

relate

information for all

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Information for Parents of Children with Disabilities

Introduction

The information in this issue is of particular interest to the parents of people with disabilities. We have tried to cover the major areas that are relevant but it has not been possible to include everything. Children with disabilities and their parents have the same rights to services as everyone else. Here we look at those services which are designed specifically for people with disabilities and in particular at what parents of children with disabilities need to know in order to fully avail of their rights and entitlements.

In general, we concentrate on entitlements for people who need help in accessing their entitlements, either because they are minors or because they do not have the mental or physical capacity to access their entitlements themselves.

Parents frequently continue to care for their children with disabilities long after those “children” reach adulthood. Here we use the term “child” to include all your children regardless of their age. We distinguish between minor children (those aged under 18) and others when this is relevant.

Further information and details of where to apply for the various benefits and services are in “Entitlements for People with Disabilities” published by Comhairle and also on www.oasis.gov.ie

Obligation of parents towards their children

Parents are obliged to maintain their children but the precise extent and limits of that obligation are not clear. Under the Maintenance of Spouses and Children Acts, parents are obliged to maintain their children until they reach age 18 or 23 if in full-time education. They are also obliged to maintain a child of any age who is “suffering from mental or physical disability to such extent that it is not reasonably possible for him to maintain himself fully”. This would seem to suggest that parents have a non-ending obligation towards a child with a disability. When the Court



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is assessing the maintenance which should be paid, it must take into account, among other things, the financial resources of the parents and the dependent children, including any income to which they are entitled under statute. Children with severe disabilities who have no income become entitled to

the Disability Allowance (see below) from age 16 so this entitlement would have to be taken into account. There do not seem to be any cases where the specific issue of parental maintenance for an adult "child" with a disability was considered. The rights of a child with a disability under a will are examined below.

Income Support

Domiciliary Care Allowance

The Domiciliary Care Allowance is a non-statutory monthly means-tested payment made to the carer of a child with a severe disability who lives at home. It is usually paid to the parent caring for the child.

In order to qualify, your child must have a disability and

- ◆ must be aged under 16
- ◆ must live at home
- ◆ must need substantially more constant care and attention than a child of the same age who does not have a disability

The assessment of whether or not your child needs more constant care and attention is made by the Health Service Executive (HSE). They look at the degree of additional care and attention needed by the child rather than the type of disability involved. There are no particular disabilities specified.

The allowance is not payable if your child is in full-time residential care but a pro-rata allowance may be paid if your child is in residential care but comes home for weekends and/or holidays. The allowance is payable if the child normally lives at home but is away for up to eight weeks, for example, in hospital.

The means test applies to the means of the child and not to the means of the parents. Since most children do not have personal means, the majority of children who are born with a severe disability should qualify. Children who become disabled as a result of an accident and who receive compensation may not qualify.

The allowance ceases to be payable when your child reaches 16. He/she may then qualify for a Disability Allowance.

You are entitled to Child Benefit in the usual way and you may also be eligible for Carer's Benefit or Carer's Allowance if you meet the other conditions. You are also eligible for a Respite Care grant.

The current maximum amount of the allowance is €225.20 a month.

You should apply to your local Health Office.

Disability Allowance (DA)

When your child reaches the age of 16, he/she may be entitled to a Disability Allowance. Disability Allowance is a weekly means-tested allowance paid to people with a disability who are aged 16 or over and under age 66.

In order to qualify for Disability Allowance your child must:

- ◆ have an injury, disease, congenital deformity or physical or mental illness or defect which has continued or may be expected to continue for at least one year. As a result of this condition, he/she must be "substantially handicapped" in undertaking work that would otherwise be suitable for a person of his age, experience and qualifications – the decision on whether or not the medical conditions are met is made by the Department of Social and Family Affairs' medical assessors.
- ◆ be aged between 16 and 66
- ◆ be habitually resident in the country
- ◆ pass a means test

Means test

The means test applies to the means of the child and not to the means of the parents. Almost all income or assets which the child has are taken into account. Higher education maintenance grants are not taken into account nor is income from rehabilitative training (see below) of up to €120 a week.

Compensation payments

In general compensation payments such as those which are paid as a result of an accident or medical negligence at birth are taken into account. (Compensation payments to victims of Thalidomide, Hepatitis C and payments by the Residential Institutions Redress Board are not taken into account.)

The capital amount involved is assessed rather than the actual income from it.

Assessment of capital

The way that capital is assessed is as follows:

The first €20,000 is disregarded. After that
The next €10,000 is assessed at €1 for each €1,000
The next €10,000 is assessed at €2 for each €1,000
The rest is assessed at €4 for each €1,000

People in residential care

If your child is in full-time institutional care in a facility supported by the Health Service Executive, he/she does not qualify for the Disability Allowance. However, he/she does qualify if in part-time care, for example, if in care for five days a week and at home for the weekends. If already receiving the allowance, your child retains it even if he/she goes into residential care.

People living in community-based houses or hostels (even if they are supported by the HSE) are not in institutional care and are eligible for the full DA.

Full-time residents in institutional care who do not qualify for the full DA are now eligible for a payment of €35 a week. This is called the "DA personal expenses rate". They have to meet broadly the same conditions as for DA. You apply for this allowance in the same way as DA. It is paid through the residential facilities in which your child is living.

The current maximum personal rate of DA is €148.70 a week.

You should apply to:

Disability Allowance Section,
Social Welfare Services Office,
Government Buildings,
Ballinalee Road,
Longford
Telephone: (043) 45211 or (01) 7043000

Payments for Carers

You, as the carer of a child with a disability, may be eligible for a Carer's Benefit or Carer's Allowance.

Carer's Allowance is a means-tested payment which may be paid if you are caring full time for a person who needs full time care and attention. If your child is under the age of 16, you may qualify for the Carer's Allowance only if you also qualify for the Domiciliary Care Allowance.

The means test takes account of the parents' income. Some income is disregarded – the most important disregard is €540 of a couple's income or €270 of a single person's income. If you get a Carer's Allowance, you are no longer considered to be an adult dependant on your spouse's social welfare payment. You may not get a Carer's Allowance and another social welfare payment at the same time.

Carer's Benefit may be payable if you give up work in order to provide full time care for a person who needs it. The conditions are similar to those for Carer's Allowance except that it is not means tested and you must have enough PRSI contributions. Carer's Benefit is paid for up to 15 months.

You may get an annual **Respite Care Grant** if you are providing full time care to a person who needs it, even if you are not getting a carer's payment. The Respite Care Grant is €1,000 in respect of each person being cared for.

Other Income Support Payments

Your child may be eligible for one or more of the following payments. They are payable by the Department of Social and Family Affairs (DSFA) unless otherwise stated:

Disability Benefit – is based on PRSI contributions; your child needs to have been working for at least a year before becoming eligible for this.

Invalidity Pension – is also based on PRSI contributions; your child needs to have been working for at least five years.

Blind Pension – is means-tested and payable to visually impaired people.

Blind Welfare Allowance – is also means-tested and payable to visually impaired people – this is payable by the HSE.

Occupational Injuries Benefits – there is a range of benefits payable to people injured at work and their dependants.

Supplementary Welfare Allowance – the weekly allowance is payable by the HSE to people who do not qualify for any other payment. The scheme also covers payments for people who need them such as diet supplement, heating supplement, exceptional needs payment and urgent needs payments. **Rent Supplement** may also be payable to people living in privately rented accommodation.

Household Benefits Package: Your child may be eligible for this (free electricity allowance, free TV licence and free telephone rental) if certain conditions are met.

Transport Costs

Car adaptations

The HSE may pay a grant to help to buy or adapt a car for a person with a severe disability who needs it for work. In exceptional circumstances, it may be payable if you live in a remote area and your child is unable to use public transport because of the disability.

Disabled Drivers and Disabled Passengers Scheme

A range of tax reliefs is available to certain people with disabilities for the buying and use of vehicles, either as drivers or passengers. There are limits on the size of the vehicles which qualify and there are restrictions on when you may subsequently sell the vehicle. Your child may buy the vehicle and claim the reliefs either as a driver or a passenger. Alternatively you may buy the vehicle for the purposes of transporting your child and claim the reliefs if your child lives with you most of the time.

Your child must qualify for a Primary Medical Certificate. This is granted if your child is severely and permanently disabled and:

- ◆ is completely or almost completely without the use of both legs
- ◆ is completely without the use of one of his/her legs and almost completely without the use of the other leg to the extent that he/she is severely restricted as regards movement in his/her legs
- ◆ is without both hands or both arms
- ◆ is without one or both legs
- ◆ completely or almost completely without the use of both hands or arms and completely or almost completely without the use of one leg
- ◆ has the medical condition of dwarfism and serious difficulties of movement of the legs.

The available tax reliefs are:

- ◆ exemption or refund of Vehicle Registration Tax (VRT), repayment of Value-Added Tax (VAT) on the purchase of a vehicle and repayment of VAT on the cost of adapting a vehicle, up to a maximum of €9,525 for a disabled driver and €15,875 for a disabled passenger
- ◆ repayment of excise duty on fuel used up to a maximum of 2,728 litres (600 gallons) a year
- ◆ exemption from annual motor tax

You apply to the Health Service Executive for a Primary Medical Certificate. If you are refused you

may appeal to the:

Disabled Drivers Medical Board of Appeal,
National Rehabilitation Hospital,
Rochestown Avenue,
Dun Laoghaire,
Co. Dublin.
Tel: (01) 235 5279.

There are considerable delays in the hearing of appeals at present.

You apply for the tax reliefs to:

Central Repayments Office,
Office of the Revenue Commissioners,
Freepost,
Coolshannagh,
Monaghan
Tel: (047) 82800
Fax: (047) 82782

Disabled Person's Parking Card

This card is available to people with disabilities, either as drivers or passengers and to registered blind people. This permit applies to the person with the disability and not the car being driven. The card entitles the holder to park in public car parking spaces. The scheme is administered by the Irish Wheelchair Association and the Disabled Drivers' Association of Ireland. People who have a Primary Medical Certificate automatically qualify but must apply. Other people may get an application form from one of the two organisations mentioned – this must be completed by their doctor and counter-signed by a Garda.

Adapting a House

You may qualify for the Disabled Person's Housing Grant Scheme if you need to adapt your house to facilitate your child. The adaptations could include adding on an extra room, making the house wheelchair-accessible or putting in a ground-floor bathroom and toilet. You should apply to your local authority.

If you live in a local authority house, the local authority may meet the full costs involved. The maximum grant for a private house at present is €20,320 or 90% of the costs involved whichever is the greater.

There are frequently lengthy delays in getting this grant. This may be caused by delays in getting the necessary assessment by an occupational therapist or by the local authority not having enough money to pay all eligible applicants.

Health Services

Entitlement to health services was described in the April 2005 issue of *Relate*. Your child may be entitled to a standard or a “doctor only” medical card if your family income is below a certain level. (New medical card income guidelines have just been announced and we will cover these in the next issue of *Relate*.) It is possible to get an individual medical card for your child if he/she has particular medical expenses but the exact basis on which this is decided is not clear. If your child does not qualify for a medical card or a “doctor only” medical card, he/she is nevertheless entitled to the following:

- ◆ Free public hospital services; no in-patient or out-patient short stay charges are levied if your child is suffering from one of the specific long-term conditions listed or if referred from child or school health clinics
- ◆ Free prescribed drugs and medicines for specific long-term conditions

The specific long-term conditions are:

- mental handicap
- mental illness (for people under 16 only)
- phenylketonuria
- cystic fibrosis
- spina bifida
- hydrocephalus
- diabetes mellitus
- diabetes insipidus
- haemophilia
- cerebral palsy
- epilepsy
- multiple sclerosis
- muscular dystrophies
- parkinsons
- acute leukaemia
- Thalidomide-related illnesses/disability

Residential Care

Residential care for people with disabilities is provided mainly by not-for-profit organisations with funding from the HSE.

Long-stay charges

If your child is in residential care, he/she may be required to pay long-stay maintenance charges. There seems to be considerable confusion about exactly who is obliged to pay these charges. It is clear that people under the age of 18 do not have to pay. It is not clear if people who live in community houses or hostels have to pay. Indeed, it is arguable that some people in traditional residential care may not have to pay either because they may not be receiving “in-patient” services.

The HSE must assess whether or not someone is liable to pay and how much. The residential care facility may then actually administer the payments.

Taxation

People with disabilities are liable to pay tax in the same way as everyone else. Most minor children with disabilities do not have any income so the issue does not arise. However, some children do have assets and income – for example, minor children who inherit money or property or who get compensation payments may have taxable income and they are liable for tax in the same way as adults. The parents or guardians are liable for the tax if the minor child fails to pay. If your child is a Ward of Court, the responsibility for making tax returns and paying the tax rests with the Guardian (in the case of minors) or the Committee in the case of adults. (The Guardian or the Committee may use the ward’s money to pay the tax.)

Specific Tax Credits and Allowances

There are some extra tax credits and allowances which are available to people with disabilities and their carers. Generally the tax legislation uses the term “incapacity” rather than “disability”.

Incapacitated Child Tax Credit

There are no tax credits or allowances in respect of children generally but there is a tax credit available to parents or guardians in respect of incapacitated children.

You may claim the Incapacitated Child Tax Credit if you have a child who is permanently incapacitated, either physically or mentally, from maintaining himself or herself. Your child must have been incapacitated before the age of 21 or before finishing full-time education or full-time training for a trade or profession. The incapacity must result in the child being permanently unable to maintain himself/herself independently. So, you do not get this tax credit if your child has an incapacity which can be corrected or improved. The Revenue Commissioners list the following disabilities which are regarded as resulting in permanent incapacity: cystic fibrosis, spina bifida, blindness, deafness, Down syndrome, spastic paralysis, certain forms of schizophrenia, acute autism. This list is not exhaustive and each application for the credit must be assessed on its merits.

If you are claiming this credit for the first time you should write to your local tax office giving the name and date of birth of your child. You should have a doctor's certificate which shows when the incapacity arose, the degree and extent of the incapacity and, if it is a condition which is not automatically accepted as being permanently disabling, whether the incapacity permanently prevents the child from being able in the long term to maintain himself/herself independently.

The credit is given to the parent who is maintaining the child or it may be divided between two parents in proportion to their contribution to the child's maintenance. The child's income, if any, is not taken into account.

The current (2005) value of this credit is €1,000. You may not get both this credit and the Dependent Relative Tax Credit.

Dependent Relative Tax Credit

You may claim this credit if you are maintaining a relative who is unable to maintain himself/herself because of infirmity. (It is available to other groups but they are not relevant here.) So, if you are maintaining a child for whom you cannot claim an Incapacitated Child Tax Credit, you may claim this credit. The current value of the credit is €60. The credit is not available if your child's income is above a certain limit – currently €10,997 a year.

Home Carer's Tax Credit

You may claim this credit if you are one of a married couple who are jointly taxed and you are caring in your home for a child in respect of whom Child Benefit is payable, an incapacitated person or a person

aged 65 or over. So, you may claim it if you are caring for your adult incapacitated child. In order to qualify for this credit you must have an income (your own income, not that of your spouse) of less than €5,080; you may get a reduced credit if you have income between €5,080 and €6,620. The current maximum value of this credit is €770.

Employed person taking care of an incapacitated person

If you employ a person to care for an incapacitated person, you may get tax relief of up to €30,000 a year. This is NOT a tax credit, it is a tax allowance. This means that you benefit from it at your top rate of tax. You do not get the Incapacitated Child Tax Credit or the Dependent Relative Tax Credit.

The carer may be individually employed or employed through an agency.

Medical expenses

You may claim tax relief for certain medical expenses incurred on your own behalf or on behalf of a dependent person. The tax relief is at your highest rate and the expenses include doctors' bills, drugs, and hospital costs.

Covenants

A covenant is a binding agreement to pay an annual sum to another person for a period – it is usually expected to last for at least six years. It can result in a reduction of income tax liability if the person paying the money pays tax at a higher rate than the person receiving it. There is no benefit if each is liable for the same rate of tax. It is obviously useful for anyone who would be maintaining the other person anyway. However, money received under a covenant is treated as income in the hands of the recipient and may have implications if that person is receiving a means-tested payment, for example, Disability Allowance.

Not all covenants attract tax benefits. Covenants by parents in favour of their minor children (under 18) do not get any tax benefit. For most covenants there is a 5% income limit on the amount which gets tax benefits but there is no limit where a covenant is between:

- ◆ Free a parent and a son/daughter over 18 years with a permanent disability
- ◆ Free anyone else and a person with a permanent disability, regardless of age

You may get forms for covenants from the local tax office.

Deposit Interest Retention Tax (DIRT)

People who are permanently incapacitated and whose income is below the usual exemption limits may get a refund of DIRT.

Compensation Payments

Certain compensation payments are exempt from tax.

Specific payments

Compensation payments to Thalidomide victims and the income arising from the investment of those payments are exempt from income tax. Capital gains on the sale of any asset which were bought with these payments are exempt from capital gains tax (from 1 January 2004). The same arrangements apply to Hepatitis C compensation payments and payments made by the Residential Institutions Redress Board.

Personal injury compensation payments

Compensation payments which are awarded for personal injuries are not subject to tax.

The income arising from the investment and continuous reinvestment of these payments may be exempt from tax if certain conditions are met. These are that

- ◆ the compensation must have been awarded by a court (or agreed before the case got to court but court proceedings must have started), by the Personal Injuries Assessment Board or the Criminal Injuries Compensation Tribunal
- ◆ the person who gets the compensation payments must be permanently and totally incapacitated (either physically or mentally) from maintaining himself/herself as a result of the injury
- ◆ the income from the investment of the payment must be the person's only or main source of income – this means that it must be at least 50% of your total income. Income from Disability

Benefit, Invalidity Pension or the Occupational Injuries Benefit scheme is not taken into account

You must declare this income on your tax return even though it is not subject to tax.

In order to get the tax exemption you should write to your local tax office. You should send a doctor's certificate which sets out the cause, nature and extent of your incapacity and evidence that the payment meets the conditions. A copy of the award made by the Court or the other bodies or a letter from your solicitor stating that the payment was made as a result of an out-of-court settlement meets this requirement. If you have already paid tax on such income, you may claim a refund. You may also be entitled to a refund of Deposit Income Retention Tax if this has been deducted.

Special trusts for permanently incapacitated people

Payments made to incapacitated people from special trusts set up for their maintenance may be exempt from income tax. In effect, the income from such funds is treated in the same way as the income from personal injuries compensation payments – the conditions about incapacity and income are the same. The income and capital gains to the trust are exempt from income tax and capital gains tax.

The trusts in question are those which are set up with funds raised by public donations on behalf of people who are permanently and totally incapacitated from maintaining themselves. The total donations to the fund must not be more than €381,000 or, if they are greater, no one person must have contributed more than 30% of the total. The trust must be exclusively for the benefit of the incapacitated person, the funds must be applied for that person's benefit and any funds which remain when the person dies must be used for charitable purposes. The trustees must not be associated with the incapacitated person.

Education

Children with disabilities are entitled to the same education services as other children. They may also have special educational needs and they are entitled to a response to those needs. Your child has special education needs if there is a "restriction in his/her capacity to participate in and benefit from education on account of an enduring physical, sensory, mental health or learning disability, or any other condition which results in learning differently from people who do not have the condition." The Education for Persons with Special Educational Needs Act 2004 sets out the special provisions for those with special educational needs. It is gradually being brought into effect and should be fully in effect by 2010.

At present, assessments of need of school-going children may be carried out by the National Educational Psychological Service (NEPS) which is an agency of the Department of Education and Science. This service is available to most primary schools in the country. Those schools which do not have a service may commission private assessments under a scheme administered by NEPS. NEPS employs psychologists based in a number of offices around the country.

National Educational Psychological Service
Frederick Court
24-27 North Frederick St.,
Dublin 1
Tel (01) 889 2700
Fax: (01) 889 2755
www.education.ie

The HSE has responsibility for providing services for children before they go to school. There is no right to pre-school education as such. The HSE may provide psychological assessment and speech and language therapy for your child.

Primary Education

Children with special needs may be educated in mainstream primary schools with the help of resource teachers and special needs assistants. There are also a number of special classes in mainstream schools and a number of special schools – these have lower pupil-teacher ratios than mainstream schools. Special transport arrangements, including escorts and safety harnesses are available for children with special needs.

Resource teachers and special needs assistants

Until this school year, it was the practice that individual applications for special needs teaching had to be made. Now primary schools get a general allocation to meet the needs of children with “high incidence” special needs, such as dyslexia and learning support needs. It is still necessary for the school to make an individual application for resource teaching hours for children with “low incidence” special needs, such as hearing impairment. This application is made to the National Council for Special Education (NCSE) which has about 70 Special Educational Needs Organisers (SENOs) based all around the country.

The Department of Education and Science has issued a circular, Sp Ed 02/05 which sets out in detail how teaching resources for children who need additional support in mainstream primary schools are organised. Each school decides how the resources for high

incidence support are used and how they are divided among the students who need such support.

There are about 5,000 teachers working directly with children with special educational needs – that is about one in every five teachers in the primary education system. There are over 6,000 special needs assistants who help children who need non-teaching support. Schools may be able to get funding from the NCSE to buy special equipment to help children with special needs.

Home Tuition

Home tuition may be provided for children who are unable to go to school on a regular basis because of a serious medical problem and to children who are waiting for a suitable school place.

National Council for Special Education

The National Council for Special Education has the following functions:

- ◆ planning the implementation of the Act
- ◆ providing information to schools and parents relating to best practice for the education of children with disabilities
- ◆ the co-ordination of special education in conjunction with schools and the HSE
- ◆ planning for the integration of children with special needs in a mainstream setting
- ◆ monitoring the progress of students with special educational needs and reviewing the resources needed in this area
- ◆ conducting research
- ◆ reviewing the provision made for adults with disabilities to avail of higher, adult and continuing education

National Council for Special Education
1-2 Mill Street,
Trim,
Co. Meath
Tel: (046) 948 6400
www.ncse.ie

A Chance to Learn - an information booklet for parents and families of children with special educational needs is published by namhi.

namhi
5 Fitzwilliam Place,
Dublin 2.
Tel: (01) 676 6035
www.namhi.ie

Education Plans

The provisions of the Act dealing with the Individual Education Plans are not yet in effect but some schools do prepare such plans. The Act requires that the parents be involved in the preparation of the plan.

The education plan must include:

- ◆ the nature and degree of the child's abilities, skills and talents
- ◆ the nature and degree of the child's special educational needs and how those needs affect his or her educational development
- ◆ the present level of educational performance of the child
- ◆ the special educational needs of the child
- ◆ the special education and related support services to be provided to the child to enable the child to benefit from education and to participate in the life of the school
- ◆ where appropriate, the special education and related support services to be provided to the child to enable him/her to effectively make the transition from primary school education to post-primary school education, and
- ◆ the goals which the child is to achieve over a period of up to 12 months

The principal of the school will be responsible for implementing the education plan and the school "shall be provided with the necessary moneys and support services"

The education plan must be reviewed regularly – at least once a year – to see if the child is reaching the specified goals and changes may be made if the plan is not effective. There are provisions for the parents to seek a review of the education plan and they may appeal to the Appeals Board if they are not satisfied.

As the child approaches adulthood and, in particular in the year before reaching 18, the education plan must take into account the provisions which may need to be made to help the child continue education or training on becoming an adult. The wishes of the child and the parents in this respect must be taken into account.

Special Education Appeals Board

The Special Education Appeals Board will be established on 3 April 2006. The Appeals Board will hear appeals on matters affecting the education of a

child with special needs. For example, parents will be able to appeal against the refusal of an assessment of educational need and against various aspects of an education plan drawn up for the child. The Appeal Board will also deal with disputes about who is to provide a service.

Secondary Education

Secondary education for children with special needs is usually provided in mainstream schools and there are some special classes in those schools and some special schools. Children with special needs in mainstream schools may be allocated resource teachers, special needs assistants and extra teaching hours and may also get technological support if appropriate.

If your child has been assessed at primary level, that assessment may be given to the secondary school by you or you may authorise the primary school to send it. If your child has not been assessed, the secondary school may be able to organise an assessment.

Your child may be excused the study of certain subjects depending on the nature of the disability. For example, some children may not have to study Irish or a foreign language – an assessment is made in each individual case. You should apply to the school for any such exemptions.

School Examinations

The State Examinations Commission which runs the Junior and Leaving Certificate Examinations has a scheme of "reasonable accommodations" for students with special needs. This includes the use of readers, writers, tape-recorders, braille, computers, word processors, helpers and extra time. The school may allow extra rest periods and use of low-vision aids and special desks or chairs. Special needs students may apply to have a part of an examination waived and to be marked out of 100% on the balance.

www.examinations.ie

Third Level

Your child may qualify for entry to third level education in the usual way through the Central Applications Office. Many of the third level institutions reserve places for people with disabilities. You must apply directly to the institution involved. Most have Disability Liaison Officers who help students with disabilities. There are some specific grants available for students with disabilities – you apply to the institution involved.

Work and Training

People with disabilities may access two types of training: – rehabilitative training which is provided by the HSE or by specialist agencies on its behalf and vocational training which is provided by FÁS or by specialist agencies under contract with FÁS.

Vocational training is designed to equip trainees with specific skills which will enhance their prospect of getting a job. People with disabilities who are training with FÁS receive the same training allowances and training bonus and are entitled to the same benefits as other trainees.

Rehabilitative training is mainly concerned with the development of an individual's core life skills, social skills and basic work skills with the objective of enhancing quality of life and general work capacity. People in rehabilitative training retain their social welfare payments and get a training bonus.

Rehabilitative employment

People with disabilities who are receiving a social welfare or HSE payment may, in some circumstances, take up what is regarded as rehabilitative employment without affecting their entitlement. This is generally so called "ordinary" employment and is not restricted to sheltered conditions.

Rehabilitative employment must be approved by the Department of Social and Family Affairs before your

child starts it. If your child is on a Community Employment scheme you only need to show evidence of this. If other employment is involved, you need letters from your child's doctor and the employer.

Sheltered workshops

People with disabilities who are not considered to be able for mainstream employment may be offered work in sheltered conditions. The HSE is responsible for sheltered workshops. Work in sheltered workshops is not generally regarded as "normal" employment in the sense that the employees are not insurably employed and are not entitled to the full range of employee benefits.

Job placement

FÁS is responsible for job placement and vocational training services for everyone including people with disabilities. People with disabilities are entitled to the same services as others.

Further information is available from your local FÁS office or www.fas.ie/disability/index.htm

Making Decisions

The rights of parents to make decisions on behalf of their children are the same whether or not those children have disabilities. This means that, in general, parents have no right to make decisions on behalf of their children once they reach 18. (See Relate, August 2005, for more information on decision making by adults.) Children under 18 have the right to make specific decisions – for example, they may validly give consent to medical treatment from the age of 16 and they may legally engage in sexual activities from age 17.

In practice, parents of children with intellectual disabilities frequently make decisions on behalf of their adult children but they do not have the legal right to do so. This can give rise to problems when it is not clear who has the right to make decisions or when there is conflict between what your child wants and what you consider he/she is capable of doing.

Managing Money

Your child may not be capable of managing money. If he/she is getting the Disability Allowance, you may be the agent appointed by the Department of Social

and Family Affairs to deal with the money. If this is the case, you have the same responsibilities as all other agents. The money belongs to your child and you must use it for his/her benefit. If your child has substantial money or assets, it is likely that he/she will be made a ward of court – see below.

Consent to Medical Treatment

If your child is capable of making decisions, then he/she may validly consent to medical treatment from the age of 16. If he/she is not capable of making decisions, it seems that you are entitled to make these

decisions until age 18. After that, you have no right to make decisions on behalf of your child. It is frequently the practice for doctors and other medical professionals to ask the parents of adults with intellectual disabilities to sign consent forms. There is no legal basis for this practice. Doctors are entitled to carry out certain procedures in emergencies without express consent. In non-emergency situations, there is no one who is legally entitled to make decisions on behalf of another adult unless that adult is a ward of court.

Sexual Relationships

Sexual relationships between consenting people who are each over the age of 17, whether those relationships are heterosexual or homosexual, are generally legal. Some people with intellectual disabilities may not have the capacity to consent to a sexual relationship.

The criminal law provides that it may be unlawful to engage in sexual activities with a person with an intellectual disability even if that person consents. It is a criminal offence to have or attempt to have sexual intercourse with a “mentally impaired person” unless married to that person.

“Mentally impaired” is defined as suffering from a disorder of the mind, whether through mental handicap or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation. Precisely what this means is not entirely

clear. Theoretically a person with an intellectual disability could be charged with a criminal offence if he/she engaged in sexual activities with another person with an intellectual disability. In practice, this does not seem to happen. Of course, it is not clear if a person with an intellectual disability can be convicted of a criminal offence.

Marriage

The Constitution of Ireland, the European Convention on Human Rights and a range of international human rights instruments recognise the right to marry and have a family life. This right extends to people with intellectual disabilities who have the capacity to marry. There is no means of assessing a person’s capacity to marry in advance of the decision. The criminal law assumes that at least some people who are “mentally impaired” do have the capacity to marry.

Anyone who intends to marry has to give three months’ notice to the Registrar of Marriages. The Registrar does not undertake an assessment of the person’s capacity to marry in the sense of understanding the nature of the decision being made. It is possible, but it does not seem to happen, that a Registrar would object to the marriage of a person with an intellectual disability. It is also possible that a parent, who did not want a person with an intellectual disability to marry, would object. This would involve court proceedings and it is not at all clear what the outcome would be.

Planning for the Future

Parents of children with disabilities, especially those with intellectual disabilities are often concerned about how to ensure that their children are financially secure and that they will not be exploited. The mechanisms available are rather complex and not always effective.

Wards of Court

If a child under 18 is awarded compensation, the money is usually paid into the Court and invested on the child’s behalf. When the child reaches 18, the money is released to the young adult. The child is not a ward of court and the parents make decisions in the normal way.

A minor child with disabilities may be made a ward of court if, for example, he/she receives compensation payments and it is necessary to draw on these payments for the maintenance of the child or for

making housing adaptations. A guardian is appointed by the court. The guardian makes the day-to-day decisions on behalf of the ward but the major decisions, for example, in relation to medical treatment and any significant expenditure, must be referred to the court.

When the ward reaches 18, he/she may continue in wardship only if he/she is of unsound mind and is not capable of managing person or property. (The wardship process for adults was described in the August 2005 issue of *Relate*.) A Committee of the

ward is appointed to make day-to-day decisions but the major decisions are made by the court.

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15-24 Phoenix Street North
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www.courts.ie

Making a Will

Most parents of people with disabilities want to try to ensure that their children will be adequately cared for after their own deaths. You can take some steps to try to ensure this.

One of the most important is to make a will to ensure that whatever money and assets you have are distributed in accordance with your wishes. You should get legal advice if you want to make special provisions for a child with a disability and also ensure that he/she retains entitlement to benefits such as the Disability Allowance and medical card.

Appointing a guardian

You may appoint a guardian in your will. However, this only has effect if your child is under 18 when you die. It is not possible to appoint a guardian for an adult child.

Obligations to your children

There is no specific obligation on parents to provide for their children in their wills – this is the case

whether or not the child has a disability. If your child is unhappy with the contents of the will, he/she may go to court to argue that you have not made proper provision. The decision on this depends on the facts of the case.

Trusts

As already stated, if you want to make specific provision for a child with a disability, you should get legal advice on how best this can be done. Depending on your circumstances and available assets, you may be able to establish a trust from which your child may benefit after your death. There are various different forms of trusts. Discretionary trusts are frequently used by parents as a means of ensuring that a child with a disability is provided for without losing entitlement to benefits.

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