



# DISABILITY RIGHTS NEW YORK

FALL 2015 NEWSLETTER

## DRNY Promotes Voting for People with Disabilities

The 2015 General Election is fast approaching, and with it an opportunity for people with disabilities to make their voices heard. Across New York State, voters will be choosing their local representatives who make decisions on laws and policies that affect our everyday lives. For people with disabilities, the decisions their elected officials make can mean the difference between access to services, jobs, and other matters of survival and independence. Local election outcomes, in particular, can often be decided by a small number of votes – Your vote really does matter!



Getting out to the polls also assists DRNY and other voting advocates in monitoring areas of voting access that still need improvement. For years, the voting rights of people with disabilities have been systemically denied and many barriers continue to exist. Casting your vote on Election Day is not only a way to express your opinion and guide what happens in your community, it also continues the fight and demand for full and equal access to the voting process. So, let's get out the vote!

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## DRNY Launches Campaign to Address Snow Barriers

DRNY is actively addressing the barriers created by unremoved snow and ice in the aftermath of last winter's heavy snowfall. Our goal is to greatly improve the accessibility of sidewalks, curb cuts and crosswalks, so everyone can enjoy the benefits of community living that many of us take for granted. For some, a snowy sidewalk is not just an inconvenience, it's an insurmountable wall.

DRNY is working with several upstate independent living centers (ILCs) and individuals with disabilities on a multi-pronged approach to eradicating this problem. We are educating elected officials on their legal obligation to have an effective plan to keep sidewalks, curb cuts and crosswalks clear and passable. We will train staff at ILCs to look out and report unpassable sidewalks to the appropriate city officials, so they can take action to get property owners to meet their obligation to clear sidewalks. We will also facilitate partnerships between municipalities and businesses to keep commercial districts clear of snow.



DRNY is using public service announcements and a social media campaign to educate property owners of their responsibility to remove snow and the real impact on their neighbors by failing to do so. DRNY cannot do this alone and seeks the help of all New Yorkers to help remove barriers in our communities. Tell us what is being done about snow and ice barriers where you live at #NewYorkersCare or by contacting DRNY.

Since 2003, DRNY has been advocating for the right of approximately 4,000 adult home residents with mental illness to live and receive services in the most integrated community setting - supported housing. DRNY settled a class action on their behalf and is monitoring the implementation of the settlement. Judge Nicholas Garaufis, U.S. District Court Judge for the Eastern District of New York presided over the case, and his words describe the significance of this long struggle:



I would like to mention just one civil case, *Disability Advocates Inc. (DAI) v. Patterson*, refiled in 2013 as *O’Toole v. Cuomo*. ... The DAI lawsuit was an outgrowth of reporter Clifford Levy’s Pulitzer Prize winning series of New York Times articles published in 2003 about abuses in the system of private adult homes for the mentally ill regulated and financed by the State of New York. These adult homes house people with mental illness on a long-term basis. In New York City, about 4,000 adults with mental illness currently reside in such accommodations situated in such remote communities as the Rockaways, Coney Island and Staten Island. Many of these facilities opened upon the closing of state mental hospitals in the aftermath of the Willowbrook consent decree...Under the terms of the settlement, over a five year period the 4,000 class members will be offered the chance to move from the adult homes where the residents live two to a dormitory room and with little privacy and mobility, into supported housing – consisting of scatter-site apartments. The state will provide rental assistance and a minimum of housing-related support services by not-for-profit housing providers for individuals with serious mental illness. Although the transition will take time, everyone involved has pledged to make the settlement work.

After a settlement was reached, Judge Garaufis held a day-long “fairness hearing” to allow adult home residents to express their views on the outcome. One resident (Speaker 117) told the court:

I’d like to speak about what I miss the most about living on my own. I miss my recliner where I used to sit in Sunnyside, Queens. I would sit, watch my TV, eat Chinese food takeout and sit with my cats. I miss cooking. I miss skirt steak in my toaster oven. I miss hot chocolate in my microwave. I miss the spoonful of ice cream every now and then from my big fridge that I bought for myself. I miss so many things. I miss cut flowers that I could afford to buy every now and then. There’s so many things that I miss. And it’s something that I want again. With support, I think I can do that. I had a rent-stabilized apartment, and I lost it in the fire. And that led me to being where I am. And I feel stuck. And with support, I think I could go back to being where I was. And I’d like the opportunity to do that. Thank you.

“When we think about everything we take for granted, these comments pull us back. We begin to understand the importance of what judges are empowered to do here in the trial courts to benefit those who can’t protect themselves. It’s not just about helping society, it’s about helping people, often one person at a time.” said Judge Garaufis.

As was made clear by Speaker 117, doing justice is not enough. Our work is often much more nuanced. I believe that it is relatively simple to administer and follow the law. Our mission is not formulaic or technical. A computer cannot be programmed to exercise the judgments we must consider each day. The great challenge is to do what’s right. Put plainly, it’s easy to do justice, much more difficult to do right.

*Cliff Zucker*

General Counsel/Legal Director

# Know Your Rights

## Ready, Set, Vote!

**G**eneral Election Day – Tuesday, November 3<sup>rd</sup> – is just around the corner. Voters across the state will be selecting their representatives for municipal and county governments and school boards, as well as judges in various judicial districts. Polls will be open from 6:00 a.m. until 9:00 p.m. Before casting your vote, make sure you know your voting rights!

### You can register to vote if you:

- Are a U.S. Citizen
- Are 18 years old or older
- Have lived at your current address for at least 30 days
- Are not in prison or on parole for a felony conviction
- Are not claiming the right to vote in any other place

### You have the Right:

- To vote
- To use your local polling place
- To cast a secret ballot
- To have someone help you mark and cast your ballot
- To vote using an absentee ballot
- To vote and use an affidavit ballot if your name is not found in the poll book
- To see a sample ballot from your County Board of Elections

If you have questions about your voting rights or believe your voting rights have been violated, contact DRNY. For Election Day voting assistance, you can contact Election Protection's voter hotline at:

English: 866-OUR-VOTE

Spanish: 888-Ve-y-Vota

Bengali/Bangla, Cantonese, Hindi/Urdu, Korean,

Mandarin, Tagalog and Vietnamese: 888-API-VOTE

## Obtaining Durable Medical Equipment

**M**edicare and Medicaid can pay for durable medical equipment (DME) when a treating practitioner, such as a doctor or therapist, determines the DME is medically necessary and no other less costly option is available. To receive approval for the DME, the treating practitioner must submit a request for prior approval to an approved Medicaid or Medicare vendor. The vendor will then submit the request for final approval. If the request is denied, the individual can appeal the determination.

To receive prior approval from either Medicare or Medicaid, the individual must clearly demonstrate that the DME is medically necessary. The treating practitioner should provide a letter of medical justification that explains, (1) the individual's condition, (2) any changes in the condition; and (3) why the DMR is necessary to treat the individual's condition. In many cases, an evaluation from a physical or occupational therapist is necessary to demonstrate medical necessity.

A treating practitioner must also explain why less-costly alternative treatments do not meet the individual's unique medical needs. The treating practitioner must consider alternative treatment options and explain why other cheaper alternatives are unsuitable.

In some cases, testing alternatives through trials will help establish that a less costly alternative is unavailable. It is always recommended that less costly alternative devices, such as a more basic DME model, are tried before seeking prior approval for a more costly one. The treating practitioner can then justify why the more costly DME is necessary.

## DRNY Obtains Standing Device for Retired Teacher

**D**RNY filed a lawsuit on behalf of a retired vocational teacher with Amyotrophic Lateral Sclerosis (ALS, also known as Lou Gehrig’s Disease) who was denied necessary medical equipment from the New York State Department of Civil Service (DCS).

ALS is a progressive neurodegenerative disease and our client’s condition had progressed to the point that he required the use of a wheelchair. His physicians recommended the use of a standing device called the “EasyStand Evolv” to mitigate the symptoms of his disability. Unfortunately, the DCS refused to provide him with a standing device.

On August 10, 2015, DRNY successfully settled the lawsuit. The DCS will pay in full for the cost of the EasyStand Evolv. The DCS will also pay for supplies, accessories, replacements, adjustments, and service, as well as the cost of replacing the device in the event that it no longer works and cannot be reasonably repaired.

## Aspirations of Becoming a Welder Comes True for DRNY Client

**W**ith DRNY’s advocacy, our client has realized his dream of becoming a welder. DRNY obtained the necessary funding for the client from the Adult Career and Continuing Education Services (ACCES-VR), the State’s Vocational Rehabilitation agency which assists individuals with disabilities to become employed. Initially, ACCES-VR refused to assist our client in becoming a welder and insisted that he instead select another path to employment.

Our client refused to give up on his dream and independently sought out welding-related training and activities in his community. Despite his strong desire and efforts, he could not afford the formal training required to get a job as a welder. DRNY represented the client on his appeal and obtained a reversal of ACCES-VR’s position. Our client is now receiving formal training to become a welder.

## Assistance to Clients With a Smile

**D**RNY’s Intake Department handles thousands of calls a year. These calls range from simple referrals to emergent situations requiring immediate assistance. Our Intake staff gathers the necessary information needed to initially assess the legal matters impacting our clients.

Additionally, under the direct supervision of our attorneys, Intake staff will provide callers with important referrals, publications, information, and other resources that will help callers better understand their rights and how to resolve their concerns.



# DRNY Monitors Day Programs and Sheltered Workshops to Ensure Meaningful Employment for People with Disabilities

Individuals with mental illness, like everyone else, have the right to meaningful employment consistent with their experience and skills. For many with mental illness, however, obtaining and keeping such employment alongside their non-disabled peers is difficult. DRNY is monitoring day programs in New York City that are designed to assist with skills training and placement in competitive, integrated employment. DRNY is collaborating with the Bazelon Center for Mental Health Law, which is based in Washington, D.C.

DRNY and Bazelon staff are conducting monitoring visits to nine different programs in four boroughs that offer supported employment and other job-related services for people with mental illness. The objective is to speak to those receiving services and learn whether the services they receive are meeting their needs. We will then evaluate whether advocacy and other actions are necessary to ensure that these programs provide high-quality employment services that serve to integrate individuals with mental illness into the workplace.

These monitoring visits and related advocacy efforts reflect DRNY's commitment to ensuring that individuals with mental illness get the resources and supports needed to enter and successfully compete in the workforce.

In October of 2014, DRNY began monitoring New York's implementation of its *Employment First* policies. To date, DRNY has visited 35 of New York's 84 certified service providers who offer, or have recently offered, pre-vocational programming to individuals with disabilities. DRNY plans to visit the remaining sites in the coming months.

Under the 14(c) Exemption to the Fair Labor Standards Act, employers can pay people with disabilities a less than the minimum or prevailing wage. About 95% of 14(c) workers are individuals with disabilities employed at "sheltered workshops," or work centers, where they typically engage in repetitive packaging or assembly work with little interaction with people without disabilities.

The 14(c) Exemption partially explains the significant disparities that exist between the employment outcomes of people with and without disabilities. In 2014, the unemployment rate for people with disabilities was 12.5%, as compared to 5.9% for people without disabilities. Worse yet, eight out of 10 people with disabilities were not in the labor force at all, in contrast to only three out of 10 of their non-disabled peers. Moreover, the 2014 poverty rates for individuals with and without disabilities were 31% and 18%, respectively.

In an effort to reverse these trends, New York adopted *Employment First* policies to provide a framework for people with disabilities to have opportunities to work in integrated settings at or above the minimum wage. Reflecting the national trend, Governor Andrew Cuomo convened an *Employment First* Commission, which was charged with creating ways to make "competitive, integrated employment the first option when considering supports and services for people with disabilities." In July 2013, the Office for People with Developmental Disabilities has stopped accepting new admissions to sheltered workshops and has a 10-year plan to transition individuals with disabilities from segregated work settings to integrated employment in the community.

During DRNY's monitoring visits, we have gathered data, listened to the issues, concerns and ideas of program administrators and participants alike, and educated individuals with disabilities about their rights. DRNY intends to publish a report of our observations and make recommendations as to how New York can advance its *Employment First* goals.



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