

CASE UPDATE – January 2011

American Council for the Blind v Astrue

Court Finds Standard Print Notice Not Sufficient for Blind & Visually Impaired

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Some 3 million blind and visually impaired Social Security beneficiaries -- two thirds over age 80 -- are entitled to receive notices about their benefits in Braille or on a Microsoft CD thanks to a successful lawsuit. However, some 80% of those in the class affected by this decision have never been notified of this right. The Social Security Administration (SSA) is only able to identify a small percentage (about 20%) of the blind and visually impaired beneficiaries receiving benefits, leaving 80% of those entitled to relief without notice.

Full implementation is an ongoing challenge. The court ordered SSA to send notice of the newly mandated options and how to request them to everyone receiving benefits who the agency knew to be blind or visually impaired. And, the agency has already done so. However, there is a problem since most people who are blind or visually impaired receive benefits on the basis of age, the agency may not know who does or doesn't have vision issues.

The plaintiffs in the case were represented by the Disability Rights Education and Defense Fund (DREDF), Howrey, LLP and Heller, Ehrman, LLP and the National Senior Citizens Law Center.

THE CASE: American Council Of The Blind V. Astrue

This national class action challenged the Social Security Administration's (SSA) policy of refusing to provide more than a standard print notice to most blind and visually impaired people receiving benefits or serving as a representative payee for someone receiving benefits. In late 2009, a federal court in San Francisco ruled in favor of plaintiffs after a trial and issued an order requiring SSA to begin offering blind and visually impaired beneficiaries and representative payees a choice of several different formats for receiving notices from the agency. The ruling applies to both the Social

Security and Supplemental Security Income (SSI) programs and represents a major victory for a particularly vulnerable group of older Americans.

The People: Dorothy Jackson

Dorothy Jackson, who was age 80 at the start of the case in 2005, is typical of the many people in the class represented in the lawsuit. Many older adults suffer visual impairment and some have conditions that cause blindness. Blindness can be caused by macular degeneration, glaucoma, cataracts or advanced cases of diabetes. As a result of these and other diseases most blind and visually impaired people in America are of advanced age, with two-thirds being more than 80 years old. Ms. Jackson, who received a small Social Security Retirement benefit supplemented by a small SSI check, lived with her late husband in a small apartment in North Hollywood, California. She was completely blind in one eye and had limited vision in the other as a result of macular degeneration. Her husband had an advanced stage of Alzheimer's disease and she served as representative payee for him.

From time to time, Ms. Jackson received standard print notices on her continuing SSI eligibility or that of her husband. When she asked SSA to send these notices in large print format, she was told that it could not be done. Instead, agency staff suggested that she ask a neighbor to read the notices to her. In addition, she was required to fill out an annual representative payee accounting form, also in standard print format. While she took care of all the family finances (she received bank statements in large print) and knew all the information required on the form, she could not see the form well enough to know where to fill in the information. As a result, she had to seek help and had to divulge private family financial information to others.

The Results:

As a result of the litigation, blind and visually impaired beneficiaries and representative payees will now be entitled to receive notices about their benefits in their choice of 1) Braille or 2) a Microsoft Word CD. Most SSA notices are already available in both formats, with remaining notices expected to be available in them by September 30, 2010. In addition, SSA expects to make large print and audio CD notices available sometime in 2011. Until that time, individuals requesting large print or audio CD can receive notices in an interim alternate format, e.g., Microsoft Word CD or standard print followed by a telephone call.

Before the lawsuit, SSA's policy was to offer notices only in standard print format except in a small percentage of cases in which blindness was the basis for receiving benefits. Even then, they only offered two other options 1) the same standard print notice sent by certified mail or 2) a standard print notice sent by regular first class mail followed by a telephone call, although the promised phone call was usually not made.

In a strongly worded decision, Judge William Alsup castigated the agency for its “lame excuses for noncompliance” and ordered SSA to offer communications in both Braille and a navigable Microsoft Word CD, not just in a standard print format. He also ordered the agency to establish a procedure for someone who cannot read any of these formats to ask for another alternative. However, the individual making the request must demonstrate why one of the automatically offered formats is not adequate.

In the course of the litigation, SSA objected strenuously to any requirement to provide notices in large print or audio format. However, they did agree after the court issued its decision to provide these options automatically beginning in 2011 to anyone requesting them. Had the agency not agreed to do so they probably would have been overwhelmed with the need to adjudicate a large number of special requests for alternative formats as required by the court’s order.

How Does Someone Request An Alternate Format?

Individuals can request an alternative format on-line (www.socialsecurity.gov/notices) SSA has also established a dedicated automated phone line (877-708-1776) both in English and Spanish for requesting alternative formats.

What If None Of The Formats Work? An individual can request another format, but must be able to specify which format they need and why one of the automatically available formats will not work for them. Such requests need to be made at a Social Security office or by calling the national SSA 800 number (800-772-1213). It is important that individuals keep a record of the request date and the names and locations of the SSA staff to whom the request is made. SSA must respond to such requests within 45 days and must send its decision in large print. The request can be denied only if SSA determines that one of the automatically available formats is effective for the individual or that providing the requested format would constitute an “undue burden” on the agency. However, denials can be appealed through SSA’s administrative appeals process.

Contacts for Advocates

The Disability Rights Education & Defense Fund (DREDF) is monitoring implementation and is available for assistance to individuals who encounter difficulty in their alternative format request. They can be reached at ssaclassaction@dredf.org or at 800-348-4232. The group is also conducting an on-line survey to receive feedback on the experience relating to people requesting alternative formats. The survey can be found at <http://www.surveymonkey.com/s/68JKVW5>.

