



Legal Aid
Agency

Mental Health Common Errors

February 2015

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Claiming Errors	
1	<p>Incorrect coding, particularly</p> <ol style="list-style-type: none"> 1. 'Stage Reached/Level' - MHL01 - MHL09 and 2. 'Meetings Attended' – MTGA01 - MTGA24 <p>The stage reached code determine the fixed fee(s) paid. The MTGA code does not affect the fee(s) but does indicate the meetings were representation took place.</p> <p><i>Ref - Guidance for reporting Controlled Work & Controlled Work matters v15 Annex K (p114-115)</i></p>
2	<p>Failure to conduct a means assessment for the client in a non-MHT matter, where no advice has been given with regards the Tribunal process, or any advice given was not necessary. (e.g. client seeking advice in relation to the Mental Capacity Act or client advises the solicitor that they do not seek advice in relation to the MHT).</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.14-7.15</i> <i>Ref – Section2 Mental Health Guidance</i></p>
3	<p>Failure to evidence of client's means in a non-MHT matters where the client is in detention and there is little/no evidence on file that the fee-earner has undertaken reasonable steps to check whether the ward manager, social workers, family members etc. can confirm the client's financial position.</p> <p><i>Ref - 2014 Standard Civil Contract Specification 3.22-3.28</i></p> <p>Providers need to consider whether it is <u>impracticable</u> to obtain the evidence of means. This will depend on the individual circumstances of the case/client. Although detention under the Mental Health Act 1983 is an important component of this test it is not entirely determinative. If it is practicable to obtain evidence of means the Guide to Determining Financial Eligibility for Controlled Work and Family Mediation the guidance in 12.2.1 - 12.2.9 of must be followed. If, on the other hand, it is impracticable to obtain evidence of means then the guidance in 12.2.10 -12.2.11 must be followed. In particular, the provider should note the reason why it was impracticable to obtain evidence on file <u>and</u> attempt to obtain evidence of income from the ward manager or social worker where practicable.</p> <p>Reasonable steps, for instance requesting sight of the latest monthly pay slip (if the client is weekly paid it is best practice to obtain the latest 4 weekly pay slips i.e. to cover the full calculation period), must be taken to verify the information provided by the client.</p> <p><i>Ref - Guide to Determining Financial Eligibility for Controlled Work and Family Mediation April 2014 v1 Point 2.1 (5)</i></p>

	<p>In lieu of written evidence providers may telephone the relevant agency, e.g. Dept. Of Work and Pensions or HM Revenue and Customs as appropriate, whilst the client is in attendance to confirm details of type and amount of benefit or tax credit, and current entitlement. A note of that conversation including the relevant details, along with any unique reference number and name of person spoken to, will be acceptable evidence on audit.</p> <p><i>Ref - Guide to Determining Financial Eligibility for Controlled Work and Family Mediation April 2014 v1 Point 12.2 (4)</i></p> <p><i>Ref – Section4 Mental Health Guidance (includes Point of Principle 55)</i></p>
4	<p>Opening a separate non-MHT matter start and claiming a separate non-MHT fee when it should have been 'rolled up' into a concurrent MHT fee. (NB If a non-MHT matter is opened before the client applies to the MHT, then in most circumstances non-MHT matter should form part of a single MHT claim);</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.20-7.22</i> <i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.56-7.62</i></p>
5	<p>Failure to understand matter start rules where the client is the Nearest Relative (NR), particularly with regard to non-MHT and MHT matter start rules.</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.33</i> <i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.19-7.22</i> <i>Ref – Section6 Mental Health Guidance</i></p>
6	<p>Claiming a MHT fee for standalone non-MHT work such as a Hospital Managers Meeting/Review or S117 meeting.</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.56-7.62</i></p>
7	<p>Claiming the MHT Level 3 Fee where an effective MHT has not taken place, or the provider has not carried out any representation.</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.69</i></p> <p>(NB There is a scenario where the Level 3 Fee can be claimed in substitution for an Adjourned Hearing Fee).</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.72</i></p>
8	<p>Claiming the MHT Level 2 Fee before an MHT application has been submitted, or where neither 30 minutes work has been done nor negotiations with a third party have been carried out.</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.65-7.68</i></p>

9	<p>Where a client is detained under section 2, the section 2 application must be <u>received</u> by the tribunal within 14 days (or the next working day when that date falls on a date when the tribunal is closed.) It is clear that the criteria for legal representation cannot be met if the provider makes the application too late for it to be considered by the tribunal, therefore only the MHT level 1 fee should be claimed.</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.63-7.64</i></p>
10	<p>Failure to open a new NMS in circumstances where an informal patient is detained under Section.</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.21-7.23</i></p> <p>If a non-MHT Escape Fee Case includes MHT work the claim would need to be submitted as two separate bills under paragraph 4.13 of the 2014 specification.</p>
11	<p>Claiming a separate fee in relation to a renewal hearing. Any work relating to a renewal hearing should be rolled back into the MHT claim for the period of eligibility to which the Responsible Clinician’s decision relates. This is regardless of when the work is undertaken (i.e. within a fresh period of eligibility). If there is not a MHT claim for the eligibility period the renewal hearing relates to then this is a non-MHT matter as a Hospital Managers Hearing would be convened.</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.56-7.62</i> Ref – Section5 Mental Health Guidance</p>
12	<p>Claims for Remote Travel Payments. There are currently no hospitals designated as remote.</p> <p><i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.73-7.78</i></p>
13	<p>Excessive travel cost claims: the Cost Assessment Guidance indicates a limit of 5 hours unless reasonable justification is evidenced on file.</p> <p><i>Ref Cost Assessment Guidance 2.42-2.46</i></p>
14	<p>Excessive disbursement claims: includes the claiming of Counsel fees (which should be paid out of the fees claimed except where prior authority has been granted to incur a higher rate) and multiple independent expert reports (where they are not justified by the case);</p> <p><i>Ref – 2014 Standard Civil Contract Specification 4.21</i> <i>Ref - 2014 Standard Civil Contract Mental Health Specification 7.41</i></p>
15	<p>Consideration must be given to whether attendance at HMH, s117 or CPA meetings is necessary and/or appropriate. Factors to take into account will include the nature of issues to be discussed at the meeting and whether legal advice and/or representations will be required.</p>

Ref - 2014 Standard Civil Contract Mental Health Specification 7.68

Tackling poor quality

The LAA has worked hard to carry out coordinated action to tackle isolated poor quality with a range of stakeholders most notably:

- Joint communications with TLS and the MHLA
- supporting the production of complaints guidance by TLS
- supporting complaints made by the NHS to the SRA/Legal Ombudsman
- investigating quality issues with providers
- introducing higher quality standard in the 2014 contract
- facilitating better communications between key stakeholders, (the LAA's contract management department now regularly liaise with the Tribunal Service regarding accreditation regulations and complaints).

It is thought that minimum quality standards are improving as a consequence. However CMs will continue to be aware of the particular vulnerabilities of MH clients and look for any warning signs on files. Potential issues include:

- Touting for business on wards when there is no client to visit (including unsubstantiated reports of bribery and coercion);
- Poaching clients from their existing providers (balanced against client choice);
- Failing to make appointments with wards;
- Applying to the MHT without client instructions or even against client instructions not to apply;
- Failing to manage client expectations by promising particular outcomes;
- Having contact with/meeting the client only at the outset of the case to sign them up to legal aid and then at the MHT;
- Failing to prepare for the MHT; and
- Failing to provide adequate aftercare.

Web links to documents

2014 Standard Civil Contract Standard Terms & Specifications

<https://www.gov.uk/government/publications/standard-civil-contract-2014>

Eligibility guidance

<http://civil-eligibility-calculator.justice.gov.uk/ecalc lar/guidance.asp#2C003>

Costs assessment and remuneration

<https://www.gov.uk/funding-and-costs-assessment-for-civil-and-crime-matters>

Guidance for reporting Controlled Work & Controlled Work matters

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/347977/guidance-for-reporting-controlled-work-matters.pdf

Mental Health guidance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342667/laa-guidance-mental-health-august-2014.pdf