



NEIGHBORHOOD  
LEGAL SERVICES, INC.

# INSIDE NLS

News from the front lines of Neighborhood Legal Services

January, 2019

## DANGER OF LEAD-BASED PAINT TO CHILDREN

Lead-based paint is a pervasive problem in Buffalo homes, especially for small children. Low levels of exposure to lead can cause negative health effects such as learning disabilities and behavioral problems in children. Children may become lead poisoned by eating or licking paint chips found in homes with peeling or flaking lead-based paint. We received a phone call from a couple concerned about the health of their small child. The couple noticed peeling paint and asked the health department to investigate. When the health department found lead-based paint, the couple contacted our office.

Katelyn Niedermier filed an affirmative warranty action to restore habitable access to the couple and their two-year-old. The case did not go to trial nor was a decision rendered because the defendant agreed to settle on terms favorable to our client. The case is notable for several reasons. First, it prevented our client's eviction. Second, it showed the housing court judge a real child exposed to the dangers of lead-based paint, which put a human face to the health department data. Last, it showed landlords (and landlord attorneys) that we will not hesitate to file lawsuits to enforce our client's rights to habitable housing.

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*“Never believe that a few caring people can't change the world. For indeed, that's all who ever have.”*

- Margaret Mead

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**NLS does not use the actual names of clients in *Inside NLS*.**

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## Help to Mother of Severely Disabled Child

“Gordon” was born in December of 2015 with Amniotic Band Syndrome (ABS). ABS is a congenital disorder caused by entrapment of fetal parts (usually a limb or digits) in fibrous amniotic bands while in utero and can result in a number of congenital birth defects. Gordon had amniotic banding on his feet, toes and penis resulting in reduction deficits of multiple toes. By age two, Gordon had undergone several surgical procedures, including amputation of toes in an effort to improve his mobility. Doctors had also fitted him with a prosthetic shoe filler to aid in ambulation. Additionally, Gordon would require cardiac surgery to repair a right aortic arch which was placing pressure on his esophagus leading to feeding difficulties.

Gordon’s mother, a single parent of five, cannot work outside of the home due to her child’s need for constant medical care, doctor’s visits, physical therapy, speech therapy and occupational therapy. In addition, Gordon’s family continually travels to Erie, Pennsylvania for treatment by specialists familiar with ABS and the long term affects as Gordon continues to grow as a toddler. Gordon’s mother applied for Social Security benefits on his behalf but Social Security denied the claim. Our office agreed to represent Gordon at a hearing to challenge the denial. Laurie Tanner argued that Gordon met the eligibility criteria and the hearing officer agreed. Gordon now receives a monthly benefit of \$750.00. In addition, Gordon received a settlement of retroactive benefits in the amount of \$19,105.00. These funds can be used for Gordon’s medical needs, future education and job skills training. The monthly award of \$750.00 has greatly eased the financial burdens on this household and helped Gordon’s mother to meet the medical needs of her child.

## Julie Gains Mobility

“Julie,” a 15 year old with many medical conditions, could not get around without the aid of a wheelchair. Because she was not strong enough to operate a manual wheelchair, Julie had a powered one. Julie is cared for by her parents, but they were not able to transport a powered wheelchair—which can weigh 250 pounds, nor could they afford to make the modifications to their home to accommodate a powered wheelchair. This meant, even at home, Julie was confined to a stroller. Because someone had to push the stroller for Julie to move from one spot to another, Julie had no independence at all.

Julie’s parents asked Medicaid for a manual wheelchair that could be fitted with a motor, so Julie would be able to operate it herself. It could be used at home and would fit in the back of a car so Julie could travel with it. Medicaid denied their request saying that it was not medically necessary and they would give Julie a powered wheelchair and a back-up manual wheelchair. Ironically, the cost of providing both pieces of equipment would be thousand dollars more than the wheelchair that could be adapted.

Marge Gustas requested a fair hearing to challenge the denial. Both Julie’s physical therapist and occupational therapist testified at the hearing on Julie’s behalf. They described how the requested eFix system would allow Julie a fuller, more integrated life. Julie now has a wheelchair with the eFix system. She has the independent mobility we all take for granted. She can move from room-to-room at home and can help around the house.

## **NLS Good News!**

**Nico Sorio and Lonnie Farrington were both admitted to the NYS bar on January 9th.**

**Danny Galvin began his new post as a Paralegal in the Public Benefits Unit on January 14.**

**Debbie Mancuso joined the Public Benefits Unit as their new secretary on January 2nd.**

**And . . . Kelley Culmer assumed her new position as Executive Assistant for the Management Team on the January 16.**

***Congratulations to Nico, Lonnie, Danny, Debbie, and Kelley!!***

## **Help for Non-English Speakers in Need**

Erie County is home to a large population of foreign-language speakers, including many immigrants and refugees. The refugee population, in particular, has been growing fast, with some 10,000 refugees resettled directly to Erie County since 2003. The largest groups have come from Burma, Bhutan, Somalia, and Iraq.

The vast majority of these immigrants understand very little English upon arriving in the United States. Additionally, many have no resources and need to apply for and access Public Assistance, Food Stamps (SNAP) and/or Medicaid from the Erie County Department of Social Services (ECDSS). These applications were being routinely denied by ECDSS because of their lack of language access services.

To remedy this problem, Penny Selmonsky and Karen Welch filed an Office of Civil Rights (OCR) Complaint on behalf of 5 Burmese and Karen (similar to Burmese) speaking clients with limited English proficiency (LEP) which they argued violated federal laws and regulations.

The U.S. Department of Health & Human Services (DHHS) agreed to investigate the Complaint. After completing a site visit, the DHHS called for a meeting with high level officials and the commissioner at ECDSS to talk about violations of the Civil Rights Act.

On December 22, 2016 the Erie County Department of Social Services entered into a Voluntary Resolution Agreement with the DHHS to ensure that appropriate language assistance services are provided to individuals with limited English proficiency whom ECDSS serves.

The OCR Complaint and resulting site visit have had a powerful impact. ECDSS has trained all staff on language access, has purchased language line telephones and has issued Language Identification Tool desk aides that are step-by-step guides of what to do if an applicant or recipient does not speak English. In addition, ECDSS established a Civil Rights Complaint Procedure and has appointed a Civil Rights Compliance Designee in the County's Law Department.

# Teamwork Reunites a Family

Diana Proske asked the Family Unit for help. She was concerned with living arrangement of the child of one of her clients, “Joseph.” Joseph was from Puerto Rico and his mother had custody of his daughter “Alexis” by court order in Puerto Rico. Alexis’s mother had engaged in instances of child neglect. Indeed, she had had three children, including Alexis, removed from her custody.

After Hurricane Maria, Joseph’s family home was uninhabitable and Joseph and Alexis came to Buffalo to live with Alexis’s mother during the rebuilding period. All went well for a time, until Alexis’s mother and Joseph had a falling-out. Alexis’s mother obtained an order of protection from the Buffalo City Court against Joseph that resulted in her having de facto custody. Meanwhile, Joseph was homeless and the Public Benefits Unit stepped in to help him. But the major concern was with Alexis, who was now in the custody of her mother who had had three children, including Alexis, previously removed from her home.

Alexis’s mother had filed a petition in Family Court concerning the alleged Family Offense against Joseph. She was also seeking custody of Alexis. Aparna Balakrishnan and Pat McGrath represented Joseph in Family Court. They obtained court-certified copies of the Puerto Rican order awarding the Joseph’s mother custody. The documents were in Spanish, so Jackie Rivera translated them to reduce the litigation costs. The International Institute certified them as accurate.

Aparna and Pat argued the Family Court in Erie County had no jurisdiction to hear this case because under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Alexis had been here less than six months and the courts in Puerto Rico should decide where Alexis should live and with whom. The UCCJEA is designed to avoid forum shopping, and Puerto Rico had issued the prior order. Based upon the prior order from Puerto Rico, the information provided by the attorney appointed for Alexis by the Family Court Judge, the scarcity of facts on which the order of protection had been issued, and an affidavit we prepared from the Joseph’s mother, the Family Court ordered Alexis returned to Puerto Rico. The reunion of Joseph and Alexis was a deeply moving one. Joseph and Alexis returned to Puerto Rico after staying at a hotel arranged for by the Homelessness Project. True teamwork!

## Have a Story to Share?

Email your story to  
Jim Morrissey at  
[jmorrissey@nls.org](mailto:jmorrissey@nls.org)

## GIVING HELP GIVING HOPE

The mission of Neighborhood Legal Services, Inc. is to provide a full range of free civil legal representation to low income and disabled people residing in Erie, Niagara, Orleans, Genesee, and Wyoming Counties, in matters involving their financial security and the legal rights which affect the stability of families and individuals. Our goal is to create the greatest access to the justice system for those low-income and disabled people without the means to pursue their rights. Our mission also includes providing outreach and training services to underprivileged populations and the community agencies which serve them.