



Response to the Ways and Means
Social Security Subcommittee and Human Resources Subcommittee
Hearing on Social Security Work Incentives
September 23, 2011

The Protection and Advocacy and Client Assistance programs make up the nation's premier disability rights network. Starting in the mid-1970s and proceeding up through today, the United States Congress has had the foresight to recognize that if children and adults with disabilities are going to have their basic civil rights recognized and ultimately upheld, they have to be provided with some assistance. When an adult with a disability has access to effective job training and supports designed to ensure they have the opportunity to find a job with a decent wage and appropriate benefits designed to help them live a stable and secure life as a tax-paying part of the community – it is good public policy. The work of the P&A network embodies that public policy.

P&A/CAP advocates do all they can to ensure that this individual has access to needed services and support to ensure his success in the community workforce so that this individual will not have to live a life of dependency and poverty. But all too often, discrimination and negative stereotypes disrupt the employment of people with disabilities who are either working or want to return to work. This is supported by P&A statistics as well as by the federal agency responsible for enforcing the employment provisions of the ADA. In FY 2010 the Protection and Advocacy Agencies addressed 2,474 allegations of employment discrimination across four of its federal programs. The Protection and Advocacy for Social Security Beneficiaries (PABSS), who assists ONLY individuals who are eligible for Social Security benefits addressed discrimination issues for three hundred and twenty nine (329) individuals receiving benefits and trying to return to work. Discrimination is alive and well in employment. According the EEOC website, they received 25,742 charges of discrimination based on disability in FY 2011, the highest number ever reported to them.

The following examples of discrimination were pulled from the Program performance Reports of Protection and Advocacy agencies. These provide a sampling of the kinds of issues/discrimination confronted by people with disabilities in the workforce.

JM works at Petsmart and was receiving training to be certified as a dog trainer. Due to her neurological problems, she missed trainings and they refused to certify her. When JM brought up her disability, they responded that it didn't matter.

ES is a 27-year-old male diagnosed with Serious Mental Illness. ES has worked for Apollo Group for four years. Since 2006, he has been accommodated through the week

by making up any hours he missed due to his medication and disability. There were no problems for four years, but now he is written up for attendance and tardiness issues. He reminded HR of the accommodations, and they denied knowledge of his disability. When he filed a charge with the EEOC in June he was terminated.

A was employed by The University of Phoenix for four years until he was unlawfully terminated on June 30, 2010. At that time he disclosed his disability to his supervisor and an HR representative in order to request a reasonable accommodation. His accommodations request was denied and was instead offered leave. He was then terminated.

The P&A assisted a 44-year-old American Indian woman who receives SSI and was employed by Family Dollar. She was offered an assistant management position until she disclosed her disability to her supervisor. Following the disclosure, the client was denied the promotion to the assistant manager position was subject to retaliation for filing a complaint.

A 21 year old male with Aspergers and Tourettes was hired by the City as a Library Page. He was successfully employed with the help of a Job Coach when a Supervisor suggested he should work as a janitor instead. The Client was happy with his work and wanted to remain in the same position.

Client contacted P&A because his employer had been requiring employees with disabilities to use a segregated bathroom for more than five (5) months. When the client voiced objections, he was "written up".

The P&A represented a blind aircraft maintenance technician who had worked at the company for several years without incident. When a news story included the fact that this blind employee worked there, the company began treating the technician differently. He was denied reasonable accommodations without the employer engaging in the interactive process and adverse employment actions were taken against him. He was also harassed on the job. Eventually he was terminated.

Illinois P&A successfully represented a woman with major depression who was terminated by her employer while on leave for her disability. As a reasonable accommodation, she had asked for additional time beyond the leave she received under the Family and Medical Leave Act. The employer refused to provide the leave, and also refused to provide accommodations that would have allowed our client to return to work.

A maintenance worker with a local village had his employment terminated after he had a stroke. The employer cited safety concerns as the reason for the termination. No consideration was given to whether or not the individual could perform the essential functions of the job.

The P&A learned that the employment application of a downstate Youth Club had numerous questions that violated the Americans with Disabilities Act. Specifically, the

application asked for dates and specifics regarding hospitalizations and asked generally whether an applicant had any physical or mental impairments, relevant provisions that violate the ADA.

A deaf postal employee sought a promotion to a new department position, but was required to take a test with deficient interpreters and an exam that was not fully accessible. The client failed the test and sought to retake the test without waiting the requisite time period.

A woman with work-related knee injuries and other impairments was employed as a Licensed Practical Nurse alleged that her employer unlawfully terminated her employment based on her disability. Her employer made improper medical inquiries, harassed her based on her disability, failed to provide reasonable accommodations and failed to engage in an interactive process. Furthermore, her employer retaliated against her after she requested reasonable accommodations and filed a charge of discrimination with the Equal Employment Opportunity Commission. Ultimately a confidential settlement resolved the matter.

A 26-year old man with a hearing impairment was denied the use of his hearing aid to take the hearing test required to enter the State Police Academy. The State Police refused to hire him even though he had passed numerous other tests, and despite the ISP policy permitting ISP officers to use hearing aids after they are employed. The client came to the P&A to challenge this policy on the basis that it violates the ADA and the Rehabilitation Act.

A woman who was deaf wanted to be employed by the U.S. Census Bureau. When the woman applied to be a Census worker and indicated a need for an ASL interpreter for the test, she was told to wait while the interpreter request was approved. After not receiving any information, the client called the Census Bureau and was told all the positions had been filled.

PB is a young woman whose primary diagnosis is major depressive disorder, was also diagnosed with narcolepsy. She had worked for years as a laboratory technician at a large hospital. After learning that she had narcolepsy, she requested a schedule adjustment from the hospital as a reasonable accommodation. The requested accommodation would have helped her perform her job better by allowing her to follow a consistent sleep pattern and control the narcolepsy symptoms. The hospital denied the requested accommodation, and shortly afterward terminated PB for frequent late arrivals and absences.

A large chain of department raised production in all its Distribution Centers by 30 percent. It then created an incentive program called the GROW Program. Employees who exceeded the new production levels by 5, 10 or 20 percent in a rolling 4 week period received an extra 27 cents to 2 dollars per hour pay. The requirement to participate in the GROW program was that the employee had to be able to rotate to all areas of the Distribution Center. Mr. S and Mr. W weren't able to do that as both are

persons with a disability and both have lifting restrictions as an accommodation. They have worked there for 11 and 29 years respectively. Human Resources notified both employees that they weren't eligible for the incentive program because of their lifting restrictions, yet they still required both men to meet the new increased production levels. When they exceeded the new levels, they didn't get paid for it. The program was discriminatory and violated the ADA as well as the KY Civil Rights Act. After negotiation, the distribution center changed its policy to include all people in the GROW program, and paid back wages to the clients for the times they'd exceeded production.

A legally blind individual with several years of experience as a dispatcher, applied for a dispatcher position at a local police station. He contacted P&A when the hiring process stalled because he did not have a valid driver's license. He is qualified to do the essential work and as the dispatcher position does not require driving since it is an office position. The human resources person affirmed that she could not move forward on his application due to the driver license requirement.

Mr. H, a deaf individual had worked at a national hamburger chain for over 15 years as a porter. He was not being provided interpreters for staff meetings, trainings, and other in-person meetings with his supervisor. While Mr. H. stated he does the best he can with note writing he is not fluent in written English and expressed that to his employer. Mr. H. alleges his employer told him he is "faking" and he can read English. The requested interpreter continued to be denied.

A 31 year old man with Cerebral Palsy who worked at a fast food restaurant felt that he was not being given additional responsibilities because of his disability. During an arranged meeting, the client was able to show the managers that he could successfully work in the grill area despite his physical limitations. The client was able to expand his job duties, and hopes to someday enter the management training program at the restaurant after gaining a little more experience.

The P&A negotiated a reasonable accommodation with the employer of a 50-year old man with vision disabilities and diabetes. The employer had prohibited the client from keeping personal items such as his cane and diabetes medications at his workstation, citing workplace safety rules.

P&A successfully negotiated a settlement for a woman who was not hired because of her disabilities. The client, a 49-year-old woman with fibromyalgia and degenerative disk disease, applied for a job as a cashier at a grocery store. When she went in for an interview, the store manager asked her about her disability stating he hadn't hired anyone with a disability for years because they had problems once. The woman was not hired, but two individuals with less experience than her were hired.

A 23-year-old woman with mental illness contacted the P&A after she was terminated from her job with a large, national retail store. The client had just started working as a cashier when she had to be admitted to a crisis unit and thereafter a psychiatric hospital. While hospitalized, the client apprised her employer of her medical status and

requested reasonable leave to obtain mental health treatment. When the client was cleared to return to work and attempted to do so, store managers refused to look at her medical documentation and told her that she was terminated because she was "not reliable" and she needs to be there "100% of the time."

After 20 years at a phone company, and 6 years as an assistant in the dispatcher department, an individual with anxiety, depression, and a learning disability got involuntarily reassigned to a new job as a dispatcher, a job the client was unable to perform because of his disabilities. Due to the client's seniority at the company, he should have been allowed to change to a different position. Instead the company forced him to go out on disability leave and failed to work with him to get him back to work.

"Rosa" worked for a health insurance company as an appeal and grievance coordinator. She took a medical leave of absence because of depression, and contacted P&A when told her by her employer that they would not hold her position for more than 30 days. The P&A provided information and assistance on leave as an accommodation and discussed other alternatives including working part-time and requesting a transfer to vacant position.

An individual with a visual impairment contacted P&A because the City of Detroit did not want to purchase software for her computer. The client eventually left the position because the city was delaying the purchase and she was unable to do her job. The P&A helped the client to file a complaint with the Michigan Department of Civil Rights. The client received a settlement based on the city not providing accommodations.

P&A assisted a 52-year-old female special education instructor diagnosed and treated for cancer. She received SSA benefits and was attempting to regain employment at her school. The client felt the school district was reluctant to rehire her based on her disability. After meeting with the P&A and school superintendent, the client was hired at her same salary. But the school refused to allow time off for weekly chemotherapy treatments.

Native American P&A continues to represent a Navajo man with a TBI, who receives SSI benefits in a complaint against a tribal program's discrimination based on his disability. When he applied for employment, the manager involved with the hiring process told him that he would only be hired if he submitted to a psychological evaluation.

A 64-year-old with visual impairments contacted the P&A when he was terminated from employment because his employer would not provide him with accessible computer software. The state Division on Civil Rights conducted an investigation and found probable cause of discrimination in his termination. The matter was referred to the Office of Administrative Law for a formal hearing and subsequently, the parties negotiated a settlement.

A 24-year-old resident has Asperger's Syndrome and a communication disability. JC

contacted P&A because he was being harassed and treated differently at work by the managers, due to his disability. He also reported that other employees at his place of employment frequently harassed him during his work.

P&A assisted a former special education student who was working because his immediate supervisor would call him humiliating names. The behavior continued unabated and eventually the young man quit and applied for Unemployment Benefits. The employer contested, claiming it was a voluntary quit but the hearing officer found that the employer had engaged in abusive behavior, and that the young man quit was for compelling reasons with good cause. The hearing officer ordered payment of benefits.

The P&A filed an employment discrimination lawsuit on behalf of a person with profound hearing loss. Ms. S received her double associate degrees in early childhood education and early childhood/special needs. When she applied for a teacher's aide position at a child development center operated by the community college from which she received her degrees and completed her practical skills training, the director of the child development center informed her that she could not be hired because of her disability.

A 48-year-old female with bipolar disorder was in jeopardy of losing her employment. She had been an Assistant Manager at a rural location of a national pharmacy when a psychiatric crisis at work resulted in hospitalization. When she attempted to return to work, the employer required a written statement from her psychiatrist stating that she was cured or that an episode would not happen again at any point in the future. Although her medication changes had resulted in her being better able to control her symptoms, there was no way her doctor could supply such a written statement. Her employer stated that the company's legal department was insisting on this statement or her employment would be terminated.

The P&A represented a man who had been terminated from his job while he was in the process of being treated for depression. When negotiations with the client's employer failed to bring about a reinstatement of his job, the P&A filed a complaint with the State's Equal Rights Division on his behalf resulting in a favorable financial settlement to the client.

If you have any questions on these, or other work done by the Protection and Advocacy Agency please feel free to contact me directly.

Respectfully,

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