

CHAPTER 163. GUARDIANS AND TRUSTEES**GUARDIANS AND TRUSTEES PROVISIONS**

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(Editor's Note: See 6 Pa.B. 684 (March 27, 1976) for uncodified text regarding this chapter.)

Cross References

This chapter cited in 55 Pa. Code § 141.41 (relating to policy); 55 Pa. Code § 141.61 (relating to policy); 55 Pa. Code § 178.125 (relating to transfer of resources from the institutionalized spouse to the community spouse); and 55 Pa. Code § 451.3 (relating to requirements).

GUARDIANS AND TRUSTEES PROVISIONS**§ 163.1. Policy.**

(a) The provisions of this chapter deal with trustees and guardians in relation to the eligibility of an adult or an emancipated minor for public assistance.

(b) Assistance for an unemancipated minor will be paid to the adult, parent, specified relative, or other person who is exercising responsibility for the care and control of the minor, even if another person or an agency is guardian of the estate or trustee for the unemancipated minor. An emancipated minor who becomes mentally unable to carry out his eligibility responsibilities will revert to the status of an unemancipated minor.

§ 163.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Client—An adult or an emancipated minor.

Guardian—A person appointed by the court as a representative of a mentally-incapable client for assistance purposes in Federal assistance cases. Reference should be made to § 163.3 (relating to requirements).

Trustee—A person appointed by State Office to assist a mentally incompetent client in carrying out his eligibility responsibilities for GA or SBP. Reference should be made to § 163.3.

§ 163.3. Requirements.

(a) *Need for guardian or trustee.* The need for a guardian or a trustee will be determined as follows:

(1) *General.* A client will be considered in need of a guardian or trustee under the following circumstances:

(i) The client is mentally incapable of carrying out eligibility responsibilities. This will include the client who has been released from a Commonwealth school and hospital for the mentally retarded or a Commonwealth mental institution under community living arrangements, such as group homes and the like, as provided in § 163.4(a)(4) (relating to procedures).

(ii) It appears that the need for protective payments for an AFDC person (non-WIN) will continue or is likely to continue beyond 2 years as provided in § 291.24(g) (relating to procedures).

(2) *Standards for determining need.* The following standards will be applied in the determination of need:

(i) The County Office will decide, in determining initial or continued eligibility of a client, whether or not he is mentally capable of carrying out the responsibilities related to eligibility for assistance. If the County Office decides the client is mentally incapable of carrying out eligibility responsibilities, the County Office will request a guardian or trustee for the client if this appears to be the best plan for protecting the welfare of the client.

(ii) The decision as to whether a client is mentally able to carry out eligibility responsibilities will be made in the framework of the principles of public assistance administration. The agency will deal with a client as a responsible individual, that is, directly with him, whenever possible. The agency recognizes an individual's right to self-direction, for example his right to make his own decisions as to how he will live, and how he will use the assistance payment to serve his best interests.

(iii) The fact that an individual does not readily understand what is required of him, that he is difficult to deal with or communicate with, or that he is physically incapable of carrying out by himself the responsibilities related to eligibility for assistance will not warrant requesting a guardian or trustee, if the individual is mentally capable of carrying out eligibility responsibilities. On the other hand, if the County Office finds the individual is mentally incapable of carrying out eligibility responsibilities, the fact that he is living in the circumstances that friends or relatives look out for his welfare will not be appropriate basis for a decision not to request a guardian or trustee.

(iv) If the client is physically unable to communicate his thoughts or decisions in relation to eligibility responsibilities, and if his physical incapacity is such that it is not possible to determine whether he is mentally capable of carrying out eligibility responsibilities, the client will be considered as if he is mentally incapable.

(v) In making the decision about the client, the County Office may use consultation from other fields such as medicine and psychology. However, the County Office will have the responsibility for the decision as to whether the client is mentally able to act on his own behalf in relation to public assistance requirements.

(b) *Determination of correct representative.* If a client has a guardian, of the estate or person or both, appointed by the court, that guardian shall be the representative of the client for any category of assistance. For the correct representative in other circumstances, reference should be made to paragraphs (1)—(4). If a person has a guardian or trustee who cannot or will not act for any reason, or if the ward seems able to act for himself, reference should be made to subsection (c).

(1) *Natural guardian.* A natural guardian shall comply with the following:

(i) If the adult client who is mentally incapable of carrying out his eligibility responsibilities has no court-appointed guardian, and has a parent who may qualify as natural guardian, the natural guardian will be the representative of the adult client or assistance purposes.

(ii) A natural guardian is a parent, natural or adoptive, of an adult child who:

(A) Because of his mental condition cannot act in his own behalf.

(B) Because of his mental condition was unable to act in his own behalf on the day he became 21 years old, and continuously since that date.

(C) Was in the custody of the parent on the date the child became 21 years old, and continuously since that date. The parent will be considered to have custody, in this context, regardless of other factors, if the child has not been legally removed from the care and direction of the parent. Marriage to a competent adult removes the child from the custody of the parent. A category of assistance may be paid to a natural guardian. Recognition of a natural guardian will be given by State Office.

(2) *Court-appointed guardian (Federal Assistance Categories).* If the client who is mentally incapable of carrying out his eligibility responsibilities has neither a court-appointed guardian nor a parent who may qualify as natural guardian, and if the client is otherwise eligible for a Federal category of assistance, a person or organization appointed by the court as guardian will be the representative of the client for assistance purposes. Court action will be taken through State Office if the prospective guardian is not paying the costs of court action.

(3) *Court-authorized representative.* Court authorized representatives will conform with the following:

(i) A court-authorized representative will be as acceptable to the Department as a court-appointed guardian to act in behalf of a person adjudged mentally incompetent.

(ii) A court-authorized representative will have the same legal authority as a court-appointed guardian to act in respect to public assistance matters for a person adjudged incompetent. Regulations related to a court-appointed guardian will also relate to a court-authorized representative.

(iii) The decision as to whether a guardian is appointed or a representative authorized rests with the court. The conditions under which a representative may be authorized for a person adjudged incompetent will be as follows:

(A) The net value of the entire real and personal property of the incompetent is \$10,000 or less.

(B) A person or institution maintaining the incompetent is available to act as representative. Maintaining in this context means spending the income of the client for his benefit, and seeing to it that the client gets the care he needs.

(4) *Trustee for GA and SBP.* Trustees for GA and SBP will conform with the following:

(i) If the client who is mentally incapable of carrying out his eligibility responsibilities has no parent who may qualify as natural guardian, but is otherwise eligible for GA or SBP only, a trustee will be the representative of the client. A trustee will be appointed by State Office.

(ii) While court action on guardianship is in process, and if assistance cannot be paid to the client directly or for him as a member of a grant group as provided in § 163.4(b)(1)(i) and (ii), a trustee will be the representative of the client. Preferably, the prospective guardian will be the trustee. Only GA or SBP may be paid to a trustee.

(iii) In some instances clients who are mentally incapable of carrying out their eligibility responsibilities will be released from Commonwealth mental institutions or Commonwealth schools and hospitals for the mentally retarded under community living arrangements, such as group homes, and the like. If the client has no guardian, but is otherwise eligible for GA or SBP, a trustee will be appointed to represent the client. The Regional Commissioner for Mental Health/Mental Retardation will approve the appointment of a trustee who meets the conditions of subsection (d). Reference should also be made to § 163.4(a)(4) for procedures for requesting a trustee. Upon receipt of written notification, the County Assistance Office will authorize assistance. GA or SBP will be paid to the trustee, pending SSI determination.

(iv) While appointment of the trustee is in process, GA or SBP may be granted to the MH/MR client if the conditions of § 163.4(b)(1)(i) apply.

(c) *Referral to CID.* If the client is already receiving assistance, it will be continued for not more than 2 months following referral, to provide time for the County Institution District to make arrangements for the care of the recipient. If the County Office has decided that the client is mentally incapable of acting in his own behalf in relation to eligibility for assistance, it will refer him to the County Institution District under any of the following circumstances:

(1) This appears to be a better plan for protecting the welfare of the client than having a guardian or trustee appointed.

(2) There is not available a qualified person willing to act as guardian for the person otherwise eligible for AFDC, or as natural guardian or trustee for the person otherwise eligible for SBP or GA.

(d) *Responsibilities of guardian or trustee.* The County Office will offer to help the client, or his relative or friends, in planning the selection of a prospective guardian or trustee who appears qualified to meet the responsibilities. A trustee appointed by the Department must be willing to serve without compensation. It is desirable that a guardian also be willing to serve without compensation. However, if the court order appointing a guardian provides that he be paid a fee for his services, this will not affect the eligibility of the client, whether the guardian or the Department pays the cost of petitioning for the appointment. The guardian and trustee will have the same responsibilities, as follows:

- (1) To assume the responsibilities of the client in establishing eligibility.
- (2) To spend the assistance grant for the benefit of the client.
- (3) To see to it that the client gets the care he needs.

(e) *Selection of guardian or trustee.* Selection of guardian or trustee will conform with the following:

(1) The guardian or trustee must be a responsible person with concern for the welfare of the client, a person who is willing and able to look after his charge. He must have a sound, workable plan for having the client get the care he needs. Since the guardian or trustee has control over the use of the assistance payment, he should be someone who has no financial interest of his own in the use of the assistance money. For this reason, if a client lives in a nursing home, boarding home or other institution, it is desirable that the prospective guardian or trustee be a person not associated with the institution. Only if a person cannot be found will the Department appoint as trustee a person associated with the institution, or petition the court to have a person appointed guardian.

(2) Before recommending a person to State Office to be a guardian or trustee, the County Office must assure itself that the person is informed about and appears qualified to meet the responsibilities involved. The County Office will also inform the guardian or trustee applying on behalf of his charge of his responsibilities in accepting the assistance payment; and that the social services of the agency are available to him in connection with his role and responsibilities as guardian or trustee. The guardian or trustee then must conform with the following:

- (i) Furnish necessary information for determining initial and continued eligibility.
- (ii) Sign appropriate application forms after his appointment. Reference should be made to § 257.24(a)(3) (relating to procedures) for acknowledgment of liability for reimbursement.

Source

The provisions of this § 163.3 amended October 6, 1978, 8 Pa.B. 2731. Immediately preceding text appears at serial pages (29130) and (34029).

Cross References

This section cited in 55 Pa. Code § 163.2 (relating to definitions); and 55 Pa. Code § 163.4 (relating to procedures).

§ 163.4. Procedures.

(a) *Procedure to appoint guardian or trustee.* The following procedures will apply to the appointment of a guardian or trustee:

(1) *Prospective guardian will pay cost of petition.* If the court is to be petitioned to appoint the guardian, the county office will determine whether the prospective guardian will pay the cost of petitioning for his appointment. If he will, he shall take the necessary action to petition the court. The county office will take no part in the appointment procedure. The county office will take no part in the appointment procedure for a guardian or representative for a person who is a patient in a public nursing home, such as a medical institution operated by a county authority.

(2) *Prospective guardian may not pay cost of petition.* If the prospective guardian is unable or unwilling to pay the cost of petitioning the court for his appointment, the Department will take the necessary action and pay the cost. There may be no costs for a natural guardian or a trustee in being appointed by State Office. The Department will neither take the court action nor pay the cost for appointment of a guardian or representative for an applicant or recipient of public assistance who is a patient in a public nursing home.

(3) *Request for guardian or trustee.* The county office will send its request for a guardian or trustee to State Office Medical Division. Medical and social information will be required on every person for whom a guardian or trustee is requested. The county office will submit the following material in requesting a guardian or trustee:

(i) A Form PA 50 (Request for Appointment of Guardian Representative or Trustee) containing the social information. If a court-appointed guardian is requested, both sides of the Form PA 50 will be completed and submitted in triplicate. Otherwise, the "Supplemental Information" section on the reverse side will be left blank, the "Recommendation" section signed, and the form submitted in duplicate.

(ii) Any available completed reports of medical findings, such as Form PA 41, Form PA 258-N, and findings from allied fields such as psychological reports, will also be included.

(iii) If the material in subparagraph (ii) is not available but the person is under the care of a physician, a letter from the physician, if he is willing to prepare one, will be submitted containing his diagnosis of the mental condi-

tion of the client, with supporting objective findings, and his evaluation of the competency of the client to manage his own affairs. Also any additional supporting medical evidence from the case record will be submitted.

(iv) The County Assistance Office will review the report of the medical examination, submitted by the physician or clinic, for completeness and conclusiveness and, finding it satisfactory, send the Form PA 48, Form PA 259, and the required Invoice Transmittal, Form PA 259-S, directly to the Bureau of Finance in Harrisburg, having noted on the upper right hand corner of the Form PA 48 "report received." If the medical report is incomplete, inconsistent, or otherwise unsatisfactory, the medical examiner will be expected to amplify or clarify his report of findings before the county office forwards the Form PA 48 and invoice forms for payment. If the medical evidence in subparagraphs (ii) or (iii) is not available, a medical examination will be authorized to get an evaluation of the mental competence of the client. The County Office will send the following directly to the physician or general medical clinic:

(A) One Form PA 48 (Authorization for Service and Supplies).

(B) Five Form PA 259's (Standard Medical Invoice).

(C) One envelope addressed to the County Board of Assistance to be used by the physician or clinic to return the Form PA 48 and the original and three copies of the invoice.

(v) If the client is physically unable to communicate and his condition is as described in § 163.3(a)(2) (relating to requirements), a physician's statement that it is not medically possible to evaluate the mental competence of the client will be submitted.

(vi) If a guardian and determination of total disability (AD) are to be requested for the same person, the Forms PA 41, 41-S, 62, 62-S, and 50 will be submitted simultaneously. If certification of visual acuity for BP and a guardian or trustee are to be requested for same person, the Form PA 40 and the Form PA 50 will be submitted simultaneously.

(vii) If the medical or social information submitted by the county office in requesting a guardian or trustee is adequate, State Office Medical Division will notify the County Office .

(4) *Request for trustees for MH/MR clients released under community living arrangements, such as group homes, and the like.* Requests for trustees for MH/MP clients released under community living arrangements will conform with the following:

(i) If the County MH/MR Administrator or his delegate has decided that the client is mentally incapable of carrying out his eligibility responsibilities, he will send a memorandum to the County Assistance Office recommending a qualified person as prescribed in § 163.3(d) to be trustee. The memorandum must contain a statement as to why the County MH/MR Administrator or his delegate believes a trustee is needed. All social informa-

tion and medical evidence, such as completed reports of medical findings, psychological reports and the like will be submitted with the memorandum.

(ii) Upon receipt of the information, the County Assistance Office will prepare a memorandum to the Regional MH/MR Commissioner requesting that the recommended person be appointed as trustee. The social information and medical evidence will be transmitted with the memorandum. Upon review of the material, the Regional MH/MR Commissioner will advise the County Assistance Office by written memorandum that he has approved the recommended person and has appointed him as the trustee. The material will be returned to the County Assistance Office with the memorandum.

(5) *Court appointment of a guardian.* Court appointment of a guardian will conform with the following:

(i) If the information which the county office submits to State Office Medical Division substantiates the county office decision and justifies proceeding with the appointment of a guardian, Claim Settlements Division will refer the case to an attorney to petition the local court to appoint the guardian. This attorney will get in touch with the prospective guardian, handle all papers, and arrange with Claim Settlements Division for payment of all costs incidental to the proceedings. At the attorney's request the county office will notify the person for whom assistance is being asked of the date, time and place of the court hearing; and the caseworker will testify at the hearing in support of the request for a guardian.

(ii) If the court requires the prospective guardian to file a surety bond, Claim Settlements Division will obtain the original bond. The bond will be automatically renewed, and a copy of the invoice for the renewal sent to the county office. If the person is no longer receiving assistance, the county office will promptly notify Claim Settlements Division of the discontinuance, giving Reason Code Number, so that the bond may be cancelled.

(iii) After the guardian is appointed, Claim Settlements Division will send the county office either a copy of the Order of the Court making the appointment, or other verification. If the attorney informs the county office of the appointment before it receives the required verification from Claim Settlements Division, the county office will proceed as if it had received the required verification.

(iv) If the client has a court-appointed guardian, the case record must contain either a copy of the Order of the Court appointing the guardian, or the name and address of the guardian and the date of appointment; and sufficient information, such as court term, year and number, to identify the court record of the appointment. The entry will be made on the Form PA 740 in the right half of the space headed "Citizenship..." Caption entry "Court Guardian."

(v) If for any reason the court does not appoint the proposed guardian, the county office will be advised of the decision of the court.

(vi) If the court finds that the person for whom the guardian is requested is not legally incompetent, the person will be made the payee and continue as payee as long as he is eligible. If the county office still finds that the person is mentally incapable of carrying out eligibility responsibilities, it will request a trustee if this appears to be the best plan for protecting the welfare of the person. If not, other appropriate action will be taken.

(vii) If the court finds that the proposed guardian does not qualify for appointment, assistance payments will be continued for not more than two months until another person is found who may qualify and will agree to act as guardian, or the client will be referred to the CID as provided in § 163.3(c).

(6) *Recognition of natural guardian and appointment of trustee.* Recognition of natural guardian and appointment of trustee will conform with the following:

(i) If the information which the county office submits substantiates its decision, the State office will recognize the parent as the natural guardian, or appoint the trustee. In either event, a signed copy of the Form PA 50 will be returned to the county office.

(ii) If an assistance payment is made to a natural guardian or a trustee, the case record must contain a copy of the Form PA 50 signed by the State Office recognizing the natural guardian or appointing the trustee.

(b) *Action pending decision on request for guardian or trustee, if no court-appointed guardianship exists.* Procedures relating to action pending decision on request for guardian or trustee, if no court-appointed guardianship exists, will be as follows:

(1) *Request for court-appointed guardian pending.* If, pending decision on a county office request for a guardian or trustee, the county office has any new information that might affect the State Office decision, or decides that the client is capable of carrying out his eligibility responsibilities, it will send a memorandum to State Office Medical Division giving the new information. Pending decision on a request for a court-appointed guardian, the county office will take the following action:

(i) If the eligibility of the client can be established through another person, and the client is able to sign his name or make his mark, and the client will derive benefit from his assistance grant, he will be made or will continue to be the payee for the type of assistance he is eligible for.

(ii) If subparagraph (i) does not apply, and if the client is or may be a member of a grant group as set forth in § 171.21(b) (relating to policy), he will receive assistance as a member of the grant group.

(iii) If subparagraphs (i) or (ii) do not apply, assistance will be granted only after a trustee has been appointed temporarily. The county office will grant GA or BP-B if the ward is eligible.

(2) *Request for trustee or natural guardian pending (no court action on guardian pending).* Pending decision on a request for a trustee or natural guardian, paragraph (1)(i) and (ii) will govern the granting of assistance. Otherwise, assistance will not be granted until the trustee has been appointed, or the natural guardian recognized.

(c) *Termination of guardian or trustee.* Whenever a person has a guardian or trustee, the county office will deal directly with the guardian or trustee. Periodically, as necessary, the county office must reassure itself that the guardian or trustee is carrying out his responsibilities as set forth in § 163.3(d) and that the person for whom assistance is being paid continues to need a guardian or trustee. This exploration will include seeing the person for whom assistance is being paid.

(1) *Guardian or trustee no longer appears to be needed.* The following procedures will apply when a guardian or trustee no longer appears to be needed:

(i) *County office action.* If the client has a trustee or guardian but no longer appears to need one, the following procedure will apply, whether the guardian or trustee is living or deceased:

(A) The county office will send the earlier Form PA 50 with a memorandum to State Office Medical Division stating why the county office believes the guardian or trustee is no longer needed, and whether he is living or deceased.

(B) In the case of a deceased court-appointed guardian, a new Form PA 50 will also be sent proposing a trustee or natural guardian, pending court action. In clause (A), the information given on the earlier PA 50 should not be repeated.

(ii) *State Office action.* If State Office Medical Division finds that the information submitted by the county office substantiates the request as required, State office will comply with the following procedures:

(A) In the case of a trustee or natural guardian, the appointment or recognition will be cancelled and the earlier Form PA 50 will be marked "Cancelled." In every case, the earlier Form PA 50 will be returned to the county office.

(B) In the case of a court-appointed guardian, action will be taken to have the appointment terminated by the court and the ward restored to full legal capacity. The County Office will also be kept informed.

(2) *Guardian or trustee still needed, not acting.* The following procedures will apply when a guardian or trustee is still needed but is not acting:

(i) *County office action.* If a guardian or trustee is living and not carrying out his responsibilities, or is deceased, and if the ward continues to need a guardian or trustee, the county office will send the earlier Form PA 50, along with a new Form PA 50, to the State Office Medical Division proposing a new guardian or trustee, as appropriate. In item a, how and why the existing guardian or trustee is not carrying out his responsibilities, or that he

is deceased, will be stated. If the county office is proposing a new guardian to be appointed by the court, it will request that he, or another person, be appointed trustee pending court action. If an MH/MR appointed trustee as set forth in § 163.3(b)(4) is living and not carrying out his responsibilities, or is deceased, and the client continues to need a trustee, the county office will send a memorandum to the County MH/MR Administrator or his delegate requesting that a new trustee be appointed and state how and why the existing trustee is not carrying out his responsibilities, or that he is deceased.

(ii) *State Office action.* If State Office Medical Division finds that the information submitted by the county office substantiates the request as required, State office will comply with the following procedures:

(A) In the case of a trustee or natural guardian, the appointment or recognition will be cancelled and the earlier Form PA 50 will be marked "Cancelled." In every case, the earlier Form PA 50 will be returned to the county office.

(B) In the case of a court-appointed guardian, action will be taken to have the appointment terminated by the court and the ward restored to full legal capacity. The county office will also be kept informed.

(C) Action will be taken to have the court terminate the existing court-appointed guardianship, and appoint a new guardian, if the county office has so requested. State office will make a trustee appointment until the existing guardian is discharged and a new guardian is appointed. The county office will be kept informed.

(3) *Payment of cost to terminate court-appointed guardianship.* If the guardian is willing to pay the cost of petitioning the court to terminate his appointment, the county office will take no part in the action. Therefore, before requesting the Department to petition the court, the county office will determine if all the conditions set forth in this paragraph have been met. The Department will then petition the court to terminate the guardianship, and pay the costs, only if the following conditions exist:

- (i) The ward is continuing to receive assistance.
- (ii) The guardian is unwilling or unable to pay, or is deceased.
- (iii) The welfare of the ward would be adversely affected if the existing guardianship were to continue.

(d) *Payment name.* The following procedures will apply to payment name designation:

- (1) *If court-appointed guardianship exists.* If the guardian is living, assistance may be paid only to him, except that if a trustee has been appointed because the guardian has not been carrying out his responsibilities, assistance will be paid to the trustee until a new guardian is appointed. If the guardian is deceased, assistance may be paid only to a trustee or recognized natural guardian, and only pending court action on the existing guardianship.

(2) *If trustee appointment or recognition of natural guardian exists.* If the court has appointed a guardian, assistance may be paid only to him, even if a trustee or natural guardian exists. Otherwise, pending decision by State office on a county office request to terminate the appointment because the condition of the ward no longer appears to require a trustee or natural guardian, the payment name will be as follows:

(i) If the trustee or natural guardian is living and carrying out his responsibilities, assistance may be paid to him only.

(ii) If he is living and not carrying out his responsibilities, or if he is deceased, assistance may be paid under subsection (b)(1).

Cross References

This section cited in 55 Pa. Code § 163.3 (relating to requirements).

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