



Brian Shellito/DN

"Adequate medical care goes on throughout the condition. Legal assistance is one of those things that comes in and helps meet other needs."

— John Milligan
attorney for Legal Services
of Southeast Nebraska

Lawyer says people with HIV and AIDS face insurance problems, discrimination

By Roger Price

Many of the non-medical challenges faced by people with HIV or AIDS — discrimination, health insurance and finances — can be solved with the assistance of a lawyer, a local attorney said.

John Milligan, an attorney for Legal Services of Southeast Nebraska works with several people with HIV or AIDS, said, "People rate the need for an attorney well down the list" when they are first diagnosed, but proper legal assistance can make it easier for people with HIV or AIDS to obtain the services they need.

One of the major roles for an attorney representing a person with HIV or AIDS, Milligan said, is to help that person obtain Social Security disability benefits.

The attorney, he said, also helps with estate planning, establishing a plan for medical treatment once the patient is unable to care for himself or herself and working with insurance companies to ensure the person with HIV or AIDS gets maximum benefits.

Milligan said it was understandable that legal services often are overlooked when a person is first diagnosed as having HIV or AIDS.

"From my viewpoint, the first thing is adequate medical treatment. I think that is the primary concern. The legal part is something that you run into after you deal with the big issues. You have time to reflect on how you need to have some legal planning to help with other issues."

"Adequate medical care goes on throughout the condition. Legal assistance is one of those things that comes in and helps meet other needs."

Because getting disability benefits from Social Security allows many persons with HIV or AIDS to get the services they need, Milligan said, an attorney often can help the person qualify for benefits quicker because the lawyer understands the process.

Qualifying for disability benefits can be difficult for people with HIV or AIDS, he said, because constant fatigue and other conditions associated with the disease require more subjective judgments.

The role of the attorney, he said, is to "facilitate obtaining information to help the decision maker."

Frank Battistelli, deputy press officer for the Social Security Administration, said there are two programs which SSA administers — Social Security Disability Program and Supplemental Security Income Program.

Only persons who have been employed and paid into Social Security are eligible for Social Security Disability, while Supplemental Security is based solely on

need, he said.

Battistelli said that to qualify for either Social Security Disability or SSI, a person must meet the legal definition of being disabled. This requires that a person applying for disability benefits have an impairment or combination of impairments that makes working impossible. The impairment must last for at least one year or result in death.

Even if people cannot perform the work they once did, Battistelli said, they may not qualify for disability benefits if they can work in other jobs.

A person qualifying for disability benefits must not be able to perform any type of work anywhere in the country, he said.

A person may qualify for one or both disability programs, he said, and both programs provide the person with a living stipend.

Milligan said being found disabled by Social Security also allowed a person to receive other benefits that were sometimes more important than the actual stipend.

"Being found disabled for many people opens the doors to receiving a lot of other associated benefits, specifically medical care."

Battistelli said qualifying for SSI, in most states, also qualified the person for Medicaid health benefits.

People on just Social Security Disability qualify for Medicare benefits after being in the program for two years, he said.

However, Medicare is a limited health insurance program while Medicaid covers most health care expenses.

Battistelli said the Social Security Administration looks at people with HIV or AIDS just like it looks at people with any other disability.

The Social Security Administration, he said, recognizes that many people with HIV or AIDS who apply for disability need the benefits as quickly as possible and tries to approve those cases as quickly as possible.

Milligan said the Social Security Administration had been responsive to the needs of people with HIV or AIDS and was changing its standards for dealing with AIDS in response to recent research and knowledge.

"They are making their standards more realistic," he said.

Before people with HIV or AIDS reach the point that they apply for disability benefits, Milligan said, they face a variety of workplace problems including discrimination and coverage by company health insurance policies.

Milligan said insurance companies had become much more conservative in response to AIDS. He said some had begun requiring physicals before people could be added to a company policy and exclude anyone who tests HIV-positive with or without any symptoms of AIDS.

Other insurers, he said, entirely ex-

clude or severely limit coverage for AIDS and related illnesses.

There is "a concern financially on the part of insurance companies and they do treat these cases differently and approach them differently," he said.

Milligan questioned insurance companies' motives for handling AIDS differently than other terminal illnesses.

"I guess the big question you have to ask is, is there really a reasonable reason why they should (treat HIV or AIDS patients differently) other than a strictly financial analysis."

In addition to insurance problems, he said, persons with HIV or AIDS sometimes face hostile workplaces.

In most of the cases Milligan has worked with, he said the discrimination takes a more subtle form.

"The employee is either treated differently by co-employees or perceives being treated differently by co-employees and is basically forced with 'wouldn't it be better for me to get out of this situation by leaving my employment?' Not an employer coming in and saying, 'You've tested HIV positive. You no longer can be employed here.'"

"It's more subtle. It's actions by employers and co-employees that make employment difficult."

Milligan said he was sure there were cases of blatant discrimination against persons with HIV or AIDS, but his office had not seen any.

Another obstacle people with HIV or AIDS face is finding employment, he said.

Like many other persons with physical problems, he said people with AIDS faced a dilemma when asked about their health problems in a job interview.

If a person answers honestly that they have HIV or AIDS he or she is less likely to be hired, he said, but if that person lies, he or she is can be fired if the employer discovered they lied.

Milligan said there were laws preventing employers from asking about health problems unless they were directly related to the job, but interviewers often ask these questions in an indirect way to avoid breaking the law.

Milligan said there was the potential for people with HIV or AIDS to face discrimination in almost every aspect of their lives, but one area where his office had become involved was the county and state corrections systems.

Discrimination against persons with AIDS is a more serious problem in jails and prisons because the afflicted person cannot leave the discriminatory situation, he said.

Because confined people cannot get away from the abuse, he said, "it is the responsibility of the administrators to protect the person while still allowing the person as much liberty as they can."

"It's a big balancing test," he said. Some institutions segregate all people who are HIV-positive away from the

general population, he said, but that situation infringes on personal freedom.

"There are no clear-cut guidelines," he said.

Robert Whitson, medical administrator for the Nebraska Department of Corrections, said the state prisons did not segregate people with HIV or AIDS from the general population unless medical or safety reasons dictated it.

Whitson said the only reasons a person with AIDS would be taken out of the general population would be for hospital treatment or protection from threatening inmates.

The other prisoners generally do not know if another inmate has HIV or AIDS, he said.

The state corrections system does test all incoming prisoners for HIV, he said, but has strict guidelines designed to keep that information confidential.

There now are 10 prisoners in the system who are HIV-positive, he said.

Whitson said there was one prisoner who was telling everybody of his HIV status, and that caused some problems with other prisoners.

Any prisoner who has had threats made on his life for any reason is isolated in protective custody, he said. No distinction is made for people who are HIV-positive, he said.

In treating people with AIDS, Whitson said, the prison system follows the latest guidelines issued by the Centers for Disease Control.

Sally Halford, Lancaster County corrections director, said the county jail didn't test prisoners for HIV, so employees and other inmates were instructed to act as if every inmate had an infectious disease.

"We tell inmates that if they follow the guidelines, they cannot contract AIDS," Halford said.

The jail does not allow any sex between inmates, any needles or drugs or any tattooing, she said.

Halford said, rumors are a way of life inside the jail, and "if somebody is being harassed, you deal with that."

Discrimination is major problem for people with HIV or AIDS, Milligan said, but as attitudes about AIDS change, discrimination will lessen.

Because AIDS was first thought of as a gay man's disease, he said, the nation's leaders were slow to deal with the epidemic.

Now that attitudes are beginning to change about the disease, Milligan said, a wide population is beginning to press for solutions to the problem.

"The first step is when people become comfortable at least talking about a problem," he said.

"If nothing else, the politicians and administrators are more willing to talk about AIDS in general, and are more willing to seriously consider the viewpoints of advocates."