



# Using the Medical-Legal Partnership Approach to Help Health Center Patients with Long-COVID

January 25, 2023 at 1 PM ET

# HRSA

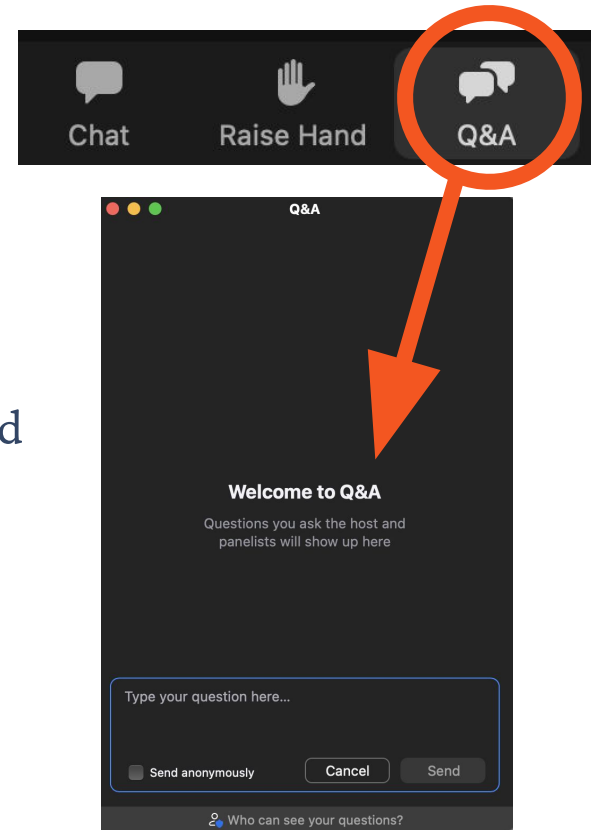
## Health Resources & Services Administration

This project is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) as part of an award totaling \$625,000 with 0 percent financed with non-governmental sources. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement by HRSA, HHS, or the U.S. Government. For more information, please visit [HRSA.gov](https://www.hrsa.gov).



# Housekeeping

- Attendees are muted throughout the webinar.
- Type questions into **Q&A Pane**.
- To activate captions, select “Live Transcript” and “Show Subtitle.”
- This webinar will be recorded and shared at [medical-legalpartnership.org/resources/](https://medical-legalpartnership.org/resources/)
- Email [ncmlp@gwu.edu](mailto:ncmlp@gwu.edu) for help



# Today's Learning Objectives:

- Receive updates on how current laws and policies can impact the health and legal outcomes for patients with long-COVID,
- Identify strategies to improve patient access to social and income support such as paid leave or disability benefits; and
- Identify best practices for health center and MLP staff on screening and documenting social and legal needs for health center patients.



# Today's Panelists



**Katie Hathaway, JD**

NCMLP Consultant  
And Subject Matter Expert in  
Disability Law



**Jasmine Harris, JD**

Professor of Law  
University of Pennsylvania  
Law School



**Andrew Yang, JD**

MLP Attorney  
Community Legal Services  
Philadelphia



**Nicholas Feden, JD**

Supervising Attorney  
SSI Unit, Community Legal  
Services Philadelphia





**Katie Hathaway**  
NCMLP Consultant

Katie Hathaway is a consultant for the National Center for Medical-Legal Partnerships and the moderator of this webinar series. Katie has nearly 20 years of experience as a disability rights attorney, and spent 17 years at the American Diabetes Association building and then leading its legal advocacy program seeking to end discrimination against people who live with diabetes.



**Jasmine Harris**

Professor of Law

University of Pennsylvania Law School

Professor Harris is a law and inequality legal scholar with expertise in disability law, antidiscrimination law, and evidence. Her work seeks to address the relationship between law and equality with a focus on law's capacity to advance social norms of inclusion in the context of disability. Professor Harris consults with federal and state lawmakers and legal advocates on issues on legislative and policy reforms related to disability laws. She also serves on the Board of Directors for the Arc of the United States and as Chair of the Legal Advocacy Subcommittee to advise the organization on impact litigation.



**Andrew Yang**

Staff Attorney

Community Legal Services Philadelphia

Andrew Yang is a medical-legal partnership attorney with Community Legal Services Philadelphia, specializing in public benefits at CHOP Primary Care in South Philadelphia. He previously represented disabled claimants for 8 years as the Managing Attorney of the Social Security Disability Department at Martin Law. He is also a community and co-founder of the South Philadelphia Participatory Defense Hub, assisting Philadelphians in navigating the criminal justice system in a community setting.





**Nicholas Feden**

Supervising Attorney  
Community Legal Services of  
Philadelphia

Nicholas Feden is an attorney with a focus on Social Security Disability (SSD) and Supplemental Security Income (SSI) cases. He was the founder and chair of the Administrative and Federal Appeals Department at Pond Lehocky Giordano, one of the largest Disability Appellate Departments in the region. Since 2020 he has been a supervising attorney at Community Legal Services of Philadelphia, where he has provided counsel to disabled individuals, consulted for the Biden/Harris SSA Transition Team, and worked on impact litigation for individuals affected by improper overpayment notices. Feden is a former trustee of the Philadelphia Bar Foundation and former Chair of the Social Security Committee of the Philadelphia Bar Association

# Long COVID: What Do We Know

## Definition:

- No single widely accepted definition of Long COVID
- Most typical presentation: new or recurring symptoms that originate or last beyond the initial COVID-19 infection
- Can also include cell damage caused by COVID-19 infection or complications from long term hospitalization



# Long COVID: What Do We Know

## Prevalence:

- General estimates – **between 10-30%** of people who are infected with COVID-19 experience Long COVID
- Federal government estimates **between 7.7 and 23 million Americans** have Long COVID

[Source: HHS National Research Action Plan on Long COVID, August 2022]

- Based on survey of 16K people between February 2021 and July 2022, **15% of U.S. adults** with prior positive COVID-19 test report symptoms of Long COVID. Long COVID in the U.S. is associated with older age (40+) and female sex

[Source: “Prevalence and Correlates of Long COVID Symptoms Among US Adults”

<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2797782>]



# Impact of Long COVID

- **4.4 million U.S. adults** – 25% of those living with Long COVID – experience symptoms severe enough to limit their day to day activities “a lot.” An additional 10.4 million (56%) are limited “a little.”

[Source: National Center for Health Statistics & U.S. Census Bureau Household Pulse Survey, <https://www.cdc.gov/nchs/covid19/pulse/long-covid.htm>]

- Economic and labor market impact of this data is significant:
  - Around 16 million working age (18-65) Americans have Long COVID
  - Of those, **2 to 4 million are out of work** due to Long COVID
  - Annual cost of lost wages is between \$170-230 billion each year

[Source: Brookings Institution, <https://www.brookings.edu/research/new-data-shows-long-covid-is-keeping-as-many-as-4-million-people-out-of-work/>]



# Impact of Long COVID

- COVID-19 as a mass-disabling event: **1.2 million more people identified as having a disability** in 2021 versus 2020  
[Source: U.S. Bureau of Labor Statistics and the Center for American Progress, <https://www.americanprogress.org/article/covid-19-likely-resulted-in-1-2-million-more-disabled-people-by-the-end-of-2021-workplaces-and-policy-will-need-to-adapt/>]
- Social Security Administration has identified **44K SSDI claims** that include COVID-19 as of November 2022
- Impact on health care system for people living with other post-viral conditions (e.g., ME/CFS)



# Where to Look for Help on Long COVID Issues

U.S. Department of Health and Human Services, <https://www.covid.gov/longcovid>

- Services and Supports for Longer-Term Impacts of COVID-19
- National Research Action Plan on Long COVID
- Health+ Long COVID Report

U.S. ME/CFS Clinician Coalition, <https://mecfscliniciancoalition.org/>

We Can't Wait Coalition, <https://www.wecantwaitcoalition.org/>



# Disability Employment Law (Statutory Authorities)

- Americans with Disabilities Act
  - Title I Private employers (w/ 15 or more employees) [42 U.S.C. §§ 12111-12117]
  - Title II State & Local Govt. employers [42 U.S.C. §§ 12131-12134]
- Sections 501, 503, 504 of the Rehabilitation Act of 1973 [29 U.S.C. §§ 791, 793, 794, respectively]
  - Section 501 [Federal agencies]
  - Section 503 [Federal contractors with contracts of \$10,000 or more]
  - Section 504 [Recipients of federal financial assistance]

Other relevant employment discrimination laws include Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Genetic Information Nondiscrimination Act, Family Medical Leave Act, state employment laws, and federal and state regulations.



# ADAAA Definition of Disability [42 U.S. Code § 12102]

With respect to *an individual*,

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment . . .





# Case Study: Long COVID & Employment

Tom works as a payroll manager at a large company. After having COVID-19 last year, he's been having trouble focusing on work due to headaches, brain fog, and extreme exhaustion. He's finding himself making more mistakes but so far, he's been able to catch and fix them himself. Recently there was a big error with payroll and his manager asked Tom for details of his work that he could not recall, raising suspicion that his actions were the cause of the error. Unknown to his employer, Tom has been living with rheumatoid arthritis and fibromyalgia for many years, but prior to getting COVID-19 both were in remission and did not affect his work. He suspects he may have Long COVID and/or his other conditions have flared up. He knows from coworkers who were at the company when covid hit that the company required payroll managers to come into the office to process payroll, which he believes is due to a desire for oversight and lack of trust. Tom is worried his performance and productivity have slipped and put him on management's radar.

**Audience Instructions: Place your thoughts in the Chat window for Zoom.**



# Medical Legal Partnership



Low-income patients and their **families face social, economic and legal problems that undermine their health**, such as lack of heat, unstable housing, and food insecurity.



**CLS advocates are stationed at health care partners** to address these health-harming legal issues.



MLP team members train health care staff to **identify legal problems that affect health, and refer families to the on-site CLS advocate** for legal assessment and representation.



MLP team members train health care staff to **identify legal problems that affect health, and refer families to the on-site CLS advocate** for legal assessment and representation.



CLS advocates work with doctors, nurse practitioners, social workers, and others to **provide holistic medical and legal care so that patients and families can thrive**.



Partnering across fields **highlights the broader social and legal determinants of health and allows for large, system-level changes** to policies that directly affect patients.



# Beth: Long COVID / MLP Case Study



- Patient arrived for medical needs
- Screener was able to catch the patient's legal needs
- Social Worker directed the patient to on site legal help
- Attorney on site assisted the patient/client in obtaining income supports and public benefits
- Medical staff, together with legal, were able to provide the necessary documentation for a successful disability claim

**Audience Instructions: Place your thoughts in the Chat window for Zoom.**



## Case Study: Long COVID & SSI/SSD

- Tom is 50 years old and has been living with rheumatoid arthritis and fibromyalgia for many years, and, as a result, has only worked part-time for the last 10 years. After having COVID-19 last year, he's been having trouble focusing on work due to headaches, brain fog, and extreme exhaustion. He's decided that he can no longer work even a part-time position. He suspects he may have Long COVID and/or his other conditions have flared up. Tom doesn't know how he'll be able to survive without his salary and is terrified that he'll be unable to afford rent or groceries.



## Disability Standard – Adults

- “Inability to perform substantial gainful activity by reason of a medically determinable physical or mental impairment, or combination of impairments, which has lasted or is expected to last at least 12 consecutive months, or end in death, taking into account the individual’s age, education, and work history.” 42 U.S.C. § 423(d); 20 C.F.R. §§ 404.1505 & 416.905



## Components

- Inability work
- For at least 12 months
- Because of a medical condition
- That is properly documented by medical data
- Considering age, education and past work



## How Does SSA Determine Disability?

- Step 1: Is claimant performing substantial gainful activity (SGA) (\$1,350 in 2022)?
- Step 2: Is condition (or combination of conditions) “severe” and expected to last at least 1 year or end in death?
- Step 3: Does condition “meet” or “equal” a listed impairment? (Claimant can be approved at this step.)
- Step 4: Is claimant able to return to past relevant work
- Step 5: Can claimant perform any other work in the national or local economy?





## Step 2- Severity and Duration of MDI

- Medically determinable impairment or combination of impairments must impose limitation of any basic work activity (physical or mental)
- *De minimus* standard see *Bowen v. Yuckert*, 107 S. Ct. 2287 (1987)
- Durational requirement: Must last at last one year or end in death.

***Documentation is essential.***





## Step 3 – “The Listings”

- Does the claimant meet or **equal** a listing?
- SSA regs provide a listing for each body system, with specific medical criteria that a person must meet or equal severity
- With mental impairments, the listings typically consider symptoms and levels of functioning, and the types of structured supports.
- Impairments considered severe enough to prevent an individual from working without consideration of age or vocational factors. Person can be approved, but not denied, at this step.
- See 20 CFR 404. Subpart P, Appendix 1 A & B, <https://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>



## What is Residual Functional Capacity?

- A person's capacity to return to prior work (Step 4) or perform any other work (Step 5) is based on their Residual Functional Capacity.
- SSA's RFC determinations must be based on the ability to engage in full-time, sustained work.
- SSA considers exertional and non-exertional demands of work.



# Exertional Demands

- Exertional levels:
  - Sedentary: sitting 6 hours out of an 8-hr day; standing and/or walking at least 2 hrs/day; lifting up to 10 pounds.
  - Light: standing 6 hours out of an 8-hour day; lifting up to 20 lbs.; using foot pedals, etc.
  - Medium: standing all day; lifting up to 50 lbs.
  - Heavy: standing all day; lifting up to 100 lbs.
  - Very heavy: lifting over 100 lbs.
- SSA recognizes only seven exertional activities:
  - standing
  - walking
  - sitting
  - lifting
  - carrying
  - pushing and pulling



## Non-exertional Impairments

- Nonexertional limitations can be both physical or non-physical.
- Any limitation NOT resulting from any of the seven exertional activities (sitting, standing, walking, lifting/carrying, pushing/pulling) is nonexertional. For example:
  - Postural/manipulative
  - Sensory
  - Environmental
  - Mental
  - Fatigue
  - Off-task
  - Pain



## Mental Demands of Work

- Mental abilities needed for any job
  - The ability to understand, carry out, and remember simple instructions
  - Use of judgment to make simple work-related decisions and be aware of normal hazards and take appropriate precautions
  - Respond appropriately to supervision, coworkers and work situations; and
  - Deal with changes in a routine work-setting
- It's important to demonstrate how symptoms translate to work-related activities.



## Sample RFC Assessments

The claimant can...

- perform the full range of medium exertional work.
- perform light work but will be off-task 15% of the time.
- perform light work but can only sit, stand, or walk for maximum of one-hour intervals.
- perform sedentary work but with the following limitations: can understand, remember, and carry out instructions for routine, repetitive tasks commensurate with unskilled work, tolerate only brief and superficial contact with coworkers and no contact with the public.



## Step 5 – Vocational Factors

- Age:
  - 18-49: Younger worker
  - 50-54: Closely approaching advanced age
  - 55-59: Advanced age
  - 60 or older: Closely approaching retirement age
- Education
  - up to 6th grade = marginal
  - up to 11th grade = limited
  - H.S. graduate or GED = high school
  - College = more than H.S.
- Work experience/skill categories
  - Unskilled: Simple work, no judgment, takes less than 30 days to learn.
  - Semi-skilled: Some skills but not complex, takes over 30 days to learn
  - Skilled: Complex tasks, use of judgment, long training period or extensive education.





## How Does SSA Address Similar Conditions?

- There have been SSRs addressing conditions similar to Long COVID. They have overlapping symptoms with Long COVID, and are also considered difficult to diagnose and evaluate.
- They focus largely on establishing an MDI. A listing at Step 3 can only be met by equivalence.
  - [SSR 12-2p – Evaluation of Fibromyalgia](#)
  - [SSR 14-1p – Evaluation of Chronic Fatigue Syndrome](#)
  - [SSR 19-4p – Evaluating Primary Headache Disorders](#)





## Identify Gaps & Develop Good Cause

- Identify critical gaps in treatment
- Document reasons for treatment gaps in the record
- Address continuity of care issues and barriers to treatment



## Developing Evidence – Subjective Symptoms

- Improve symptom documentation with calendars and diaries
- Consider declarations from lay witness or claimant regarding subjective complaints



## Developing Medical Evidence

- Increased need for medical source statements from treating and examining medical sources
- Determine where in-person assessment is needed and how it might be obtained
- May need referral to experts (mental health, cardiology, pulmonary, neurological), long COVID clinics, and appropriate testing (e.g., PFT, cognitive testing)
- Request MEs for equivalence arguments, or for onset date or durational issues





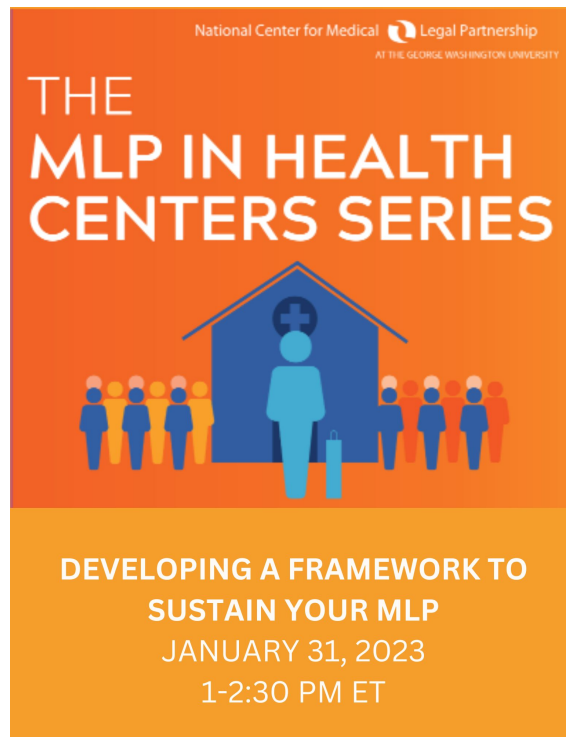
# Q&A

Please put questions in the Q&A Panel.

# Happening Soon!

Subscribe to our newsletter to stay up-to-date on our events and resources.

[bit.ly/mlpnews](https://bit.ly/mlpnews)



National Center for Medical Legal Partnership  
AT THE GEORGE WASHINGTON UNIVERSITY

## THE MLP IN HEALTH CENTERS SERIES

DEVELOPING A FRAMEWORK TO  
SUSTAIN YOUR MLP  
JANUARY 31, 2023  
1-2:30 PM ET





# THANK YOU!

Please take a moment to complete our survey. Link is in the chat.