

Comment from Julie Reiskin on *Nonlawyer Assistance and Representation*
August 10, 2024

To Whom It May Concern:

I am responding to the notice and questions. The organization I co-lead does non-attorney representation on Medicaid cases. We have also done some social security, SNAP and other issues over the years, but mostly Medicaid. While I do not practice now, I did for many years and supervise those who do. I have also used this advocacy personally as have all of our staff. Most of us are disabled and use the Colorado Medicaid Buy In for Working Adults with Disabilities. We all use our internal non-attorney advocates (including our attorneys) when we have issues with Medicaid.

Experiences Navigating Administrative Adjudication

1. What has been your experience interacting with an administrative adjudication regarding a benefit or service that you are applying for or renewing, for example unemployment insurance or student loan assistance? Were you able to receive adequate assistance from the agency, including interactions with agency staff and agency-provided resources, such that you did not need external legal services from lawyers or nonlawyers? If not, what steps did you take to find such assistance, if any?

I use Colorado Medicaid and when I get denials that do not make sense, or that I know are wrong, I use our organizations individual advocacy program for appeals. My experience has been excellent. We have a strong track record of resolving cases.

2. If you have been represented by someone in an administrative adjudication, how would you describe the experience and outcome? Have you experienced any unintended consequences from representation? How did you find and decide to work with your representative? Did the agency assist you with finding your representative? Was your representative a lawyer? If not, was your representative part of an organization or a solo practitioner? How did you decide to proceed with your representative, and what alternatives did you consider?

My representative works for a disability rights organization, She is not a lawyer and not supervised by lawyers. I did not consider any other option.

Perspectives from Representatives or Legal Assistance Providers

3. If you have worked as a nonlawyer representative in administrative adjudications, how long have you worked in this capacity? Before which agency or agencies do you practice? What tasks do you undertake as part of your representation? How were you trained? Are you required to re-certify regularly or seek ongoing training? Is training provided by the agency or by a sponsoring organization? Are you supervised by a lawyer in any capacity?

I did representation for many years. I did get some training from our local LSC grantee, Colorado Legal Services. Our Office of Administrative Courts has materials to understand the rules and the judges are good about explaining as well. I just figured it out. There is no certification or requirement to seek training but it is only ethical to keep up with changes in law. Our organization hosts regular trainings for non-attorney advocates that are doing this work especially as laws change. We also work closely with our unrestricted legal services organization, Colorado Center for Law and Policy and they along with CLS provide training or consultation if we need it.

4. If you have worked as a nonlawyer representative in administrative adjudications, what was the certification and oversight process from the agency? In your experience, was that process efficient and/or successful?

None and that is effective-but there should be an agency involved. There are some rogue advocates that are not connected with a nonprofit. As a nonprofit there is some accountability because we are run by a Board so if there were a problem there would be somewhere to go. Our funding is all private and if we could not show results we could not get funding.

5. If you have worked as a nonlawyer representative in administrative adjudications, have you felt that you were treated professionally and equally by others in the process? Was the government represented by a lawyer?

Occasionally the government is represented by a lawyer but usually they are not. I have always felt that I have been treated professionally and equally by the staff at the Colorado Office of Administrative Courts, the judges are used to non-attorneys and work really well with us. The few times I have worked through Social Security I did not feel that way. They make it very hard for non-attorneys by giving attorneys special ways to schedule their hearings, leaving un-represented and those represented by non-lawyers to wait a long time. They also make it hard to get materials and there is no one to call and just ask a question. This applies to both the field offices and the ODAR office where there are judges. In Social Security I have mostly done overpayment cases or other cases related to people who were trying to escape poverty and this is not a priority for SSA. While I won most cases, it was way too hard to do this and there is a huge disparity in how lawyers and nonlawyers are treated. I know now they have a whole certification program for non lawyers now so maybe those who go through that have better experiences. If they are going to require this they should fund organizations to have staff who would have the time to go and comply with all of their rules and processes. We do not do a lot of social security work so we cannot afford to spend weeks in training and gain certifications, which is why we do not do what most people need, disability applications.

6. If you are a lawyer representing people in administrative adjudications, what are your experiences and interactions with nonlawyer representatives, if any?

NA

7. If you represent people in administrative adjudications, what are your experiences with agency rules and procedures regarding representation? In what ways could they be improved?

On a state level it is quite clear, they say that people can have whomever they want as a representative. Federal programs are much more difficult due to their cumbersome requirements and inability to find a human to ask a question. The best way for us non-attorneys to learn is to be able to do the work with support--having someone we can call. If there is some sort of test, then we should be able to either attend a training (and get funding for this) or have asynchronous fully accessible training we can do on our own time. In any case, we need a human that is available to answer questions as we are going through the process. Sometimes as simple as "how do I get you the release" or asking what something means. The biggest problem with federal programs is there is no one we can call or email and talk to and there are such huge backlogs--you get to court and then even if you win the agency comes back and repeats the same action but for a different time period. The other overall problem is that agencies that deliver benefits need to fix problems that cause so many appeals, like not looking at income that is reported by labor departments or having incomprehensible or unreasonable reporting requests. People often report income but the case worker never sees it because the systems are so broken. Social Security is months or years behind so when people get an overpayment demand it is for many years in the past and no one can remember what they reported and many clients may not have great document management or filing system and cannot find records of a report that was made 8 years ago. The other problem we have had is the other side (Medicaid, county eligibility workers, SSA, etc) tries to call our clients when we have submitted proof that we are representing them. This is highly inappropriate. This is intimidating and causes problems, often a low level person will look at the system and say to the client, I see your benefits are on without interruption so you can dismiss the appeal, but they do not understand that the reason they benefits are continued is because we filed the appeal so benefits continue as a matter of law. If the appeal is dismissed before the underlying issue is solved, the eligibility goes away also,

Landscape of Relevant Agency Programs

8. Are you familiar with specific agency programs that encourage nonlawyer representation? Are these programs working to meet the demand of need for assistance and/or representation in administrative adjudications? If not, how might they be improved?

Colorado Medicaid does not encourage it but they let people know they can use anyone and are supportive of this.

9. Are there specific agency programs that could be expanded to encourage more forms of nonlawyer assistance and/or representation?

I think all benefits cases could be done by non lawyers especially if lawyers could be a backup. Training by legal aid lawyers on poverty law, appeals, *Goldberg v Kelly*, due process, are helpful and I believe most LSC funded programs will do this as part of community outreach.

10. Are you aware of studies or other data examining aspects of nonlawyer representation before federal agencies, beyond data that is publicly available through agency websites?

no

11. What role can public- and private-sector groups play in increasing nonlawyer representation, and how should government agencies encourage such actions, if at all?

Fund those who are doing this, while we do not have to pay lawyers we still have to have staff. Provide support for salaries. This is best from private sector folks because many advocates cannot or do not want to take government money. What government agencies should do is meet frequently with advocates to learn what systemic barriers are causing so many appeals and stop the problem. For example, in Colorado our system is so clunky that many appeals happen because clients get notices saying "your benefits are being terminated because you did not give us something". Most cases we find that the client did provide the information but when the client uploads it in the system there is no intuitive way it gets to the caseworker. The case worker can find it but it is many steps and they are overwhelmed. The state needs to make the system work better, not yell at the counties that it is a user error (even if it is, the system is too hard to use). Fixing this problem would prevent many terminations and appeals. Also, all agencies should have plain language not legalese on their forms including appeal forms and should explain what words mean--for example the word household means different things in different programs and without clarification on how to answer people answer with who lives in a physical structure when that might not be right if they are living with people who have no legal responsibility. Different programs have different rules about how this is counted or considered. Even if the legal info has to be included, have a plain language explainer as an attachment. There is so much extraneous required legal information that adds to the confusion for the clients. Client groups should be contracted with to review and test forms and letters.