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On the procedure for the rehabilitation and habilitation of persons with disabilities

Sobre el procedimiento de rehabilitación y habilitación de personas con discapacidad

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RESUMEN:

Las personas discapacitadas requieren una atención especial por parte de los trabajadores sociales. Los servicios sociales brindan a este grupo de personas la oportunidad de someterse a un conjunto de medidas destinadas a mejorar su salud. El desarrollo de un programa individual para la rehabilitación social de una persona discapacitada incluye las siguientes etapas: realización de un diagnóstico experto en rehabilitación del estatus social, evaluación del potencial de rehabilitación, identificación de actividades y servicios destinados a ampliar la esfera de vida de una persona discapacitada. La implementación de servicios para la rehabilitación social de personas discapacitadas debe tener como objetivo el máximo efecto con el mínimo de tiempo dedicado a su logro. La responsabilidad de la implementación de un programa individual recae en el estado o en una organización con licencia para implementar medidas complejas. Su interacción se rige por las normas del derecho civil, ya que entran en relaciones legales de propiedad. La implementación de medidas compensatorias se está convirtiendo en el principal tema discutido por los sujetos de relaciones civiles. En este sentido, en la etapa actual se torna importante formular y resolver el problema asociado a la implementación de un programa individual de rehabilitación y habilitación de personas con discapacidad. Al mismo tiempo, un programa individual de rehabilitación y habilitación es un sistema de medidas de rehabilitación destinadas a la formación, restauración y compensación de las funciones y capacidades corporales dañadas de una persona discapacitada. Un enfoque de rehabilitación integral incluye la articulación entre servicios y programas en los sectores de salud, empleo, educación y social.

PALABRAS CLAVE: protección social, seguridad social, rehabilitación, habilitación, persona discapacitada, Caja de Seguro Social.

ABSTRACT:

Disabled people require special attention from social workers. Social services provide this group of people with the opportunity to undergo a set of measures which allow them to improve their health. The development of an individual program for the social rehabilitation of a disabled person includes the following stages: conducting a rehabilitation expert diagnosis of social status, assessing the rehabilitation potential, identifying activities and services aimed at expanding the sphere of life of a disabled person. The implementation of services for the social rehabilitation of disabled people should be obtained at maximum effect with the shortest time to achieve it. Responsibility for the achievement of an individual program lies in the state or an organization licensed to implement complex measures. Their interaction is governed by the norms of civil law, as they enter into property legal relations. The fulfillment of compensatory measures is becoming the main issue discussed by the subjects of civil relations. In this regard, the main objective of the study is to accurately formulate and solve the problems associated with the implementation of an individual program for the rehabilitation and habilitation of disabled people. To accomplish that, we seek out to use the individual program of rehabilitation and as a practical and reliable strategy to facilitate participation as it aims to improve health, restore, and maintain long-term functioning at the formation, restoration, compensation of the impaired body functions, and abilities of a disabled person. A comprehensive rehabilitation approach includes articulation among services and programs in health, employment, education, and social sectors.

KEYWORDS: social protection, social security, rehabilitation, habilitation, disabled person, Social Insurance Fund.

INTRODUCTION

“Habilitation” refers to a process aimed at helping people gain certain new skills, abilities, and knowledge. “Rehabilitation” refers to re-gaining skills, abilities or knowledge that may have been lost or compromised as a result of acquiring a disability, or due to a change in one's disability or circumstances¹⁻³.

People with disabilities as a large social group are part of the body of our society and have the right to benefit from all the facilities of society, although due to various problems their presence in various social environments is low. In today's world, especially in developed countries, significant measures have been taken regarding the disabled in terms of laws, regulations and culture²⁻⁴.

Federal Law No. 442-FZ of December 28, 2013 "On the Basics of Social Services for Citizens in the Russian Federation" defines the main directions of rehabilitation of disabled people. They include:

1. medical rehabilitation, reconstructive surgery, prosthetics and orthotics, sanatorium treatment;
2. vocational guidance, general and vocational education, vocational training, employment assistance, industrial adaptation;
3. socio-environmental, socio-pedagogical, socio-psychological, and socio-cultural rehabilitation;
4. social and personal adaptation;
5. physical culture and recreational activities, sports⁵.

It should first be pointed out that interdepartmental interaction is considered by experts not only as a mechanism for coordinating the activities of various departments and institutions but also as the basis for effective comprehensive rehabilitation, as a mechanism for ensuring consistency in the interaction of various types of rehabilitation.

According to Article 11 of the Federal Law No. 442-FZ of December 28, 2013 "On the Basics of Social Services for Citizens in the Russian Federation", the federal executive body responsible for the development and organization of state policy, legal regulation in the field of social protection of the population, determines the procedure for implementing individual rehabilitation and habilitation program (hereinafter IRHP)².

The document states that IRHP is mandatory for implementation by the relevant state authorities, local authorities, as well as organizations, regardless of organizational and legal forms and forms of ownership. It should be noted that a disabled person receives services provided by government agencies free of charge. The Bureau of Medical and Social Expertise provide a list of institutions that are ready to implement the rehabilitation program. But a disabled person also has the opportunity to independently select an

organization for its implementation. The level and quality of service will also depend on the client of social work. And in the process of solving organizational issues, a disabled person may face difficulties.

Often, the bodies of medical and social examination call the executors, not specific institutions, but organizations of a certain type. Some of them are social service centers or schools that solve problems of learning and social adaptation ³. The task of a disabled person is to search for these institutions, send registered letters by mail to obtain information about the possibility of providing services on their basis within the framework of IRHP. Thus, the client is obliged to wait for consent or refusal, wasting his time resources.

METHODS

As mentioned earlier in this study, the main purpose of the study is to formulate and address the issues related to the implementation of an individual program for the rehabilitation and habilitation of disabled people, in order to empower them and raise their social activities.

The research is based on the method of analysis of the current Russian legislation and law enforcement practice and existing European (world) standards for legal unification ⁴. Methods of legal modeling and forecasting make it possible to determine the need for amendments to the existing Russian regulations, as well as the need to adjust judicial practice ⁵. Through the use of modeling and forecasting methods, the consequences of such changes and adjustments can be established with a sufficient degree of reliability, as well as it is revealed how, ultimately, Russian law enforcement practice will be close to the existing European (world) standards ⁶. The legal sociological method provides for the assessment of social problems from a legal position, from the position of the legislator and law enforcement office ⁷. The method of interpretation complements the comparative legal analysis in the study, making it possible to understand and compare Russian and European (world) legal standards ⁸. The use of various methods made it possible to formulate the main theoretical conclusions and make their proposals on the investigated sphere of social relations ⁹.

RESULTS AND DISCUSSION

Following the federal list of rehabilitation measures, a disabled person is provided with technical means and services for free. Such technical means include, for example, prostheses and orthoses, hearing and voice-forming aids ¹⁰.

The rehabilitation measures provided free of charge and the provided technical means may not fully satisfy the client's need, therefore the disabled person or organizations can pay for IRHP at their will. So another drawback in the implementation of the program is the lack, the impossibility of operating and using technical means. A disabled person is forced to independently decide on providing himself with a specific technical means of rehabilitation or a type of rehabilitation, including wheelchairs, prosthetic and orthopedic products, printed publications with special fonts, sound amplifying equipment, alarms, video materials with subtitles or sign language interpretation, and other similar means.

If a disabled person has acquired an appropriate technical means of rehabilitation and paid for the service at his own expense, he is compensated in the amount of the cost of the acquired technical means of rehabilitation and the rendered service, but not more than the cost of the corresponding technical means of rehabilitation and service. The procedure for the payment of such compensation, including the procedure for determining its amount and the procedure for informing citizens about the amount of this compensation, is determined by the federal executive body in charge of developing and implementing state policy and legal regulation in the field of social protection of the population.

Refusal of a disabled person from an individual rehabilitation or habilitation program as a whole or the implementation of its parts frees the relevant state authorities, local authorities, and organizations, regardless of organizational and legal forms and forms of ownership, from responsibility for its implementation ¹¹.

A disabled person may not need rehabilitation measures from these institutions but suffer financial difficulties. Unfortunately, the free base of social services does not offer monetary compensation. The following conditions for compensation have been established:

1. The purchased technical means of rehabilitation is subject to IRHP registration;
2. The regional branch of the Social Insurance Fund determines the amount of compensation;
3. The price of the purchased technical means of rehabilitation may exceed the amount of compensation, but this difference will have to be paid at the patient expense.

Therefore, the free basis of the IRHP is documented only. In reality, the client of a social institution will have to incur monetary costs.

The right to reimbursement for the implementation of IRHP is given only by documented contractual relations with a real contractor of IRHP, supported by proof of the fact of payment for rehabilitation funds and services. A disabled person must provide evidence that the contractor has legally assisted and provided the technical means of rehabilitation or services that meet legal requirements. Copies of the contractor's right supporting documents are various quality certificates, licenses for activities in certain areas, which confirm the possibility and legality of the contractor's activities for the proper execution of IRHP.

Compensations are made by the "Procedure for payment of compensation for a technical means of rehabilitation acquired independently by a person with a disability and for the service provided, including the procedure for determining its size and the procedure for informing citizens about the amount of this compensation" (approved by order of the Ministry of Health and Social Development of the Russian Federation No.57n of January 31, 2011). The amount of compensation includes payment for banking services to transfer compensation funds ¹².

The amount of compensation is determined by the authorized body based on the results of the most recent procurement of the corresponding technical means of rehabilitation. If the authorized body does not purchase technical means of rehabilitation or the procurement procedure fails to take place, the amount of compensation is determined based on the results of the most recent procurement of technical means of rehabilitation.

If organizations that provide paid rehabilitation services prefer to receive money without formalizing a relationship and do not pay for training through the accounting department, do not issue receipts for payment, the issue of compensation for the costs incurred by the social security authorities cannot be considered.

The interaction of a disabled person eligible for legal compensation for expenses incurred in the process of IRHP, and the FSS authorities or other authorized body should be accurate, clear, and mutually correct. Compensation is paid based on an application by a person with a disability or his legal representative for reimbursement of expenses. Together with the application, copies of documents confirming the costs of the independent acquisition of technical means of rehabilitation and the provision of services by a person with a disability at their own expense, as well as the presentation of the following copies of documents to them are attached:

- an identity document;
- an individual rehabilitation program for the disabled;
- insurance certificate of compulsory pension insurance containing the individual insurance account number (SNILS);
- copies of receipts for payment for services, contracts for the provision of services;
- copies of deeds of the executor.

Payment of compensation is carried out by the authorized body within a month from the date of the relevant decision by a postal order or transfer of funds to an account opened by a disabled person in a credit institution.

The client may face rejection from the higher authorities of the Social Insurance Fund. Refusal to pay compensation by the higher authorities completes the stage of the interaction of the disabled person or his representative with the FSS voluntarily. The next step to compensation for the costs of IRHP may be to apply to the court with a complaint about the inaction of the bodies of the social insurance fund and the requirement to compensate the expenses incurred by the disabled person or his representatives on a legal basis. An individual rehabilitation or habilitation program is recommendatory for a disabled person; he or she has the right to refuse some type, form, and scope of rehabilitation measures, as well as the implementation of the program as a whole. The mechanism for implementing the IRHP has already been worked out, but in practice, obstacles to the individual rehabilitation of a person with a disability arise at every step - from the moment the IRHP is drawn up to the procedure for its implementation, including those related to compensation for the costs of rehabilitation of disabled people. Issues related to the implementation of IRHP are resolved in the pre-trial and trial order.

SUMMARY

Thus, a disabled person who undergoes an individual program within the framework of social work becomes a participant in civil relations. He interacts with such subjects of civil law as the state and legal entities that carry out the implementation and are responsible for the implementation of a complex of rehabilitation measures. Based on contractual agreements, each party agrees and determines its conditions for fulfilling obligations. In this procedure, it is necessary to adhere to the written form of the transactions being made and establish the exact level of compensation costs.

At the present stage, civil relations between performers and recipients of an individual rehabilitation and habilitation program are not sufficiently regulated by Russian legislation. Regulatory documents such as the Federal Law "On the Basics of Social Services for the Population" No. 442-FZ of December 28, 2013, and the Federal Law "On Social Protection of Disabled People" No. 181-FZ of November 24, 1995, do not include rules on the procedure for registration of contracts. Thus, a client of social services, in this case, a disabled person is not able to count on protecting his freedoms and receiving compensation on legal grounds. For these reasons, the issue of reforming and supplementing the regulatory framework of domestic legislation is relevant.

CONCLUSIONS

In our opinion, the Ministry of Health of Russia should consider the development of an Order "On the approval of the procedure for concluding agreements within the framework of the program of individual rehabilitation and habilitation of disabled people". Its articles will contain a list of alternative forms of services rendered to a disabled person, terms of fulfillment of contractual obligations, rights, and obligations of both parties. This document can also note the ways of resolving disputes in the presence of claims and elaborate the procedure for compensation payments.

Thus, if the regulated acts consider the issue of drawing up written agreements, the social work client will exclude the infringement of his rights by the contractor.

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