



More Than Meets the Eye – Realistic Damages

By Julie Sawyer-Little

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As a result of the medical malpractice law passed in North Carolina roughly 10 years ago insurance companies and courts of law are scrutinizing damage claims more closely than ever. In response, insurance defense attorneys and plaintiff attorneys need more detailed and accurate estimates of the costs of current and future treatment care for someone who has experienced a serious or catastrophic injury and now has chronic health care needs. Attorneys need a comprehensive life care plan outlining future care needs based on well-supported documentation, analysis/evaluation of the individual to forecast and justify a claim.

A life care plan should provide the attorney and their client with a comprehensive analysis providing an organized, concise plan for current and future needs, with associated costs, for individuals who have experienced limitations resulting from an injury or accident.

This plan needs to take into account estimates of the impact on the client's life at home; their life with their family; the impact on their jobs, and their life in the community. A life care plan should address issues associated with injury onset, family support, health care professionals, treatment facilities, and assistive equipment designed for the client.

The life care plan also needs to include costs that may not be immediately apparent such as necessary changes to the home to accommodate the client, vocational training or job placement for the client.

This comprehensive plan should include an independent analysis of the impact of an injury on a client. In some cases, the extent of the impact of an injury may not always be apparent. For instance, in the case of a mild brain injury, the client may seem like they are able to function normally, but a closer evaluation by the professional consultant may determine the kinds of deficits the client has as a result of the injury and define any support or long-term care needed. This seemingly well-functioning client with the mild brain injury may actually require varying degrees of supervision due to impulsive behavior or poor decision making skills which impacts their safety in the home.

In the evaluation process, a life care plan should analyze all relevant case documents, opinions of the treating providers and the most current available medical records to form the basis for formulating opinions and complete perspective of the case. The plan should also look at issues such as the client's functional capacity, updated equipment, transportation needs, available medical care, and other care needs based on current costs extending

to life expectancy. The life care plan should factor in the client's lost earnings and future wage loss. In some cases, the client may be able to go back to work, given modifications to their workstation or additional education. There are other situations when the client has significant injury resulting in limitations which in combination result in the inability to return to competitive employment. In both scenarios, the life care plan should focus on maximizing the individual's independence with all aspects of activities of daily living.

Another major expense consideration in the damage estimate is the cost for attendant care, future medical evaluations, therapeutic interventions, medications and medical supplies.

In formulating opinions regarding future medicals costs, the qualified life care planner should utilize client-specific information instead of relying on national aggregate data. Costs, treatment sources, earnings, etc. should be based on where the client resides. The cost may vary depending on if the client lives in a big city or a small community. Care needs and frequency are calculated in present day value and are based on industry standards.

The life care plan should be a clear and understandable written report based on standard methodology which provides valuable data and information in the litigation process. This narrative report and life care plan provides the basis for supporting or opposing a client's claim for damages in the event that the case does not settle. A life care plan should not advocate for the defense or the plaintiff, rather it should maintain a focus on objective analysis that is most likely to be trusted by all parties including a judge and a jury, if the case goes to trial or mediation.

The professional consultant developing the life care plan also serves in the role of educator to fully outline and explain the impact of injury/illness, residual physical capacity, future care needs, and vocational outcomes based on a using a standardized evaluation process recognized in the field. This process allows the life care planner to present a written document outlining these areas to be used throughout the litigation process.

Whether used by a defense attorney or a plaintiff attorney, a comprehensive life care plan can help ensure that the injured party gets a fair and honest settlement or award to meet their current and future medical and financial needs, to help prevent against possible opportunistic side-effects associated with the injury and treatment and provide the client with a path to the most appropriate level of independence.