

Can I claim for Domestic Care and Assistance in my Personal Injury Claim?

Article by Injury Lawyer, Tyla Leo
16 February 2022

Introduction

When you claim compensation for personal injuries, most people are aware that you can be compensated for loss of earnings and medical expenses. But what happens when an injury leaves you unable to clean your home, mow your lawn, or even do the grocery shopping?

When people are injured, they often feel helpless and require the assistance of others. Sometimes this assistance is required for the remainder of their lives. However, caring for someone can be difficult and if you don't have anyone to care for or assist you it can also be extremely costly.

The case of *Griffiths v Kerkemeyer* [1977] HCA 45 refers to compensation awarded to injured people for services (for tasks) provided to them, that because of their incapacity/injury, they were unable to carry out for themselves.

Who can claim for domestic care and assistance?

You can claim for domestic care and assistance as part of a motor vehicle accident claim, public liability claim, medical negligence claim and in some circumstances as part of a workers compensation claim.

With respect to a claim for domestic care and assistance, it is essential that the injured person did not require this level of assistance prior to suffering their injury. For example, if you employed a cleaner to undertake say 2 hours of general cleaning per week around your home prior to your accident, this will not form part of your compensation claim. If you employ this cleaner to perform additional service, then this could be claimed. E.g. if you increased cleaning to 4 hours each week, you could claim for the additional 2 hours.

What is paid care?

When a person suffers an injury and is unable to undertake certain domestic or personal care tasks they may pay for domestic services. For example, if an injured person can no longer undertake cleaning tasks, they may pay for a cleaner to regularly clean their home. It is common for injured people to also pay for assistance with cooking, laundry, and gardening/yard maintenance.

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What is Gratuitous Care?

By contrast, if a family member or friend provides services to an injured person without payment (for free) this is known as gratuitous care. Compensation may be claimed for the voluntary work of third parties who assist injured people with their needs. These can include domestic services as well as personal care tasks.

If a claim for care is to arise in a personal injuries matter, there are several criteria that apply:

1. The care must be reasonable; and
2. The care must be provided to the person only because of their injury/incapacity.

Thresholds that apply for Gratuitous Care:

In a **motor vehicle or public liability claim**, the threshold that must be met to claim (for past and future) gratuitous care is known as the '6 x 6 rule.'

Under the *Civil Liability Act*, gratuitous services must be provided for at least 6 hours per week for a period of at least 6 consecutive months following an accident in order to claim for gratuitous care.

How is a Workers Compensation Claim different?

Under the *Workers Compensation and Rehabilitation Act*, you are much more limited to what you can claim with respect to care and assistance. If you are injured at work, the following applies:

Paid care: In a workers compensation claim, any paid care that you receive must be reasonably required as a result of your injuries. You will be able to claim for paid care into the future *if you have been paying for such care since the accident* and if the majority of your care has not been provided gratuitously since the accident. The difficulty of course is finding the money to pay for services as having been injured, you may not be able to work.

Gratuitous care: In the majority of workers compensation claims, you cannot claim for gratuitous care and assistance.

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How does a claim for Gratuitous Care relate to my claim?

In ANY type of claim (motor vehicle or workers compensation) a claim for gratuitous care can add, \$10,000, or \$20,000, or \$50,000 or hundreds of thousands of dollars to your claim (depending on how bad your injuries are).

It is important to keep a record of the care and assistance provided to you as a result of your injuries. If you are not able to show that you have received assistance, it may be the case that you cannot include this as part of your claim at all.

With respect to paid care, we would strongly recommend keeping receipts/payments made from any service that you have received due to your injuries.

As gratuitous care can be more difficult to prove, we recommend keeping a diary of the assistance that you have been provided each week since your injury. This will be particularly useful when it comes to determining whether you have met the '6 x 6 rule' in a motor vehicle or public liability claim.

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Call us on 4772 5155 to book an appointment with an experienced Personal Injury Lawyer.