

# SOCIAL SERVICES

If you have a disability such as MS, then the Social Services department of your local council are the first step towards getting the help and support you need.

Social Services have a duty under the Community Care Act 1990 to make a health and social care assessment of need and also those of your carer.

Each local authority has its own procedure for assessments. They will have a leaflet explaining this. Depending on the extent of your needs and the criteria used by your Local Authority, you will be entitled to a range of care services.

You have a legal right to be able to obtain care services support which:

- (1) Enable you to live in your own home
- (2) Enable you to retain as much independence as possible, whether at home or in residential care
- (3) Are tailored to your individual needs

## **Services and support you may be entitled to:**

Services can include:

- home care help with things like cleaning and shopping
- disability equipment and adaptations to your home
- day centres to give you or the person who cares for you a break
- direct payments to employ your own support worker/enabler
- day care for your child if either you or they are disabled
- care homes

Its always a good idea before an assessment to spend some time thinking about the kind of things you would like to be able to do and what support you would need to do them.

## **Now let's look at what you want and why you want it – needs:**

These are the sorts of issues you may wish to consider before asking for an assessment.

## **What kind of things do you want to do in your life?**

We are all individuals. Only you can decide what you want to do. Look at decisions that other people have made and then ask what will suit you. Where do you want to live? What do you want to do with your day? What would you like to do with your free time?

## **What do you want to do during the day?**

Look at what you are doing already. Is it suitable for you or do you have skills that you would like to use or new skills that you would like to learn? What support will you need to achieve that? Do you want to, for example,

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develop a hobby, go to College, go to Adult Education classes etc?

### **What do you want to do with your free time?**

What do you enjoy doing in your free time? Is there anything new that you would like to try? Can you organise this yourself or do you need help? Do you want to do sport, go to a club, go to the pub, watch television, do cookery, pottery, painting etc?

### **Cultural needs?**

Do you have any special needs relating to your cultural beliefs? These could include special diets, church going or other forms of worship.

### **Where and how do you want to live?**

Are you happy with where you are living now? Could it be made better if you had special equipment or adaptations? Do you need more home care and if so, how? Do you want to live, for example, independently, in suitable housing? How do you feel about shared housing? What would be most appropriate for you?

### **What do you need to achieve all this?**

- *Transport* - Do you have access to appropriate transport? Do you need transport to get to the activities you need?
- *Someone to help* - As well as any help you need in your home to live independently do you need an enabler when you go out?
- *Equipment* - There is all sorts of equipment available from wheelchairs to communications aids, to gadgets for use in the home, work, College etc.
- *Money* - Work out how much money you have coming in and list where it comes from. It may be that you are not getting all the benefits that you are entitled to.

*Other things* - Your health care needs, your friends, acquaintances and family, any legal issues and carers. It would also help if you were to keep a 24 hour diary of everything that you do, write down the day and time when you do it and any help that you require. Keep this diary for at least a week if possible. This should give a clearer picture of your overall needs.

### **How is this going to happen and who is going to provide it?**

Each Local Authority has its own assessment procedure. Find out how the assessment works in your Local Authority. This information is available in a long-term care Charter called '*Better Care, Higher Standards*'. Each Local Authority produces its own Charter. You should be able to find it at Social Services, your hospital Social Services department and at the Citizens Advice Bureau; or perhaps in the library, or your GP's surgery.

### **The Community Care Assessment Process**

At the assessment, a specialist - often an Occupational Therapist - looks at your individual needs and discusses them with you.

The data gathering process should cover all basic human needs and other risk factors; social

needs, recreational, leisure needs, environmental and of course health.

Having an assessment is of course different to actually receiving community care services. It is therefore very important that you set a clear picture of all your needs.

Once your Local Authority has collected all the data on your 'presenting needs', they will then look at which ones meet the 'eligibility criteria'. These criteria will vary as there is no national criteria set out. However, there are four criteria, critical, substantial, moderate and low – representing how serious a risk it would be to a person's independence if problems and issues are not addressed. These are laid out in the 'Fair Access to Care Services' guidance as follows:

### **Critical – when**

- Life is, or will be, threatened; and or
- Significant health problems have developed or will develop; and or
- There is, or will be, little or no choice and control over vital aspects of the immediate environment; and or
- Serious abuse or neglect has occurred or will occur; and or
- There is, or will be, an inability to carry out vital personal care or domestic routines; and or
- Vital involvement in work or education or learning cannot or will not be sustained; and or
- Vital social support systems and relationships cannot or will not be sustained; and or
- Vital family and other social roles and responsibilities cannot or will not be undertaken.

### **Substantial – when**

- There is, or will be, only partial choice and control over the immediate environment; and or
- Abuse or neglect has occurred or will occur; and or
- There is, or will be, an inability to carry out the majority of personal care or domestic routines; and or
- Involvement in many aspects of work, education or learning cannot or will not be sustained; and or
- The majority of social support systems and relationships cannot or will not be sustained; and or
- The majority of family and other social roles and responsibilities cannot or will not be undertaken.

### **Moderate – when**

- There is, or will be, an inability to carry out several personal care or domestic routines; and or
- Involvement in several aspects of work, education or learning cannot or will not be sustained; and or
- Several social support systems and relationships cannot or will not be sustained; and or
- Several family and other social roles and responsibilities cannot or will not be undertaken

### **Low – when**

- There is, or will be, an inability to carry out one or two personal care or domestic routines; and or
- Involvement in one or two aspects of work, education or learning cannot or will not be sustained; and or
- One or two social support systems and relationships cannot or will not be sustained; and or
- One or two family and other social roles and responsibilities cannot or will not be undertaken.

Social Services will then work with you to draw up a care plan, agreeing services to be provided

to meet the assessed needs. Note, even unmet need should still be assessed for and included in your care plan as these needs still need to be met, maybe through the voluntary sector.

Once your care plan is in place, Social Services either provide or arrange for these specified services to be delivered or with your agreement, they can arrange for you to receive a Direct Payment for you to purchase your own services with the people of your choice.

### **How quick will this happen?**

There are no national rules which set out how quickly a Local Authority must carry out a care assessment following your request, although many Local Authorities set and publish their own standards. These should also be published in the 'Better Care, Higher Standards Charter'. To promote improved performance by Local Authorities, the Government has introduced performance indicators under which Local Authorities should work towards. All assessments should be started within 48 hours of the request and completed within 28 days, with all services put in place within a further 28 days.

### **Direct payments**

If you have been assessed as needing help from Social Services, you may be able to get direct payments to choose and buy those services yourself. Direct payments are money that is paid directly to you to enable you to purchase your own care. In other words you can become the employer. This gives great flexibility but does mean you also have more responsibility. Otherwise you can get the services directly from your council.

### **Being reassessed**

Most people's health needs change over time. Your care plan should be reviewed regularly. As a minimum, reviews are carried out three months after services are first provided or significantly changed and then once every year. Reviews should be carried out more frequently if necessary. If you would like to be reassessed because your needs have changed, contact your local Social Services or community health team within your local council.

### **Community Care Law - the main Acts:**

**1. S47 (1) NHS & Community Care Act 1990** - this act placed new duties on the Local Authority which include:

- The duty to assess individual need for the Community Care services covered by the Act. A duty to consider the provision of these services to match those individual needs.
- The duty to establish a complaints procedure.
- A duty to publish the Community Care plan for its area.
- A duty to assess a disabled persons needs under the *Disabled Persons Act 1986* at the same time as they are assessed for their need for community care

**2. Chronically Sick & Disabled Persons Act 1970** – The Disabled Persons Act 1986 strengthens the provisions of this act as it requires Local Authorities to meet the various needs of disabled people.

Services include:

- help in the home;

*(note- The Ombudsman has held: it to be maladministration for a council to have criteria which stipulate that no domestic assistance can be provided - unless accompanied by a need for personal care. it is maladministration for a local authority to suggest that bathing is not an essential activity - unless there was an identified medical need". that the ability to properly manage bathing/washing with dignity is the entitlement of everybody).*

- recreational facilities outside the home;
- assistance with transport to such facilities;
- provision of aids and adaptations;
- holidays, meals, telephones etc.

Local Authorities have a duty to assess needs but, at present, there is no duty to provide a service.

### **3. National Assistance Act 1948**

### **4. Mental Health Act 1983 (s117)**

**5. Children Act 1989, Section 17** enables Social Services departments to provide a comprehensive range of services (residential and non-residential)

### **Community care costs - How is this worked out?**

Again there is no simple answer to this and it's all based on assessment. However there is guidance that should support you when an assessment of ability to pay is being made. The guidance is laid out in the 'Fairer Charging Policies for Home Care and other non-residential Social Services'. I have taken sections from this guide but would suggest you read the full publication for more information. You can download this from the Department of Health website or telephone 020 7210 4850.

### **The Executive Summary**

1. Councils are expected to implement this guidance under section 7 of the Local Authority Social Services Act 1970 (Section I) at the latest by the dates set out below (Section XX).

2. This guidance does not make any presumption that councils will charge for non-residential social services, nor does it introduce any requirement to charge. Councils have had discretionary powers to charge for many years, subject to a general requirement of reasonableness. (Section I)

3. The guidance aims to help local councils, who decide to charge for any nonresidential services, to design reasonable and fair charging policies. It seeks to ensure greater consistency in charging policies. It provides that:

- Deciding whether to charge for non-residential social services continues to be a matter for councils' discretion. (Section I)

- Charges for different types of non-residential social service, and allied services, and how they affect individuals should be considered together, not in isolation. (Section III)

- Where councils charge for these services, flat-rate charges are acceptable only in limited circumstances. (Sections III, IV, and XIII)

- Regard should be paid to the effect of any charge on a user's net income; net incomes should not be reduced below defined basic levels of Income Support or the Guarantee Credit of Pension Credit, plus 25%. Charging policies, which reduce users' net incomes below these defined basic levels are not acceptable and undermine policies for social inclusion and the promotion of independence. (Sections IV, V, VI, XIII, and XIV)

- Councils should consider and specifically consult on the need to set a maximum charge. (Sections IV, V, and XIII)
- Where disability benefits are taken into account as income in assessing ability to pay a charge, councils should assess the individual user's disability-related expenditure; councils should specifically consult on the need to assess disability-related expenditure for other users. It is not acceptable to make a charge on disability benefits without assessing the reasonableness of doing so for each user. (Sections VI, XIII, and XIV)
- Councils should ensure that comprehensive benefits advice is provided to all users at the time of a charge assessment. Councils have a responsibility to seek to maximise the incomes of users, where they would be entitled to benefits, particularly where the user is asked to pay a charge. (Sections VI and VII)
- As a minimum, the same savings limits as for residential care charges should be applied. Councils are free to operate more generous rules, as with other parts of the guidance. (Section VIII)
- Guidance is included on the treatment of partners' resources. (Section IX)
- To ensure that disabled people and their carers, who wish to do so, are able to enter and progress in work, the guidance expects that earnings will be disregarded in charge assessments. (Section X)
- Where carers receive services in their own right under the Carers and Disabled Children Act, 2000, the guidance includes specific advice on ensuring the fairness of any charges. (Section XIV)
- Good management by councils of charging policies continues to be important. Councils need to monitor the impact of charging policies on users and need to know how much it costs to administer their system. As with other services, the user's and carer's needs, including their need for good information, should be put first. (Section XIX)

**Partners' income and savings** *(I have left in the numbers so it's easier for you to reference in the full publication)*

62. Section 17 of the HASSASSA Act 1983 envisages that councils will have regard only to an individual user's means in assessing ability to pay a charge.

63. This will mean that parent's and other members of an adult user's family cannot be required to pay the charges, except in certain legal circumstances, for example, where a family member may be managing the user's own resources.

Partners' earnings should always be disregarded in any charge assessment, in the same way as users' earnings, as set out in the section "work incentives".

**Work incentives** *(this is a very important section)*

68. The Government's policy is to encourage and enable those who wish to take up employment, including disabled people and their carers, to do so. Charging policies should avoid creating disincentives to work.

69. Disincentives may be either disincentives to take work at all, or disincentives to work longer or earn more – neither is acceptable.

Disincentives may arise because many social security benefits are income related and so are withdrawn as earnings rise. For example, both Housing Benefit and Council Tax Benefit are withdrawn as earnings rise. Both these effects will be taken into account if councils follow the guidance at paragraph 75.vii below that housing costs and Council Tax should be assessed net of any Housing Benefit and Council Tax Benefit payable. If either benefit is withdrawn as earnings rise, increased net housing costs and Council Tax will be reflected in the assessment of expenditure.

70. Working Tax Credit was introduced in April 2003 and replaced Working Families Tax Credit and Disabled Person's Tax Credit. To ensure incentives for work Working Tax Credit should be disregarded as income in charge assessments.

## **Management of charges and charging policies**

### *Access to care and assessment of ability to pay charges*

97. Assessment of a person's need for care should not be confused with financial assessment of a person's ability to pay a charge. Once someone has been assessed as needing a service, that service should not be withdrawn because the user refuses to pay the charge. The council should continue to provide the service, while pursuing the debt, if necessary through the civil courts. If a user refuses to provide information for a charge assessment, it may be reasonable to require payment of a full charge.

I would imagine that in many ways this article has raised as many questions as it's answered. I will be very happy to hear from you and try to answer individual queries.

To contact Emma Rowe for more information and advice please contact the MSRC office on 01206 505444

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