



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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OFFICE OF  
CHIEF COUNSEL

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The Honorable Edward Markey  
Member, U.S. House of Representatives  
5 High Street, Suite 101  
Medford, MA 02155

Dear Congressman Markey:

This letter responds to your inquiry dated December 10, 2008, on behalf of your constituent, . asked about the deductibility of expenses paid to care for her mother, who is in an assisted care program because she suffers from Alzheimer's disease.

As a general rule, taxpayers may not deduct personal, family, or living expenses (section 262(a) of the Internal Revenue Code (the Code)). However, an exception allows taxpayers to deduct expenses that they pay for medical care of the taxpayer, the taxpayer's spouse, or the taxpayer's dependent, subject to certain limitations, if the expenses are not covered by insurance (section 213(a) of the Code). For purposes of this deduction, medical care expenses include amounts paid for the treatment or mitigation of a mental illness and amounts paid for qualified long-term care services (section 213(d)(1) of the Code).

Qualified long-term care services are certain services that a chronically ill individual requires, and that a licensed health care practitioner prescribes under a plan of care (section 7702B(c)(1) of the Code). An individual is chronically ill if the individual meets one of two "triggers." The first trigger is the inability to perform at least two daily living activities without substantial assistance from another individual for at least 90 days. Daily living activities include eating, toileting, transferring, bathing, dressing, and continence (section 7702B(c)(2)(B) of the Code). The second trigger is a severe cognitive impairment that requires substantial supervision to protect the individual from threats to health and safety (section 7702B(c)(2)(A) of the Code).

asked what level of assistance with daily living activities is required to meet the

first of the two triggers—the inability to perform at least two daily living activities without substantial assistance from another individual. In Notice 97-31, 1997-1 C.B. 417, we define “substantial assistance” as either “hands-on assistance” or “standby assistance.” Hands-on assistance means the physical assistance of another person without which the individual could not perform the activity. Standby assistance means the presence of another person within arm’s reach of the individual that is necessary to prevent, by physical intervention, injury to the individual while the individual is performing the activity (such as being ready to catch the individual if the individual falls while getting into or out of the bathtub or shower as part of bathing, or being ready to remove food from the individual’s throat if the individual chokes while eating).

Notice 97-31 also provides guidance about the second trigger—a severe cognitive impairment that requires substantial supervision to protect the individual from threats to health and safety. The notice defines a “severe cognitive impairment” as a loss or deterioration in intellectual capacity that is comparable to (and includes) Alzheimer’s disease and similar forms of irreversible dementia, and is measured by clinical evidence and standardized tests that reliably measure impairment in the individual’s:

- Short-term or long-term memory,
- Orientation as to people, places or time, and
- Deductive or abstract reasoning.

“Substantial supervision” means continual supervision (which may include cuing by verbal prompting, gestures, or other demonstrations) by another person that is necessary to protect the severely cognitively impaired individual from threats to his or her health or safety (such as may result from wandering).

also asked whether meals provided with long-term care services are deductible medical care expenses. If an individual is in a hospital or another institution because of a mental illness, the meals and lodging furnished as a necessary incident to medical care are considered medical care expenses (section 1.213-1(e)(1)(v) of the Income Tax Regulations (the regulations)). This regulation applies to individuals who must be in the facility because of a mental illness that makes it unsafe for them to be left alone (section 1.213-1(e)(1)(v)(a) of the regulations). However, if the principal reason for being in the facility is based on personal or family considerations, rather than the need for medical care, the cost of the meals and lodging is not a medical care expense. Only the cost of the medical care itself would be deductible (section 1.213-1(e)(1)(v)(b) of the regulations). Thus, expenses for meals and lodging that are non-deductible personal expenses at the onset of a mental illness may be deductible medical expenses after the illness has progressed. For example, expenses for meals and lodging at a minimal-care assisted living facility are non-deductible personal expenses. However, expenses for meals and lodging in a constant-care nursing home may be deductible medical care expenses if the meals and lodging are furnished as a necessary incident to medical care.

I hope this information is helpful. If you have any questions, please contact  
or me at .

Sincerely,

Kimberly L. Koch  
Senior Technician Reviewer, Branch 2  
(Income Tax & Accounting)