



## **GUARDIANSHIP: Your Rights if you have a DEVELOPMENTAL DISABILITY**

A **guardian** for an adult is someone who is chosen by the court to make decisions in place of that adult. The person with a guardian is often called a **ward**. This paper tells you about your rights if someone tells you that you need a guardian.

In Michigan, there are two types of adult guardianship, depending on how old you are when your disability begins. The rules for both types of guardianships are similar, but there are small differences. **This paper is for people whose disability started before they turned 22.** The court will call this type of guardianship a **guardianship for an individual with a developmental disability.**

You have the right to not have a guardian if you can manage your own life, **even if you need help to do it.**

### **How is a guardian appointed?**

If someone thinks that you need a guardian, they will fill out forms at the probate court and ask for a hearing. You will receive paperwork explaining when the court will have a hearing to see if you need a guardian. **If you do not want a guardian, you must go to court.**

### **What does the court do after they get the paperwork and set a hearing date?**

The court will order that you be examined by a doctor or other mental health professional. At the hearing, the doctor or other professional will

explain to the court how well they think you make decisions. If you and your lawyer do not like the evaluation, you may decide to have a second evaluation done by a doctor or mental health professional that you choose. This is called an **independent evaluation**.

If you already have a lawyer of your choosing, the court will probably not do anything else until the day of your hearing. You and your lawyer should work together to build your case, which will be discussed more below. If you do not have a lawyer of your choosing, the court will then appoint a lawyer to represent you. **You have the right to a lawyer.**

### **How should I get ready for the hearing?**

If you are fighting the guardianship, the judge will be deciding whether you can make certain decisions for yourself, or if a guardian should be appointed to make decisions for you. The judge will probably want you to show that you can do these things:

1. You can understand and give permission for medical care, *even if you have other people help you to understand.*
2. You can manage your own money *or arrange for someone to handle it for you.*
3. You can arrange for food, shelter, clothing, or other service *or make sure that someone else does it for you.*
4. You can arrange to go to work or school if you need *or make sure that someone else helps you.*

You have a right to put on **witnesses** who can testify about how you make decisions. A witness might include a case worker, therapist, family member, or friend. The court will also rely on the doctors or mental health professionals who have examined you. You should work with your lawyer to decide how to make the best case with witnesses.

### **What happens at the hearing?**

You have the right to have your case decided by a judge or a jury. You can also ask for a **closed hearing** if you do not want to allow strangers to be present for the hearing.

You have a right to be present and to hear all the evidence unless a doctor can show that you would be harmed by attending the hearing. If you cannot physically make it to court, you may want to ask the judge to take steps to move the hearing to you.

At the hearing, the judge will weigh the evidence and decide if you need a guardian. If the judge decides that you do need a guardian, they will also decide what powers the guardian should have over you.

A guardian with all powers allowed by law is called a **plenary guardian** or a **full guardian**.

A guardian with only some powers is called a **partial guardian** or a **limited guardian**.

### **What happens after the guardian is appointed?**

If a full guardian is appointed, they will have these duties unless the court says otherwise:

1. Deciding where you live, either in state or out of state.
2. Arrange for your care, comfort, and maintenance. This generally means making sure that you live in a safe place with the services that you need.
3. Take care of your clothing, furniture, cars, and other property.
4. Consent to medical care or other services.
5. Manage your money.
6. Make a report to the court at least once a year about how you are doing.

A limited guardian will only have the specific duties given to them by the court.

### **What if I already have a guardian?**

If you already have a guardian, but you think that you can manage at least some things on your own, you need to go back to court. The easiest way to do this is to write an informal letter to the court asking for a change.

MPAS has a sample letter and instructions on its website, [www.mpas.org](http://www.mpas.org). If you feel comfortable, you can also fill out a **Petition to Terminate or Modify Guardianship** and file it with the court. For more instructions on how to do this, contact your local Probate Court.

Once you send the court a letter or file the Petition to Terminate or Modify Guardianship, the process will start again and you will prepare in the same way discussed above.

### **Is there anything I can do now to prevent having a guardian appointed?**

There are many alternatives to guardianship, like having a special document that gives someone you trust the legal power to help you in your life, called a **power of attorney**. Special bank accounts and natural supports like friends and family members may also allow you to avoid guardianship. MPAS also has a paper on Alternatives to Guardianship with more information.

***This is not a substitute for legal advice. For more information, contact your attorney or call Michigan Protection & Advocacy Service, Inc. at 1-800- 288- 5923 or 517- 487-1755.***

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