



Cornell University
School of Industrial and Labor Relations
Employment and Disability Institute

Work Incentives Support Center

Policy & Practice Brief #10

Fifteen Years Along the Bumpy Road to Self Support

The Case of Larry Welman and Benefits Planning
Along the Way

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

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Introduction

The Role of the Benefits Specialist and PABSS Advocate

The Social Security Administration (SSA) funds Benefits Planning, Assistance and Outreach (BPA&O) and Protection and Advocacy for Beneficiaries of Social Security (PABSS) projects, nationwide. At least one BPA&O exists in every state, with funding ranging from \$50,000 to \$300,000 per year, depending on the number of Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) beneficiaries within the project's geographic region. In the case of some densely populated urban areas, like New York City or Los Angeles, one \$300,000 project may cover a portion of the large city. By contrast, in some of the sparsely populated, largely rural states, like North Dakota, one \$50,000 project will serve the entire state.¹ Every state will have a PABSS based typically in the state agency charged with providing typical protection and advocacy services.

Despite differences in geography, culture, and language faced by the various BPA&O projects throughout the country, the benefits issues confronted by beneficiaries will be very similar in every locale. In fact, the SSDI and Medicare rules governing how work affects benefits will be identical and the SSI rules will be nearly identical in the 50 states, the District of Columbia, and the territories served by BPA&O projects.² The key differences will be: some states will supplement the SSI federal benefit rate (FBR), while in many states the FBR is the SSI rate; in 39 states, the District of Columbia, and the Northern Mariana Islands SSI beneficiaries automatically qualify for Medicaid, while in the remaining 11 states, known as section 209(b) states, Medicaid eligibility is determined separately;³ and the annual income test for section 1619(b) Medicaid will vary from state to state.⁴

This article will, by using a case scenario, walk through the issues a young man with a mental disability might face as he struggles with his disability and the various benefits issues that might face him on the road to self support. We will trace his ups and downs, over a period of nearly 15 years, as his condition deteriorates and he winds up qualifying for SSI disability benefits. In stages, the article will follow him as he goes through the early years of life on benefits. At each stage, we will analyze what can be expected to happen with his benefits and how a benefits specialist or advocate might assist him so he can make informed choices about which path to take. In a couple of instances, we also point out how the PABSS program or another Protection and Advocacy program might be able to assist this individual with some of the problems he faces.

¹ For a list of all BPA&Os and PABSS, nationwide, see SSA's website at www.socialsecurity.gov/work/ServiceProviders/providers.html.

² For a comprehensive discussion of the SSI and SSDI work incentives, see *Work Incentives for Persons with Disabilities Under the Social Security and SSI Programs* (Aug. 2002), available on the Neighborhood Legal Services, Inc. website at www.nls.org/work_incentives.htm.

³ 42 U.S.C. §§ 1396a(f). States which exercise the 209(b) option include: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia. See SSA's Program Operations Manual Systems (POMS) SI 01715.020, available on SSA's website at www.ssa.gov/representation (follow the links for POMS, then table of contents, then for the category "SI"). Under state-specific Medicaid eligibility criteria, income and asset limits will vary from state to state.

⁴ For a listing of the state-by-state financial eligibility thresholds for section 1619(b) Medicaid, see POMS SI 02302.200.

The Case of Larry Wellman: 1993 - 2008

I. PART ONE: The Four Years Leading to Larry's Approval for SSI

A. 1993 - 1995: Starting College; Diagnosis of a Disability

Larry Wellman did very well in high school and graduated at age 18. He began attending college at the State University of New York at Fredonia in the fall of 1993, planning a dual major in elementary education and music education.

Larry also did very well during his first three semesters at college, attaining a 3.4 grade point average. During his fourth semester (i.e., the second semester of his second year), Larry began to experience symptoms related to what was later diagnosed as a bipolar disability (sometimes referred to as a manic depressive condition). Because he had difficulty staying on task, Larry took two incompletes, and got two Cs and a D that semester.

Larry and his parents wrote off this bad experience to the pressures of a dual major and the stress involved with the break up with his girlfriend. He took it fairly easy during the summer, working only part-time and started school again in the fall of 1995. Despite a less demanding schedule, Larry's mental condition worsened and he took a leave of absence from school rather than bring down his grade point average any further. A family friend convinced Larry to seek mental health treatment and he was diagnosed with bipolar disorder in November 1995 at the age of 20.

B 1996: Larry's Attempts at Part-Time Work

In November 1995, Larry began a program of mental health counseling and also began taking medication. Within a fairly short time his condition stabilized. He was doing well enough in early 1996 that he planned to start work to finish his incomplete courses from the previous year. That summer, Larry started working part-time at a convenience store, working 18 hours per week. Despite his monthly counseling session and medication, Larry still found it difficult to deal with the stress of this job and he quit after two months.

Given Larry's reaction to the job, his counselor and psychiatrist recommended that he take one more semester off before returning to college. Larry followed this advice and also decided to take another part-time job in what he thought would be a less stressful setting, a day care center. This job proved to be Larry's undoing and he quit after six weeks, unable to deal with what for him was the most stressful activity of his life. When his condition deteriorated even further after leaving the job, Larry's psychiatrist arranged to have Larry checked into a hospital for a brief period of psychiatric treatment which lasted for four weeks.

C 1997: Application and Approval for SSI

Following these episodes, Larry's therapist recommended an indefinite leave from college and encouraged Larry to apply for SSI. Based on the deterioration of his condition, the psychiatrist believed that Larry would be incapable of any more than low-stress, part-time work for the foreseeable future.

Larry applied for SSI and was approved effective May 1997, just one month before his 22nd birthday. He began receiving benefits that year at the then current federal benefit rate. In late 1997, Larry began to improve a bit and began to look for part-time employment. He was offered a part-time job that would pay him \$285 gross per month.

NOTE: For purposes of this article, we will assume that Larry lives in a state that does not supplement the SSI federal benefit rate and that SSI recipients in his state automatically qualify for Medicaid. To limit confusion, all examples will use the 2006 federal benefit rate of \$603 per month, even though the examples span a period of many years.

Questions for the benefits specialist. Before accepting the part-time job and beginning to earn money (\$285 a month), Larry wants to find out how this might affect his cash benefits. He is also concerned about whether he stands to lose his Medicaid, as Medicaid pays hundreds of dollars each month for his counseling and prescription medication.⁵ He goes to Mary Smith, a benefits specialist,⁶ and presents these questions, explaining that he heard of a woman who went to work and lost her benefits and her Medicaid. Larry also wants to know whether he is allowed to have money in the bank and whether the SSI program allows him to have a car if he can ever save enough money to buy one.

Benefits specialist analysis. The very first thing the benefits specialist explains is that everyone’s case is different. Ms. Smith points out that the woman Larry had heard of may have been a beneficiary of SSDI benefits, in which case gross wages that exceed a designated amount will, after a nine month trial work period, result in a loss of benefits. Ms. Smith urges Larry to call if he has questions and not make decisions based on what might have happened to someone else.

Ms. Smith then explains SSI’s formula for counting monthly wages in determining the SSI check amount. Since Larry’s only income, other than SSI, is wages the program will exclude the first \$20 of his gross wages as a general income exclusion, then will exclude the next \$65 and 50 percent of the remaining wages as earned income exclusions.⁷ Ms. Smith writes this out on a fill-in-the-blank worksheet that she completes and gives to Larry:

Step 1	Unearned income		\$ 0	
Step 2	Earned income		\$285	
	General income exclusion (not otherwise used)	-	\$ 20	
	Earned income exclusion	-	\$ 65	
			\$200	
	Additional 50 % exclusion	-	\$100	
	Counted		\$100	
Step 3	Counted unearned income		\$ 0	
	Counted earned income	+	\$100	
	Total counted income		\$100	
Step 4	Base SSI rate		\$603	(2006 FBR, no state supplement)
	Counted income	-	\$100	
	SSI benefit		\$503	

⁵ Since prescription drugs are one of the optional benefits authorized by federal Medicaid law, not every state Medicaid program is required to cover that benefit. See, federal Medicaid regulations at 42 C.F.R. §§ 440.1-440.185 for a listing of many of the federally required and optional categories of coverage.

⁶ SSA did not begin to fund BPA&Os until the fall of 2000. We will assume that prior to that time Larry was able to locate one of the handful of advocacy agencies around the country that had, prior to 2000, dedicated staff to deal with issues involving benefits and work.

⁷ See 20 C.F.R. § 416.1112 for a full listing of SSI’s exclusions from earned income.

Ms. Smith shows Larry the math and explains that for every additional \$2 in gross monthly earnings, Larry's SSI check will go down by \$1. She also points out that Medicaid will continue to be automatic, even as Larry's SSI payment goes down with increased wages. She then explains to Larry that at some point, if wages are high enough, countable income will equal or exceed the SSI rate (i.e., when gross wages are \$1291 or higher in a state that pays the \$603 rate) and Larry will no longer be eligible for an SSI check. Ms. Smith explains that even if Larry loses SSI cash benefits due to wages, his Medicaid eligibility is likely to continue under the 1619(b) program.⁸ Finally, she explains some of the basic resource rules, which govern the SSI program, including the \$2,000 limit on non-exempt assets such as bank accounts. Larry is told that in all cases he is allowed a car of any value, so long as the car is used by him (or another household member) for transportation.⁹

Following this meeting with Larry, Ms. Smith confirms all these points in a written letter or benefits advisement report. Attached to the report is a copy of the completed budget worksheet and fact sheets, prepared by her agency, that explain: the 1619(b) program and the state's threshold for eligibility; and the SSI income and resource rules. The letter encourages Larry to call Ms. Smith if he has questions or as his circumstances change. The letter also explains that Larry is required to report his wages to SSA when he starts working. Ms. Smith decides to keep an open case file to retain case notes and correspondence, and to record any future communication with Larry.

II. PART TWO: LARRY MOVES INTO HIS OWN APARTMENT

A. 2002: Moving in to His Own Apartment

During the period between 1997 and 2002, Larry's condition continued to be severe. He did not return to school and his periodic attempts at part-time work always seemed to result in his leaving the job after a month or two. He went through a continuing disability review in the summer of 2002 and was found to have a continuing disability (i.e., for SSI purposes, his condition had not medically improved), allowing his SSI benefits to continue.

In late 2002, Larry moved into his own one-bedroom apartment. This very small apartment, which rented for \$435 per month (including heat and electricity), was a real challenge to pay for on the rate of SSI Larry was getting (again, we'll assume the 2006 FBR of \$603 per month throughout this case scenario).

Questions for the benefits specialist. Larry has kept contact with Ms. Smith over the five years since he first went on SSI. In addition to the advice about the impact of work on benefits, which had to be reinforced each time Larry started a new job, Ms. Smith helped Larry to obtain a higher SSI rate when he was living with his parents. Initially, Larry received \$402 per month in SSI benefits as his parents were not comfortable charging Larry anything to live with them.¹⁰ Then, after Ms. Smith talked to both Larry and his parents on this issue, Larry started paying his "pro rata share" of household expenses (about \$350 per month) and his SSI check increased to the full \$603 rate per month (i.e., the 2006 FBR).

⁸ See POMS SI 02302.010 C for an explanation of how section 1619(b) works.

⁹ See 20 C.F.R. § 416.1210 for a listing of all the excursions under SSI's resource rules. Although these events took place in 1997, we are using the current SSI rules for exclusion of vehicles which were effective April 2005.

¹⁰ Larry's SSI benefits were reduced by one-third of the federal benefit rate because he was receiving in-kind support and maintenance (i.e., both food and shelter) from his parents. See 20 C.F.R. § 416.1131; POMS SI 00835.900 S.

Since it will be more expensive for Larry to live on his own, he asks Ms. Smith if the SSI program can pay him a higher rate when he moves to his own apartment. He also wonders what would happen if he got a larger apartment and had a roommate. His girlfriend, who also has a mental illness and receives SSI benefits, has talked to Larry about sharing an apartment with him.

Benefits specialist analysis. Ms. Smith explains to Larry that he is already getting the maximum SSI rate for his state and that his SSI rate will not go up if he moves into his own apartment. The reader should note that this analysis would be different in a state like New York which supplements SSI's FBR by \$23 for persons who live with others and by \$87 for persons who live alone. In New York, the benefits specialist would advise Larry that his SSI check will go up by \$64 when he moves into his own apartment.

Regarding the potential roommate, Ms. Smith explains that this should not affect Larry's SSI payment rate so long as the two are splitting expenses and the roommate is not supporting Larry in any way. This would be true even if the roommate is also an SSI beneficiary. She cautions Larry, however, that should he move in with his girlfriend, who is also an SSI recipient, the two combined could be reduced to the 2006 SSI couple's rate of \$904 per month if SSA determined they are "holding out" as a married couple.¹¹ They should be able to avoid being considered a married couple if their actions are consistent with being single, i.e., they retain their separate last names, do not introduce each other as husband or wife, continue getting mail in separate names, do not sign loan papers or tax returns as husband and wife, and retain separate identities (as single individuals) when renting or purchasing property together.¹²

Ms. Smith then points out that there is a housing subsidy program, sponsored by the federal government, called the Section 8 program. Based on Larry's limited income, he would qualify for the Section 8 certificate program (recently renamed the Housing Choice Voucher Program). This program would provide Larry with a certificate or voucher that he could use in the private housing market to help him pay for rent in a better apartment. Based on Ms. Smith's referral, Larry signs up for Section 8 and is put on a waiting list to receive a voucher.

Ms. Smith confirms all this in a letter or benefits advisement report and, with Larry's permission, forwards a copy of the report to Larry's case manager who is working with Larry to help him access various community services. With the letter, the benefits specialist includes a flyer which is put out by the agency which runs the local Section 8 program. The flyer explains the Section 8 certificate program and how to apply for it. The letter then encourages Larry to call Ms. Smith if he has any questions or as his circumstances change.

B. April 2003: Larry Faces Eviction From His Apartment

In April 2003, shortly after the baseball season begins, Larry's landlord, who owns the apartment complex Larry lives in, hears Larry cheering for the New York Yankees (Larry lives upstairs of his landlord in this six-apartment housing complex). The landlord, a diehard Boston Red Sox fan, cannot bear the thought of a summer of living in the same house with a Yankees fan. He tells Larry that he will have to move out by the end of May, telling Larry that it is because he makes too much noise.

¹¹ See POMS SI 00501.152, describing the circumstances under which a couple will or will not be considered to be holding themselves out as husband and wife.

¹² POMS SI 00501.152 B.1.c.

Questions for the benefits specialist. Larry calls up Ms. Smith and is very upset. He is sure the real reason for the eviction is because Larry is a Yankees fan and not because of the noise. He claims that he made even more noise during the football season cheering for the Buffalo Bills, but that was alright because the landlord was also a Bills fan. He is sure it must be illegal to discriminate against him on this basis. Larry also explains that several of his friends are encouraging him to file a federal court lawsuit against his landlord for this act of discrimination.

During their discussion, the benefits specialist also learns that Larry's landlord just recently learned that Larry is on SSI for a mental disability. One of the other tenants has told Larry that this landlord had a bad experience with an individual with a mental disability who stopped taking her medication. The other tenant suggests to Larry that maybe the eviction is because of Larry's mental disability.

Benefits specialist analysis. During their phone conversation, Ms. Smith's very first suggestion to Larry is that he attempt to talk things out with the landlord, as the landlord may be willing to change his mind on the issue. She also cautions Larry not to be too quick to act on the advice of friends who are not experts on housing discrimination laws. She then explains that she will consult a fair housing expert before attempting to answer Larry's questions.¹³ Later, based on that consultation, Ms. Smith calls back and reports to Larry:

- Before considering discrimination questions, Larry might be protected from eviction if he has a written lease. If not, his state's laws would allow a landlord to evict on short notice like this so long as the landlord's action does not violate any federal or state discrimination laws.
- Larry, as a tenant, is covered by the federal Fair Housing Act since he has a severe disability and lives in an apartment complex that contains more than four units (even though one is occupied by the landlord).¹⁴
- The Fair Housing Act does protect persons with disabilities from discrimination in rental housing if the discrimination relates to the person's disability. It would not protect against a landlord who chooses to evict a person (even a person with a disability) if the only reason for the eviction is the baseball team the tenant cheers for.
- If Larry could prove that the landlord decided to evict Larry upon learning of his disability, he might be able to stop the eviction using the Fair Housing Act's protections, but it appears this would be difficult to prove based on the facts presented.

After explaining all this to Larry, Ms. Smith refers Larry to the Protection and Advocacy (P&A) attorney who provided the information about the protections under the Fair Housing Act. Based on Larry's disability and the issues involved, this referral might be to the P&A for Individual Rights (PAIR) program attorney. Also, since Larry is an SSI beneficiary, the newest P&A program, P&A for Beneficiaries of Social Security (PABSS) may be able to assist Larry if the discrimination could be viewed as a barrier to employment.¹⁵ Once again, Ms. Smith confirms this advice in a letter and attaches a flyer that describes rights under the federal Fair Housing Act.

¹³In some cases, the benefits specialist might make an immediate referral to a Protection and Advocacy or legal services program that specializes in fair housing issues.

¹⁴An overview of the Fair Housing Act, 42 U.S.C. § 3601 et seq., as it applies to persons with disabilities, appears in the Winter 2002 issue of *AT Advocate*, the quarterly newsletter of the National Assistive Technology Advocacy Project. It is available on the Neighborhood Legal Services website at www.nls.org/avl/winter01.htm.

¹⁵For a full discussion of the various P&A programs, and how they can potentially provide legal representation for persons with disabilities, see the Policy and Practice Brief, *State Protection and Advocacy Programs*, available on the Cornell Website at www.ilr.cornell.edu/edil/publications/PPBriefs/PP_2.pdf (pdf version), www.ilr.cornell.edu/edil/publications/PPBriefs/PP_2.txt (text format).

C. June 2003: The Move to Subsidized Housing

Just as Larry was facing the eviction, his name came up on the waiting list for a housing subsidy certificate and he was awarded a certificate under the Housing Choice Voucher Program (formerly the Section 8 certificate program). Larry is able to find a nicer apartment that will accept the housing voucher and he is to move in on June 1, 2003. The rent charged by the landlord on this new apartment will be \$500 per month.

Questions for the benefits specialist. By now, Larry thinks Ms. Smith knows everything and calls upon her any time he faces a new issue in his life. When the questions Larry presents are outside Ms. Smith's areas of knowledge or expertise, she wisely tells Larry this and refers him to an individual or agency that may be able to provide the answer. Now, in May 2003, Larry calls the benefits specialist with questions about the Housing Choice Voucher Program. He wants to know how his rent will be determined and also asks questions about what would happen to his rent if he went to work part-time. He also asks about his girlfriend, who lives in a public housing complex and is also thinking about going to work part-time. Larry reminds Ms. Smith that his girlfriend is also an SSI recipient.

Benefits specialist analysis. The benefits specialist explains to Larry that the Housing Choice Voucher Program is like a number of federally-sponsored housing subsidy programs in which rent is calculated under a formula. In general, the rent owed will equal 30 percent of his monthly income, after subtracting any deductions allowed by the program. With his only income being the SSI check, Larry's rent will be \$181 ($\$603 \times .30$). In effect, this calculation will allow Larry a \$319 subsidy toward the monthly rent of \$500.

The reader should note that the subsidy allowed in any case will depend on whether the actual rent for the apartment is within or exceeds the rents approved for the Housing Choice Voucher Program in the area where the tenant resides. For example, if the maximum rent for the size apartment Larry is moving to is \$450, he will be responsible for the extra \$50 making his monthly rent \$231 (\$181 plus \$50).

Regarding the issue of part-time wages and their impact on rent, Ms. Smith explains that, in general, as income goes up rent owed will also go up. Since the tenant's rent will continue to be based on 30 percent of countable income, the general rule is that rent will go up by \$1 for every additional \$3 in income. She then explains that there is a new earned income disregard rule that applies to the Housing Choice Voucher Program. Since any part-time wages would follow a period of unemployment, the Housing Choice Program would disregard any increased income resulting from work for 12 months and his share of rent would not go up. During the following 12 months (months 13 through 24), 50 percent of the increase in income resulting from work will be disregarded.¹⁶

On the issue of the girlfriend's questions, Ms. Smith advises Larry that the girlfriend should call if she has questions. She explains that it is too easy to provide bad advice when it is done through a third party, as the benefits specialist may wind up missing a critical fact that only the girlfriend could provide.

¹⁶24 C.F.R. § 5.617. These same rules for disregarding earned income apply to three other programs sponsored by the federal Office of Housing and Urban Development (HUD); the HOME Investment Partnership Program, 24 C.F.R. Part 92; Housing Opportunities for Persons with Aids, 24 C.F.R. Part 574; and the Supportive Housing Program, 24 C.F.R. Part 583.

III. PART THREE: WORK, UNEMPLOYMENT, AND SSDI ELIGIBILITY

In November 2003, the benefits specialist's agency is awarded a sub-contract to serve as a BPA&O project for a 10-county region within their state. The agency will partner with two other agencies to cover this region. Ms. Smith, who has been working with Larry, will now spend all of her time doing BPA&O work and Larry's case will now be a BPA&O case.

As part of the planning process for the BPA&O, it is decided that part of a benefits specialist job will be to help arm the beneficiary with the tools to enable the person to manage his or her own benefits. With that in mind, Larry is invited to an educational workshop for beneficiaries where he is trained on how to do an SSI budget and is provided with blank SSI budget worksheets that will allow him to determine the impact of working on his benefits.

A. May 2004: Larry Starts a Part-Time Job

Larry has improved enough that, with the support of his counselor, he decides to try part-time work again. He is offered a job in a used book store beginning in May 2004 which he seriously considers accepting. That job will pay him \$685 gross per month.

Questions for the benefits specialist. Once again, Larry calls Ms. Smith wanting to confirm the impact of the work on his SSI benefits and his rent before he accepts the job. Larry used one of the blank SSI calculation worksheets and calculated his SSI payment as follows, based on \$685 in wages:

Step 1	Unearned income		\$ 0	
Step 2	Earned income		\$685	
	General income exclusion (not otherwise used)	-	\$ 20	
	Earned income exclusion	-	<u>\$ 65</u>	
			\$600	
	Additional 50 % exclusion	-	<u>\$300</u>	
	Counted		\$300	
Step 3	Counted unearned income		\$ 0	
	Counted earned income	+	<u>\$300</u>	
	Total counted income		\$300	
Step 4	Base SSI rate		\$603	(2006 FBR, no state supplement)
	Counted income	-	<u>\$300</u>	
	SSI benefit		\$303	

He wants to know if he did the calculation properly.¹⁷

Larry also wants to know how this new job will affect his Medicaid and how it will affect his rent owed now that he has an apartment through the Housing Choice Voucher Program.

¹⁷ Keep in mind that we are using 2006 SSI rates for all years in question.

Benefits specialist analysis. Ms. Smith confirms that Larry did the budget properly. Based on take home pay of about \$600 per month, she points out that, adding Larry's SSI check of \$303, his net disposable income will now be \$903 per month - - \$300 more than when he was receiving only SSI.

Ms. Smith also reminds Larry that since he is paid weekly, every third month he will get a fifth paycheck. Since Larry's SSI check will go down by \$1 for every additional \$2 earned, if his fifth paycheck is for \$170 the SSI check would go down by \$85 to \$218 per month. She also reminds Larry about the concept known as "retrospective monthly accounting," under which the money earned in one month determines the SSI check amount two months later.¹⁸ For example, if Larry gets five paychecks in October his SSI check will be reduced in December. Ms. Smith helps Larry identify when the five paycheck months will be so that he can plan for a reduced SSI check two months later.

Ms. Smith explains that since Larry lives in a state in which Medicaid is automatic for SSI beneficiaries, he will continue to get Medicaid automatically so long as he continues to receive at least \$1 of monthly SSI payments. She also reminds Larry once again of the section 1619(b) program, under which Medicaid can continue automatically, in most cases, if he loses SSI due to increased wages and his income is below his state's financial eligibility threshold for 1619(b). This entire discussion is summarized in a letter to Larry, with Ms. Smith retaining a copy of it in Larry's file.

B. December 2004 - Larry is Laid Off

At the end of the year, the economy slows down and Larry is an unfortunate victim of it. He is laid off, applies for unemployment insurance benefits and learns that he will be entitled for \$385 per month in unemployment benefits.¹⁹ If he does not find work in the meantime, he can collect unemployment benefits through early July 2005. He calls Ms. Smith and wants to know what will happen to his SSI checks and Medicaid with this rate of unemployment benefits.

Benefits specialist analysis. Ms Smith explains the new SSI budget over the phone while Larry works it out on one of the worksheets he still uses to calculate his benefits:

Step 1	Unearned income	\$385	Unemployment benefits
	General income exclusion	- \$ 20	
		\$365	Counted unearned income
Step 2	Earned income	\$ 0	
Step 3	Counted unearned income	\$365	
	Counted earned income	+ \$ 0	
	Total counted income	\$365	
Step 4	Base SSI rate	\$603	(2006 FBR, no state
	Counted income	- \$365	supplement) ²⁰
	SSI benefit	\$238	

¹⁸ For an explanation of how SSI's retrospective monthly accounting system works, see POMS SI 02005.001 et seq.

¹⁹ The author has learned that one or more states may have rules making it impossible to collect both SSI or SSDI and unemployment benefits. That might be an issue to refer to the P&A program to determine if the rule can be challenged.

²⁰ As noted above, New York would provide an \$87 per month supplement to the SSI federal benefits rate if Larry lives alone.

Ms. Smith explains that Larry's net available income during the months when he collects unemployment benefits would be \$623 (\$385 unemployment check + \$238 SSI check).

The reader should note that if Larry had been making a higher salary, say \$2,085 gross per month when he got laid off, his unemployment benefits would probably be much higher. What if his monthly unemployment benefits were \$1,085 per month? What then would happen to his SSI and his Medicaid?

Under these new hypothetical facts, Larry would lose his SSI check with earnings of \$2,085 per month (\$25,020 per year), but could retain Medicaid under the 1619(b) program in all but eight states which have 1619(b) eligibility thresholds of less than \$25,020 per year.²¹ Even in those states, Larry could establish an individualized threshold of more than \$25,020 if, for example, his Medicaid reimbursed expenses and impairment related work expenses were high enough.²²

If Larry got laid off from the \$2,085 per month job and collected \$1,085 per month in unemployment benefits, this could be a real problem. Since \$1,065 of this income would be counted, with only a \$20 exclusion allowed for unearned income, Larry would now be ineligible for SSI. He would also be ineligible for 1619(b) Medicaid because that benefit is only available to individuals who are ineligible for SSI because of wages. Now, Larry will be eligible for Medicaid, if at all, under separate state Medicaid rules. If Larry lives in New York, his \$1,065 in countable income will be \$373 more than the state's 2006 one-person Medicaid eligibility threshold under the medically needy category. He would, therefore, face a \$373 spend down, or share of cost requirement if he wants to keep Medicaid. In other states he might face either a higher or lower spend down, or in those states that do not offer this optional medically needy category, he would not even be offered a spend down and might not be eligible for Medicaid.

D. August 2005 - Larry Becomes Eligible for SSDI Benefits

In August 2005, Larry calls Ms. Smith. He explains that his father has retired making Larry eligible for \$420 in monthly SSDI benefits against his father's earnings record. These benefits are commonly referred to as Child's Disability Benefits (CBD).²³ Larry is eligible for CBD benefits because he has a disability with an onset date before age 22. He received his first SSDI check in August. His last unemployment check was received in early July.

Questions for the benefits specialist. Larry has new concerns. First, he wonders how the SSDI benefits will affect his SSI and Medicaid. He also wants to know what will happen with the SSI, SSDI and Medicaid if he goes back to work.

Benefits specialist analysis. Ms. Smith explains how the SSI program will budget the SSDI benefits. She has Larry pull out a budget work sheet and goes through the math with him:

²¹The states with 2006 section 1619(b) thresholds, or annual income maximums of less than \$25,020 include Alabama, Arkansas, Georgia, Kentucky, Mississippi, Oklahoma, Washington State, and Wyoming. POMS SI 02302.200.

²²See POMS SI 02302.050, for an explanation of how SSA calculates an individualized threshold under 1619(b).

²³CDB benefits are officially known as Child's Insurance Benefits, and are often referred to as Disabled Adult Child's (DAC) benefits, 42 U.S.C. § 402(d).

Step 1	Unearned income		\$420	SSDI benefits
	General income exclusion	-	<u>\$ 20</u>	
			\$400	Counted unearned income
Step 2	Earned income		\$ 0	
Step 3	Counted unearned income		\$400	
	Counted earned income	+	<u>\$ 0</u>	
	Total counted income		\$400	
Step 4	Base SSI rate		\$603	(2006 FBR, no state supplement)
	Counted income	-	<u>\$400</u>	
	SSI benefit		\$203	

Ms. Smith points out that Larry will continue to qualify for automatic Medicaid so long as he receive at least \$1 of SSI benefits.

She then explains that Larry’s receipt of SSDI adds a new dimension to the benefits analysis in his case. Since Larry has assumed an active role in the management of his benefits, Ms. Smith provides Larry with a copy of the Summer 2004 issue of the *Benefits Planner* newsletter which discusses SSDI and work, covering the Substantial Gainful Activity (SGA) rules, the Trial Work Period (TWP), the Extended Period of Eligibility (EPE), and the new Expedited Reinstatement rules.²⁴ She suggests that the two of them can have a better discussion of the SSDI rules once Larry has read through the newsletter.

After Larry reads the newsletter, they meet again. After a brief discussion of the TWP and EPE, Ms. Smith explains that Larry’s SSDI check would be unaffected for at least the first nine months of his return to work as TWP rules always allow the person to get both a paycheck and an SSDI check during those nine months. Using the most recent wage level of \$685 per month, Ms. Smith goes through the way this combination of wages and SSDI benefits would affect his right to SSI:

Step 1	Unearned income		\$420	SSDI benefits
	General income exclusion	-	<u>\$ 20</u>	
			\$400	Counted unearned income
Step 2	Earned income		\$685	
	Earned income exclusion	-	\$ 65	
			<u>\$620</u>	
	Additional 50% exclusion	-	\$310	
			\$310	Counted earned income
Step 3	Counted unearned income		\$400	
	Counted earned income	+	<u>\$310</u>	
	Total counted income		\$710	
Step 4	Base SSI rate		\$603	(2006 FBR, no state supplement)
	Counted income	-	<u>\$710</u>	
	SSI benefit		\$ 0	

²⁴The *Benefits Planner* newsletter is available on the websites of both Cornell University’s Employment and Disability Institute at www.ilr.cornell.edu/edis-benefitsplanners.cfm and Neighborhood Legal Services at www.nls.org/tocplanr.htm.

Ms. Smith explains that a return to the previous level of wages, \$685, would mean a loss of Larry's SSI cash benefits. However, she goes on to explain that if that happens Larry should be eligible for continued Medicaid under the 1619(b) provisions, as he would have lost SSI due to wages, his disability would be continuing, and his annual wages would be less than his state's 1619(b) eligibility threshold. As always, Ms. Smith confirms this analysis in a letter to Larry, referring to the budget sheets and the newsletter to help Larry understand the analysis.

IV. PART FOUR: LARRY'S RETURN TO COLLEGE

A Spring 2006 - How to Pay for College; How to Pay for a Car

During the fall of 2005, Larry talks with Ms. Smith about his desire to return to college. He wants to pursue a career in teaching, even if it means taking a job working less than full time when he finishes college. Larry has been doing volunteer tutoring work at a private high school and would like to become an English teacher.

Ms. Smith tells Larry about the services available from his state's Vocational Rehabilitation (VR) Agency and Larry applies for services from the VR Agency in February 2006. The VR Agency's counselor and Larry agree on a plan for him to return to college in the fall of 2006, get a degree in education, and work as a teacher in the future.

The VR Agency is willing to pay for Larry's full tuition if he attends a state university or college. However, the counselor tells him the VR Agency will not pay for the private college he wants to attend which would cost an additional \$1,200 per semester (\$2,400 per year), after full use of grants and scholarships. Larry wants to attend the private school as he believes that its smaller class sizes will make it less stressful on him as he works his way back into a college atmosphere. Larry would also like to obtain a dependable used car by the time he is a college senior so that he can drive to his student teaching assignments, job interviews, and, eventually, permanent employment. The VR Agency counselor tells Larry they cannot help with the car.

Questions for the benefits specialist. Larry calls Ms. Smith in the spring of 2006 and explains his concerns. Larry believes he will not succeed in college if he goes back to a state university with its larger classes and believes his counselor will support this from a therapeutic standpoint. He asks Ms. Smith if the VR Agency might be made to change its mind. Larry also strongly believes that the used car will be needed if he is to succeed in getting to student teaching assignments, then later to a first job. He wonders if either the state VR Agency can be made to pay for the vehicle or if there is some other source of funding he might be able to find to help him buy a car.

Benefits specialist analysis - - the VR Agency issues. Before getting back to Larry, Ms. Smith reviews the article made available to her from Cornell's Program on Employment and Disability, *The State/Federal Vocational Rehabilitation Program*.²⁵ After reviewing the article and consulting the local advocate for the Client Assistance Program (CAP), Ms. Smith advises Larry:

²⁵This article is available on the Cornell website at www.ilr.cornell.edu/edi/publications/PPBriefs/PP_1.pdf (pdf version), www.ilr.cornell.edu/edi/publications/PPBriefs/PP_1.txt (text format).

- As a general rule, the VR Agency policy on college is as stated by the counselor. She explains that the CAP advocate is doubtful that the VR Agency will grant an exception to the policy based on Larry's circumstances.
- The state VR Agency has a policy of never paying for vehicles, a policy that some disability advocates believe should be challenged in court. Apparently, several state VR Agencies in other states will purchase vehicles in some circumstances and the federal VR regulations allow this.²⁶

Ms. Smith refers Larry to the CAP advocate to discuss whether the CAP might be able to negotiate on Larry's behalf with the VR Agency or appeal the VR Agency's decision.²⁷

Benefits specialist analysis, SSI's Plan for Achieving Self Support (PASS). Ms. Smith tells Larry about SSI's PASS, a special plan that would allow Larry to set aside all or part of his countable income toward the payment of items to help him achieve his vocational goal of becoming a teacher. For example, his \$400 in countable SSDI benefits could be set aside toward the excess tuition costs and/or for the purchase of the used car. If such a proposal was approved by SSA, that \$400 of income would no longer count and his SSI check would increase by \$400 to the full, \$603 per month SSI rate.

Larry is enthused about the PASS. He believes the PASS may provide a better option than a time-consuming appeal of the VR Agency's decision, with an uncertain outcome. Ms. Smith agrees that she will contact Winnie Carroll, one of SSA's PASS specialists covering upstate New York, to discuss this possible PASS proposal. In the meantime, she provides Larry some reading material on the PASS, the Summer 2002 issue of the *Benefits Planner* newsletter.²⁸

Following her discussion of Larry's potential PASS with Ms. Carroll of SSA, Ms. Smith meets with Larry in June 2006 to go over how a PASS might work for him. After some discussion they agree on the following, as part of a PASS proposal that will be submitted to SSA:

- Larry's vocational goal is to become an English teacher at the high school level, working at least 60 percent time and earning at least \$16,000 per year.
- He will set aside \$400 of his monthly SSDI benefits toward the excess \$2,400 per year of tuition payments that the state VR Agency will not cover and toward the purchase of a used car during the first semester of his senior year in college. The car he will purchase will be a subcompact with a purchase price of \$9,000 in September 2010.
- With only minimal transfer credits from 10 years ago, and the need to keep his course load at a level Larry can handle, he expects to graduate in five years, i.e., in May 2011.

²⁶ See 34 C.F.R. 361.5(b)(57)(i), Ex. 2, stating that "the purchase and repair of vehicles, including vans" is an example of an expense that would meet the definition of "transportation," a service specifically mandated under the federal VR laws (i.e., Title I of the Rehabilitation Act).

²⁷ For a detailed explanation of advocacy services available under the CAP program, see the Policy and Practice Brief, *State Protection and Advocacy Programs*, available on the Cornell website at www.ilr.cornell.edu/edil/publications/PPBriefs/PP_2.pdf (pdf version), www.ilr.cornell.edu/edil/publications/PPBriefs/PP_2.txt (text format).

²⁸ The Summer 2002 issue of the *Benefits Planner*, with its feature article on SSI's PASS is available on the Cornell website at <http://www.ilr.cornell.edu/s-BenefitsPlanners.cfm> and on the Neighborhood Legal Services website at www.nls.org/planner/summer02.htm.

- Larry's PASS will be retroactive to January 2006, when he first contacted the state VR Agency for an appointment to seek their sponsorship of his plan. This would allow Larry to save \$3,200 during the eight months before his college begins, allowing him to pay the excess tuition for his first semester (\$1,200) and giving him a \$2,000 start toward savings for the \$9,000 used car.

NOTE: If Larry lives in one of the 11 section 209(b) states,²⁹ in which Medicaid eligibility is not automatic for SSI beneficiaries, he will want to determine how the PASS will affect continued Medicaid eligibility. In Indiana, for example, money put into a PASS is excluded by the state's Medicaid program only for individuals who are blind but not for other disabilities. This policy was upheld as legal in a federal appeals court.³⁰

Larry, with the assistance of Ms. Smith, submits this PASS proposal to Ms. Carroll in early July 2006, explaining the urgency of getting it approved before the fall semester begins.³¹ It is approved one month later in August 2006, retroactive to January. With the PASS approved, he is able to immediately come up with \$3,200 in retroactive savings (8 months at \$400 per month), allowing him to cover the \$1,200 tuition for the fall 2006 semester. Thereafter, during each September to August, 12-month period, Larry is able to set aside \$4,800 which leaves \$2,400 for savings after covering the \$1,200 per semester in excess tuition. Thus, by the beginning of Larry's senior year (September 2010, or the beginning of his fifth year of college under the plan), he has saved \$11,600 toward the purchase price on the used car, sales taxes, and the initial six-month insurance payment. Based on her conversations with Ms. Carroll, Ms. Smith advises Larry that he can always amend the PASS upon purchasing the car to add expenses related to the cost of driving to and from school, as well as to cover maintenance expenses.

Following approval of the PASS proposal, Ms. Smith sends Larry a letter, which confirms his obligation to comply with the terms of the PASS (i.e., deposit the money into a special bank account each month, withdrawing it only for expenses approved in the PASS). She urges Larry to call her any time he has questions or if he wants to change the terms of the PASS through an amendment. She arranges to speak to Larry again by phone in December 2006 to review Larry's progress with the PASS and to submit a simple amendment to add the 2007 SSDI cost-of-living increase to the monthly amount that will go into the PASS. They agree that they will meet each year in December, by phone or in person, for the same purpose.

The reader should note what Larry has accomplished here. Assuming that Larry's PASS continues through his graduation in May 2011, Larry has been able to use the PASS to come up with \$26,000 in expenses toward tuition, the car purchase, and car insurance. Combining this with another \$10,000 to \$15,000 from his VR Agency to pay for tuition and other expenses, Ms. Smith has helped Larry identify \$35,000 or more of PASS and VR Agency funds to support his work goal. He will be able to graduate without incurring any student loan expenses, which is important as his disability may make it difficult to work full time upon finishing school.

²⁹ See note 3, above.

³⁰ *Vaughn v. Sullivan*, 83 F.3d 907 (7th Cir, 1996).

³¹ In urging its PASS specialists to expedite PASS decisions, SSA's policy points out: "Remember that a delay can result in a loss of a job or training opportunity for the individual." POMS SI 00870.025 A.2.

B 2007 and 2008: Part-Time Summer Work

During the summers of 2007 and 2008, Larry plans to work part-time at the used book store he has worked at before and earn between \$650 and \$700 gross each month during the months of June, July and August. Larry will also earn more than \$700 gross in both January 2006 and January 2007 when he is on his break between semesters. He may follow a similar arrangement during the following years of his education unless he finds a need to attend summer school.

Questions for the benefits specialist. The job during the summer of 2007 will be Larry's first work since he became an SSDI beneficiary in August 2005, as he has spent time doing volunteer work and taking some adult education courses to get the feel for a classroom again. Larry calls Ms. Smith in May 2007 before starting the summer job. He wants to know how the wages will affect his SSI, his Medicaid, and his PASS. He has heard about an SSI Student Earned Income Exclusion (SEIE) and wonders if he qualifies for that. He also wants to know how his wages will affect his SSDI and whether he will be using up his TWP. Finally, he has learned that he will soon qualify for Medicare and wonders if he should agree to take the optional Medicare Part B coverage, as it will require a premium of \$88.50 per month (based on 2006 premium levels). He also asks about the Medicare Part D prescription drug program.

Benefits specialist analysis. Ms. Smith first explains that SSI's SEIE is only available to students under age 22.³² She then explains that SSI will use its usual formula to count his wages, excluding the first \$65 and 50 percent of his remaining gross monthly wages. So, for example, with \$685 in gross monthly wages, his countable income would be \$310 and his SSI check would be reduced to \$293 (\$603 - 310). Medicaid will continue under this scenario, since Larry would still be getting an SSI check.

Larry's PASS can continue without change, but Larry might want to amend the PASS to put the additional countable income from wages into the PASS. This could allow him to save up faster to buy the car sooner, or he might want to add new expenses to his PASS if they are reasonable and connected to his work goal. Ms. Smith and Larry discuss the possibility of using this extra money, in a PASS amendment, to purchase a newer computer to upgrade the seven year old computer Larry is using.

Regarding his SSDI, by working during the summers and school breaks, Larry will use up a TWP month whenever his gross monthly wages exceed that year's amount considered to be a TWP month (\$620 in 2006 and indexed for future years).³³ Just working the two summers and two semester breaks could use up eight of his nine TWP months. Ms. Smith explains that even using up the full, nine-month TWP would not adversely affect his SSDI so long as "countable" monthly wages were not greater than the substantial gainful activity amount for the year in question (\$860 in 2006 and indexed for later years). As his TWP ends and he moves into his EPE, his SSDI benefits will continue without interruption if we assume his earnings do not exceed the SGA amount.

³² See 20 C.F.R. § 416.1112(c)(3), allowing qualified students to exclude up to \$1,460 in monthly earnings, up to a maximum of \$5,910 per year in 2006 (indexed for later years).

³³ *Id.* § 404.1592.

Ms. Smith explains that Medicare Part B is not, currently, as good a form of health insurance for Larry as Medicaid. She also points out that the Medicaid program should be able to pay his Part B premiums under the Qualified Medicare Beneficiaries program while he continues to have low income. If the cost of the Part B premium will be paid by the Medicaid program, this may be a benefit he should take.

Since Larry will be eligible for Medicare effective August 2007,³⁴ he will then be required to enroll in the Medicare Part D prescription drug program. At that time, he will be required to obtain his prescriptions (costing more than \$700 per month) from Medicare. The good news, Ms. Smith explains, is that since Larry will be dually eligible for Medicaid and Medicare, he will be eligible for the full low-income subsidy program, meaning that his out-of-pocket expenses for Part D coverage will be minimal. As always, Ms. Smith confirms this analysis in a letter which she retains in Larry's case file.

C. September 2008: Larry Thinks Ahead to Graduation and His First Teaching Job

It is now September 2008. Larry has gone through his first two years of college as planned. He is just starting his third year of college and still plans to graduate in May 2011 and go to work in September 2011. He has also earned enough during his two summers and two semester breaks that he has used up eight trial work months. He continues to get SSI, SSDI, Medicaid, and Medicare. Larry's hope, upon graduation, is to find a job in one of the private high schools with an annual salary for a three-quarter time position expected to be about \$18,000 per year, without a very strong health insurance package. He believes he has a better chance of success, with less stress, in the private school with smaller class sizes and more serious students.

Questions for the benefits specialist. Larry arranges a meeting with Ms. Smith to go over his plans for the future. He explains that he expects to work again in January 2009 which will be his ninth TWP month. He wants to confirm that this will be the end of his TWP, as he will have used nine TWP months within a 60-month period. He wants to know when his EPE will begin and end, and what special protections the EPE offers. Most importantly, he wants to know if he will be able to keep Medicaid after he starts working. He has learned quite a bit about the section 1619(b) program, but is concerned because one of the things he read said he had to keep his resources within the limits imposed by the SSI program.

Benefits specialist analysis, SSDI benefits. Ms. Smith confirms that Larry's TWP will end in January 2009 when he works his ninth TWP month. His EPE will begin in the very next month, February 2009, and run for 36 consecutive months through January 2012. During the EPE, the first time that Larry performs SGA by earning more than the indexed monthly SGA amount (\$860 in 2006), that month will be considered his "cessation month." He will be eligible for SSDI for that month and two more months, known as the three-month "grace period." Following the grace period and for the remaining months of the EPE, Larry will be entitled to an SSDI check in any month in which his countable earnings are equal to or less than the SGA amount. He will not be entitled to an SSDI check for those months in which his countable wages are more than the SGA amount.

³⁴ Larry is eligible for Medicare in August 2007, having received SSDI benefits for 24 months.

Based on Larry's earning levels to date, during the summers and semester breaks, it would appear that Larry will not perform SGA during the remainder of his years as a student. In fact, based on Larry's plans, it appears that his first month as a teacher, September 2011, will be his first month of earnings above the SGA level during the EPE (i.e., more than the 2006 SGA figure of \$860, as indexed, during the February 2009 to January 2012 period). If that is true, September 2011 will be Larry's cessation month and he will be eligible for continued SSDI checks for the three-month grace period, September through November 2011. For the remainder of the EPE, i.e., through January 2012, he would not be entitled to SSDI checks as his earnings would, we assume, continue to be more than the SGA amount (i.e., his earnings will be about \$1,800 per month for a 10-month job). Assuming this job continues for the entire 2011-2012 school year, Larry's entitlement to SSDI would end and he would only be able to get benefits again, if his work ended, through the expedited reinstatement provisions or a new application.

Ms. Smith cautions Larry that the last piece of analysis is based on a lot of assumptions. She pulls out an SSDI tracking sheet, plotting out Larry's TWP and EPE so that he can see just how these stretch out over a period of years. She agrees that she will include the tracking worksheet with the letter she sends Larry to confirm their discussion.

Benefits specialist analysis, SSI and Medicaid. Larry understands that he will lose his SSI benefits when he starts working because of the earned income he will be making. Ms. Smith reviews with Larry the 1619(b) Medicaid criteria and reiterates that with a loss of SSI due to wages, a continuing disability, and wages of about \$18,000 per year, he should qualify for continued Medicaid under the 1619(b) program. She confirms that Larry is correct to be concerned about the added 1619(b) requirement that his resources must continue to be within the SSI program's limits.

Larry says that with added income he would like to start saving for a down payment on a house and would also like to put money into an individual retirement account (IRA). Ms. Smith explains that there are no provisions under 1619(b) that would allow him to do this. If his savings account exceeds \$2,000 or if his combined savings and IRA accounts exceed \$2,000 (the resource limits allowed by the SSI program) he would cease to be eligible for 1619(b) Medicaid.

Ms. Smith then points out that his state has recently implemented the optional Medicaid Buy-In program.³⁵ His state's version of the Buy-In allows eligibility at income levels that exceed \$50,000 per year, with an asset limit of about \$10,000. She is not sure whether the Buy-In will allow retirement accounts to be exempt. Since Larry has nearly three years to plan for potential use of the Buy-In, Ms. Smith suggests that they plan to discuss it in more detail in the future. It appears, however, that the Medicaid Buy-In might offer Larry the ability to retain Medicaid at higher levels of income than the 1619(b) program with the added ability to save toward a home purchase through a higher resource allowance.



³⁵ See Ticket to Work and Work Incentive Improvement Act of 1999, § 202.

The reader should note that as this document is written, approximately 30 states had adopted and were implementing Buy-In programs, with several additional states at various levels of pre-implementation (i.e., already passed by state legislatures, but not yet submitted for federal approval).

Conclusion

This article has, by using a case scenario, walked through the issues that many beneficiaries of SSI or SSDI will face as they move down that bumpy road to self support. While these scenarios require extensive analysis and research, with the facts and SSA policies often changing, they present a realistic sample of the types of issues that will confront benefits specialists who work for BPA&O programs and practitioners within PABSS programs. Like Ms. Smith, the benefits specialist will be called upon to analyze this ever-changing set of facts, often calling upon experts from other fields in order to provide the beneficiary with accurate information or an appropriate referral for information.

While not specifically stated in the text above, we expect that Ms. Smith would regularly reference the training materials, including the two-volume manual provided by Cornell University as part of her five-day and follow-up training programs. We would also expect that she would periodically consult with the technical assistance consultants employed by the regional technical assistance and training provider for her region of the country. The need for this outside assistance will, of course, depend on the experience level of the benefits specialist and the complexity of the issues he or she is facing at the time. In many instances, we expect that outside assistance will be also be sought from the PABSS attorney or advocate, or from an attorney or advocate from one of the other P&A programs.

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