

HYDROTHERAPY

Sink or swim...

Lack of scientific evidence for the value of hydrotherapy has often led to it being dismissed by the courts. Chista Kermani outlines the benefits and how to succeed with claims



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Defendants have traditionally resisted claims for the costs of hydrotherapy on the basis that there is little evidence to prove its benefit as a treatment. Despite claimants and their families often feeling strongly that water-based forms of therapy have a significant impact on their condition, it appears that the reason for the lack of supporting evidence is because of the difficulty in assessing what improvement, if any, can be directly attributable to hydrotherapy alone. However, the tide seems to be turning, with claimants experiencing increasing success in recovering hydrotherapy costs, which at current prices can potentially exceed £200,000. So careful consideration should be given in each case as to whether it may be appropriate to seek an expert opinion in relation to this head of claim, even where hydrotherapy is not already being utilised as a form of therapy. Two cases reflecting two very different scenarios where the costs of hydrotherapy were claimed are detailed below.

What is hydrotherapy?

Essentially, hydrotherapy is physiotherapy that is carried out in a pool, which is usually heated. Water provides a medium that allows almost total weightlessness, and people who are otherwise restricted in their mobility, for example if wheelchair-dependent, can experience more independent movement in water. Advocates of hydrotherapy will cite its use as the oldest form of medical treatment, with the Greeks and Romans using spas and natural hot springs to treat physical ailments.

Hydrotherapy is usually used in conjunction with other forms of physiotherapy, but, as funding is frequently not available, it is commonly overlooked in the treatment regime. Although there

appears to be no hard evidence supporting the effects of hydrotherapy, the reported benefits include reduction in blood pressure and pulse rate, improved circulation and joint mobility, pain relief, and improvement in the immune system. People who are disabled often have abnormal muscle tone, which may give rise to difficulty with movement on land as they have to work against gravity. Immersion in water removes the effects of gravity, allowing them greater freedom to move in a three-dimensional way, with less effort, in a manner that is not possible with regular physiotherapy carried out on dry land. If the individual otherwise spends the rest of their time in a wheelchair with little or no other independent movement, it is easy to see the attraction of hydrotherapy and the freedom it could potentially offer.

Hydrotherapy has the added advantage of providing a form of cardiovascular exercise, which in some cases may be the only form of exercise that the patient can undertake. Despite the lack of evidence, carers and practitioners will usually be willing to attest to their own practical experience of the beneficial effects of water-based activity on their patients.

Instructing an expert

It is important to identify a credible physiotherapy expert with sufficient expertise in commenting specifically on hydrotherapy issues. Unfortunately, there do not appear to be many practitioners with this experience. General physiotherapists will either not deal with hydrotherapy or will do so only in broad terms.

If possible, the expert should visit the claimant on a day when a hydrotherapy session is taking place, and should examine them both before and after so that the beneficial effects, particularly on joint mobility, may be documented. The expert

HYDROTHERAPY

needs to consider every aspect of treatment, starting with whether there is a suitable local pool to which the claimant has easy access. The pool should be within a reasonable distance, have disabled access and facilities if necessary, and be maintained at an appropriate temperature. If not, the expert needs to consider whether it is reasonable to claim the costs of installing a suitable hydrotherapy vessel at the claimant's dwelling, and the discussion should then focus on whether a hydrotherapy spa pool installed in the bathroom would be sufficient, or whether a traditional pool needs to be constructed. If the latter, details of the size of vessel along with any specific requirements (for example, whether a hydraulic floor should be installed to minimise manual handling) should be provided in conjunction with evidence supplied by the housing expert.

Other information that should be included in the report is the cost of equipment (including buoyancy aids, storage trolley, towels, portable chair hoist, swimming aids and changing cubicle if appropriate), maintenance costs, and the cost of training courses for carers, as well as the cost of domiciliary hydrotherapy with frequency of sessions.

The strongest evidence in support of a claim for hydrotherapy costs is from the claimant and/or their carers, in the form of witness statements attesting to the therapeutic effects it has or will have on the claimant. Medical opinion in relation to the noted beneficial effects on muscles and joints, pain relief and improvement in spatial awareness etc, will help persuade a judge that the treatment recommended goes beyond merely providing activity and pleasure for the claimant. Further helpful evidence may be submitted by way of a day-in-the-life video filmed on the day in which a hydrotherapy session takes place, to show what the treatment entails as well as the claimant's response.

The defendant's response

The defendant may reject a claim for hydrotherapy on the basis that there is no firm evidence to support such a claim, as mentioned above, and that any benefit that is gained would be marginal and temporary in any event.

Even where it is agreed by the defendant that the claimant would benefit from hydrotherapy, the main point of contention is likely to be the pool itself, with the defendant naturally arguing that

this should be provided in a local facility. While this may be appropriate in some cases, in many instances local pools are either too remote or insufficiently resourced. There is little to be gained from a hydrotherapy session if the time it takes to get to the pool (often in discomfort if the claimant does not enjoy travel) is so long as to negate the therapeutic effects of the treatment. The pool must also have the correct equipment for the specialist treatment required – a chair hoist alone may not be sufficient to suit the needs of the claimant.

Other arguments put forward by the defendant in relation to installation of facilities at the claimant's dwelling include the difficulty in finding a physiotherapist with appropriate training to attend domiciliary sessions over a long period of time; the difficulties of maintaining a domestic pool (particularly in relation to hygiene); that the costs of installing a pool are disproportionate; that the claimant is claiming for inappropriate luxuries which, but for the defendant's negligence, they would not otherwise have enjoyed (and which may incidentally benefit the rest of the claimant's family); and that the claimant would be deprived of the social element of attending a local public pool. The defendant may seek an allowance in lieu of other sporting activities that the claimant would otherwise have engaged in, but it is difficult to see that this argument would carry much weight.

Two cases specifically addressing the importance of hydrotherapy were recently settled out of court and are outlined below.

Case report 1

The claimant had suffered a birth injury and negligence had been admitted by the defendant prior to issue of proceedings. The possibility of obtaining a hydrotherapy report was only considered at a consultation with counsel after the directions order had been agreed, in which there was no provision for such a report to be obtained, and the decision was made to instruct an appropriate expert after the claimant's parents described the positive effect of hydrotherapy on him.

The hydrotherapy expert carried out a full assessment, noting the improvement in the claimant's joint mobility after the treatment session. She agreed with the claimant's parents that hydrotherapy was probably the reason why the

claimant had, unusually, maintained a symmetrical alignment and not developed any contractures. She attributed this to the claimant's ability to have a full range of movement and stretching in the water. She also noted reports that the claimant appeared more relaxed and concentrated better after a session, that he appeared more contented, slept better, vocalised more, and seemed more supple and therefore easier to dress.

The defendant would not consent to service of the report and an application came before Master Yoxall. After a strongly contested hearing, leave to rely on the report was given. Subsequently the case settled on a global basis, and although the defendant did not concede this part of the claim, the claimant's legal representatives were of the opinion that the sums claimed helped to increase the overall settlement. The claimant's parents subsequently confirmed that they intended to pay for the costs of a hydrotherapy pool following settlement as they had no doubt of the benefits for their son in terms of ongoing therapy.

Case report 2

The claimant, a 60-year old lady, underwent a right-sided below knee amputation following admission to the defendant's hospital for a total hip replacement. Although she could swim prior to her admission, it was not an activity that she pursued as her husband was unable to swim and most of their leisure time was spent together.

A hydrotherapy expert was instructed to prepare a report on the possible therapeutic effects of hydrotherapy, her opinion being that the claimant would benefit from regular sessions. She did not feel that the public leisure centre would be an appropriate venue for the treatment, but that a local private health club would provide more appropriate facilities. The defendant contended that the local leisure centre had adequate provisions, and the parties negotiated a compromise between the two positions at a round-table meeting. ■

Cases where hydrotherapy costs have been awarded include:

- *Wakeling v McDonagh & anor* [2007] EWHC 1201 (QB)
- *Lewis v Royal Shrewsbury Hospital NHS Trust* (Unreported, 29 January 2007); and
- *Burton v Kingsbury* [2007] EWHC 2091 (QB).