

The Gottesman Report

A Newsletter For Your Benefit

April 2005

Upcoming Speaking Engagements . . .

Ms. Gottesman will be speaking at two support group meetings in May. The first will be on Thursday evening, May 12 at 7:30 p.m. in Summit, NJ at the bipolar disorder support group. The second will be on Tuesday evening, May 24 in Paterson, NJ at the RSD support group. We are looking forward to great turnouts at both groups. If anyone wishes further information about these speaking engagements, or to book a speaking engagement for your group, please call or e-mail our office.

A Review of SSI benefits for Children ...

Since parents have a legal obligation to provide financial support for their children until at least 18 years of age, the only Social Security benefits available for disabled children are SSI benefits. As with all SSI benefits, there are income and asset limitations that parents must meet. Assuming that they meet those limitations, the next issue is whether the child is disabled enough to meet the SSA guidelines for awarding benefits.

As with Social Security disability benefits, the burden is on the Claimant to prove that the child has physical and/or mental limitations that are severe enough to consider the child disabled under the law. While the inquiry with adult disabilities is whether and to what extent the Claimant is able to work, the question regarding child

disabilities is whether and to what extent the child has met normal developmental milestones. If the parent has been told that the child is not functioning on a physical, mental or emotional level that would be "normal" for children of that age, then the child may be eligible for SSI benefits. Such benefits would guarantee financial income for the child as well as Medicaid coverage. This can go a long way to assure that the child gets appropriate medical or psychological treatment and medication.

The only way to assess children's limitations is through documentation of how they are developing, including how they are performing in school. In general, the younger the child, the more difficult it is to show that there are limitations.

If you are applying for SSI benefits for your child who you believe is disabled, your most important allies in documenting your child's problems are his or her pediatrician, teacher, and/or other health care providers. After you submit an SSI application for your child, the Social Security Administration will assist you in obtaining all of your child's records, both from school and from all of his or her treating sources. However, without clear and convincing letters and/or reports from the treatment and school personnel involved with your child, documenting the child's difficulties, you will not be able to win a claim for SSI. These letters and/or reports must clearly document the ways in which your child is not developing in the normal or expected manner. The limitations must severely impair your child's ability to perform age-

appropriate tasks and/or engage in age-appropriate behavior.

Diagnostic tests go a long way towards documenting your child's problems, but can be difficult to obtain when the family has limited income, unless the family is already receiving Medicaid or the child is in school. If in school, the school is required to perform such diagnostic tests and to make treatment available for a child who is not doing well in school. An attorney experienced in obtaining such benefits for children can assist you in documenting your child's impairments. As with all Social Security benefits, the attorney is not allowed to collect a fee until the case is over and benefits have been obtained.

Free Publication on Advance Planning

If you are a person suffering from a chronic illness, have you ever considered what would happen if you became incapacitated and were unable to make your own health care decisions? This topic has been discussed in the media a great deal, and is a topic which will be the subject of ongoing legislative action, as efforts are made to ensure that laws are in place that will allow a person's end-of-life wishes to be respected. Consideration of issues regarding advance planning also apply to those who are well. Everyone can benefit from thinking about these issues and discussing them with those who are close to you.

A new booklet called "Things to Consider If You Have A Chronic Illness," has been published by the NYS Bar Association, and our office has acquired copies for our readers. This publication discusses leave of absence from work, long-term disability, types of health insurance coverage, living wills, powers of attorney

health care proxies, drafting a will, and permanency planning for children. To obtain a copy of this publication, please contact our office.

Taxes on Court Awards and Legal Settlements ...

In January 2005, the United States Supreme Court ruled, in a unanimous decision, that the full amount of a court award or legal settlement is taxable to the successful Plaintiff, even if a sizable portion of that award goes directly to the attorney under a contingent fee agreement. Although Congress enacted the American Jobs Creation Act of 2004 last November, that law, in which taxpayers may deduct attorney fees and court costs in connection with any action involving a claim of unlawful discrimination, applies only to those types of lawsuits. In all other lawsuits, the Supreme Court's decision of January 2005 sets the standard. We urge all those for whom this is an issue to consult either with the IRS or with your tax preparer to determine the law's applicability to your particular circumstances.

Finally . . .

If you are interested in seeing a particular issue addressed in this Newsletter, or if anyone you know wishes to be placed on the mailing list for future Newsletters, please let us know.