

*A REPORT BY THE NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER*

**Alan G. Hevesi
COMPTROLLER**



***OFFICE OF TEMPORARY AND DISABILITY
ASSISTANCE***

***LEGAL SERVICES FOR NEW YORK CITY
DISABILITY ADVOCACY PROGRAM
CONTRACT C008614***

2002-S-28

DIVISION OF STATE SERVICES

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Alan G. Hevesi
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Report 2002-S-28

Mr. Brian J. Wing
Commissioner
Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, New York 12243

Dear Mr. Wing:

The following is our audit report addressing the Disability Advocacy Program contract between the Office of Temporary and Disability Assistance and Legal Services for New York City (Contract C008614).

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. Major contributors to this report are listed in Appendix A.

Office of the State Comptroller
Division of State Services

July 24, 2003

EXECUTIVE SUMMARY

OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

LEGAL SERVICES FOR NEW YORK CITY DISABILITY ADVOCACY PROGRAM CONTRACT C008614

SCOPE OF AUDIT

Section 35 of the Social Services Law (Law) established the Disability Advocacy Program (DAP) in New York State, which provides for the legal representation of individuals whose federal disability benefits have been denied or may be discontinued. Since 1984, DAP has provided legal assistance to disabled New Yorkers seeking federal disability benefits under the Social Security Disability Insurance program (Title II of the Social Security Act) or the Supplemental Security Income program (Title XVI). Pursuant to the Law, the Commissioner of the Office of Temporary and Disability Assistance (OTDA) makes grants to not-for-profit legal services corporations, not-for-profit agencies serving the disabled, and local social services districts to provide for such legal representation. Under contract number C008614 (contract), Legal Services for New York City (LSNY) began providing legal services for DAP on July 1, 1998. LSNY serves New York City residents through subcontracts with LSNY-affiliated neighborhood offices in the Bronx, Brooklyn, Manhattan, Queens, and Staten Island. In addition, LSNY subcontracts with the Legal Aid Society in order to further extend services throughout the City. LSNY has received \$2.5 million for each of the four contract years through June 30, 2002. The contract has been extended to December 31, 2003. The DAP contract requires LSNY to achieve an aggregate minimum successful win rate of 65 percent on the cases they represent to the point of an administrative or judicial decision (i.e., the client either wins or loses the case for federal disability benefits).

Our audit addressed the following questions about the DAP contract between OTDA and LSNY for the period July 1, 1998 through June 30, 2002:

- Can improvements be made to the contract that will result in greater contractor accountability?

- Are there variances in subcontractor performance and, if so, have efforts been made to identify these, determine their causes and take corrective steps, as necessary?
 - Is the reported win rate for the contract year July 1, 2001 through June 30, 2002 accurate?
-

AUDIT OBSERVATIONS AND CONCLUSIONS

We found that OTDA can improve the contract to provide greater contractor accountability. We also found variances in subcontractor performance that OTDA had not identified. In addition, we found that the win rate for the contract year July 1, 2001 through June 30, 2002 was generally accurate.

The contract requires LSNY to achieve a win rate of 65 percent. We found LSNY exceeded the required win rate in each of the four contract years, and that LSNY's historical average win rate has approached 80 percent (3,553 reported wins out of 4,497 total decisions) over the period. Such performance suggests that the current 65 percent requirement, originally developed by OTDA without the benefit of statistical analysis, may need adjusting to require higher expectations. In addition, the number of cases that LSNY has closed has steadily declined over the four contract years, from 5,983 cases closed in 1998/99 to 4,138 cases closed in 2001/02. The number of total wins has also steadily declined over the period. Nevertheless, LSNY received the same money each year even though it represented fewer cases. We recommend that OTDA analyze available performance data and determine whether it would be appropriate to add a minimum number of wins and cases closed as contract requirements. The contract does not require LSNY to win or otherwise close a minimum number of disability cases. (See pp. 5-8)

In addition, it is important for OTDA management to review and assess contractor performance. This involves identifying variances in contractor performance, determining the causes for such variances, and requiring corrective action plans to address needed improvements. We determined that OTDA needs to strengthen its overall monitoring efforts to identify and address variances in performance among the offices. OTDA does not determine if there are variances in office performance nor attempt to determine causes for such variances. We found that some offices reported annual performances below the 65 percent win rate, which indicates the need for OTDA to monitor the performance of individual offices. We also found there was a lack of feedback from OTDA to the individual offices regarding their performance. Our report makes recommendations to improve the monitoring of contractor performance. (See pp. 9-13)

COMMENTS OF OTDA OFFICIALS

OTDA officials generally agreed with our recommendations and indicated the steps they either have already taken or will take to implement them. OTDA officials agreed that they can improve the contract to provide greater contractor accountability through strengthening data collection and reporting requirements for contractors, and by enhancing their monitoring activities during the next contract cycle. OTDA officials pointed out that it is their policy that the prime contractor is responsible for monitoring the efficiency of subcontractor operations. However, given that the win rate for the contract year July 1, 2001 through June 30, 2002 was generally accurate, and the fact that LSNY has surpassed the required win rate in each of the four contract years of the audit period, OTDA believes that strengthening contractor accountability and enhancing monitoring, will sufficiently address variances in subcontractor performance.

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Major Contributors to This Report

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INTRODUCTION

Background

The mission of the Office of Temporary and Disability Assistance (OTDA) is to promote greater self-sufficiency of the State's residents through the efficient delivery of temporary and transitional assistance, disability assistance, and the collection of child support. Section 35 of the Social Services Law (Law) established the Disability Advocacy Program (DAP) in New York State, which provides for the legal representation of individuals whose federal disability benefits have been denied or may be discontinued. Since 1984, DAP has provided legal assistance to disabled New Yorkers seeking federal disability benefits under the Social Security Disability Insurance program (Title II of the Social Security Act) or the Supplemental Security Income program (Title XVI). Pursuant to the Law, the Commissioner of OTDA makes grants to not-for-profit legal services corporations, not-for-profit agencies serving the disabled, and local social services districts to provide for such legal representation.

OTDA awards DAP contracts regionally throughout the State, including the New York City (City) area. Under contract number C008614 (contract), Legal Services for New York City (LSNY) began providing legal services for DAP on July 1, 1998. LSNY serves City residents through subcontracts with LSNY-affiliated neighborhood offices in the Bronx, Brooklyn, Manhattan, Queens, and Staten Island. In addition, LSNY subcontracts with the Legal Aid Society (LAS) in order to further extend services throughout the City.

The original contract with LSNY covered the three-year period through June 30, 2001 and allowed for two one-year renewal periods. At the time of our audit, LSNY was in the second one-year renewal on the contract set to end on June 30, 2003. The contract has since been extended to December 31, 2003.

The contract sets forth a performance requirement that LSNY and its affiliates and subcontractors (offices) achieve an aggregate minimum successful outcome rate (win rate) of 65 percent on the DAP cases for which they provide representation to clients before an administrative law judge (ALJ) at Social

Security hearings and in court (administrative and judicial determinations). OTDA requires LSNY to submit performance-related data to the Greater Upstate Law Project (GULP), which is a non-profit legal resource center providing technical assistance to local legal services programs and other community groups in the State. GULP acts as an independent clearinghouse for performance data and provides that information to OTDA for monitoring purposes. LSNY has received \$2.5 million for each year of the contract, for a total of \$10 million through June 30, 2002.

Each year, DAP saves both New York State and its 62 counties millions of dollars when Safety Net Assistance benefits are paid back to the State and localities from retroactive awards of federal disability benefits to clients. For the four years ended June 30, 2002, savings totaled \$8,409,179 from awards won by LSNY-represented clients.

Audit Scope, Objectives and Methodology

We audited the DAP contract between OTDA and LSNY for the period July 1, 1998 through June 30, 2002. The objectives of our performance audit were to determine if improvements can be made to the contract that will result in greater contractor accountability; to determine if there are variances in subcontractor performance and, if so, have efforts been made to identify and correct the causes for the variances; and to determine if the reported win rate for the 2001/02 contract year is accurate.

To accomplish our objectives, we interviewed OTDA and LSNY officials. We also reviewed and analyzed the contract's requirements. We obtained statistical data concerning outcomes (wins and case closings) from GULP. We analyzed the statistical data to determine the performance of each office. We visited four LSNY affiliate offices (Brooklyn "A", Brooklyn "B", Bronx, and Queens) and one LAS office (Brooklyn). During these visits we reviewed a sample of cases reported as wins at each office to determine if the case file documentation supported the reported wins. To determine the accuracy of reported statistics on case wins, we sampled at each office, 25 cases reported as wins during the July 1, 2001 through June 30, 2002 contract year in each of the five offices visited. The Brooklyn "A" and Brooklyn "B" offices were each selected based upon a decline in the number of total cases closed during the

contract period. We selected the Bronx office based upon a decline in the total number of closed cases as well as reporting a win rate below 65 percent during one year of the contract. Similarly, we selected the Queens office because its win rate fell below 65 percent in three out of four contract years. We selected the LAS-Brooklyn office because it reported the greatest number of cases closed out of all the LAS offices. We selected only one LAS office to visit because all eight LAS offices receive only 29 percent of the total LSNY contract amount while the remaining nine LSNY affiliate offices and one administrative office receive the remaining 71 percent.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations which are included within our audit scope. Further, these standards require that we understand OTDA's internal control structure and its compliance with those laws, rules and regulations relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by agency management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations that have been identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address in detail activities that may be functioning properly.

Response of OTDA Officials to Audit

We provided a draft copy of this report to OTDA officials for their review and comment. Their comments have been considered in preparing this report and are included as Appendix B.

OTDA officials generally agreed with our recommendations and indicated the steps they either have already taken or will take to implement them. OTDA officials agreed that they can improve the contract to provide greater contractor accountability through strengthening data collection and reporting requirements for contractors, and by enhancing their monitoring activities during the next contract cycle. OTDA officials pointed out that it is their policy that the prime contractor is responsible for monitoring the efficiency of subcontractor operations. OTDA officials further stated that the win rate for the contract year July 1, 2001 through June 30, 2002 was generally accurate and LSNY has surpassed the required win rate in each of the four contract years of the audit period. Therefore, OTDA believes that strengthening contractor accountability and enhancing monitoring will sufficiently address variances in subcontractor performance.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Temporary and Disability Assistance shall report to the Governor, the State Comptroller and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRACT ACCOUNTABILITY IMPROVEMENTS

We identified several opportunities for OTDA to improve the current DAP contract with LSNY. Areas identified relate to increasing the performance requirements of the contractor, analyzing the current minimum successful win rate requirement to determine if it should be changed, and improving the reporting of performance data by the offices. Improvement in these areas could result in LSNY serving additional clients more efficiently and effectively.

Performance Requirements

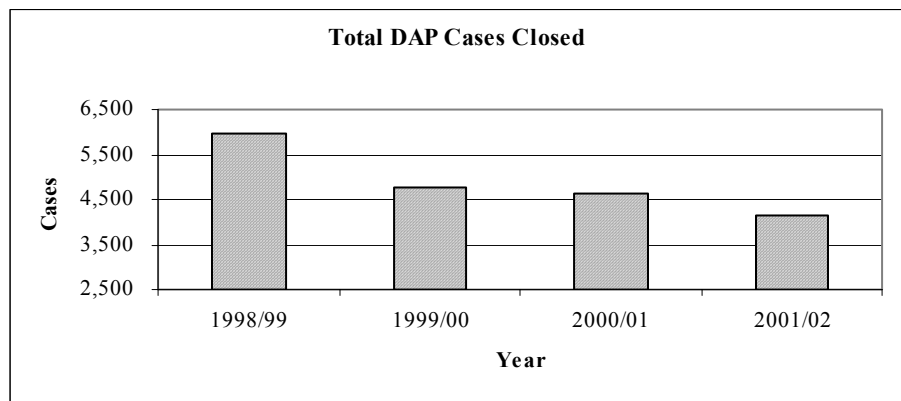
Each office is responsible for preparing a Case Closing Report for each case closed to record the case outcome as well as other related data. The offices send their Case Closing Reports to GULP, which records the information on a database for use by OTDA in monitoring contract compliance.

OTDA uses five categories to classify the outcomes of closed cases at the various offices as well for the overall DAP program. Where LSNY offices provide representation before an ALJ or in court, cases are categorized as either a win (client received/retained benefits), a loss (client did not receive/retain benefits) or case remanded (neither a win nor a loss until additional determinations are made by the courts). The last category includes all open activities that do not result in formal representation.

The DAP contract with LSNY has only one performance requirement. This requirement calls for LSNY to achieve an aggregate minimum successful win rate of 65 percent on the cases they represent to the point of an administrative or judicial decision (i.e., either a win or a loss). The contract does not require LSNY to win or otherwise close a minimum number of cases. Therefore, LSNY was in compliance with the contract requirement during the 2001/02 contract year when its offices won 716 of 885 decisions (81 percent win rate) just as it was during the 1998/99 contract year when all offices won 1,017 of 1,285 decisions (79 percent win rate). During the 2001/02 contract year, LSNY represented 400 fewer cases and won 301

fewer cases than during the 1998/99 contract year. Nevertheless, LSNY received the same money for representing fewer cases.

The contract's performance requirement does not take into account the overall caseload handled by LSNY. For the 1998/99 contract year the cost per case closed was \$418 and increased to \$604 per case closed in the 2001/02 contract year. As shown in the following chart, the number of cases that LSNY has closed has steadily declined over the four contract years, from 5,983 cases closed in 1998/1999 to 4,138 cases closed in 2001/02.



In addition, LSNY exceeded the required win rate in each contract year, and LSNY's historical average win rate has approached 80 percent (3,553 reported wins out of 4,497 total decisions) over the period. Such performance suggests that the current 65 percent requirement, originally developed by OTDA without doing any statistical analysis, may need adjusting. The following table summarizes data relating to LSNY's performance covering the four contract years:

	Contract Year (July 1 through June 30)				Total
	1998/1999	1999/2000	2000/2001	2001/2002	
Cases Closed	5,983	4,783	4,653	4,138	19,557
Total Decisions	1,285	1,223	1,104	885	4,497
Wins	1,017	1,010	810	716	3,553
Losses	268	213	294	169	944
Win Rate (Percent)	79	83	73	81	79

Our analyses show the need for OTDA to review contract performance requirements. LSNY has exceeded the

contractual requirement in every year of the contract while actual performance has declined in terms of both the number of cases closed and cases won. OTDA should analyze available performance data and determine whether it would be appropriate to add a minimum number of wins and cases closed as contract requirements. OTDA should also analyze the win rate requirement to determine if there is a need for higher expectations.

Statistical Reporting

OTDA works with GULP to verify that performance statistics are reported by the DAP offices before OTDA approves their payment vouchers for the period. We found that most offices had provided GULP with required statistical information over the four contract years. However, we noted some opportunity for OTDA to improve the reporting of performance by the offices.

We found that LSNY's Harlem office did not report its required performance statistics for the 1999/00 contract year, and that OTDA had not followed up before approving payment. Harlem officials attributed the oversight to human error. We were able to determine that the Harlem office had represented 60 cases to the point of a legal decision for the 1999/00 contract year. We have included this information in our analysis of individual office performance, which appears in the next section of our report.

We also found that one of LSNY's offices, Legal Services for the Elderly (LSE), generally has not reported case closings or wins to GULP for inclusion in DAP performance statistics. OTDA does not require LSE to report performance statistics as a condition of receiving reimbursement, even though LSE has received \$136,719 per year in contract funds. In working with LSE officials, we learned that the office did provide services during the four years of the contract. For example, LSE officials provided us with copies of their biannual progress reports for the 2001 calendar year. These progress reports showed that the LSE office had provided various legal services over the period. However, OTDA did not have copies of these biannual reports for use in monitoring LSE's performance. OTDA should require LSE to report their performance on Case Closing Reports to enable OTDA to monitor LSE's performance. (We did not use the data contained in LSE's biannual reports for our analytical purposes because the information was not derived from Case

Closing Reports and there was some overlap between the two biannual reports.)

Recommendations

1. Analyze available performance data and determine whether it would be appropriate to add a minimum number of wins and cases closed as contract requirements.
2. Analyze the adequacy of the existing win rate requirement and determine if changes are justified based upon historical performance.
3. Prior to approving payments, verify that all offices have submitted the required performance statistics to GULP. Require LSE to report performance statistics to GULP.

PERFORMANCE MONITORING

It is important for OTDA management to review and assess contractor performance. This involves identifying variances in contractor performance, determining the causes for such variances, and requiring corrective action plans to address needed improvements. As noted previously, LSNY's contract amount has remained at \$2.5 million per year while total cases closed and total wins have each decreased. While OTDA monitors whether LSNY achieves a win rate of 65 percent, we determined that OTDA needs to strengthen its overall monitoring efforts to identify and address variances in performance among the offices. Effective monitoring of contractor performance will become even more important if OTDA establishes additional performance requirements in future contracts.

We sampled cases identified as wins by the five offices we visited to determine if LSNY's reported win rate for the 2001/02 contract year was accurate. We found that the win rate was generally accurate, as 115 of the 125 cases reviewed (92 percent) contained adequate documentation to support the win claimed.

In line with LSNY's declining caseload, wins have followed a similar trend by decreasing during each contract year from a high of 1,017 reported in 1998/99 down to 716 in the 2001/02 contract year (a 30 percent decrease). As a result, the amount of contract dollars expended per win has steadily increased as shown in the following table.

	Contract Year (July 1 through June 30)				Total
	1998/1999	1999/2000	2000/2001	2001/2002	
Contract Amount	\$2,500,000	\$2,500,000	\$2,500,000	\$2,500,000	\$10,000,000
Total Wins	1,017	1,010	810	716	3,553
<i>Amount per Win</i>	\$2,458	\$2,475	\$3,086	\$3,492	\$2,815

In addition, the average contract dollars expended per win varied significantly among offices and from year-to-year. For example, as shown in the following table, the Queens office averaged \$13,599 per win during the 1999/00 contract year

while the LSNY average was \$2,475 per win. Queens' average fell to \$4,857 in the next contract year while the LSNY average was \$3,086. Another office, MFY Legal Services, had costs that exceeded the overall LSNY average in all four contract years. That office had averages of \$6,936 per win during the 1998/99 contract year, \$5,149 during the 1999/00 contract year, \$4,414 during the 2000/01 contract year, and \$5,310 per win during the 2001/02 contract year.

Office	Budget Amount	1998/99 Amount per Win	1999/00 Amount per Win	2000/01 Amount per Win	2001/02 Amount per Win
Bedford-Stuyvesant	\$125,652	\$1,632	\$2,792	\$4,333	\$2,922
Brooklyn "A"	189,620	2,084	2,312	4,410	7,023
Brooklyn "B"	209,123	1,367	1,341	1,504	2,071
Bronx	261,258	950	986	1,603	2,141
Harlem	142,773	1,929	3,038	1,586	1,830
LSE	136,719	N/A	N/A	N/A	N/A
LSNY-Brooklyn Branch	70,329	3,197	1,758	1,675	2,131
MFY Legal Services	339,855	6,936	5,149	4,414	5,310
Queens	271,974	5,132	13,599	4,857	8,773
LAS (All offices)	722,054	3,238	2,516	4,223	3,327
LSNY Admin & Support	30,643	N/A	N/A	N/A	N/A

* N/A = Not Applicable

OTDA does not determine if there are variances in subcontractor performance. We found that some offices reported annual performances below the 65 percent win rate. The following table shows the win rates by office for each year of the contract:

Office	1998/99		1999/00		2000/01		2001/02	
	Percent	Wins	Percent	Wins	Percent	Wins	Percent	Wins
Bedford-Stuyvesant	86	77	90	45	81	29	92	43
Brooklyn "A"	96	91	93	82	92	43	90	27
Brooklyn "B"	92	153	93	156	93	139	84	101
Bronx	81	275	75	265	59	163	69	122
Harlem	94	74	78	47	87	90	79	78
LSE	----	-	100	2	----	-	----	-
LSNY-Brooklyn Branch	92	22	87	40	86	42	94	33
MFY Legal Services	93	49	99	66	90	77	94	64
Queens	54	53	74	20	52	56	63	31
LAS (All offices)	65	223	80	287	68	171	84	217
Total LSNY	79%	1,017	83%	1,010	73%	810	81%	716

Given the variances noted in the preceding tables, OTDA should review the basis for making allocations to offices to determine whether the existing approach is equitable. LSNY has allocated the same amount to each office over the four-year period. In addition, OTDA should analyze variances as part of its monitoring efforts to determine the efficiency of offices' operations and whether assistance is needed to improve performance. Such monitoring may identify practices at certain offices that could be implemented by other offices to improve performance. For example, OTDA should, during the course of each contract year, obtain and review the win percentages for each office and, for any office which does not meet the 65 percent win rate, determine the reasons for failing to meet the required percentage and work with the office to improve performance.

We found there was a lack of feedback from OTDA to the individual offices regarding their performance. GULP provides OTDA with performance statistics concerning the number of wins and cases closed by office. However, at three of the offices we visited (Queens, Bronx and Brooklyn "A") officials indicated that they had not received any formal notification from nor had discussions with OTDA or LSNY officials regarding their performance. For example, officials from the Queens office, which had a win rate below 65 percent in three of the four contract years, could not recall any inquiries from either OTDA or LSNY. Similarly, the Bronx office did not meet the 65 percent requirement during one contract year and officials could not

recall any questioning by OTDA or LSNY officials. Officials from the Bronx, Queens, and Brooklyn “A” offices were all surprised by their overall performance, believing their performances were better than reported.

One method that is available to OTDA for monitoring LSNY’s performance and goals is through the review of the project narratives (narratives) that LSNY is required to submit to OTDA on a quarterly basis. These narratives are intended to provide OTDA with statistical and programmatic updates regarding the achievement of performance goals, including case closing goals. However, we noted that LSNY has not always submitted the required narratives to OTDA, and that OTDA does not use the narratives that are submitted for monitoring purposes. We noted the following:

- For the contract period July 1, 1998 through June 30, 2002, LSNY submitted only 12 of the 16 required narratives.
- Six of the 12 narratives on file contained certain information that was unchanged from the previous narratives, thereby indicating that these narratives were not adequately reviewed before they were submitted. Two of the six narratives were also missing statistical performance data relating to the period being reported. Without such data OTDA is unable to determine LSNY’s progress in meeting performance goals. These shortcomings lessen the effectiveness of narratives as monitoring tools.

In response to our findings, OTDA officials stated that they “appreciate the assistance of OSC in coordinating this review in relation to the completion of the current contract cycle and our time frames for developing the new DAP RFP. The input and information provided by OSC has been valuable in refining the content of the new DAP RFP.”

Recommendations

4. During the course of the contract year, determine if there are variances in office performance, identify causes for such variances, and work with the offices to improve performance as necessary. This could involve identifying best practices and improvement opportunities, and providing feedback to the offices.
5. In making funding allocations, consider the performance of the respective offices to ensure allocations are made in an equitable manner.
6. Enforce the requirement that LSNY submit properly-completed project narratives, and use the narratives for monitoring purposes.

MAJOR CONTRIBUTORS TO THIS REPORT

William Challice

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Brian J. Wing
Commissioner

June 4, 2003

**Re: Draft Audit Report: OTDA Legal Services for New
York City Disability Advocacy Program - 2002-S-28**

Dear Mr. Challice:

We have reviewed the draft audit report of Legal Services on the New York City (LSNY) Disability Advocacy Project (DAP) for the period of July 1, 1998 through June 30, 2002. We appreciate consideration of our informal comments in response to the internal, preliminary report provided previously, and appreciate inclusion of many of our suggestions in this draft. We also request your consideration of the response submitted by Legal Services of New York.

In addition to our comments on the report, we would like to note that OTDA's Office of Internal Audit (OIA) conducted an extensive audit of the DAP program during calendar years 2002 and 2003. OIA began and completed field audits of nine contractors and ten of their subcontractors, and reached many of the same conclusions as the OSC auditors. As a result of the ideas developed through these field audits, OIA suggested various improvements that were incorporated into the new DAP RFP to be released shortly. The major recommendations to contractors as a result of these reviews were that they prepare and submit case closing reports in an electronic format to reduce errors between the contractor and Greater Upstate Law Project (GULP), and that they reconcile with GULP on a yearly basis their case closing reports transmittals and make adjustments to correct variances. The major recommendation to GULP as a result of these reviews was that GULP provide the contractors with a listing of case files entered in GULP's database for the first nine-month period of the contract year to permit reconciliation by the contractors of this listing with the information in their files to facilitate any necessary adjustments to correct their variances. All significant recommendations to the contractors and GULP were included in the RFP, and the contractors and GULP have accepted these major recommendations and agreed to implement them.

We note that the Background section was revised to clarify that the aggregate minimum successful outcome rate of 65% that LSNY and its subcontractors must achieve includes not only representation to clients before an administrative law judge (ALJ) at Social Security hearings, but also in court (administrative and judicial determinations). The discussion of DAP savings in this section was revised, as we requested, to identify the amount of Safety Net Assistance benefits paid back to the State and localities from retroactive awards of federal disability benefits to clients, as well as the savings from awards won by LSNY-represented clients for the period of the audit. We appreciate the opportunity to provide formal comments in response to the draft report, and will respond specifically to the audit findings and recommendations.

"providing temporary assistance for permanent change"

Audit Observations and Conclusions

We concur with the finding that the Office of Temporary and Disability Assistance (OTDA) can improve the contract to provide greater contractor accountability. We intend to implement this finding through strengthening data collection and reporting requirements for contractors and by enhancing our monitoring activities during the next contract cycle.

With respect to the finding that there are variances in subcontractor performance that OTDA had not identified, as stated in our prior informal comments and discussions with audit staff, we agree that it is consistent with good management practices to require monitoring of these variances. However, it is OTDA's standard policy for all contracts that the prime contractor is responsible for monitoring subcontracts. In addition, the DAP contract states that budget revisions that affect changes in funding allocations among subcontractors require our prior written approval. Therefore, it is consistent with our contract authority to require contractor monitoring of the efficiency of subcontractor operations. Given the finding that the win rate for the contract year July 1, 2001 through June 30, 2002 was generally accurate, and the fact that LSNY has surpassed the required win rate in each of the four contract years of the audit period, we believe that the measures identified in the preceding paragraph to strengthen contractor accountability and to enhance monitoring by OTDA will sufficiently address variances in subcontractor performance.

1. **Recommendation: Analyze available performance data and determine whether it would be appropriate to add a minimum number of wins and cases closed as contract requirements.**

Response: During the next contract cycle, we will enhance the existing 65% win rate by requiring contractors to accept a specified percentage of Safety Net assistance cases with achievement of a specified percentage of wins in those cases, as determined by case closing reports. We also will require contractors to specify in their initial work plan the number of cases expected to be opened and closed, and to specify in subsequent work plans the number of cases actually opened and closed in the prior year. We will then monitor statistics for the number of cases opened and closed, and ask for an explanation of any declines. We will continue to fund providers handling more difficult cases, but maintain the discretion to reduce or eliminate DAP funding of contractors who fail to present satisfactory reasons for statistical declines in cases opened and closed.

2. **Recommendation: Analyze the adequacy of the existing win rate requirement and determine if changes are justified based upon historical performance.**

Response: As discussed in the prior paragraph, we will enhance the 65% win rate during the next contract cycle by requiring contractors to accept and win a specified percentage of Safety Net cases. However, we regard the 65% win rate requirement as highly effective, given that it surpasses the national average. Requiring the enhanced 65% win rate will ensure that DAP services are provided to hard-to-serve clients, which will result in additional savings to the State. This win rate also takes into account the past performance of DAP contractors, statewide, without unduly penalizing a contractor whose historical performance rate has exceeded 65%.

3. **Recommendation: Prior to approving payments, verify that all offices have submitted the required performance statistics to GULP. Require LSE to report performance statistics to GULP.**

Response: We concur that both prime contractors and subcontractors should report required statistical activity. During the next contract cycle, we will require contractors to submit case closing data electronically. In addition, we will continue to monitor statistical reporting by both contractors and subcontractors by reviewing their performance against contract requirements in six-month intervals, along with requiring justification and corrective action plans from those contractors and subcontractors who do not meet contract requirements.

4. ***Recommendation:*** *During the course of the contract year, determine if there are variances in office performance, identify causes for such variances, and work with the offices to improve performance as necessary.*

Response: The steps identified in response to Recommendation 3 will achieve the purpose of this recommendation by ensuring regular monitoring by OTDA of subcontractor variances that are identified through statistical reporting by prime contractors.

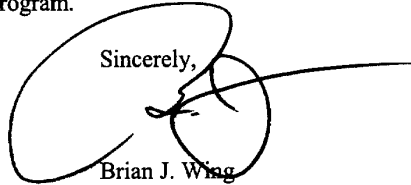
5. ***Recommendation:*** *In making funding allocations, consider the performance of the respective offices to ensure allocations are made in an equitable manner.*

Response: As we stated in our prior informal comments, LSNY is unique in the scope of its operation and the number of DAP subcontractors in comparison to other DAP contractors. We will achieve the purpose of this recommendation by maintaining the contract requirement that OTDA must approve all subcontracts, by requiring prime contractors to justify deficient performance by subcontractors, and by reserving the right to adjust DAP funding to contractors on an annual basis.

6. ***Recommendation:*** *Enforce the requirement that LSNY submit properly completed project narratives, and use the narratives for monitoring purposes.*

Response: We concur with this recommendation. This is an existing requirement under the current DAP contract, which will be enhanced under the new DAP contract cycle, as a result of electronic submission of case closing reports by contractors and monitoring by OTDA in six-month intervals.

The information provided by our own audit as well as those in your report has enhanced the efficiency and effectiveness of our administration of this program.

Sincerely,

Brian J. Wing

Mr. William P. Challice
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