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SUPREME COURT
OF THE STATE OF WASHINGTON

BRIANA WAKEFIELD,

Appellant,

v.

CITY OF KENNEWICK,

Respondent,

and

CITY OF RICHLAND,

Respondent.

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WASHINGTON STATE
SUPREME COURT
by h

BRIEF OF AMICUS CURIAE

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ORIGINAL

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I. INTRODUCTION

Compelling people with mental illness who receive Supplemental Security Income (“SSI”) to pay court-imposed Legal Financial Obligations (“LFOs”) ignores that they have already been determined to be unemployable and forces them to sacrifice basic needs such as food and hygiene products. The threat of imprisonment for failure to pay LFOs looms particularly large and induces heightened fear for those individuals with mental illness who may be subjected to solitary confinement once in custody, and who may or may not understand their rights regarding their ability to pay the LFOs.

The SSI benefits paid to individuals with mental illness are already set at a bare minimum, and from all accounts fail the intended mission to provide for sustenance and a basic standard of living. To then require that these individuals pay a significant percentage of their SSI benefits for LFOs on a monthly basis, with the fear of imprisonment hovering over their heads, constitutes an excessively unreasonable psychological and practical burden for people living with mental illnesses.

Amicus Curiae joins and supports the argument of American Civil Liberties Union, that Washington law should contain a rebuttable presumption that mentally disabled individuals receiving SSI would suffer

a manifest hardship if forced to turn over a portion of their benefits for LFOs.

II. IDENTITY AND INTEREST OF AMICUS

Amicus Curiae is the National Alliance on Mental Illness — Washington (“NAMI Washington”), an organization dedicated to supporting and advocating on behalf of individuals affected by mental illness, including families and support systems for individuals with mental illness. NAMI Washington is committed to forming an alliance of individuals, families and communities to inform, advise, support, and raise public awareness of issues that affect individuals with mental illnesses.

A disproportionate number of individuals with mental illnesses find their way into the Washington State criminal justice system, which is woefully ill-equipped to address the unique needs of this population or to recognize the illnesses which cause their offending behavior. By definition, SSI recipients are unable to obtain any full-time employment and their SSI benefits are often the sole source of their income. The terrifying experience of incarceration and ongoing interactions with the criminal justice system can be a waking nightmare for people with mental illness. Thus the drastic impact of having to pay LFOs upon release from custody is heightened for mentally disabled recipients of SSI benefits such as Ms. Wakefield. Her case and her story are all too familiar to those

affected by mental illness; as such, her case presents issues of significant interest to NAMI Washington and its affiliates.

III. ISSUE ADDRESSED BY AMICUS

Whether the trial court erred by imposing continuing LFOs on Ms. Wakefield where her SSI benefits constitute the sole source of her income?

IV. STATEMENT OF THE CASE

Amicus Curiae adopts the statements of the case in the briefs submitted by *amici* American Civil Liberties Union and the Attorney General.

V. SUMMARY OF ARGUMENT

Imposing LFOs on individuals whose sole source of income consists of SSI benefits deprives these individuals of a material portion of a bare-minimum stipend, resulting in overly-harsh consequences for individuals with mental illnesses who cannot work to supplement their income, and penalizes poor people who have no other prospects. People with a mental illness (and who often live in fear of the criminal justice system) must then make choices about which necessities of life they will sacrifice in order to comply with a court order. These court orders are routinely based on faulty and unsupported assumptions about ability to pay. Because recipients of SSI benefits have already been forced to

document proof of their disability and incapacity to work, the Court should adopt a rebuttable presumption of manifest hardship for these individuals when deciding whether to impose LFOs.

VI. ARGUMENT

A. A Real Life Example and Illustration that Ms. Wakefield is Not Alone

Debra is a resident of Washington State.¹ At a younger age, Debra was diagnosed by a physician with bipolar disorder, formerly known as manic-depressive illness. Bipolar disorder causes unusual shifts in mood, energy, activity, levels, and the ability to carry out day-to-day tasks. Symptoms are severe. Symptoms of Debra's bipolar disorder included alcoholism and extreme bulimia (impulsive behavior is typical of bipolar disorder, and can manifest itself in these and other pleasurable, high-risk behaviors). At one point, Debra had a psychotic break and for a time she was institutionalized at a state treatment facility. As will be discussed in further detail below, in 1995 Debra successfully applied for SSI benefits based on her mental illness and began to receive approximately \$620 a month.

Years later, Debra had an incident where she felt suicidal. She went to a crisis center and was put on suicide watch. The agency that ran

¹ Debra's story was relayed by her parents to counsel for NAMI Washington. Her name has been changed to protect her identity.

the crisis center placed her in a residential facility for the night. Despite the fact that she was on suicide watch, the facility did not contact Debra's parents or her physician. At the residential facility, Debra was placed with non-suicidal residents. Debra was hyper and agitated, and she was experiencing severe anxiety. She kept trying to get to the phone, but the residential facility had a policy against making calls after 9:00 p.m. Because Debra was unable to comply with the rules of the residence, the manager kicked her out of the facility. Despite the fact that Debra was on suicide watch, the staff dropped her off at her apartment. Alone, without medication, and supposedly on suicide watch, Debra chain-smoked a carton of cigarettes through the night and into the next day. Sometime the next day, Debra set her couch on fire with a cigarette lighter.

Debra was charged with first degree arson. Debra and her parents did not know what to do. They feared the possibility that she could be given a life sentence.

While awaiting trial, Debra spent time at Benton County Jail, where she was kept in isolation for 23 out of the 24 hours of the day. On the first night in jail, Debra ate dinner, and then went to the bathroom to purge. At this time Debra weighed 80 pounds and was rail-thin.

On the second night in jail, she again went to purge after dinner. This time, she was intercepted and tied to a chair for the next five hours in

order to prevent her from purging. Denied access to a bathroom, Debra urinated on herself. She was untied at 1:00 a.m.

After dinner on the third night, Debra was told by jail personnel to get in the chair again. After the awful experience of the previous night, Debra ran for the door. She attempted to push a guard out of the way. This act constituted felony custodial assault, and she was charged with another felony. In this way Debra would accumulate another LFO.

Debra was eventually sentenced to one year at Purdy Women's Correctional Facility in Gig Harbor, Washington. The correctional facility could not provide proper treatment for her worsening mental illness. She was released after ten months.

Debra eventually overcame her alcoholism and bulimia. She is now stable. She will never be cured, but her symptoms, for the time being, are treated. She continues to be "unemployable" both in the eyes of SSI as well as in any practical sense of the word.

Debra's LFOs for the arson and custodial assault (and a later conviction for shoplifting) now total over \$90,000. She accumulates around \$800-900 in interest monthly, at the statutory rate of 12%.

Because Debra's mental illness is permanent and she will not be able to find gainful employment, Debra will almost certainly never be able

to pay off her LFO debts. She will be obligated to the State for the rest of her life.

B. The Court Should Adopt a Rebuttable Presumption of Manifest Hardship for Mentally Disabled Recipients of SSI Benefits

1. *Recipients of SSI Benefits Are Required to Submit Medically-Sound Evidence of Their Inability to Work*

Debra's story and Ms. Wakefield's story reflect an unfortunately well-trodden path to those whose interests are represented by NAMI Washington, which has seen the imposition of LFOs continue to haunt individuals and threaten them with the fear of (re)imprisonment for the rest of their lives. By virtue of their condition, individuals with mental illnesses are more likely to come into contact with the criminal justice system while battling untreated conditions or during psychological crises. By one estimate, in Seattle alone, police engage in approximately 10,000 encounters with individuals with mental illness in just one year;² more disturbingly, another source estimates that nationwide, of 990 individuals shot and killed by police officers in 2015, approximately twenty-five percent displayed signs of mental illness.³

² *Report: Force rare as Seattle police deal with about 10,000 mentally ill people a year*, Seattle Times, Sept. 6, 2015, available at < <http://www.seattletimes.com/seattle-news/crime/spd-report-minimal-force-used-in-contacts-with-mentally-ill/> >

³ *990 people shot dead by police in 2015*, Wash. Post, available at < <https://www.washingtonpost.com/graphics/national/police-shootings/> > (last viewed April 7, 2016).

Once in custody, this group has a more difficult time working with their attorneys, and understanding their rights in general. These individuals have medical conditions that need treatment in a clinical setting, not punishment in a correctional facility. Nonetheless, once they are in custody, the special needs of the individual with mental illnesses are simply not adequately addressed. Typically they are subjected to excessively harsh treatment, including “remedies” such as tying Debra to a chair to manage her illness, or frequently, isolation and restraint that exacerbates their condition. But no amount of punishment will or can cure mental illness.

The population of individuals with mental illness frequently cannot be identified on sight, often leading to the initial incarceration and improper treatment in custody. After release, because their illnesses are not always apparent, courts may be led to the mistaken assumption that these individuals are able to find employment and pay LFOs. But these individuals have already undergone a rigorous application process to prove that they cannot be employed and submitted qualifying medical evaluations regarding their disabilities and inability to work. To qualify for SSI benefits, individuals must prove they meet the definition of “disability,” which means:

the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work . . . or any other substantial gainful work that exists in the national economy.

20 C.F.R. § 416.905. The federal regulation provides that “Substantial work activity” is work activity that “involves doing significant physical or mental activities. Your work may be substantial even if it done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before.” 20 C.F.R. § 416.972.

This is an in-depth process, and SSI applicants are frequently unsuccessful.⁴ For example, as discussed above, in 1995, Debra began to receive SSI benefits. This was no easy thing, however. Debra, with the assistance of her parents, applied twice but was turned down each time. Debra and her parents had to retain a local attorney who specialized in these benefits. The attorney succeeded in obtaining an evidentiary hearing for Debra. An Administrative Law Judge conducted a hearing to determine if Debra was in fact eligible for SSI, despite being twice rejected. As a condition of benefits Debra had to show that she suffered

⁴ *The Facts About the Social Security Disability Programs*, Huffington Post, April 4, 2013, available at < http://www.huffingtonpost.com/donna-meltzer/social-security-disability-programs_b_3014961.html >

from serious mental illness or a combination of mental and physical handicaps. 20 C.F.R. § 416.905. She also had to show that she was “unemployable.” 20 C.F.R. § 416.972. Debra and her parents gathered clinical notes and evidence of her psychotic break, including an in-hospital stay and evaluation confirming her mental disability precluded her ability to work full-time in any capacity.

The ALJ reviewed materials submitted by Debra’s attorney. A psychiatrist also was retained by the State of Washington. The state contracted the psychiatrist to conduct an assessment of Debra and to give testimony at this hearing. After the hearing and based upon the evidence presented, the ALJ found that Debra was “unemployable” and granted her application for SSI benefits.

A trial court determining the terms of an individual’s release is far less informed than the ALJ or agency that made the determination that the individual qualifies for SSI benefits. LFO debtors who have already met the lengthy and involved federal requirements to qualify for SSI benefits should be entitled to a rebuttable presumption of manifest hardship. People in LFO hearings are frequently unrepresented and lack the means or wherewithal to re-litigate their illness and/or their lack of resources.

A rebuttable presumption does not end the inquiry, but it would put the State and the LFO debtor in a fairer initial position at the outset of the

proceedings in a Washington court. The State could still establish a lack of manifest hardship, but the SSI recipient would not be required to start from square one in answering a question that has already been answered in a proceeding bearing certain basic guarantees of due process.

Such a presumption is already supported by state law. Other briefs have discussed RCW 10.01.160 and that discussion will not be repeated here. Yet it is also worth noting that under RCW 9.94A.777, a judge must determine that a person with a mental illness has the means to pay an LFO, before imposing that LFO. For purposes of RCW 9.94A.777, which is applicable to felony convictions, a person who is enrolled in a public assistance program based upon a diagnosis of a mental disorder is automatically deemed to suffer from a mental health condition. The relief requested by *amicus curiae* — establishing a presumption of manifest hardship based upon enrollment in SSI at the time of motion to reduce or remit an LFO — would be entirely consistent with what is already required by RCW 9.94A.777 — wherein the legislature established a similar presumption when a judge first considers whether to impose an LFO upon a person with a mental illness who is convicted of a felony.

2. *Even Without LFO Obligations, the SSI Benefits Program is Woefully Inadequate to Provide for Basic Living Standards*

The SSI program is intended to “assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level.” 20 C.F.R. § 416.110. The maximum amount of SSI benefits available to any individual in 2016 is \$733 a month.⁵ The amount of SSI benefits may be reduced based on any countable cash income, or “in-kind” income, meaning non-cash resources that may be reduced rent or supplemented food programs.⁶ Beneficiaries of SSI are disqualified if they accumulate more than \$2,000 in assets, at any time. The group of people receiving these SSI payments are estimated by one source as facing “the most severe levels of poverty of any group of Social Security beneficiaries.”⁷

A breakdown of how the benefits are spent each month may be illustrative here. Debra’s income from SSI is \$733 per month. Because of rental assistance she now pays one-third of her income toward rent (\$120). Her utility bill is discounted but still amounts to between \$75-125 each

⁵ *SSI Federal Payment Amounts for 2016*, available at < <https://www.ssa.gov/oact/cola/SSI.html> > (last viewed April 7, 2016)

⁶ *Countable Income for SSI Program*, available at < <https://www.ssa.gov/oact/cola/countableincome.html> > (last viewed April 7, 2016)

⁷ *White House Urged To Raise SSI Limits*, Disability Scoop, April 19, 2013, available at < <https://www.disabilityscoop.com/2013/04/19/white-house-urged-ssi-limits/17753/> >

month. She receives Medicaid. Still, Debra has no extra room in her budget. Her remaining income goes toward bus passes, utilities, telephone bills, food, hygiene products, and other expenses. She is blessed to have parents who assist with her support and make up the difference between her SSI benefits and what it takes to live in Benton County. She has no prospect of ever paying off her LFOs, and lives in fear that she will be incarcerated again.

Nonetheless, Debra must pay \$75 per month — more than 10% of her income — toward her LFOs. This amount was determined by a Benton County Superior Court Judge. State law requires that courts consider defendants' individual financial circumstances, and that the court conduct an inquiry into the individuals' current and future ability to pay.” *State v. Blazina*, 182 Wn.2d 827, 837, 344 P.3d 680 (2015).

But in practice, this analysis is not always conducted, and may not be sufficiently thorough. Instead, as was the case with Debra, the Judge simply asks if the person with mental illness can pay some amount, say \$10 or \$20 per month. The debtor is usually not represented by counsel. She is, of course, afraid that if she says no, she will be given more jail time. So she represents that she can pay whatever the court suggests she should be able to pay. This answer contradicts the evidence which she had to submit in order to be deemed eligible for SSI.

And so the supposed inquiry is meaningless. A person can petition to have the monthly LFOs reduced, but in practice that is difficult for an individual with mental illness and the prospects for success are uncertain. Most petitioners, for example, would not have the assistance of a lawyer practicing in this area like Debra did, and most petitioners would not have tenacious parents who appeared before the court multiple times to request that the amount of the LFOs be reduced. Even with these resources, Debra pays 10% of her SSI benefits, her sole income, toward LFOs.

The injustice of this judicial inquiry would be ameliorated by adopting a standard wherein the trial court is to presume the imposition of LFOs would result in manifest hardship to an individual with mental illness who has demonstrated she qualifies for SSI benefits.

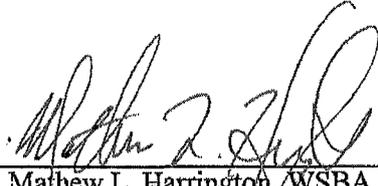
VII. CONCLUSION

NAMI Washington represents the interests of an impoverished and vulnerable population in Washington State, whose mental illness prevents them from gainful employment and finding alternative sources of income. Because of this, those with LFOs must pay substantial portions of their monthly SSI benefits to the State to avoid the continued and ongoing threat of involvement in the justice system. Imposing these obligations on SSI recipients with LFOs is, in most cases, clearly a manifest hardship.

These individuals do not have the means to pay their LFOs,
notwithstanding the inquiry of a Washington court.

NAMI Washington respectfully submits that Washington law
should contain a rebuttable presumption that mentally disabled individuals
receiving SSI would suffer a manifest hardship if forced to turn over a
portion of their benefits for LFOs.

By:



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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 8th day of April, 2016, I caused a true and correct copy of the foregoing to be delivered by electronic mail and U.S. mail to the following counsel of record:

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Dated this 8th day of April, 2016, at Seattle, Washington.

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Respectfully submitted are 1. Motion of Proposed Amicus Curiae National Alliance on Mental Illness-Washington to File Amicus Brief, and 2. Brief of Amicus Curiae for filing with the Court.

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