DECISION-MAKING AND FUNCTIONAL ASSESSMENT: CRITERIA FOR LEGAL IMPAIRMENT A MULTI-DISCIPLINARY TOOL

PPS 10610
Jan 2013

NAME:		DATE:	
APS Social worker:		Completed by:	

*To enter Name, Date, etc., double click on the Name blank on page 1. To return to main document, double click on document, below.

Purpose

This document was developed to assist you in the often difficult task of deciding whether a person needs a guardian and/or conservator to help him or her maintain a better quality of life. The assessment instrument is not a test but is a required Department for Children and Families(DCF) form. It is an informal tool which shall be used when gathering information about a person's capacity of self-care.

Determining Functional Ability

The assessment tool should help you weigh the quality and the quantity of information received in the process of trying to protect the health and welfare of the person, in need. Even after you use this assessment tool, you may still be faced with the decision about whether to interrupt the civil rights and the legal autonomy of another person through the recommendation that he or she have a guardian or conservator appointed. The aim of this assessment instrument is to help you make such a decision as carefully and as confidently as possible. It is important to meet with the person more than once to properly determine functional ability.

Goal of Guardianship or Conservatorship

Guardianship and conservatorship is an attempt by the state to provide a way to help and protect a person. when that person is incapable of self-care or of acting in his or her own best interest. A guardianship or conservatorship, while intended to be helpful, may place the most severe restrictions on a person's freedoms that a court can impose. A guardianship or conservatorship should be used only as a method of last resort and be considered only after all other lesser restrictive alternatives have been explored.

Alternatives to Guardianship or Conservatorship

These alternatives may include offering informal community intervention through family, friends, or volunteers with help in such things as shopping for food or providing banking assistance in paying bills. Professional assistance can be found through agencies offering social services, case management and home and community based services. Alternative help with financial affairs can be obtained through Social Security representative payeeships, durable powers of attorney, voluntary conservatorships and, durable power of attorney for health care decisions. The giving of durable powers of attorney and voluntary conservatorships requires that the person involved have capacity at the time he or she signs such agreements.

For Additional Information

The assessment tool was originally created by the Kansas Social and Rehabilitation Services Guardianship Task Force in 1991. It has been revised to incorporate changes to the guardianship and conservatorship statutes effective July 2002. It is not copyrighted and you may share it with others. If you are an DCF social worker and have questions about the use of this tool, consult your supervisor or the DCF attorney in your region.

DECISION-MAKING AND FUNCTIONAL ASSESSMENT: CRITERIA FOR LEGAL IMPAIRMENT A MULTI-DISCIPLINARY TOOL

NAME:		DATE:	
APS Social worker:		Completed by:	

*To enter Name, Date, etc., double click on the Name blank on page 1. To return to main document, double click on document, below.

A QUALIFYING STATEMENT FOR THE USE OF THIS FORM

X The goal of all of us should be to empower lives to the fullest extent possible and to allow persons to make decisions for themselves, even when we disagree with those decisions.

X This document may help you make decisions about the use of guardianship/conservatorship in cases in which no other resort exists.

X Be cautious about confusing dependency with the need for a guardian and conservator. The two are not equal.

X Look for alternatives to guardianships/ conservatorships, such as medical powers of attorney, federal payees, and community persons who might provide volunteer care if no family exists or is willing to get involved.

X Do not take anything for granted and question the authority of all persons, including doctors, social workers, lawyers and others who make judgements about those they do not know well.

X Guardianships and conservatorships may invalidate the constitutional rights of wards/conservatees. Remember that you would not freely allow others to make your decisions for you.

X Try to stand in the other person's shoes. Would you want a guardian if you were in the same position?

X **Guardianship/Conservatorship which is used as a source of control for a person who chooses to behave in a disruptive or uncontrolled manner is rarely successful and usually illegal.**

NOTE: Many conditions which will affect the need for a guardianship or conservatorship are episodic in nature. It may therefore be necessary to visit the client several times. Do not make a judgment based upon a single visit.

A STATUTORY REFERENCE TO GUARDIANSHIP AND CONSERVATORSHIPS IN KANSAS

K.S.A. 59-3051 et. seq. Definitions when used in the act for obtaining a guardian or conservator, or both:

(a) AAdult with an impairment in need of a guardian or a conservator, or both " means a person 18 years of age or older . . . . . whose ability to receive and evaluate relevant information, or to effectively communicate decisions, or both, even with the use of assistive technologies or other supports, is impaired such that the person lacks the capacity to manage such person's estate, or to meet essential needs for physical health, safety or welfare, and who is in need of a guardian or a conservator, or both.

(b) "Manage such person's estate" means making those determinations and taking those actions which are reasonably necessary in order for a person to receive and account for personal or business income, benefits and property, whether real, personal or intangible.

(c) "Meet essential requirements for physical health or safety" means making those determinations and taking those actions which are reasonably necessary in order for a person to obtain or be provided with shelter, sustenance, personal hygiene or health care, and without which serious illness or injury is likely to occur.

Generally, a guardian is appointed to provide for the physical health and safety of the ward. A conservator is generally appointed to provide for the financial resources of the conservatee.

K.S.A. 59-3073. "Temporary Appointment of Guardian or conservator. Such a hearing can only be held when a proceeding for guardianship or conservatorship has been previously initiated. The statute says that a hearing can only be held if "...it appears that there may be an imminent danger to the physical health or safety of the proposed ward, or that there may be an imminent danger that the estate of the proposed conservatee will be significantly depleted unless immediate action is taken... "

Generally, Kansas statutes on guardianship/ conservatorship in Kansas are found in K.S.A. 59-3051 through 59-3096 et. seq.

DECISION-MAKING AND FUNCTIONAL ASSESSMENT: CRITERIA FOR LEGAL IMPAIRMENT A MULTI-DISCIPLINARY TOOL

PPS 10610
Jan 2013

NAME:		DATE:	
APS Social worker:		Completed by:	

*To enter Name, Date, etc., double click on the Name blank on page 1. To return to main document, double click on document, below.

A. Physical/Mental Ability	Open-Ended Comments
1. Communication. Can the person speak or communicate in any manner? If the answer is no, what reasonable means of communication have been attempted?	
a. Can he/she speak?	
b. Can he/she write?	
c. Can he/she use or understand sign language?	
d. Does the person speak a language other than English?	
e. Can the person communicate through other signals or assistive devices?	
f. Can the person see? To what degree?	
g. Can the person hear? To what degree?	
2. Ambulation. To what degree is the person ambulatory? Be specific, particularly with respect to self-sufficiency.	
a. Can the person walk without assistance?	
b. Can the person walk with assistance?	
c. Can the person walk with a cane or walker?	
d. Does the person use a wheelchair for mobility?	
e. Is his/her living area accessible or can it be made accessible?	
3. Medical Problems. What are the areas of medical weakness? Be specific and list each separately, based upon known diagnosis by a physician. Determine how each limits self-sufficiency and increases the level of Impairment.	
a. Are there chronic ailments?	
b. What are the known medical problems?	
c. Is terminal illness present?	
d. Are any medical conditions potentially reversible?	
e. How do any medical conditions interfere with the person's ability to perform self-care?	
f. How do any medical conditions interfere with the ability to make decisions?	
g. Do any medical conditions cause severe pain?	
4. Medications. What prescription medications does the person take?	
a. Do the prescription medications limit the ability to receive information or to communicate effectively?	
b. Is there poly-substance dementia?	
c. Is there regular use of non-prescription medications? What kinds?	
d. Does the person use caffeine? If so, what is the extent of	

DECISION-MAKING AND FUNCTIONAL ASSESSMENT: CRITERIA FOR LEGAL IMPAIRMENT A MULTI-DISCIPLINARY TOOL

NAME:		DATE:	
APS Social worker:		Completed by:	

*To enter Name, Date, etc., double click on the Name blank on page 1. To return to main document, double click on document, below.

usage?	
e. Is there an indication of improper mixture of prescribed medications?	
f. Is there indication of improper mixture of prescribed and non-prescription medications?	
g. Does there seem to be excessive medication used?	
h. Is more than one doctor making prescriptions?	
I. Is the person taking prescriptions that may interfere with mobility or use of transportation?	
5. <u>Alcohol usage</u>. Is there indication of alcohol or illegal drug usage?	
a. How does such usage affect prescribed and nonprescribed legal medications.	
b. Does any drug usage affect the person's ability to receive and evaluate information effectively and/or communicate decisions?	
c. Does any drug usage limit self-sufficiency?	
6. <u>Mental Impairment</u>. Is there an impairment or condition which appears to limit mental functioning and self-sufficiency? What diseases are involved? Is the person limited or are there problems with:	
a. Orientation to time, place or person? Be aware that such orientation may change from day to day.	
b. Memory impairment?	
c. Cognitive deficits?	
d. Neurological dysfunction?	
e. Has the person had a recent mental evaluation? If so, what was the conclusion or prognosis of the mental evaluation? Is the condition likely to improve?	
7. <u>Physician's Evaluation</u>. Is there reason to believe there may be a faulty diagnosis on the part of the physician doing a medical evaluation? If so, is there a need for a second opinion?	
a. Has a physician utilized medical procedures and community resources to complete an evaluation?	
b. What was the conclusion or prognosis of the physical/mental evaluation? Is the condition likely to improve?	
REMEMBER THAT DEPENDENCY ITSELF IS NOT INDICATIVE OF LEGAL IMPAIRMENT.- NEITHER IS PHYSICAL INFIRMITY, LACK OF MOBILITY, OR MEDICAL	Open-Ended Comments

DECISION-MAKING AND FUNCTIONAL ASSESSMENT: CRITERIA FOR LEGAL IMPAIRMENT A MULTI-DISCIPLINARY TOOL

NAME:		**DATE:**	
APS Social worker:		**Completed by:**	

*To enter Name, Date, etc., double click on the Name blank on page 1. To return to main document, double click on document, below.

WEAKNESS.	
B. <u>Knowledge and Skills</u>	
1. <u>Nutrition</u>. Can the person engage at a minimum level in cooking and nutrition?	
a. Is the person able to maintain a proper diet?	
b. Can the person acquire, store, and prepare food?	
c. Can the person provide for appropriate nutritional needs with or without assistance?	
d. Can the person provide food through basic cooking skills?	
e. Can the person cook without injury?	
f. Is the person endangered by unsanitary cooking or danger of fire?	
2. <u>Personal hygiene</u>. Lack of cleanliness is not an indication of any impairment or inability to function. To what extent is the person able to keep his or her environment clean?	
a. Is the person able to wash himself or herself?	
b. Can the person use the bathroom and clean himself or herself?	
c. Can the person keep the environment clean?	
d. Is the person capable of cleaning wounds or injuries?	
3. <u>Personal safety.</u> The critical question here is whether personal health and safety is endangered.	
a. Can the person recognize potential dangers in the home and get help with them?	
b. Can the person understand the proper prevention of food spoilage?	
c. Can the person avoid obstacles in the home?	
4. <u>Personal health</u>. Is there an ability to respond to health needs which endanger physical health and safety?	
a. Can the person respond appropriately to minor health problems?	
b. Can the person alert others in case of illness or take precautions in case of illness?	
c. Can the person follow routines for taking prescribed medications?	
d. Is the person capable of cleaning wounds or injuries with or without assistance?	
e. Can the person relay necessary health information to health care providers?	
5. <u>Money Management</u>. The ability to manage money or estate.	
a. Can the person count change?	

DECISION-MAKING AND FUNCTIONAL ASSESSMENT: CRITERIA FOR LEGAL IMPAIRMENT A MULTI-DISCIPLINARY TOOL

NAME:		DATE:	
APS Social worker:		Completed by:	

*To enter Name, Date, etc., double click on the Name blank on page 1. To return to main document, double click on document, below.

b. Manage a checkbook?	
c. Pay bills?	
d. Avoid exploitations?	
e. Generally manage financial resources?	
6. Clothing. The ability to maintain physical health and safety may be impaired if clothing does not protect a person from a threatening environment.	
a. Is the person able to dress and undress himself or herself with or without assistance?	
b. Are the person's clothes adequate for weather and circumstances?	
c. Can the person keep his/her clothes clean?	
7. Maintenance of shelter.	
a. Can the person maintain a safe residence?	
b. Is the shelter properly heated and/or cooled?	
c. Is there running water, and a toilet?	
d. Can the person avoid exploitation with regard to his/her home?	
8. Avoidance of life threatening behavior.	
a. Can the person recognize and/or avoid safety hazards?	
b. Can the person handle an in-home emergency?	
c. Can the person assume safety in the home by locking doors?	
d. Can the person contact others for assistance if necessary?	
Once again we caution that dependency is not necessarily indicative of a level of impairment which would require a guardian/conservator.	
C. Values and Goals	
1. Desire for guardian/conservator.	
a. What are the individual's personal desires regarding need for a guardian/conservator?	
b. Does he/she communicate a need for one?	
c. Does he/she understand the ramifications of such action?	
d. Does he/she understand that there will be a loss of personal autonomy?	
2. Life perspective.	
a. What does the person see as his/her future?	
b. Does he/she have a positive or negative perspective?	

DECISION-MAKING AND FUNCTIONAL ASSESSMENT: CRITERIA FOR LEGAL IMPAIRMENT A MULTI-DISCIPLINARY TOOL

NAME:		**DATE:**	
APS Social worker:		**Completed by:**	

*To enter Name, Date, etc., double click on the Name blank on page 1. To return to main document, double click on document, below.

3. Current Status.	
a. Is the person satisfied with where he/she lives?	
b. Where would he/she like to live?	
c. Would a community based residential placement or a nursing facility be acceptable?	
4. Ability to determine alternatives.	
a. Does the person have the ability to determine alternatives for himself or herself?	
b. Does the person understand the impact of potential alternatives?	
D. Physical Environment **Potential High Risk. Are these factors present?**	
1. Lack of family support.	
2. Overcrowding.	
3. Isolation.	
4. Marital or intra-family conflict, abuse, neglect or exploitation.	
5. Economic pressure.	
6. Desire for institutionalization by the family.	
7. Disharmony in shared responsibility.	
8. History of abuse, neglect, or exploitation.	
9. Inability of the person to care for self in current environment, either physically or emotionally.	
10. Poor environmental surroundings.	
Some or all of the above conditions may contribute to abuse and/or neglect of a person.	
E. Social/Family Support	
1. What social systems are currently being used and to what extent are they involved in the person's life?	
2. Does the person have family, friends and associates with whom he/she communicates on a regular basis? If not, is he/she totally isolated?	
3. Does the person have social systems such as social service, home health, or other systems of support accessible?	
4. If there are not systems of support from family or friends, is the person capable of independent living? If not, what kind of systems, if made available to the person would allow for independent living to avoid a guardian/ conservator?	
5. Does the person or his/her family desire institutionalization?	
6. Will the family support legal action if a guardianship/ conservatorship is needed?	

DECISION-MAKING AND FUNCTIONAL ASSESSMENT: CRITERIA FOR LEGAL IMPAIRMENT A MULTI-DISCIPLINARY TOOL

NAME:		**DATE:**	
APS Social worker:		**Completed by:**	

*To enter Name, Date, etc., double click on the Name blank on page 1. To return to main document, double click on document, below.

7. If a guardian/conservator is ultimately necessary, what kinds of environment would provide the most to maintain suitable social environment for the person?	
8. Are there social groups or activities which would allow the person to access friends?	
F. <u>Guardianship/Conservatorships Plans</u>	
1. In what ways could this potential court action be limited to allow maximum freedom and independence for that person?	
a. Could the case be limited to specific areas of life, such as decisions about medication or medical care, placement in a more restrictive setting or other areas of life?	
b. Is it possible that this may be a short term case which should be reviewed for potential restoration? How should the review be made?	
c. In what time frame should the review be made?	
G. <u>Recent Stressors</u>. - Are these factors present?	
1. Recent loss of spouse or other death.	
2. Recent move from home.	
3. Recent serious illness or injury.	
4. Recent change in medication.	
5. Recent victim of abuse, neglect or exploitation.	
6. Death of a pet.	
7. Other Stressors.	
H. <u>Historical Lifestyle</u>	
1. <u>Emotional</u>. What has changed in the emotional life of the person to warrant an intrusive intervention such as a guardianship or conservatorship?	
a. Is there a history of mental disease or emotional problems? To what degree?	
b. Has there been mental disease or emotional impairment in the person's family?	
c. Does mental disease or other illness impair the person to the extent he or she is unable to receive and evaluate information effectively or to communicate decisions, or both?	
d. Is the person impaired to the extent that they lack the capacity to manage financial resources or to meet the essential requirements for physical health, safety, or both?	
I. <u>Systemic Variables</u>	
1. Does the person understand the guardianship process and the consequences of such an action?	
2. Does the person have an effective advocate to help him or her prior to possible adjudication?	

DECISION-MAKING AND FUNCTIONAL ASSESSMENT: CRITERIA FOR LEGAL IMPAIRMENT A MULTI-DISCIPLINARY TOOL

NAME:		**DATE:**	
APS Social worker:		**Completed by:**	

*To enter Name, Date, etc., double click on the Name blank on page 1. To return to main document, double click on document, below.

3. Has there been an appropriate clinical examination of the person?	
4. Has the prospect of limiting a potential guardianship been explored?	
a. Are there alternatives to guardianship/ conservatorship?	
b. Would a payee or durable power of attorney (medical) achieve the desired results for health care decisions?	
c. Can the guardianship be limited and in what specific ways?	
d. What would happen if the guardianship/ conservatorship action was delayed for one month or one year?	
e. If a guardian/conservator is appointed, when will it be appropriate to consider restoration to capacity?	
5. **Physical.** What has changed in the physical life of the person to warrant an intervention such as a guardianship or conservatorship?	
a. Is there history of physical disease? Chronic or acute?	
b. Has the person been recently immobilized?	
c. What is the history of medication? Has the person stopped taking needed medication?	
d. Does medication affect the person's physical abilities? Is there a new medication?	
e. Could the person manage his or her resources with supervision?	
6. **Environment.** What has changed in the environment of the person to warrant an intrusive intervention such as a guardianship or conservatorship?	
a. What is the present living situation? Has it changed recently?	
b Are there environmental stressors present, such as abusive persons or sick family members, and has this occurred recently?	
c. Has the living arrangement changed to a more hazardous environment?	
d. Is there potential for abuse, neglect or exploitation in the current environment? How has the environment changed to allow this?	
7. **Social.** What has changed in the social life of the person to warrant an intrusive intervention such as a guardianship or conservatorship?	
a. Has the person's social environment changed recently?	

DECISION-MAKING AND FUNCTIONAL ASSESSMENT: CRITERIA FOR LEGAL IMPAIRMENT A MULTI-DISCIPLINARY TOOL

NAME:		DATE:	
APS Social worker:		Completed by:	

*To enter Name, Date, etc., double click on the Name blank on page 1. To return to main document, double click on document, below.

A Continuum of Interventions

The appointment of a guardian and/or conservator should occur only after all other lesser restrictive alternatives have been explored. These include the following in order of least restrictive:

1. Informal community intervention, including family, friends, banking assistance in paying bills, and other volunteers.
2. Social services involvement through DCF, case management, Home Community Based Services (HCBS), home health care, and other community based services.
3. Social Security payee without a guardian and conservator.
4. Durable Power of Attorney (only a possibility if the person is not legally impaired and has the capacity to know what he or she is signing).
5. Durable Power of Attorney for Health Care Decisions (only a possibility if the person is not legally impaired and has the capacity to know what he or she is signing).
6. Voluntary conservatorship (must have capacity).
7. Full conservatorship with court approved conservatorship plan limiting certain authority.
8. Full conservatorship.
9. Full guardianship with court approved guardianship plan limiting certain authority.
10. Full guardianship.
11. Full guardianship and conservatorship with placement in a treatment facility or nursing facility.

NOTE

The diagnosis of mental retardation, mental illness, some other mentally disabling condition or dependency may not indicate the need for a guardianship/conservatorship. Instead, look for how the person copes with day-to-day living.

GUARDIANSHIP AND CONSERVATORSHIP PLANS (K.S.A. 59-3067 and 59-3079)

At any time the court may require the guardian or the conservator, or, the guardian or conservator may at any time choose to develop and file with the court a plan of care of the ward.

A guardianship or a conservatorship plan may be useful in those cases where the person is capable of making some decisions. The plan can set out which decisions should be left to the individual. The guardianship plan may provide for, but need not be limited to provisions regarding where the ward will reside, what restrictions may be placed upon the persons with whom the ward may associate and how much autonomy the ward will have to make decisions regarding, for example, employment, education and travel. The plan may also contain provisions regarding use of the ward's financial assets if no conservator has been appointed.

A conservatorship plan may include provisions regarding the type and amount of funds over which the conservatee may have control, and how the conservator may protect the eligibility of the conservatee for public benefits.