

Client Rights Office

Department of Health Services
Division of Mental Health & Substance Abuse Services

<http://dhs.wisconsin.gov/clientrights/index.htm>

Community Programs Training 2012

RESTITUTION from CLIENTS in RESIDENTIAL SETTINGS CLIENT RIGHTS IMPLICATIONS

House “rules” can generally include the expectation that clients **respect property** of peers or the facility. However, it is very problematic for house rules or a placement agreement to require restitution, in an across-the-board manner (one size fits all), for damages to items by clients who live in that setting.

In reviewing when or in what circumstances use of **restitution** may be appropriate, it is imperative that the following factors be comprehensively addressed:

- 1) Is there a **history** of the client acting out in ways that cause damage to property? If so, then there should be an **individualized** “treatment plan” (or behavior support plan) in place that spells out how staff are to proactively work with the client to promote and reinforce **positive behavior**, and how staff will respond or intervene in situations where there is a potential for damage. The plan should note potentially successful or effective approaches and interaction styles. It is of great importance to ensure **staff consistency** and that all staff “work off the same page”.
- 2) Is the client able to make a **meaningful connection** between the behavior and/or damage caused, and the potential consequence of restitution? Or, are there indications the client was not in control of the behaviors when they were being displayed or made no connection to possible consequences? This involves the issue of **competency** or **capacity** of the individual. **Individualized assessment** is needed to document that restitution is warranted and meaningful and will be effective in conditioning behaviors and deterring damage. If a client is psychotic or otherwise does not have the capacity to make the connection, then requiring restitution may be arbitrary or unwarranted.
- 3) Has the service provider taken **reasonable measures** to protect the property against any known or **foreseeable risks**? If a client has a history of targeting items such as radios or TVs, then those appliances need to be secured in ways that would prevent them from being toppled, thrown, or damaged. When it is quite foreseeable that a certain harm might occur, and the provider does not effectively guard against it (e.g., by providing sufficient staffing or other environmental safeguards), then it may be the **provider’s responsibility** and **not the client’s**.

- 4) If there is **damage**, there needs to be an assessment after the incident to review whether it is fair and reasonable to require restitution from the client in that circumstance. Is it **more probable than not** that the client in fact did the damage? What is the client's version of events, and his/her credibility? Was the client solely culpable or, e.g., provoked by a peer who should perhaps be held partially responsible due to the provocative behavior? Are there other **mitigating factors** that should be taken into account, e.g., mental instability due to medication changes? Did staff recognize the precursors to the behavior and intervene proactively (and reactively), in accordance with the client's treatment plan? Depending upon the answers to these questions, it may be an arbitrary decision and/or inappropriate to impose restitution in some instances, even when damage occurred. In other words, it may not be reasonable to make the client pay if staff did not properly fulfill their roles and treatment responsibilities to the client. **Documentation** regarding consideration of the above factors is necessary to show there was not a potentially arbitrary decision and that prompt treatment efforts were attempted or occurred. This process should, as much as possible, be a **team assessment** and decision.
- 5) The **amount of restitution** imposed needs to be determined on a **case-by-case** basis, both in terms of amount and a reasonable payment plan. Requiring full replacement cost is not usually valid, due to the depreciated value of the property. Depreciation formulas (taking into account the age/ condition of the item damaged) should be utilized. A maximum amount (or percentage) of a client's funds that could be applied to restitution should be established [because the legitimate treatment goal of a restitution plan is to facilitate learning, not to "make another person whole", or for the provider to act as a "Small Claims Court"]. In no circumstances can all, or nearly all, of a client's earnings or monthly personal allowance be used for restitution. Nor should the payment of restitution be prioritized in a way that precludes access to community, recreational, and leisure activities.

The primary client rights [per § 51.61(1), Stats. and DHS 94, Wis. Admin. Rules] that are applicable when restitution is involved are:

- right to **prompt and adequate treatment** appropriate for one's condition
- right (of client/guardian) to **participate in the planning of treatment & care**
- right to be **free from arbitrary decisions**
- right to the **least restrictive conditions**
- right to access / use one's **personal funds** (and to not have funds taken without due process).
- **federal regulations** and guidelines applicable to clients served via **CIP funds**

[NOTE: This summary **does not address voluntary restitution** which may occur in some instances, guardian-initiated or guardian-paid restitution, or the option of going to "Small Claims Court" where action could be initiated by an aggrieved person.]