



The Guardian is a quarterly newsletter published by the Greater Wisconsin Agency on Aging Resources' (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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In This Issue:

Points of Interest.....2

- Review of Recent Webinars from the National Center on Law & Elder Rights
- August is National Immunization Awareness Month
- National Association of Social Workers—WI Chapter Conference
- GSC Outreach Update

News.....3

- Potential Impact to Certain Individuals Who Received Services From Wisconsin Medicaid Long-Term Care Programs
- Senators Urge HHS, DOJ to Provide More Data on Conservatorships and Guardianships
- Consumer Financial Protection Bureau Rental Assistance Finder

Case Law.....4-7

- Eau Claire County v. J.M.P.
- Sauk County v. S.A.M.
- Sheboygan County v. M.W.

Helpline Highlights.....8-9

- Can my health care power of attorney be activated immediately upon signing, if I want help making decisions right away?
- Can my in-laws witness my health care power of attorney?
- I am guardian for my loved one with serious and persistent mental illness. What are the limitations on my authority regarding treatment for their condition?
- My parents named me in their will to be the guardian of my adult disabled sister, do I still need to go to court to be appointed her guardian?

Interested in Receiving *The Guardian*?

Do you want more information about guardianship, POAs and related issues?

Signing up is easy with a link on our website:

[Guardian Newsletter Sign-Up.](#)

You can also subscribe by emailing your name, email address, and organization to

guardian@gwaar.org.



Review of Recent Webinars from the National Center on Law & Elder Rights

The National Center on Law & Elder Rights held several webinars this summer that may provide useful information to attorneys, guardians, caregivers, and other professionals. Recordings and materials are [currently available](#) for the following:

June 17: What it Takes to Age in Place: Bringing Housing and Home and Community-Based Services (HCBS) Together

June 22: Emergency Rental Assistance Programs and Other Tools to Prevent Evictions of Older Adult Tenants

July 13: Role of Decision Supports in Elder Abuse Prevention and Recovery

July 21: Strategies for Developing Accessible Documents and Presentations

August is National Immunization Awareness Month!

August is National Immunization Awareness Month (NIAM). This annual observance highlights the importance of getting recommended vaccines throughout your life. We know the COVID-19 pandemic has impacted all aspects of life, including your ability to attend important appointments and receive routine vaccinations. During NIAM, we encourage you to talk to your doctor, nurse, or healthcare professional to ensure you and your family are protected against serious diseases by getting caught up on routine vaccination. More information is available [from the CDC](#).

National Association for Social Workers – WI Chapter Conference

The Wisconsin Chapter of the National Association for Social Workers now has [registration available](#) for its annual conference. This year's theme is Social Work, Human Rights and Resiliency. The conference offers options to attend in person in Wisconsin Dells or virtually. The GSC will be presenting a session on supported and substitute decision-making and lessons learned during the pandemic on the last day of the conference.

Dates: November 1-3, 2021.

GSC Outreach Update:

The majority of our outreach events continue to be remote for now. However, we may be available to schedule in-person trainings and programs for later in the fall/winter, depending on the status of the pandemic.

If you or your organization would like us to present or record a video for you, whether it's on advance directives, supported decision-making, or guardianship, please contact us at guardian@gwaar.org.





Potential Impact to Certain Individuals Who Received Services From Wisconsin Medicaid Long-Term Care Programs

(Press Release from the Wisconsin Department of Health Services (DHS))

The Wisconsin Department of Health Services (DHS) announced in June that an unauthorized individual gained access to an email account on February 19, 2021. This unauthorized access was disabled quickly following discovery that day. DHS conducted an investigation of the unauthorized access, and determined that it may have exposed names, member identification numbers, dates of birth, some Social Security numbers, address, and health information such as medical conditions and treatment information. **No known exposure has occurred.**

DHS identified individuals whose information may have been accessed through its investigation of this incident. On June 4, 2021, notifications were mailed to 2,868 individuals who received services from Wisconsin's Family Care, IRIS, or Children's Long-Term Support programs, and whose information may have been accessed. Out of an abundance of caution, these individuals have been offered free credit monitoring for one year as well as given access to a dedicated call center to answer questions they might have.

Since discovering the unauthorized access on February 19, 2021, the Wisconsin Department of Health Services has taken actions to improve its security posture. DHS has also requested that the Department of Administration and the State's Chief Information Security Officer conduct a review of Department of Health Services' security protocols protecting personal health information including the adequacy of our information system protections against malicious phishing attacks.

Individuals in the above programs who received a notification letter or have questions about this incident, can call 1-833-664-2022 from 8:00 a.m. to 8:00 p.m. CT Monday through Friday.

Senators Urge HHS, DOJ to Provide More Data on Conservatorships and Guardianships

On July 1, Sens. Elizabeth Warren (D-MA) and Bob Casey, Jr. (D-PA) [sent a letter](#) to U.S. Department of Health and Human Services Secretary Xavier Becerra and Attorney General Merrick Garland urging the federal government to provide more data on guardianships and conservatorships of adults. The letter follows reporting on singer Britney Spears' conservatorship and ongoing conversations regarding the rights and restrictions that may be appropriate under states' protection systems for vulnerable adults. A copy of the letter is available [here](#) (PDF).

Consumer Financial Protection Bureau Rental Assistance Finder

This week, the Consumer Financial Protection Bureau (CFPB) debuted a new tool that helps renters and landlords look up rental assistance in their area and apply for assistance. The [Rental Assistance Finder](#) is designed to help tenants and landlords take advantage of emergency rental assistance that can be used to cover rent, utilities, and other housing costs, with the goal to keep people in their homes.

Many individuals face barriers to accessing rental assistance funds, including lack of knowledge of the programs available, internet connectivity issues, language access issues, and difficulty navigating overly burdensome paperwork. Advocates can learn more about how to help older adults navigate these issues in a recent training from the National Center on Law & Elder Rights on [Emergency Rental Assistance Programs and Other Tools to Prevent Evictions of Older Adult Tenants](#), as well as the [Chapter Summary](#) that accompanied the training.



Title: *Eau Claire County v. J.M.P.*

Court: WI Court of Appeals, District III

Date: May 25, 2021; withdrawn and reissued on June 22, 2021

Citation: 2020AP2014

Case Summary:

In February 2019, J.M.P. was involuntarily committed for treatment and medication under Ch. 51, Wisconsin Statutes. His commitment was subsequently extended for another year. J.M.P. appealed that extension, arguing that the court failed to make specific factual findings with reference to the statutory grounds for recommitment as required by *Langlade County v. D.J.W.*, 2020 WI 41, 391 Wis. 2d 231, 942 N.W.2d 277.

The Court of Appeals reversed the circuit court decision on the basis that the court had failed to follow the directive of *D.J.W.*, which had been issued prior to the extension hearing in this case.

Case Details:

In February 2019, J.M.P. was committed for a period of six months for involuntary medication and treatment. In August 2019, J.M.P.'s commitment was extended for twelve months. In June 2020, Eau Claire County filed a petition seeking another extension of J.M.P.'s commitment.

During the hearing scheduled to discuss the commitment extension, a psychologist who had evaluated J.M.P. testified that he had a history of schizophrenia and substance abuse with drug-induced psychosis, that he reported hearing voices at least once a week telling him to hurt himself or others, and that he met the standard for dangerousness because there was a substantial likelihood that he would be a proper subject for commitment if treatment were withdrawn. Further, the psychologist testified that J.M.P. had stated that he would resume using cannabis and alcohol if not in a group home and that he would not take his medications "if left to his own devices." The psychologist opined that if J.M.P. stopped taking his medications and resumed using cannabis and alcohol, it was likely that his hallucinations would become more prominent, "which could result in poor behavioral choices that could result in him participating in behaviors that could injure or kill himself or others."

Following the witness testimony and each parties' arguments, the circuit court ruled that J.M.P. suffers from a mental disorder of Drug-induced Psychosis. The county asked the court to find that J.M.P. did meet the level of dangerousness outlined in Wis. Stat. § 51.20. The court found that J.M.P. did meet the dangerousness requirement, due to his threats, and that he was not competent to refuse medication. The circuit court subsequently entered a written order extending J.M.P.'s commitment, as well as an order for involuntary medication and treatment for twelve months.

On appeal, J.M.P. argued that the court had not made specific factual findings with regard to the ground for recommitment as required by the Wisconsin Supreme Court in *D.J.W.*, and that because his hearing had taken place more than two months after *D.J.W.* was decided, the court was bound to follow it. The county, in turn, argued that where the individual could potentially meet more than one statutory ground for recommitment, it was not necessary for the court to articulate which ground it relied on.

The Court of Appeals disagreed with the county, noting that the Supreme Court had encouraged circuit courts to state each ground; although there may have been more than one in this case, the court failed to state even one.

Initially, the Court of Appeals remanded the case to the circuit court to make appropriate factual findings in compliance with *D.J.W.* However, J.M.P. filed a motion for reconsideration, noting that his previous extension order expired in



August 2020, and that with this court holding that that order to be invalid, the circuit court had failed to enter a valid order prior to expiration of the previous order. He argued that the circuit court had thus lost competency to proceed. The county failed to respond to the Court of Appeals' request for briefing on this issue. In light of the county's lack of response, the loss of competency of the circuit court, and the fact that any new fact-finding hearing (assuming the underlying order to be valid) would give J.M.P. no meaningful opportunity to appeal prior to expiration in August 2021, the court withdrew its previous opinion and issued a new one reversing the case and dismissing the orders.

This particular remedy for this situation may be repeated in future cases; the majority of the cases to date that have argued non-compliance with *D.J.W.* were in cases with hearings prior to that decision's issuance, and thus the court has affirmed the orders as *D.J.W.* was intended to be prospective. Now that *D.J.W.* is more than a year old, however, more cases may end up like this one if the circuit courts do not make specific findings.

Title: *Sauk County v. S.A.M.*

Court: WI Court of Appeals, District IV

Date: September 3, 2020

Citation: [2019AP1033](#)

Case Summary:

In February 2018, S.A.M. was involuntarily committed pursuant to Chapter 51, Wisconsin Statutes, for a period of six months. In June 2018, Sauk County filed a petition to extend S.A.M.'s commitment for an additional twelve months. S.A.M. contested the petition, and the Sauk County Circuit Court issued an order extending S.A.M.'s commitment for six months, rather than the requested twelve months. Nearly a year later – and four months after the extension had expired – appointed counsel for S.A.M. filed an appeal of the order extending S.A.M.'s commitment. Because the commitment had expired, the Court of Appeals requested briefing on whether the issue was moot. After briefing on that specific issue, the Court held that the issue was moot and did not reach the merits of the commitment order.

Because mootness is a frequent issue in commitment appeals (even a fast-tracked appeal can take 10-11 months for a decision, which means even a 12-month extension may have expired by the time the decision is reached), the Supreme Court of Wisconsin has agreed to hear this case; it is currently scheduled for oral argument on September 27, 2021.

Case Details:

On February 2, 2018, S.A.M. was involuntarily committed for treatment of bipolar disorder. On June 22, 2018, Sauk County filed a petition to extend S.A.M.'s involuntary commitment for an additional twelve months. S.A.M. contested the petition and the circuit court held a hearing regarding the recommitment.

Subsequent to the hearing, the Sauk County Circuit Court issued an order extending S.A.M.'s commitment, involuntary medication administration, and treatment for an additional six months, as opposed to the requested twelve. The parties agreed that the order would end on approximately February 1, 2019. On June 3, 2019, S.A.M.'s appointed counsel filed a notice of appeal from the order extending the commitment. In a hearing on August 6, 2019, the court of appeals issued an order stating that S.A.M.'s appeal appeared to be moot and ordered the parties to address the mootness issue as the first issue in their appellate briefs.

Case law provides that an issue is moot when its resolution will have no practical effect on the underlying controversy. Relying on this precedent, the court of appeals noted that it generally declines to reach moot issues unless the issue meets one of five exceptions: 1) the issue is of great public importance; 2) the issue involves the constitutionality of a statute; 3) the issue arises often and a decision from the court is essential; 4) the issue is likely to recur and must be resolved to avoid future uncertainty; or 5) the issue is likely to repeat and yet evades review.





Sauk County argued that S.A.M.'s recommitment is a moot issue because his recommitment had expired and the issue does not fall within any of the five exceptions above. Sauk County based its argument on the decision in *Portage Cty v. J.W.K.*, 2019 WI 54, 386 Wis.2d 672, N.W.2d 509, in which the Wisconsin Supreme Court held that "reversing the expired 2016 order for insufficient evidence would have no effect on subsequent recommitment orders because later orders stand on their own language of the statute." The court further held "an appeal of an expired commitment is moot and reversing the expired order will have no practical effect on the underlying controversy because J.W.K. is no longer subject to the 2016 order."

S.A.M. sought to distinguish his case from J.W.K., noting that J.W.K did not assert that collateral consequences resulted from his expired extension. S.A.M. pointed to the court's holding in respect to mootness was "limited to situations where no collateral implications of the commitment order were raised." S.A.M. contended that, although he was no longer subject to his recommitment order, his challenge to the order was not moot because he was subject to three collateral consequences: (1) a firearms ownership ban; (2) the stigma associated with being subject to an involuntary commitment order; and (3) possible liability for costs of his care.

With regard to the firearms ban, the Court of Appeals found that after briefing was completed in this case, the Wisconsin Supreme Court addressed this issue in *Marathon County v. D.K.*, 2020 WI 8, 390 Wis. 2d 50, 937 N.W.2d 901. In that case D.K. was civilly committed and appealed the order. Five days after his appeal was filed, D.K.'s commitment order expired, and no extension was sought. Marathon County argued that D.K.'s commitment challenge was moot because his commitment had expired and did not fall within any of the five exceptions. D.K. argued that his appeal was not moot because three collateral consequences remained: (1) liability for costs of his care; (2) a firearms prohibition; and (3) the negative stigma attached to a mental commitment. The Supreme Court agreed with D.K., holding that "on appeal, a decision in D.K.'s favor would void the firearms ban and therefore have a practical effect. Thus, we conclude that D.K.'s commitment is not moot because he is still subject the collateral consequence of a firearms ban." *Id.* at ¶25.

S.A.M. noted that both the circuit court in the original order and the Court of Appeals imposed a firearms ban in their commitment and recommitment orders. There is no order or document on record that the firearms ban was ever lifted. S.A.M. argued that the extension could impact his ability to have the firearms prohibition lifted. S.A.M. also noted that a person banned from possessing a firearm following and involuntary commitment may petition to the circuit court rescind the ban, and pursuant to Wis. Stat. § 51.20(13)(cv)1m.b., the circuit court may grant the request only if the "individual's record and reputation indicate that the individual is not likely to act in a manner dangerous to public safety and that granting of the petition would not would not be contrary to public interest." S.A.M. argued that the number of commitments or extensions a person has on their record "may be relevant to the court's determination of whether an individual is likely to act in a manner dangerous to public safety. As a result, he asserted that "the firearms ban associated with SAM's commitment extension and the extension's implications for his ability to obtain a cancellation of the ban are therefore real and substantial collateral consequences of the extension order."

However, the Court found that because S.A.M. failed to show that the firearms restriction is the result of extension, rather than the result of the original commitment order, he did not prove that a decision in his favor would impact the firearms ban. On the next point, the Court of Appeals ruled that S.A.M. would not be subject to any more or any less social stigma if the extension order was vacated. With regard to S.A.M.'s final point, alleged monetary liability, S.A.M. did not allege any actual monetary liability for which he has been held responsible and his hypothetical liability does not constitute a consequence sufficient to avoid application of the mootness doctrine.

As a result, the Court of Appeals found that none of the exceptions to the mootness doctrine applied here, and declined to reach the merits of the extension. S.A.M. requested review from the WI Supreme Court, which has been granted; a decision is expected in late 2021 or early 2022.





Title: *Sheboygan County v. M.W.*

Court: WI Court of Appeals, District II

Date: May 12, 2021

Citation: 2019AP1033

Case Summary:

In August of 2020, Sheboygan County filed a petition to extend M.W.'s mental health commitment and requested involuntary medication and treatment.

Forty-eight hours prior to the recommitment hearing, M.W. filed a motion requesting specific notice of the grounds for commitment that the county intended to pursue. The circuit court held the hearing on October 9, 2020, and M.W.'s motion was denied. At the recommitment hearing, the circuit court granted Sheboygan County's petition for recommitment, involuntary medication and treatment. M.W. appealed, citing inadequate notice of the specific grounds for the commitment. The Court of Appeals noted that M.W. had not identified what, if anything, she would have done differently without additional notice, and that her substantive rights had not been affected by the lack of specificity in the petition for recommitment.

Case Details:

M.W. has been subject to many mental health commitment, involuntary medication, and treatment orders since 2006. The order at issue in this appeal was filed in August 2020. Along with the recommitment, Sheboygan County also petitioned for an involuntary treatment and medication order. Two days before the hearing, M.W. filed a motion to request clarification as to the specific ground for the petition.

The circuit court held a hearing regarding the petition on October 9, 2020. The circuit court denied M.W.'s motion, concluding that nothing required the County to identify precisely which standard of dangerousness the county intended to proceed under, and that the doctor's report did not have that information contained in it. Dr. Marshall Bales, the independent examiner who interviewed M.W., and Emilee Sesing, the case worker assigned to M.W., testified for the county at the recommitment hearing, and M.W. herself testified at the hearing. The court granted Sheboygan County's petition for recommitment and entered an order for involuntary treatment and medication, finding that the county had proved by clear and convincing evidence that M.W. suffered from a mental illness, would be a proper subject for commitment if treatment were withdrawn, and was a danger to herself or others.

M.W. appealed, arguing that the County failed to provide her with sufficient notice of the standard of dangerousness under §51.20(1)(a)2. M.W. also argued that the circuit court failed to comply with the requirements set forth by the Wisconsin Supreme Court in *Langlade County v. D.J.W.*, 2020 WI 41, 391 Wis. 2d 231, 942 N.W.2d 277, that it identify the statutory standard of dangerousness it relied on upon ordering M.W.'s recommitment.

The Court of Appeals noted that while M.W. "put forth a vigorous defense at the hearing" she failed to identify on appeal what, if anything, she would have done differently if the county had provided more specific notice than what it provided through the doctor's report. The court also noted that while M.W. claimed that any notice error made amounted to structural error, this point was raised for the first time in her reply brief.

The Court of Appeals also concluded that M.W.'s substantial rights were not affected by Sheboygan County's failure to provide greater specificity with regard to the subsections under which it was pursuing her commitment, and affirmed the circuit court's decision.



Can my health care power of attorney be activated immediately upon signing, if I want help making decisions right away?

Yes. Wisconsin statutes provide for activation upon incapacity “unless otherwise specified in the power of attorney for health care instrument.” Wis. Stat. § 155.05(2). A power of attorney document drafted to take effect right away does not require a statement of incapacity, and will allow the agent to make decisions in addition to the principal. As long as the principal has capacity, their wishes will take precedence over any other preferences listed in the document. A consult with an attorney to draft a POAHC in this manner may be helpful, to ensure it works as the principal intends.

One other option for people who may want some assistance with medical decisions is a supported decision-making agreement. Supported decision-making agreements are available to anyone who may have a functional impairment that substantially limits major life activities, including self-direction or self-care, mobility, communication, etc. A supported decision-making agreement would allow the individual to name one or more supporters who could potentially get information from the individual’s care team, attend appointments with the individual, and communicate decisions back to the care team. The individual remains the decision-maker, but can get as much (or as little) support as they would like from family or friends. More information on supported decision-making agreements and the state standard form is available from the [Board for People with Developmental Disabilities](#).

What is the difference between a guardianship and a conservatorship in Wisconsin?

The concept of substitute decision-making for an adult who is unable to make their own decisions goes by different names in different states. With singer Britney Spears’ conservatorship case once again in the news, questions have come up about what “conservatorship” means in Wisconsin and how it differs from guardianship.

What California calls a conservatorship, Wisconsin calls adult guardianship – it is involuntary, and the court appoints an individual to provide for the person’s health and safety, financial management, or both. Wisconsin also has conservatorship for financial matters, but it is voluntary. No person can be forced into a conservatorship. In a conservatorship, the court does not make a finding of competency or incompetency. Instead, the court talks with the applicant to make sure the person wants a conservator and that the individual selected to be conservator is suitable for the position. Because a conservatorship is voluntary, the individual can request the court terminate it at any time. However, if the court feels the individual cannot manage their own finances and property, the court does have the option to continue it.

Typically, the conservatee (person requesting a conservator) would voluntarily petition the court to have a conservator appointed. This action might be taken when the conservatee wants someone to make their financial decisions, but also wants the court to have oversight of the actions of that individual. A conservator has the same powers and duties as a guardian of the estate with limited exceptions.

I am guardian for my loved one with serious and persistent mental illness. What are the limitations on my authority regarding treatment for their condition?

A guardian of the person often has broad powers to consent to voluntary and involuntary medical treatment on behalf of the individual. However, there are some important exceptions. A person under guardianship retains all rights to give or withhold a consent reserved to the individual under Ch. 51, the State Alcohol, Drug Abuse, Developmental



Disabilities and Mental Health Act. Wis. Stat. § 54.25(2)(b)6. These rights include the right to refuse all treatment and medication unless otherwise ordered by a court. Wis. Stat. § 51.61(1)(g).

In addition, an individual may not be involuntarily admitted to a facility of 16 or more beds for the primary purpose of mental health treatment through the protective placement process. Wis. Stats. §§ 55.055(2), 55.12(2). An individual under guardianship may voluntarily request admission to an acute mental health care unit or other mental health treatment facility, with consent of the guardian, under Wis. Stat. § 51.10(8). However, if the individual needs placement or admission to a facility for purposes of mental health treatment and the individual is not willing or able to admit themselves voluntarily, then a court must order treatment or placement through the procedures outlined in Ch. 51.

In other words, guardianship is not a substitute for mental commitment proceedings. While a guardian can work with the individual's care team and service providers to help establish suitable housing and support services, the guardian may not make mental health treatment decisions for the individual – only a court may override the individual's right to refuse mental health treatment and medication. The guardian may continue to make decisions regarding other health care concerns, financial matters, the individual's employment situation (if any), and the like as authorized by their letters of guardianship.

My parents named me in their will to be the guardian of my adult disabled sister, do I still need to go to court to be appointed her guardian?

Yes. This is called a *testamentary nomination*. Wis. Stat. 54.15(6) provides that a parent may nominate a guardian by will for an adult child who is “found to be in need of a guardian by reason of a developmental disability or serious and persistent mental illness.” Testamentary nominations are one factor in the list of options the court must consider when deciding who to appoint as guardian. Someone named in a testamentary nomination to become guardian of an adult still must go through the court to be appointed. The court has discretion for whether to appoint the nominee based on the ward's best interest. □

What is the Guardianship Support Center able to help with?

The GSC is a neutral statewide informational helpline for anyone throughout the state. We can provide information on topics such as Powers of Attorney, Guardianship, and Protective Placement. The GSC is unable to provide information on minor guardianships, wills, trusts, property division or family law. The GSC is also unable to give legal advice or specific direction on completing court forms such as the inventory and annual accounting. The GSC does not have direct involvement in cases nor are we able to provide legal representation.

What are some other free or low-cost legal resources?

Other resources include the American Bar Association's Free Legal Answers [website](#) where members of the public can ask volunteer attorneys legal questions. The State Bar of Wisconsin also offers a Modest Means Program for people with lower income levels. The legal services are not free but are offered at a reduced rate. Income qualifications must be met to qualify. For more information, visit the state bar's [website](#) or call **800-362-9082**.