

'They said *what?*'

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*Some common myths about disabled parents and
community care legislation*

Jenny Morris

Published for the National Centre for Disabled Parents



Disabled
Parents
Network



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'THEY SAID WHAT?'

Some common myths about disabled parents and community care legislation

The idea for this booklet came from disabled parents who had difficulties getting the assistance or equipment they needed in order to look after their children. Some of the things they were told by social workers and other professionals were not accurate, but the parents usually did not have the necessary knowledge about their rights to challenge these statements. This booklet sets out some of these statements and gives information about what disabled people are entitled to. At the end of the booklet is a list of legislation and government guidance, and details of how to get hold of them. There are also details of organisations that can provide advice and information. The booklet covers England and Wales.



We can't do an assessment of your needs until after you've had the baby

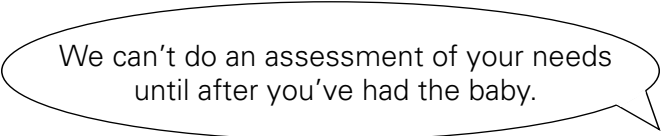
This is not true. If it 'appears to a local authority' that you 'may be in need of' any of the community care services that they provide, then they must assess your needs for those services. This is stated in Section 47(1) of the National Health Service and Community Care Act 1990.

In addition, if you come under the legal definition of a disabled person, you have the right to have your needs assessed for the services, adaptations and equipment provided under Section 2 of the Chronically Sick and Disabled Persons Act 1970. Section 4

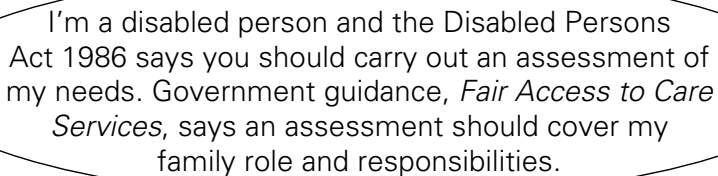


of the Disabled Persons (Services, Consultation and Representation) Act 1986 gives you this entitlement. The assessment should cover the things you need in order to carry on living in your home (assistance with daily living tasks, equipment and adaptations to your home).

According to government guidance called *Fair Access to Care Services*, an assessment of your needs should also cover any assistance you need in order to carry out 'family and other social roles and responsibilities'. This includes parenting tasks. Details of how to get hold of a copy of this guidance and other important documents are at the end of this leaflet.



We can't do an assessment of your needs until after you've had the baby.



I'm a disabled person and the Disabled Persons Act 1986 says you should carry out an assessment of my needs. Government guidance, *Fair Access to Care Services*, says an assessment should cover my family role and responsibilities.

After doing an assessment, the social services authority will decide which of your needs are 'eligible' by deciding what are the risks to your independence (in both the short and long term) if your needs are not met. How it should do this is laid down in *Fair Access to Care Services*. The guidance says the social services authority should consider whether there is a risk (in the short or long term) to your ability to carry out family responsibilities when deciding whether your needs are eligible to be met.



Social services departments are usually divided into children's services and adults' services. In order to get your entitlements under community care legislation you need to contact the adults' services.

Because you've got a child you'll have to contact the children and families social worker

Or

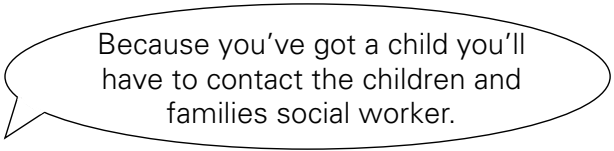
Because you've got a child we'll have to refer you to the children and families social worker

This is not true. As stated above, if you appear to be in need of community care services and/or you are a disabled person, you are entitled to an assessment of your needs. This assessment

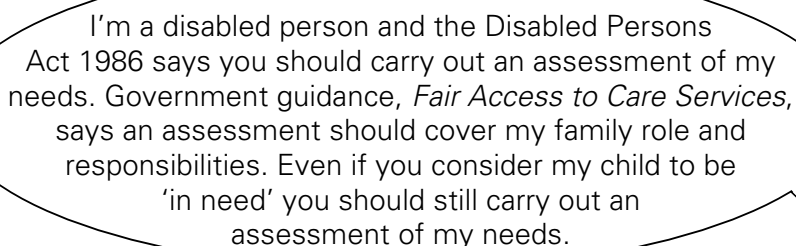
should be done by the adults' services section of the social services authority and should cover all your needs including those that relate to 'family and other social roles and responsibilities'. The Government's guidance to local authorities says: 'In the course of assessing an individual's needs, councils should recognise that adults, who have parenting responsibilities for a child under 18 years, may require help with these responsibilities' (*Fair Access to Care Services Policy Guidance, Paragraph 9*).



If the social services authority considers that your child comes under the definition of 'child in need' (see below), then it should carry out an assessment under Section 17 of the Children Act 1989. This will usually be done by the children and families section of the social services department. But you are still entitled to an assessment of your needs as a disabled person – from the adult services section of the social services department – including your needs for help with carrying out your parenting role.



Because you've got a child you'll have to contact the children and families social worker.



I'm a disabled person and the Disabled Persons Act 1986 says you should carry out an assessment of my needs. Government guidance, *Fair Access to Care Services*, says an assessment should cover my family role and responsibilities. Even if you consider my child to be 'in need' you should still carry out an assessment of my needs.

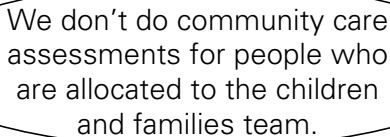
You can't have a social worker from the adult team because you've already got one from the children and families team

Or

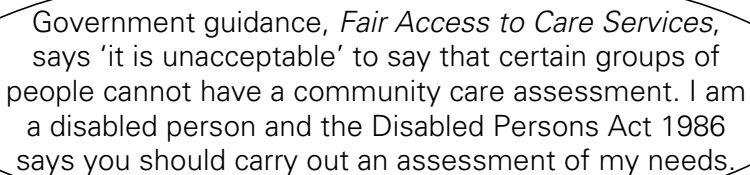
You can't have a community care assessment because you've already had an assessment from the children and families team and they are dealing with your case

If you are a disabled adult, you are entitled to an assessment of your needs from the adult services/community care section of your social services department. This assessment should cover

the help you need in looking after your child, as explained above. Government guidance says that it is 'unacceptable' for local authorities to say they do not provide assessments or services for certain groups of people (*Fair Access to Care Services: Practice Guidance*, Question 8.2).



We don't do community care assessments for people who are allocated to the children and families team.



Government guidance, *Fair Access to Care Services*, says 'it is unacceptable' to say that certain groups of people cannot have a community care assessment. I am a disabled person and the Disabled Persons Act 1986 says you should carry out an assessment of my needs.

Your child comes under the definition of a 'child in need' because you're disabled, so we need to get the children and families section involved

This is not true. Government guidance says that children of disabled parents should not automatically be seen as in need (*The Children Act 1989 Guidance and Regulations: Vol. 2. Family Support, Day Care and Educational Provision for Young Children*, Paragraph 2.5).

Section 17 of the Children Act 1989 defines a child as being 'in need' if they are unlikely to experience 'a reasonable standard of health or development' without assistance, or if they are disabled.



Government guidance on carrying out assessments of disabled adults makes clear that assistance with parenting should be included (see above). If a disabled parent receives the assistance they have been assessed as needing (including assistance with parenting) under community care legislation, and there *are still* concerns about a child's health or development, then the child may be 'in need'. In these circumstances, a referral to the children and families section should result in an assessment under Section 17 of the Children Act 1989 and in accordance with government guidance called *Framework for the Assessment of Children in Need and their Families*.

Government guidance says that adults' and children's services should work together, and professionals should bear in mind that 'the provision of services that assist disabled parents who need support in bringing up their children is often the most effective means of promoting the welfare of the children' (*Fair Access to Care Services: Practice Guidance*, Question 4.2).



A community care assessment will cover only the help that you need, it can't cover help with child care

This is not true. Government guidance says that community care assessments must cover the assistance that someone needs to carry out 'family and other social roles and responsibilities' and that 'family responsibilities' include 'parenting roles and responsibilities' (*Fair Access to Care Services: Practice Guidance*, Question 4.2).

We can only assess your personal care needs.

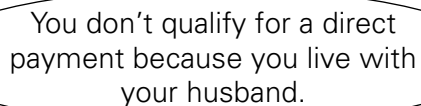
Government guidance, *Fair Access to Care Services*, says that community care assessments should cover parenting roles and responsibilities.

You don't qualify for direct payments because you live with your husband

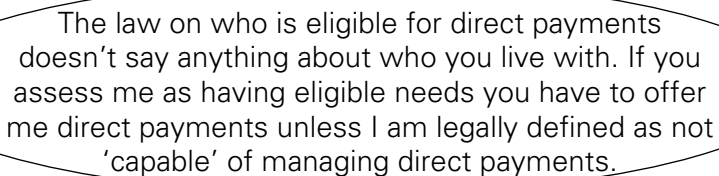
This is not true. If you are a disabled person, you are entitled to an assessment of your needs (see above). Who you live with is irrelevant in terms of your entitlement to either an assessment of your needs or a direct payment.



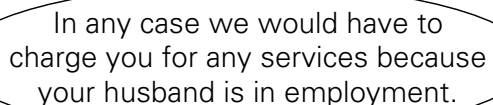
Once a social services authority has agreed that your needs are eligible to be met, it could meet your needs by providing services but it must (in England) or may (in Wales) also offer you a cash payment (direct payments) so that you can purchase your own help instead, if this is what you would prefer. The only situation in which it should not do this is if it considers you are not 'capable' of managing a direct payment or you are subject to certain mental health or criminal justice legislation (Statutory Instrument 2003 No. 762 The Community Care, Services for Carers and Children's Services [Direct Payments] [England] Regulations 2003).



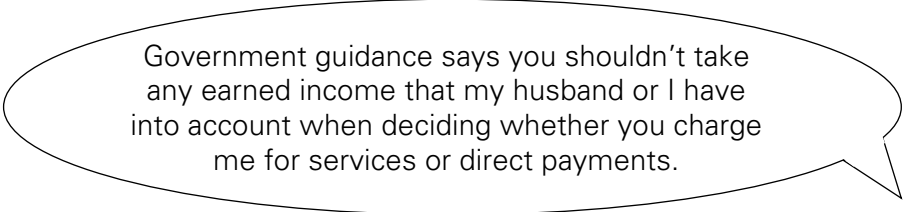
You don't qualify for a direct payment because you live with your husband.



The law on who is eligible for direct payments doesn't say anything about who you live with. If you assess me as having eligible needs you have to offer me direct payments unless I am legally defined as not 'capable' of managing direct payments.



In any case we would have to charge you for any services because your husband is in employment.



Government guidance says you shouldn't take any earned income that my husband or I have into account when deciding whether you charge me for services or direct payments.

In calculating whether a direct payment or service should be charged for, the social services department cannot take into account your salary or wages or those of your partner (*Fairer Charging Policies for Home Care and Other Non-residential Social Services*, Paragraph 67). However, other (unearned) income can be taken into account and you can be charged for a service or a direct payment if it is above a certain level (once disability-related costs are taken into account).

We don't provide adapted equipment to help you look after your baby

If you have been assessed as needing adapted equipment to help you look after your baby, and this need comes within the eligibility criteria, then the social services department must make arrangements to ensure that the equipment is provided. As a disabled person, you are entitled to an assessment of your needs, which should include any assistance you require in parenting tasks.

The care worker can only wash your clothes and not those of your child, as doing that wouldn't be part of your personal care needs

An assessment of your needs as a disabled person should have included an assessment of your needs relating to your 'family and other social roles and responsibilities'. A social services authority *could* claim that washing your child's clothes does not meet the eligibility criteria applied by the department. However, if you are not able to carry out basic tasks in your role as a parent, this is likely to constitute a significant risk to your independence and may undermine your family. You may therefore have a strong case for arguing that tasks relating to child care are eligible.



RESOURCES

Legislation and government guidance

You can buy copies of legislation (Acts of Parliament) and government guidance from:

The Stationery Office

Tel.: 0870 600 5522

Fax: 0870 600 5533

Textphone: 0870 240 3701

Braille copies (at no extra cost) can also be ordered by telephone or in writing:

PO Box 29

St Crispins House

Duke Street

Norwich NR3 1GN

Email: customer.services@tso.co.uk

Web site: <http://www.tso.co.uk/bookshop/>

You should also be able to consult legislation and guidance in the reference section of your local library. Some publications are also available on the web and, where this is the case, the web site addresses are given below.

The following are three Acts of Parliament that tell social services authorities what they should do to support disabled people:

- Chronically Sick and Disabled Persons Act 1970
- Disabled Persons (Services, Consultation and Representation) Act 1986
- National Health Service and Community Care Act 1990.

Fair Access to Care Services: Guidance on Eligibility Criteria for Adult Social Services. This is the government guidance that tells social services authorities how they should assess and meet disabled people's needs.

www.doh.gov.uk/scg/facs/

Fair Access to Care Services: Practice Guidance. This gives more advice to social services authorities about assessing and meeting disabled people's needs.

www.doh.gov.uk/scg/facs/

Fairer Charging Policies for Home Care and Other Non-residential Social Services. This is the guidance that tells councils how they should calculate whether and how much they should charge you for a service or direct payment.

www.doh.gov.uk/scg/homecarecharges/guidance.pdf

Children Act 1989. This is the Act of Parliament that tells social services authorities how they should protect and promote children's welfare and support families.

www.hmso.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

The Children Act 1989 Guidance and Regulations: Vol. 2. Family Support, Day Care and Educational Provision for Young Children.

This is the government guidance on how to implement the parts of the Children Act that deal with family support.

Framework for the Assessment of Children in Need and their Families. This is the government guidance that tells social services authorities how to assess children in need and their families.

www.doh.gov.uk/scg/qptch.htm

Statutory Instrument 2003 No. 762 The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003

www.dh.gov.uk/PublicationsAndStatistics/Legislation/StatutoryInstruments/fs/en

Information from local social services departments

Your local social services department should provide you with a copy, in a format accessible to you, of the following information:

- 1 how to apply for a community care assessment and how long you can expect to wait for an assessment
- 2 its eligibility criteria for community care services
- 3 its Community Care Plan (this sets out the local authority's community care policies and how it intends to use its resources)
- 4 information about local services provided by the local authority and by voluntary organisations.

Organisations that can offer advice and support to disabled parents, and also to professionals supporting disabled parents

The National Centre for Disabled Parents is home to Disability, Pregnancy and Parenthood International (DPPi) and Disabled Parents Network (DPN).

DPPi provides a personal and confidential enquiry service, and also produces a number of information sheets.

Freephone: 0800 0184730

Textphone: 0800 018 9949

Email: info@dppi.org.uk

Web site: www.dppi.org.uk

DPN is a nationwide network of disabled parents, their families and allies. It has a contact register and can put disabled parents and would-be parents in touch with each other. They also run a helpline for parents who want moral support from another disabled parent.

Helpline: 0870 2410450

Admin.: 020 7263 3088

Email: information@disabledparentsnetwork.org.uk

Web site: www.disabledparentsnetwork.org.uk

The Centre also offers a resource centre and access to a disabled parent support worker who can give advice to disabled parents regarding rights and entitlement to services.

The postal address for both organisations is:

National Centre for Disabled Parents

Unit F9, 89/93 Fonthill Road

London, N4 3JH.

The Disability Law Service is a national registered charity. It provides independent and confidential legal advice as well as a casework service for disabled adults and children, their carers, enablers, families and those working with disabled people. It employs solicitors and legal advisers who specialise in a number of areas of law including community care. It produces factsheets and runs telephone advice line sessions.

The Disability Law Service
39–45 Cavell Street
London E1 2BP
Tel.: 020 7791 9800
Fax: 020 7791 9802
Minicom: 0200 7791 9801
Email: advice@dls.org.uk