

ANSWERS TO TYPICAL
QUESTIONS
REGARDING
GUARDIANSHIP
FOR PERSONS WITH
DISABILITIES

• **WHAT IS GUARDIANSHIP?**

Guardianship is a legally sanctioned method for appointing a substitute decision-maker to act in the best interest of a person who is unable to make decisions for him/herself. The person who needs a guardian is often called a "ward" or "respondent". In this relationship, the guardian has the right and the duty to make certain decisions affecting the life of the individual. When a Court places some of the individual's legal rights in the hands of a guardian, it is taking those rights away from the individual and limiting his/her powers of self-determination. Appointing a guardian is, therefore, a matter that must be taken very seriously. Within certain limits stipulated in state statutes, the specific duties of the guardian are decided on an individual basis by the Probate Court after a hearing.

• **WHAT IS
CONSERVATORSHIP?**

Conservatorship is an alternate way of providing substitute decision-making. Any person deemed incapable by a Probate Court of making his/her own decisions may be assigned a conservator. There are two forms of conservatorship:

- conservator of the person who can consent to medical treatment, placement and appropriate services for the welfare of the individual; and
- conservator of the estate who handles the individual's finances, which is especially relevant if considerable assets are included.

• **WHAT IS THE DIFFERENCE
BETWEEN GUARDIANSHIP
AND CONSERVATORSHIP?**

Unlike the laws for conservatorship, special guardianship laws are set up to meet the needs of adults with mental retardation. (These are separate from the guardianship laws for minors). A conservator has broad powers, whereas the guardian's duties can be tailored specifically to the needs of the individual with mental retardation, allowing him/her to maintain as much control over his/her own life as possible. It is possible for one individual to have both a guardian and a conservator of his/her estate.

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Guardianship for Individuals Who Are Intellectually Disabled

Transfer of Rights

At least one year before student reaches the age of 18, the student's IEP must include a statement that the student has been informed of his or her rights. (Pg. 6 of the IEP)

3 Types of Guardianship

- 1) A full or plenary legal guardian
- 2) A limited legal guardian
- 3) A temporary legal guardian (Not to exceed 60 days. Ex.: Consent for a specific medical or dental treatment.)

5 Areas Considered for Full or Limited Guardianship

- 1) Residence outside the natural family home
- 2) Specifically designed educational, vocational, or behavior programs
- 3) The release of clinical records and photographs
- 4) Routine, elective and emergency medical and dental care
- 5) Any other specific limited services necessary to develop or regain to the maximum extent possible the ward's capacity to meet essential requirements

The application must be filed in the Probate Court in the district in which the individual resides. There is a filing fee and a state marshal fee.

The court hearing is set within 45 days of filing the application. The respondent will be notified of the time and place of the hearing at least 7 days in advance. Appropriate records will be requested and provided prior to hearing.

Resource List

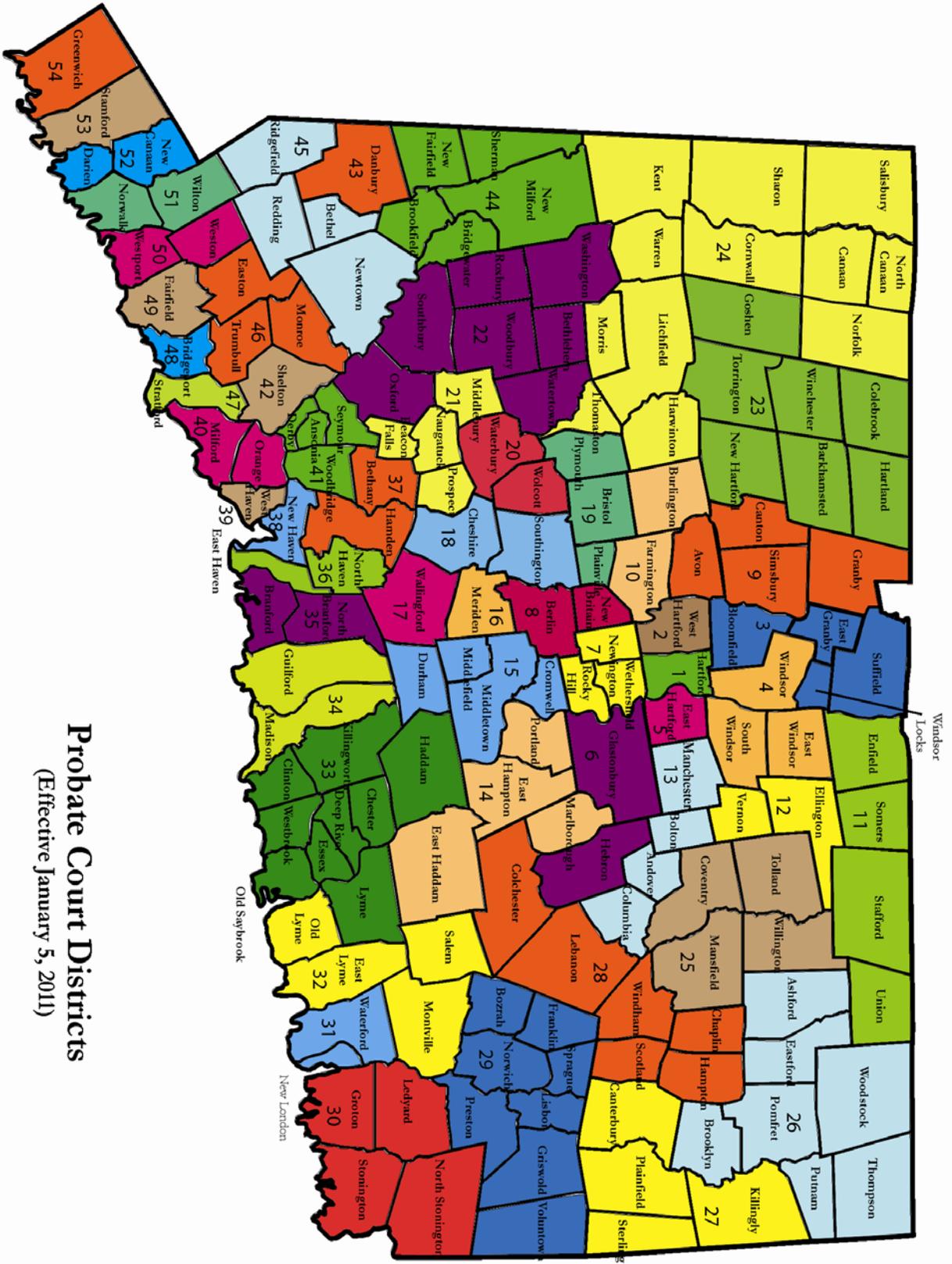
Call your local Probate Court or the larger Probate Court district. The Probate Court clerk's office should be contacted to obtain any necessary forms. All phone numbers are in the blue pages of the telephone directory.

**Office of Protection and Advocacy
for Persons with Disabilities**

60-B Weston Street
Hartford, CT 06120-1551
860-297-4300 (voice) 860-566-2102 (TTY)
1-800-842-7303
www.state.ct.us/opapd

St. of CT Probate Court Administration
186 Newington Rd.
West Hartford, CT 06110-2320
860-566-7897

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Probate Court Districts
 (Effective January 5, 2011)

TRANSITION PLANNING

Social Security SSI/Title 19 Medicaid/Guardianship

When and How to Apply? What is the Process?

At age 18, an individual should apply to the Social Security Administration (SSA) for SSI (Supplemental Security Income) and once the SSI has been approved, then apply to the Department of Social Services (DSS) for Title 19/Medicaid. It is imperative that your son/daughter be eligible for Medicaid in order to receive DDS vocational or day program funding upon graduation. There are different types of Medicaid Programs. **In order to be eligible for DDS funding upon graduation, your son/daughter must be enrolled in the adult “Fee-for-Service/Straight” Title 19 Medicaid. This will also qualify them for DDS case management services.**

Social Security/SSI: 1-800-772-1213

- Income based eligibility program through the Federal Social Security Administration www.ssa.gov. In order to be eligible for SSI, an individual must meet certain asset, income and disability status criteria. Please contact the Social Security Administration for more information.
- An SSI application can be made at any time. Usually, it is best to apply when the individual turns 18 years of age. This way the person is considered an adult and it is **their** income that will be considered versus the families. You can apply before the age of 18; however the parent’s income is considered when SSI benefits are provided to a minor child.
- Applying for SSI first, makes the entitlement process go more smoothly. The SSI establishes your son’s/daughter’s disability and if found eligible, they will be found eligible for Title 19. You will still need to apply for Title 19 eligibility.

Some tips:

- Make an appointment for an intake meeting with the Social Security Administration. (In person is best)
- You can download the application and start working on it before your appointment. It can take several weeks before you are seen and it can be a 3-4 month process.
- Be sure to answer questions, as if your son/daughter is filling out the information. (Example: When asked about “family income”, you should be referring to your son/daughter’s income. After age 18, your family income should not be documented in the application.)
- Doctor’s information is very important. In answering the question, “Can this person work?” it is important the doctor indicates” **yes, this person can work, but only with support.**” Without this recommendation of support, the individual will not be found eligible!

ELIGIBILITY FOR SUPPLEMENTAL SECURITY INCOME

Adult Income and Resource Eligibility for Supplemental Security Income

When children with disabilities who have been receiving SSI turn 18 years old they must apply again as an adult. If the child had not been eligible previously, he or she might be eligible for SSI as an adult. This is because different medical criteria apply and income and resources are counted differently for adults. One difference is that the adult must meet the disability criteria as well as not be able to work at a substantial level which is defined in 2011 as the ability to make more than \$1,000 a month.

In most instances the young adult is considered a household of one. This means that only his or her income and resources are counted. However if this young adult is living with family or others and is not able to pay this or her fair share of living expenses the young person could have a reduction of one-third in their SSI amount as the living expenses are considered subsidized. Income from a spouse is also counted toward total income. With earned income, every month the first \$85 is disregarded and what remains decreases the SSI amount by \$1 for every \$2 earned. Unearned income such as a pension or social security benefits received on a deceased, retired or disabled parent have a disregard of \$20 a month and then decrease the SSI amount \$1 for \$1. The resource limit for an individual is \$2,000 and \$3,000 for a couple.

Definitions of Adult Disability for Supplemental Security Income

Adult definitions of disability are also found in Disability Evaluation under Social Security (aka the Blue Book) under the Mental Disorders section. The adult section is labeled 12.10 Autistic Disorder and Other Pervasive Developmental Disorders. Again both the A and B criteria must be met.

A. Medically documented findings of the following:

1. For autistic disorder, all of the following:

- a. Qualitative deficits in reciprocal social interaction; and
- b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity; and
- c. Markedly restricted repertoire of activities and interests;

or

2. For other pervasive developmental disabilities, both of the following:

- a. Qualitative deficits in the development of reciprocal social interaction; and
- b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity; and

B. Resulting in two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration

Remember while a medical diagnosis is necessary, parents, teachers, friends and others can provide important information about the limitations on the person's ability to handle daily living activities and social interactions. Giving concrete examples of where the person struggles help give the disability determiner a picture that cannot be found in a medical document or psychological evaluation.

RSDI for Children and Adults

Children and adults may be eligible for social security benefits based on an insured worker's account. The insured worker can be a parent, spouse, or the person applying. Children under age 18 with and without disabilities are eligible for social security benefits if a parent (and sometimes a caretaker grandparent) are disabled, deceased or retired. If the Social Security Administration finds an adult disabled before the age of 22 he or she may be eligible for RSDI. The disability criteria are the same for RSDI as it is for SSI (see above Definitions of Adult Disability for SSI). If the RSDI is a less than the full SSI benefit, the child or adult might be eligible for SSI as well. This is called concurrent benefits and the total is \$20 more than the SSI amount of \$674 (in 2011). Persons who are eligible for RSDI as adults are eligible for Medicare after 24 months.

How to Apply For Supplemental Security Income and Retirement Survivor's Disability Insurance

Starting the application for SSI and RSDI can be done on line at www.ssa.gov or by calling 1-800-772-1213 or be visiting your local Social Security Administration office. This first step will ensure your protected filing date. After the initial application is completed the file is sent to your state's Disability Determination Services (DDS). You will begin receiving mail from them within a few weeks including forms to be completed. It is important to be in regular communication with the DDS claims manager to make sure they have received all the medical, educational and other supporting documentation for determining disability. You can also gather information and send it in yourself as well as letters as discussed above. When you receive paperwork fill it out completely with plenty of examples of the difficulties the person faces in their daily living activities and return it promptly. If SSA sends the child or adult to a doctor for a consultative exam it is important that they go. Not turning in requested paperwork or missing appointments can be a reason for the process to be stopped and the application denied.

If the application is denied for any reason always seek out a representative for the appeal process. There are attorneys and non-attorneys who specialize in social security law who can represent you in an appeal process. They are paid if they win your case out of the back benefits with limitations set by SSA. Contact the National Organization of Social Security Claim representatives at www.nosscr.org or the National Association of Disability Representatives at www.nadr.org for individual state contact information for their members".

National Autism Information and Resource Center

References

- The publications cited below and much more information can be found at the [Social Security Administration website](http://www.ssa.gov).

An advocate's manual written by Marsha Rose Katz, called [Don't Look for Logic: An Advocate's Manual for Negotiating the SSI and SSDI Programs](#)