

TAC FUNDING OF OVERNIGHT INACTIVE CARE TO FAMILY MEMBERS

Our July 2009 Injury Briefing includes information prepared by Tim Connor, Accredited Personal Injury Specialist, on TAC funding for overnight care.

Moores Legal are able to assist with TAC No Fault Claims as well as Common Law Damages Claims for Serious Injury.

We trust you find the information useful and you should not hesitate to contact us about any TAC or other serious injury matters.

The Circumstances

There are circumstances where attendant care is provided by family members. The family members are usually employed through an attendant care agency and paid in the same manner as any other carer.

The attendant care program usually includes a sleepover component.

The Issue

In recent months the TAC have refused to pay the cost of sleepovers to family members on the basis that they normally reside in the house and the sleepover is in fact a payment for not sleeping in one's own bed.

In some cases the TAC have attempted to compromise by offering some additional hours of active care in place of the amount that would be payable for the inactive sleepover.

Challenging the TAC

We were made aware of the fact that the TAC were inconsistent in the application of this so called policy. In some circumstances the funding was provided for inactive sleepovers and in other circumstances it was declined.

We pursued this issue with the TAC.

Janet Dore, the Chief Executive Officer of the TAC has now confirmed that funding of inactive sleepovers as they relate to family members is dependent on the individual circumstances.

It has been acknowledged that the first question that needs to be addressed is whether there is a need for overnight care. In the large majority of cases this is not usually in dispute.

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The second consideration is how the best care be reasonably provided. As we are aware there are many situations where the person best placed to provide the care overnight is in fact a family member. There are many instances where suitable carers cannot be found for the particular program.

Ultimately if it is determined that the family members are appropriate and suitable carers and represent a reasonable option, they should receive funding on the same basis as any other carer. The fact that they are sleeping in their own bed is not a relevant consideration.

Unfair Action on the Part of the TAC

For the TAC to suggest that the funding of inactive sleepovers is inappropriate because a person sleeps in their own bed is unjust and incorrect. It fails to recognise the fact that a family member cannot leave the home, may periodically get up in the night to provide care, have to be vigilant during the night and generally have the possibility of having an interrupted night's sleep. These are very relevant considerations in providing the overnight care.

Action for the Future

If family members are part of an attendant care program but are not paid for inactive sleepovers (or are paid at a lower rate), the TAC should be challenged. This of course assumes that a need for sleepovers has been assessed as reasonable.

Dispute Resolution Protocols

This type of issue can be addressed by a lawyer via the dispute resolution protocols.

If those protocols are utilised, the large majority (and in many cases all the legal costs) would be recovered from and payable by the TAC.

The Moores Legal Personal Injuries Team:

For further advice and guidance in this area, contact the Personal Injuries team at Moores Legal.

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DISCLAIMER: This Injury Briefing is of a general nature only. Specific legal advice should be sought rather than relying on this Briefing.

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