

## Facts about...

### Care Fees and NHS Funding

Care funding decisions may go wrong for several reasons. Recent research by Age UK suggests that 3 out of 4 elderly people who should receive NHS Continuing Healthcare (CHC) have had to pay their own fees. One important reason is the lack of a clear dividing line between health needs which are met by the NHS and “incidental and ancillary” health needs met by Social Services. As a result, mistakes can be made by local NHS teams when interpreting and applying the eligibility criteria. Despite there being a National Framework it is often the case that different NHS teams apply the criteria differently and take an individual, ad hoc approach.

Here at Newstead & Walker we set out an overview of the law relating to Continuing Healthcare (CHC):

- **What is ‘Continuing Healthcare’** – CHC means care provided outside hospital over an extended period of time to a person over 18 years to meet physical or mental health needs that have arisen as a result of a disability, accident or illness.
- **Why Continuing Healthcare is important** – CHC is arranged and funded solely by the NHS and therefore is free. This is different to social care provided by Social Services (care for social needs and for the general activities of daily living, such as washing, dressing, getting to the toilet, etc.), which is means tested.

If care is provided by Social Services, generally speaking anyone who has savings, property and other assets over £23,250 will have to pay for ALL of their care. NHS CHC is NOT means tested and what a person has in savings and other assets is irrelevant.

CHC can be provided in any setting outside hospital, including a care home or in a person’s own home. In a care home setting, CHC covers all care fees including the costs of accommodation. In a home setting CHC covers all nursing care plus personal care and any household costs directly related to care needs.

- **Eligibility – CHC vs Social Care** – eligibility for CHC is based upon health needs rather than any specific diagnosis or condition such as Dementia or Parkinson’s.

Since 2007 there has been a National Framework in place setting out the eligibility criteria for CHC funding.

The basic position is that if a person has a “**primary health need**”, then the NHS will meet the cost of the care.

Unfortunately, there is no simple definition of the phrase “primary health need”. Some clarification was provided in the landmark Coughlin case, where it was held that to qualify for NHS funding, a person’s overall nursing care needs must be complex, intense and severe, with the result that their needs are beyond the responsibility of Social Services.

Social Services are able to provide some health services, but not if the majority of care a person requires is focused on health needs or on preventing health needs. Any care provided by Social Services must be general nursing care and must be “incidental and ancillary” to a person’s accommodation and of a nature that a local authority can expect to provide.

- **The NHS assessment process** – If someone has health needs, a CHC assessment should be requested at an early stage, ideally before any financial assessment by Social Services.

The first stage of the process is the healthcare checklist, which is basically a screening stage to determine whether a person’s case merits a full CHC assessment. The checklist can be applied by a single health worker.

The second stage is the full assessment carried out by a multidisciplinary team. A document called a Decision Support Tool is completed by the team to determine whether the person has a primary health need, as opposed to a social care need (where costs are not covered by the NHS). The extent of a person’s needs are assessed and then graded in 12 different aspects of health care. A recommendation is then made to the local NHS Clinical Commissioning Group as to eligibility and this is usually accepted.

## Care Fees and NHS Funding (cont.)

- **Reviews** – An award of CHC is not for life. An initial review is carried out no later than 3 months following the eligibility decision and then at least every year.
- **Fastrack Pathway** – If a person requires an urgent package of CHC because they have a rapidly deteriorating condition that may be entering a terminal phase, then a clinician can complete a fastrack pathway tool stating that a person is entitled to CHC. This tool is sufficient evidence, by itself, to establish a person's eligibility for CHC.

If you feel that NHS funding has been wrongly denied to you or your relative then you may be able to reclaim any care fees by means of a legal challenge.

We can also help you to bring a retrospective review if you feel that a relative, who has now died, was wrongly paying for Care home fees because their needs were primary health needs.

Please call 01943 461414 or email [post@newsteadwalker.co.uk](mailto:post@newsteadwalker.co.uk) if you would like to arrange an initial assessment interview.