HURRICANE IRMA began its assault on Florida in September 2017. Many evacuated, others stayed home, but everyone worried about the devastation they would find once the storm passed. Irma did demonstrate how Floridians can pull together under incredibly stressful conditions and work toward a common goal. Even with careful coordination and collaboration, we still learned that much more needs to be done to protect our most vulnerable residents. Disability Rights Florida is committed to working with other agencies to better protect Floridians with disabilities from natural disasters in the future. We also encourage you to make your 2018 Disaster and Emergency Plan now. You may even find time to reach out to others who need extra assistance to prepare. Let’s make our kindness as abundant as our Florida sunshine.

To learn more about disaster and emergency planning, visit www.disabilityrightsflorida.org/disasterprep.

– Maryellen McDonald, Executive Director

40 YEARS OF ADVOCACY

Florida’s Protection and Advocacy agency opened its doors in 1977 as the Governor’s Commission on Advocacy for Persons with Developmental Disabilities. Ten years later, we became a private not-for-profit agency known as the Advocacy Center for Persons with Disabilities, Inc., and in 2011 we rebranded to Disability Rights Florida. Regardless of our name, we have endeavored for 40 years to protect and advance the rights of individuals with disabilities through administrative, legal and other appropriate remedies. Unfortunately, there is still much work to be done. As we reflect on the successes of the past 40 years, we stand committed to building a future where all people with disabilities enjoy equal rights, opportunity and freedom.
In 2017, Disability Rights Florida settled an historic federal lawsuit against the Florida Department of Corrections (FDC). Disability Rights Florida had been receiving letters from inmates and family members of inmates regarding violations that were going on throughout the prisons. Disability Rights Florida, along with co-counsel, visited each Florida prison to assess the complaints regarding accessibility. The suit (Disability Rights Florida v. Jones) was brought with attorneys from the Florida Justice Institute and Morgan & Morgan, P.A., and challenged FDC’s failure to comply with the Americans with Disabilities Act by not providing reasonable accommodations for inmates with visual, hearing, and mobility disabilities.

The Settlement Agreement requires the FDC to provide qualified sign language interpreters and other auxiliary aids and services during critical interactions such as medical appointments, disciplinary hearings, and educational programs. They are also required to provide telecommunications access to deaf prisoners so they can remain in touch with loved ones. The FDC is also required to allow prisoners with mobility disabilities to participate in work, educational, and religious programs and other services. Lastly, the FDC is prohibited from retaliation against prisoners for attempting to exercise their rights. The FDC has up to four years to remedy the issues and Disability Rights Florida, along with co-counsel, will be monitoring compliance.

DAVIA TAYLOR

Davia Taylor had successfully completed a vocational rehabilitation-supported associate’s degree from the Rochester Institute of Technology National Technical Institute for the Deaf. A year later she realized she needed more schooling to land a job. Davia asked the Division of Vocational Rehabilitation (DVR) to help her obtain a bachelor’s degree so she could become a teacher specializing in working with deaf and hard of hearing students. DVR denied her request and conditioned that she pay for her first semester at Gallaudet University, despite being exempt from financial participation, before they would consider supporting her. Because Davia would not give up her dreams, she persisted and finally received a decision letter from DVR which allowed her to appeal her counselor’s decision.

Through Disability Rights Florida’s advocacy, Davia received clarification of her Federal rights. We investigated her concerns and found them to be credible on many levels. After a year of negotiations, DVR agreed to support Davia at Gallaudet, including reimbursing her for a student loan she had to take to fund her first semester. Davia will graduate in late 2018 with her career dreams still well in focus. A settlement agreement was also implemented to provide training to DVR counselors and staff on due process.
Florida’s Twentieth Judicial Circuit adopted a new procedure allowing judges to preside over involuntary commitment hearings remotely by videoconference. The Circuit’s Public Defender filed a petition in the Second District Court of Appeals that challenged the videoconference procedure as unconstitutional (Doe v. State). Unfortunately, the Appellate Court ruled against the petition but certified the question to the Florida Supreme Court as one of Great Public Importance.

In the Florida Supreme Court, Disability Rights Florida filed an amicus brief in support of the petitioners. We argued that the use of videoconferencing violates a patient’s constitutional rights. The use of videoconferencing might be confusing to patients who do not understand the process. Patients may negatively react to videoconferencing due to their symptoms of mental illness, and the use of videoconferencing could discourage patient participation in the hearings. The Florida Supreme Court reversed the decision of the Appellate Court and ruled that individuals subject to involuntary commitment hearings have a clearly established right to have a judge physically present at the hearing. The Florida Supreme Court also specifically identified Disability Rights Florida as the designated voice for those with mental illnesses in Florida.

Aaron Pfuhl was riding his motorcycle when a driver that was under the influence crashed into him, resulting in an amputation to his right leg above the knee. Aaron obtained a prosthetic leg through insurance but it only met general requirements to allow him to walk. Aaron is a supervisor at a construction company and a K4 level amputee, so he needs a prosthetic designed for someone who is athletic, provides a natural gait, and offers extremely good balance.

Aaron’s physician recommended a new prosthesis with a microprocessor knee. However, the insurance company denied the request. In August 2017, Aaron reached out to Disability Rights Florida about his need for the specialized limb. Although he had initially met with Division of Vocational Rehabilitation (DVR) six months earlier, policy guidelines were not followed and he was informed he could not receive services.

Disability Rights Florida referred Aaron back to DVR for a formal determination of eligibility. He was assigned a new counselor who provided home, office and vehicle evaluations. Aaron worked with his DVR counselor and Disability Rights Florida so that approval of the state of the art prosthesis could be expedited. DVR will also be providing guidance to staff to prevent the type of situation Aaron initially experienced in his first attempt to apply.
In 2016, Disability Rights Florida settled Parrales et al v. Senior, a challenge to the Agency for Health Care Administration’s (AHCA) failure to properly oversee and administer their long-term care (LTC) waiver program. We continue to monitor cooperation with the settlement. This includes ensuring that managed care companies fulfill their responsibilities to offer medically-necessary supports and services.

As part of our monitoring, we continue to accept individual cases that might be violations of the settlement. In one case, we represented Dawna Parkin, an adult with Parkinson’s disease who sought help with a Medicaid appeal regarding the denial of additional personal care and homemaking services through the LTC waiver. Disability Rights Florida investigated the issue and secured a reassessment of Dawna’s ability to function on her own. The assessment showed a need for an additional twelve hours per week of in-home services. By obtaining the new assessment, Dawna got to stay in her home.

We also represented Carol, an adult with multiple sclerosis who received services in her home through the LTC waiver. Her request for additional services was denied, and the managed care plan indicated the services would be provided if she moved to a more restrictive setting such as a Skilled Nursing Facility. After Disability Rights Florida filed an official complaint with AHCA and a Notice of Appearance in the Medicaid fair hearing, the plan overturned itself and approved all her requested services.

Due to a lack of transportation, Roberta’s husband and daughter would not have been able to visit with Roberta in a Georgia nursing home and there were limitations on their own ability to provide care. The family had already confirmed the electricity in the house could support Roberta’s medical equipment. Disability Rights Florida coordinated between the hospital and Roberta’s Medicaid Long Term Care Plan to make sure proper home health services would be in place for Roberta’s return home. Roberta returned home in November, just three months after our involvement.

Roberta Robinson was living in a Tampa-based hospital due to her reliance on a ventilator. Roberta has myotonic dystrophy, the most common form of muscular dystrophy. Her husband and daughter, both of whom also have disabilities, attempted to get Roberta discharged back home with home health nursing. Although Florida recently passed a law allowing higher rates for ventilator-dependent patients in Florida nursing homes, the potential payment system does not start until October of 2018. Even then, it is uncertain if those payments would be enough to cover the cost for someone like Roberta, who cannot be taken off the ventilator. The hospital suggested that Roberta be discharged to a nursing home in Georgia.
Floridians with developmental disabilities rely on the Medicaid Individual Budgeting Waiver (iBudget) to provide a sufficient level of home- and community-based services to avoid institutionalization. The Florida Developmental Disabilities Waitlist Strategic Plan Task Force was a stakeholder group that focused on the needs of Floridians with developmental and intellectual disabilities who are waitlisted for the iBudget waiver. During the time of the taskforce’s activities, approximately 6,000–7,000 individuals were moved from being waitlisted to receiving waiver services through the iBudget waiver.

Disability Rights Florida assisted Joaquin Adame in submitting a crisis application for the Medicaid iBudget waiver. Joaquin needed a community placement, and APD approved funding. Joaquin was placed on the waiver and can now obtain services in a residential setting. We also represented Richard Robertson, who found a suitable group home placement and his funding was approved. When Richard moved into the group home, he began to receive residential habilitation services along with transportation services to maintain community involvement.

We also continue to monitor the implementation of Florida’s iBudget Waiver to ensure that recipients have the services and supports needed to remain in the community and that the waiver is operating in a manner that is fair for the recipients that rely on these services.

Disability Rights Florida represented Charles Miles, Jr. and enforced the Significant Additional Needs (SAN) rule limiting the Agency for Persons with Disabilities (APD) response time to 20 days to provide a Notice of Agency Action. Charles continued to receive the personal supports and skilled nursing necessary to remain in the community.

We also represented Lynde Mongiovi and successfully argued that her services be reinstated during the completion of the appeal process. This shifted the burden to APD to prove the services were no longer medically necessary. After the hearing, Lynde received a favorable Final Order that continued the Supported Living Coaching necessary for her to remain in the community.

Disability Rights Florida continues to represent individuals whose services are insufficient as well as those who are waiting to receive services.

**BRIAN AYALA**

Brian Ayala, a student in the Orange County School District, was denied Free Appropriate Public Education (FAPE) as he was being prevented from returning to school based on his need for an external defibrillator. Brian has Autism Spectrum Disorder and Brugada Syndrome, a condition that causes a disruption of the heart’s normal rhythm. Disability Rights Florida represented Brian in an administrative hearing and provided evidence proving that Brian’s least restrictive environment is the general education classroom in the school zoned for his home. The administrative hearing officer ordered Orange County Public Schools to immediately allow Brian to return to school with appropriate services and supports. Brian returned to school and was provided with 692 hours of compensatory education to account for the education he was improperly denied.
Heather Vanness’s family contacted Disability Rights Florida when she was unable to secure durable medical equipment (DME) she was prescribed from a doctor. Heather needed a wheelchair, hospital bed, and an air pressure-relieving mattress after going through knee surgery. We represented Heather in a fair hearing she filed, claiming that the DME was denied when she could not get a provider to submit the claim for approval. After negotiations, Disability Rights Florida was able to secure the DME Heather needed. We also investigated and addressed the due process and reasonable timeliness violations in the process of requesting DME.

The Agency for Health Care Administration (AHCA) agreed to work with Disability Rights Florida to change the system and avoid any potential systemic legal issues. Among other things, AHCA will identify potential solutions so recipients will be able to request services on their own behalf. Disability Rights Florida will continue to work with AHCA as part of this informal agreement.

Disability Rights Florida is a non-profit organization funded by a variety of sources. For a complete list of funders, go to www.disabilityrightsflorida.org/funders.
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