



GREATER BOSTON
LEGAL SERVICES
...and justice for all

June 19, 2015

Joseph Stanton, Clerk
Massachusetts Appeals Court, Room 1200
One Pemberton Square
Boston, MA 02108-1705

Re: Internet Access to Court Files

To The Trial Court Public Access to Court Records Committee:

Greater Boston Legal Services (GBLS) is a non-profit corporation that provides civil legal services to eligible low income clients in 33 cities and towns in eastern Massachusetts. The help it offers ranges from legal advice to full case representation, depending on client need. As part of its mission, GBLS, through its' Disability Benefits Project, and Children's Disability Project, represents individuals with disabilities of all who are seeking to receive or preserve benefits under Titles II or XVI of the Social Security Act. It also provides representation in state court pursuant to chapter 30A when an administrative agency, such as MassHealth, has denied or terminated health care benefits.

The Disability Law Center (DLC) is the Protection and Advocacy agency for Massachusetts. DLC is a private nonprofit entity that provides free legal assistance to individuals with disabilities throughout Massachusetts. A key mission of the DLC is to help ensure that people with disabilities are able to access the items and services they need to live and work in the community. Since 1983, the Disability Benefits Project (DBP) at the Disability Law Center has provided technical back up and support to legal services advocates and private attorneys who represent individuals before the Social Security Administration (SSA).

The undersigned are commenting on this issue based upon our experience in federal court with civil actions filed under 405(g) of the Social Security Act which permits court review of denials or terminations of benefits in individual cases. In those cases, the claims are first adjudicated by the Social Security Administration through three levels of appeals. When an individual has exhausted the administrative process, there is an option to file a civil action in federal court. The federal district court will review the administrative record in the individual case, and determine whether the Commissioner's decision is supported by substantial evidence, or is an error of law. The administrative record contains all the medical, psychological, vocational, and personal records that were submitted to the agency. It is not unusual for such records to have over 500 pages of detailed, sensitive medical/psychological records and stretch back many years. The vast majority of individual Social Security disability claims now have an electronic record. This means that the administrative record is filed electronically in any federal court civil action, just as is the complaint or other pleadings. In spite of the fact that it is now filed electronically, this

administrative record is not available to the general public through PACER, but is only available online to the counsel of record. Individual counsel must log on to the case docket using their personal username and password that has been registered with the federal court, not a general PACER username and password.

To address privacy concerns in regard to Social Security cases, the Federal courts adopted the Federal Rule of Civil Procedure 5.2(c). For cases involving benefits under the Social Security Act, the rule specifically limits remote public electronic access to “the docket and an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.” FED. R. CIV. P. 5.2 (c)(1)(B) (“F.R.C.P. 5.2(c)”). However, the documents are available electronically at the public terminals found in the clerk’s office. U. S. DIST. CT. RULES D.MASS., CM/ECF Admin § N. Privacy. The Judicial Conference adopted the rule in response to Congressional legislation requiring greater public access to court records. E–Government Act Of 2002, PL 107–347, December 17, 2002. In the Act, Congress noted that the new rule should “protect privacy” and address “security concerns” relating to the electronic filing of documents. *Id.* at §3(A)(i). The legislative history also expresses a concern for balancing these two competing interests, noting that access is only allowed if it complies fully with “privacy protections under existing law and policy”. H.R. REP. 107-787, at 50 (2002), 2002 U.S.C.C.A.N. 1880 at 1885.

Some eight years ago, a GBLS client had the experience of googling her name, and up popped information from her federal court disability action. She was horrified that information about her most personal psychiatric and physical impairments was so easily available. She had become a footnote in an article, and it was never clear how the information ended up online. She was able to get some of it withdrawn, but she felt the damage had been done. In state court, the Superior Court hears appeals of administrative actions under chapter 30A, such as denials or terminations of MassHealth benefits. Just as in the federal system, the agency’s decision, medical records, and any other papers relevant to the case become part of the 30A administrative record. These records can contain personal medical/psychological information about the plaintiff. Easy availability of these records through remote access puts individuals at risk for employment and housing discrimination. There is no good reason to have that information available to the public online.

MassCourts was designed to be a case management system for the Massachusetts Courts, not a tool to broadcast the most private or personal information about plaintiffs such as our clients. We ask you to tread very cautiously in this area, and do not make this type of case information available to the general public online.

Thank you for the opportunity to comment.

Sincerely,

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