

## **Disability Benefit Specialist Program Policies and Procedures**

### **I. Introduction**

These policies and procedures, developed by the Wisconsin Department of Health Services (DHS), apply to all Disability Benefit Specialist (DBS) program services provided within Aging and Disability Resource Centers (ADRCs) and services provided by tribal disability benefit specialists under contract with DHS, and to the program attorneys contracted to provide training, technical assistance and substantive oversight to DBSs.

### **II. Eligibility for Disability Benefit Specialist Services**

A. DBS services at an ADRC are available to an individual if s/he:

- Is a resident of Wisconsin and resides in a county with an Aging and Disability Resource Center (ADRC)
- Is between the ages of 17 years and 9 months and 59 years
- Identifies as being a member of an ADRC target group, which includes people with a physical and/or developmental disability, mental illness and/or substance abuse disorder and
- Has a need for benefits counseling and/or support within the bounds of the *Disability Benefit Specialist Scope of Services*

B. Tribal DBS Services

Tribal DBSs are available to serve enrolled tribal members who reside on or near a reservation located within the State of Wisconsin. Tribal members must also meet the criteria for DBS services as outlined in Item II. A. above in regards to age, ADRC target group, and a need for benefits counseling within the bounds of the DBS scope of services.

Enrolled tribal members who reside on or near a reservation that is located in a county where ADRC services are available may choose to receive services from either the tribal DBS or the DBS at their local ADRC.

### **III. Scope and Nature of Disability Benefit Specialist Services**

The breadth and scope of the services available to clients from a DBS are outlined in the *Disability Benefit Specialist Scope of Services*. Some services are provided at the discretion of the ADRC or tribal disability benefit specialist services contractor.

#### **IV. Staffing of Disability Benefit Specialist Positions**

##### **A. Combining Disability Benefit Specialist and Other Activities**

Each ADRC will staff *at least* one half-time disability benefit specialist and apply any staffing recommendations from DHS.

Organizational limitations regarding staff and/or funding may make it necessary to combine other activities with disability benefit specialist activities in order to create a full position. To avoid conflict-of-interest issues, all combinations of activities that include DBS work shall be submitted to DHS for approval prior to implementation. *Proposals must include non-disability benefit specialist activities unrelated to functional and/or financial eligibility determinations.*

Proposals for combinations of activities that do not pose a potential conflict of interest and that maintain client confidentiality will be approved. An example is combining DBS activities with information and assistance activities.

##### **B. Physical Accommodations**

The ADRC will physically house the DBS, with the exception of tribal DBSs, even when s/he is a contract employee unless an alternative arrangement has been approved by DHS.

On the first working day of a DBS, ADRCs and the tribal DBS services contractor will make available basic business tools such as a telephone, high-speed internet access, printer, computer, desk and a lockable file cabinet.

ADRCs and the tribal DBS services contractor will provide a private workspace for each DBS such as an office with a door, or access to private meeting areas that have internet and telephone access to facilitate confidential online or telephone applications, as appropriate.

##### **C. Vacancies**

The ADRC and the tribal DBS services contractor will work with DHS and the program attorneys to develop local protocols for managing the workload of a vacant DBS position.

Local protocols will include management of existing caseload, including clients for whom the DBS signed on as the authorized representative; management of ongoing correspondence with outside agencies directly related to the client work conducted by

the DBS (e.g., letters from the Social Security Administration); and management of new DBS contacts.

## V. **Supervision and Case Oversight of the Disability Benefit Specialist Position**

### A. Responsibilities of the ADRC and the tribal DBS services contractor

1. Employ or contract for the employment of a DBS
2. Provide a physical location for the DBS to work and a secure electronic and physical filing system
3. Provide local supervision to the DBS position. Local supervision includes the following:
  - a. Direction regarding the daily job performance of the DBS, including time management, 100% time reporting, productivity and prioritization of non-case-specific functions such as outreach and community education
  - b. Insure the DBS will attend all mandatory ongoing trainings coordinated and organized by the program attorneys, meetings of the Wisconsin Disability Benefits Network (WDBN), and any other trainings required by the DHS
  - c. Adherence to relevant employee policies and procedures
  - d. Direction regarding outreach to target populations
  - e. Incorporate guidance from the program attorney around issues related to caseload size and composition
  - f. Completion of employee performance evaluations with input from the program attorney regarding substantive knowledge and performance, and the DBS program manager at DHS regarding client data reporting
4. When a DBS housed at an ADRC is employed by an agency other than the ADRC, the ADRC shall provide the employing agency with a copy of the following documents: the *Disability Benefit Specialist Policies and Procedures* and the *Disability Benefit Specialist Scope of Services*.
5. When a DBS housed at an ADRC is an employee of an agency other than the ADRC, the ADRC shall have a written agreement with the employing agency describing the supervisory duties of both agencies, as well as those of the program attorney.

## B. Responsibilities of the Program Attorney

1. Provide substantive case oversight to each DBS position. Substantive case oversight includes the following:
  - a. Direct case oversight, including case acceptance, case monitoring, case closing and case termination
  - b. Technical assistance via telephone, email, fax and in person, as needed and as appropriate considering time, resources, complexity of issue(s) and expertise of the DBS
  - c. Input regarding substantive knowledge and performance in evaluations of the DBS(s) by the ADRC local supervisor and/or employing entity
2. Provide training to DBSs consistent with the requirements of the contract with DHS. This includes:
  - a. Collaborate with the WDBN to coordinate the initial WDBN Tier III training; and
  - b. Develop a series of ongoing trainings on substantive and skills-based areas within the scope of program services
  - c. Provide ongoing training in alternative media, and at varied locations throughout the state
  - d. Make training topics available for later viewing, as appropriate, and
  - e. Provide the ADRCs and the tribal DBS services contractor with a list of training dates for a 12-month period
3. Concerns regarding the substantive performance of the DBS should be addressed with the ADRC local supervisor or tribal DBS services contractor.

Significant and ongoing issues will be brought to the attention of the DBS program manager at DHS for assistance with resolution.

4. The assigned program attorney will work with the local supervisor at the ADRC or the tribal DBS services contractor to develop a DBS work plan that addresses DBS caseload management and delivery of services.
  - a. Every DBS service provider, including ADRCs and the tribal DBS services contractor, will have a work plan on file with the DBS program manager

- b. Questions regarding the intent of guideline issued by DHS, or requirements in the contract with DHS to provide DBS program services will be addressed with the DBS program manager at DHS, as appropriate

### C. Responsibilities of the Disability Benefit Specialist

1. Receive supervision from the local supervisor and substantive case oversight from the program attorney.
  - a. DBSs housed at ADRCs receive local supervision from the designated ADRC supervisor and/or employing agency subcontracted by the ADRC.
  - b. Tribal DBSs receive local supervision through the tribal DBS services contractor.
2. Be accountable to the local supervisor at the ADRC or tribal DBS services contract agency regarding daily job performance, time management, 100 percent time reporting, productivity and prioritization of functions other than casework, such as outreach and community education
3. Adhere to relevant local employee policies and procedures of the ADRC or tribal services contractor.
4. Collaborate with the local supervisor at the ADRC or tribal DBS services contract agency and the program attorney regarding issues of caseload size and composition
5. Receive performance evaluations from the local supervisor at the ADRC or tribal DBS services contract agency, with input regarding substantive knowledge and performance from the program attorney, and input regarding client data reporting from the program manager
6. Attend and participate in the initial Tier III training, and in ongoing, substantive and skill-building trainings conducted or coordinated by the contracted program attorneys and/or program manager, and meetings of the WDBN
7. Receive direct case oversight, including case acceptance, case monitoring, and case termination and case closing from the program attorney
8. Seek technical assistance via telephone, email, fax and in person, as needed and as appropriate considering time, resources, complexity of issue area(s) involved and expertise of benefit specialist from the program attorney
9. Adhere to the program policies and procedures

## **VI. Responsibilities of the DBS Program Manager at the Department of Health Services**

- A. Respond to concerns regarding the operation of the program.
- B. The program manager is responsible for the:
  - 1. Maintenance, modification/revision and oversight of the implementation of the DBS policies and procedures
  - 2. Obtaining, compiling and making public program-wide data
  - 3. Oversight of the contract with the provider of program attorney services for operation and implementation of the program attorney contract and budget
  - 4. Input and participation in DHS activities relevant to the ADRC especially with regard to the operation of the DBS program
  - 5. Participation in ongoing trainings and program updates with the program attorneys
  - 6. Participation in the development of training criteria for the contract between DHS and the Wisconsin Disability Benefits Network (WDBN)
  - 7. Consultation with the program attorneys and local supervisors regarding substantive performance of DBSs, especially with regard to the implementation of DBS policies and procedures, the contract between DHS and the ADRCs, and the contract between DHS and the tribal DBS services contractor

## **VII. Integrity of Program Services**

- A. Nature of Disability Benefit Specialist Program Services
  - 1. DBSs provide benefits counseling and advocacy directly to individuals, as well as support to the program attorney in providing direct legal services to clients of the program attorney. Support for the program attorney may include obtaining documents, communication with client and copying files, as requested.
  - 2. Program attorneys provide technical assistance and ongoing training to DBSs and direct legal services to individuals.
    - a. When providing technical assistance or training to DBSs, the work of a program attorney is not explicitly legal because there is no direct attorney-client relationship between the program attorney and the individual receiving DBS services.

- b. When providing a service directly to an individual who has been accepted as a client of a program attorney or a private “compensated” pro bono attorney whose work is funded by the DBS program contract, the work of the attorney is considered a legal service and all related work, including the supporting work of a DBS, falls under the Wisconsin Supreme Court Rules of Professional Conduct for Attorneys, SCR Chapter 20.

## B. Confidentiality of Disability Benefit Specialist Services and Confidentiality of Program Attorney Services

1. The confidentiality standards for DBS services derive from the Wisconsin Administrative Code and the Wisconsin Supreme Court Rules of Professional Conduct for Attorneys.

- a. Wisconsin Administrative Code HFS 10.23 Standards for performance by ADRCs

... (2)(d)2. “...a benefit specialist may not disclose information about a client without the informed consent of the client, unless required by law. A disability benefit specialist may also disclose information about a client without the informed consent of the client as permitted under s. 55.043 (1m) (br), Stats., if there is reasonable cause to believe that the adult at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk or if an adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.”

- b. Wisconsin Supreme Court Rules of Professional Conduct for Attorneys SCR 20:1.6 Confidentiality of Information

“...(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation ...”

This confidentiality provision applies when the DBS is providing support to the program attorney or a private “compensated” pro bono attorney who is in turn providing direct legal services to an individual.

2. Use of Client Services Agreement: A standard document designed by the program attorneys is to be used by all DBSs

- a. The purpose of the Client Services Agreement is to:

- 1) inform the client about the nature and scope of the service(s) to be provided

- 2) inform the client about the confidential nature of the service(s)
  - 3) inform the client about the responsibilities of the client and the DBS
  - 4) inform that client that their confidential information may also be viewed by the person providing substantive case oversight, the local supervisor at the ADRC or the tribal DBS service contract agency, and by the person analyzing program-wide data, as needed, and
  - 5) provide the client the opportunity to give informed consent to the disclosure of information about themselves by the DBS
- b. The disability benefit specialists shall use a Client Services Agreement with every client for whom they open a case (this does not include individuals who receive “information only” services). The DBS shall review the Client Services Agreement with the client and/or his/her guardian at the beginning of the provisions of services, as well as at any other time it may be helpful.
- 1) Information-only services use less than one half hour of the DBS time, including any research or contact with the program attorney. Information-only calls *do not* involve Medicare Part D. All other client contacts are opened as cases.
  - 2) Individuals who make two or more information-only contacts during a three-month period will be opened as clients.
- c. An ADRC or tribal DBS service contractor may modify the content and/or format of the Client Services Agreement with prior written approval of the DBS program manager at DHS.
- d. Responsibilities of the Program Attorney
- 1) Monitor the inclusion of a Client Services Agreement in open client cases, as part of the development and review of the county work plan
  - 2) For cases in which the client has declined to sign a Client Services Agreement, the program attorney will provide advice as to how information may or may not be shared in the ADRC per HFS 10.23
  - 3) When accepting a case for direct representation, the program attorney will abide by the Supreme Court Rules of Professional Conduct and will provide the client with a description of services to be provided as part of the representation agreement

### C. Responsibilities of the DBS Program Manager Regarding Confidentiality of Clients

Through the course of collecting client data for reporting purposes, the DBS program manager may receive verbal or written information about the clients of a DBS and/or program attorney. The program manager shall maintain the confidentiality of clients of the program to the same extent as the confidentiality maintained by the DBS and the program attorney.

## VIII. Case Acceptance for Disability Benefit Specialist Services

### A. Responsibilities of the Aging and Disability Resource Centers and tribal DBS services contractor and the Disability Benefit Specialists

1. Identify if the individual seeking services falls within the target populations specified in the ADRC or tribal DBS service contract and whether the issue(s) identified fall within the *Disability Benefit Specialist Scope of Services*, as well as considering:
  - a. Whether the issue(s) presented affects the individual's access to basic income, health care, food and/or housing
  - b. Whether the case is meritorious

The merit of a case will be evaluated by reviewing available information including the applicable laws, regulations and policies, as well as available facts and evidence.

- 1) For applications or appeals involving the disability determination process, a case may be accepted when available information allows the DBS and program attorney to develop a reasonable legal argument based on the five-step sequential evaluation process.
  - 2) A case involving the disability determination process will not be accepted when the DBS and program attorney cannot develop a reasonable legal argument based on the five-step sequential evaluation process.
- c. Potential benefit to individual seeking services (as opposed to family members, providers or others)
  - d. Benefit to individual seeking services versus resources expended
  - e. Availability of staff and other (e.g., travel) resources
  - f. Availability of evidence/documentation

- g. Availability of other assistance (e.g., Legal Services Corporation, private attorney, other agencies/programs, volunteers)
- h. Cooperation of individual seeking services (NOTE: There may be evidence from past representation to consider.)
- i. Availability of individual seeking services to participate in case (NOTE: There may be evidence from past representation to consider.)
- j. Whether representation will jeopardize safety of individual seeking services or staff (NOTE: There may be evidence from past representation to consider.)
- k. DBS's knowledge of issue area(s)
  - 1. Program attorney's knowledge of relevant substantive law
- 2. The DBS shall consult with the program attorney as needed in applying the case acceptance criteria.
- 3. When there is doubt about whether a case should be accepted, the local supervisor at the ADRC or tribal DBS services contract agency shall be available for consultation with the DBS and program attorney.

If the local supervisor questions the merit decisions of the DBS in the course of the responsibilities of the local supervisor, the program attorney, the local supervisor and the DBS will have a joint consultation with regard to applying rules of merit; specifically as they apply to caseload, county priorities and the client's needs.

- 4. DBSs shall provide clients with information about the process for filing complaints or grievances regarding DBS services received or the denial of services according to the complaint and grievance plan required per the contract between the Department of Health Services and ADRC and between the Department of Health Services and the tribal DBS services contractor.
- B. Responsibilities of the Program Attorney regarding Case Acceptance for Disability Benefit Specialist Services
- 1. Ongoing consultation with the DBS regarding case acceptance determinations
  - 2. Assist the DBS in evaluating whether to provide benefit specialist representation at a hearing
  - 3. Cases lacking in legal merit will not be accepted for DBS services

## **IX. Case Closure and Termination for Disability Benefit Specialist Services**

- A. Case *closure* describes the discontinuation of DBS services resulting from the natural resolution of issues in a client's case.
- B. Case *termination* describes the discontinuation of DBS services before the natural resolution of the issues in a client's case.
- C. The decision to terminate benefit specialist services shall be made in consultation between the program attorney, DBS, and, when necessary, the local supervisor at the ADRC or the tribal DBS service contract agency. The local supervisor at the ADRC or the tribal DBS service contract agency will be informed of all case termination decisions.
- D. The DBS may terminate services to a client under the following circumstances:
  - 1. Client is no longer eligible for services through the Disability Benefit Specialist program.
  - 2. The case no longer has merit.
  - 3. Client does not cooperate.
  - 4. Further services to the client would require fraudulent behavior on the part of the DBS
  - 5. Other good cause such as dishonesty on the part of the client.
  - 6. Closing reasons detailed in the *Disability Benefit Specialists Database User Manual*.
- E. Case Termination Procedure
  - 1. The DBS shall document the reason for terminating services in the client case notes
  - 2. The DBS shall provide the client with a copy of the ADRC grievance procedure.
  - 3. The decision to terminate benefit specialist services shall be made in consultation between the program attorney, DBS and, when necessary, the local supervisor at the ADRC or the tribal DBS services contract agency.
  - 4. Upon decision to terminate services, the DBS shall:

- b. Provide client with written notice of termination of services including cause(s) for termination and grievance procedure
- c. Send written notice of termination of services to client's last known address

**X. Direct Client Representation by Program Attorney**

**A. Case Acceptance and Case Termination**

The agency that contracts with the DHS for the provision of program attorney services will provide a copy of case acceptance and case termination policies to the DBS (see appendix).