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London Borough of Haringey (16 012 715)

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Decision : **Upheld**

Decision date : **12 Jun 2017**

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The Ombudsman's final decision:

Summary: There was fault in the way the Council considered the questions of domestic tasks and food preparation in Ms X's social care assessment and support plan. It gave unclear and contradictory explanations of how it decided these issues. The Council has agreed to review the assessment in these two areas and clearly explain its decisions.

This may result in an increase in the support proposed. If not Ms X will have a chance to make a further complaint. This is a satisfactory remedy.

The complaint

1. Ms X complained, through her sister Ms Y, that in carrying out a review of her care and support needs the Council failed to take proper account of her need for help with domestic tasks and preparing food for a special diet. She says the Council has unfairly removed funding for these items from her care package not because her needs have changed, but because of a change in Council policy. She also says the Council has wrongly taken account of her welfare benefits in the needs assessment when this should only be considered as part of the financial assessment.

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The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, sections 26(1), 26A(1) and 34(3), as amended)
3. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

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How I considered this complaint

5. I discussed the complaint with Ms Y and considered the information she provided. I considered the information the Council provided in response to my enquiries. I had telephone discussions with two Team Managers in the Adult Social Services team. I considered relevant law and guidance on social care assessments and support. I shared my draft decision with the Council and the complainant and considered their responses.

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What I found

6. Under the Care Act 2014 councils have a duty to assess any person in their area who may be in need of care and support. The assessment will decide what the person's 'eligible needs' are. The person will have eligible needs if they meet all of the following:
 - a. They have care and support needs as a result of a physical or a mental condition.
 - b. Because of those needs, they cannot achieve two or more of the following outcomes:
 - managing and maintaining nutrition;
 - maintaining personal hygiene;
 - managing toilet needs;
 - being appropriately clothed;
 - being able to make use of the adult's home safely;
 - maintaining a habitable home environment;
 - developing and maintaining family or other personal relationships;
 - accessing and engaging in work, training, education or volunteering;
 - making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
 - carrying out any caring responsibilities the adult has for a child.
 - a. As a result, there is a significant impact on their wellbeing.
7. Where a council has determined that a person has any eligible needs, it must meet these needs.
8. Following the assessment, the council must draw up a support plan in discussion with the individual and any carer, which addresses the identified needs. The care and support

plan should consider what support the person has, what they want to achieve, what they can do by themselves or with existing support, and what care and support may be available in the local area.

9. Councils calculate the funding to meet these needs, which is the personal budget. The personal budget must be sufficient to meet the person's care and support needs.
10. The personal budget can be used towards services commissioned by the council or given as a direct payment. Direct payments are payments made to individuals who ask for one to meet some or all of their eligible care and support needs.
11. The Care and Support Statutory Guidance says councils may not need to arrange provision to meet eligible needs where it is satisfied they are being met by alternative means such as a carer or another organisation.
12. In deciding how to meet needs, a council may take reasonable account of its financial position. But it "should not set arbitrary upper limits on the costs it is willing to pay to meet need through certain routes".

What happened

13. Ms X is in her fifties and has been diagnosed with ulcerative colitis and a severe form of Chronic Fatigue Syndrome. She receives Disability Living Allowance (DLA) middle rate care component and higher rate mobility component. Her sister, Ms Y, has Power of Attorney for her and supports her in managing her affairs.
14. Until 2010 Ms X was living with her elderly parents in another council area and was receiving a care package from that council. She had a carer three times a day to help her with personal care tasks such as washing and dressing, to prepare her food and to carry out domestic tasks including cleaning and laundry. It included a 45-minute session each day to prepare "a specially cooked meal due to her colitis problems" and clean the kitchen afterwards. The Council says the package amounted to 18 hours a week, although Ms Y has provided a care plan showing it was 22.25 hours a week.
15. In 2010 Ms X moved out of her parents' home to her own accommodation in Haringey. Before the move Ms Y asked the Council on her sister's behalf for an assessment of Ms X's care needs so that suitable care would be in place when she moved.
16. After Ms Y completed a Supported Self Assessment Questionnaire with her sister, the Council approved a support plan to cover care to be provided four times a day for a total of 31.5 hours a week. The Council agreed a Personal Budget to be paid by way of Direct Payments. In the assessment Ms X explained that she needed help with personal care tasks and could not do her own domestic tasks because she suffers from muscle pain, fatigue and weakness. She said she also had neurological symptoms and was acutely sensitive to noise and light. She described her need for a specialised diet to keep her

ulcerative colitis under control. This involved eating a restricted range of foods prepared in a particular way.

17. At the time the Council approved the support plan it was aware Ms X was considering arranging to have someone come to live with her. This would be either someone under the 'homeshare' scheme who would live there rent free in exchange for companionship and support, or a live-in carer. She decided on a homesharer. Ms Y made the arrangements and used £130 per month from her sister's Personal Budget to pay the homeshare fee. The rest was spent on visiting carers.
18. In February 2015 the Council carried out a review of Ms X's care needs. It decided the existing care package was meeting her needs and should continue at the same level with the same Personal Budget.
19. In September 2016 the Council carried out another review of Ms X's care needs. Ms Y was present at the review which took place at Ms X's home, and provided information on her behalf. The review document notes that Ms X was receiving 30 hours' care a week as well as up to 10 hours a week of 'light touch' support in the evenings and at night from the homesharer. At the beginning of the review the social worker explained that there had been changes to funding thresholds and eligibility criteria since Ms X had last had an assessment.
20. As a result of the review the Council decided that Ms X had needs under several of the Care Act outcomes including 'managing and maintaining nutrition' and 'maintaining a habitable home environment'. The support plan dated 26 September 2016 provided for 24.5 hours per week, reduced from 31.5, as follows:
 - 1.5 hours a day in the morning for 'support with personal care, grooming, medication support and light meal prep'
 - 30 minutes a day lunchtime support - 'preparation of light meal and support with medication, if required, personal care if required'
 - 30 minutes a day tea time support – 'preparation of light meal and support with medication, if required, personal care if required'
 - 45 minutes a day evening support 'for assisting with personal care if required, medication support if required and light meal prep'
 - 2 hours a week for support with shopping on-line, correspondence, telephone calls and maintaining contacts with the family.
21. In addition the Council agreed to continue to fund the homeshare provision. The reviewing social worker considered this benefitted Ms X particularly by providing emotional support given her past problems with depression.
22. Regarding nutrition, the assessment and support plan said Ms X "requires daily support

with meal preparation due to her poor health" in order to "maintain healthy daily nutritional intake and appropriate hydration". The Council said the carers funded by Direct Payments would provide light meal preparation. But it said:

"DLA benefit would now need to be utilised to purchase support with practical homecare support, shopping, as well as fresh meal prep daily – lengthy periods required to prepare gluten free, specific organic meals can no longer be funded via DP provision. Social care provision would only be able to support light meal preparation and feeding if required."

23. Under 'maintaining a habitable home environment' the assessment and support plan said Ms X "requires support with practical homecare requirements as she is too weak to do so herself". But it said:

"it has been explained to [Ms Y] that DLA benefit will now need to be utilised to purchase support with practical homecare support."

24. Ms Y made a complaint to the Council in October 2016 about the proposed cut of 25% in her sister's personal budget, which she said would have a detrimental effect on her health. Her main arguments were that:

- The assessment had failed to take proper account of her sister's need for a special diet. She said without this the symptoms of her ulcerative colitis would be severely exacerbated and her health would deteriorate.
- If the Council accepted that Ms X had an eligible need for food preparation and help with housework it should meet these needs under the care package and not expect Ms X to fund them through her DLA.
- The Council should not have a blanket policy of withdrawing funding from a particular area of need.

25. The Council reviewed the proposed care package and wrote back to Ms Y to say it considered it was adequate to meet Ms X's needs. If she needed any additional support she could use her DLA.

26. Ms Y was not satisfied with the response as she felt it did not address the points she had raised. She asked the Council to take her complaint to the next stage. After a telephone discussion with Ms Y the Council wrote to her in November 2016. It confirmed that the Council would not reduce Ms X's personal budget while the complaint was still being considered. It said:

"in regard to funding for meal preparation and domestic tasks (laundry and housework)...this service is no longer provided for in one's package of care...Unfortunately your sister's special

dietary and domestic needs will need to be managed from her benefit as a Disability Related Expense.”

27. The Council offered to carry out another review of Ms X’s care needs which it said might result in no change, or an increase or decrease in the care package. When the Council confirmed that such a review would still be based on the same policy framework as the previous review, Ms Y declined. In further correspondence the Council confirmed there was no written policy to exclude support for domestic tasks or cooking for a special diet. After trying to obtain more detail about the reasons for the decision in her sister’s case, Ms Y complained to the Ombudsman.

Council’s response

28. The Council confirmed it had not decided that Ms X’s needs had changed. Rather it considered her needs could be met differently and with fewer hours of support. It said previous care packages had not provided a breakdown of how the 30 hours in the care package or the 10 hours of ‘light touch’ support from the homesharer would be used. It considered that cleaning and help with preparing light meals could be done within the hours offered.
29. When asked for evidence and further explanation of the decision to stop funding complex meal preparation and help with laundry and housework, the Council repeated that long periods needed to prepare special meals “can no longer be funded via DP provision”. It said when the service identifies the need for nutrition this can be provided in various ways for example meals on wheels or delivery of ready meals.
30. The Team Manager explained the Council’s position further in a telephone interview. She confirmed the Council does not have a policy on excluding complex meal preparation and cleaning tasks from provision funded by Direct Payments, and it had not changed its position on these aspects of care. So it was not correct to say there had been a change of policy or practice.
31. She said the Council had not accepted Ms X had a medical need for the particular diet she followed. Although there was a medical diagnosis, the Council did not have evidence from a GP or consultant linking her medical condition with the particular diet she says she needs. Also the Council considered there were enough hours in the support plan to meet Ms X’s needs for food preparation. She said there were different ways of managing time creatively, for example food could be cooked in bulk and frozen so that the carer only has to re-heat and serve it.
32. The Team Manager confirmed that the Council does consider help with practical domestic tasks an eligible need for Ms X. But she said it considered the need could be

partially met from the homesharer's 10 hours 'light touch support' and that overall there was enough time allowed for housework. For example carers will usually tidy up during their visits. She acknowledged that domestic tasks are not listed in the breakdown of support to be provided in the plan and the plan should have spelt this out.

Analysis – is there fault causing injustice?

33. The Council is entitled to come to a view, based on its assessment, about what Ms X's eligible needs are and how much time is needed to support those needs. But if the Council considers her needs are eligible for support it must meet them, unless they are already being met by someone else. In this case it is not clear what the Council considers the eligible needs are and why it will not fund support for certain needs. The Council has given confusing and sometimes contradictory explanations. The two key areas are domestic tasks and food preparation.
34. It would be wrong for the Council to have a blanket policy or standard practice ruling out funding provision for these tasks. Despite indicating to Ms Y and the Ombudsman in its written responses that it has such a policy, the Council has now confirmed it does not.

Domestic tasks

35. The Council has made it clear it considers that Ms X needs help with cleaning and domestic tasks because of her disability. As this is an eligible need the Council has a duty to meet it. It has given two contradictory explanations for its approach to this need.
36. On the one hand the assessment and support plan say Ms X will have to meet the need herself by using her disability benefits to pay for the service. I can see nothing in the Care Act 2014 or the statutory guidance which allows the Council to require a person to use their benefits this way. As the Council has not shown what authority it is relying on I find that its decision on this point is flawed.
37. On the other hand the Council has told me the need for help with domestic tasks can be met from the hours and Personal Budget proposed. If that is its view I consider it is at fault in failing to include details of these tasks in the support plan and say how the need can be met.

Food preparation

38. The Council has not previously said explicitly that it does not consider Ms X has a medical need for a special diet. If it found after proper consideration that complex food preparation was not an eligible need, it would not be at fault in suggesting that Ms X could fund support for this extra need from her DLA. However Ms Y says she offered the

reviewing officer a copy of a medical report about her sister's need for her special diet but the officer said she did not need to see it. If this is the case, then I would consider the Council to be at fault in failing to take proper account of the available evidence before reaching its decision.

39. On the other hand, if the Council considers the existing care package is sufficient to allow for complex food preparation by managing the time differently, as the Team Manager suggests, it should make this clear.

Injustice

40. The Council has not reduced Ms X's budget yet so she has not experienced any loss of support. However in my view she and her sister have suffered an injustice. The varying explanations the Council has provided have been confusing for them and have not allowed them to understand how the Council has reached its decision to reduce the proposed funding for the care package.

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Agreed action

41. The Council has agreed to review the two contested areas of the assessment as follows:
- allow Ms Y the opportunity to provide the medical evidence she says she has relating to Ms X's diet, decide whether food preparation for her special diet is an eligible need, and if so explain clearly how it proposes to meet the need;
 - confirm it considers help with domestic tasks to be an eligible need and explain clearly how this need will be met, taking account of any evidence the complainant provides.
42. If this reconsideration results in a recommendation to increase the proposed care package, the Council will amend the proposed support plan and personal budget to take account of the increase. If not, Ms X will have the opportunity to either accept the proposed support plan or challenge the decision through the complaints procedure.

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Final decision

43. I have found fault in the way the Council reached its decision to reduce Ms X's personal budget in relation to domestic tasks and preparing food. I am satisfied with the action it has agreed to take and so I have completed my investigation.

Investigator's decision on behalf of the Ombudsman

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Investigator's decision on behalf of the Ombudsman

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