



Establishing Value for Loss of Household Services

By Ryan E. Hodge

Ofentimes after an injury, a plaintiff is no longer able to do certain household chores, or it may take him or her longer to do those chores. The law permits recovery for this loss of household services. *Chapman v. Gas Service Co.*, 190 P.2d 367 (Kan. 1948)(The value of the loss of household services is a recoverable pecuniary loss.) The purpose of this article is to focus on the value of household services from an economics perspective and how to establish such losses.

Economists and courts universally accept the idea that there is an economic value for the ability to perform household services. The United States Supreme Court articulated a standard for pecuniary loss, which has been followed by most, if not all, states with minor variations.

The court in *Michigan Central Railroad Company v. Vreeland*, 227 U.S. 59 (1913), provided a definition of pecuniary loss as follows:

The pecuniary loss or damage must be one which can be measured by some

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standard....Compensation for such loss manifestly does not include damages by way of recompense for grief or wounded feelings.

The "gold-standard" study on this topic is a study by William H. Gauger and Kathryn E. Walker, *The Dollar Value of Household Work*, (Bulletin 60, Ithaca, New York: New York State College of Human Ecology, Cornell University 1980). The Cornell study shows that there are at least three major variables affecting the number of hours of household services provided by family members, including:

- (1) The number of children in the family;
- (2) The age of the youngest child; and,
- (3) Whether the wife is employed outside the household.

The Cornell study was the first significant research that attempted to

establish the value of household services and the approximate amount of time spent by family members performing household services based on the size and makeup of the family. A later study by Douglass, Kenney and Miller, "Which Estimates of Household Production are the Best?" *Journal of Forensic Economics*, Vol. 4, No. 1 (1990), established a value for house-keeping and household management services at \$7.26 per hour in 1991. (This estimate did not include a fair market markup for the cost to hire to have the outside services done, only an estimated actual cost to hire an individual full-time to perform the services.)

There have been numerous studies that have attempted to establish an average time range for household services performed by a family member. While the hours vary based on the number of children and other factors, the numbers range from 39 to 45 hours a week for a wife and between 10 and 13 hours for a husband.

In order to establish a money value for the loss of household services, a proper foundation must be laid. There is no foolproof way to arrive at an accurate value of loss of household services; however, a reasonable estimate sufficient for an evidentiary foundation can be obtained. Keep in mind that an expert may base his opinion on hypothesized facts, but when such an opinion is based upon hypothesized information, the facts must be either in the record or admissible as evidence. *Lytle v. T-Mac, Inc.* 931 S.W.2d 496, 500 (Mo.App. 1996).

Begin your quest by asking family members or the injured person whether the services performed



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would, in their opinion, be performed in an average family. If so, ask to what degree the performance of those services has been lost. The loss of performance may be the inability to do the service or additional time spent doing the service.

For example, a plaintiff in a personal injury action may indicate that based on the additional time it takes for him or her to perform certain chores and the inability to do certain other chores, he or she has experienced a 20 percent loss of household services. As long as there is a medical expert who has established some permanent impairment or task disability, this evidence constitutes a sufficient foundation to establish loss of household services.

In *Jordan v. Elex, Inc.*, 611 N.E.2d 582, 82 Ohio App. 3d 222 (1992), the plaintiff testified as to his own estimate of percentage of disability as related to household chores; however, the plaintiff failed to present any medical testimony in support of the disability. In that particular case the court required competent medical testimony to prove that the plaintiff had some permanent injury or disability before he could establish the estimated loss of his ability to perform household services.

Another and more comprehensive technique is to go through tasks that the plaintiff performed before the injury and cannot perform after the injury, similar to a work task loss rating used in a work comp case. While this method takes a little more time, it provides a much more defensible basis for a plaintiff's estimate of loss of household services.

In a wrongful death action, the family can provide sufficient foundation as to the loss of household services of the deceased regarding the household services that the deceased performed. *McKinney v. California Portland Cement Co.*, 96 Cal. App. 4th 1214 (2002). In *McKinney*, the plaintiffs testified regarding the loss of household services of plaintiff's deceased father. They testified regarding the chores, household services, etc., that they have had to "pick up" since the death of Mr. McKinney. *Id.* at 1227-1228. Hence, Mr. McKinney performed services that saved the family the expense of hiring someone else. *Id.* at 1228.

The plaintiffs offered the testimony

of Dr. Ben-Zion, an economist, regarding the loss of household services.

Over the defendant's objection, the court held that the family's testimony provided sufficient support for a determination that Mr. McKinney performed substantial household services. *Id.* It provided a sufficient factual foundation for Dr. Ben-Zion's testimony. *Id.*

In some families, a family member may have unusual talents that permit him or her to perform services beyond those of a typical family member. For example, if a husband is in construction, he may save the family money on carpentry, plumbing or electrical work in the house that an average husband would have to pay to have done. Establishing what unusual services the family member performs will not only establish additional value but will humanize the plaintiff by showing his or her unique contributions to the family.

Once an estimate of the loss of time is established, the economist will determine what average study value to use as a baseline. Most economist will follow the Cornell study or use an average value of the numbers from all the studies. Once the study to use as a baseline is selected, the estimation of loss becomes one of simple math. For example, if the study relied upon by the economist shows the average husband with two children performs 12.5 hours a week of work around the house and the plaintiff's estimates are a 20% loss, then the plaintiff has experienced a 2.5 hour a week loss.

Once the hours lost is established, a value must be placed on the time. There are four general approaches that have been used by forensic economists to measure the value of household production:

(1) **Specific Services Replacement Cost.** The Specific Services Replacement Cost attempts to estimate the specific services being provided by the household worker in terms of time spent in each activity and to apply a set of different market wage proxies for the value of each service that is separately estimated. This technique is time-consuming and can be very expensive. It should only be considered with a plaintiff who has a unique set of

difficult-to-replace skills.

(2) **General Replacement Cost.** The General Replacement Cost approach attempts to estimate the total amount of time provided by a household worker and to value that time based on a single market-based wage rate for a person able to provide all such services. Although this is a more general method, it is generally accepted by economists and is the most straightforward technique.

(3) **Simple Opportunity Cost.** The Simple Opportunity Cost method is very similar to the General Replacement Cost method, but the value of the time provided is valued on the basis of the market earnings rate that would have been currently available to the household worker rather than a general wage that would need to be paid to the replacement worker.

This method can be attacked if your injured person is of particularly high economic value in the open market. For example, most jurors would struggle with the suggestion that a medical doctor who earns up to \$500 an hour is worth that when he mows the lawn. However, this technique, like the long-term implied opportunity cost method, can be used under limited circumstances if a detailed foundation is laid. This foundation is explained in the long-term implied opportunity cost section.

(4) **Long-term Implied Opportunity Cost.** The Long-term Implied Opportunity Cost would ordinarily apply only to primary household workers. A primary household worker is someone who has, in the human capital sense, devoted him or herself to the development of important human capital skills for his or her special roles in household work. He or she is, in short, not an unskilled worker but a worker with significant levels of family-specific human capital skills that are involved in providing special non-market services to the family or market services in a non-market context.

He or she normally serves as the household manager, supervising other household workers. He or she prepares budgets, maintains overall expenditure controls over other

household members, has primary responsibilities for childcare and elder care, and so forth.

He or she may provide important career consulting services for a spouse, which may include volunteer work where she may develop social contacts useful for her spouse's business. He or she may maintain full-time employment in the labor market on a "mommy-track" or "daddy-track" basis, may work part-time in the labor market or be fully employed in non-market work for his or her family.

The key element is that he or she has forgone the development of his or her full labor market potential and thus is earning less than would have been possible with a fully focused labor market career. This means that if he or she had fully specialized in labor market human capital instead of non-market family specific human capital, he or she would have been earning much more in the labor market than was the case at the time of her injury or death.

The Long-term Implied Opportunity Cost method projects the earnings of the decedent or injured primary non-market worker on the basis of her earnings if he or she had fully developed her labor market career. In other words, if a worker had not become a family specialist, he or she would have developed a marketable career in the open market worth well in excess of the average value of a household laborer. His or her value to the family is equal to her labor market earnings plus her unskilled non-market services.

This technique has the same potential problems as the simple opportunity cost method, in that at first glance it appears to grossly inflate the value

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of the household services. However, for a stay-at-home husband or wife this method has appeal. This is especially true if the individual was deeply involved in civic activities, volunteer work or schooling of the children.

Of course, in order to have maximum persuasive influence on a jury, there should be testimony of above-average success in the endeavors. For example, children with exceptional grades or extracurricular talents and testimony of significant projects that would not have been possible without this person help justify an above-average wage rate for this person.

Each method above is considered generally accepted by economists. Working closely with the economist will allow the development of projections that are best for the individual plaintiff under the circumstances.

While many juries can be reluctant to render verdicts for household services, it is important to build the value of these services. Analogizing the household to a business, wherein the loss of the ability to perform household services by one member is a loss to the family business, may be helpful.

Providing specific examples of unusual services will help to humanize the plaintiff.

Specific examples of limitations also add credibility to the plaintiff's testimony. This is especially important if there are limited objective signs of the injury. For example, a plaintiff who testifies that she hates daylight savings time because she has to climb up on a stool to change the time on a wall clock has an aura of credibility based on the fact that a dishonest plaintiff would never think of such an example of limitations.

In sum, the testimony of an economist will help the jury wade through the jumble of hypothesized facts and medical testimony on the loss of household services. A basic goal of tort law is to compensate an injured party for wrongful conduct of a defendant. The recovery of loss of household services in personal injury actions is a vehicle whereby plaintiffs may recover the economic value of certain losses. In serious injury cases, establishing household services losses as economic losses will help avoid the injustice of noneconomic damage caps.

Establishing loss of household services damages through the testimony of economists provides a scientific means to partially compensate a plaintiff for his or her injuries. While a verdict for money damages cannot make a plaintiff whole, it is the only remedy available in our judicial system. When a person has been injured by someone's wrongful conduct and that person's quality of life has been diminished, he or she should be entitled to recover for that loss. ♦

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