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MEMBER



Special needs require special lawyers.

SpecialNeedsAlliance.com

Wednesday, September 26, 2007

Re: ACES\$ and required fiscal intermediary to pay direct support workers - Adult or Children's HBSSP

Dear fellow parents of children with special needs:

Attached you will find a copy of the email recently distributed by Charlotte Cronin of The Family Support Network and The Arc of Illinois, in regard to ACES\$, the organization engaged by the State of Illinois, as the required "fiscal intermediary", a/k/a "middle man", for situations where families choose, themselves, to hire workers.

While this change in the "mechanics" is, to say the least, a major headache for families, it was required by the Federal government.

Families are now receiving requests to sign forms, including a Power of Attorney, allowing ACES\$ to act as the families' representative or agent as to Illinois Unemployment Tax. Complete them, sign them, and return them. You are simply authorizing ACES\$ to "take care of" the paper work for you. By analogy, I use "QuickBooks" for my law firm's payroll. I signed similar documents to have QuickBooks "take care of" my payroll tax filings. That's all those forms are doing.

Simply stated, the Power of Attorney ONLY gives ACES\$ permission or authority to file the required employment tax forms on your behalf. The Power of Attorney does NOT give ACES\$ any other powers involving or related in any manner to your life, or the life of your child.

Sincerely,

Brian Rubin

Enclosure

Brian Rubin, the father of a son with autism, is a member of the Special Needs Alliance. The Special Needs Alliance, the oldest national organization of Special Needs Planning Attorneys, is a "not for profit", membership by invitation, association of Attorneys in every state that concentrate their law practices, if not limit their law practices, to special needs legal and future planning for individuals with special needs and their families.

Brian Rubin, is an attorney with an undergraduate degree in Accounting, a former IRS Revenue Agent, and a former IRS Estate Tax Attorney. He was admitted to the Illinois Bar and has practiced law since 1976. Brian is the parent of three children, one of whom, Mitchell, has autism. Brian's law practice, since 1981, when his son, Mitchell, was one year old, has been dedicated to serving the legal and "future planning" needs of his fellow families of children and adults with special needs.

Brian Rubin, is the immediate Past Chairman of the State of Illinois, Department of Human Services, Advisory Council on Developmental Disabilities; Serves as Co-Chairman of the State of Illinois, Department of Human Services, Autism Task Force; Serves as a member of the State of Illinois, Department of Human Services, Division of Developmental Disabilities, Strategic Plan Committee; Serves as a member of the State of Illinois Disabilities Services Advisory Committee (The State's Olmstead Committee) by appointment of the Governor; and also by appointment of the Governor, serves as a member of the State of Illinois, Department of Human Services, Office of Inspector General, Quality Care Board, a seven person Board which over-see the activities of the Office of the Inspector General investigating allegations of abuse and neglect of individuals with developmental disabilities and mental illness.

Brian Rubin, is a member of the Board of Directors of many organizations, including The Arc of Illinois, Clearbrook, & Special Leisure Services Foundation (The foundation of the Northwest Suburban Special Recreation Association). He also has served on the Board of Directors of Keshet, Northpointe Achievement Centre, Foundation for the Special Education District of Lake County (Founding Chairman), Village of Buffalo Grove Commission for Residents with Disabilities (Founding Chairman), among others. Brian Rubin has served on the Illinois State Bar Association's Trusts and Estates Section Council, and on the Illinois State Bar Association Standing Committee on Mental Health Law. He is a member of the Chicago Estate Planning Council, the Greater North Shore Estate Planning Council (member of the founding Board of Directors), and the Northwest Suburban Estate Planning Council. Please visit www.SNFP.net for more information about Brian Rubin and our firm. Please visit www.SpecialNeedsAlliance.com for more information about The Special Needs Alliance.

Brian Rubin, has lectured on the topic of Special Needs Legal and Future Planning for Individuals with Special Needs and their Families for more than 25 years. He lectures regularly for The Arc of Illinois, and has been a speaker and author on the topic for IICLE, The Illinois Institute for Continuing Legal Education. For a complete list of where Brian has lectured in the past, and for his future schedule, please visit www.SNFP.net. Please contact our office if you wish to arrange for an educational presentation to your group or organization.

From: Family Support Network [mailto:InTheKnow@familysupportnetwork.org]
Sent: Sunday, September 23, 2007 8:08 PM
Cc: Charlotte Cronin
Subject: ACES\$ and Taxes! Suburb N 1

Greetings, Family Support Network Members!

I've got to tell you **taxes were the last thing I ever thought I'd need to understand** doing advocacy for people with disabilities.

But, here we are. The transition to using a fiscal intermediary to pay direct support workers has been very painful for just about everybody involved. And yes, I include DHS and ACES\$ staff.

Way too much has happened way too fast. Our families, DHS, and ACES\$ have been caught in the middle.

Everybody knows hindsight is 20/20. But, we are where we are. Finger pointing is not helpful.

We need to figure out what we can change and change it. We need to figure out what strategies will work and use them.

ACES\$ Tax Issues

I e-mailed last week about our meeting with Connie Sims and Reta Hoskins at the Division of Developmental Disabilities. At that meeting we discussed a wide range of issues, many of which I am hopeful can and will be worked out over time.

But, many, many of you and others have expressed **extreme and understandable consternation over the issues of taxes** on direct support workers. Some taxes are just taxes that we all have to pay and come out of our "gross income". Some taxes are taxes that employers pay and that are typically "invisible" to the employee.

I hate taxes. I think my family loses almost a third of its paychecks to taxes of one kind or another. But, then again, if it wasn't for taxes most of the support and services we receive would simply not exist. That includes everything from SSI to the Home-Based Support Services Programs to our children's school programs. So we've got to pay them.

So let me characterize the issues as I've sorted them out.

Moving From Being Paid as "Contractual Workers"

First, it is VERY important to remember that the Feds DEMANDED that Illinois use a fiscal intermediary to pay direct care workers. Illinois does NOT have a choice.

In the past, the State of Illinois paid personal support workers in the Adult Home-Based Support Services Program (HBSSP) directly. There were a lot of problems with that system including that it was not unusual for workers to wait a month or two or MORE to be paid. Direct care workers were considered "contractual". No deductions were made from their paychecks.

The State of Illinois sent the workers a form called a 1099 (instead of a W2) at the end of the year. The state also reported this income to the appropriate state and federal taxing bodies. Workers were then expected to pay all their federal and state income taxes, and ½ of Social Security and ½ of their Medicare. This could be especially hard as workers may not have saved enough from each check to pay these taxes, a nasty surprise. We all know that most of our personal support workers live on a very tight budget.

Now that money is being taken from the worker's paycheck each month. It comes from THE EMPLOYEE'S gross income and is not an additional expense to the HBSSP participant's monthly allotment. If, for instance, you choose to pay a worker \$10 per hour, it's subtracted from the \$10 per hour. At the end of

the year, when the employee files his tax return, depending on his circumstances, he may get a lot of that back or he may have to pay more in.

Now Personal Support Workers Are “Employees”

All employers have to make additional payments to the State and Feds on behalf of their employees so that they can participate in some key government programs. They are invisible to the employee but expensive to the employer. They include the other ½ of their Medicare payment, the other 1/12 of Social Security, and their Employee Unemployment Compensation Insurance.

This IS an additional expense that does come out of the Adult or Children's HBSSP participant's monthly allotment. There isn't much we can do about it. Law says that employees have a right to these programs. Do we as advocates really want to be saying that other people shouldn't be able to participate in these basic programs?

Issues We May Be Able to Address

Savvy Illinois advocates have been contacting me, DHS, and ACES\$ saying that “spouses” and “family members” should not have to pay the Unemployment Compensation Insurance. This amounts to 3.9% of the gross paid to the State and .8% paid of their gross paid to the Feds. That totals an additional 4.7%.

It's a complicated issue.

ACES\$ is paid a flat rate per participant to provide fiscal intermediary services. That rate is PAID by the state of Illinois and DOES NOT come out of the participant's monthly allotment.

ACES\$ says they cannot afford to figure every individual payment separately. It's too hugely complicated. They have worked out an agreement with the state allowing them to use a fixed percentage to figure Unemployment Compensation Insurance for all employees regardless of the spousal or family relationship to the employer.

ACES\$ would have to charge the state significantly more per participant if they are to figure each account individually. That would mean less funding available to provide services to people currently not receiving any services.

Spouses and families are, of course, indignant.

We may have some choices and they are being explored. But this takes time, tax lawyers, and the IRS. We may have some opportunities if we can amend the current waivers. Some have pointed to other states saying they do it this way or that way. Those opportunities also need to be explored. But they are seldom as simple as they sound.

Knowledge is Power

I know that this is not a good news e-mail.

But, I want to provide you with reliable information in a way that is understandable. I hope this has been helpful.

We are all learning.

This is a Painful Moment

But, we are at the beginning of an exciting new era in disability services in Illinois. The mere existence of these programs is an incredible step forward.

Your Voice is Important

Sharing your problems and successes will help to make the programs better. You will have many opportunities to do that in the future, both formally and informally. Informally you can keep me up to date on your successes and your challenges. Formally, there will be opportunities to participate in committees and other conversations around these programs. We need you there. I will keep you up to date.

Thanks,

Charlotte

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