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## 2009 Docket Report

### Introduction

In 1996, Congress passed legislation prohibiting Legal Services Corporations from representing people with low income through class actions, and administrative and legislative advocacy. Maine Equal Justice was formed to represent Maine's low-income individuals and families in the legislature, the courts, and before administrative agencies.

Originally two organizations, Maine Equal Justice **Partners** provided representation for low-income people before administrative agencies and in class actions, while Maine Equal Justice **Project** represented the interests of low-income people in the Maine Legislature. As of January 2003, the two organizations were merged into one, with Maine Equal Justice Partners (MEJP) assuming the lobbying activities of the Project.

MEJP's mission is to find solutions to poverty and improve the lives of people with low income in Maine. We accomplish our mission through (1) public policy advocacy in the legislature and with governmental agencies; (2) legal representation and impact litigation on systemic issues; and (3) statewide outreach and training on issues affecting people with low income and the supports that can help them prevent or move out of poverty. MEJP focuses its work on issues that affect people's daily lives – access to adequate health care, food assistance, income supports, housing issues, fair working conditions, and higher education and training opportunities.

Maine Equal Justice's advocacy is on behalf of and informed by our primary client, the Maine Association of Interdependent Neighborhoods (MAIN). MAIN is a statewide coalition of low-income individuals and their allies, which was formed in 1980 for the purpose of creating a network of people and organizations that seek economic and social justice for Maine's low-income families and individuals. MEJP's staff meets monthly with MAIN members to learn about emerging issues that low-income individuals are facing, to update MAIN members about administrative and legislative issues that affect public benefit programs and to provide MAIN members with information on changes to public assistance programs. MEJP also holds client meetings with MAIN's leadership team when issues arise in between monthly meetings that require immediate attention.

The issues of concern raised during the annual MAIN conference, regular monthly and ad hoc meetings comprise the majority of the initiatives MEJP pursues in every forum necessary to accomplish systemic change in public policy. MEJP regularly seeks MAIN members to participate in administrative and legislative advocacy where members share their stories and experiences with administrative and legislative officials and put a human face on issues and regulatory proceedings.

## **MEJP's Scope of Work**

Since MEJP's creation, it has been providing free, high quality legal services to socially and economically needy individuals – individuals with income below 150% of the Federal Poverty Level (FPL). MEJP also assists individuals with incomes below 200% of FPL with regard to health care matters. Our legal representation is limited to public benefits law, including MaineCare eligibility and benefits, prescription drug assistance programs for the elderly and the disabled, Temporary Assistance to Needy Families, Alternative Aid, Supplemental Nutrition Assistance Program (formerly Food Stamps), General Assistance, and miscellaneous heating related programs offered through the Public Utilities Commission and the Maine State Housing Authority. In addition, MEJP also provides limited representation with regard to low-wage worker issues, and higher education and training programs.

MEJP offers several different levels of direct legal representation in order to provide services to the greatest number of people possible. The four types of services offered are as follows: (1) brief services, advice and referrals to clients located statewide; (2) extended representation; (3) administrative advocacy; and (4) training and outreach.

### **Brief Services, Advice, Referrals *and* Extended Representation**

MEJP provides brief legal services, advice and referrals to clients throughout the state via our toll free number Monday through Friday. In light of the fact that MEJP's focus is systemic we focus on statewide public benefit programs that benefit all people with low incomes, other legal issues are referred to the appropriate legal services organizations or administrative agencies. In addition to receiving calls via the toll free number, MEJP regularly provides legal services to members of MAIN and to those individuals and/or social services agencies that are assisting individuals applying for benefits or appealing a denial of benefits. The vast majority of the cases that fall under our brief services, which consist of one or two calls made on behalf of a client or a referral to a particular agency, are resolved succinctly and successfully. By providing these services we are able to serve more clients with limited resources.

MEJP identifies cases for possible litigation through direct contact with individual MAIN members, referrals from other legal service or social services providers, and individuals who contact us directly. MEJP opts for negotiation and settlement of potential litigation matters to achieve its goals of systemic reform, resorting to resolution in court where appropriate.

In 2009, MEJP filed one new lawsuit, while also overseeing the implementation of two court settlements, which resulted from lawsuits that were originally filed in 2008. In addition, MEJP also successfully negotiated a number of potential litigation issues with the state.

- Health Care/MaineCare Services: This lawsuit was filed in December 2009 on behalf of three young men with disabilities who we assert have been unlawfully confined to nursing facilities rather than receiving habilitation and support services in the community as required by law.<sup>1</sup> We have asserted that their rights under the federal Medicaid Act, the Nursing Home Reform Amendments to the federal Medicaid Act,

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<sup>1</sup> MEJP filed this lawsuit in conjunction with the Disability Rights Center and the National Health Law Program.

Title II of the Americans with Disabilities Act, the Rehabilitation Act of 1973, and relevant provisions of the Social Security Act and its implementing regulations are being violated as a result of their confinement in nursing home facilities. Prior to filing the lawsuit, MEJP and the Disability Rights Center (DRC) met several times with the Department of Health and Human Services (DHHS) to discuss adequate screening processes for individuals with disabilities similar to the named Plaintiffs. In October 2009, after months of administrative negotiations and advocacy, MEJP and DRC informed the DHHS that they would file a federal lawsuit in early December if progress was not made with regard to the screening processes and services for our clients. On December 18<sup>th</sup>, the lawsuit was filed after the DHHS failed to respond to our efforts to resolve this matter without litigation.

- Temporary Assistance to Needy Families (TANF): In the spring of 2009, MEJP was contacted by a single mom who was caught between two states' (Maine and Massachusetts) child foster care systems. As a result, she was unable to access the assistance she needed. MEJP researched the matter and discovered that the State of Maine, pursuant to the Interstate Compact on the Placement of Children, was responsible for ensuring adequate protection of the child and, in this case, assuming financial responsibility of the child if Massachusetts failed to meet its obligation to assume financial responsibility for the child. After pursuing administrative advocacy and being unable to successfully negotiate a resolution that would have provided the single mom with financial assistance for her child, MEJP decided to sue the state. In the end, the lawsuit was not filed. The parties reached a settlement that included a lump sum payment to the mom on behalf of her young son and DHHS agreed to amend its policies with regard to cases involving the Interstate Compact on the Placement of Children.
- Children with Special Health Care Needs: In our 2008 MCLSC report, MEJP described a class action lawsuit that was brought on behalf of children with special needs who had been denied services through Child Development Services (CDS), an agency of the Maine Department of Education (DOE) which helps coordinate and provide services to children with special health needs between the ages of 0-5. MEJP determined that CDS was violating federal Medicaid law. MEJP filed a class action lawsuit in federal court on behalf of children with special needs. In October 2008, MEJP and DHHS settled the case and the named plaintiffs received the services they needed. As part of the settlement, the DHHS and CDS (DOE) agreed to create a new eligibility determination and notice process. The implementation of the settlement and thus the creation and implementation of the new eligibility and determination and notice process did not get underway until early 2009. MEJP oversaw the development of this process, including the new child services rules that were promulgated, in part, as a result of the lawsuit. In late December 2009, the Office of MaineCare Services informed MEJP that fifty-five children referred through the new system, which resulted from the lawsuit, had been approved for medical services. This case illustrates the importance of impact litigation and systemic advocacy. In less than twelve months fifty-five children, in addition to the named plaintiffs, received services that they were entitled to under MaineCare – services that they would not otherwise have received.

- Housing: In November 2008, MEJP, in conjunction with a private attorney, filed a class action lawsuit against Bangor Housing Authority (BHA), on behalf of Amanda Black and Melissa Seidel and the 440 other tenants who lived in BHA housing at that time. The law suit asked a federal judge to order BHA to follow the law in imposing any extra charges during the 2008-2009 heating season and to reimburse tenants who paid a surcharge during the 2007-2008 heating season. In March of 2009, the parties entered into a Settlement Agreement and the lawsuit was dismissed. As a result, refunds were made and BHA policies, notices and procedures were changed for the following heating seasons.
- MaineCare Notices regarding Prior Authorization for Services: Pursuant to a consent decree, DHHS is required to consult with MEJP whenever DHHS undertakes to revise its MaineCare Prior Authorization (PA) notices and process. In 2009, as MaineCare prepared to change over to a new claims management system, MEJP met with DHHS to review the new PA notice format. As a result of this meeting, an agreement with DHHS was reached regarding a new format for its future MaineCare PA notices.

### **Administrative Advocacy**

In 2009, MEJP, primarily on behalf of the Maine Association of Interdependent Neighborhoods, was successful in increasing access to social and economic justice on a systemic level through its administrative advocacy. In order to improve access to public benefit programs and improve the processes and procedures that govern these programs, MEJP met regularly with various agencies within the Maine Departments of Health and Human Services, Labor and the Maine State Housing Authority as well as with their federal counterparts. In addition, we submitted comments on the state and federal level for administrative rulemakings ranging from access to oral health and other MaineCare services to child care subsidies and ensuring federal funds were available for direct training at the state level. Furthermore, MEJP participated in over forty state boards, committees, workgroups and /or task forces, some at the request of the legislature and the administration, in order to improve the systems and supports available to people with low income. (Please see Appendix A for a list of the various groups MEJP participated in during 2009.)

MEJP advocated for over twenty different administrative advocacy initiatives in 2009 that ranged from commenting on proposed state and federal rules to advocating for increased access to public benefit programs, including continuity of health care coverage as well as increased opportunities for workforce training and education. The cases outlined below represent the wide variety of initiatives that MEJP pursues through administrative advocacy on behalf of its clients.

- National Health Care Reform: MEJP provided legal research and analysis to a variety of state and federal advocates, Maine's Congressional Delegation, and State Representatives regarding the impact of national health reform components on Maine programs and people with low income. In addition, we provided information regarding the impact of certain policies, including affordability standards, establishing coverage based on a particular federal poverty limit and the need for comprehensive benefit packages, based on Maine's experience, to our Congressional Delegation.

- Education & Training Opportunities: MEJP had been pursuing the feasibility of supplementing the available funding in the Competitive Skills Scholarship Program (CSSP), which provides low-wage workers with the supports necessary for them to pursue post-secondary training and education programs, with education and training funding available through the Supplemental Nutrition Assistance Program (SNAP). MEJP is working with Maine's Departments of Labor and Health and Human Services as well as with the federal Department of Agriculture, which oversees the SNAP program. If successful, the number of CSSP participants will double.
- Children's Health Issues: Through MEJP's administrative advocacy and, in part, as a result of a lawsuit (described above), the Department of Health and Human Services (DHHS) agreed to fundamentally alter how children with special needs access MaineCare covered services. In addition, DHHS will no longer discriminate in the provision of services solely based upon a child's diagnosis, illness or condition; rather functional limitations will be the primary basis for determining eligibility for services. In 2009, the DHHS issued proposed rules restructuring the delivery of services to for children with special health care needs. MEJP submitted rulemaking comments. At this time the rules have not yet been finalized.
- Elder Issues: In 2008 MEJP worked with the DHHS and Legal Services for the Elderly to adopt a long-term care partnership program, which would encourage people to purchase long-term care policies as a way of reducing Medicaid expenditures and protecting assets of people who require long-term care. In 2009, MEJP submitted rulemaking comments, the majority of which were accepted, with regard to Maine's Long term Care Partnership program.
- Low Income Heating Assistance Program (LIHEAP): MEJP in collaboration with the Community Action Programs, MaineHousing and the Department of Health and Human Services (DHHS) has been working to streamline the LIHEAP application process with other public benefit programs. MaineHousing is the agency primarily responsible for LIHEAP, while the DHHS is responsible for nearly all of Maine's other public benefit programs. By reviewing the application systems for these two agencies, we identified commonalities between the programs that will shorten the wait period for LIHEAP and eliminate the need for applicants to fill out more than one application or produce the same documents to verify eligibility more than once. In these hard economic times, removing barriers to programs is vital to keeping families intact with a roof over their heads, heat in their homes, and food on their tables.
- Increasing Access to Public Benefits: After months of advocacy with the Governor and his staff on the need to increase the use of technology to remove barriers to public benefit programs, the Governor signed an Executive Order (29 FY 08/09) entitled, "An Order to Facilitate Community Partnerships and Recommend Efficiencies and Simplifications in the Delivery of Public Benefits to Help Maine Weather the Economic Downturn." The Executive Order created a small work group, on which MEJP sits, that is tasked with increasing access to public benefit programs by evaluating available technology that can improve access, streamline administrative procedures, including recertification, and the delivery of services. The potential to eliminate face-to-face interviews, reduce the number of people churning on and off various programs by offering electronic recertification and eventually creating web

based applications, will make it easier for rural and/or elderly individuals and individuals without readily available transportation to access services that can help them make ends meet.

## **Training, Education and Outreach**

In addition to direct client representation, MEJP provides information to clients, providers and the general public through training and education presentations throughout Maine. In 2009, MEJP reached over 400 individuals through workshops and conferences. We provided information on a wide range of topics, including specific MaineCare issues such as the non-categoricals and prescription drugs as well as general information regarding MaineCare; TANF/ASPIRE; Parents as Scholars; Food Stamps; Dirigo Health; Alternative Aid; General Assistance; and federal health care reform.

MEJP's direct training, education and outreach is supplemented by our website ([www.mejp.org](http://www.mejp.org)), which contains a wealth of client education materials and information on MaineCare, TANF/ASPIRE, Parents as Scholars, Medicare Part D, prescription drugs, Food Stamps, Alternative Aid, Maine Medical Assistance Program and more.

## **The Impact of MEJP's Work**

MEJP offers free legal services to individuals with income below 150% of the Federal Poverty Level (FPL). In some instances, primarily health care related matters, MEJP provides free legal services to individuals with income up to 200% of FPL.<sup>2</sup> We focus specifically on efforts to benefit:

- Families receiving TANF benefits; approximately 13,554 families, including 24,101 children in 2009 and 708 TANF parents receiving Parents as Scholars benefits;
- People receiving MaineCare; approximately 313,955 families and individuals (in any given month) who receive benefits;
- People eligible for prescription drug assistance; approximately 85,785 individuals, including elderly and disabled individuals in 2009;
- People receiving food assistance; approximately 111,357 families, representing over 222,261 individuals, who receive food stamp benefits; and
- Low-wage workers and their families whose wages are below 150% of the poverty guidelines.

As a result of the systemic nature of MEJP's work, the exact number of people served by MEJP in 2009 is hard to estimate. Given the direct and indirect impact of our work, MEJP served the following numbers of Maine people in 2009:

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<sup>2</sup> MEJP provides free legal services for individuals with income up to 200% of FPL with regard to health care coverage issues, because Maine's MaineCare program provides health care coverage for parents up to 200% of FPL.

Activity	Number of People Served
Full intakes – Advice; brief services; full representation	185
Advice and Referral – Advocates/social service providers	120
Advice and Referral – Individuals	243
Administrative Advocacy – all public benefit programs	524,650+
Training, Education & Outreach – presentations	400+

Maine Equal Justice is deeply grateful to its many supporters who make it possible for us to do the work we do. We believe that our advocacy over the past 14 years has been effective in bringing hope, opportunity, and economic security to thousands of Maine people. In these challenging economic times, our work will be more important than ever, as we seek to protect the less fortunate from further hardship and promote long-term sustainable solutions to poverty.