

EAST AYRSHIRE COUNCIL

SOCIAL WORK COMMITTEE: 7 SEPTEMBER 2006

FREE PERSONAL CARE – PREPARATION OF FOOD

Report by the Executive Director of Educational and Social Services

1. PURPOSE OF REPORT

- 1.1 To advise Committee of revised guidance from the Scottish Executive on Free Personal Care (FPC) policy in relation to assistance with the preparation of food.
- 1.2 To detail the current position in relation to Free Personal Care in East Ayrshire and the implications of new guidance.

2. BACKGROUND

- 2.1 The “Free Personal and Nursing Care Policy” was introduced in July 2002. The legal requirements were set out in the Community Care and Health (Scotland) Act 2002 (the Act) which addresses the application of charges for services. The statutory requirement for Local Authorities to meet identified need following appropriate community care assessment is detailed in the Social Work (Scotland) Act 1968 as amended.
- 2.2 The legislation was in the main clear in that personal care was defined as activities which relate to the day to day physical tasks and needs of the cared for person, for instance bathing, dressing or helping with going to the toilet (essentially care involving touch). From July 2002, service users with an assessed need, no longer made a contribution to charging for these activities, however in relation to other practical services such as shopping and housework charges continued to be applied.
- 2.3 A list of what should be considered “personal care” was detailed in Schedule 1 of the said Act. In relation to a person’s eating requirements the Schedule was less clear. Consequently there was significant debate around the wording in relation to what is described in the Schedule as “assistance with the preparation of food” and what that would mean in practice.
- 2.4 The issue seemed to be clarified when in April 2002 the Scottish Executive issued a Circular entitled “Implementation of Free Personal and Nursing Care Guidance “. This Circular under the heading of “Food and Diet“ states that food preparation is not included within the types of care which should be provided free of charge. It goes on to state that “assistance with eating, assistance to manage special diets and assistance with the preparation of specialist meals (e.g pureed foods) is included.” The Circular appeared to indicate that food preparation would only be free if linked to a special dietary need rather than the need to eat generally. This was consolidated by further guidance issued in July 2003.

- 2.5 Subsequently the Scottish Executive issued a letter to Local Authorities on 24 September 2004 which stated that the previously issued guidance was inconsistent with Schedule 1 of the Act, which makes explicit that assistance with the preparation of food should not be charged for. The letter however did not draw out any distinction between the term “food preparation” used in the guidance and the term “assisting with the preparation of food” used in the Act, which led to confusion. This also led to some councils continuing to charge for meal preparation and some moving away from this practice.
- 2.6 A lack of resolution on the issue has remained resulting in prolonged negotiations between CoSLA and the Scottish Executive to try to bring clarity and direction.

3. CURRENT POSITION

- 3.1 Following these negotiations the Scottish Executive issued a further letter on 25 May 2006. This advised that “simple tasks” related to assistance with the preparation and eating of food should be categorised as care within the policy and therefore should not attract a charge. Simple tasks may include chopping and mixing ingredients, cooking them, putting them on a plate and serving the food. Whilst this still does not bring absolute clarity to the issue, the implication is that basic supports such as preparation of breakfasts, snacks and light meals should not now attract a charge.
- 3.2 The revised guidance also noted that within Schedule 1 of the 2002 Act meal provision is not included in the list of “care not ordinarily charged for”. This has significance in relation to supporting the continuation of charging for services such as Community Meals.
- 3.3 A recent Health Committee report into Free Personal Care concluded that the policy has been a success and has been well received. However, the Health Committee also stated their belief that a thorough review of the resources required by local authorities, collectively and individually was required to ensure the system was adequately financed. The Health Committee made four main recommendations on free personal care:
- A thorough remodelling of the free personal care budget including the mechanism used to distribute it to local authorities;
 - Removing the legal loophole that allows Councils to maintain waiting lists;
 - A change in the law to make assistance with preparation of food clearly eligible for support;
 - A new minimum period for assessment or the backdating of claims to remove the incentive to local authorities to delay assessments.

4. POLICY IMPLICATIONS FOR EAST AYRSHIRE

- 4.1 In East Ayrshire we have continued to follow the original Scottish Executive Guidance
- 4.2 East Ayrshire do not charge for any aspect of helping a person to eat, or with preparation of specialist meals, e.g. puree.

- 4.3 East Ayrshire do not charge if we are working alongside a person ("assistance") to make a meal, for rehabilitation or skills maintenance.
- 4.4 East Ayrshire does charge for food preparation and provision of meals, including breakfasts and light meals, when we provide this service.
- 4.5 Given the revised Scottish Executive Guidance issued on 25th May 2006 it is proposed to :-

(a) Stop charging for food preparation services with immediate effect. It is considered reasonable not to refund payments received for provision of these services since 25th May 2006 as the Council required a short period to consider the implications of the change in guidance and review it's position ; and

(b) To determine not to backdate refunds to each individual service user for the food preparation element of their care package prior to 25th May 2006 given that the Council was following statutory guidance in applying charges for food preparation and did not profit from receipt of these charges which formed part of a planned budget of social services expenditure. A secondary consideration is the feasibility and equity of identifying all those entitled to a refund and of quantifying the refund which may further impact on resources available for provision of social services.

5. LEGAL IMPLICATIONS

- 5.1 Social Work Services in implementing their obligations under the Community Care and Health (Scotland) Act 2002 adhered to the terms of the 2002 Scottish Executive Circular and imposed charges for providing assistance with the preparation of food
- 5.2 The latest guidance issued by the Scottish Executive is a change / clarification of advice which requires revision of our future charging policy. Prior to May 2006 when Scottish Executive guidance was clarified the Council acted in good faith in reliance on statutory guidance in it's application of charges for providing assistance with the preparation of food. The Council did not profit from receipt of these charges as the money was used to provide additional social services within a planned budget which included these receipts.
- 5.3 Having considered the recent Scottish Executive guidance and carried out a formal review of our charging policy, taking account of the adverse financial effect on this year's budget, it is recommended that the revised charging policy be implemented with immediate effect.

6. FINANCIAL IMPLICATIONS

- 6.1 In East Ayrshire there are no waiting lists for Free Personal Care. This is achieved through substantially subsidising the policy from mainline homecare resources.
- 6.2 The Scottish Executive initially allocated the Council £2.649million in 2002 to support the introduction of free personal care. This has increased incrementally each year to £3.796million.

6.3 The current spending level to support free personal care is nonetheless outlined below:

- Free Personal Care and Free Nursing Care – People in Care Homes £1.374m
- Free Personal Care – People Receiving Care at Home £3.866
- **Total** **£5.24m**

6.4 Charging for food preparation currently attracts income of some £462,000 per year. Amending our charging policy to include food preparation as now falling within free personal care will mean a total loss of this income.

6.5 As the most recent correspondence from the Scottish Executive containing revised guidance was dated the 25 May 2006, it is this guidance that has implications for our charging policy. It is proposed therefore that the Council stops charging for food preparation with immediate effect for all those older people affected. The total lost revenue for this financial year if the Council agree this proposal will be £254,000.

7. COMMUNITY PLANNING IMPLICATIONS

7.1 Free Personal Care makes a significant contribution to the Improving Health and Eliminating Poverty themes of the Community Plan.

8. RECOMMENDATIONS

8.1 Social Work Committee is asked to:-

- (i) approve the proposal for a revision to the current charging policy and determine not to backdate refunds as detailed in section 4.5 of this report;
- (ii) ensure that the Policy and Resources Committee is aware of the financial implications of the change to ensure that the budget process is appropriately informed; and
- (iii) otherwise note the contents of this report.

Graham Short
Executive Director of Educational and Social Services
JD/NMc
4 August 2006
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LIST OF BACKGROUND PAPERS

- (1) Fair Care for Older People – September 2001
- (2) Schedule 1, Community Care and Health (Scotland) Act 2002
- (3) Scottish Executive Circular No. CCD 4/2002 – Implementation of Free Personal and Nursing Care: Guidance
- (4) Scottish Executive Circular No. CCD 5/2003 – Free Personal and Nursing Care: Consolidated Guidance
- (5) Scottish Executive Letter of 24 September 2004 – Free Personal Care Guidance
- (6) Scottish Executive Letter of 25 May 2006 – Assistance with the preparation food.

For further information on this report please contact:-
Eddie Fraser, Senior Manager, Community Care, telephone: 01563 576926

IMPLEMENTATION OFFICER: JACKIE DONNELLY