

Compensation for gratuitous care in personal injury claims

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In personal injury claims, most people are aware of the primary components of compensation; loss of wages, medical treatment and (for some personal injury claims) general damages or pain and suffering payments. But what about situations where your injury leaves you unable to do the housework, gardening or other day-to-day tasks? You may have to arrange for a relative or friend to help you with this. This is called gratuitous care. In this blog, we explore what compensation may be available when assessing gratuitous care.

What is gratuitous care in personal injury claims?

In general terms, gratuitous care is the time given to an injured person by relatives or friends to help with everyday tasks like domestic work (housework and gardening), supermarket and other shopping, looking after children etc.

Importantly, the care is unpaid. Consideration of gratuitous care in personal injury claims does not include paid care (for example, by professional cleaners) for services to the injured person.

When is compensation available for gratuitous care?

In Queensland, the time spent in the provision of gratuitous care is taken into consideration if the injury is the subject of some types of personal injury claims, including:

- motor vehicle accident (CTP) claims; and
- worker's compensation claims;

- public liability claims;
- medical negligence claims.

Generally, as part of the eligible personal injury claim settlement, a portion of this may include an amount calculated to compensate family and friends for their time at a commercial rate for the services they were performing.

Minimum threshold for gratuitous care payments

Legislative amendments in Queensland changed the general right to be compensated for gratuitous services. Before the law changed, an injured person's ability to claim gratuitous services was calculated by reference to decisions of the High Court of Australia. Injured claimants were able to claim the commercial value for the services performed by family and friends on a gratuitous basis (ie, where the injured person had given no payment or reward to the person providing the services).

Now in Queensland, various legislation has been introduced which states that injured claimants do not have a right to claim for gratuitous care unless they meet a minimum threshold amount.

This minimum threshold is that the injured person must have received a minimum of **6 hours per week** of gratuitous services for a minimum of **6 months**.

This means that if an injured person's family and friends performed only 5 hours per week for 12 months or performed 6 hours per week for only 4 months, then no claim for gratuitous care can be made.

Unfortunately, this can have a limiting effect to the number of claims which can be made for gratuitous care, however, the courts have been somewhat generous in their interpretation of these minimum thresholds.

Gratuitous care claims for cumulative time periods

One way the courts have provided some leniency to thresholds is by not requiring that the minimum 6-month period be consecutive or continuous.

> ### Consider this example
>
> John was injured in a car accident and his wife, Jan, started doing extra jobs around the house. John used to cook dinner five nights per week (five hours per week) and mow the lawn and do the gardening once per week (two hours per week).
>
> After John's accident, Jan started doing these tasks (a total of 7 hours per week) because John's injuries meant he couldn't.
>
> Four months after John's accident, he started to be able to do a few more things and

started cooking dinner three nights per week. This meant that Jan was only providing 5 hours per week of gratuitous care.

Three months later, John needed surgery for his accident-related injuries. After the surgery, he was once again unable to cook dinners (at all), and Jan went back to providing 7 hours per week of gratuitous care for three further months until John recovered properly from his surgery.

In this scenario, the court would look at the periods where Jan was providing more hours of care per week to decide whether this met the 6-month minimum threshold.

There are two periods to consider. The first four months after the accident and then the three months after the surgery. Separately neither of these periods meet the minimum requirements, however, when they are considered together (cumulatively), the minimum threshold is met and John can include a claim for gratuitous services in his claim for compensation.

Gratuitous care claims once the threshold is met

Once the threshold has been met, it does not have to be maintained.

If we consider John and Jan's circumstances, this means that because the minimum threshold has been met, a claim can also be made for the three months during which Jan was providing 5 hours of care per week (ie, less than 6 hours per week).

Strengthening the success of your gratuitous services claim

If you've been injured and you intend to lodge a personal injury compensation claim, there are some steps you can take to improve or 'back up' any claim for compensation for gratuitous care:

- Keep a record of the amount of time family and friends are providing gratuitous care; and

- Keep a record of the types of tasks family and friends are providing.

It is easy for family and friends to forget just how much time they are putting in to assist their injured loved ones, so it is often best to ensure these records are kept at the time. A journal/diary or even a shared spreadsheet recording the date, task and time spent can be useful tools to record this information accurately.

When considering the amount of time spent by family and friends in the provision of gratuitous care and then comparing it to commercial rates of providing the same services, these types of claims for compensation have the potential to be quite substantial.

Get help from a personal injury lawyer

When considering these claims, careful consideration must be given to whether the threshold can be met and what information is required when lodging a claim. It is important that expert personal injury lawyers are engaged to ensure you maximise the compensation you are entitled to.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.