

SDMNY ADVISORY COUNCIL MEMBERS WIN IMPORTANT LEGAL DECISION ON ELIGIBILITY FOR SERVICES AND “CO-DIAGNOSIS”

From time to time we bring you legal decisions which, though not directly related to SDM, may be of significant interest to our community. This is such a decision, but not only is it “good news” in itself, it is also the result of inspiring work by members of our SDMNY Advisory Council.



The Appellate Division, Third Department courthouse

Matter of H.R. v. New York State Department of Health, decided May 9, 2024, was an opinion from the Appellate Division, Third Department. The Appellate Division is the second layer of New York State courts, above, and reviewing decisions from, the trial level courts, including Surrogate’s Court and Supreme Court (we know, it seems crazy that our lowest level court is the Supreme Court, but that’s New York!) It is below our highest Court, The Court of Appeals, which reviews decisions from the four geographic Departments of the Appellate Division (as an example, the five boroughs of New York City constitute the First Department; Albany and a number of nearby counties constitute the Third Department). So a decision from any Department of the Appellate Division has a lot of weight, especially when there isn’t one on the same subject from any of the other Divisions, as is the case here.

The issue was the denial of Medicaid-funded services by OPWDD to an applicant on the ground that she did not meet the eligibility criteria for developmental disability in the Mental Hygiene Law. Although expert reports demonstrated that the applicant’s functional limitations resulted from a developmental disorder, she also had a “co-diagnosis” of mental illness. Counsel for the applicant argued that such a co-diagnosis is not unusual and that “these mental health issues do not negate the presence of a [qualifying] developmental disability.” The Appellate Division agreed, noting that a decision on eligibility must be made “upon consideration of the record as a whole” and reversed the decision below.



Sheila Shea



Natalie Chin

Although we’ve never asked for or utilized diagnoses in providing our services during our grant-funded pilot projects, we are aware that people with I/DD may have mental health problems, just like neurotypical people. We are thrilled at this important decision that affirms their right to the services they need, and to which they are entitled because of their developmental disabilities. We are also so proud of, and grateful to counsel for H.R. in this case, the brilliant and indefatigable Sheila Shea, Director of Mental Hygiene Legal Services (MHLS) Third Department, and Professor Natalie Chin and her terrific students at the CUNY Law School Disability and Aging Justice Clinic. Sheila and Natalie have been valued members of our Advisory Council since SDMNY’s inception and provide superb service to the disability rights community as well as friendship and support to SDMNY!