

Disability Law Service

Offering free, confidential legal advice and
representation for disabled people

Charges for Domiciliary Care Services

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Introduction

Should I be charged for my care?

- No, if your care is fully funded through **NHS Continuing Care**. If you have high level healthcare (nursing) needs then ask your Primary Care Trust (PCT) to assess you for this.
- No, if you are in receipt of **s117** aftercare services which must be provided following detention under s3 MHA.
- No, if you are getting **intermediate services** for an initial six week period may not be charged.

For all other forms of care, under the **Health and Social Services and Social Security Adjudication Act 1983** (the **HSS Act**), Local Authorities are allowed to charge you for most of the social care services they provide you with, but they do not have to. Most Local Authorities do charge for some, if not all, of their services. They can only charge a reasonable amount for a particular service. It is up to each local authority to decide what a 'reasonable' amount is. See the guidance below on charging policies.

Services which Local Authorities **can** charge for include:

- Home care and 'home helps' (practical support and care with, for example: getting up, washing, getting dressed, cleaning etc);

- Day centres;
- Meals on wheels and lunches in day centres;
- Transport;
- Services for carers; **and**
- Aids, adaptations and equipment – although community equipment is free and minor adaptations that you or your carer are assessed as needing will be provided for as long as the cost is less than £1,000. Social Services can charge for adaptations costing over £1,000, but in some cases you may be able to get a Disabled Facilities Grant (DFG), (see our Factsheet on DFG).

Guidance for local authorities on charging for non-residential social care services was issued in November 2001. The guidance is called **Fairer Charging Policies for Home Care and Other Non-residential Services (LAC 2001/32)**. The aim of the guidance is to produce more consistent charging policies, which in the past have varied greatly from one local authority to another.

By law, Local Authorities must keep to the guidance. The guidance is just the minimum. Authorities can still decide not to charge for a particular service and must decide what a 'reasonable' charge is for services they do charge for. You can get a copy of the guidance from the Department of Health's website at www.doh.gov.uk.

The Law on Charging

Charges and Income

The guiding principles for charging for services say that the charge must not reduce your income below a certain level. This means that you should not be charged an amount which reduces your weekly income below the level of income support, (i.e. personal allowance and appropriate premium(s) but excluding the severe disability premium) plus 25%. This calculation is done **after** making allowances for housing costs and anything you need to pay for your disability (if you have one).

If you are receiving Income Support and are not on disability benefit you will not have to pay for the services you receive. Guidance says that Local Authorities can also choose not to charge you for services if you receive Income Support or income-based Jobseeker's Allowance, even if you receive disability benefits.

If your Local Authority takes your disability benefits into account as income when they assess ability to pay for services, it should also assess the amounts you have to pay out for things related to your disability. This is known as Disability Related Expenditure.

Types of Disability Related Expenditure (DRE)

- Community alarm
- Private care arrangements
- Laundry
- Specialist diets
- Clothing/footwear
- Additional bedding, because of incontinence.
- Extra heating
- Garden maintenance
- Cleaning or domestic help
- Purchase, maintenance and repair of disability equipment
- Personal assistance costs
- Other transport costs over and above Mobility Component of DLA.

Some authorities have decided to allow a set amount for normal disability related costs. If you have expenditure that falls outside the list of usual expenditure, you can ask for this to be taken into account.

Income

Your Local Authority may take all types of income into account when it assesses your ability to pay for services you receive, including income from benefits such as Income Support, Incapacity Benefit, State Pension, an occupational or private pension and disability benefits. However, this does not include the following:

- Mobility component of Disability Living Allowance (DLA);
- War Pensioners Mobility Supplement;
- The first £10 of any War Disablement or War Widow's or Widower's Pension;
- Any income from work; **and**
- Disabled Person's Tax Credit or Working Tax Credit.

Your weekly income is worked out by assessing your total weekly income less your housing costs and costs related to your disability, where this applies.

The Local Authority can take into account the following disability benefits when it works out your weekly income:

- Constant Attendance Allowance or Exceptionally Severe Disablement Allowance, which are paid with Industrial Injury Benefit or War Pension;
- The care component of Disability Living Allowance (it must not take the mobility component into account);
- Attendance Allowance; **and**
- Severe Disability Premium which is paid with Income Support.

It should only take account of disability benefits in relation to the services provided for the time of day for which the allowance is paid. If social services are only providing or arranging your day care, then it should not take into account any benefits that you receive for night time care, but it can take into account the following benefits:

- Lower-rate Attendance Allowance
- Middle-rate care component of Disability Living Allowance
- Day rate of Constant Attendance Allowance.

The Local Authority can also take off the following amounts from your income when it assesses you:

- Your rent (less any Housing Benefit you receive)
- Council Tax (less any Council Tax Benefit you receive)
- Mortgage payments
- Water rates
- Home insurance.

Savings

Your Local Authority can take your savings and investments into account when it assesses you but it does not have to. The guidance has made it clear that your Local Authority can only ask you to pay the full cost of the service you receive if you have savings or investments of over £23,000 (the same as for a care home).

Who can be charged?

Your Local Authority will only assess you, not your family or anyone else. If you have joint income or savings with another person, your local authority may ask for their details to work out your share and only your share can be taken into account. If it is not clear what your share is, your Local Authority will assume that it is equal to the other person.

Carers

If you have a carer, your Local Authority can also charge them for services they receive for being your carer. Your local authority can only take your carer's financial circumstances into account when it is working out what they must pay towards the services they receive. It should also take off any expenses your carer has to pay related to their role as your carer, including:

- Transport costs;
- Your laundry and cleaning;
- Making adaptations to your home (related to your condition); **and**
- Paying for private care to give them a break from caring for you, or to help them work or look after their children.

Direct Payments and the ILF

If you are receiving direct payments, you can still be assessed for charges in the same way as if you were receiving services direct from your local authority. Your local authority may take charges for the services you receive from your Direct Payments before you receive them. If you are receiving payments from the Independent Living Fund, your local authority should take off any charges you pay to Social Services from any contribution you have to make towards the cost of your care paid by the fund.

Who assesses you?

Your local authority will decide who assesses you. Your assessment may be carried out by their specialist financial staff, social workers or care managers. **Always ask your local authority to reassess you if your financial circumstances change.**

Disputing the Charges

What if I cannot afford the changes?

If you think you cannot afford the charges the Authority has assessed that you must pay, it is your responsibility to prove this. You can ask your local authority to review its decision, which you must ask for in writing, and explain why you cannot afford to pay. You may have to provide details and evidence of your costs. If your Local Authority does not reduce your charges, it should explain why. If you are still not happy with the decision, you can go through its complaints procedure to try and get the charge reduced.

Your local authority has a legal right to reduce or cancel a charge if it is satisfied that you cannot afford to pay it. Some Local Authorities have a formal review procedure relating to charges, whilst others carry out reviews informally. If you refuse to provide reasonable information about your finances, your local authority is entitled to ask you to pay the full charge. However, your local authority must make sure that it gives you clear and accurate information about any charges you have to pay and how you can ask it to review its decision, should you think it is unreasonable.

What happens if I refuse to pay the charges?

If you refuse to pay the charges for your care, your Local Authority cannot legally withdraw or refuse to provide a service. This is because it has a duty to meet your assessed needs and this is a separate issue from the way it charges for the services it provides. If your Local Authority refuses to provide or withdraw a service, you should get legal advice immediately or make a complaint.

However, your Local Authority can take legal action to claim back the charges from you, through the County Court. You should always make sure that your Local Authority has assessed your financial circumstances accurately and that it has considered extra amounts you have to pay because of your disability (if

this applies). If you do not agree with something in your assessment you should try to sort this out using the social services complaints procedure.

Challenging the Local Authority's charging policies

If you do not agree with some or all of your Local Authority's charging policies you can challenge them in various ways. You could complain to your local councillor or the monitoring officer, and get legal advice about whether a policy is unlawful. It is usually better and easier to ask others to get involved by contacting local disability groups or voluntary organisations, such as the National Centre for Independent Living. You can contact it by visiting its website at www.ncil.org.uk

This factsheet was prepared with the assistance of the MS Society.

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Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

For further advice on these matters please contact:

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Or write to us at: 39 – 45 Cavell Street, London E1 2BP

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