



## The Value of Compensation FOR PERSONAL CARE

By Dorothy Hagel, JD, CFP, Barrister, Solicitor & Notary Public, Hagel Lawfirm

Mrs. Childs had been pronounced as incapable of managing her own care and property. This triggered a dispute between her four children as to who should be appointed guardian of her personal care as well as guardian of her property. Mrs. Childs had an estate worth an estimated \$1.8 million and therefore the affordability was not an issue.

Mrs. Childs' daughter had moved in with her in order to look after her. This was of great benefit to Mrs. Childs as it allowed her to remain in her own home.

Unfortunately, an agreement between the daughter and her three brothers could not be reached as to whether the daughter should be compensated for caring for their mother and if so, how much compensation was appropriate. The matter ended up in Court.

Mrs. Childs' daughter sought compensation for \$133,000 for the period of three years, during which she cared for mother as well as for \$53,620 per annum on a go forward basis. The Court took position that the children are generally obligated to look after their parents who look after them when they were growing up. As a result, the Court awarded only \$25,000 in compensation for three years of personal care and \$500 per month, or \$6,000 annually, on a go forward basis.

Only four months later the parties were back in Court. As a result of the low compensation awarded by the Court, Mrs. Childs' daughter was forced to seek employment in order to support herself and was no longer able to care for her mother on a full time basis. This meant that hired caregivers would have to be engaged to care for Mrs. Childs with their fees expensed against Mrs. Childs' property. This was not in Mrs. Childs' best interests as her doctors agreed that she should remain in her own home and be cared for by those familiar to her, most specifically her daughter.

The Court reversed its earlier ruling and awarded Mrs. Childs' daughter compensation in the amount of \$50,000 annually recognizing that it is in the best interest of Mrs. Childs to have her daughter care for her. The Court also recognized that it is in

the best interest of the mother to award personal compensation to the daughter for providing her with full time personal care when the daughter is unable or unwilling to care for her mother without compensation.

### What Can We Take From This Decision?

The outcome of this case is very important because it appears to shift the approach to awards of compensation for personal care recognizing the value of services for personal care and the need to award meaningful compensation for the services provided.

Traditionally, Courts have been reluctant to award compensation for personal care for children carrying for their aging parents. In fact, the Justice, who presided over this case stated that, "a child should not be paid to care for an ailing mother"<sup>1</sup> when awarding a very little compensation in the first instance (notwithstanding that only one of the children was looking after the mother, while the other three did not). However, only four months later, the Court reversed its decision awarding much higher and reasonable compensation in the amount of \$50,000.00 per year. While \$50,000 annually may not seem high to some, contrast this amount to the nominal amount of \$6,000 per annum that was originally awarded.

It seems therefore that there has been a shift from the traditional position whereby people looking after aging relatives were expected to do so without compensation and out of the goodness of their hearts. There now seems to be recognition that those providing personal care should be properly compensated for doing so. It is also in the best interests of the incapable persons to be cared for by their family member. It is also in the best interest of society in general that incapable persons are cared for by family and friends instead of institutions. While it is true that those who take on the responsibility to care for incapable family member or friend, do so out of love and a sense of duty, this responsibility is often stressful and exhausting and can have a negative impact on the caregivers' mental and physical wellbeing. It is therefore appropriate and just that their efforts are properly compensated.

<sup>1</sup> Childs v. Childs (2015) ONSC 4036, para. 33.

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	<p><b>905.990.3440</b></p> <p>268 Lakeshore Rd E., Suite 400 Mississauga ON L5G 1H1</p> <p>@HagelLawfirm • info@dhestatelaw.com • www.dhestatelaw.com</p>	