

Benefit Specialist Handbook

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INTRODUCTION

The federal government, through the Older Americans Act (OAA) of 1965, requires that each of the three Wisconsin Area Agencies on Aging fund legal assistance for older individuals. The OAA requires agencies that receive funding to focus on several groups including, those in greatest social need, those in greatest economic need, low-income minorities, and rural elders. Wisconsin uses the Benefit Specialist Program to provide this mandated legal assistance to the state's older individuals.

The purpose of Wisconsin's Benefit Specialist Program is to provide broad access to benefits, entitlements and legal rights to large numbers of older persons throughout the state. The goal of the program is to promote and preserve the autonomy, dignity, independence and financial security of older individuals. These objectives are achieved by having a benefit specialist in each Wisconsin county and tribe work closely with a supervising attorney who can provide strong legal advocacy, training, technical support and representation beyond the local level. The Benefit Specialist Program maximizes the service that clients receive by providing a benefit specialist who can use their knowledge of local services and advocacy skills to solve client problems.

The Benefit Specialist Handbook provides guidance for benefit specialists and their supervising attorneys. The handbook is to be used to coordinate the services provided by the Benefit Specialist Program in order to ensure the highest quality of service to the client.

I. PROFESSIONAL RESPONSIBILITIES

A. Professional Associations Between Lawyers and Non-Lawyers

The Wisconsin Supreme Court has outlined rules relating to the professional association between lawyers and non-lawyers. In the Benefit Specialist Program, supervising attorneys and benefit specialists work together to provide accurate advice and effective representation to clients. This collaboration creates a relationship between benefit specialists and supervising attorneys that places a duty on the supervising attorney to ensure that the conduct of the benefit specialist is compatible with the professional obligations of attorneys in Wisconsin. This duty is described in the following excerpts from the Supreme Court Rules.

Wisconsin Supreme Court Rule 20:5:3 (b) states:

“A lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer...”

In certain situations, this can impose the responsibility for the benefit specialist's conduct on the attorney.

Wisconsin Supreme Court Rule 20:5:3 (c) states:

“A lawyer shall be responsible for conduct of such a person (non-lawyer) that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer...has direct supervisory authority over the person, and knows the conduct at the time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.”

Under this rule, the actions taken by the benefit specialist are professionally linked with the attorney’s duties under the Rules of Professional Responsibility. It is important for supervising attorneys and benefit specialists to maintain a stream of communication when working together in order to ensure that the actions of the “team” do not violate the rules.

Communication between benefit specialists and their supervising attorneys is essential to avoid having benefit specialists engage in the unauthorized practice of law. Attorneys cannot assist non-attorneys in practicing law without a license. SCR 20:5.5. However, an attorney can delegate functions of legal services to a non-attorney so long as the attorney supervises the work. Ongoing consultation and communication with the attorney is therefore critical.

B. Benefit Specialist Contact Requirements

In order to provide thorough and accurate advice and advocacy to clients, benefit specialists and supervising attorneys need to work together closely. With this in mind, listed below are general situations in which you are required to contact your supervising attorney, and some guidelines for how to make that contact most effective.

1. You Must Contact Your Supervising Attorney If:

- a. your client is facing any adverse action affecting his or her benefits, such as the **denial, reduction or termination of any benefit**. (In addition to calling your supervising attorney, please email or fax a copy of any pertinent notices to him or her as soon as possible.)
- b. you are **submitting an appeal or grievance** on behalf of a client or assisting a client in submitting an appeal or grievance on his or her own. (In addition to calling your supervising attorney, please email or fax a copy of all pertinent documents to him or her as soon as possible.)
- c. you receive a **decision whether favorable or unfavorable, from any type of administrative hearing**. (In addition to calling your supervising attorney, please email or fax a copy of the decision to him or her as soon as possible.)
- d. you receive **papers or documents from an attorney's office**, whether they are from an opposing attorney or an attorney working on behalf of a client. (Please email or fax copies of all pertinent documents to him or her as soon as possible.)
- e. your client requests assistance in understanding or interpreting **court documents** or a client brings in court documents. Reminder: Benefit specialists may only assist clients with matters related to small claims court, which are matters limited to

\$10,000 or less. The EBS program does not assist with or advise on matters in circuit court.

- f. you are contacted by an individual or agency **requesting a copy of the client's file, or** if the client requests a copy of his or her own file.
- g. your client has a **disability** case.
- h. your client presents with an **estate recovery** or **spousal impoverishment** issue.
- i. you are **unsure how to proceed**.
- j. you **question whether or not you should be involved** in a case.
- k. you believe your client is engaging in conduct which could be considered fraudulent (see Handbook section on "**Clients in Violation of Program Rules**").
- l. you believe you may have a **conflict of interest** or another ethical problem.
- m. you would like to include your supervising attorney or GWAAR's information in correspondence with another person or entity (a.k.a. **copying your attorney in correspondence**). In addition to contacting your supervising attorney, please email or fax a copy of the correspondence to him or her before you send the document.

2. Suggested Preparation Prior to Contacting Your Supervising Attorney

- a. Have the client's name, age and basic income and asset information readily available.
- b. Obtain all relevant facts related to the client's situation: names, dates, appeal deadlines, other deadlines, amounts of money involved, assets, what has already happened on the case, etc. **REMEMBER: It is your responsibility to keep track of all appeal deadlines.**
- c. Obtain copies of relevant documents to the extent possible given the time available: notices, Medicare Summary Notices, letters, bills, court documents, rental leases, etc. However, you can contact the supervising attorney if you are waiting for the client to bring in these documents.
- d. Check the Basic Benefit Specialist Training binder (also on the EBS portion of the gwaar.org website), ERI online learning modules, Benefit Specialist Handbook and other resources such as the Medicaid Eligibility Handbook, Social Security POMS, FoodShare online handbook, previous training materials, etc., for information about the issue.
- e. Please refrain from calling your supervising attorney while the client is in your office. This can create an awkward situation, and inhibit our ability to openly discuss the case. If necessary to call while a client is present, inform the attorney immediately that the client is in your office. Do not put a call on speaker phone without getting the attorney's consent.

3. Follow Up With Supervising Attorney

When you contact us, we make a contact sheet for your client. Thus, it is helpful for you to contact us again to tell us that you have obtained a result and are closing your file. We can then close our file as well.

In addition to sending us a copy of your closing letter/case closure form, if you have taken any type of written action pursuant to your supervising attorney's advice, a copy of the writing should be provided to the supervising attorney. In some cases, we may ask you to let us review the letter before you mail it. In other cases, you can send us a copy of the final document.

C. Identifying the Client

Pursuant to the Older Americans Act, the Benefit Specialist Program is designed to provide services to individuals age 60 and older with certain legal needs described throughout this Handbook. The first step in providing services is to identify the client. The client is always the older person and possibly their spouse. The client is never a family member, a concerned neighbor, a medical provider or another professional in the community (unless that person is acting as agent under an activated power of attorney). Clients of the Benefit Specialist Program are owed duties of confidentiality, loyalty and zealous advocacy.

1. Serving Individuals Under Age 60

It would be improper to use Older Americans Act funds to serve persons under 60 on a regular basis. It is appropriate, however, to consider representing an individual client who is under age 60 in two narrow circumstances.

First, a person under age 60 may need assistance in an appropriate substantive area where your assistance would also benefit that persons' spouse, who is at least 60 (e.g., completing an SSI-E application, which would bring additional income to the household). Second, a person in his or her late 50s may request help with an application or an appeal of a denied claim for Medicaid, in a context where no one else can assist (i.e. the DBS is out of the office). If the application is denied and an appeal becomes necessary, the EBS may assist with the case to ensure the appeal deadline is met.

2. Unsolicited Assistance (or "Cold Calling")

Your role as an advocate is in response to a direct request for services from an older adult or his/her appointed representative. While the Benefit Specialist Program does encourage general outreach measures, it does not condone calling specific individuals and offering services when the individual has not requested them. This not only preserves the confidentiality of the older person but also supports his or her autonomy to make a decision about whether to be a client of the program. The best practice is to ask the concerned individual to recommend to the older person that he or she contact you directly. In the vast majority of circumstances, this method results in the older person initiating contact with the benefit specialist.

3. Working with Someone Other Than the Client: Family Members, Powers of Attorney and Guardians

Frequently, you will receive requests for assistance from someone other than the older person. Often times the request will come from someone claiming to be the older individual's power of attorney or guardian. It is important to remember the basic principle that the older person is your client and you should presume that he or she is capable of working directly with you unless an *activated* Power of Attorney for Finances document or a court order of guardianship indicates otherwise. Even if you determine that an activated power of attorney for finances or court order of guardianship exists, the best practice is to try to maintain some contact with the older individual.

If an individual claims to be the older person's power of attorney or guardian you must do the following:

- Verify that the individual is the older individual's Power of Attorney ("POA"). An activated POA for Healthcare allows the person's "agent" to make very specific health-related decisions, most of which relate to end of life care or admission into a nursing home or other facility. **(A power of attorney for finances document provides the authority to sign a person up for medical insurance—not the health care power of attorney.)**
- Obtain a copy of the POA for Finances document or court ordered guardianship papers. If the individual provides a POA for Finances document you must make sure that the document is activated. Typically, a POA for Finances will be activated when the document was executed or it will be activated upon subsequent incapacity. Keep a copy of the documents in your case file.

You should call your supervising attorney if you have any questions regarding power of attorney for finances or court ordered guardianship documents.

Once you have verified that either a POA for Finances or court ordered guardianship exists you must explain to the POA or guardian that you are an advocate for the client, not the POA or guardian personally, and that your assistance is intended solely to assist the older person. It is critical that everyone involved is made aware that it is your responsibility to advance the wishes of the client, irrespective of the opinions and demands of others. You should continually monitor the situation and if any concerns arise regarding your work with individuals other than the client contact your supervising attorney immediately.

4. Client with Diminished Capacity

Benefit specialists deal with a wide spectrum of clients including those with diminished capacity. Clients may have diminished capacity from aging, an accident, mental health problems or other disabilities. Benefit specialists have a duty to maintain a normal client relationship with all clients including those with diminished capacity. Every effort should be made to ensure all clients are served in a competent and diligent manner. This may include special accommodations for clients who have diminished capacity. Some clients may need a written notice reviewing what occurred during a meeting or home visit. Some clients may ask to have another person present in meetings. In cases involving a client with diminished capacity who has an authorized representative, the benefit specialist still has an

obligation to the client to include him or her as much as possible in all decisions and in the case.

D. The Benefit Specialist As Advocate

The benefit specialist's most important role is advocate. The benefit specialist should keep the following principles in mind in all aspects of his or her practice.

1. By law all persons over 60 are entitled to the services described in section II (A) below. Benefit specialists may not turn away those seeking assistance on the basis of prejudice, inconvenience, lack of program knowledge, or the mere belief that help is available elsewhere.
2. By law clients may be entitled to a wide range of benefits and services. A benefit specialist's moral or political views on the merits of certain public benefit programs may not interfere with this entitlement.
3. Benefit specialists are responsible for advancing the wishes of their clients even when they personally believe such wishes to be poor choices by the client.
4. Benefit specialists must not let their personal, religious, or political views regarding the client's lifestyle or alleged reputation in the community affect any aspect of the representation.

In sum, the benefit specialist owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of [the client's] rights and the exertion of his or her utmost learning and ability." *Canon 15, American Bar Association Code of Professional Ethics*.

E. Communication with the Client

The Benefit Specialist Program goals of promoting and preserving the autonomy, dignity, and independence of older individuals are best served when benefits specialists work closely with clients to advance clients' wishes. Maintaining communication with your client is important in both a practical and ethical sense. Benefit specialists should adhere to the following communication standards in order to provide competent representation and comply with the Wisconsin Supreme Court Rules of Professional Responsibility (SCR 20:1.4).

1. Benefit specialist must reasonably consult with the client about the means by which they will try to achieve the client's objectives.
2. Benefit specialists must obtain informed consent from the client for actions they take on the client's behalf. Informed consent is obtained after you have communicated adequate information about the material risk of and reasonably available alternatives to the proposed course of action.
3. Benefit specialists must keep the client reasonably informed about the status of his or her case. Clients should be sent copies of all appeals and correspondence sent on behalf of the client.

4. Benefit specialists must promptly reply to reasonable requests by the client for information.
5. If a client wants you to engage in conduct prohibited by law, benefit specialists must discuss the limitations with the client. You should contact your supervising attorney if you suspect a client wants you to engage in improper conduct.

F. Benefit Specialist Confidentiality Standards

The confidentiality standards for Wisconsin's Benefit Specialist Program are derived from two primary sources—the Older Americans Act (OAA) and the Wisconsin Supreme Court Rules of Professional Responsibility. These standards are based on the principle that older persons may be hesitant to seek legal assistance if others would have access to their private information. The standards set forth in the Supreme Court Rules are based both on the ethical duty to maintain client confidences and on the principle of “attorney-client privilege” which protects attorneys and clients from being compelled to testify about communication between the attorney and the client.

The underlying premise is that effective legal assistance and representation requires clients to disclose detailed financial, medical and personal information to an advocate, and that without the guarantee of confidentiality, they will be reluctant to do so. Simply put, clients must be able to expect that information about them is not going to be openly shared with others except in very limited circumstances.

1. General Standard of Confidentiality

A benefit specialist shall not reveal information relating to representation of a client to anyone, unless the client gives informed consent. Waivers of confidentiality must be knowing and voluntary and limited in scope as the client prefers.

2. Maintaining Confidentiality and Working Effectively Within the Aging Unit or Aging and Disability Resource Center (“ADRC”)

a. Aging Unit Data Collection

Some county aging units throughout the state have had difficulty in complying with the confidentiality standards when it comes to compiling agency-wide data for reporting purposes. Password protections should be in place to limit the availability of identifying information on benefit specialist clients to the benefit specialist(s). Questions related to the confidentiality standards as they apply to data collection should be addressed to the Bureau on Aging and Long Term Care Resources.

b. Sharing Client Information with Aging Unit or ADRC Directors and Other Staff

You are prohibited from sharing client information with your aging unit or ADRC directors and other staff unless there is a specific reason to consult the individual for assistance and the client consents. For example, it is okay to discuss a client's case with a local income maintenance specialist in order to try to informally resolve the case.

Another method of accessing aging unit or ADRC resources is to pose a hypothetical case to determine whether certain resources or services are available and appropriate for that individual. You can also use this technique to provide your aging unit or ADRC director with general information about the types of cases you are working on. In both of these situations, you cannot reveal clients' names or other information that would readily identify the individual. Be mindful that in some instances it may be easy for others to identify which client you are referring to, even if you do not mention that person's name.

Finally, as your on-site supervisor, your aging unit or ADRC director can request that you provide the phone numbers or addresses when you go on home visits, in case there is an emergency. One suggested technique is to place the information in a sealed envelope and give it to your director for him or her to open, if necessary to contact you. If you have questions or if conflicts arise in this area, contact your supervising attorney to discuss it.

3. Confidentiality When a Client Violates Program Rules or Engages in Criminal Activity

a. Violation of Program Rules

Occasionally, you may come across a client who has violated a benefit program rule. Sometimes the client is intentionally committing fraud; or he or she may be unaware that what the action is a violation of the rules. For example, you might discover that a client, who you helped become eligible for SSI, is keeping cash at home in excess of the SSI resource allowance. In such instances, you are still bound by your duty of confidentiality to the client. Therefore you may not report the violation to program authorities such as the Social Security Administration or the county income maintenance office. Before assisting the client any further you should contact your supervising attorney for guidance.

b. Criminal Activity

Benefit specialists must adhere to the confidentiality rules, even in difficult circumstances. The Rules of Professional Responsibility state: Disclosure of a client's intended criminal or fraudulent activity which is likely to result in death, substantial bodily harm, or substantial injury to the financial interest or property of another is permissible.

Bear in mind this rule pertains to future acts, not past acts. If you witness a serious violent or physical crime, or believe that it is highly likely that a crime is about to be committed, you should contact the police by calling 911.

In all other situations, you will need immediate direction from your supervising attorney to ensure that the proper steps are followed. **You must contact your supervising attorney immediately to discuss the situation before disclosing confidential information and before seeking consent from your client to disclose.** If your supervising attorney is not in the office, you should ask to speak with another attorney in the Elder Law & Advocacy Center.

4. Confidentiality in Elder Abuse and Neglect

a. Providing Information About Your Client to Others—General Rules

Suspicions of elder abuse, including self-neglect, do not warrant a breach of confidentiality. These situations, while difficult to observe, do not present an exception to the duty of confidentiality owed to your client. Although others in the human services or aging unit may have elder abuse reporting obligations, these do not apply to benefit specialists. You may not report suspected elder abuse or neglect (including self-neglect) of a current or former client if the client is competent and he or she does not consent to the report. *An EBS with a social worker certification does NOT create an exception to this rule. Social worker certification is not a requirement for the EBS role, and EBS are not acting as social workers in this role. The EBS role is that of a paralegal, working under the direction of a licensed attorney; therefore, EBS are held to the same ethical standards as attorneys.*

You can advise the client when you believe that his or her choices are not in his or her best interests. Further, you can and should provide information to the client that may encourage him or her to accept services or other interventions. However, if the client declines, you cannot breach confidentiality.

Handling these situations within the Benefit Specialist Program's guidelines can be challenging. In some very narrow circumstances, protective action may be permitted and warranted. For these reasons, you must contact your supervising attorney immediately for direction.

b. Elder Abuse Investigations

Benefit specialists should not engage in elder abuse investigations. The dual role of abuse investigator and benefit specialist creates a conflict between the advocate's duties to maintain client confidences and to act according to the client's wishes, and the abuse investigator's duties to perform a thorough investigation and take appropriate steps that are in the individual's best interests.

If a person investigating or responding to elder abuse in another way requests information from you, the rule of confidentiality still applies. You must ask the person to provide you with written consent agreeing to the release of information signed by the client before you can share any information. If such a request for information comes from the police or from a court, or if you receive a subpoena to testify about your client in a legal proceeding, you must contact your supervising attorney or another attorney in the Benefit Specialist Program before taking any action.

5. Limited Exceptions to Confidentiality

a. Communication with your supervising attorney

The principle of attorney-client privilege applies to all communication between supervising attorneys and benefit specialists relating to cases. Thus, you may share all client information with your supervising attorney without violating the confidentiality standards.

Strategies, impressions, conclusions, opinions, legal research or theories shared between the benefit specialist and the supervising attorney, either verbally or written, are also protected under the attorney-client privilege. This form of attorney-client privilege is known as “work product.”

b. Disclosure to Persons Necessary to Provide Services to Clients

It is permissible for you to disclose relevant client information to another person, for the purpose of providing client services. For example, you may have a secretary help you type client letters or a volunteer assist with Medicare “shoebox” cases. These individuals should only have access to the client information that is necessary to perform their employment or volunteer functions. Any aging unit employees whose services are used to support your work with clients are subject to the same confidentiality standards discussed here.

c. Disclosure Implicit in the Representation

Many times, the nature of your services implicitly authorize you to disclose relevant information to other people in order to assist the client. For example, if the client asks you to negotiate the repayment of a past medical debt, it is implied that you will discuss the pertinent information with the creditor. As another example, if the client requests your help with a Social Security Disability application, it is implied that you will disclose information about the client’s personal, educational, work and medical histories with Social Security personnel.

d. Disclosures with Specific Permission from the Client

Whenever a client expressly authorizes you to communicate with someone about his or her case, you may do so without violating confidentiality rules. The best practice is to obtain a signed release from the client for each person or agency the client has given permission for you to contact. You should not, however, use blanket release forms. Blanket releases either fail to specifically identify the agency or person you will contact or they include too many agencies or persons. As a result, the blanket authorization does not reflect the client’s knowing consent to disclose information to a specific person or agency. If time does not permit you to obtain a signed release, you must document in the client’s file that the client has given permission to speak to specific persons or agencies.

F. Conflicts of Interest

A conflict of interest arises when interests other than the client's interfere with the benefit specialist's obligation to advocate on behalf of the client. If you suspect a conflict of interest might exist in your practice, you should contact your supervising attorney immediately to discuss how to proceed.

EXAMPLE: Mr. and Mrs. Venus visit your office because they have been receiving calls and letters from a law firm representing their credit card company in a debt collection action. Mr. Venus is very angry with credit card companies and tells you they will never get a cent out of him. During a follow-up conversation with Mrs. Venus she tells you that she wants to pay off the debt to avoid going to court. You call your supervising attorney because you question whether this presents a conflict of interest.

II. SUBSTANTIVE GUIDELINES

A. Benefit Specialist Program Case Acceptance and Referral Guidelines

As in all aspects of the Benefit Specialist Program, case acceptance guidelines involve balancing numerous competing objectives. We are obligated first and foremost to provide services to those most in need. Yet we must also act within the program's substantive areas of focus in order to ensure that we have the required level of experience and expertise to address a particular service need. These factors, coupled with limited resources require prioritizing which cases will be accepted by the program.

Below is a list of considerations and guidelines to assist you with this process. Common referral contacts are included in section two for a number of topic areas. Many of these referral sources are funded to provide services for specific topics. Utilizing these referral sources is an effective way to connect clients with assistance available. As always, contact your supervising attorney with any questions or concerns.

1. Case Acceptance Guidelines

a. General Considerations

- i. Whether representation will comport with priorities of federal Older Americans Act and state standards
- ii. Whether issue presented affects client's access to food, housing, basic income and/or health care
- iii. Whether case is meritorious
- iv. Knowledge of substantive law involved
- v. Potential benefit to client (as opposed to family members, service providers or others)
- vi. Benefit to client versus resources expended
- vii. Potential benefit to larger client population

- viii. Staff (and other) available resources
- ix. Availability of evidence/documentation
- x. Availability of other assistance (e.g., law school, free clinic, Judicare, Legal Action, private lawyer)
- xi. Cooperation of client (NOTE: There may be evidence from past representation to consider)
- xii. Ability of client to participate in case (NOTE: There may be evidence from past representation to consider)
- xiii. Whether representation will jeopardize safety of client or staff (NOTE: There may be evidence from past representation to consider)

b. Substantive Guidelines

- i. Medical Assistance (MA)
 - Categorically Needy
 - Medically Needy (Deductible Program)
 - MA Purchase Plan (MAPP)
 - Medicare Buy-in Programs (QMB, SLMB, SLMB+)
 - Spousal Impoverishment (**see specific Handbook section**)
 - Benefit Coverage Issues
 - BadgerCare+
 - Estate Recovery & Liens
- ii. Medicare, Medicare Advantage, and Medicare Supplement insurance coverage Issues
- iii. Long Term Care Insurance Coverage Issues
- iv. Home and Community-Based Long Term Care Programs
 - FamilyCare, IRIS, PACE, Partnership
 - COP Waiver
 - Community Integration Program (CIP)
- v. SeniorCare
- vi. Other Health Insurance Coverage Issues (employer, marketplace, etc.)
- vii. Social Security
 - Retirement Benefits
 - Disability Applications (**see Fee Generating section of Handbook**)
 - Widow(er)/Survivor Benefits
 - Overpayment Issues

- Supplemental Security Income (SSI) and State Supplement
 - SSI-Exceptional Expense Supplement
- viii. Veterans Benefits (refer to local Veterans Service Officer as appropriate)
- ix. Railroad Retirement Benefits
- x. FoodShare Program
- xi. General Assistance Programs
- xii. Universal Service Fund (e.g. Lifeline, Link-Up, Telecommunications Equipment Purchase Program)
- xiii. Housing Issues
- Weatherization Programs
 - Low-Income Energy Assistance
 - Housing Improvement Loans and Grants
 - Subsidized Housing Access/Tenant Rights
 - Homestead Tax Credit Appeals (not initial filing)
 - Property Tax Deferral Program
- xiv. Consumer Issues
- Debt Collection Practices
 - Telecommunications
 - Consumer protection/scams
 - Identity theft
 - Landlord/Tenant Issues
 - Eviction
 - Security Deposit Return

2. Case Referral Guidelines

a. Substantive Areas

- (1) Durable Powers of Attorney for Health Care
- (2) Living Wills, advance directives
- (3) Durable Powers of Attorney for Finances
- (4) Guardianship
- (5) Protective Services
- (6) Protective Placement
- (7) Criminal cases
- (8) Divorce
- (9) Bankruptcy
- (10) Probate
- (11) Wills and Estate Planning
- (12) Unemployment Insurance
- (13) Immigration/Naturalization
- (14) Malpractice*
- (15) Personal Injury*
- (16) Bad Faith Insurance Denials*
- (17) Worker's Compensation*
- (18) Discrimination or Civil Rights Issues*
- (19) Social Security Disability*

b. Referral Sources

GWAAR's
Wisconsin Guardianship
Support Center Helpline
(1-855-409-9410)
**(see Advance Directives
section of Handbook)**

Wisconsin State Public
Defender Program

Modest Means Panel
Private Attorney
Legal Action of WI, Judicare
State Bar of WI
Lawyer Referral and
Information Service (LRIS)
(1-800-362-9082)

* see Fee Generating section of Handbook

(20) Tax	AARP tax clinic, VITA, technical college or private accountant
(21) Nursing Home Resident or FC Rights/Issues (+ discharge issues)	Wisconsin Long Term Care Ombudsman Program (1-800-815-0015)
(22) Pension Issues	Upper Midwest Pension Rights Project (St. Paul, MN) (1-866-783-5021)
(23) Scams, consumer protection	Dept. of Ag, Trade, & Consumer Protection (1-608-224-4949)
(24) Selection and Comparison of Medicare Advantage Plans, Medicare Supplement Policies, Employer Group Coverage, & Long Term Care Policies	Medigap Helpline (1-800-242-1060)

B. Fee Generating Cases

A “fee generating” case is one that a private attorney may take on a contingency fee basis or without requiring a retainer fee as a condition of representation. In other words, the case generates its own fee. Generally the statutes that authorize and fund the Benefit Specialist Program require that fee generating cases be referred to private attorneys. For the purposes of the Benefit Specialist Program there are two categories of fee generating cases.

1. Cases That Are Immediately Referred to a Private Attorney

When a client comes to you with a problem involving a personal injury, worker’s compensation, malpractice, or employment discrimination you should:

- a. Immediately refer the client to a private attorney. Clients may wish to contact the State Bar Lawyer Information and Referral Service at 1-800-362-9082 to find an attorney that practices in their area of concern.
- b. Send the client a follow-up letter indicating that you are unable to assist him or her with the problem, reminding him or her that legal claims are often subject to time limits. A copy of this letter must be sent to your supervising attorney.

2. Cases That Require You to Contact Your Supervising Attorney

When a client comes to you with a disability issue you should carefully interview the client to find out what point of the process the client is at: application, reconsideration, or ALJ hearing. Do not indicate to the client that you will be able to assist at this point.

SSDI applications:

- a. If the client is seeking information regarding applying for SSDI, direct the client to the SSDI toolkit available at the following link or direct the client to the local SSA office. http://www.ssa.gov/disability/disability_starter_kits.htm
- b. Explain to the client the criteria for SSDI applications: work history, severe and persistent disability, unable to perform previous job, unable to perform other work.
- c. When requested, EBS do assist with SSDI applications. EBS should be cognizant of program priority areas regarding helping those who could not complete the process without assistance due to disability or other limitations.
- d. If assistance is requested with a SSDI application, and the client's work history is not clear, it is appropriate for an EBS to ask that the client get a statement of his or her work history from SSA in order to ensure the client has the required work quarters of credit to be eligible for SSDI.
- e. If an EBS is unsure of the merits of a SSDI application, he or she should contact the supervising attorney to discuss the facts of the case.
- f. During Part D annual enrollment season, it may be necessary for EBS to refer nearly all clients to SSA directly due to high demands for EBS time.

SSDI Appeals:

The most common type of fee generating case that a Benefit Specialist is likely to encounter involve Social Security Disability appeals (reconsideration and ALJ hearing). Disability appeals involve a complex body of law and require an extensive time commitment; therefore it is preferable that persons of experience and adequate resources handle such cases. The average time preparation for a SSDI appeal is 30 hours.

The expectation is that SSDI appeals are referred to and handled by private attorneys.

In rare circumstances, supervising attorneys will consider taking a SSDI appeal if all four of the following criteria are met:

1. Other legal representation is unavailable or will not meet the client's needs;
2. EBS feels capable of assisting with the SSDI appeal;
3. Atty feels strongly that the case has merit; **and**
4. Legal services team has the time and resources to devote to such an appeal.

All four prongs must be met in order for the program to represent the client at an appeal. The program attorneys will meet to discuss the merits of the case and evaluate as a group the program's ability to take on such a case. Due to the legal liability and applicability of malpractice claims, the program attorney has the final say regarding whether the program takes the appeal.

It is understandable that some clients would prefer for the EBS to assist with the SSDI appeal. First, the EBS may have been the person that assisted with the SSDI application; and second, EBS services are free, whereas a private attorney would likely take the case on a contingency (typically up to 1/3 of the benefits paid out). **EBS should not offer that the**

legal services program is an option for representation. The expectation is that clients pursue private representation for these appeals.

NOTE: For reconsideration level appeals, the deadline is only 60 days. EBS must write a closing letter to the client and remind them of the appeal deadline.

C. Advance Directives

1. Powers of attorney

Clients often seek assistance in completing advance directives, which may include living wills, Powers of Attorney for Finances (POA-F) and Powers of Attorney for Health Care (POA-HC). The state standards in this area are very clear: benefit specialists may not assist in completing these documents or serving as witnesses. First and foremost, benefit specialists have not been trained in this area of elder law.

Second, with respect to health care advance directives, the federal Patient Self-Determination Act requires hospitals, nursing homes, home health care agencies and other Medical Assistance-certified health care providers to provide community education and individual assistance in these areas. Thus, it would be an inappropriate use of limited benefit specialist hours to engage in these activities.

Third, other resources and assistance are available. GWAAR's Guardianship Support Center has Do-it-Yourself Kits for powers of attorney and step-by-step instructions for their completion and other helpful information. Refer clients to GWAAR's GSC (1-855-409-9410) to request these documents and/or neutral information about powers of attorney, advance directives, guardianships, protective placements, Do Not Resuscitate Orders, etc.

There is growing awareness among advocates for older people, that many of the victims of elder financial abuse and exploitation are victimized by the very people the elder appointed to look after his/her interests through a POA-F. As a means of ensuring that benefit specialists do not unwittingly assist in elder financial abuse, caution must be exercised when talking to clients about POA-F documents. Benefit specialists should not distribute GWAAR's POA-F do-it-yourself kit or any similar type of pre-printed forms to persons other than the elder who intends to be the principal under the POA-F document.

D. The Benefit Specialist's Role in Divestment Cases

Benefit specialists receive many requests for information about divestment and/or asset transfers. It is not always easy to determine if the person requesting information wants to find ways to "shelter" excess assets through impermissible transactions or merely wants to know what the rules are if s/he were to apply for Medical Assistance.

The benefit specialist should handle questions about divestment according to the rules set forth below. These rules are designed to maximize the Benefit Specialist Programs' expertise and to avoid duplicating services that are available to clients through the private bar.

1. General Information about Divestment

Benefit specialists are permitted and encouraged to provide general information to clients on how the divestment rules work.

Benefit specialists do not provide advice to clients or to the community about how to shelter, protect or divest assets in excess of the relevant liquid resource limit. Changes in divestment rules have made “successful” transfers of assets much more difficult. Additionally, the penalties for divesting are very damaging to clients. All clients who request assistance with transferring assets in order to become Medical Assistance eligible should be referred to a private attorney who specializes in estate planning or elder law. Benefit specialists are permitted to educate clients about resources that are exempt for Medical Assistance eligibility. Benefit specialists should limit their roles in these cases to information rather than advice. Remember, benefit specialists never render advice on "financial planning" for Medical Assistance, long-term care, or any other program.

You should contact your supervising attorney immediately about requests to "spend down" assets or engage in financial planning to avoid committing malpractice.

EXAMPLE 1: A client wants to apply for Medical Assistance. She has \$8,000 in a bank account, but has not set aside anything for burial. The benefit specialist can educate her about exempt assets for Medical Assistance such as burial arrangements or small life insurance policies.

EXAMPLE 2: Same client as above except she does not want to plan for her burial or invest in the home she owns. She wants to give her money to her adult child. The benefit specialist should notify the client about potential divestment penalties, but if the client is interested in possibly divesting, the benefit specialist should refer the client to a private attorney.

2. Exceptions to the General Rule

a. Client Already Has Divested

In cases where a client has already divested, the benefit specialist can explain to the client how divestment periods of ineligibility will be calculated, estimate the period of ineligibility, and identify the date ineligibility began. Before providing this information to the client, the benefit specialist must contact the supervising attorney to ensure that s/he provides correct information about the client's particular situation.

b. Client is Denied Eligibility or Terminated from MA Because of Divestment

The benefit specialist may be able to assist clients whose MA eligibility has been denied or terminated because of divestment.

As with any case involving a potential appeal, the benefit specialist must discuss the case immediately with the supervising attorney to determine whether the benefit

specialist actually will pursue an appeal. The questions that the benefit specialist and attorney will investigate include:

- Has a divestment actually occurred (i.e., did the client believe s/he was getting fair market value in exchange for the property transferred, etc.)?
- Does the transaction fall within an exception that would preclude a penalty period?
- Has the divested amount been calculated correctly?
- Has the period of ineligibility been calculated correctly?
- Was the initial date of ineligibility correctly identified?
- Has a “cure” of the divestment occurred?
- Will denial of MA or termination from MA cause the client an “undue hardship” as defined in MA rules?

3. Prohibited Assistance

According to the rules described above, certain involvement by benefit specialists is clearly inappropriate. The following situations illustrate prohibited assistance:

a. Use of Exempt Assets is Exhausted or Declined

If an individual asks the benefit specialist about ways to dispose of assets in excess of relevant asset limits, and the use of traditionally exempt assets either has been exhausted or is not contemplated, a referral to a private attorney is necessary.

Particularly for married couples, there are a number of legal ways to shelter assets and to utilize other strategies in planning for long-term care. Benefit specialists do not receive training on these methods and are not qualified to offer advice on them. Any advice that a benefit specialist renders in this area will risk malpractice.

Private attorneys, however, can be knowledgeable in these techniques. Proper and timely identification of cases that are inappropriate for benefit specialist assistance is critical so that clients can locate an attorney who can assist them. Benefit specialists should consult their supervising attorneys to discuss such a referral.

EXAMPLE: A couple with \$150,000 in liquid assets visits the benefit specialist to get information about what to do with the assets because the wife may be entering the nursing home in the next few months. Under the spousal impoverishment guidelines, their CSAS would be \$75,000 (and they wouldn't qualify for an increased CSAS). They want to know what to do with the extra \$73,000 (\$75,000-\$2,000). They don't need any home or vehicle repairs, and have already made burial arrangements. The benefit specialist should consult with the supervising attorney to discuss a referral to a private attorney for this couple.

b. Request for Assistance Comes From Someone Other than the Client

Benefit specialists must follow the Benefit Specialist Handbook policy on working with people other than the client any time the request for assistance comes from someone who claims to be seeking help on behalf of a person who would be eligible

for services. The benefit specialist should not provide the individual with information unless the individual provides the benefit specialist with proof of legal authority to act as the older person's representative. This is especially important in the area of MA eligibility and possible divestment because the potential for self-dealing by other parties increases when access to an older person's resources is involved.

EXAMPLE: A daughter calls you and reports that her dad is going into the nursing home and "he wants to know if it is okay to give her \$10,000." The benefit specialist should inform the caller that the benefit specialist program only handles requests from persons over age 60 or their authorized representatives, and terminate the conversation. If it turns out that the daughter is the legal representative and produces the appropriate documentation, the case will likely be referred to a private attorney because the client is requesting assistance in divesting.

E. The Benefit Specialist's Role in Spousal Impoverishment Cases

1. Basic Principles

Under the Older Americans Act, the benefit specialist program has an obligation both to coordinate its services with the private bar and to allocate its resources to clients in the greatest economic or social need. Fortunately, both the benefit specialist program and the private bar possess expertise in spousal impoverishment prevention.

While the benefit specialist program cannot deny services based on an individual's financial circumstances, in some cases the individual has substantial assets and can afford to hire an attorney to perform the work. Also, many individuals with spousal impoverishment questions also have legal needs beyond the benefit specialist program's capabilities. These individuals require the services of a private attorney to adequately protect their interests through "MA planning," "estate planning," or "planning for incapacity." Fortunately, a growing number of private practitioners have expertise in this increasingly complex area.

In general, benefit specialists should exercise caution in agreeing to assist in spousal impoverishment cases. Benefit specialists must complete a thorough case screening and discuss the case with the supervising attorney before accepting it for representation. Early investigation is essential to the decision whether to accept the case. Cases involving business property, complicated real estate holdings and sophisticated investment portfolios are likely to require immediate referral to a private attorney.

If the case is referred to the private bar, the benefit specialist can help the client to be a wise consumer of legal services by providing information about hiring an elder law attorney.

2. General Information About Spousal Impoverishment

Benefit specialists play an important role in keeping their client base informed about spousal impoverishment protections. Benefit specialists are encouraged to distribute GWAAR's

“Spousal Impoverishment Protections” publication as well as engaging in other outreach activities involving spousal impoverishment protections.

3. Cases Involving an Increase in the Community Spouse Income Allowance Due to Excess Shelter Costs

Benefit specialists can be instrumental in gaining an increase in the community spouse’s income above the CSIA when s/he has excess shelter costs. The benefit specialist must complete a thorough investigation of the couple’s financial situation and consult with his or her supervising attorney before proceeding. These cases can typically be resolved informally with the local income maintenance consortia by presenting evidence of high shelter expenses.

4. Cases Involving an Increase Above the Minimum Monthly Maintenance Needs Allowance Due to “Exceptional Circumstances”

Benefit specialists may encounter community spouses who have or will have difficulty making ends meet because of certain monthly expenses such as high consumer debt or a second mortgage on the home. It is possible to seek an increase in the allocation of income from the institutionalized spouse above the CSAS in order to meet the community spouse’s needs if “exceptional circumstances” require an increase to avoid “financial duress.” This requires an administrative hearing and a substantial amount of documentation. Administrative law judges’ decisions vary widely in their interpretation of the expenses that qualify as an “exceptional circumstance” that would require an increase. The benefit specialist must complete a thorough investigation of the couple’s financial situation and consult with his or her supervising attorney before proceeding.

5. Cases Involving a Possible Increase in the Community Spouse Resource Allowance in Order to Raise the Community Spouse’s Income to the CSAS

If a benefit specialist believes that an individual may qualify for a community spouse asset allowance (CSAS) above the standard CSAS, the benefit specialist must contact the supervising attorney immediately before proceeding. The benefit specialist must complete a thorough analysis of the couple’s financial situation. Time is of the essence in gathering the information and making a decision to accept or refer the case. Delay could result in deferred eligibility.

F. Small Claims Court and the Benefit Specialist’s Role

1. Introduction to Small Claims Court

Every county has a small claims court, which provides an informal way of resolving lawsuits where damages sought are \$10,000 or less. Typical small claims court actions include property damage, debt collection, landlord-tenant disputes and repossession. The procedure for suing in small claims court varies somewhat by county. Contact your local small claims court clerk for specific information about the process in your county.

Generally, small claims actions involve filing a summons and complaint; serving the summons and complaint on opposing parties; mediation, appearing at a hearing before a commissioner, or judge; and possibly a short trial.

Small claims court rules and procedures are simplified so that individuals can handle their own legal disputes without requiring legal assistance. In many cases however, people do opt to have legal representation. Many private attorneys provide small claims court representation, and legal service corporations provide assistance for low-income individuals. If the opposing party has legal representation, your client's chances of prevailing are better if he or she also has legal representation.

In addition to possible costs associated with legal representation, there are various filing and service fees. Indigent clients can request waiver of such fees.

2. The Benefit Specialist's Role in Small Claims Court Proceedings

The benefit specialists' role in small claims actions is somewhat limited and requires immediate discussion with a supervising attorney. Mostly, the EBS educates the client as to small claims procedures, paperwork, and explains the process. An EBS may attend a court hearing with a client as a non-attorney advocate to provide support to the client.

- **Provide a general explanation of court documents received.** A summons should identify opposing parties and specify legal representation, if any. It should also tell your client when and where to go in order to contest the case. Further, it should explain the type of case and the amount disputed. The complaint, which accompanies the summons, gives a brief explanation of why the plaintiff thinks he or she should prevail in the dispute. Remember, you must contact your supervising attorney promptly any time a client brings you court documents.
- **Explain your client's right to contest the lawsuit and the consequences of opting not to contest the lawsuit.** In some counties, one can contest a small claims lawsuit by filing a written Answer to the complaint. The summons will state if this is an option. The Answer addresses issues in the complaint that are disputed, and raises other issues which the hearing officer should be aware of prior to hearing the case. After the Answer is received, the court will schedule the case for a hearing and send out a notice specifying the time and place the hearing will occur.

A personal appearance at the hearing is typically also required in order to dispute the case. Even if your client does not dispute the case as a whole, he or she may benefit from disputing particular facts, which could result in fewer damages being awarded (or a lower judgment amount). Your client should bring any pertinent evidence to the hearing that can be used to strengthen his or her arguments.

If your client does not file an Answer or appear at the hearing, a default judgment will most likely be granted.

- **Refer clients to other resources.** Even if your client chooses not to pursue legal representation, he or she may wish to contact an attorney for advice as to whether

there is a valid claim or defense, and the types of evidence needed to prove such a claim or defense.

You should also refer your clients to the county small claims court clerk. Although the clerk cannot give legal advice, he or she will provide necessary documents and further explain the process in your county's small claims court.

The Wisconsin Judicial Council's "Guide to Small Claims Court" is a publication that thoroughly explains all aspects of the small claims process, including a glossary of terms and copies of relevant forms. It is available from most county small claims court clerks at either no cost or a nominal fee. It is also available on the internet at:

http://www.wicourts.gov/formdisplay/SC-6000_instructions.pdf?formNumber=SC-6000&formType=Instructions&formatId=2&language=en

3. Contact your Supervising Attorney

Benefit Specialists do not receive regular training on small claims court procedures. Therefore, you must contact your supervising attorney when such issues arise, particularly if a client brings you any court documents he or she has received.

III. PRACTICE GUIDELINES

Habits of Highly Effective Benefit Specialists

- ❖ *Tell me and I'll forget. Show me and I'll remember. Involve me and I'll understand.*
- Confucius
- ❖ *The greatest problem in communication is the illusion that it has been accomplished.*
- George Bernard Shaw

Following these ground rules allows the program to operate most efficiently, enabling both benefit specialists and attorneys to practice confidently in their respective roles and areas of expertise.

You can be a highly effective benefit specialist by making these habits a part of your daily practice:

1. Recognize that supervising attorneys, like your benefit specialist colleagues, have unique personalities and work styles.
 - ❖ Be flexible...
2. Maintain regular contact with your supervising attorney.
 - ❖ Your ethical obligations to your clients require you to maintain regular contact with your supervising attorney to ensure that you are handling your clients' cases appropriately.

3. Stick with your assigned attorney unless you have an emergency that must be handled with another attorney. Your assigned attorney will keep you informed of any planned absences from the office so that you are aware of his/her availability and can plan accordingly. Because of our high caseloads, the other staff attorneys can perform “triage” for your assigned attorney in certain circumstances when s/he is not available to assist you.
 - ❖ An “emergency” is one of the following:
 - A client’s last-minute appeal must be submitted while your assigned attorney is unavailable;
 - A client has been evicted from his/her home;
 - You have been served with a subpoena to testify in court about your client; or
 - You encounter an ethical dilemma that cannot wait for your assigned attorney, such as how to handle an elder abuse situation.
 - Clients with an urgent needs for medications
4. Maintain the anonymity of the supervising attorneys.
 - ❖ Do not share our identities or contact information with the client without our specific permission. It is acceptable for the client to know that your work is supervised by an elder law attorney. However, you are the client’s local advocate providing the services and all contact about the case should come through you. We would be unable to perform our part of the work if clients contact us directly.
 - ❖ Do not include our names in the text or the “carbon copy” section of your correspondence without our permission. Keep in mind that a lawyer’s name on the bottom of a document may hinder the case rather than help. Also, we do not want to be unprepared when a person from “the other side” of the case calls us after receiving your letter with our name on it. If you have permission to use our names in your correspondence, make sure that you actually send the copy to us for our review and record-keeping.
5. Carefully track appeal deadlines.
 - ❖ Develop a system that works for you that will prevent you from missing any appeal deadlines. You are responsible for meeting these deadlines.
 - ❖ Keep your supervising attorney informed of approaching deadlines. Be persistent in reminding him/her.
6. Gather and develop the documents necessary to tell the client’s story.
 - ❖ Obtain as much third-party documentation of your client’s situation as you can. You should gather documents such as Medicare Summary Notices, CARES notices, medical records, a copy of the pertinent insurance policy, coverage denials, etc., immediately after meeting with the client and provide them to your supervising attorney. He or she will guide you in which additional documents to gather.
7. Use technology to achieve quality, not speed.

- ❖ Contact your supervising attorney by email or phone. Please leave enough information in your message so that we can prioritize the order in which we return the contacts.
 - ❖ Do not forward emails, faxes or other materials from your supervising attorney to anyone unless you have asked us in advance. Our communications with you are intended to provide services to individual clients and to provide substantive information for benefit specialists as a group. Nobody else should be privy to the information.
 - ❖ The benefit specialist internet “list-serv” is a courtesy of the Wisconsin Association of Benefit Specialists for the purpose of communicating WABS business and sharing non-legal community resources that may be helpful to you in assisting your clients. It is not a substitute for contact with your supervising attorney in handling clients’ legal matters. The list-serv offers no guarantee of substantive accuracy, appropriate ethical guidance or protection from malpractice.
8. Recognize the time (yours and ours) it takes to provide quality services and adjust your practice to accommodate it.
- ❖ Speed rarely translates into the best outcome. Our clients will present with complicated facts and complex legal issues that cannot be resolved in a day.
 - ❖ Do not call your supervising attorney with the client(s) in your office without advance permission. This is not conducive as it increases the clients’ expectations that their questions are instantly “solvable.”
 - ❖ Do not contact the attorneys with a question for which you (or the client) want an answer the next day because you have already scheduled an appointment with the client. We must prioritize the work we are doing for all the benefit specialists we supervise. Your desire for an answer because of a pre-set appointment likely will lead to disappointment for you and the client.
9. Respect the authorship of the printed materials GWAAR provides to you.
- ❖ We provide you with a wealth of printed materials, ranging from articles on legal issues pertaining to a large group of seniors to detailed instructive memos about a particular client’s case. We prepare all materials with a specific audience in mind. Do not share any of the material with other readers (even a client) without our explicit permission.
 - ❖ “The BENSPECTrum” monthly newsletter is sent to elder benefit specialists. The newsletter contains articles on topics applicable to older adults statewide that are clearly identified for reprint and available to place in your local aging newsletter. These articles are the only part of “The BENSPECTrum” that can be shared with other readers, outside of ADRC and/or aging unit staff. Our administrative assistant formats and distributes the newsletter. If you have questions about the substantive content, contact your supervising attorney.

A. Appeal Deadlines

It is critical that benefit specialists do not miss appeal deadlines. The benefit specialist is responsible for maintaining a record of appeal deadlines and ensuring that the appropriate requests are filed in a timely manner. Because of supervising attorneys' caseload volume, it is not feasible for the attorneys to keep track of all the deadlines of the benefit specialists working under their supervision.

If a client presents with a case for which the appeal deadline recently expired, or if you miss a deadline that you were aware of, you should still contact your supervising attorney to discuss what can be done about the appeal.

B. Training Attendance Policy

Attendance at bi-monthly EBS trainings is **mandatory**. The law changes rapidly, and attendance at trainings is necessary to stay abreast of the current law. In-person review and discussion of substantive issues at training, where attorneys can entertain questions, cannot be replicated by reading printed materials. In addition, bi-monthly trainings often include hands-on skill-building exercises as well as review and discussion of policies and procedures relevant to the Benefit Specialist Program.

We will note unexcused absences, consistent tardiness or leaving early and will report them to aging unit or ADRC directors and the relevant AAA. Our annual performance evaluations of benefit specialists will contain a specific section on training attendance.

If you are unable to attend a training session, contact your supervising attorney immediately. Because the schedule of trainings for the entire year is provided well in advance, you must make every effort to avoid scheduling conflicts. Vacation plans is not considered an appropriate reason for missing training. If a conflict cannot be avoided for the training site where you normally attend, you are expected to attend one of the other training sites during that month.

E. Document and File Management

1. Purpose

A standardized filing system is necessary to maintain continuity and efficient case handling. A case file which is organized by subject matter, separating internal work product, documents, correspondence, and procedural documents permits you to quickly and efficiently retrieve and insert information from and into the file as needed. A file which is well organized also permits any other case handler or supervising attorney to quickly examine a file and become familiar with its contents. The system permits easy transfer of files in the event that you are out of the office for an extended period of time or when the case is transferred to a new advocate.

⊙ *Benefit specialists should not write on original client documents and should not keep original client documents in their files. These are the client's property. Instead, benefit specialists should make copies of all pertinent documents to include in the file.*

2. Setting Up a File

- a. All files will be contained initially, within an 8½ by 11 manila folder. The left side (as you are looking at it) of the interior of the file will be reserved for internal benefit specialist work product ("Internal Work Product section"). The right side of the interior of the file will be reserved for written correspondence between you, the client, and any third parties ("Correspondence section"). Additional documents will be secured to 8½ by 11 cardboard backing sheets. Depending on the nature of the case, there may be several of these cardboard backing sheets which have documents relevant to the file attached to them.
- b. Internal Work Product Section. The internal work product side of the file should be organized as follows:
 - i. The initial intake sheet or legal back-up contact form should be the initial document in the file. Since it is the first contact the benefit specialist has with the client, it should be the first (in other words, on the bottom) of the work product file.
 - ii. The representation agreement. After opening a file, the first document which you should obtain from the client or the client's representative is the representation agreement. The document outlines the terms of your representation.
 - iii. Miscellaneous notes taken which do not appear on the Confidential Case Action Summary sheets. For instance, these would include notes taken during a telephone conversation which are subsequently transcribed onto an Action Summary sheet. They may also include notes taken while reviewing the client's file, draft copies of letters, or legal documents.
 - iv. All Confidential Case Action Summary sheets. These should be kept together and filed chronologically beginning with the legal back-up contact form or intake form (benefit counselor's). The Action Summary sheets should be filed chronologically from the date the file is opened. This means that the earliest contacts would be on the bottom of the stack. The Action Summary sheets should be kept together and should not be interrupted with other work products. The Action Summary represents the most complete history of the file. Therefore, it should be a coherent description of all of the benefit specialist's activity with respect to the file.
 - v. For very complex cases, on the top of the internal work product's section of the file will be a sheet called a "Case Summary Sheet." This sheet will basically serve as a guide to the Action Summary sheets. Notations regarding conversations should be made here with appropriate guides to the Action Summary which should be examined in order to determine the substantive nature of the entry. For some entries, it will not be necessary to make an additional notation within an Action Summary. This would occur when, for example, a benefit specialist attempted to make a contact but was unable to

complete the connection. In such cases it would be useful to have a record that the attempt was made even though contact was not completed.

- c. Correspondence Section. The correspondence section of the file should be organized chronologically based on the date that you sent a letter or on the date you received a letter. Correspondence should include the following:
 - i. All substantive letters sent from your office that are not procedural documents. For example, a letter brief or a letter requesting a fair hearing would not be included in the correspondence file.
 - ii. All letters received from the client. You should make sure that the date the letter was received is noted on the back of the letter.
 - iii. All letters received from opposing and other parties which are not procedural documents.
- d. Separate File Backings. Separate file backings should be prepared for each substantive area of the law. Examples of these are as follows:
 - i. Medical Assistance. Such file backing would usually include the following:
 - The CARES Notice of Decision advising client of the action taken in the case
 - The Request for Fair Hearing
 - The Acknowledgment of Request for Hearing received from the Division of Hearings and Appeals
 - The county agency's Statement of Position
 - The Notice of Hearing received from the Division of Hearings and Appeals
 - Exhibits included in the Administrative Record at the hearing
 - Hearing Examiner's Decision
 - Request for Re-hearing (if necessary)
 - Rehearing decision
 - ii. Part B Medicare File.
 - Appointment of Representative
 - Explanation of Benefits or Medicare Summary Notice statement

- Requests for review
- Review Decision
- Request for Carrier Hearing
- Decision of Carrier based on paper review of file
- Exhibits submitted at hearing or at review
- Carrier Hearing Decision
- Request for Administrative Law Judge Hearing
- Acknowledgment of Receipt of Request for Hearing
- Notice of ALJ hearing
- Exhibits from hearing
- Administrative Law Judge Hearing Decision
- Request for Appeals Council Review (if necessary)
- Exhibits submitted at Appeals Council level (if any)
- Decision of Appeals Council

Note: This basic system or organization can also be used for Part A appeals, Social Security, SSI or FoodShare cases.

- iii. Separate file backings should also be used for medical or financial records gathered on behalf of the client.

3. Filing Client Case Files

- a. All files should be filed alphabetically by client last name.
- b. Files which are not being presently worked on should always remain in the file drawer.
- c. File drawers which contain client files should be clearly marked. If more than one drawer is used, the letter of the alphabet which is included within the drawer should be marked on the outside.
- d. Client files should be kept in a locked filing cabinet.

- e. Client files must be maintained for at least 7 years following the date of case closure or the last date of contact with the client, whichever is later. Depending on your ADRC or local aging unit policies, closed files may be kept on site or off site—either of which is appropriate as long as the files are kept in a secure location. The death of the client does *not* change the requirement that the file be kept for at least 7 years. It is recommended that closed files be stored in boxes labeled with a “destroy by” date on the outside. Files must be destroyed in a manner consistent with program confidentiality rules.

6. Brief Advice Files

- a. Some of the clients you speak with receive only brief advice. It is not necessary to open a complete file on these cases.
- b. Generally, a brief advice file is one which requires no additional work on the part of the benefit specialist other than the answer given over the telephone, in person or in a brief follow-up letter which is sent out within not more than three days of the conversation with the client. Clients for whom you just do planfinders for during Medicare Annual Enrollment period in the fall may constitute brief advice.
- c. When the advice case is closed, any papers relating to that case should be stapled to the initial intake sheet and the case should be placed in the benefit specialist's file.
- d. Brief advice files must be kept at least 3 years from the date of last contact.

F. Contributions and Fundraising

The Older Americans Act and the Wisconsin standards for the Benefit Specialist Program preclude: (1) denying benefit specialist services based on income and (2) charging clients for legal services or conditioning services on a promise to make a contribution to the Benefit Specialist program. On the other hand, the Older Americans Act and Wisconsin standards do require that each county's Benefit Specialist Program offer clients "the opportunity to contribute." For many counties, client contributions enhance the services they are able to offer.

There are many ways to offer clients this "opportunity to contribute" and you should start off by asking your ADRC or aging unit director what methods your benefit specialist predecessor(s) have used. For example, some counties make an annual appeal in their newsletter. Others send out an appeal letter to clients at the time the client's case is closed, or a letter to all clients at the same time of the year. Other counties only offer the opportunity to contribute at certain times of the year for certain services. Still other counties combine the request for contributions with a letter they send asking the client to evaluate the program's services.

Clients often outright ask: *"Is there a charge for your services?"* or *"How much will this cost me?"* The answer to those questions is a polite "We do not charge for our services, but our program always welcomes any contributions you choose to make." If a client presses you and asks how much they "should contribute," again repeat that the program would be grateful for any amount that the client

chooses to donate. Do not pressure clients to contribute. For example, clients entering your office should not be greeted by a large sign that reads:

"The average cost of a benefit specialist's service is \$X per hour. We expect you to contribute accordingly."

Ask your ADRC or aging unit director to what entity client contribution checks should be made out and how the funds are used so that you can relay this information to clients. For example, some counties may keep any cash in petty cash to use for client emergencies like taxi rides, emergency shelter or food. Others may use the funds for larger photocopying jobs of consumer education materials that cannot be done by the county. Finally, you should also find out your county's procedures and protocols for situations where a client makes a check out to you personally (i.e., how you endorse the check over to your county or agency), and what you should do about gifts of plants, food, gift certificates or other non-cash items.

IV. ADVOCACY AND LOBBYING: RESPONSIBILITIES AND PROHIBITIONS*

The federal Older Americans Act (OAA) requires area agencies on aging, Title III legal services programs (such as the benefit specialist program), county and tribal aging units, commissions on aging and other recipients of OAA Title III funds to engage in advocacy to improve the well-being of the state's 60+ population.

The Wisconsin Elders Act also requires aging units to perform advocacy by assisting in representing the needs, views and concerns of older individuals in local decision-making and assisting older individuals in expressing their views to elected officials and providers of services. In addition, the Wisconsin Elders Act requires county aging units to advocate on behalf of older individuals to assist in enabling them to meet their basic needs. Wis. Stats. §§ 46.82.(3)(a)(12); (18).

Benefit specialists and supervising attorneys must be careful not to engage in impermissible lobbying in their efforts to advocate for the needs of Wisconsin's older residents. Lobbying is seeking to influence legislators in favor of a special interest. Lobbyists are individuals employed to influence legislators to introduce or vote for measures favorable to the interests the lobbyist represents. Lobbying-related activity is closely regulated by the state and governed by Wis. Stats. §§13.61 – 13.75.

A benefit specialist's involvement in advocacy in a legislative or regulatory context will be determined by his/her local supervisor, by individual county policies and by the parameters of the Older Americans Act and state law. Local governmental policies may place different or additional restrictions on the activities of benefit specialists in some counties. Benefit specialists should always be mindful that their statements to the public and to elected officials will reflect on their employers. **Therefore, benefit specialists must always check with their local supervisors before proceeding with any activity described below.**

A. Elections

1. Neither agency funds nor staff positions may be used to influence *any election*. An aging network representative may not use his/her position or title in fostering a partisan/political activity.

2. Public support or endorsement of one candidate is not permitted. However, if county rules permit, a benefit specialist may lend her name (but not her title) to anyone running for office. Keep in mind the consequences should the candidate lose the election.
3. Arranging an even-handed candidates' forum to talk about senior issues is permissible as long as all candidates are invited to attend and they are allowed equal time to speak. The forum could go forward even if only one candidate shows up, as long as all candidates were invited.
4. Conducting candidate surveys on issues of interest to older people is permitted as long as the candidates are aware that their responses (or non-responses) will be publicized. Responses can be printed in the local newsletter or sent to legislators or other officials. The responses can be printed, even if certain candidates chose not to respond. (E.g., "Mr. Chad Challenger: *No response.*")

B. Serving on a Legislative Committee

This activity is permitted.

C. Communicating with Elected Officials

1. In the Capacity of Benefit Specialist

- a. Making available the results of non-partisan analysis, study or research is permitted.

EXAMPLE: Simply informing legislators or the general public of the results of a study or survey is permitted. "Dear Senator: A recent survey of our meal site clients indicates that over 93% would prefer to pay higher co-payments for Medicare covered services than to see the program means-tested."

- b. Communicating with an elected official is allowable if a benefit specialist is providing education, not lobbying, regarding a particular policy.

EXAMPLE: A proposal is made to change the SeniorCare program. A benefit specialist could speak to a legislator regarding the fact that SeniorCare counts as creditable coverage in lieu of Medicare Part D, costs only \$30 per year, and has 4 different income levels.

Suggested Guidelines – Absent a specific legislator's request for input, the following guidelines for legislative contacts are suggested to ensure that your contacts with legislators are proper:

- ❑ Establish that the issues about which you communicate to legislative or related bodies are of bona fide interest to your agency, i.e., that the issue(s) affect the agency itself and/or its constituency (PEOPLE OVER AGE 60).

- ❑ Ensure that the communication or contact presents a balanced view of the topic
- ❑ Adhere to any developed priority statements and goals for the programs and services within your ADRC or county.
- ❑ Follow established protocols for determining the appropriateness of legislative contacts about new issues that may not be part of current priority statements or goals, i.e., when a new issue not currently on your agency's agenda comes up, how will you decide whether to take a position on it and what that position is?

2. In the Capacity of Private Citizen

Benefit specialists can contact governmental officials as private citizens (without using the title of benefit specialist in the communication). If there is a likelihood that the person receiving the communication will know that the writer or caller is the benefit specialist even without using that title, the benefit specialist should specify that s/he is communicating as a private citizen. Communicating with a legislator who represents the senate or assembly district in which the benefit specialist resides is allowed on a personal basis, outside of work activities and during time off.

D. Providing Oral and Written Testimony

Benefit specialists and supervising attorneys may identify themselves by their job titles when they provide testimony in the legislative arena.

EXCEPTION: If Mary Benefit Specialist takes a day off work to come to Madison to urge legislators to stop the mining in northern Wisconsin (or whatever she feels strongly for or against that is unrelated to her job), she should state her name and the city where she lives. If a legislator recognizes Mary and asks, "Aren't you the benefit specialist from Badger County?", she should, of course, tell the truth but make clear that she is there in her personal capacity as a private citizen.

1. Testifying in Support of or Opposition to Legislation and Administrative Rules

Benefit specialists and supervising attorneys may, and indeed should testify in support or opposition to legislation or administrative rules in two circumstances:

- ❑ If representing a client affected by the proposed legislation or rule and the client has provided written consent or authorization; or
- ❑ If a legislator has requested the benefit specialist or attorney to testify.

2. Testifying for Informational Purposes

Even without a client or invitation from a legislator, benefit specialists and supervising attorneys may testify at any time for informational (educational) purposes. When providing this form of "community education," benefit specialists may only "provide information."

They must refrain from recommending to policymakers a position on how they should proceed in formulating legislative or administrative remedies.

EXAMPLE: “The bill before you, AB456, would decrease the SSI benefit by \$10 per month but permit SSI eligible individuals to apply for FoodShare. In my experience, many older people will find that they are not eligible for FoodShare or will be discouraged from applying because of the extra appointments and paperwork requirements of the program. Others feel that it is not worth it to go through this administrative burden for only \$10 worth of benefits. Last week, I gave a presentation about this proposal to the seniors at our meal site. They were very upset about it. I distributed a survey and, of those who are currently on SSI, less than 10% said they would apply for FoodShare. For these reasons, I believe that, if this bill passes, there will be a net loss in income support for these low-income elders.” Note that the benefit specialist did not “urge them to vote against this bill.”

E. Public Speaking to Groups

Benefit specialists and other aging network should be active in educating their communities about issues affecting older people. Advocacy through public speeches to groups made up principally of persons other than legislators or agency officials is permitted. Thus, aging network staff can speak to groups of older people about actions the audience members could (or should) take in contacting elected officials.

* Grateful acknowledgement to Attorney Betsy Abramson for her text on this topic (May 1997).