

## SOAR Dialogue Phone Call

May 20, 2011

(Attendance: Emily Carmody, Judith Romanowski, TJ Reynolds-Emwanta, Terri Clark, Kendra Norville, Violet Collins, Spencer Cook, Liz Lumley, Jacquetta Bullock, Toni Roseborough)

- I. Introductions and Community Updates-
  - a. Emily Carmody, NCCEH- Just held the Greenville SOAR Training this week, still working with the state hospital system to implement a SOAR program
  - b. Toni Roseborough, Ivy House, Winston-Salem- At the SOAR training this week, wanting to get more information about SOAR, will be doing SOAR applications with Jenna Lackard for Ivy House
  - c. TJ Reynolds-Emwanta, PATH, Winston-Salem- Two approvals this month, one of which was a hearing and he was approved in less than two days with a large amount of back pay, one was approved under presumptive disability, submitted two cases this week and five in process
  - d. Jacquetta Bullock, New Directions Ministries, Vance County- Have had a presumptive approval for six months on first case, was able to find applicant after she left the program to get her the supportive services she needs, she is also applying for Shelter Plus Care housing
  - e. Spencer Cook, PATH, Durham- Have a new psychologist on board to preform psychological testing, hoping to get funding for the next year, a couple of approvals, one decision was presumptive, want to discuss an ethical quandary about relapse and benefits
  - f. Violet Collins, DSS, Pitt County-At this time, no celebrations.
  - g. Kendra Norville, DSS, Pitt County- Presumptive approval this week, hearing pending on one case
  - h. Terri Clark, PATH, Cumberland County- Getting more experience in working with payees, have a psychologist onboard with Voc Rehab to do psychological evaluations pro bono
  - i. Liz Lumley, LATCH, Durham- No good news to report today
  
- II. Announcements
  - a. Thank you for the outcomes forms and filling out the DDS Examiner information
  - b. Outcomes for the designated SOAR DDS Examiner
    - i. 35 cases reported to have gone to the SOAR DDS Examiner
    - ii. 32 cases approved, 91% approval rate
    - iii. 86 days for average decision time
    - iv. 1 Recon case was approved within 90 days
  - c. Feedback on Donna Gould
    - i. Spencer- Donna Gould is the most helpful, responsive examiner ever
    - ii. TJ- she has been very helpful and reaches out to TJ for cases that she knows TJ is helping with, very quick on presumptive decisions
    - iii. Emily- I will give this feedback to Donna's supervisor at DDS

- III. Presentation on Attorney Collaborations by Judith Romanowski
  - a. Judith is a disability attorney in North Carolina who works with many homeless applications, is a great resource for SOAR programs in the Triangle region, and has insight into the medical field as a former nurse
  - b. Promote collegiality between SOAR Case Workers and attorneys
    - i. Fears and myths on both sides of the relationship
    - ii. Not across the board but within the extreme groups
  - c. SSI/SSDI benefits were not always a legal issue
    - i. Goldberg vs. Kelly- landmark case
      - 1. Early 70s: social workers were primarily handling SSI/SSDI applications
      - 2. Individuals had no recourse if denied or if benefits were taken away from them
      - 3. The lawsuit gave individuals more rights to appeal decisions made by SSA
    - ii. Attorneys became involved to protect people's rights to benefits
  - d. Referrals to attorneys
    - i. SOAR case workers can establish connections with attorneys in your communities that practice their work in a way that is in line with SOAR
    - ii. Finding attorneys
      - 1. Check with other clients who have successfully gotten benefits
      - 2. North Carolina Bar has a referral service
      - 3. Two professional organizations with attorney and non-attorney representatives
        - a. NOSSCR-
          - i. Attorney-based association
          - ii. National Organization of Social Security Representatives
          - iii. Judith is a member and recommends attorneys that are associated with this organization
        - b. NADR-
          - i. National Association of Disability Representatives
          - ii. More non-attorney representatives
        - c. Both have referral systems
      - 4. Be cautious with general practitioners who dabble in Social Security cases
    - iii. SOAR Case Workers can help to empower clients to find an attorney that they feel comfortable working with
      - 1. The fee schedule levels the playing field
      - 2. Clients often are not used to working with attorneys except for criminal cases

3. Help them understand that they deserve to have an attorney that they feel comfortable with and to interview attorneys to make sure they are a good fit
4. Most colleagues in the state are passionate about getting individuals benefits
5. Caution: there are a few attorneys in the state who are basically running Social Security Disability factories to the extent that they won't meet their clients before the hearing
6. Questions to ask attorneys:
  - a. Is this an attorney that will be available to them?
  - b. Will we meet more than one time?
  - c. Will the attorney come to the client?
    - i. Transportation costs can be a huge burden to our clients
    - ii. Some clients get confused in trying to reach the attorney
    - iii. SOAR case workers can help facilitate these meetings by suggesting some places
7. Although it may be true that some attorneys may delay cases for fees, but Judith does not know of any
  - a. The system has enough delays built in that attorneys do not have to do much to delay a case
  - b. It may be that they do not put energy into pushing a case through the system
  - c. Traditionally attorneys have stepped in at the hearing level
  - d. Currently, hearings are getting scheduled within a year and it's easier to get dire need cases heard quicker

e. Fees

- i. Attorneys deserve to be paid for their work much like SOAR case workers
- ii. Wishes the pay came out of a separate fund instead of back pay
- iii. Congress established the fee structure in order to ensure that those who could not afford an attorney would be able to retain an attorney to represent them
  1. Can charge contingency fee (no fee if not a favorable decision) 25% of back pay up to a maximum of \$6,000
    - a. Ceiling takes away incentive to delay case
    - b. Attorneys can opt out of the contingency fee and get paid by the hour
    - c. In order to be paid, SSA/ALJ has to approve the attorney fee no matter how fee is established
    - d. Ceiling continues even if the case is appealed to the Appeals Council

- e. After the Appeals Council, then the case is appealed to federal court and a whole new fee structure comes into play
- f. Attorneys versus Non-attorney representatives
  - i. Legal involvement is to ensure individual's rights to benefits
  - ii. Not an exceedingly complicated legal issue
    - 1. Not an issue with non-attorney representatives representing applicants
    - 2. There used to be a difference where SSA only directly paid attorneys
      - a. In the past, non-attorney reps could charge same amount but had to collect directly from the applicant
      - b. As of 4-5 years ago, non-attorney reps can be paid directly, but they have to meet certain criteria
        - i. Had to take exams, have liability insurance, and handle a certain number of cases
        - ii. Right now, exams are on hold because there is no one to take over supervising the system
  - iii. There are some great non-attorney representatives that are good at what they do
  - iv. However, there are some cases with legal issues where attorneys need to be consulted
  - v. Non-attorney reps do not have a code of ethics that they must adhere to, unlike attorneys that have a code of ethics that they must practice under
- g. 1696 Representative
  - i. Important role to play with case, not just a glorified release of information
  - ii. Nuances can come up that as a Representative you have a responsibility to help applicants to address or to get help to address those issues
  - iii. Other legal issues have come up in cases that you need to call an attorney to consult before acting on them
- h. Presumptive Disability
  - i. Warning: if DDS cannot get cases approved within 6 months, SSA will stop payments
  - ii. Don't stop working on case just because individuals get income and health benefits
- i. Questions and Comments for Judith
  - i. Charlotte has developed relationships with attorneys who work with SOAR case workers closely
  - ii. TJ- Has a collaboration with Legal Aid
    - 1. Will take cases at ALJ stage and not charge a fee
    - 2. Has a lunch meeting today to speak to two attorneys to do referrals
      - a. Already get a lot of referrals from PATH
      - b. Are willing to lower fees for referrals
    - 3. Unable to appeals now because want to process as many cases as possible

4. Would like to find attorneys who are charging less because TJ does a considerable amount of work on cases before referring them to attorneys
- iii. Emily- Judith you have experience with charging lower fees?
    1. Judith- was a nightmare with SSA because they are not used to paying lower fees
    2. If you don't charge the statutory fees, you have to petition SSA for the fee
    3. Went back to a regular fee for cases
      - a. Attorneys don't win every case but still spend up to 40 hours on cases
      - b. Just had two cases where Judith won't be paid because of resource issues and date of onset issues even though she worked for a year on the case
      - c. Judith charges the full fee because she does a lot of work that she does not get paid for
  - iv. Who has had experience doing hearings?
    1. TJ- most experience at hearing level
    2. Spencer- I've just watched
    3. Jackie- no
    4. Terri Clark-
      - a. Has submitted a case to ODAR
      - b. Submitted evidence and emergency request
      - c. Put it directly in front of ALJ to review it and approved presumptive
      - d. However, went ahead and did hearing without Terri and approved application
    5. A couple of retired attorneys who are SOAR trained who go to hearings
  - v. Spencer- SOAR Tips for Reconsiderations and Appeals- have you seen this resource Judith?
    1. Judith- no but would like to review
      - a. Emily to send to Judith
      - b. Emily will send out comments to group
    2. Requesting a review on the record
      - a. Spencer- is it important to make sure you state that you are not waiving the right to appear for a hearing?
      - b. Judith- yes, you need to make that clear so that the review does not deny the case
        - i. Make sure you are clear that you are asking for a favorable decision on the record
        - ii. Make sure that you state you are not waiving the right to a hearing if it is not favorable

- vi. TJ- I file a Dire Need request with letter and hearing is scheduled within a month.
  - 1. Always ask for Review, but with Dire Need they schedule the hearing so quickly they often won't do the Review because hearings are scheduled within a couple of weeks.
  - 2. Judith- Not always the case that Review cases have Dire Need
    - a. Dire Need: homeless or facing homelessness, terminal illness
    - b. Sometimes on the record decisions are granted in cases that are not Dire Need
  - 3. Judith- Make sure that if you request a Dire Need you have all the records you need to prove your case
    - a. To rush a bad case is to rush a denial through
    - b. Sometimes choose not to proceed with Dire Need to get some more records together to strengthen case
  - 4. Terri- Now sees that Review and award were done so quickly because they saw it as a Dire Need case
- vii. Judith- You are in a great situation to educate providers on how to keep records and state things in records
  - 1. The more you do cases you see how poor records keep eligible individuals from being awarded benefits
  - 2. Every chance I get I talk to providers about improving records
    - a. Updating substance abuse information
    - b. Explaining non-compliance issues (i.e. financial or ability reasons)
- j. Emily-The most professional thing to do is to know when you are in over your head and reach out for help
  - i. Use attorneys as a referral source to take cases that you feel need more help
  - ii. Use attorneys as resources to ask questions along the way
  - iii. Emily will send out NOSSCR and NADR information to help SOAR case workers locate attorneys
  - iv. Judith- People are welcome to contact me if you ever have any questions

IV. Next Phone Call, Friday, June 16, 2011, 10-11 am

- a. Please send topics to Emily that you want covered on future SOAR Dialogue Phone Calls
- b. Register for the call by following this link: <http://ncceh.org/en/cev/452>