Presenting Economic Damage Experts in Litigated Matters: The Role of the Life Care Planner

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What is a Life Care Plan?

- Dynamic document
- Based upon
  - Published standards of practice
  - Comprehensive data assessment
  - Data analysis
  - Research
- Organized and concise plan for current and future needs with associated costs

For What Circumstances are Life Care Plans Developed?

- Setting reserves
- Estate planning
- Matters of divorce
- Litigants in personal injury
Litigation vs. Non-Litigation

- Litigated
  - Single window of time for a lifetime of needs.
- Non-litigated
  - Ability to reassess needs and modify plan accordingly.

Damages

- Economic
  - Loss of earnings (Voc rehab)
  - Past and future medicals (LCP)
  - Present Value (Economical)
- Non-economic (General)
  - Pain and suffering
  - Emotional distress
  - Loss of consortium
  - Disfigurement
  - Loss of reputation
  - Others...

Methodology

- Medical records review
- Interview, evaluation, and examination
  - History
  - Past
  - Physicians involved in case
  - Present
  - Personal care assistance
  - Medications
  - Psychosocial impact
  - Family history
  - Home environment
  - Transportation/vehicular modifications
  - Equipment, supplies
Data Collection & Analysis

- Importance of reliable data sources
  - Extensive
  - Reliable
  - Well recognized by peers
  - Collaboration with others with unique experience
  - Peer review

Planning

- Recommendations based upon current standards of care and clinical practice guidelines

Qualifications

- Involved in care, treatment, and/or rehabilitation of individuals with significant disabilities
  - CRC, CCM, NCC, MSW, RN, MD, PT, OT, SLP, PhD, psychologist
- At least 120 hours of post-graduate or post-specialty degree training in life care planning
- Successful completion of certifying test administered by the ICHCC
Overlapping Roles of the Economic Damage Experts

Forensic Vocational Expert
Life Care Planner
Economist

Differences in Professional Perspectives and Expectations

- “Professional set”
- Skill sets are different amongst experts
- Determines how each expert views his or her role and responsibilities for the task, and how the task is conducted
- Voc rehabilitation specialists often have different backgrounds from life care planners
  - More experience in finance, economics.
  - Greater familiarity with disability law, workman’s comp, work capacity issues

Professional Perspectives

- LCP: Nursing, MD, social work, rehabilitation counseling, professional therapists (PT/OT/SLP), psychology
- Working in private agency system versus a public setting
- Direct providers of care in medical or sub-acute settings vs. vocational rehabilitation settings, or case managers for insurance companies
- Though goals and professional sets of experts are not mutually exclusive, their different perspectives and methodologies can be the source of misunderstanding and can negatively affect satisfactory task completion
- When constraints of the legal system cause either or both of the experts to “diverge” from their fundamental professional sets, the potential for misunderstanding and goal divergence increases
Areas of Overlap Include:

- Causation
- Apportionment
- Premorbid medical conditions
- Premorbid level of function
- Determination of current level of disability
- Prognosis for improvement
- Access to Care
- Reported earnings
- Household services

Caution Issues

- Loss of income secondary to vocational changes must be tied to the compensable injury
- Economic damage experts get pulled into causation issues and offering opinions on causation simply because the task that they have on hand is to provide damages applicable to the claim.
- Did the injury in question specifically result in an inability to work
- Premorbid chronic pain
- LBP patients who experience worsening as a result of a compensable injury

Apportionment

- Premorbid Medical Conditions
  - Neurodegenerative or other progressive disorders
  - "Static" medical conditions
- Premorbid Level of function
- Neurodevelopmental issues
- Academic performance/Educational Records
- Vocational experience
- Performance reviews
- Employment records
- Transferable skills
- Tax returns/earning history
- Age a t which the injury occurred
- Future loss of wages in a child who has never earned wages
The Straw That Broke the Camel's Back

Apportionment Issues

- Conditions made worse by injury
- Preexisting conditions exacerbated by an injury
- Functional CP patients made much worse after HIE
  - Autonomy living vs need for structure, support, supervision because of injury superimposed upon premorbid condition
  - Changes in work life expectancy
- Chronic back pain pts made greatly worse after MVA
- Pts with chronic med condition treated with wrong medication and made worse

Nature and extent of premorbid disability and medical diagnoses

- Vocational analysis involves
  - Educational records
  - Performance reviews
  - Transferrable skills
  - Employment records
- The LCP must not inadvertently undermine the work of the vocational expert
Determining the degree of current disability

- How are data weighed?
  - Review of disability examinations, workman's comp evaluations
  - Neuropsychological reports
  - Review of medical records
  - LCP analysis
  - Plaintiff and defense expert reports
  - Functional capacity evaluations

Prognosis for Functional Improvement

- Age at which the injury occurred
- Premorbid function
- Time between injury and report
- Anticipated rehabilitation/surgery

Household Services

- Economic loss exists but for which quantification can be challenging
- Could be an entirely independent expert analysis
- We tend to look at the most pressing (heavier household chores, handyman tasks, lawn maintenance) at the risk of underestimating the cost of the needed services
- May need to defer these to other experts
- Forensic voc experts and economists may go to great lengths to quantify specific subcategories of these services
- Discrepancies between experts can be potentially problematic
- Often experts who do this varies from state to state
Limited Access to Care/Benefits

- "Come back to me if you need to"
- Paucity of medical care in the records does not mean there's no need
- Medications
- Transportation issues

Reported vs. Actual Earnings: Underground economy

- Discrepancies between amount reported during evaluation process vs. tax returns
- Emphasizes need for experts to communicate data, but remain independent with analysis of that data