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Human Services Committee Hearing - February 23, 2010

Testimony of John P. Spilka, Esq.
Director of the Disability Unit of Connecticut Legal Services

Re: Governor's Proposal To Cease Paying Attorney's Fees In SAGA Grant Reimbursement SSI Disability Cases

Dear Committee Members,

I am here to testify against the renewed proposal by the Governor to eliminate the payment of fees to attorneys who do the legal work to get people off state SAGA benefits and onto federally funded SSI benefits (which are, in fact, much better benefits for these people). You should continue the current system of payment because:

- Eliminating it saves almost nothing while the program is bringing millions of dollars into the state; and

- The federal provision referred to in the Governor's proposal which allows lawyers to take their money from low-income SSI recipients, is bad policy (because these are very poor people who need the money), and, in fact, this provision is scheduled to expire at the end of this month (Congress has not decided whether to extend the program which was enacted as an experiment).

I have been a legal aid attorney since 1974 and I have handled Supplemental Security Income (SSI) disability cases since the inception of the SSI program in 1975. I am the Director of the Disability Unit within Connecticut Legal Services, the largest legal services program in the state. I supervise the work of several other disability advocates who work either full-time or part-time handling SSI disability cases. Over the years, I have represented clients in more than one thousand disability hearings and have handled hundreds of appeals to the Appeals Council and the federal District Court.

The SSI disability program is a lifeline for people struggling to meet basic human needs. Many of my clients are surviving, somehow, on $212 per month offered by the State Administered General Assistance (SAGA) program. Moving them from state benefits to the SSI program is a major improvement in their financial status ($674) that gives them a ray of hope as they deal with their physical and or mental impairments. Additionally, it makes them eligible for Medicaid (Title 19).

A large segment of my clientele are mentally ill and undereducated. They are children, young adults, middle-aged adults, and senior citizens over 60 years old. Most are poor but some are citizens who were once well off but lost their income and assets due to their disability. Many have grown up in poverty and have received minimal medical and psychiatric care throughout their lives. Too many are victims of physical

and sexual abuse. Some live in shelters, some live in the woods or under bridges, some share housing with family or friends, and some move from place to place depending upon what might be available. They are fragile people who need representation in securing disability benefits for which they are eligible.

In a perfect administrative process, disability applicants would not need legal representation. The process, unfortunately, is not perfect and the Social Security Act, as one Court described it is an "exceedingly complex and detailed law" which requires attorney involvement. For a mentally ill person with a limited education, it is near impossible to negotiate the Social Security administrative appeal process successfully. The chances for someone securing disability benefits increases dramatically with legal representation. Sometimes it can take a long time. In one case of mine, it took 8 years (three hearings and two appeals to District Court) but it resulted in success and the state was reimbursed over $23,000.

The attorney's fees statute which the governor proposes to abolish supports representation of SSI claimants by legal aid attorneys. There are good reasons for keeping the statute as explained below.

First, from a legal aid perspective, the money generated from this fees statute helps support our efforts to represent as many SSI disability clients as possible, not only SAGA clients receiving cash assistance -- but also SAGA clients receiving just medical assistance, and individuals whose SSI has been stopped because of alleged medical improvement or an alleged overpayment of benefits. Legal aid programs have a limited budget and limited staff. This money allows us to dedicate several attorneys to representation in disability related claims. Even with the money we receive, we are still understaffed in this area of practice. For example, I cover the Meriden, Middletown, Bridgeport, Norwalk and Stamford regions along with helping out in other parts of the state when necessary. I also oversee the appeals to the Appeals Council and the District Court.

Second, legal aid attorneys do not charge a fee for their services. This allows the SSI claimant to receive a larger amount of retroactive benefits. The benefit to the claimant is that they receive more money to help them out of poverty. Since they have had to survive on $212 per month for a number of years in many cases, they have had to forego purchases of clothing, furniture, and other necessities of life they could not afford. As one former client said to me, the award of SSI and the SSI retroactive benefits that he received (minus reimbursement to the state) allowed him to move to a better neighborhood where he was able to focus on his mental health treatment.

Third, even with the opportunity to get paid directly out of the retroactive benefits, SSI disability cases are not as lucrative as Social Security Disability Insurance (SSDI) cases because the retroactive award is much less and, consequently, the fee is less. Thus, there is not as great an incentive to take these cases by the private bar.

Furthermore, in gray area cases, i.e., difficult disability claims lacking objective medical documentation, private attorneys are not as inclined to engage in representation because it's not worth their investment of time, effort, and money since the chance of success is not perceived as good. In fact, we handle these gray area cases as a matter of course and such cases are referred by private attorneys to us. Often, we do succeed in obtaining disability benefits resulting in reimbursement of SAGA to the state.

Fourth, the provision in the Social Security Act that allows attorneys to get paid directly from the claimant's retroactive SSI award is part of an experiment that will end on February 28, 2010. An extension of this provision has not yet been passed by the Congress.

Fifth, there is important advantage to the state fisc to encouraging representation of SSI applicants. SAGA cash and medical - the programs most individuals appealing SSI receive - are entirely state funded. Moving these recipients to SSI cash assistance and in some cases to SSI/SSDI cash assistance which are entirely federally funded, is advantageous to the state. As well, moving them to Medicaid, jointly funded by state and federal government, reduces medical costs covered by the state. Legal services represents many recipients who pose difficulties in representation - they may have severe mental impairments, they may not have a solid documentation of their medical or psychiatric conditions, they may be highly mobile and difficult to locate, or they may not be fluent in English. These hurdles mean that the private bar may not assist these individuals as it can be too costly for them. If anything, the state should find ways to assist legal services in expanding representation and helping the state to save more money.

The funding for attorney's fees in these SAGA cases has resulted in great success in making legal representation available to poor disability claimants who could not otherwise afford representation. It has, also, resulted in helping the state recoup hundreds of thousands of dollars, if not more, of SAGA money. In the past three fiscal years, my program has saved the state an estimated $400,000 in moving people from SSI to SAGA and with the resultant eligibility for Medicaid (Title 19) we have helped the state save, perhaps, an equal sum of money or more in medical costs. Now is not the time to eliminate this funding.

Finally, I would strongly urge this legislature to address a significant untapped source of income for the state: currently 2,000 of the 5,000 children in DCF care are potentially eligible for SSI disability benefits but no application has been filed on their behalf. If disability applications were filed for these children and benefits were awarded at the initial level or within the administrative appeal process, this would result in a significant benefit to the child, the family of the child and the state.

Receiving SSI benefits would benefit the child and the child's family because, if the child returned to the family, the child would receive $674 per month for the

child's personal needs. Additionally, when the child reached adulthood and began living on their own, this benefit would be available for them to meet their basic living expenses (as opposed to SAGA cash assistance). Also, for children in DCF's care, DCF would immediately receive $674 per month for every child who became eligible and was not receiving benefits under Title IV-E of the Social Security Act. This amount could easily result in millions of dollars for the state.

I would urge the legislature to not adopt the Governor's proposal and add SSI for children in state care to the current attorney's fees statute.

I thank you for the opportunity to share my testimony.