

## **What is the True Earning Capacity of Your Client?**

**By: Edmond Provder, CRC, CLCP, D-ABVE, *Occupational Assessment Services Inc.***

Many personal injury attorneys overlook a significant amount of case damages by not considering the injured person's pre-injury earning capacity. The usual method is to look at the individual's actual earnings and use this figure as the baseline to determine the person's earning capacity. Vocational experts work closely with attorneys to assist them in documenting these damages in the case of severely injured persons by using a combination of a functional capacity assessment and methods to objectively measure a disabled person's ability to perform daily activities.

Earning capacity is defined as what a person is able to earn, expected earnings is expected to earn, and actual earnings are what a person actually earned. (Horner & Sleznick, 1999).

Several factors are considered during a vocational evaluation to determine the plaintiff's loss of earning capacity. Earning capacity considers the ability of an individual to select an occupation they are qualified to perform, or will be qualified to perform in the future. The person's ability to earn money is considered their earning capacity.

In order to determine the injured person's pre-injury earning capacity, consideration is made regarding such factors as the ability to apply previously learned skills, cognition, medical prognosis, future career prospects given the injured person's vocational capacity, pre-existing and acquired vocational handicaps, work motivation, and demonstrated earnings history.

The classic example is the person who became seriously injured while working as a Fast Food Worker at McDonald's. However, the individual was in their second year of medical school at the time of the accident. Is their pre-injury earning capacity the minimum wage of a Fast Food Worker or of a Physician? Obviously, as a Physician.

A recent case involved Ms. Clark, age 30, who was a Self-Employed Controller/Bookkeeper working in New Jersey. She had just started her business and had earnings of \$24,066 the year before her accident. The vocational expert reviewed her background and reached a vocational opinion that Ms. Clark's pre-injury earning capacity was best represented by the average earnings of a Bookkeeper in her County which were \$52,900 per annum. This determination resulted in a total loss of earnings over her work life of \$2,221,800 including fringe benefits.

In conclusion, it is important for the Vocational Expert to consider all factors including the plaintiff's education, occupation, and past earnings to determine earning capacity. Such a determination can greatly increase the case value.

Occupational Assessment Services has been involved as Vocational Experts in some of the largest verdicts in the United States including Escobar vs the State of New Jersey which received a verdict of \$166,000,000 and Verni vs Armark which received a \$105,000,000 verdict. With the use of OAS Life Care Plan Charts, these large verdicts may not have been achieved.

Determine the Worth of a Case! For over 44 years, Occupational Assessment Services has been providing Vocational & Life Care Planning Expert Services for Personal Injury Cases. Through a medical record review, vocational interview, vocational testing and labor market research, we assist attorneys in documenting their case damages.

Occupational Assessment Services is a nationwide leader in vocational evaluations and life care plans. To see how OAS Life Care Planners/Vocational Experts can assist you in documenting the damages in your Personal Injury cases, consult <http://www.oasinc.org> or Call 800-292-1919 for a proposal containing the expert's professional qualifications, fee schedule, and a sample report.

About the Author: Edmond Provder, CRC, CLCP, D-ABVE, Occupational Assessment Services Inc.

Edmond Provder is a certified rehabilitation counselor, certified life care planner, Diplomate of the American Board of Vocational Experts, and is credentialed by the American Board of Vocational Experts, the Commission on Rehabilitation Counselor Certification and the International Academy of Life Care Planners. In his extensive career, Mr. Provder has evaluated the vocational and employability potential of, over six thousand individuals. He also served as a Vocational Expert for the Social Security Administration for nearly a decade providing impartial vocational testimonies in thousands of Social Security Disability Hearings and has provided expert witness testimonies in hundreds of cases throughout the country. In addition, Mr. Provder has developed and administered vocational and rehabilitation programs, including vocational evaluation testing centers and sheltered workshops for numerous organizations.