



July 13, 2021

Roxanne Klubertanz-Gerber
Aging & Disability Resource Center of Eagle Country
Richland Center Office
221 W Seminary Street
Richland Center WI 53581

Dear Ms. Klubertanz-Gerber:

I am a Benefit Specialist Supervising Attorney at the Greater Wisconsin Agency on Aging Resources' (GWAAR) Elder Law and Advocacy Center. GWAAR has provided legal supervision for the elder benefit specialist program since 2012; prior to that this grant was held by the Coalition of Wisconsin Aging Groups. I have had the privilege of providing legal supervision for Elder Benefit Specialist Joanne Welsh for the past 4 years.

My daily work with the elder benefit specialists has intimately acquainted me with the complex, demanding and sophisticated job requirements of the position. The elder benefit specialist position requires a wide-ranging and in-depth knowledge of complex state and federal public benefit programs, and the application of sophisticated advocacy skills on behalf of clients with regard to those programs.

The job requirements of the benefit specialist position go well beyond what the title might suggest. Although the position does indeed require specific, specialized knowledge of the multitude of federal, state and local public benefit programs available to Wisconsin residents, more importantly (and more challengingly) it requires the ability to advocate on behalf of clients with regard to those benefits. Indeed, a more apt title of the job and its requirements would be "benefit advocate." Advocacy requires not only a deep understanding of the available public benefit programs but an understanding of how those programs actually work in real life, how they will apply to each individual client's set of unique circumstances, and how to obtain the best possible outcome for each client given those circumstances.

What may be characterized as a relatively basic position is, in fact, a dynamic, highly sophisticated position requiring extensive knowledge, advocacy skills, autonomy, intellect and the ability to quickly assimilate ongoing changes to existing knowledge and programs.

Having provided direct legal supervision to 20 elder benefit specialists for the past 4 years, I can directly attest to the wide-ranging, complicated, and ever-changing programs that the position requires them to navigate on a daily basis. Indeed, one need only take a glance at the public benefit programs and legal areas in which benefit specialists work on a daily basis to grasp the breadth and complexity of their work:

- Medicare Parts A, B, C, D: Medicare, as the largest provider of medical coverage in America, plays a significant role in the lives of most of the benefit specialist program's clients. Benefit specialists routinely assist clients in the complicated process of appealing denials of coverage for medical services, an activity which requires an in-depth knowledge of Medicare's extensive and diverse coverage criteria. Benefit specialists must not only understand the coverage criteria but craft arguments using their individual client's circumstances that they meet those criteria. This individualized assistance is coupled with ongoing, continuous education and assistance to those newly eligible for Medicare as each month new individuals turn 65 and qualify for Medicare. Medicare has grown significantly since the benefit specialist program began. Only Medicare Parts A and B existed when the position of the elder benefit specialist was created. Parts C and D did not, and their addition over the last two decades have added additional layers of complexity to assisting Medicare eligible beneficiaries. Unlike Parts A and B, Parts C and D benefits are delivered through the private market and bring with them all the complexity and (often overwhelming) options of that market. Since the introduction of Medicare Part D in 2006, benefit specialists have been assisting clients understand and compare drug coverage options, including Wisconsin's SeniorCare. As with many of the benefit programs we work with, the plan options change each year, and new plans must be evaluated by monthly premiums, drug copays, formulary comprehensiveness, tier structure, and preferred pharmacies.

- Social Security: Social Security forms the core or, in many instances, the sole source of many of the program's clients' incomes. As such, benefit specialists must be able to decipher, understand, and explain the wide array of eligibility and benefit rules applying to retirement, disability (SSDI), and supplemental security income (SSI). Our program provides assistance ranging from applying for benefits, demonstrating disability eligibility, and addressing benefit overpayment to Social Security beneficiaries. As with Medicare, Social Security is a constant source of work, especially as more and more baby boomers reach full retirement age.

- Housing: Benefit specialist also assist clients with a broad range of housing-related issues. This assistance ranges from determining eligibility for public housing (housing owned and operated by public housing authorities under HUD and vouchers issued under Section 8 public housing), reviewing lease provisions, assisting clients with requests for reasonable accommodations, and protecting clients against self-help eviction. This enforcement of client rights requires an in-depth familiarity with the complex HUD rules applying to publicly-funded housing, as well as Wisconsin landlord/tenant statutes.

- Consumer law and debt collection issues: Benefit specialists routinely assist clients in the realm of consumer law and debt issues resulting from medical bills, credit cards, and identity theft. Their work involves drafting cease and desist letters to collection agencies, requesting community care assistance from medical providers, assisting clients in completing financial disclosure forms, and requesting verification when there is questionable validity to the debt.

- Medicaid: The benefit specialists' work with Medicaid involves expertise not simply with elderly, blind, or disabled Medicaid but all its permutations: categorically needy Medicaid, the MA deductible, MAPP, Medicare Savings Programs (QMB, SLMB, SLMB+), BadgerCare+, and long-term care Medicaid. As with most other public benefit programs, MA has grown and

changed since the creation of the benefit specialist position. For example, the spousal impoverishment protections applying to married institutional MA and FamilyCare did not exist when the program began. Benefit specialists have had to learn these complex rules and apply them to their clients. In addition to spousal impoverishment and estate recovery, benefit specialists must also be able to calculate FamilyCare cost shares, Institutional Medicaid patient liabilities, as well as assess the accuracy of divestment penalties.

The above summarized programs do not constitute an exhaustive list and a benefit specialist's job duties are as varied as the problems clients bring with them to the benefit specialist's office. However, what the breadth and complexity of these programs does demonstrate is that the responsibilities and expertise required of the benefit specialist position has grown substantially and will continue to expand.

As mentioned above, the elder benefit specialist position does not simply require extensive knowledge of public benefit programs, but also the ability to *apply* that knowledge to a client's individual circumstances. This advocacy and assistance requires the mastery of a wide set of skills that clearly locate the position well above an administrative assistant. Indeed, my office equates the elder benefit specialist role with that of a paralegal at a private law firm.

Here is a list of the traits and the skill set needed for an elder benefit specialist:

- Sophisticated analysis and advocacy skills including the ability to identify legal issues, understand and apply relevant statutes, regulations and program rules to client situations and construct persuasive arguments on behalf of clients using their facts and the relevant sources of law in both written and oral form.
- Exercising a high degree of autonomy. One of the strengths of Wisconsin's supervising attorney/benefit specialist arrangement is the ability to maximize the legal assistance available to elder Wisconsin residents. If available legal services were confined to only what the attorneys could directly provide (the setup of many states) the program would only be capable of assisting a fraction of the people it does. However, a consequence of the arrangement is that the benefit specialist position requires a level of autonomy and responsibility that would not be as great were the attorney and benefit specialist both "in-house." With one attorney supervising generally 20 or more benefit specialists diffused across multiple, distant counties, the responsibility for many important aspects of the position necessarily falls to the benefit specialist. These responsibilities include the monitoring of appeal deadlines and ensuring that they are met, appearing at hearings, managing heavy caseloads and prioritizing cases effectively, exercising judgment as when to contact a supervising attorney, the ability to recognize potential ethical issues such as confidentiality and potential conflicts of interest, to name just a few. The autonomy and responsibility inherent in the benefit specialist position is reflected in the ethical rules governing legal practice that benefit specialists are required to observe. The rules require benefit specialists and their supervising attorneys to adhere to the core duties of loyalty to the client, zealous advocacy, diligence and confidentiality.
- Preparing for and appearing at hearings on behalf of clients. The benefit specialist position requires advocacy on behalf of clients at state and federal administrative law hearings when

eligibility and benefit issues arise. Preparation for a fair hearing includes reviewing extensive medical records, preparing exhibits, interviewing the client and others to establish the facts and circumstances of the case. Benefit specialists are expected to be able to read and analyze statutes, administrative code provisions, eligibility handbooks, contracts, and denial notices in order to present a synopsis of the case to the supervising attorney. Most importantly, benefit specialists must try and informally resolve cases by calling providers, consortia staff, and private health insurance companies to request correction of errors and negotiate a resolution.

° Issue-spotting and identifying areas not related to the concern which brought the client into the benefit specialist's office for assistance. For example, a client's request for assistance with a landlord/tenant dispute is an opportunity to investigate other areas for which assistance might be appropriate and to screen for available public benefits.

° Outreach to the elder population at large in the form of educational presentations at community sites, writing articles for distribution in the local senior newspaper, and the creation and dissemination of consumer-oriented publications.

° Ability to integrate changes to existing programs and knowledge base on an ongoing basis. All of the public benefit programs with which benefit specialists work are constantly changing. This is reflected in the bi-monthly trainings conducted by GWAAR, which are necessary both to cover the continual changes to existing programs and introduce new programs. This reality of constant change requires a benefit specialist who can not only grasp the complex ins and outs of the many public benefit programs available but who also has the flexibility to quickly adapt that understanding to the quite frequent changes that occur to those programs.

All of the wide ranging and complex program areas with which benefit specialist must work and the sophisticated set of skills the benefit specialist must employ with regard to those programs on behalf of their clients demonstrate that the benefit specialist position is a highly dynamic position that more than meets the definition of "professional employee" under Wisconsin statute §111.70(1)(L).

(L) "Professional employee" means:

1. Any employee engaged in work:
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or

2. Any employee who:
 - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d.;
 - b. Is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in subd. 1.

I would like to particularly emphasize the satisfaction of the last requirement within that statute which addresses the need for “knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital.” As the preceding summary of the benefit specialists’ daily work and the sophisticated skills needed to do that work demonstrates, the benefit specialist position is *defined* by the possession and application of “knowledge of an advanced type.” The above job duties and responsibilities make it quite clear that the knowledge requirements of the position go well beyond that bare minimum description. Furthermore, this advanced knowledge is of the type “customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.” This is reflected in the fact that all new benefit specialists are required to hold a baccalaureate degree (see the Wisconsin Aging Network Manual, Chapter 9). And, the “prolonged course of specialized intellectual instruction” is truly prolonged in the benefit specialist position in that the specialized education never ends but continues indefinitely as long as the position is held by the benefit specialist in the form of the ongoing bi-monthly training sessions which are essential to maintaining an understanding of the complicated and ever changing benefit programs and other legal areas that are key to the benefit specialist position.

I hope that you will agree it is essential that the Richland County Elder Benefit Specialist position be classified with the equivalent professional credentials. If I can provide further information, please do not hesitate to contact me at (608) 243-5682.

Sincerely,



Amanda Grady
Benefit Specialist Supervising Attorney
GWAAR Elder Law & Advocacy Center