

ILF CLAIMS FOR PEOPLE WITH LEARNING DIFFICULTIES WHO HAVE LIVED IN HOSPITAL.

The argument used by ILF was that for people who had lived in long stay hospitals the health authority was responsible forever, so ILF would be double funding and people were being denied claims. To quote them:

Discharge from Long Stay Hospitals

We have recently received guidance from the Department of Social Security on how to deal with applications from people who have in the past been long-term hospital patients. In these cases the Local Authority should have received some funding from the Health Authority which should be sufficient to cover their social care needs, and this is usually in the form of a payment under Section 28A of the NHS Act 1977 or a Resource Transfer.

This guidance states that the ILF should not be involved in funding applications for previous long stay hospital patients at all, as this is beyond the scope of the Fund - even if they are now (or have since been) in residential care. This has now become a policy of the Fund.

The principle is that financial responsibility rests with health and local authorities as health authorities have been funded for the provision of social care for these people. It is expected that the two authorities should work together to ensure the ongoing social care needs are met and the financial responsibilities are decided between the two authorities.

We now have a response from the DoH and await one from ILF.
Précis of full letter from the DoH

1. People who entered for assessment or treatment and were discharged should be treated the same as if entered acute hospital, the HA has no responsibility.
2. For people who have been in long stay and get funds through section 28a or dowry payment. Money is not tied to an individual – even if they are named and it is not time limited. The money assists social services to meet the needs of the individual. HA not expected to meet full cost of living in the community.
3. Social services use money from a variety of sources for com care. Responsibilities for ex long stay are same as for people who have always lived in comm.. Therefore entitled to ILF in same way as anybody else – irrespective of any agreements that exist!
4. Section 64 grants – HA may make section 64 to enable voluntary bodies to function. Cannot make such grants to pay for the care of individuals. So red herring in this argument.
5. If the care is from NHS trust in community it is more complicated. If under a consultant they have not been discharged and still under NHS care.
6. But NHS trusts can sell social care (i.e. care in registered homes) to social services. If people are seeking to move on from this then eligibility to benefits and ILF unaffected.
7. Important that people do not loose out on opportunities and need to promote independence, as strategy will underpin.

Full text of letter from David Ellis at the Department of Health 12/12/00.

You raised the issue about people with learning disabilities who once lived in long stay hospitals obtaining ILF. I promised to seek further advice in the light of our meeting and I am sorry that I have been unable to get back to you about this more promptly.

As I understand it those deciding on eligibility for ILF are unclear about whether health authorities are responsible for meeting the full costs of social care for people with learning disabilities who have at some time been a patient in a long stay hospital. If health authorities should be meeting the full cost then there would be double funding if the person also received an ILF payment.

Long stay hospitals sometimes have assessment and treatment units on the same site as long stay accommodation. As far as benefits and ILF are concerned people who enter hospital for assessment and treatment and are then discharged back into the community should be treated the same as if they had for instance entered an acute hospital for treatment of a physical illness. The health authority would have no responsibility for funding their social care.

Most people who lived in or are still living in the old long stay hospitals were/are doing so because in the past much of the social care needed by certain client groups including people with learning disabilities was provided by the NHS rather than by local authorities. The 1992 guidance (HSG(92)43) on health authority payments in respect of social services functions states that "if local authorities assume prime responsibility for arranging care for particular groups any transfer of responsibility should be reflected in a transfer of funds." Section 28A or dowry payments are simply a means of achieving this. Section 28A payments are not necessarily tied to a named individual and they are not time limited. Even where section 28A payments are made in respect of named individuals this is simply a way of transferring appropriate resources to the local authority. The individuals will have been discharged from NHS care and the money is managed by the local authority. The section 28A payments are simply a way of channelling the money from central Government to the local authority. Another way of achieving this would have been a transfer between votes but it was felt that this would be less effective. The money assists the local authority to meet the community care needs of people with learning disabilities and of their successors who would otherwise have entered the institutions. The health authority is not expected to meet the full cost of the person living in the community. Since the aim is to provide better quality care the costs incurred may well be higher than those incurred by the health authority in caring for people living in hospital.

The money local authorities use to support people living in the community comes from a variety of sources including money transferred under section 28A. The responsibilities they have for ex long stay hospital residents are the same as that for people who have lived all their lives in the community. It follows that ex long stay hospital residents are entitled to access benefits and ILF - in the same way as people who have always lived in the community - irrespective of any agreements which exist between the health and local authority about transfer of resources between agencies.

On the related matter of section 64 grants from health authorities to local voluntary organisations the issue is straightforward. Health authorities may make grants to voluntary organisations under section 64 to enable them to function. They cannot make such grants to pay for the care of individuals. It is therefore a "red herring" in this debate.

A further issue which may arise is in relation to ex residents of old long stay hospitals who are living in the community and continuing to receive care from NHS Trusts. The situation here is complicated. Some people with complex needs may still be under the care of an NHS consultant i.e. they will not have been discharged from NHS care. However, NHS Trusts can also sell social care to local authorities under their income generation powers. In this respect they will be functioning as any other independent sector provider and the homes will need to be registered under the Registered Homes Act. Again, for people seeking to move on from such homes, eligibility for benefits or ILF would not be affected by whether or not the individual had once lived in an old long stay hospital.

I have tried to identify the main scenarios facing those charged with deciding whether or not a person who once lived in an old long stay hospital is eligible for ILF. It is important that misunderstandings about the funding of ex long stay patients do not result in them missing out on opportunities to become more independent. Indeed, the whole notion of independence is at the core of the cross Government Learning Disability Strategy which is to be launched as a White Paper early next year. I should therefore be grateful if you would ensure that those considering the eligibility of individuals for ILF are made aware of the position with regard to ex-long stay hospital patients.

Please let me know if you require any further clarification on this issue.