

# THOMAS J. FRAIN

THOMAS J. FRAIN LAW OFFICE



**A**dvocating on behalf of a 45-year-old developmentally disabled woman whose IQ was one point above the cut-off score for eligibility, Thomas J. Frain overturned a state regulation last July that denied benefits to those with an IQ over 70.

The regulation was invalid, the Appeals Court ruled, because it did not cite any authority to support its rule, as required by statute.

Frain's client in the case, Paula Tartarini, was raised by a single mother, now in her 70s, who worries about her daughter's future. "Paula would fail miserably on her own. She wouldn't even get through the day if it weren't for her mother," Frain says.

The victory holds special meaning for the Bolton lawyer, who grew up with a developmentally disabled brother.

**Q.** *How significant is the Appeals Court ruling?*

**A.** It's a very important issue for the least of our brethren. These folks have no voice of their own. Until 2006, a 70 IQ was not a cut-off. In 2006, the Superior Court held that someone with an 83 IQ was still eligible. The reaction was to drastically cut back that regulation, so those with 70 or above weren't eligible, even though it's not accepted on a clinical or medical basis. It was purely to stop people from getting in the door.

**Q.** *What happens now?*

**A.** We've urged them to adopt the rule prior to 2006 based on the [recommendations of the American Association on Intellectual and Developmental Disabilities], which says you also have to look at a person's adaptive functioning. Do they appreciate dangerous situations? Can they cook? Dress themselves? The court has ordered a full review of my client's case and I'm hoping they award her services.

**Q.** *What was your biggest challenge?*

**A.** When you see injustice and disabled people suffering, and a hard-working, do-the-right-thing mom who is suffering and worrying, you become very close to the people and you don't want to lose. This was a very important case to win, not just for my client but for everybody. The biggest challenge was fearing I might lose, especially once I got to the Appeals Court. Justice is a hard thing to get in any circumstance. But it's really sweet when it comes.

**Q.** *How does your own experience inform your work?*

**A.** I have a brother a year younger than me who is mentally retarded and lives in a state-operated group home. My mother is 80 and still visits him every other day. My family situation is similar [to Tartarini's]. My father passed away when I was 22, and my mother worked full time as a nurse, trying to manage the family and keep him safe. Once an intellectually disabled person turns 22, federal special education laws no longer apply and you're left with state services, which are drastically different and appallingly worse. People fall out of the federal safety net and each family is left on its own to apply for services. Our family spent years of trial and error not knowing what to ask for. When I had just gotten out of law school and was living at home, I heard my mother on the phone while my brother was suffering in pain. He has a seizure disorder and the person at the group home refused to take him to the ER. That angered me.

**Q.** *Do you handle other cases in this area?*

**A.** Since 1995, I have been heavily involved on a pro bono basis with the nonprofit COFAR, a statewide advocacy group for intellectually disabled people. I'm president now, but I've never stopped volunteering. This is a passion of mine.

— SYLVIA HSIEH