

Integregation and Mitigation for Valuing Family (Household) Services
in Personal Injury Litigation

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In a personal injury circumstance, the pecuniary value of the loss of family services is the difference between the pecuniary value of the family (household) services an individual could have provided before an injury, subject to requirements for earnings in the labor market, and the pecuniary value of the family services an individual can provide after an injury, again subject to requirements for earnings in the labor market. There are two parts to that definition. First, the amount of services provided must be considered in light of the way in which the pre and post injury employments will affect the opportunity to provide family services. This is the integration issue. Second, the amount of services provided must be considered in light of the potential for offsetting part of damages. This is the mitigation issue. This short comment considers both integration and mitigation.

Integration

If an individual is forced from one job into another because of an injury, it may have important impacts on the ability of the individual to provide family services. If an individual is forced out of one employment into another with the same requirements for time away from home, this would generally not be an issue because each employment would have the same labor market requirements. If, for example, both employments (or expected employment in the case of the post

injury circumstance) involved one half hour of travel each way to and from work and each employment involved the standard work week, one would not expect the differences between employments to have any impact on the ability to provide family services. However, if there are substantial differences in the amount or schedule of time away from the home between the two employments, the time differences might favor either the pre injury or post injury opportunities to provide family services.

One common problem with evening and weekend employments, for example, is that the time spent in employment is time when parenting of children is most easily accomplished. Since parenting of children is a major family service if there are minor children in the home, this can be an important issue. If the pre injury employment involved the standard work week, when children would be in school, but post injury employment was in evenings or on weekends when children would ordinarily be home, there could be a substantial loss of parenting services even though the time spent in labor market involvement was the same. On the other hand, it could also be that the change in employments might result in reduced travel time to and from work and make an individual more able to provide family services in terms of time availability. A more complex question arises if the injured person spends substantially less time or cannot work at all in the labor market because of an injury. This will mean that the individual will have increased time availability for provision of family services.

It is important to note that in many jurisdictions, the opportunity to provide family services is considered of sufficient importance that mitigation is only required within a fifty mile (or some other) radius of a person's home. A person is expected to mitigate labor market damages, but only if doing so does not force an individual to move away from where family

services can be provided and received by that individual.

The main point with regard to this issue is that there must be consideration of how the pre and post injury employments affect the opportunity of an injured person to provide family services. Damages estimates must include an integrated consideration of damage elements such that the estimates of individual damages elements are logically consistent with each other. Family services being valued must be possible and reasonable within the time requirements implied by a projection of earning capacity in the labor market.

Mitigation

If an individual is prevented from continuing to provide some family services by an injury, one must consider how those damages could be mitigated and what the requirements are. If an individual is precluded from providing some family services that were being provided before an injury, but can still provide others, there is an issue of whether mitigation is required and, if so, of what kinds. Economic experts seldom consider mitigation issues when valuing lost household services in personal injury circumstances. A standard method for measuring family services is to calculate the number of hours of services that an individual, because of injury, can no longer perform. However, unless an injury is assumed to have life shortening impacts or to increase time required for other activities, an injury will not result in a loss of time during which family services could be provided. Thus, the hours valued in this conventional methodology were not lost. They could have been used for other different family services that remain possible. The mitigation issue relates to how and whether the remaining availability of those hours to be used for other services is to be considered.

Suppose, for example, that a male worker was assumed to be providing twelve hours per

week before his injury. Assume that the worker's time requirements for labor market involvement remain the same, but that the individual can no longer perform family services that previously took four hours of the worker's family service week. There are four hours of lost services, but there is also an offsetting gain of four hours that could be used to mitigate losses by producing different family services. How should those four hours of potential mitigating offset service provision be considered?

In some families, mitigation is the normal order of things. If a father can no longer cut the grass, some other family member will do that in the father's place, but the father will then take on other family responsibilities. It can even be that the replacement cost in the commercial market is higher for the replacing activities than for the activities that were lost. If a husband, for example, spends more time managing family finances and his wife now cuts the grass, it is likely that time spent managing family finances will have a higher replacement value than time spent cutting the grass. Because the family had chosen to have the husband cut the grass and the wife manage family finances, that was presumably the best allocation of the time in family service provision of the two family members. After the husband's injury, the tasks have been exchanged and, in some sense, there must be a loss to the family, but the loss is not equal to four hours of time spent cutting the grass.

This example, however, presumes that such exchanges are possible. It may be that no one else in the family can provide some of the family services that the injured worker can no longer provide. Suppose, for example, that the husband was able to repair the family automobile and other appliances around the home, but now can no longer do so after his injury. Assume further that no one else in the family can do these things that took the injured worker two hours per

week. Now, the family will have to hire market replacement or to do without those services.

However, the two hours themselves have still not been lost. What is the mitigating value of those two hours, if any?

In this regard, there is a fundamental difference between provision of family services and provision of services in the labor market. Because of market effects, the demand for labor market services is effectively unlimited relative to the ability of one individual to supply those services. Because there are physical limits on what one individual can do, economic experts are not concerned about unlimited nature of the demand side for those services. However, an individual who did not sleep or have other normal physical limitations and ate meals rapidly could conceptually maintain four full time forty-hour-per-week jobs within a 168 hour week. In a household, however, there is not an unlimited demand for family services. Families presumably stop well short of the number of hours of services that could produce maximum value, but most families do not need more than fifty to sixty hours of family services per week. They would not permit labor market replacement workers to be in the home producing free services for longer than that unless there were small children in the family.

With a family consisting of a wife, a husband and two teenaged children, there would be a practical limit as to the number of hours that the family could usefully put into family services, particularly if the children are usually off on their own. Thus, in the case of the husband who had spent two hours per week providing automobile and appliance repair, there may be no need for those two hours to be used for some other purpose. If so, mitigating offset in a direct sense becomes impossible. The family still needs the two hours that were lost, which must now be replaced by labor market provision or foregone. The injured person still has the two hours that

were previously used in automobile and appliance repair, but there are no other needed services whose production can mitigate the lost services. Arguably, those two hours have leisure value, but this is not ordinarily considered in a damages analysis.

Concluding Remarks

The purpose of this comment has been to heighten awareness of the issues of integration of damages analysis and mitigation of losses when assessments are made of the value of lost family services. It was not designed to provide answers for the issues of integration and mitigation and no answers have been provided. Hopefully, this will contribute to the roundtable discussion.