

8.11 DAMAGES CHARGES — GENERAL

I. FUTURE MEDICAL EXPENSES¹ (Approved 5/97)

Plaintiff in this case seeks to recover future medical expenses. Plaintiff has a right to be compensated for any future medical expenses resulting from the injuries brought about by defendant's wrongdoing.²

If it is reasonably probable that plaintiff will incur medical expenses in the future then you should also include an amount to compensate the plaintiff for those medical expenses. In deciding how much to award for future medical expenses think about the factors mentioned in discussing the nature, extent and duration of plaintiff's injury. Also consider plaintiff's age today, his/her general state of health before the accident, and how long you reasonably expect the medical expenses to continue. Obviously, the time period covering plaintiff's future medical expenses cannot go beyond that point when it is expected that he/she may recover from his/her injuries.³

¹ If the attorneys will stipulate as a fact that the interest and inflation rates will offset each other, only paragraphs one, two and three of this section need be charged.

² *Coll v. Sherry*, 29 N.J. 166, 174 (1959).

³ The collateral source rule (see cases under Model Civil Charges 8.11C and 8.11A) applies to loss of earnings as well as to medical and hospital expenses. Plaintiff may recover damages for loss of earnings although having been paid wages or their equivalent by employer pursuant to sick or annual leave benefits or retirement on half salary under a pension contract. *Rusk v. Jeffries*, 110 N.J.L. 307, 311 (E. & A. 1933). *Chap. 326, L. 1987*, eliminates the collateral source rule as to causes of action arising on or after December 18, 1987. Deduction of benefits, less premiums, is done by the court, not the jury. See also N.J.S.A. 59:9-2(3) for similar effect for Tort Claims Act causes of action. See *Parker v. Esposito*, 291 N.J. Super. 560 (App. Div. 1996) for application of collateral source rule to future benefits.

You should also consider plaintiff's life expectancy in assessing future medical expenses.⁴

But you should be aware that the figures that you have been given on life expectancy are only statistical averages. Do not treat them as necessary or fixed rules, since they are general estimates. Use them with caution and use your sound judgment in taking them into account.

For future medical expenses you must base your decision on the probable amount that plaintiff will incur. It is the burden of the plaintiff to prove, by a preponderance of the evidence, the probable need for future medical care and the reasonableness of the charge for future medical care.

In deciding what plaintiff's future medical expenses are, understand that the law does not require of you mathematical exactness. Rather, you must use sound judgment based on reasonable probability.

Once you have decided how much medical care plaintiff will need in the future, you must then consider the effects of inflation and interest. As to inflation, you should consider the effects it probably will have in reducing the purchasing power of money. Any award for future medical expenses should be increased to account for losses due to inflation. The consideration of interest requires that you

⁴ This concept should be charged if there is appropriate evidence received on the subject.

should not just award plaintiff the exact amount of medical care that he/she will need in the future. The reason for that is that plaintiff will have that money now even though he/she will not have needed that money until some time in the future. And that means that plaintiff will be able to invest the money and earn interest on it now even though he/she otherwise would not have had that money to invest until some future date.

To make up for this, you must make an adjustment for having the money available now even though the expense will not be experienced until the future. This adjustment is known as discounting, and what discounting does is give you the value of the money that you get now instead of getting it at some future time. In other words, it gives you the present value or present worth in a single lump sum of money which otherwise was going to be received over a number of years at so much per year.

Your goal is to create a fund of money which will be enough to provide plaintiff future medical care and which will be used up at the end of the total period of need. In arriving at the amount of that fund — the present value of future need — you should consider the interest the fund would earn, the probable amount by which taxation on the interest would decrease the money available to plaintiff and the effect of inflation in decreasing the purchasing power of money.