Greater Wisconsin Agency on Aging Resources, Inc.

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THE GUARDIAN

The Guardian is a quarterly newsletter published by the Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) Wisconsin Guardianship Support Center (GSC).

The GSC provides information and assistance on issues related to guardianship, protective placement, advance directives, and more.

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Individual at Risk Restraining Orders and Injunctions

Courtesy of GWAAR's Legal Services Team

The laws surrounding individual at risk restraining orders and injunctions were updated in 2006. However, recently the GSC has received several inquiries about individual at risk injunctions, how they work, and when they can be used. These processes can be useful tools to consider in situations of abuse of vulnerable older adults and certain adults with disabilities. Below is a summary of information providing answers to common questions about individual at risk injunctions:

1. Who may be an individual at risk?

Adult at risk is any adult who has a physical or mental condition that substantially impairs one's ability to care for his or her own needs, and that adult has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect or financial exploitation. *See* Wis. Stats. § 55.01(1e) & §813.123(1)(ae).

Elder at risk is defined as "any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation." *See* Wis. Stats. § 46.90(1)(br) & § 813.123(1)(ae).

The existence of a physical or mental impairment, or age alone is insufficient to make someone an individual at risk. What is important is the person's state, the

Inside:

National Health Care Decisions Day: April 16, 2016

The purpose of this national awareness campaign is to inform the public and providers about the importance of advanced care planning. The theme for this year is "It Always Seems Too Early, Until It's Too Late." Check out the website here: http://www.nhdd.org/#welcome

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impact of that state on him/her to see to his/her own needs and care, or physical conditions and the actions of the other party causing harm to that person.

Being an individual at risk, regardless of age, does not necessarily mean the individual lacks mental capacity or would meet the standards for legal incapacity or incompetency. While it is possible that the individual may have an impairment effecting his/her capacity and making him/her more vulnerable, no assumption should be made that an individual at risk lacks capacity simply because of his or her victimization or likelihood to be victimized.

2. What is an individual at risk injunction?

An individual at risk injunction is a type of court order that prohibits contact between the individual and the person who abused, neglected, or exploited the individual to prevent harm to the individual at risk. The injunction would be the final relief in the petitioning process.

3. Who is involved with an individual at risk injunction?

Depending on the nature of the case, several parties may be involved. They include the following:

1) **Individual at risk**: an adult at risk or elder adult at risk (see definitions above).
2) **Petitioner:** person or agency who filed the petition for the adult at risk injunction. (See below for more discussion about who may be the petitioner).
3) **Respondent:** The person alleged to have engaged in the abusive behavior.

4. What are examples of the types of conduct that may necessitate an individual at risk injunction?

Examples of conduct that may be a basis for a petition for an adult at risk injunction include:

- Physical, mental, or sexual abuse (Wis. Stat. § 46.90(1)(a));
- Treatment without consent (Wis. Stat. § 46.90(1)(a));
- Mistreatment of the individual's animals: defined as cruel treatment of any animal owned by or in service to an individual at risk (Wis. Stat. § 813.123(1)(fm));
- Neglect: Such as, leaving individual without care or without meeting other basic needs (Wis. Stat. § 46.90(1)(f));
- Financial exploitation: Such as, stealing from an individual or manipulating the individual to gain a financial benefit (Wis. Stat. § 46.90(1)(ed));
- Harassment (Wis. Stat. § 813.125(1));
- Stalking: engaging in a course of conduct, as defined in Wis. Stat. § 940.32(1)(a).

5. When will an individual at risk injunction be ordered?

No injunction will be ordered unless the court finds reasonable cause to believe the respondent has done one of the following:

A) Engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of the individual at risk;
B) Engaged in or threatened to mistreat an animal;
C) Interfered with the investigation of an adult at risk or elder adult at risk or may interfere with the investigation of an adult at risk or elder adult at risk because of previous behavior. Because of that interference, it would be difficult to determine if abuse, financial exploitation, neglect, harassment, stalking of an individual at risk, or mistreatment of an animal occurred or may recur; or
D) Interfered with the delivery of a protective service or a protective placement of an individual at risk after the offer of protective services or placement has been made and the individual or his or her guardian consented to the receipt of those services or the protective placement, or interfered with the delivery of services to an elder adult at risk.

Wis. Stat. § 813.123(5)(a)3.

6. Who can file this type of injunction?

The individual at risk, any person acting on behalf of an individual at risk, an elder-adult-at-risk agency, or an adult-at-risk agency may be a petitioner under this section. Wis. Stat. § 813.123(2)(a).

7. If someone other than the individual at risk files, are there any additional steps?

Yes, the petitioner must serve a copy of the petition on the individual at risk.

The appointment of a Guardian ad Litem (GAL) is also required if someone other than the individual at risk files. No matter who the petitioner is, the court still has discretion to appoint a GAL "when justice so requires." Wis. Stat. § 813.123 (3)(b).

8. What must be in the petition?

By law and as seen in the state form, the petition must contain the following items.

A) Name of the individual at risk;
B) Name of the petitioner;
C) Name of the respondent and whether that respondent is an adult;
D) The petitioner's allegations about and factual basis showing whether the respondent interfered with an investigation of an adult at risk or elder at risk; the delivery of protective services or a protective placement; or engaged in or threat to engage in abuse, financial exploitation, neglect, stalking, harassment of the individual, or the mistreatment of an animal; and
E) If the petitioner is aware of any court order involving contact between the adult at risk and the respondent, and if so, the name or type of court proceeding, the date of, and the type of provisions about contact.

Wis. Stat. § 813.123(6).

9. Where can the petition be filed?

A petition may be filed in the county where the behavior occurred or where the respondent resides. Wis. Stat. § 801.50(2)(a),(c).

10. What is the typical process followed?

a. Petition for Temporary Restraining Order and/or Petition and Motion for Injunction Hearing (Form: CV-428) is completed and filed.
b. The respondent is personally served. The petitioner may choose to have the local sheriff's office perform service or to hire a process server. Proof of service will be required.
c. If the petitioner is not the individual at risk, that individual is served and a GAL is appointed to represent the individual's best interest.
d. Upon the filing of the petition, a court must decide if there is reasonable cause to determine if the allegations in the petition are true. If so, the court may issue a temporary restraining order (TRO). This TRO remains in effect until the injunction hearing, which can be up to 14 days later. No notice is required to be given to the respondent before a TRO may be granted.
e. A hearing may be scheduled on the petition for the injunction, and a hearing held where the various parties present their respective cases.
f. The court enters an order on the petition.

11. **Effect of injunction**

A court order may require the respondent to cease engaging in the behavior that necessitated the order, to avoid the residence of the individual or any place temporarily occupied by him or her, and to avoid contacting the individual, to avoid directing a third party from trying to contact the individual or any other appropriate remedy not inconsistent with the remedies requested in the petition. (Wis. Stat. § 813.123(5)(ar)(5)). The injunction is effective for as long as the terms of the injunction specify, but typically not more than 4 years. (Wis. Stat. § 813.123(5)(c)).

An order may also prohibit the respondent from intentionally preventing an APS worker from meeting, communicating, or being in visual or audio contact with the adult at risk.

A firearms restriction may also be ordered. The court may order that the respondent is prohibited from possessing a firearm until the injunction expires.

12. What is the penalty for violating an individual at risk injunction or TRO?

Whoever intentionally violates an applicable order may be fined up to $1,000 or imprisoned for up to nine months. Wis. Stat. § 813.123(10). ❒

Case Law

In the matter of the mental commitment of Christopher S.:
Winnebago Co. v. Christopher S.
Date: January 5, 2016
Citation: 2016 WI 1

Summary: Christopher S. (hereafter "Christopher") appealed the orders for his involuntary commitment and involuntary administration of psychotropic medication established while he was an inmate in the Wisconsin State prison system. Christopher argues that Wis. Stat. § 51.20(1)(ar) is facially unconstitutional because it violates his substantive due process rights by not requiring a finding of dangerousness as is required in a Wis. Stat. § 51.20(1) involuntary commitment. The Court held that Wis. Stat. § 51.20(1)(ar), providing for involuntary commitment of prison inmates, is facially constitutional.

Case Detail: Christopher was serving a sentence for mayhem in a Wisconsin state prison when Winnebago County filed a petition to commit him to the Wisconsin Resource Center (WRC). The county alleged that Christopher was suffering from a mental illness and that commitment to the WRC could meet his treatment needs. The county also petitioned for the involuntary administration of psychotropic medication and treatment under Wis. Stat. 51.61(1)(g)4.b. The circuit court granted the petition for involuntary commitment and involuntary administration of psychotropic medication and treatment. After several extensions of the orders Christopher filed a post commitment motion challenging both orders. The circuit court denied the motion on the basis that the case was moot because the original orders had expired. Christopher appealed. The Court of Appeals certified the question to the Wisconsin Supreme Court. The Court accepted the certification of the case from the Court of Appeals, and decided to hear the case regardless of mootness because the question is a "matter of great public importance". *Christopher S.*, at ¶ 32.

The Court discussed two of Christopher's arguments on appeal: 1) Wis. Stat. § 51.20(1)(ar) is facially unconstitutional because it violates his substantive due process rights; 2) the circuit court erred when it concluded that he was incompetent to refuse psychotropic medication and treatment under Wis. Stat. §51.61(1)(g).

After examining whether § 51.20(1)(ar) is facially unconstitutional, the Court disagreed with Christopher. Holding that the statute is facially constitutional.

The Court compared the inmate commitment statutes with the general involuntary commitment statute. To commit someone under Wis. Stat. § 51.20(1) the court must find that 1) the person is mentally ill, developmentally disabled, or drug dependent, 2) a proper subject for treatment, and 3) is dangerous. However, to commit

an inmate the court must find that 1) the individual is an inmate of the Wisconsin state prison system, 2) the inmate is mentally ill, 3) the inmate is a proper subject for treatment and is in need of treatment, 4) appropriate less restrictive forms of treatment were attempted and unsuccessful, 5) the inmate was fully informed about his treatment needs, services available, and rights, 6) the inmate had an opportunity to discuss his needs, the available services and rights with a licensed psychologist or physician. Wis. Stat. § 51.20(1)(ar). Christopher argued that the lack of a requirement to find dangerousness violates his substantive due process rights and is therefore facially unconstitutional.

A challenge of a statute's constitutionality is reviewed with a presumption that the statute is constitutional. The party challenging the statute must prove the statute unconstitutional beyond a reasonable doubt. Further, under a facial challenge it is up to the challenging party to show that the law "cannot be enforced under any circumstances." *Id.*, at ¶ 34.

Substantive due process rights provide protection from state action that is "arbitrary, wrong or oppressive" by "forbidding the government from exercising power without any reasonable justification in the service of a legitimate government objective." *Id.*, at ¶ 35. The Court has to look at a challenge with a different standard of review if it is alleged that a fundamental right or suspect class is involved. If neither is at issue, the Court is to use rational basis review. Christopher did not allege that a suspect class was involved, so the Court only discussed whether the law implicates a fundamental right.

The Court noted that § 51.20(1)(ar) only applies while an individual is serving a prison sentence. It found that fact important because a criminal conviction and sentence extinguish a defendant's rights to freedom from confinement. Prison inmates retain the constitutional rights that are not inconsistent with his status as prisoner. The Court stated that the standard used for determining the validity of a prison regulation that is allegedly infringing on an inmates constitutional rights, is to ask whether the regulation is reasonably related to a legitimate penological interest, even if it is a fundamental right being limited. The Court decided that because the right to freedom from physical restraint is already limited when a person is incarcerated and because § 51.20(1)(ar) only applies to inmates that the rational basis standard of review should be used to determine if the statute is facially unconstitutional.

Under rational basis review, a law is upheld unless it is arbitrary and bears no rational relationship to a legitimate government interest. Any conceivable set of facts that show a legitimate government interest is enough to be upheld as constitutional under rational basis review.

The Court stated that the state has an interest in the care and assistance of those individuals with a mental illness. It classified this interest as an obligation in the prison context. Because the Court could think of at least one conceivable set of facts where § 51.20(1)(ar) related to a legitimate government interest, the Court

held that the statute is facially constitutional.

Christopher also challenged the circuit court order finding him incompetent to refuse psychotropic medication. The Wisconsin Supreme Court found that the circuit court did not err in finding Christopher incompetent to refuse psychotropic medications. The Court stated that the County carefully followed the required statutory language in the testimony of the witnesses. Dr. Musunuru stated that "the subject holds patently false beliefs about the treatment recommended medications, which prevent an understanding of the legitimate risk and benefits." *Id.*, at ¶ 15. Dr. Musunuru also found that "due to the subject's mental illness, [he] is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to make an informed choice as to accept or refuse medications." *Id.* Dr. Pareek similarly found that Christopher suffers from chronic paranoid type schizophrenia and has no insight into his mental illness so that he does not accept that he needs to be treated. The Court found that this testimony was sufficient to suggest that Christopher was incompetent to refuse psychotropic medication because he was substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his condition to make an informed choice as to whether to accept or refuse. ❒

Title: **In the Commitment of Thomas Treadway: State of Wisconsin v. Thomas Treadway**
Date: December 1, 2015
Citation: 2015 AP 591
Affirmed

Summary: Thomas Treadway (hereafter "Treadway") appealed a court order finding him not competent to refuse medication and granting an involuntary medication order. He argued the state did not show that the advantages and disadvantages of, and alternatives to medication were explained to him, or that he was substantially incapable of applying an understanding of the advantages and disadvantages and alternatives to his mental illness to make an informed choice. The Court of Appeals found that the record showed that the state did meet its burden of proof, and affirmed the circuit court order.

Case Detail: Treadway was committed under a Ch. 980 in 1999. The first involuntary treatment order Treadway appealed was petitioned for by his treating psychiatrist at Sand Ridge Treatment Center. Treadway's treating physician, Dr. Weiler, reported that Treadway was mentally ill, and that he had explained to Treadway the advantages, disadvantages and alternatives to accepting medication or treatment.

Dr. Weiler testified that he had been treating Treadway for schizophrenia for five-and-a-half years and that he had recently begun to refuse his medication, making him aggressive and irritable. Treadway protested that he suffers

from schizophrenia, and told staff that he does not need medication.

Treadway contended that the record is insufficient to support the order. His argument raised two issues the court must address: 1) what standard of review must the court apply when reviewing an order for involuntary administration of psychotropic medication, and 2) whether the circuit court's order is supported by the record.

The State argued that an incompetency determination is reviewed under the clearly erroneous standard. Treadway argued that the Court of Appeals must review the order de novo. The Court of Appeals stated that it will not resolve the issue because under either standard of review, the record demonstrates that the State met the burden of proof.

The State was required to prove two things: 1) the advantages, disadvantages and alternatives to medication were adequately explained to Treadway, and 2) that Treadway was substantially incapable of applying an understanding of his medication to his mental illness in order to make an informed choice as to whether to accept or refuse medication.

The Court of Appeals found that the State presented adequate evidence to support both of these requirements. The Court found that the Physician's report in the record, where Dr. Weiler signed acknowledging that he explained the advantages, disadvantages and alternatives to accepting medication or treatment to Treadway, and Dr. Weiler's testimony that Treadway was previously offered an alternative medication when he complained of side effects that was not as effective, sufficient to meet the first requirement. The Court also found Dr. Weiler's testimony that Treadway's condition had deteriorated to the point where he lost the ability to understand the benefits and effects of taking his needed psychotropic medication all sufficient to meet the burden of proof. ❒

Title: In re the Commitment of Theodore K. Sanderfoot:
State of Wisconsin v. Theodore K. Sanderfoot
Date: February 17, 2016
Citation: 2014 AP 1227
Affirmed

Summary: Theodore Sanderfoot (hereafter "Sanderfoot") appealed an order denying his petition for discharge from his Ch. 980 commitment and denying his motion for a new discharge hearing due to ineffective assistance of trial counsel. The Court of Appeals affirmed the circuit court, finding that the counsel was effective at the discharge hearing and that the circuit court did not err when excluding a reference to the length of Sanderfoot's extended supervision.

Case Law

Case Details: Sanderfoot was committed under Ch. 980 in 2011. He petitioned for discharge from his commitment in 2013. The State has the burden at a discharge hearing to prove that an individual continues to meet the criteria under § 980.09(3) for commitment. At the discharge hearing it is determined whether any new evidence could lead a reasonable trier of fact to conclude that the petitioner does not meet the criteria for commitment as a sexually violent person. The jury found that Sanderfoot continued to meet the standards, and the circuit court denied the discharge petition.

Sanderfoot appealed the order denying his discharge claiming two things: 1) he is due a new hearing because of ineffective assistance of counsel, 2) the circuit court erred in excluding references to the length of his extended supervision.

He argued ineffective assistance of counsel, claiming that his counsel should have objected to testimony which referred to extrapolation analysis about an individual's lifetime re-offense risk. The Court of Appeals found that the trial counsel's strategy to remark on the lack of reliability of extrapolation is supported in the record and therefore not clearly erroneous.

The Court of Appeals also found that Sanderfoot's next argument that the circuit court erred by excluding testimony about the length of his extended supervision, was not supported by the record. Sanderfoot argues that the case, *State v. Mark*, 2006 WI 78, does not control on the issue. *Mark* held that the conditions of probation supervision were not relevant to whether he was still a sexually violent person for the purposes of a Ch. 980 commitment. The Court of Appeals disagreed with Sanderfoot's argument that it should read *Mark* to exclude only conditions of extended supervisions, but not the length of extended supervision. The Court stated that the length of extended supervision, the conditions under which he would be released, and the type of supervision he would receive in the community cannot be considered separately. ❒

Non-Expiring ID Cards for Seniors

By: Intern Xis Ning

A recent enacted Wisconsin law is making life a little easier for our senior citizens. They now, have the option to obtain a non-expiring I.D. card for free, if it is obtained for voting purposes. In addition, senior citizens do not even have to go into the DMV to obtain the I.D. card. They can simply "order" the card online and receive it in the mail. This means they will not have to go and wait in line at the DMV to renew an identification (ID) card or driver's license (DL) again, unless their previous ID/driver's license had been expired for two or more years, they had never held an ID/driver's license before, or they just want to update their photo. The card will work and look the same as any state administered ID or driver's license, except there will be the words "non-expiring" where the expiration date use to be.

The one caveat for having the card is that the individual will give up their driver's license, therefore losing all driving privileges in any of the 50 states. Individuals cannot hold both a driver's license and non-expiring ID. If an individual obtains the non-expiring card in Wisconsin and also gets a driver's license in Minnesota, the I.D. card will automatically become invalid. Therefore, a non-expiring ID may not be for everyone 65 and over ❒

Helpline Highlights

The Wisconsin GSC receives many calls and emails about guardianships, powers of attorney, other advance directives, and more. The following are examples of some of the questions received and responses given through the Guardianship Support Center. All personal and identifying information has been removed from each selection to protect the privacy of the individuals involved.

1. Who must receive notice of a non-emergency transfer of an individual protectively placed? Must the guardian consent to the transfer?

By law, certain parties must receive notice of any transfer of a protectively placed individual. Per Wis. Stat. § 55.15(5)(a), the person or entity initiating the transfer "shall provide 10 days' prior written notice of a transfer to the court that ordered the protective placement and to each of the other persons and entities specified… who did not initiate the transfer." Other entities who must receive notice include the guardian, the county department providing the protective placement, the department, and the protective placement facility. See Wis. Stat. § 55.15(5)(a) & 55.15(2). Note, the entity or person providing the notice must include a notice to the individual, his or her attorney, and to other interested parties that one may petition the court for a hearing on the transfer. *Id*.

Not only must the guardian be provided notice of the transfer, but also no individual may be transferred without the written consent of the individual's guardian except in the case of an emergency. Wis. Stat. § 55.15(3).

2. Must a guardian of the person follow the ward's wishes, on things such as visitation, or may a guardian limit visitation? If so, what are some things to think about when considering this type of limitation?

Whether a guardian has the authority to make a decision that is contrary to the ward's opinion depends on the situation.

Wisconsin guardians must strive to make decisions in their wards' best interest. Making a decision consistent with the ward's best interest is not necessarily the same as following the ward's wishes, although guardians should attempt to discover those wishes.

When an individual is appointed a guardian of the person, that individual does not give up a right unless that right was specifically removed within the guardianship order. Wis. Stat. § 54.18 (1) **("A ward retains all his or her rights that are not assigned to the guardian or otherwise limited by statute")**. Unless removed, wards generally have the authority to exercise many rights such as their constitutional rights like the freedom of association and privacy.

When an issue involving a limitation arises, Wisconsin law requires a guardian of the person to

discover the ward's preferences and to make sincere efforts to respect the ward's wishes before restricting the ward's access to others. Wis. § 54.25(2)(d)3.b provides the guardian of the person must "make a diligent effort to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression." *Id*.

This duty does not necessarily mean the guardian must always agree with the ward. As stated, guardians follow the best interest standard. In addition, if there is a preceding court order, such as an injunction, that court order should be followed.

The guardian of the person has the authority to act in a manner different than what the ward wants if the guardian first considers several factors and believes his or her actions are in the ward's best interest. Wis. Stat. § 54.25(2)(d)3.b provides, "[I]n making a decision to act contrary to the individual's expressed wishes, the guardian shall take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience." Likewise, this same language allows guardians to give their wards some freedom if the exercise is beneficial to the ward.

Several factors should be reviewed when the guardian is considering the ward's exercise of a power, including the following:

1) Is there any specific court order involving this situation?
2) Did the court, in the guardianship action, assign the guardian power to act in this area of decision making?
3) If so, has the guardian asked the ward about his or her preference for the decision?
4) If the guardian wishes to make a decision contrary to the ward's wishes, did the guardian examine:
   - The person's level of understanding of the nature and consequences of the decision;
   - The level of risk involved;
   - The person's opportunity to develop decision-making skills; and
   - The need for wider experiences?
5) Does the decision relate to the ward's essential requirements for health, safety and protection from abuse, neglect or exploitation?
6) If so, does the decision place the least possible restriction on the ward's personal liberty necessary to meet these essential requirements?
7) Is the guardian's decision in the ward's best interest?
8) Is the guardian making the decision in good faith?
9) If this decision is regarding visitation and safety is an issue, is there a way to allow the visitation to occur (i.e., can a safer environment be identified)?
10) Is the individual in a facility? If so, have

other applicable rules and procedures been reviewed? Residents in facilities usually have a right to visitation with that right only being removable in specific situations and through a specific rights removal process.

Even after reviewing the above questions and if there is no existing court order removing the power, a guardian may want to seek court approval prior to restricting the ward's rights.

Note, a guardian's personal feelings about the visitor are never a legitimate basis for restricting visits with the ward. Whether the guardian does not like the visitor or would not wish to spend time with him or her personally is irrelevant. The ward's right to see the visitor should be honored if he or she is able to express a preference and there is no compelling interest to the contrary.

3. Where may a guardianship petition be filed?

A guardianship petition may be filed in the county of residence or the county where the person is physically located. Wis. Stat. § 54.30(2). If the proposed ward is also the subject of a protective placement action, a petition for a protective placement may be filed in the (a) county of residence, (b) where the individual is physically located because of extraordinary circumstances, or (c) by the individual's guardian. Wis. Stat. § 55.075(5)(a). ❒

Disclaimer

This newsletter contains general legal information. It does not contain and is not meant to provide legal advice. Each situation is different and this newsletter may not address the legal issues affecting your situation. If you have a specific legal question or want legal advice, you may want to speak with an attorney.

POMS for ABLE Account

In the March 2015 issue of the *Guardian,* the GSC published an article about Achieving a Better Life Experience (ABLE) accounts. Recently, the Social Security Administration has issued POMS provisions for ABLE accounts. (SI 01130.740). These provisions include explanations of terms, what to exclude from countable income, and other topics that might be of interest to readers.

Most notable for the readers of the *Guardian,* there is a provision describing who can have signature authority on an ABLE account: "A person with signature authority can establish and control an ABLE account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account. The person with signature authority must be the designated beneficiary's parent, legal guardian, or agent acting under a power of attorney. For SSI purposes, we always consider the designated beneficiary to be the owner of an ABLE account, regardless of whether someone else has signature authority over it." (SI 01130.740(B)(4))

The full POMS section can be found here: https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740