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Cerebral Palsy newsletter

This newsletter is one in a series of publications produced by the clinical negligence and personal injury group within the Private Individuals Division of Penningtons Solicitors LLP. If you would like further details on any of the subjects covered, please contact us at the addresses at the end of the newsletter.

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Caring for a disabled child – know your benefits

Caring for a disabled child is not only time consuming but places considerable emotional and economic strain on a family. To minimise the financial burden, it is important that families check that they are receiving the state benefits that their child is entitled to and that they may be entitled to as his or her carers.

Disability Living Allowance (DLA) is probably the obvious starting point. DLA is a tax free benefit for children, and adults, who need help with personal care or have mobility difficulties because they are physically or mentally disabled. DLA is therefore paid in two components; a care component (DLAC) and a mobility component (DLAM). A child may be entitled to one or the other, or both. Both components can be paid at different rates, depending on how disability affects your child.

DLA can also act as a gateway benefit to other benefits. For example, the Motability Scheme provides assistance and advice to families of disabled children who need help getting a vehicle or scooter, or adapting a vehicle, to accommodate their child's needs. The family of a child over three years old, who receives DLAM at the higher rate, can apply to the Motability Scheme for help with leasing or buying a suitable vehicle. Part of the child's DLAM is then used to fund the vehicle the family needs to meet the child's particular transport requirements. Motability also offers a hire purchase scheme for powered wheelchairs and

scooters. One of the advantages of the scheme is costs saving; the cost of hiring a car through the scheme is not subject to VAT and the cost of adapting a vehicle for a disabled person is also eligible for VAT relief.

A child over two years old, either in receipt of DLAM paid at the higher rate, or registered blind, is also entitled to parking concessions under the Blue Badge parking scheme. Even if your child is not receiving DLAM at the higher rate, or is younger than two years old, you may still be able to apply for a Blue Badge on his or her behalf. Your child may be eligible if he or she has substantial difficulty walking, needs to be accompanied by bulky medical treatment, or you need to stay close to a vehicle, either to be able to provide your child with medical treatment or for easy access to hospital etc. The parking concessions afforded by the scheme include parking on single or double yellow lines for up to three hours (except where there is a ban on loading or unloading), exemption from the London congestion charge (subject to registration and payment of a one off £10 fee) and some toll fee concessions.



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It is widely believed that many people do not claim their full entitlement to benefits.

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Carer's Allowance is a taxable benefit paid to people who care for someone disabled (an adult or a child), whether a relative or not. To qualify for Carer's Allowance, you need to be providing at least 35 hours of care per week to someone in receipt of middle or highest rate DLAC. Unfortunately you cannot get Carer's Allowance if you are studying or in receipt of even a fairly modest net income.

The benefits system is far from straightforward and it is widely believed that many people do not claim their full entitlement to benefits. This article has been prepared to offer an insight into what assistance may be available and highlight what we see as the most obvious starting point. There may well be other benefits available to you and your child depending upon your family's individual circumstances.

It is therefore important to check that you and your child are receiving the most appropriate benefits and a call to the Disability and Carers Service, part of the Department for Work and Pensions, may well be worthwhile.

Autism and cerebral palsy – is there a link?

Autism is a developmental disorder which is very often diagnosed in childhood but is a life-long condition. The term autistic spectrum disorder (ASD) is used to cover a broad range of autistic-like disorders. Pervasive developmental disorder (PDD) has also historically been used to describe the same condition but ASD is now more frequently used by professionals and parents alike.

The clinical characteristics of autism include social deficits affecting the individual's ability to interact with others and form relationships and communication abnormalities. Restricted, repetitive behaviours may also be apparent.

The diagnosis of autism or ASD generally entails reference to the frameworks developed by the World Health Organisation (known as ICD-10) or the American Psychological Association (known as DSM-IV).

The National Institute for Health and Clinical Excellence (NICE) is currently developing clinical practice guidelines on ASD in children and young people, with a planned publication date of September 2011. Two of the proposed outcomes are to consider the accuracy of clinical and other features for recognition of ASD and to identify co-existing conditions.

There has long been interest in what causes autism. Considerable media interest was generated when it was suggested that there might be a link between the measles, mumps and rubella vaccine and autism

although recent research has not supported such a link. Genetic factors may well play a role in the susceptibility to or development of some forms of autism (although a genetic test has not yet been developed) but it is also thought that physical or environmental factors influence the development of autism, by affecting the development of the brain.

It has been noted that a number of individuals with cerebral palsy exhibit clinical characteristics consistent with a diagnosis of ASD and there has therefore been some interest in the question of whether there is a relationship between the two conditions.

In a recent study by Kilincaslan and Mukaddes entitled *Pervasive Developmental Disorders in Individuals with Cerebral Palsy*, published in *Developmental Medicine and Child Neurology 2009*, it was found that PDD was more common in children with tetraplegic, mixed and hemiplegic cerebral palsy (than with other forms of cerebral palsy) and in children with epilepsy, learning disability and a low level of speech.



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The implication of this research is that a potential diagnosis of ASD/PDD should not be overlooked in children with these conditions. If a diagnosis is made, appropriate long-term support should be put in place for those individuals. This is an issue that should be considered when claims are put forward on behalf of such individuals.

Index linking of periodical payments under the spotlight

In the previous edition of this newsletter, we highlighted the decision of the Court of Appeal in the *Thompstone group of cases*. Since then, there have been further developments relating to how future care and case management costs should be index linked – here we provide an update.

The Court of Appeal ruling allowed periodical payments to be index linked to the Annual Survey of Hours and Earnings (ASHE) 6115, an index of the pay given to care assistants, rather than the Retail Prices Index, because care costs are largely composed of earnings. Alternative indices might, however, be more appropriate for other future heads of claim which are being met as periodical payments, such as loss of earnings.

The defendants in the *Thompstone group of cases* appealed this decision to the House of Lords. Before the appeal was heard, it was withdrawn and all of the cases that were adjourned, pending the appeal decision in this group of cases, were brought back before the court. After some negotiation and court involvement

with regard to the wording of a model periodical payments order, some standard wording was agreed and then, earlier this year, orders were made in individual cases reflecting the details of those cases.

As matters stand, therefore, in cases where claims are being made for, in particular future care and case management, and the claims in this respect are to be met via annual periodical payments, those payments will be index linked, year on year, to ASHE 6115 to reflect inflation in respect of carers' earnings.

Although that issue has been resolved, there has been talk of ASHE 6115 being reclassified to reflect different types of carers, which could complicate things further - so it remains a case of watch this space!



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Casewatch

An example of the work undertaken by our team:

Trust admits liability for negligent delivery

In this case, it was alleged that East of England Strategic Health Authority (formerly Essex Strategic Health Authority) negligently managed the claimant's mother's pregnancy and subsequent labour on 5 December 1987. This caused or permitted hypoxic ischaemia, circulatory collapse and permanent brain damage to the claimant.

Her estimated delivery date was 5 January 1988. The delivery actually occurred at 02.20 hours on 5 December 1987. The child had been noted as small during the pregnancy.

The claimant's mother was admitted at 23.00 on 4 December 1987. On admission, the child was assessed as being in the breech position. At 01.00, there was an onset of strong painful contractions with type 2 dips to 70 and 90 beats per minute and slow recovery to base line. At 01.05, bradycardia to 80 beats per minute set in for an extended period, variously described in the notes as 30 or 45 minutes. The child was born at 02.20 hours by emergency caesarean section because of the high breech and persistent bradycardia.



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On delivery, she was in a poor condition. Her Apgar scores were three at one minute, five at five minutes and eight at ten minutes. She was severely acidotic and was immediately intubated. Her birth weight was 1.38kg.

The child was ventilated for 36 hours. She was discharged home on 8 January, having apparently made a good recovery. However by five months, she was showing signs of neurological impairment. At 17 months, she had signs of increased tone in all four limbs. At about 22 months, she had improved and was reasonably steady on her legs. She was initially diagnosed as suffering from spastic diplegia but as her years advanced it became apparent that her arms were more severely affected and are now the main cause of her disability. Her diagnosis is now mild dystonic athetoid cerebral palsy.

Had it not been for the defendant's negligence, the claimant would have suffered no loss or damage. As a result of the negligence, she suffered acute profound asphyxia and damage to the basal ganglia and thalami, with resulting cerebral palsy of a dystonic athetoid nature. She has

a lurching gait, with poor balance. She is able to walk several hundred yards but stairs are very difficult. She has significant problems with her upper limbs, with a tremor, involuntary movements and very poor hand/eye coordination. The claimant cannot dress, clean her teeth or eat a meal without help. She cannot chew properly. She has dysarthria and drooling. Her bladder control is poor. She has suffered considerable anxiety about her disabilities and takes Amitriptyline.

The claimant's cognitive functions are essentially intact. Her life expectancy is perhaps marginally reduced. Over her lifetime, it is likely that she will become less mobile. She is capable of undertaking some paid work, but this is not likely to be full-time nor at the level expected if uninjured, nor for the whole of her working life.

A full admission of liability has been made on behalf of the defendant trust and judgment entered accordingly. The parties are now able to concentrate on the issue of quantum and directions have been ordered for a quantum only trial.

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