



WORKING WITH A LIFE CARE PLANNER AND CASE MANAGER

WHAT IS A LIFE CARE PLAN?

A life care plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research, that provides an organized, concise plan for current and future needs, with associated costs, for individuals who have experienced catastrophic injury or have chronic health care needs. Combined definition Intelicus/University of Florida and IALCP.

Like most people, individuals with chronic health conditions or catastrophic injuries want to be able to plan for the future. To do so means they and their family members must understand and anticipate future needs such as wheelchair replacements, medical interventions, supplies and medications and the associated cost. The life care plan provides an organized, easy to read report that charts individual specific future needs. Including the cost allows for the development of a financial plan that helps families or insurers budget for these needs. (Source: Community of Life Care Planners web site.)

- Traumatic Brain Injury
- Acquired Brain Injury
- Spinal Cord Injury
- Amputation(s)
- Soft Tissue Injury
- Chronic Pain
- Burns
- Cerebral Palsy & Developmental Delay
- Chronic Respiratory Conditions
- Visual & Hearing Impaired

Historically the Life Care Plan has been used in settings reserves for insurance companies, assisting workers' compensation companies with assessing future care costs associated with work-related disabilities, estimating the cost of future care for health care companies, and providing the client and family with an outline of future care (Deutsch & Sawyer, 2003; Weed & Field, 1994). In the event of that adequate funding is available, the life care plan can become the road map for care.

Since the life care plans are used in a variety of jurisdictions, the appropriate "rules" must be considered. Probably the most comprehensive settings is in personal injury litigation (Weed & Berens, 2002). In litigation area, the life care plan must consider the entire person and his or her situation. Only items that have economic value are included.



Elements of Future Care Damages

1. When does the treatment start?
2. What are the frequency of sessions?
3. What is the cost per session (if relevant)?
4. When does the treatment stop?
5. Additional costs such as evaluations, tests, laboratory, or medications?
6. Any other needs/costs?

The Life Care Plan

Regardless of the topic, the expert must be able to quantify damages in a way that provides the economist, if one is used, or the jury with the necessary information to project costs over time (Dillman, 1989). These data are used to help determine the amount of award to the client, if any party against whom the suit is lodged is found at fault. To ascertain the needs and costs of future care, particularly for serious medical conditions and catastrophic injuries, the life care plan was originally published by Deutsch and Raffa in *Damages in Tort Action* (1981). This method organizes topics according to various categories that outline expected treatment, start and stop dates, costs, and other information that will provide the jury with an understanding of the treatment plan. The format is designed to develop a comprehensive rehabilitation plan that includes necessary information to project the expense, usually with the help of an economist, in order to arrive at a bottom-line figure.

A Plaintiff Attorney's Perspective on Life Care Planning

In the catastrophic case, the plaintiff's attorney understands that a myriad of questions may and should be asked about the future. Yet that same attorney is buffeted by thoughts that no real answers can be given. He or she fears that all attempts to probe the future or assist the trier of fact in probing the future will slide into that murky realm of the possible and away from the safe ground of the probable, where he or she must remain to prove the case. The attorney also knows that the more specific the questions become, the more difficult they are to answer.

Following this course leaves the attorney and his client ill-equipped to stand before the trier of fact and ask for specific compensation for future medical and rehabilitation needs. He knows the judge or jury will be asking the next obvious questions: What will those needs be, and how much can we expect that they will reasonably cost? The modern plaintiff's attorney must and should provide the judge or jury with all the evidence that exists on those issues.

Plaintiff's attorneys, are accustom to marshaling all their own evidence, tracking down its sources, and shaping their cases so that they can be fairly and clearly presented to the judge or jury. They are reluctant to say that in the catastrophic case, the medical and rehabilitation needs are too complex for them to attempt that marshaling of evidence. Attorney's do not know where to begin, and do not know what questions to ask. This is a specialized area and fortunately, life



care planners and qualified persons such as rehabilitation professionals and nurses use their background training to prepare a plan for future medical and rehabilitation needs of the client.

The attorney joins with the life care planner to make sure the right questions are asked. The skilled plaintiff's attorney recognizes that he needs the assistance of an equally skilled life care planner to identify those questions (Elliott, 1993).

The Role of the Plaintiff Attorney in the Life Care Plan

From the plaintiff's perspective, the life care plan is an integral tool in the proof of damages in neurolitigation or any other catastrophic injury. The attorney must continue to play an active role in making sure the plan fits the parameters for the admission into evidence and the plan meets the rest of the logic. The life care planner and the attorney must work as a team in reaching this goal. The plan cannot be drafted by the life care planner and then handed to the attorney, who, in turn, tenders it into evidence. It is not a chain letter to be passed on. It is a part of the mosaic of the case and must be viewed as such.

A Defense Attorney's Perspective on Life Care Planning

Counsel defending against serious injuries is likely to confront a life care plan presented by the plaintiff's attorney in an effort to quantify the various impacts upon the injured party's activities of daily living and quality of life. A defendant must prepare early and thoroughly to rebut the plaintiff's various claims and identify areas of overreaching or weakness in the plan.

Attacking the Plaintiff's Life Care Plan

The first step in attacking the plaintiff's life care plan is to determine whether the plaintiff's life care planner is in fact, qualified to present the plan. This is critical issue because an unqualified witness will not be accepted as an expert and will not be permitted to testify at trial. Thus, a successful attack on the plaintiff's life care planner's qualifications will result in the planner's entire testimony, and the plan itself, being kept out from the jury's consideration.

There are two levels of qualification that will be required of a life care planner expert presenting a life care plan.

- a. The expert must be qualified generally in the area of life care planning;
- b. The expert must be qualified to substantiate to the degree required under the particular jurisdiction's substantive law, the need for each element of care provided in the plan.

1. Qualifications as a Life Care Planning Expert Generally

Under the Federal Rules of Evidence, a witness may establish his or her qualification as an expert by reason of "knowledge, skill, experience, training, or education."

2. Qualifications to Present the Particular Life Care Plan



Rule 702 was written as a general grant of authority for the use of expert testimony and is therefore permissive in nature. Therefore, in many applications of the expert witness rule, the threshold issue is whether the field of expertise is proper for expert testimony in court. Expert testimony is generally proper in any scientific field that has reached a level of general acceptance. Most courts have at least implicitly recognized that life care planning itself has reached such a degree of general acceptance as to be the proper subject of expert testimony. Thus, there should not be any question that the expert testimony is generally permitted in conjunction with a life care plan.

3. Foundation Objections, the Frye Standard, and Other Preclusions

Even where there are no questions regarding the expert's qualifications, the experts opinion must be supported by an adequate factual foundation. The expert's proper role is to provide opinion testimony based on facts that are of record in the case. The lack of adequate factual foundation requires that the expert's testimony be stricken as based on speculation. Such an issue may arise if, for example, the life care planner intends to testify regarding the cost of certain treatment but no medical evidence has been proffered to indicate that such treatment is reasonable, necessary, or caused by the relevant accident. Such foundation objections should be considered in cases where similar objections to the life care planner's qualifications have been overruled.

The speculative nature of a life care plan can also preclude its admissibility if the plan involves new or experimental treatments or novel theories of causation. *Frye v. United States* (the Frye Rule)

Source: Life Care Planning and Case Management Handbook, Second Edition. Edited by Roger O Weed, Ph.D., CRC., LPC., CLCP., CCM., CDMS., FNRCA., FIALCP.)

Please feel free to contact me, as well, if you have any questions about our services.
We look forward to working with you in the future.

Sincerely,
HAWKINS FORENSIC CONSULTING™



Lois G. Hawkins, R.N., C.L.C.P.
(Commission on Health Care Certification)
L.Hawkins@HawkinsForensics.com
480 306-6389

LGH/lh