State Budget Cuts and Welfare Reform

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Disability Advocacy Projects: Programs That Assist Low-Income Clients and Ease State Government Fiscal Problems

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I. Introduction

Disability Advocacy Projects (DAPs) substantially benefit thousands of low-income disabled state residents by providing them with increased income and better medical care. These programs cost little to fund, are simple to administer, return at least two dollars in direct savings--and usually much more--for every dollar a state spends on them, and bring federal dollars into the state economy. They also provide attorney fees to legal services programs and private attorneys for helping their clients to obtain these benefits.

DAPs assist people on General Assistance (GA), a state-funded benefit, to become eligible for federally funded Supplemental Security Income (SSI) disability. Some DAPs are preappeals projects: they help clients at the stages of initial application and request for reconsideration prior to an administrative hearing. Others are appeals projects that represent clients at the administrative appeals level and in federal court. State governments fund DAPs because they save the state money. In states where counties partially or wholly fund GA, some county governments also fund DAPs.

Despite the excellent record of DAPs, the number of states that have established DAPs has grown slowly since the mid-1980s. In fact, because of the severe budget pressure in many states, most existing DAPs are not being expanded, and some are facing the possibility of reduced funding. Also, state governments and advocates have raised questions about whether there is a role for DAPs in states in which the GA program has been severely cut.

There are several reasons for the slow expansion of DAPs. Many states are so hard-pressed for money that they are unwilling to spend one present dollar even to recover four future dollars. Some states are dominated by forces hostile to any program that helps poor people. It is unclear what role DAPs will have in states that have reduced or eliminated their GA programs. Although DAPs are simply not economically feasible in some states, in other states, DAPs’ feasibility has not been studied.

As worthwhile as DAPs are, they are designed to help only a specific category of people: those on GA who are unable to work because of long-term disabilities and who are likely to become eligible for SSI disability. DAPs do not address the needs of the entire needy population. They
do not help large categories of GA recipients: those who are unable to find work because of a short-term disability; those who are defined as able-bodied but who are unable to find employment because of bad economic conditions or who lack necessary skills and education. And, DAPs do not reach the poor with disabilities in states that provide no financial assistance to their residents with disabilities.

DAPs are, however, highly effective at helping the people they are designed to help: GA recipients with long-term disabilities. Moreover, DAPs can help all needy people indirectly. By bringing additional funding to legal services programs and state governments, they free these entities to direct their other resources to those clients who are not reached by DAPs.

This article describes the different kinds of DAPs, why they are worthwhile, where they are feasible, and provides some information about planning for a DAP. The purpose of this article is to demonstrate the value of DAPs and to encourage legal services programs to examine the feasibility of creating them.

II. The Different Kinds of DAPs

A. Appeals Projects

The majority of DAPs are appeals projects that take cases at the administrative hearing level (i.e., the administrative law judge stage). There are two appeals models. One is the Illinois or non-staff model; the second is the Massachusetts or staff model.

1. The Illinois or Non-Staff Appeals Model

In the Illinois or non-staff model, the state department that administers social services is authorized by state legislation to pay attorney fees to either private or legal services attorneys who successfully represent a GA recipient in an SSI appeal. Arizona, California, Connecticut, Illinois, Missouri, Ohio, Oregon, Virginia, and Washington State have adopted this model. /3/

The source for attorney fees is the interim assistance the state recoups from the Social Security Administration (SSA). In Illinois, the state pays the attorney an amount "equal to 25% of the maximum federal Supplemental Security Income grant payable to an individual for one year." /4/ Most states with Illinois-model programs use this formula or some variation of it. /5/

Payments to legal services programs are not subject to SSA approval. SSA has ruled that, when a representative's fees are paid by a nonprofit or government agency, "The fee arrangement is not within the purview of the fee-setting regulations and, thus, the representative is not required to obtain the [SSA's] authorization of a fee." /6/
2. The Massachusetts Appeals Model

The Massachusetts model DAP is a distinct project within a legal services program. The state agency administering social services contracts with a legal services program to provide legal representation. The contract usually provides some form of flat funding on a per capita basis with additional funding for administration, coordination, training and outreach, and more general disability advocacy. The legal services program has to set a specific cost-saving goal for the DAP and then ensure that the DAP has a sufficient number of cases to meet the goal. It has to document carefully the DAP's cost-effectiveness for the state government, and it has to obtain annual refunding.

New Jersey, New York, and Pennsylvania use this model; /7/ the Legal Services Corporation of Iowa has contracts with three counties. /8/ The Massachusetts Legal Assistance Corporation has one contract and one appropriation: one provides for a straight, case-by-case payment (so many dollars for every GA recipient's case their staff take and so many dollars for each case successfully completed), and one provides for the Disability Benefits Project to perform broader disability advocacy, such as helping an SSI recipient to develop a plan for self-support /9/ or challenging terminations of SSI. /10/ The New York contract sets aside a certain percentage of money for staff training. /11/

3. Advantages and Disadvantages of the Different Appeals Models

Each of these models has advantages and drawbacks. Each legal services program has to determine by analyzing its own situation which model is better for it.

The great program advantages of the Illinois or non-staff model are:

- it requires the state to earmark a portion of the interim assistance it recoups for legal representation for low-income clients;
- it requires virtually no administration on the part of a legal services program; and
- it requires no firm commitment of staff and program resources to handle a specific number of cases.

In Chicago and Detroit, urban areas where there are substantial numbers of private social security attorneys, legal services programs routinely refer GA/SSI clients. This referral arrangement leaves legal services attorneys free to represent applicants for SSI disability for whom SSA will pay no attorney fees. In rural areas, where there are few private attorneys with social security practices, legal services programs do represent GA/SSI clients. In Connecticut, Illinois, Pennsylvania, Oregon, parts of Michigan, and Virginia, both legal services and private attorneys take GA/SSI cases.

The strategic advantage of the Illinois model is that it is more attractive to state legislators because it requires no new appropriations. In addition, the private bar will generally support the state legislation needed to create the model. In several states, such as California, Missouri, and Washington State, private attorneys have led the legislative effort.
The disadvantage of the Illinois model is that it creates no focal point for SSI advocacy. In Illinois itself, the program is so dispersed that it is almost invisible. The state government does not even compile statistics demonstrating how much money the program is saving the state. /12/ Also, almost no opportunity exists for training, case supervision or quality control review, or for identifying patterns of problems that require systemic remedies. /13/

The Massachusetts model requires much more of a legal services program. A sponsor of a Massachusetts model has to have administrative staff who can devote time to the DAP, program staff experienced in SSI and social security disability law, and a good working relationship with sympathetic state government staff in key positions.

A Massachusetts model program offers enormous opportunities for significant advocacy for a legal services program that has the appropriate staff and a state government willing to fund the program. The first great program advantage of the model is that the legal services program will develop consistent, sustained, and progressively more sophisticated SSI advocacy. The legal services program will train and monitor the staff providing the service. If the state contract is not limited to initial eligibility determinations, but permits staff to handle other disability issues, they will be able to help disabled clients achieve self-sufficiency.

The Massachusetts model also provides a focal point for statewide SSI advocacy and an opportunity for supervision, quality control, and issue development. The Massachusetts coalition of SSI advocates convenes substantive work groups in which advocates develop advocacy techniques and discuss substantive issues. One work group focuses on the relevant decisions of the federal district court or the First Circuit for each case about to be brought into federal court.

B. Preappeals Projects

The number of preappeals projects is increasing faster than the number of appeals projects. Advocates in preappeals projects assist clients at the prehearing stages of the initial SSI application and request for reconsideration. Staff are primarily paralegals and specially trained nonlawyers. If a hearing is necessary, they refer their clients to either private attorneys or legal services. In states that provide attorney fees for appeals, the preappeals projects establish a close working relationship with the lawyers to whom they refer cases.

Preappeals projects are attractive because (1) they reach people sooner and the social costs of delay are so great; (2) they reach those people who are among the neediest and who might otherwise drop out of the long and complicated application process because they cannot handle it by themselves; and (3) they are inexpensive to administer.

1. Preappeals Projects in State Governments

The typical model of a state preappeals program consists of state human services employees who work within a special SSI advocacy unit. Their main source of referrals is other units of
the department of human services, although the programs also usually have community outreach programs.

A number of state governments operate their own preappeals projects with state employees. /14/ In California, San Jose County has a preappeals program. Five county social workers operate the program and refer cases for appeal to private attorneys. /15/ The preappeals projects operated by state governments in Michigan, Pennsylvania, and Washington State also use that model.

The preappeals program in Oregon uses a somewhat different approach. Oregon's program, which is administered through the Senior and Disability Division of the state Department of Human Services, uses specially trained state employees to represent clients through the hearing before an administrative law judge. Clients are given a choice of having the SSI liaison worker or a legal services or private attorney represent them at this stage. When a case goes to the Appeals Council stage, the client is referred to private or legal services attorneys. /16/

2. Preappeals Projects Administered by Legal Services Programs

A few legal services programs do some preappeals work, but there is only one example of a state government contracting with a legal services program to operate a preappeals project. Although the Legal Assistance Foundation of Chicago's (LAFC's) SSI Advocacy Project is "very successful and easy to administer," /17/ no one else has yet imitated it. LAFC's SSI Advocacy Project has an attorney as project director, one staff attorney, a supervising paralegal, and a small paralegal staff. The Project receives most of its referrals from the state Department of Public Welfare, and also receives referrals from substance abuse programs, homeless shelters, social security offices, social service providers, and from other clients. The Project has also developed a special working relationship with the local office of SSA. /18/

3. Advantages of Preappeals Projects

Preappeals project clients are generally among the neediest applicants--those who are mentally retarded, suffer from affective orders (depression), or are illiterate. The Disability Determination Service (DDS), a division of the state department of human services, which makes initial and reconsideration decisions for SSA, depends solely on written disability reports prepared by the applicants or SSA personnel. Unlike DDS adjudicators, preappeals project staff see their clients face-to-face so they can identify conditions that the clients are frequently unable to articulate. /19/

Preappeals projects are less expensive to administer than appeal DAPs. First, their staff are primarily paralegals and social workers. Second, the program can be structured so that, under Medicaid regulations, the federal government reimburses the state for one half of the its administrative expenses (the salary of the advocates and the attorney fees). /20/ Medicaid will also pay for the cost of the medical examinations for clients, which is an important project expense. /21/
4. Essential Characteristics of Successful Preappeals Projects

The preappeals projects discussed in this article, all of which are well-designed and operate effectively, have two common characteristics that are essential to their success: (1) they all have close referral links to lawyers who will handle cases on appeal; and (2) they protect the confidentiality of their clients' records.

The nature of SSA's decisionmaking process is such that a significant number of preappeals project clients whose applications are denied at the prehearing stages will prevail on appeal, if they have legal representation. A preappeals project without a connection to legal representation cannot provide effective service to a significant percentage of its clients.

Protecting the confidentiality of clients' records is essential to maintaining the project's integrity and to establishing a relationship of trust between client and worker that is the foundation for effective work. Because of their connection with their state departments of human services, preappeals projects have to have special procedures to ensure that their records are confidential.

C. SSI Projects for Disabled Children

Although most DAPs serve adults, since the Supreme Court's decision in Zebley v. Sullivan, /22/ a number of state governments and legal services programs are establishing SSI programs for children who are eligible for Zebley retroactive benefits and children who will now be found eligible for SSI disability because of the new SSI childhood disability standards.

The projects that have been established so far focus on reaching disabled children in foster care who are eligible for SSI disability. Kansas State Legal Services, /23/ the Legal Assistance Foundation of Chicago, and the Virginia Poverty Law Center have such programs. /24/ The Kansas and Chicago programs have contracts with the state department administering social services. The Colorado Coalition of Legal Services, the state support unit, and the Colorado Department of Social Services have tentatively agreed upon a program. The Department will contract with the Coalition, which will, in turn, subcontract with other legal services programs and private attorneys. /25/ Virginia's SSI for Children program was created by the same legislation that created Virginia's Illinois-model DAP for adults. The Virginia Poverty Law Center staff hopes that coordinated SSI advocacy for adults and children will develop in the state. /26/

Massachusetts's Disability Benefits Project has taken a different approach: it has trained a pro bono panel of 250 private attorneys who will set up trusts for Zebley claimants with large retroactive benefits. /27/

III. Relations with the Private Bar
In most states, the private bar and legal services programs have had cooperative relationships in setting up and maintaining DAPs. In Connecticut, legal services programs opposed the state's proposal to place a $3,000 cap on fees the state pays from interim assistance because they thought the cap would discourage private attorneys from taking cases. /28/ Members of the National Organization of Social Security Claimants' Representatives (NOSSCR) and National Association of Trial Lawyers have been the originators of several state programs and have been cooperative in creating others.

Private lawyers have been quite supportive of preappeals programs as well as DAPs. In Washington State, a private lawyer, who is a NOSSCR member and former legal services attorney, was one of the principals of the coalition to create the original, pilot, preappeals project. /29/

Private attorneys handle most of the appeals rising from the preappeals projects in Oregon and Washington State. Private attorneys also handle most of the appeals referrals from Chicago's SSI Advocacy Project. /30/ The Chicago Project staff provide training and supervision to the associates of a major Chicago law firm. /31/

There is occasional friction between private attorneys and legal services programs. Private attorneys question whether legal services programs should take cases that generate any fee, especially when they are already overworked. Legal services attorneys oppose efforts by private attorneys to have state departments of human services withhold their legal fees from the client's retroactive payment.

Legal services attorneys' payments are limited to a portion of the interim assistance award to the state, /32/ while private attorneys can charge the client an additional fee (subject to SSA approval) from the remaining retroactive payment that is sent directly to the client. There is no clear resolution to these differences, but so far they have been only minor problems in a few areas.

IV. Cost Savings to State Governments

DAPs are enormously cost effective. The Massachusetts Disability Benefits Project reports that it annually obtains $2.10 in direct reimbursements to the Commonwealth for each $1.00 it invests, and the total monies the project brings into Massachusetts yield $7.80 for every dollar invested. /33/ New York State reports a net savings of $10,114,898 (gross savings of $14,854,898 minus $4,740,000 for program costs) for FY 1991. /34/ Pennsylvania (preappeals and appeals) reports for the first half of FY 1992 a net savings of $18,940,623 (gross GA savings of $21,514,971 and program costs of $2,574,348). /35/

Washington State (preappeals and appeals) projects a net savings to the state of $30 million for the two-year period between FYs 1992 and 1993. /36/ Chicago's SSI Advocacy Project has conservatively estimated that it has saved the state over $7 million within a three-year period. /37/ The preappeals project of San Jose County California served 145 clients in FY 1992. It recovered $464,367 in interim assistance and avoided costs of $575,940. /38/
These cost savings are impressive, but they are only a partial measure of DAPs' worth. States figure their savings narrowly. They add the amount of interim assistance returned by SSA ("recoupment") to the cost the state avoids ("cost-avoidance") for one year by not having to pay GA to the DAP clients who are now SSI recipients. However, DAPs save considerable money for state and local governments in a number of ways not reflected in these formulas. The most direct ways are:

- **Budget-savings or recoupment.** For every GA recipient who becomes eligible for SSI, the state can recover from SSA the interim GA payments it paid from the time the recipient applied until the recipient is determined eligible. To receive interim assistance, the state has to sign an interim assistance agreement with SSA. /39/ The state may subtract the interim assistance amount from the retroactive SSI award (SSA pays benefits retroactive to the date of the SSI application), if the GA recipient has signed an agreement authorizing it to do so.

- **Cost avoidance.** This is the amount that states avoid by not having to pay GA to the people who are now on SSI and social security disability. Cost avoidance for one year is determined by multiplying the number of DAP clients who became eligible for SSI multiplied by the amount of their annual GA payments.

For example, for the three-year period, FYs 1989-91, Chicago's SSI Advocacy Project helped 1,521 GA recipients to become eligible for federal benefits. The state pays annual cash assistance of $1,980 to each GA recipient. This equals over $3 million in savings to the state (1,521 x $1,980 = $3,011,580). /40/

Savings from continued cost avoidance usually go far beyond the one year in the standard cost-savings calculation. One recent SSA study estimates that, once a person has become eligible for SSI disability benefits, the person will remain eligible for 9.3 years. /41/

- **Health care costs.** Most states provide some form of state-funded health care to GA recipients. Recipients of SSI are eligible to receive Medicaid, a federal-state funded program. Many states are now using presumptive Medicaid. /42/ They place those GA recipients deemed likely to be eligible for Medicaid on Medicaid during the SSI application period. This procedure benefits the state because it removes the applicant from the totally state-funded health care program much sooner.

DAPs also provide significant indirect economic benefits to the state.

- **Generation of federal cash.** The formulas do not take into account the effect of the federal cash brought into the state or that a significant portion of that cash is additional income, not just replacement for state dollars. Transferring from GA to SSI routinely doubles the client's income, and often increases it more. /43/ Chicago's SSI Advocacy Project provided an estimated $4,416,984 in additional annual income to clients and to the state economy in FY 1991. /44/

In poor, sparsely populated areas, the effect on the local economy is easily visible as federal benefit dollars are spent to purchase groceries, gasoline, and clothes at local stores. In a
recession or economic downturn, these additional federal dollars can also make a discernible difference in the economies of well-populated urban areas.

- Multiplier effect. The federal cash generated by transferring individuals from GA to SSI also has a "multiplier effect" on state and local economies. The dollars spent by one person create increased demand; in other words, the dollars multiply.

Although no studies have measured the multiplier effect of the federal cash generated by a DAP, several studies have measured the multiplier effect of welfare benefits on county and local economies. These reports are useful in demonstrating the similar effect that the new federal cash generated by DAPs will have on the state and local economy. The Virginia Poverty Law Center recently used these studies during its efforts to persuade the state government to create a DAP.

For example, one study of benefit programs in Georgia concluded that every state dollar used to match a federal dollar for public assistance generated three additional dollars in the local economy, a 300-percent return on the state's investment. /45/ A study of the effect of increased federal funding for AFDC on Kentucky's economy concluded that, for every net state dollar spent, income in the state increased by $6.26. /46/

V. Effect on Clients' Lives

The necessary emphasis on the cost-savings benefits to the state should not obscure the effect of DAPs on the lives of the people they serve. As well as benefiting their clients economically, DAPs also have great social value.

DAPs create a resource for providing significant legal assistance to very needy people. DAPs are enormously successful in their representation; appeals programs uniformly report over 80-percent success at the ALJ level.

Preappeals programs are similarly successful. /47/ Although it is difficult to compare the performance of different programs because they use different statistical formulas for determining percentages of successful outcomes, their figures do uniformly indicate that each program is doing successful work. /48/ The SSI Liaison Program in Oregon reports that it helps 51.7 of its clients to file successful initial applications. /49/ Chicago's SSI Advocacy Project reports a similar success rate of 50.4 percent at the initial application stage. /50/ Of the clients whose initial applications are rejected, 23 percent of the Oregon program's clients and 55 percent of the Chicago Project's clients win at the next level, the request for reconsideration. Eighty percent of the Washington State SSI Liaison Program clients' claims were approved at the initial application and reconsideration stage in the first nine months of FY 1992. /51/

The increased dollars that a DAP obtains for a person can make the difference between that person being able to afford housing and being homeless. Some preappeals programs target the homeless; the SSI Advocacy Project in Chicago, for instance, has designated a paralegal as the homeless outreach worker. She works closely with homeless shelters and the homeless liaison staff from the local SSA office. In FY 1991, she assisted over 150 clients. /52/
Frequently, DAP workers do considerable social work to stabilize a person's situation before the person is able to apply for SSI. Many applicants have faulty memories because of mental illness. Street people usually have long lost whatever personal identification they ever had. It is common for DAP workers to do a great deal to help applicants obtain personal documentation, such as a social security number, that they need to apply for SSI.

Access to better health care through Medicaid makes possible rehabilitative treatment that can lead to greater self-sufficiency. For instance, in many states, Medicaid provides coverage for mental health counseling that often is not covered by state programs. Medicaid also often provides for treatment like dental care that contributes to a person's well-being. /53/

Disability benefits can also provide additional income enabling families to stay intact. For example, in Colorado, where AFDC payments are in the mid-range of states, the increased income that an AFDC family receives when a parent or a disabled child becomes eligible for SSI disability can almost double the family's income. An AFDC mother with two children receives $356 monthly. If one of the children becomes eligible for SSI disability, the family's net income will increase to $702. (The increase from the SSI disability increase is offset by a $70 decrease in the family's AFDC payment). The difference between AFDC and SSI will be even greater in 1993 because SSI benefits are adjusted annually for inflation, but AFDC is not. /54/

VI. Effect on Administrative Agencies

DAPs improve the effectiveness and accuracy of SSA's decisions. Effective advocacy at the initial stages by preappeals projects eliminates the need for some administrative appeals and federal court reviews. The staff of DAPs are able to focus their attention on the work of local SSA offices. For example, the SSI Advocacy Project in Chicago, a preappeals project, has begun an initiative to increase the responsiveness of local SSA offices to the project's clients. /55/ Also, legal services lawyers who specialize in these cases are able to identify patterns of problems that need to be resolved through systemic remedies.

DAPs can be used to improve the operation of state agencies. The Disability Benefits Project of the Massachusetts Disability Law Center was instrumental in creating an advisory board of advocates, clients, and social service agency representatives, which acts as a "watchdog" of the Massachusetts Disability Determination Service. Massachusetts now has some of the most favorable allowance statistics in the country. Advocates give the advisory board much of the credit for this. /56/

VII. Developing Coalitions

In several states, DAPs have been effective in developing broad-based coalitions for SSI advocacy. In King County, Washington, the DAP, a preappeals project administered by the state government, established the SSI Resource Consortium, a group of federal, state, county,
city, and private nonprofit agencies. They have banded together to do SSI outreach and to train staff to help clients to fill out their SSI applications. /57/

Likewise, the Massachusetts Disability Benefits Project created a statewide SSI advocacy coalition of legal services advocates, private attorneys, social service agencies and state agency staff. The coalition publishes a newsletter that provides updated practice information to all social security practitioners in the state.

Chicago's SSI Advocacy Project's contract arrangement with the Illinois Department of Public Welfare pays for items that enhance the quality of its direct service, such as client transportation costs and consultative medical examinations. The contract also permits the Project to maintain a vigorous outreach program, including a special program for the homeless, /58/ and training and supervision of private attorneys who take appeal cases. /59/

**VIII. Feasibility of DAPs**

DAPs are generally feasible in states and counties with:

- interim assistance agreements with the SSA; /60/
- large GA expenditures; and
- large, state-funded health care costs for GA recipients.

The first DAPs began in states with those characteristics: Illinois, Massachusetts, New York, Michigan, and Pennsylvania.

Generally, DAPs have not been feasible in states with no GA program or interim assistance agreement. They may not be feasible in states where the maximum length of time a person can receive GA is less than the average time SSA takes to approve an SSI application. Although there has been no official decision, there is the possibility that SSA will reimburse the state for interim assistance only if the newly eligible SSI recipient is receiving GA on the date of the SSA decision. /61/

It is possible that, through a DAP, a state with small GA costs and little or no state-funded health costs would pay out more in Medicaid-matching funds to new SSI recipients than the state would save in health care costs for its GA recipients. /62/ In states where counties can opt out of the GA system, county-based DAPs instead of a statewide program may be more feasible.

However, the answer to whether a DAP is economically feasible in a particular state can be found only by reviewing the actual statistics. For example, the Virginia Poverty Law Center presented figures that persuaded the Department of Human Services and the state legislature that the state would likely benefit from the program, although Virginia has GA payments in the low range, and counties are not required to participate in the GA program. The state legislature subsequently passed an Illinois-model DAP in its 1991-92 session. /63/
There appears to be a role for DAPs at least in some states with drastically reduced GA programs. State governments tend to cut aid to the able-bodied before they cut aid to persons with disabilities. For example, although Illinois has cut its GA program drastically, assistance to persons with disabilities is still intact. Funding has continued at a level that allows Chicago's SSI Advocacy Project and the attorney fees for appeal programs to continue.

Some state governments have made specific concessions to existing DAPs. After the GA cuts in Massachusetts, the Public Welfare Department amended its contract for the GA/SSI conversion program to allow it to continue representation of GA recipients who may be terminated from state assistance during the SSI appeal process. /64/ When the legislature in Washington State considered legislation limiting the period of time a person could be on state assistance, it explicitly exempted clients of the SSI Facilitation Program. /65/

The situation is different in Michigan, where the state government removed 100,000 people from its GA rolls. The state has an assistance program for persons with disabilities, but the eligibility standards for the program are at least as stringent as those for SSI, and the decisionmaking process often takes longer. The staff of the SSI Advocacy Unit are helping clients to apply for state assistance and SSI, and attorneys are handling appeals of state assistance denials and SSI denials. In the past, Michigan's DAP has been highly effective; in FY 1991 it achieved $13.7 million dollars in cost avoidance. /66/ Until the figures are compiled for its first year of operations after the GA cuts, it will not be clear how the DAP is functioning in the new situation.

The experience of New Mexico is difficult to categorize. In the past several years, the Department of Human Services has taken steps to limit GA benefits or to terminate the program for brief periods because it claimed that it had exhausted the program's appropriation for the fiscal year. It has been prevented from taking these steps by suits for declaratory judgment and injunctive relief brought by legal services attorneys. /67/

Nonetheless, the state legislature in the 1991-92 session created a $65,000 pilot project for SSI advocacy. The Department of Human Services, which is administering the program, is planning a Massachusetts-model program and has issued a Request for Funding. /68/

The following information is useful in determining whether a DAP is feasible in a particular jurisdiction (state or county):

- the number of GA recipients;
- the annual GA budget;
- the annual state medical care budget for GA recipients;
- the state's Medicaid budget;
- any subcategories such as disabled persons or persons medically unable to work, which would be likely to contain a high number of likely candidates for SSI disability;
- the number of people in those subcategories;
- the state standards for determining eligibility for those subcategories;
- any breakdowns on how long people have been on GA or the ages of the recipients.
This information can be used to determine what size the DAP should be, whether there are formal subcategories of GA recipients the DAP can target, and generally how much work per client will be required to demonstrate that a client meets federal standards for disability (the more lenient the state’s standard, the more work is required).

A. Figuring Cost-Avoidance

To determine possible savings to the state for one year, multiply the average monthly GA grant by 12, then multiply the product by the number of GA recipients likely to become eligible for SSI in one year. Example: $150 \times 12 = $1,800 \times 1,000 \text{ GA recipients} = $1,800,000.

After arriving at this figure, a legal services program considering a DAP should determine how many GA/SSI clients its staff can realistically handle in a year and a likely success rate. The cost-avoidance figure based on these projections will be much smaller than the theoretically possible savings. Example: $150 \times 12 = $1,800 \times 100 \text{ GA/SSI conversions} = $180,000.

Most legal services programs multiply the annual total by three years ($180,000 \times 3 = $540,000) or five years ($180,000 \times 5 = $900,000) to estimate the minimum amount of time a former GA recipient will continue to receive SSI.

B. Figuring Recoupment to the State

Gross recoupment (savings) to the state equals the average amount of interim assistance the state receives for each successful GA/SSI conversion times the potential number of successful conversions. Net recoupment (savings) equals gross recoupment (savings) minus the cost of the DAP.

Here again, the legal services program considering DAPs will want to determine the potential universe, and then estimate a likely number of successes based on the number of cases it can reasonably handle.

Example for Gross Recoupment: The average GA monthly amount is $150, the average waiting period for SSA approval is 10 months, and the legal services program has projected that it will have 100 successful GA/SSI conversions: $150 \times 10 \text{ months} = $1,500 \times 100 \text{ SSI conversions} = $150,000.

Example for Net Recoupment: If the SSI monthly benefit is $422, and the legal services program will receive 25 percent of the annual SSI benefit, the program will receive $1,266 for every successful SSI conversion ($422 \times 3 = $1,266). If the program handles 100 successful appeals, it will receive $126,600 ($1,266 \times 100). Therefore, the state’s net recoupment is $23,400 ($150,000 gross recoupment - $126,600 cost = $23,400).
C. **Figuring Generation of Federal Cash**

Generation of federal cash is calculated by multiplying the monthly amount of an SSI grant times 12 times the number of likely successful GA/SSI conversions. When making a projection for more than one year, it should be pointed out that the amount of SSI benefits is adjusted annually to reflect changes in the consumer price index.

Example: If the monthly SSI benefit in 1992 is $422, and there are 100 likely SSI conversions, $506,400 in federal cash will be generated in 1992 ($422 \times 12 = $5,064 \times 100 = $506,400). If the consumer price index increases 3.5 percent in 1993, SSI benefits will be raised by that amount. If there are 100 new GA/SSI conversions in 1993, they will generate $524,124 ($506,400 plus $17,724 [3.5%]) in 1993. The 1992 GA/SSI conversions will generate an equal amount in 1993. The DAP will therefore generate $1,030,524 in federal cash for the state in 1993 (cumulative number of SSI conversions for current year and for all past years /72/ x current annual SSI disability benefit).

D. **Figuring Additional Income to Clients (New Federal Cash)**

Additional income to clients is calculated by figuring the difference between the amount of the state assistance and the SSI benefit. For example, if the monthly SSI grant is $422, and the monthly GA grant is $132, each client who is converted from GA to SSI is receiving an additional $290 each month. /73/ That amount multiplied by the number of new GA/SSI conversions equals the amount of additional income to clients (new federal cash). Using the figure of a monthly increase of $290, a DAP that has 100 successful GA/SSI conversions will produce $29,000 in new annual income for its clients (and the state economy). /74/

When figuring the financial effect of cumulative years, this figure will also have to be adjusted to reflect the automatic annual increase in SSI benefits.

E. **Figuring Medical Costs**

Medical cost savings can be difficult to quantify. If the state provides a monthly amount for each GA recipient, the total amount of health care costs that a DAP will save is easily determined. If there is no individual allowance, it is necessary to examine the state's expenditure for health care for the indigent and to identify items that Medicaid will cover for SSI recipients.

It is possible that a state with little state-funded health care for GA recipients and sizable Medicaid expenditures could lose more in health care dollars than it saved in GA. /75/ When a legal services program considering a DAP thinks there may be a difficulty with the savings figures from health care, it needs to examine its state's Medicaid figures closely. /76/

It is also important to look for other health care savings. For example, every GA recipient who becomes eligible for social security disability receives Medicare, which is funded by the federal
government, after 24 months. Programs proposing DAPs should also emphasize the figures demonstrating the DAP’s overall economic value, such as the number of years an SSI recipient is likely to receive SSI benefits, while downplaying the medical figures. It will also be useful to talk with experienced legal services staff in other states.

**IX. Conclusion**

For a number of years, DAPs have served two purposes: saving money for state governments and increasing benefits for persons with disabilities. Although state governments are facing continuing budget pressures, DAPs can continue to play an important role in a variety of situations. If a state with a DAP is planning to cut its GA, it can certainly do so in conjunction with its DAP to avoid the harsh treatment of its GA recipients. DAPs can provide urgently needed assistance to people with no current income in those states that have drastically cut other benefits.

Legal services programs and state government officials in states with no DAP should investigate the establishment of DAPs as a method of forestalling deep cuts in GA. DAPs are an effective method for a state government to meet its social responsibilities and to save money: legal services programs and state governments would do well to consider them.

footnotes

1. General Assistance is a generic term. The exact name of the program differs from state to state. The generic term General Assistance (GA) is used throughout this article for all forms of state-funded relief paid to disabled persons while their SSI disability applications are pending. For further information about GA, see Kenneth P. Nieman, General Assistance: A Preliminary Legal Analysis, 13 CLEARINGHOUSE REV. 145 (July 1979).

2. This article focuses primarily on DAPs and state governments, but there are occasional references to DAPs and counties.

3. The legislation in California permits a county to opt out of participating in the program. CAL. WELF. & INST. CODE Sec. 17403.1.

The state legislature in Missouri passed legislation creating a program based on this model in 1990 (Mo. S.B. 765), but the program has never been implemented.

4. ILL. PUB. AID CODE Sec. 3-13(a).

5. The Arizona state legislature recently passed legislation creating a DAP that authorizes payment equal to two months of the maximum SSI payment or 50 percent of the amount of interim assistance that the state is paid, whichever is greater. Ariz. S.B. 1365 (signed on July 13, 1992).
The State of Connecticut pays either $1,000 or 25 percent of the interim assistance (with a cap of $3,000), whichever is greater.

One state that does not follow the formula, Minnesota, pays an hourly rate ($75 to lawyers, $55 to paralegals) for "reasonable hours." There is no explicit cap on the number of hours, but payment cannot exceed the state's share of the interim assistance.


7. The Pennsylvania program does have some participation by private attorneys. In addition to the contract between the Pennsylvania Department of Public Welfare and the Pennsylvania Legal Services Center to handle SSI and social security disability appeals, the county SSI workers, who are part of the Pennsylvania Department of Public Welfare DAP, a preappeals project, refer clients for appeal to both private and legal services attorneys. See Michael B. Glomb & Jane Hardin, Alternative Funding Mechanisms for Legal Services Providers, 25 CLEARINGHOUSE REV. 484, 490-491 (Aug./Sept. 1991), for a description of the Pennsylvania program. For further information about the Pennsylvania program, contact Otto Hofmann, Pennsylvania Legal Services Center, 118 Locust St., Harrisburg, PA 17101, (800) 322-7572, or Thomas Siroli, Director, Disability Advocacy Program, Department of Public Welfare, 1401 N. 7th St., 5th Fl., Harrisburg, PA 17102, (717) 772-2604.

8. Information supplied by Dennis Groenenboom, Director, Legal Services Corporation of Iowa, 312 Eighth St., Suite 300, Des Moines, IA 50309-3828, (515) 243-2151.


10. The Massachusetts Legal Assistance Corporation contracts with the Massachusetts Department of Public Welfare, and then subcontracts with the Disability Law Center. For information about the Massachusetts programs, contact Ray Cebula, Disability Law Center, 11 Beacon St., Suite 925, Boston, MA 02108, (617) 723-8455.


12. A private attorney filed a Freedom of Information Act request and learned that, in FY 1990, the state had received $24.2 million dollars in interim assistance payments. Of this amount, $14.6 million was paid to public aid clients, and $2.8 million was paid to attorneys. The state saved $6.6 million from all SSI cases in which interim assistance was returned. (The state did not supply a figure for the amount received from favorable decisions won at the ALJ level.)

13. The Trial Lawyers Association or the National Organization of Social Security Claimants' Representatives (NOSSCR) may provide an opportunity for communication among their members.
Although an Illinois model program does not have an inherent focal point, a creative legal services program can use it as a means of focusing attention on SSI advocacy. The Virginia Poverty Law Center hopes to do just that with its newly created DAP, which began operating July 1, 1992.


15. For further information, contact Rena White, Social Work Supervisor, SSI Advocacy, 591 N. King Rd., San Jose, CA 95133, (408) 299-8301.

16. Information supplied by Karl Bien, SSI Liaison Program Coordinator, Senior and Disabled Services Division, 313 Public Serv. Bldg., Salem, OR 97310, (503) 378-3751.


In 1991, the Illinois legislature passed legislation to create a statewide preappeals program modeled after the SSI Advocacy Project in Chicago; the state would contract with nonprofit organizations to administer the programs. The legislature passed an appropriation, but the state government allowed it to lapse because of the state's bleak fiscal condition. Some discussions are now underway about creating several small, pilot projects in downstate Illinois. ILL. REV. STAT. ch. 23, para. 3-1a(c).


19. Id. at 11, note 13.

20. Information supplied by Karl Bien, supra note 16.

21. Id.

23. See Michael B. Glomb & Jane Hardin, supra note 7, at 491.

24. The contact in Illinois is Thomas Yates, Legal Assistance Foundation, 343 S. Dearborn St, Suite 1010, Chicago, IL 60604, (312) 341-1070; in Kansas, Lynette Petty, Kansas Legal Services, Inc., 712 S. Kansas Ave., Topeka, KA 66603, (913) 233-2068; in Virginia, Steven Myers, Virginia Poverty Law Center, 9 W. Main St., Richmond, VA 23220, (804) 782-9430.

25. Information provided by Daniel M. Taubman, Colorado Coalition of Legal Services, 1905 Sherman St., Suite 710, Denver, CO 80203, (303) 830-1551.

26. See discussion in part II.A.3., supra.


28. Information supplied by JoAnne Lewis, Connecticut Legal Services, Inc., 69 Walnut St., New Britain, CT 06051, (203) 225-8678.

29. The attorney, Peter H.D. McKee, has prepared a seven-page paper, The Washington State Model: Joint NOSSCR-State Efforts to Assist Public Assistance Claimants with Their Claims for SSI, for presentation at the 1992 NOSSCR Annual Conference. For copies, contact Peter H.D. McKee at (206) 623-0900.

30. SSI ADVOCACY PROJECT, supra note 18, at 13.

31. Id. at 36.

32. The state itself can withhold the amount of the interim assistance (the amount of GA the state paid the client during the application period) from the client's retroactive payment only if the client has earlier signed an agreement permitting the state to do so.

33. Fact Sheet, Disability Benefits Project, Budget Line Item 0321-1600 (1991) (prepared by the Massachusetts Legal Assistance Corp.). For information on the Massachusetts program, contact Ray Cebula, supra note 10.

34. NEW YORK DEPT OF SOCIAL SERVS., DEPARTMENT PRIORITY & RESOURCE NEED STATEMENT, PROGRAMS INITIATIVE DESCRIPTION 4 (1991). Information supplied by George Cushing, Ass't Counsel, Department of Social Services, 40 N. Pearl St., Albany, NY 12243, (518) 473-3272. For additional information about the New York DAP, see Michael B. Glomb & Jane Hardin, supra note 7, at 488-89, 492; or contact Louise Tarantino, supra note 11.

36. Statistics supplied by John Mooney, Program Manager, Office of Social Servs., Economic & Medical Field Servs., Washington State Dep't of Social & Health Servs. (Aug. 1992). For further information, contact Mr. Mooney at 1009 College St., SE, P.O. Box 45401, Lacey, WA 98604-5401, (206) 438-8413.

37. SSI ADVOCACY PROJECT, supra note 18, at 19-22.

38. Information supplied by Rena White, supra note 15.


40. SSI ADVOCACY PROJECT, supra note 18, at 20.

41. Information supplied by George Cushing, supra note 34.

42. 42 U.S.C. Sec. 1396(a)(v)(1); 42 C.F.R. Sec. 435.541. Applicants who the state determines likely to be found eligible for SSI disability are placed on Medicaid during the application process.

43. Chicago's SSI Advocacy Project reports an average increase of 147 percent. SSI ADVOCACY PROJECT, supra note 18, at 21.

44. Id. at 22.

45. PETER G. BATEMAN, ESTIMATING THE ECONOMIC IMPACT OF PUB. WELFARE PROGRAMS ON THE GEORGIA ECONOMY 3 (1987). The definition and examples used are drawn from this study. The study is available from the author.

46. CHARLES HAYWOOD, AN ECONOMIC IMPACT ANALYSIS OF INCREASED FEDERAL SPENDING FOR AID TO FAMILIES WITH DEPENDENT CHILDREN IN KENTUCKY 5 (not dated). Copies of this study are available from the author.

47. The high success rate of preappeals projects is partially attributable to their selective intake requirements.

48. Information supplied by Judith Rickard, SSI Coordinator, Region 4, Washington State Dep't of Social & Health Servs., (206) 298-4417.

49. Information supplied by Karl Bein, supra note 16.

50. SSI ADVOCACY PROJECT, supra note 18, at 6.


52. SSI ADVOCACY PROJECT, supra note 18, at 35.

53. Information supplied by John Mooney, supra note 36.
54. Information supplied by Daniel M. Taubman, supra note 25.

55. SSI ADVOCACY PROJECT, supra note 18, at 33-34.

56. Information supplied by Ray Cebula, supra note 10.

57. Information supplied by Judith Rickard, supra note 48.

58. See supra text accompanying note 52.

59. SSI ADVOCACY PROJECT, supra note 18, at 36.

60. In 1989, the following states had interim assistance agreements (at least in some counties): California, Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, West Virginia, and Wisconsin.


A more recent survey of GA programs will be available in the fall from National Conference of State Legislatures, 444 N. Capitol St., NW, Washington, DC 20001, (202) 624-8693.

61. This insight is supplied by Ray Cebula, supra note 10. No specific passage of the law states this point, but the Third Circuit has supported this interpretation. See Pennsylvania v. United States, 752 F.2d 795 (3d Cir. 1984).

62. The issue is quite complicated, but the situation may be improving in some states. See Michael Parks, The Relationship Between Medicaid and Social Security Administration Disability Determinations: An Introduction for Advocates, 25 CLEARINGHOUSE REV. 1566, 1567-69 (Apr. 1992).


64. Information furnished by Ray Cebula, supra at note 10.

65. The legislation did not pass. Advocates expect similar legislation with a similar exemption in the next legislative session. Information provided by Judith Rickard, supra note 48.
66. MICHIGAN DEPT OF SOCIAL SERVS., OFFICE OF SPECIAL PROGRAMS & SERVS., INFORMATIONAL PACKET ON THE SSI AUTHORIZED REPRESENTATIVE PAYMENT PROGRAM (not dated) (available from the author).


68. The pilot project will be located in Bernalillo County, where Albuquerque is located. The Legal Aid Society of Albuquerque has responded to the RFP, but has not yet heard from the state. For further information, contact Karen Meyers, Executive Director, Legal Aid Society of Albuquerque, 121 Tijeras, NE, Albuquerque, NM 87102, (505) 243-7871.

69. Two good resources for technical assistance on planning projections and presenting the figures in a well-organized, succinct, and attractive manner are Elvera Anselmo, Director, Arizona Statewide Legal Services Project, 402 W. Roosevelt, Suite F, P.O. Box 311, Phoenix, AZ 85001-0311, (602) 252-3432, and Ray Cebula, supra note 10.

70. See supra the discussion of cost avoidance at text accompanying note 41.

71. See parts I. & II., supra, for the discussion of other methods and formulas by which states pay legal services programs and attorneys.

72. See supra text accompanying note 41.

73. See supra text accompanying note 44.

74. Id.

75. See supra note 62.

76. HCFA Form 2082 provides much useful information. Every state is required to fill out the form, and the state office administering the state's Medicaid program should make it available. If a copy is unavailable at the state level, it can be obtained from Tony Parker, Statistician, Division of Medicaid Statistics, Health Care Financing Administration, (410) 597-3792.