thus subject only to federal law and policy (i.e., there is no relevant state law and policy). By contrast, the other three programs -- vocational rehabilitation, special education, and Medicaid -- are programs authorized by federal law but operated on a state and local level, with numerous state and possibly local policies coming into play.

We do not specifically list case law or court decisions under these four programs. For each program, case law would be either primary or secondary authority, depending upon the court where the decision was made.<sup>3</sup> Keep in mind that for SSDI and SSI, any court decisions would be from the federal courts. For the other three programs, the court decisions could come from the federal or state courts.

### 1. SSDI and SSI

Primary authority includes: Titles 2 and 16 of the Social Security Act, 42 U.S.C. §§ 402 *et seq.* and 1382 *et seq.*; the SSDI and SSI regulations, 20 C.F.R. Parts 404 and 416; decisions of the federal courts. There are virtually *no* state laws or regulations governing the SSDI or SSI programs, with the exception of state laws governing the amount of any SSI state supplement.

Secondary authority includes: SSA's Program Operations Manual Systems (POMS); Social Security Rulings (SSRs); SSA's Handbook; SSA's Program Circulars; SSA's Emergency Messages; the HALLEX (for cases decided at the ALJ hearing or Appeals Council levels); ALJ hearing decisions; and Appeals Council decisions. The hearing decisions and Appeals Council decisions are not officially published, but will often be collected by advocates for submission in later cases before the agency. They are not binding on the federal courts. The Appeals Council decisions, issued at the highest levels of SSA, should be binding in later cases decided within the agency. The hearing decisions, although not binding on other ALJs, are often submitted at hearings as "persuasive" authority to show what another ALJ decided when confronted with similar issues.

On the practical level, benefits specialists and advocates who are dealing with SSA's claims representatives on issues related to benefits and work should refer to the POMS manual before anything else. The POMS should be readily available to all claims representatives, as it will be used as the guide for more than 95 percent of their decisions. Occasionally, you may reference an SSR when there is a published SSR dealing with the issue in question.

Emergency messages (EMs) are often used by SSA to communicate major new policies to its employees when no regulations or POMS provisions have yet been published. For example, the only written policies on the expedited reinstatement provisions, when they first became effective in January 2001, were circulated as an EM. Program circulars often serve a similar purpose. Because EMs and program circulars are not officially

<sup>3</sup> See part III.A. above.



published and rarely appear on SSA's website, attorneys and advocates tend to find out about them through contacts at SSA or through their SSA-funded regional technical assistance and training centers.

You should use SSA's regulations to make your point with a claims representative when the answer does not appear in the POMS. If an issue can only be resolved by referring to federal or case law, the decision to rely on that source of authority, rather than the POMS, would probably have to be made by an SSA employee in a supervisory capacity.

PABSS attorneys and advocates who represent individuals in appeals before administrative law judges (ALJs) will find that this is the first time that federal law and regulations are regularly used by the decision-maker. In fact, the POMS and other secondary authority, referenced above, will not be binding on the ALJs but should be relied upon when they support your case.

## 2. State Vocational Rehabilitation Agencies

Primary authority includes: Title I of the federal Rehabilitation Act, 29 U.S.C. § 701 *et seq.*; the federal Rehabilitation Services Administration (RSA) regulations, 34 C.F.R. Part 361; your state law and regulations. Secondary authority includes: RSA policy statements, your state's vocational rehabilitation (VR) policy manual, and administrative hearing decisions.

Based on discussions with advocates from around the country, it is safe to say that the VR program or programs<sup>4</sup> vary from state to state in the way they are run. However, you can expect your VR agency or agencies to have published both state VR regulations and a policy-like manual to govern counselor decision making. In our experience, the federal regulations and RSA policy letters only become important when a case goes into appeal, or if you are discussing policy at a higher level within the state agency. This practice may vary between states.

## 3. Special Education

Primary authority includes: the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 *et seq.*; the U.S. Department of Education regulations, 34 C.F.R. Part 300; your state special education laws and regulations. Secondary authority includes: the various policy letters regularly issued by the U.S. Department of Education; policy manuals used by your state educational agency; administrative decisions of your state educational agency; hearing decisions issued by ALJs or hearing officers.

## 4. Medicaid

Primary authority includes: title 19 of the Social Security Act, 42 U.S.C. § 1396 *et seq.*; the federal Medicaid regulations, 42 C.F.R. Part 440; state law and regulations. Secondary authority includes: on the federal level, the Centers for Medicare and Medicaid

<sup>4</sup> Some states will have one VR program serving the entire state. About two thirds of the states have a second VR agency that serves only individuals who are legally blind.

Services (CMS) policy letters and the State Medicaid Manual; on a state level, the Medicaid policy manual, policy memos, and fair hearing decisions. NOTE: While fair hearing decisions are classified as secondary authority, the state Medicaid agency is, arguably, bound to follow these decisions in later cases. To do otherwise would violate the federal mandate that the Medicaid agency must have a uniform statewide program.

### C. The Legal and the Practical

#### 1. Federal vs. state law or regulation

**Legal.** Under the federal supremacy clause (U.S. Constitution), federal law (both statutes and regulations) will always prevail over inconsistent state law provisions.

**Practical.** Generally, these arguments only work if you are in court or if an attorney is negotiating at the highest levels of an agency, having threatened to go to court. When dealing with state and local bureaucrats or ALJs you can expect them to only be interested in state laws and regulations. It is also likely that a state ALJ will not have the authority to rely on federal laws or regulations to overrule a clear mandate laid out in a state law or regulation. If your state law and regulations are silent on an issue, or if there are conflicting provisions within state laws or regulations, the state bureaucrat or ALJ is more likely to pay attention to the federal law.

#### 2. Primary vs. secondary authority

**Legal.** When arguing your point, always start with primary authority, i.e., law and regulations. Then move on to secondary authority, i.e., policies, etc.

**Practical.** When advocating at the agency level (i.e., with a local SSA office, or a local Medicaid agency), agency policy manuals are usually what the decision-makers will rely upon. With SSA, for example, the POMS manual is the guide for all day-to-day decision making. Most claims representatives have access to the POMS, while few ever consult or have access to the law or regulations. Similarly, most state Medicaid agencies publish extensive policy manuals governing day-to-day decision making. In New York, for example, there are three separate sources of Medicaid policy (other than the law and regulations), including a Medical Assistance Reference Guide, Administrative Directives, and Local Commissioner's Memoranda.

## IV. Where do you Find the Legal Authority for your Work?

### A. The Resources Needed and those Available will Depend on Several Factors

#### 1. Your area of focus

If you focus on only one area, such as SSI or Medicaid, you may have the luxury of keeping most of the key research tools within arm's reach or at least within your agency's offices. If you do a little of everything, you may not have the time, space, or budget to obtain and regularly update all of the key resources.

## 2. The size of your agency and agency's budget

It may be cost-effective for a P&A agency with a 40-person advocacy staff to have a full complement of research materials in an agency library. By contrast, a smaller agency with a four-person advocacy staff may have more difficult choices to make in terms of how to spend its library budget.

**Editorial comment.** A PABSS attorney or advocate cannot do effective advocacy without resources for legal research. Similarly, the BPA&O's benefits specialist will need some basic research tools to perform quality work at an optimal level. At a minimum, all PABSS attorneys and advocates who are responsible for individual cases should have their own computer station with access to email, the Internet, and Westlaw (or a comparable program).<sup>5</sup> If the attorney or advocate is working in a specialty practice, the purchase of specialty treatises or loose leaf-type services should be considered. For example, if your agency plans to devote two or more advocates to a primary special education practice, you should consider a subscription to the Individuals with Disabilities Education Law Reports (IDELR).

The BPA&O's benefits specialist's primary focus should always be on SSDI and SSI, including the Medicaid and Medicare eligibility issues that are part of the body of SSDI and SSI work incentives. As explained below, many of the legal research resources for the benefits specialist's work can be located on SSA's website.

**Practical comment.** It may not be practical to purchase something like the IDELR, either because it is too expensive or because staff does not have time to read it regularly. There are many cost-free or inexpensive ways to maintain a high (if not the highest) level of expertise in an area. As described below, these include: use of treatises, articles, and newsletters prepared by others; bookmarks to good websites; participation in list serves; and contacts with technical assistance and back-up centers.

### B. The Conventional Law Library

The classic office law library might include, as hard or soft cover volumes, the key state and federal books which contain state and federal statutes (i.e., laws), regulations, and "reported" court decisions (see sample citation formats, below, if using West's reporters). A growing number of law offices, including P&A agencies, are limiting the size of their libraries as most everything is available (and up-to-date) with Westlaw.

#### 1. Statutes

To own the whole set of either state or federal statutes is both very expensive and probably unnecessary. Although many individuals, including the author, appreciate the ability to page through a book, access to Westlaw may be sufficient to access the full range of state and federal laws. If your primary areas of practice involved special education and SSI, your office might order only the individual volumes of 20 United States Code (U.S.C.) (special education laws), the 42 U.S.C. volume(s) that include SSI and SSDI, and any state book(s) that contain the relevant state special education laws.

<sup>5</sup> P&A agencies, through the National Association of Protection and Advocacy Systems (NAPAS), have access to a very favorable rate for Westlaw. Using this rate structure, the author's agency pays for four Westlaw licenses to be shared by a staff of about 35 advocates (attorneys and paralegals).

## 2. Regulations

For day-to-day casework, regulations are the most likely volumes the advocate will want to have within arm's reach. (See discussion of Westlaw, below. Arm's reach might mean through your computer keyboard.) For example, an advocate handling a volume of SSI appeals will regularly consult the Code of Federal Regulations (C.F.R.) and will thus prefer to have their own hard copy of 20 C.F.R. within arm's reach. (In the author's office, SSI advocates, including benefits specialists who work for a BPA&O project, get a new copy of 20 C.F.R. every two years, knowing that Westlaw is available to access regulatory changes that occur in between volumes.) For those practicing in the special education or vocational rehabilitation areas, your state's regulations (or policy manuals) may be the most important volumes to keep on your bookshelf.

**Editorial comment.** The benefits specialist, employed by a BPA&O project, should have access to the SSDI and SSI regulations. While not every BPA&O agency will deem it appropriate to purchase a copy of 20 C.F.R. for each benefits specialist, it may be appropriate to have a shared copy at agencies with two or more benefits specialist in the same office. The regulations are also accessible from SSA's website (see discussion at part IV.E.1, below).

## 3. Court reporters - containing reported decisions

Federal reporters include the Federal Supplement (e.g., 348 F.Supp. 286), Federal Reporter (e.g., 14 F.3d 368), and Supreme Court Reporter (e.g., 101 S.Ct. 1374). State reporters will include volumes for lower courts, intermediate appellate courts, and the state's highest courts. Often, all of these decisions will be available in one statewide reporter (e.g., the New York Supplement - 416 N.Y.S. 2d 62) or a regional reporter (e.g., the Atlantic Reporter - 66 A.2d 314). Here again, with all of the reported and unreported decisions available on Westlaw, many P&As and other law offices are moving away from keeping these books in an office law library.

## 4. Additional library volumes

A well-stocked law library may contain any number of additional tools for legal work, including the Federal Register, books containing legislative history, specialized loose-leaf services, and litigation form books. Some resources, like the Federal Register, will be available through free websites<sup>6</sup>; others may be available on Westlaw for an extra charge or an hourly access fee.

## C. Special Library Volumes at a P&A Agency

The volumes described below might be contained in an office-wide law library or in the individual office of the attorney or advocate who specializes in the topic.

<sup>6</sup> See [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html), providing free access to the Federal Register.

## 1. Treatises from commercial vendors

With a limited library budget, selected spending on treatises might be very cost-effective. Here, the word treatise is used loosely to include everything from 600-page commercial volumes to the latest 15-page article that appeared in *Clearinghouse Review*, a bi-monthly publication of the Sargent Shriver National Center on Poverty Law, [www.povertylaw.org](http://www.povertylaw.org). *Clearinghouse Review*, available to P&As through a special rate negotiated by NAPAS, is highly recommended for any P&A office.

An excellent resource on special education, annually updated through a pocket part is: Goldstein and Tucker, *Legal Rights of Persons with Disabilities: An Analysis of Federal Law* (LRP Publications). Any number of other quality volumes from traditional commercial vendors are available on special education law, Social Security, and the Americans with Disabilities Act, for example.

## 2. Books, articles, and policy briefs from the public sector network

Many excellent resources are available through the three regional technical assistance and training centers, Virginia Commonwealth University, the University of Missouri-Columbia, and Cornell University, funded by SSA to support the work of BPA&O and PABSS programs. Likewise, national organizations or back-up centers, like the National Health Law Project, the National Senior Citizens Law Center, and the Center on Law and Education, have produced many excellent resources., many of which are either free or reasonably priced. An increasing number of these resources are available on the web sites of these organizations (see Selected Web Sites, part IV.E, below).

For BPA&O or PABSS staff, the first place to look for these resources is through the SSA-funded **regional technical assistance centers**. For example, Cornell University's Employment and Disability Institute, through its Work Incentives Training and Technical Assistance Center, has published a two-volume manual that is used to deliver the five-day training program required for all new BPA&O benefits specialists and PABSS attorneys and advocates. The Cornell manual, *Benefits Planning, Assistance and Outreach: Supporting Career Development and Employment for Individuals with Disabilities*, is updated annually and can be accessed through Cornell's website.<sup>7</sup> Cornell has also published a series of policy and practice briefs, including briefs on the following topics: the State and Federal Vocational Rehabilitation Program, the Transition from School to Work, SSI and SSDI Overpayments, the Ticket to Work, and SSI's Plan for Achieving Self Support. As this is written, 13 policy and practice briefs appear on Cornell's website<sup>8</sup> with additional briefs regularly added to the site.

**Two excellent Medicaid treatises** are available for purchase through the National Health Law Project ([www.healthlaw.org](http://www.healthlaw.org)). Both of these are published in a three-ringed binder format and are republished every few years. They are: *An Advocate's Guide to the Medicaid Program* (2001 ed.); and *Representing Clients Who Need Medicaid Early and Periodic Screening, Diagnosis and Treatment: A Practice Manual for the National Association of Protection and Advocacy Systems* (2001 ed.) (the "EPSD manual").

<sup>7</sup> See [www.ilr.cornell.edu/ped/ssa\\_curriculum/index.html](http://www.ilr.cornell.edu/ped/ssa_curriculum/index.html).

<sup>8</sup> See [www.ilr.cornell.edu/ped/pp.html](http://www.ilr.cornell.edu/ped/pp.html).

### 3. Loose-leaf services

Many of the commercial publishers produce extensive resource materials in three-ringed binder formats that are constantly updated, in some cases as often as every two weeks. For example, in the special education area, the priority purchase (if your agency does a good deal of this work) is the *Individuals with Disabilities Education Law Reports* updated approximately twice per month. It allows you to keep up with: changes in law and regulation, case law (including cases reported no place else), state educational agency and local educational agency decisions (typically reported no place else), and policy statements issued by the U.S. Department of Education.

#### D. Westlaw ([www.westlaw.com](http://www.westlaw.com))

This is an Internet-based research service available through paid subscription. If you plan to use this service, be aware of what your subscription covers (flat fee or hourly) and what databases will be billed on an hourly basis. With the excellent pricing for Westlaw available through NAPAS, this has become a very affordable resource for P&A agencies. In the author's experience, nearly all of the research tools described in this practical discussion are covered under the basic flat fee plan available through NAPAS.

Westlaw offers access to all the key published resources in support of a typical P&A practice, including: federal and state statutes or laws, federal and state regulations, the federal register, and reported and unreported court decisions. This service also allows the user to: find court decisions by searching under a party name; determine the "history" of a case, to determine what lower courts have said, whether a decision has been affirmed or overruled, etc.; and "shepardize" a court decision, statute, or regulation to determine if federal or state court decisions have followed an earlier decision, or interpreted a law or regulation. While many other services are available through Westlaw, the core services discussed are the most important ones in most P&A practices.

#### E. Selected Web Sites

Most federal or state benefit programs, like those referenced in this handout, will be covered by both government and advocacy group web sites. A growing number of these government web sites now contain the laws, regulations, and policy manuals that govern the programs. Some of the advocacy group web sites will include summaries of the programs, updates on new laws or regulations governing the programs, updates on court decisions interpreting the program's mandates, and other resource materials. BPA&O and PABSS advocates will want to bookmark many of these sites on your favorites list for later access.

##### 1. SSI and SSDI

**SSA's website** is one of the most useful and easy to navigate of all federal agency sites. There are three key links that you should become familiar with:

- \$ **SSA's home page** – [www.socialsecurity.gov](http://www.socialsecurity.gov). This will be your source of links to other parts of the SSA site. Links to recent policy changes and agency initiatives will be available here. Use the search feature to find items on other parts of the agency's site.
- \$ **SSA's "Work Site"** – [www.socialsecurity.gov/work](http://www.socialsecurity.gov/work): This site is geared specifically to meet the needs of beneficiaries who are looking to go to work and take advantage of work incentives and other resources. Links are available to SSA's *Red Book* on work incentives, for information about special programs like the Ticket to Work, and for finding assistance through the BPA&O and PABSS programs.
- \$ **SSA's "Representing Claimants" site** – [www.socialsecurity.gov/representation](http://www.socialsecurity.gov/representation): This contains links to SSA's handbook, laws and regulations, and Program Operations Manual Systems (POMS).

Several **advocacy group sites** are very good resources:

- \$ **National Organization of Social Security Claimant's Representatives** – [www.nosscr.org](http://www.nosscr.org). This site has extensive informational materials and keeps abreast of developments affecting SSI and SSDI generally; there are charges for some of their materials, including an excellent newsletter.
- \$ **National Senior Citizens Law Center** – [www.nsclc.org](http://www.nsclc.org). This site includes regular updates on issues related to SSI and SSDI, links to available publications, and other resources.
- \$ **The Social Security section of the Neighborhood Legal Services web site** – [www.nls.org/ssassi.htm](http://www.nls.org/ssassi.htm): The focus is on SSI and SSDI work incentives. The site contains links to all of Cornell's policy and practice briefs, an extensive 2002 article/booklet on work incentives, the quarterly *Benefits Planner* newsletter, at-a-glance sheets, and many other resources.

## 2. Special education

Two web sites are probably too broad to be useful to most advocates: the U.S. Department of Education's agency-wide website, [www.ed.gov/index.jsp](http://www.ed.gov/index.jsp), and the website of the Office of Special Education and Rehabilitation Services (OSERS), the agency that oversees the Office of Special Education Programs and the Rehabilitation Services Administration, [www.ed.gov/about/offices/list/osers/index.html](http://www.ed.gov/about/offices/list/osers/index.html). Rather, advocates will want to look at two sites as the starting point for their work:

- \$ **Office of Special Education Programs (OSEP)** – [www.ed.gov/about/offices/list/osers/osep/index.html](http://www.ed.gov/about/offices/list/osers/osep/index.html). This site contains links to the law and regulations, agency policy letters, agency publications, and descriptions of ongoing monitoring activity.

- \$ **Federal law and regulations** – [www.idealpractices.org/law/index.php](http://www.idealpractices.org/law/index.php): A user-friendly set of links to the Individuals with Disabilities Education Act and the agency's regulations.

Numerous advocacy agencies maintain useful sites to support the work of advocates. Here are two that advocates will find helpful:

- \$ **Center of Law and Education** – [www.cleweb.org](http://www.cleweb.org): All special education advocates should bookmark this site. It includes a wealth of resources on all aspects of special education, including many on-line publications, and links to other resources.
- \$ **Neighborhood Legal Services of Buffalo** ([www.nls.org](http://www.nls.org)) and its **National Assistive Technology Advocacy Project** ([www.nls.org/natmain.htm](http://www.nls.org/natmain.htm)): The site includes many useful resources, including a comprehensive article/booklet on special education, many newsletters, and selected training materials.

### 3. Vocational rehabilitation

On a federal level, state vocational rehabilitation agencies are overseen by the Rehabilitation Services Administration (RSA), a part of OSERS within the Department of Education. Advocates will want to check out these two sites:

- \$ **RSA** – [www.ed.gov/about/offices/list/osers/rsa/index.html](http://www.ed.gov/about/offices/list/osers/rsa/index.html): This site is laid out in the same format as the OSEP site (special education). It also contains links to the law and regulations, agency policy letters, agency publications, and descriptions of ongoing monitoring activity.
- \$ **Federal law and regulations** – [www.ed.gov/about/offices/list/osers/rsa/policy.html](http://www.ed.gov/about/offices/list/osers/rsa/policy.html): This provides links to the law (Title I of the Rehabilitation Act), regulations, and RSA policies.

The author is not aware of a comprehensive advocacy-based site comparable to those that exist for the other benefit programs referenced in this document. The sites for Neighborhood Legal Services ([www.nls.org](http://www.nls.org)) and its National Assistive Technology Advocacy Project ([www.nls.org/natmain.htm](http://www.nls.org/natmain.htm)) contain a number of good resources to support VR advocates, including a comprehensive article/booklet, links to policy and practice briefs published through Cornell University, several newsletters, and selected training handouts.

### 4. Medicaid

The federal Centers for Medicare and Medicaid Services (CMS), which oversees Medicaid, has three sites which advocates will want to check out:



- \$ **CMS home page** – *www.cms.gov*: This is an excellent site, but may contain too much information for all but the most serious health care advocates.
- \$ **Medicaid home page** – *www.cms.gov/medicaid*: This is the most useful of the three sites, with links to regulations, manuals, and information on state Medicaid waivers. The user will need to invest some time to learn how to negotiate the links.
- \$ **Medicaid law and regulations** – *www.cms.gov/regulations*: This actually contains the law and regulations of Medicaid, Medicare, and other programs overseen by CMS. It contains links to recently published regulations.

Most state Medicaid agencies now have web sites. You can probably locate your state's site by doing a search by the agency's name with one of the popular Internet search engines such as Google (*www.google.com*) or Alta Vista (*www.altavista.com*).

Many good advocacy group sites exist to support the advocate's work. The following are two that you will want to check out:

- \$ **National Health Law Project** – *www.healthlaw.org*: This is probably your best, up-to-date source of Medicaid information for the attorney or advocate. It has regular updates to legislation and regulations, and written analyses of key Medicaid provisions. Most materials are available for free, with some publications for sale.
- \$ **Families USA** – *www.familiesusa.org*: This contains a great wealth of information, from both an advocacy and watchdog perspective, on the range of health care options available to Americans.

## F. Using List Serves as a Research Tool

A list serve, usually set up by a specialty topic, allows an individual to communicate with an entire network of individuals by posting a message to the list serve address. It can be described as a virtual discussion group in which members of the group can respond to inquiries at their leisure, often providing either file attachments or links to web-based resources to help support the work of the person posting the inquiry.

Although a long discussion of the benefits of the list serve is beyond the scope of this document, some very useful list serves are maintained by the NAPAS, including a PABSS list serve, a Client Assistance Program list serve, and a special education list serve are all relevant to the topics discussed in this document.

## G. Using National and Regional Technical Assistance and Back-Up Centers

### 1. Regional technical assistance projects funded by SSA

SSA funds three regional technical assistance and training projects to serve the needs of the advocacy staff employed by the BPA&O and PABSS programs:

- \$ Virginia Commonwealth University, Benefits Assistance Resource Center, [www.vcu.barc.org](http://www.vcu.barc.org)
- \$ The University of Missouri-Columbia, [www.rcep7.org/ssabpao](http://www.rcep7.org/ssabpao)
- \$ Cornell University's Employment and Disability Institute, Work Incentives Training and Technical Assistance Center, [www.ilr.cornell.edu/ped/dep/nwittac.html](http://www.ilr.cornell.edu/ped/dep/nwittac.html)

These projects were awarded grants by SSA to provide comprehensive training and technical assistance to both BPA&O and PABSS programs in three regions of the country.<sup>9</sup> Each project will have a designated person to provide technical assistance in your state. Each of the projects has either created or can identify written resource materials for use by advocates, including documents such as this policy and practice brief.

## 2. National Back-Up Centers

National back-up centers can be useful sources of information and support for attorneys and advocates employed by PABSS programs. When doing legal research, the back-up center's resources (by phone, email, web site, publications) are often a good starting point. The following is an alphabetical and representative list of national back-up centers. We will not separately list state specific back-up centers, although some of those may be of more immediate value depending on the nature of your work. Web site and telephone information are provided for each. Because PABSS work can extend well beyond the four benefit programs featured in this article, we have provided a more extensive list:

- \$ AARP/Legal Counsel for the Elderly, 202-434-2120 (Washington, D.C.), [www.aarp.org](http://www.aarp.org)
- \$ Bazelon Center for Mental Health Law, 202-467-5730 (Washington, D.C.), [www.bazelon.org](http://www.bazelon.org)
- \$ Center for Law and Education, 617-371-1166 (Boston, Mass.), [www.cleweb.org](http://www.cleweb.org)
- \$ National Assistive Technology Advocacy Project, 716-847-0650 (Buffalo, N.Y.), [www.nls.org/natmain.htm](http://www.nls.org/natmain.htm)
- \$ National Association of Protection and Advocacy Systems (NAPAS), 202-408-9514 (Washington, D.C.), [www.protectionandadvocacy.com](http://www.protectionandadvocacy.com)
- \$ National Health Law Project, 310-204-6010 (Los Angeles, Ca. office), [www.healthlaw.org](http://www.healthlaw.org)
- \$ National Housing Law Project, 510-251-9400 (Oakland, Ca. office), [www.nhlp.org](http://www.nhlp.org)

<sup>9</sup> For a breakdown of the states covered by each of the three SSA-funded technical assistance projects, see [www.ssa.gov/work/ServiceProviders/contractsbpao.html](http://www.ssa.gov/work/ServiceProviders/contractsbpao.html)

- \$ National Senior Citizens Law Center, 202-289-6976 (Washington, D.C. office), [www.nslc.org](http://www.nslc.org)
- \$ National Veterans Legal Services Project, 202-265-8305 (Washington, D.C.), [www.nvlsp.org](http://www.nvlsp.org)

Some of these organizations were described in earlier parts of the document. For others, check the web sites for a full description of the agency's services.

## H. Using Law Libraries Outside Your Agency

Despite the availability of many resources on web sites, the PABSS attorney or advocate (and to a lesser degree, the BPA&O benefits specialist) will want to access a traditional law library from time to time. Since most P&As have limited hard copy volumes in their law libraries, it is helpful to know what other resources might exist in your community or state.

The following is a list of key sources of law libraries that may be available. Some of the resources listed may be the only local or regional source for some volumes that could be needed in your work. If in doubt, call ahead so you do not waste a trip. While you are at it, ask if they have any on-line resources you can use without making the trip:

- \$ **Law schools** – If you have a law school nearby, they should have a very comprehensive library.
- \$ **Universities** – Many universities, colleges, and even community colleges contain limited law libraries, particularly if the college has a legal studies department.
- \$ **Courts** – Many state and federal courthouses have extensive libraries that are open to the public.
- \$ **Other law offices** – There may be a private sector or public sector office with a law library that you could use. Check around. You may each have resources that the other could use.
- \$ **Public libraries** – They sometimes have a limited number of volumes, possibly just the ones you are looking for.

Be aware that these other entities may or may not keep their law library materials updated.

## V. Application of Research Skills Through a Case Scenario

We will now attempt to provide a practical application of the research skills that have been summarized above. To get maximum practical benefit, you are urged to walk through the steps outlined below. Keep in mind that over time, some of the website addresses may change.

All of the issues that are raised in the hypothetical case are relevant to the work that goes on in a BPA&O or PABSS project. While some of the issues might not meet the criteria for a “case” under one or the other project (depending, of course, on what additional facts get added to the scenario), all issues can be expected to come up as information and referral issues, or as questions that are presented when you are doing outreach and training. For the purposes of this exercise, we will assume this scenario takes place in a P&A office and involves a PABSS advocate.

### A. Case Scenario, Part I

#### 1. The initial SSI questions

Myron Edwards is 17 and lives with his mother, father, and 15-year-old brother in Any State, USA. Myron injured his spinal cord when he was seven years old. As a result, Myron is quadriplegic. His brother does not have a disability.

The Edwards= family income is \$30,000 per year (about \$2,500 gross per month) which Mrs. Edwards makes from a part-time job as a physical therapist. Mr. Edwards was successfully employed as a chef until two years ago when he suffered a back injury. After unsuccessfully attempting other work, Mr. Edwards stopped working about nine months ago and applied for SSDI. His SSDI application was denied and has been appealed. Mr. Edwards has received short-term disability benefits through a state program, but those benefits ran out about three months ago.

You are meeting with Myron and his parents in May 2004. You learn that Myron will not be 18 until April 2005. He will graduate from high school in June 2005. Myron and his parents pose the following questions:

- \$ The family heard that Myron might be eligible for SSI. Is he? (Assume that Myron meets SSI's disability criteria, so the question is whether he meets the financial eligibility requirements.)
- \$ Even though Mrs. Edwards makes \$3,000 per month in gross pay, only \$2,800 of that is taxable, as \$200 per month goes into a “flexible spending account” pursuant to section 125 of the Internal Revenue Code to pay for uncompensated medical insurance, including health insurance premiums and insurance co-payments. Would that make a difference in the SSI eligibility determination?

## 2. Researching the initial SSI questions

Ask around the office: Don't overlook the expertise you may have just down the hall. You ask your co-workers and nobody has an answer. At this point, your next contact should probably be to your designated technical assistance person at the SSA-funded technical assistance project for your region. To illustrate the multiple methods for researching the issues, we will assume this person was not immediately available because he or she is presently doing training for new BPA&O and PABSS staff.

Posting on PABSS list serve: This list serve, run by NAPAS, includes attorneys and advocates who are representing SSI and SSDI beneficiaries who are encountering barriers to work. You post the information about Myron's case and the family's question and ask if anyone has any answers:

- \$ One person tells you need to find a link to an SSI parent-to-child deeming break-even chart for your state. The chart will show the levels of monthly parental income at which a child would cease to be eligible for SSI benefits.
  - You do a search at the "Google" site and locate a link to the Social Security section of the Neighborhood Legal Services website. Specifically, you go to: [www.nls.org/ssassi/deembrk2004.htm](http://www.nls.org/ssassi/deembrk2004.htm). This provides a 2004 deeming break-even chart for New York. (We will assume at this point that Myron and his advocate reside in New York.<sup>10</sup>)
  - The chart tells you that the 2004 break-even point would be \$3,273 per month, or about \$273 per month more than Mrs. Edwards is paid per month. This confirms that Myron will be eligible for an SSI check if he applies today (we cannot tell how much the SSI check would be at this point).
  
- \$ Another person on the PABSS list serve says that they "heard" that money put into a flexible spending account, sometimes called a "cafeteria plan" does not count as income for SSI purposes. The person believes the answer should be in Social Security's POMS manual, which can be located on SSA's "Representing Clients" website.
  
- \$ You go to: [www.socialsecurity.gov/representation](http://www.socialsecurity.gov/representation)
  - At that site, you select "POMS" (located on left side of the screen).
  - That takes you to another site where you select "table of contents."
  - That takes you to another site where you are offered the opportunity to "search."
  - After getting nothing relevant with a "flexible spending account" search, you find what you are after with the search terms "cafeteria plan."
  - The first selection on the search list is POMS SI 00820.102 "Cafeteria Benefits Plans," which is just what you are looking for.
  - Under B.4 of this POMS section, the policy provides that the part of earnings that go into the cafeteria plan, through a salary reduction agreement, will not be counted as wages for tax purposes or as income for SSI purposes.

<sup>10</sup> Since New York supplements SSI's federal benefit rate (FBR), its SSI rates will be higher than in states that do not supplement the FBR. This means the break-even points in the deeming chart will be higher than in states that do not supplement FBR.

→ This means that Mrs. Edwards's monthly income for SSI purposes is \$2,800 per month, rather than \$3,000 per month, making Myron eligible for a higher level of monthly SSI check (about \$100 per month higher).

## B. Case Scenario, Part II: Additional SSI Questions, a Medicaid Question

### 1. The questions posed by Myron and his parents

Mrs. Edwards is aware that the family is required to have limited resources if Myron is to qualify for SSI. Although they only have \$374 in savings, no stocks, no bonds, and no retirement accounts, they do have a 2004 minivan that was specially modified to allow Myron to ride in it, from a wheelchair, as a passenger. (If Myron gets his driver's license, additional modifications would have to be done to the van for him to drive it.) This van with its modifications was purchased by Myron's grandparents last year at a total cost of \$27,000 and the van is still probably worth more than \$24,000.

You also learn that Myron has a summer job lined up for July and August, working for a state agency. He will make \$1,000 gross each month. Myron asks whether that would affect his SSI eligibility after he is approved. Finally, the family has been hearing conflicting information about Medicaid eligibility and whether it will be automatic when Myron is approved for SSI.

Myron and his family now pose the following additional questions:

- \$ Will the value of the van make Myron ineligible for SSI?
- \$ What happens to Myron's SSI if he works for those two months?
- \$ With SSI eligibility established, will Myron also be eligible for Medicaid? Will he have to file a separate application?

### 2. Case Scenario, Part II: Researching the issues

Ask around the office: Once again, you walk down the hall and present these questions to the attorney who always seems to know a little about everything. She doesn't know the answers, but provides you with two things: an old copy of 20 C.F.R. from 1999, containing the SSI regulations; the booklet, *Work Incentives for Persons with Disabilities Under the Social Security and SSI Programs*, published in August 2002 through the National Assistive Technology Advocacy Project. She also tells you might be able to find some answers on the Social Security website: [www.socialsecurity.gov](http://www.socialsecurity.gov).

You look in 20 C.F.R.: Remember, your first mission is to determine if the van affects Myron's SSI eligibility. NOTE: It is alright to look at dated resources as a starting point for research. Keep in mind that anything you learn must be verified as current.

- \$ You find that the rules governing resources are found in 20 C.F.R. Part 416 and then within the 416.1200 sections.
- \$ At 20 C.F.R. § 416.1218(b)(1), you find the rule you are looking for regarding vehicles. It provides that the total value of an automobile is considered exempt, for SSI purposes, if it is specially modified for a person with a disability.
- \$ You go to Westlaw to verify that the rule in 20 C.F.R. is still current.
  - Go to *www.westlaw.com*.
  - Using the “find” function, type in “20 C.F.R. 416.1218(b)(1).” Oops! You cannot type in subsections, like (b)(1) into Westlaw.
  - You limit your search terms to 20 C.F.R. 416.1218.
  - You now get exactly what you want and verify that the rule from the 1999 book is still the same. You can tell the Edwards family that the van will not disqualify Myron from getting an SSI check.<sup>11</sup>

You go back to 20 C.F.R.: Now, you are looking for rules on how the SSI program will treat income from Myron’s summer job.

- \$ In paging through the C.F.R. from 1999, you come upon section 416.1112 and a special rule regarding the earned income of students under age 22.
- \$ The rule states that up to \$400 per month, up to a total of \$1,620 per year in wages can be completely excluded and not counted by the SSI program.
- \$ This is in addition to the usual rules from the SSI program (first \$20 always excluded, additional \$65 plus 50 percent of remaining wages excluded each month).
- \$ This seems like great news for Myron and you are tempted to call him right now. Better check Westlaw first, however.
- \$ You go back to Westlaw: This time you want to see if the student earned income exclusion rule has changed.
  - Using the “find” function, you type in 20 C.F.R. 416.1112 as your search terms.
  - Good thing you did this. The current regulation, 20 C.F.R. § 416.1112(c)(3), shows that the student exclusion rule changed in 2001 and increased from \$400 per month to \$1,290 per month.
  - The new regulation provides for cost-of-living adjustments each year, beginning in calendar year 2002, but does not list the current, 2004 student exclusion amounts.
  - You now go to the Social Security website: *www.socialsecurity.gov*
  - Using the site’s search function, you type in: “2004 student exclusion”

<sup>11</sup> While not relevant to Myron’s case, as this goes to press a proposed amendment to section 416.1218 (b)(1) would make all vehicles exempt if used as transportation for the recipient or a household member. See 69 Fed. Reg. 554 (Jan. 6, 2004).

- One of the first listings on the search results, takes you to a Fact Sheet ([www.ssa.gov/OACT/COLA/studentEIE.htm](http://www.ssa.gov/OACT/COLA/studentEIE.htm)) that lists the 2004 student exclusion amounts based on cost of living increases.
- You make a note that the 2004 rule excludes the first \$1,370 per month of a student's gross wages, up to a yearly maximum of \$5,520 per year.
- This is even better news for Myron!

You stay on SSA's website: Now you are looking to see if Myron will be eligible for Medicaid. At this point, we will assume that your PABSS program is located in Idaho.

- \$ You search with the terms: "SSI and Medicaid"
- \$ You don't find anything helpful very quickly. (If you persisted, you might eventually find the information you need in SSA's POMS manual provisions. See below.)
- \$ You start paging through the *Work Incentives* booklet (section V.B.2, above)
- \$ Three pages into the booklet you find what you are looking for: a reference to the fact that Medicaid is automatic for SSI recipients in 39 states and Washington D.C.
- \$ Since your state, Idaho, is not one of the 11 states listed in the booklet that has its own Medicaid criteria for SSI recipients (i.e., it is not a section 209(b) state), you are able to confirm with the Edwards family that Myron will be automatically eligible for Medicaid as an SSI recipient.
- \$ The booklet does not answer the question of whether Myron must separately apply for Medicaid to establish eligibility, but does reference a Social Security policy manual section, POMS SI 01715.020, in reference to states in which Medicaid eligibility is automatic.
- \$ You look up POMS SI 01715.020 on SSA's site:
  - You learned earlier this section can be found by going to [www.socialsecurity.gov/representation](http://www.socialsecurity.gov/representation); then going to POMS; then going to "table of contents."
  - You navigate on the site until you get to SI 01715.020 and confirm what the *Work Incentives* booklet told you.
  - Then, by navigating within the broader SSI and Medicaid heading, SI 01715, you come to SI 01715.010 A.2, which lists the eight states in which Medicaid is automatic for SSI recipients, but that require a separate application to obtain Medicaid.
  - Since Idaho is listed as one of those eight states, you advise Myron and his family that he will need to file a separate application for Medicaid.



## C. Case Scenario, Part III: Additional Medicaid Questions

### 1. What about Medicaid funding for a standing power wheelchair?

Myron's mother calls back two weeks later with some additional Medicaid questions. They are still awaiting official word on the SSI application, but have been assured that it will be approved and that Myron be eligible for Medicaid. She explains that Myron's power wheelchair is now five years old and will need to be replaced soon.

The therapy team that is working with Myron is recommending that he receive a power wheelchair with a power standing mechanism on it. They have explained to Myron and his parents that the standing function can replace the passive standing that he has been doing with a standing frame, assisted by two adults. The medical benefits that have been achieved through the standing frame (e.g., better circulation, prevention of decubitus ulcers, less incidence of muscle and bone mass atrophy) can now be achieved through the standing mechanism on the wheelchair without any help from others. Upon further discussion, you learn that the standing power wheelchair will cost \$19,000 and that the state's Medicaid program has never paid for this kind of wheelchair.

Myron's mother asks about the likelihood that the Medicaid program will approve funding for a standing power wheelchair when the standing mechanism adds \$8,000 to the cost?

### 2. Researching the additional Medicaid questions

Ask around the office: Once again, you go to that experienced attorney in your office who seems to know a little about everything. She explains that you are now raising an assistive technology (AT) issue and suggests that you call a certain attorney who specializes in AT issues and works in your agency's other office.

\$ You call the AT attorney from your agency's other office. You want to know what he thinks about Myron's chances for approval of the power standing wheelchair. He quickly consults some notes he took at a recent conference. Apparently, there are two state court decisions in recent years that have approved standing wheelchairs, a case called *Forest Johnson* out of Minnesota and a case called *Sorrentino* out of New York. He does not have citations to those cases.

\$ You go to Westlaw: First, you look for the Minnesota decision. Using the find by party name function (i.e., "Find by Title"), you first type in "Forest Johnson" for one party and "Minnesota" for the second party (figuring that Minnesota is likely to appear in the state agency's title as defendant). You search in the state courts database. You get nothing.

- \$ You try a different spelling, “Forrest Johnson,” keeping “Minnesota” as the second party. You get what you are after, a decision from the Court of Appeals in Minnesota, *Forrest Johnson v. Minnesota Dept. of Human Services*, 565 N.W.2d 453 (Minn.App. 1997).
- \$ You now begin looking for the New York decision.
- \$ You assume that Sorrentino is not as common a name as Johnson and using the same search method (by party name), you type in “Sorrentino.”
  - You get 124 documents. This is too many to search through. You revise your search terms, keeping “Sorrentino” for the first party and “New York” for the second party.
  - Now you have a list of 13 documents or decisions. You start going through the list and the second decision, *Sorrentino v. Novello*, 744 N.Y.S.2d 592 (N.Y.A.D. 4<sup>th</sup> Dept. 2002), is what you are after.
  - Both the *Johnson* and *Sorrentino* decisions would lend support for approving the standing mechanism on the wheelchair for the medical reasons stated by Myron’s therapy team.
- \$ You provide the Edwards family and the therapy team with copies of the decisions. You explain that these are not binding on the Medicaid agency in Myron’s state, but indicate they would be helpful if the standing wheelchair was denied and later wound up in court.
- \$ You also explain that the decisions are helpful in terms of the medical information referenced to support approval of the standing wheelchair. You offer to contact the two P&A agencies involved in the two cases, one from Minneapolis and one from Buffalo, to find out what was put into their prior approval packets and hearing records.

## **D. Case Scenario, Part IV: Eligibility for State Vocational Rehabilitation (VR) Agency Services**

### **1. VR eligibility questions**

It is now January 2005 and Mrs. Edwards and Myron are meeting with you. Myron has just been accepted at the local state university to begin classes in September 2005. He has no idea how he will be able to pay for the college tuition.

The Edwards family has heard about your state VR agency. They have learned that the VR agency will pay for college, but that it will continue to count the income and resources of the parents while the individual remains a dependent. The Edwards family resources are about to go up as Mr. Edwards’ SSDI claim was just approved. However, all of the back benefits will be needed just to get the family out of debt and prevent bankruptcy.

Myron and his mother pose two questions:

- \$ Will Myron be eligible for assistance to pay college tuition?
- \$ Will Myron be subject to the VR agency's financial needs test, taking into account the income and resources of his parents?

## 2. Researching the issues

This time, when you consult the attorney down the hall, she suggests that you look on the Neighborhood Legal Services (NLS) website, as she believes there is information there about the obligations of state VR agencies.

- \$ You go to the NLS website, [www.nls.org](http://www.nls.org).
- \$ Using the search function on the NLS website, you search under the terms "vocational rehabilitation and eligibility."
- \$ The first thing on the list of more than 20 documents is the 1999 article/booklet authored by Ron Hager of NLS and has his email address on it.
- \$ Rather than start reading through this nearly 30 page booklet (you don't have time right now), you send Mr. Hager an email and pose the Edwards' family questions to him.
- \$ Within 24 hours Mr. Hager sends a reply.
  - First, he emails you a copy of the "final draft" of the new, 2004 version of the VR booklet.
  - He points out that college tuition payments is one of the VR services available through a state VR agency, referring you to the section in the booklet where that is discussed.
  - He then tells you that under 1998 amendments to Title I of the Rehabilitation Act and 2001 amendments to the federal VR regulations, SSI recipients, like Myron, must automatically meet any needs-based criteria of the state VR agency without regard to parental resources. He tells you where in his article/booklet the citations to law and regulation will be found to support this statement.
- \$ You go to Westlaw to look up the federal regulation, 34 C.F.R. § 361.54(b)(3)(ii), that you found in Mr. Hager's new booklet (regarding SSI recipients and the financial needs test).
  - Using the "find this document by citation" function, you type in "34 C.F.R. 361.54" (Remember, you cannot search down to the (b)(3) subsection.)
  - This takes you right to the regulation in question. You confirm what Mr. Hager told you: Myron will not face a financial needs test because he is an SSI recipient.

Using the research tools and strategies, as outlined in this document, you have been able to provide Myron and his parents timely and accurate information. In the future, as a PABSS attorney or advocate, you can use these same tools or strategies if one of these issues turns into a denial of services with the need for representation in an administrative hearing or in litigation. Similarly, if you are a BPA&O benefits specialist. You can use these same tools and strategies in the future if you are providing ongoing benefits planning services to Myron.

## VIII. Conclusion

This policy and practice brief has provided a comprehensive, yet practical summary of the many tools now available for doing legal research in a BPA&O or PABSS practice. To fully benefit from the brief, you are encouraged to set aside some time to view the many websites that are included, and to walk through the simulation research exercise.

**MY NOTES ON TRANSLATING THIS TO PRACTICE:**

**MY STATE CONTACTS:**



## Contact Information

**Employment and Disability Institute  
School of Industrial and Labor Relations**

Cornell University  
ILR Extension Bldg., Rm. 201  
Ithaca, New York 14853-3901  
607/255-7727 (voice)  
607/255-2891 (TTY)  
607/255-2763 (fax)  
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