

CURRENT ISSUES IN CARE AND CASE MANAGEMENT 16 MAY 2011



Maggie Sargent RGN
Community Case Management Services Limited
Darlingscott Farm
Darlingscott
Shipston on Stour
Warwickshire CV36 4PN
Tel: 01608 682522
Fax: 01608 682372
Email: enquiries@ccmservices.co.uk
Web Site: www.ccmservices.co.uk

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Expert witness



- ▣ "... One who has made the subject upon which he speaks a matter of particular study, practice or observation and he must have a particular and specialist knowledge of the subject..." (Stroud's Judicial Dictionary)

Expert witness



- ▣ Independent
- ▣ Reliable
- ▣ Objective
- ▣ Accurate
- ▣ Knowledgeable
- ▣ Experienced
- ▣ Up to date

Letter of Instruction

- ▣ It is the role of the expert to provide an independent assessment of future care needs, and this was stated by Lord Scarman reiterating the views of Lord Blackburn 100 years ago.
- ▣ "The principle of the law is that consideration should as nearly as possible put the party who has suffered in the same position as he would have been in if he had not suffered the wrong"

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Case Manager



- Qualification
- Profession
- Training
- Experience
- Insurance
- Instruction

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Goal Planning: ROMP



- Establish the clients and their families' goals and integrate these into a cohesive, timely, realistic and cost-effective rehabilitation and maintenance programme in liaison with relevant others

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Interface between care expert and case manager

- (a) Not always a comfortable role.
"The court is not a benevolent institution". Both care expert and case manager have a duty of care to ensure the claimant receives the best quality of rehabilitation. "Independence of case manager" – look at the European Model.

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Why Have Care Costs Gone Up?

- 1. E U Manual handling.
- 2. Work-time directives - "measured care"
- 3. Care Standards.
- 4. RPI Index.
- 5. Geographical considerations.
- 6. Case Management



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Rehabilitation Code of Practice

- Are there funds for rehabilitation?
Joint funding?
- When liability is agreed, should the NHS/Local Authority have to pay for rehabilitation?
- When looking at longer term options, is NHS/Local Authority more expensive?



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Costs of Care

* 11 hours a day @ \$12.00 an hour on weekdays and 14.00 an hour at weekends = 1,232.00 a week = 65 weeks	77,920.00
* Two carers = 14 hours a day @ \$12.00 an hour on weekdays and 14.00 an hour at weekends = 1,316.00 a week = 65 weeks	85,540.00
* Weekly night care = 1,200 hrs a week @ night and 14.00 an hour on night = 1,680.00 a week = 65 weeks	109,200.00
* The PRN's @ 17.5% on 1,316.00 a week	17,117.32
* Food and expenses of 4000 hrs a week	4,000.00
* Miscellaneous advertising	2,000.00
* Insurance	170.00
* Training	1,000.00
* Payroll	60,000.00
* Case management for 2000 hours @ 1.0000 = cost of expenses	19,000.00
Year = 420,877.32	
* Health care management for 1,700 hours @ 1.0000	annually 1,700.00
* Employee pension contribution of 1% (where applicable)	annually 41,700.18
* Employee pension contribution of 2% (where applicable)	annually 82,000.36
* Employee pension contribution of 1% (where applicable)	annually 41,700.18

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Case W - His Honour Judge Mackie QC - August 2007

Two carers throughout the day and at night

“There is no dispute about the reasons why Adam needs two carers at times. He is some six foot three tall and prone to involuntary movements and spasms. He may need to be placed on his commode at short notice. When occasionally incontinent, he needs washing and changing. His painful right arm needs to be protected while being moved and is sometimes prone to lash out aggressively through frustration”.

“Ms M accepts that Adam will require two carers for all moving and handling tasks during the day time but believes that all re-positioning in his wheelchair and bed can be undertaken by one carer making use of the range of equipment that has been recommended including a specialist turning bed, reclining wheelchair, and the use of glide sheets”

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- For this reason she recommends a second day time carer limited to six hours a day.
 - Ms M was asked how Adam was to be transferred during periods of time when only one carer was available.
 - “In my view the answer is clear. Adam will never enjoy more than a few fragments of the existence he had before and could have looked forward to. There is no doubt that Adam would survive and might be content for a good proportion of the time should the regime proposed by Ms M be in place. He would, however, be subjected to considerable constraints on his activity and restrictions on the time of day when he could have access to facilities he needs or would enjoy. From time to time he would be beset by embarrassing incontinence accidents. The six-hour allowance for two carers proposed by MIB would not extend much beyond what was needed to get Adam up in the morning and to put him to bed at night.
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□ Similarly, Adam would survive and no doubt be alright for a lot of the time with the one sleeping carer proposed by Ms M. But that is not the point. The obligation upon the defendant is to provide not simply what is necessary for Adam to survive, but what he reasonably requires to have proper access to the very limited opportunities available to him. In order to provide Adam with what he reasonably requires it may well be that from time to time the provision of care available is not utilised to full capacity. But that potential waste of resource is something the defendant should bear given the manifest unfairness to him of having to save money by imposing unnecessary restrictions on his enjoyment of a very limited life. Every case turns on its own facts, but I am reassured that my approach appears to be consistent with that taken by Mr Justice Lloyd Jones in *A v B NHS Trust (2006) EWHC 1178*."

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□ "The defendant's proposal for the night time involves some risk and does not reveal the claimant's approach as extravagant or unreasonable. Adam does not just turn in at night but needs to be carefully arranged with cushions and blocks and his splints have to be adjusted. His skin is vulnerable. He has accidents with incontinence. All these problems are current and real as the records of The Raphael Centre (where two carers attend to Adam at night) establish."

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6. Andre Crofton - 19 January 2006 - Judge Reld QC

□ Quality of Life: If he was living within his own accommodation, the claimant would continue to have a routine although with more ability to develop and adapt the routine than in Meadowbank. There is no reason, for example, why carers should not introduce new activities such as the suggestions of coach driving (a suggestion made by Ms Sargent and Ms Ho, the claimant's occupational therapist, and run by Riding for the Disabled), fishing in some very limited form, attending sporting events, attending concerts, going to church, or joining special needs clubs or societies. During his three years at Meadowbank there has been little evidence of comparable community activities.

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Ⓜ The oral evidence showed that the claimant is cramped in his present accommodation. His key worker, Sarah Andrews, accepted that the claimant simply did not have enough space. His parents, his brother, and the experts in the different fields put forward the same view at various points in their evidence. In my view it is a valid point. The evidence shows that the room that the claimant has is adequate in terms of size, but very little more. The evidence further showed that whilst in theory he had access to a common room and a small patio-type garden, the reality was that his ability to use these spaces was extremely limited.

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5. Ben Royce - 13 October 2005 - Justice Mackay

- Ⓜ I feel a live-in scheme is not appropriate for a high level dependency claimant such as this man. Its value as an instrument is that a carer will accept it as a good bargain. Take the case of a less disabled, say, an elderly person, who can be left to his or her own devices for significant periods of the day for what Mrs C would be called unmeasured care. The salary per week of the live-in carer is not to be evaluated by dividing it by 24 hours per day for the number of days in this working week. In that way, a cheaper package can be obtained which is acceptable to both purchaser and provider.
- Ⓜ I am, therefore, persuaded as a matter of generality that the Sargent model, so called, is the right one.

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