



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.

To contact the GSC:

Call:
(855) 409-9410

E-mail:
guardian@gwaar.org

Website:
<http://gwaar.org/guardianship-resources>

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Survival Coalition Caregiver Survey

The [Survival Coalition](#) of Wisconsin Disability Organizations is gathering personal stories to help state legislators, who are currently developing their state budget priorities, understand the impact of the caregiver shortage on people with disabilities, older adults, family caregivers, paid care workers, and others who are affected.

If you have been impacted by the shortage of paid (or unpaid) caregivers, please complete the Survival Coalition's [short survey](#). The survey closes **April 28**.

IEP Transition Checklists – WI FACETS

Wisconsin FACETS (Family Assistance Center for Education, Training & Support) has developed [checklists](#) for IEPs for both parents and students. Both general checklists and checklists that focus on transition meetings for youth 14 and older are available. The general checklist is also available in Spanish.

Respite Care Grants Available

The Respite Care Association of Wisconsin has several different types of grants available for caregivers who may need some financial support for respite care. More information on eligibility, dates, and the application process is available [through RCAW](#).

6th Annual Older Adult Mental Health Awareness Day Symposium – May 11

[Registration is now open](#) for the 6th Annual Older Adult Mental Health Awareness Day (OAMHAD) Symposium, which will be held on May 11, 2023. This free, all-day, virtual event will feature an engaging plenary, informative sessions, and a diverse array of topics addressing the most pressing mental health needs in older adults. The event is

sponsored by the National Council on Aging, the Administration for Community Living, the Health Resources and Services Administration, and the Substance Abuse and Mental Health Services Administration.

Circles of Life Conference – Wisconsin Dells, May 11-12

Circles of Life is Wisconsin's annual conference for children with disabilities, their families, and professionals who support them. This year's conference includes [a number of sessions](#) relevant to adolescents and young adults and their families, including information on financial literacy for children and young adults (including long-term supports options, special needs trusts and ABLE accounts, and the myths of public benefits), supported decision-making, housing and residential options for adults with disabilities who choose to move out of the family home, and planning for employment. Some sessions will be available virtually; some will also be presented in Spanish. Register via the [Circles of Life website](#); registration for in-person attendance closes May 3 but there is no deadline to register to attend virtually.

Alzheimer's Association Annual State Conference – Wisconsin Dells, May 21-22

The annual conference for the WI Chapter of the Alzheimer's Association will take place on May 21-22. This year's theme is "Rising with Resilience." The conference will be held both in-person and virtually and will feature keynote speakers, panels, workshops, and the chapter's annual caregiver awards dinner and ceremony. Topics range from the latest in Alzheimer's research, mental illness and dementia, how dementia impacts diverse communities, and caregiver safety. Both virtual and in-person schedules and registration are [now available](#).



Points of Interest



NCLER Webinar Series: Closing the Justice Gap for Older Adults – ongoing

The National Center on Law & Elder Rights is hosting a new training series presented by the Administration for Community Living and the Legal Services Corporation, Closing the Justice Gap for Older Adults. The most recent LSC Justice Gap Report shared that 70% of low-income older adult households had at least 1 civil legal problem in the past year, but older adults did not receive any or enough legal help for 91% of substantial problems. This training series is designed for legal aid attorneys, staff, and partners to build capacity, expertise, and skills to provide counsel to older adults, with a person-directed and trauma-informed approach.

The first session, on representing older adults in nursing facility eviction cases, took place on February 28, but the [recording](#) and [materials](#) are still available to view. Three additional sessions are scheduled:

- April 18: Representing Clients with a Range of Decisional Capabilities
- June 13: Partnering with Adult Protective Services: Leveraging Strengths Across Disciplines
- August 23: You Can Make a Difference: Defending Against or Terminating Guardianship

More information on the content and presenters for each session (including the recording for February's session) and links to register are available [through NCLER](#). ☐

News



DHS Announces Pilot Program for Independent Living Support

This summer, the Department of Health Services is beginning a pilot program in select areas of the state to offer short-term, flexible, and limited services and supports for people at risk of entering Medicaid long-term care programs. The program will help improve people's ability to stay in their own homes, as well as providing insight to the state in how people seek information about and access services and supports. Enrollment is expected to begin in July 2023. More information will be available [via DHS](#) as it becomes available. ☐

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.





Attend Aging Advocacy Day May 9th!

Are you interested in issues affecting older adults and caregivers? Would you like to tell your legislator what aging/caregiver services mean/have meant to you, your family, or those you serve?

Join members of the Wisconsin Aging Advocacy Network (WAAN), aging network professionals, older adults, and family caregivers to “tell your story” and help educate state legislators about issues impacting Wisconsin’s aging population.

Citizens from around the state will gather in Madison on Tuesday, May 9 for training, to meet with other constituents from your Senate and Assembly district, and for office visits with your legislators. No experience is necessary; you’ll get the training and support you need before meeting with state lawmakers. Following the training, join others from your state Senate and Assembly district to provide information and share personal stories with your legislators to help them understand how specific policy issues and proposals impact you, your family, and older constituents.

Wisconsin Aging Advocacy Day (WIAAD)

Schedule—10:00 a.m. — 3:00 p.m.

Best Western Premier Park Hotel, 22 S. Carroll St.,
Madison and the Wisconsin State Capitol

9:00 – 10:00 a.m.: **Event check-in**,
Best Western Premier Park Hotel

10:00 a.m. - Noon: **Training** - Issue briefing/
advocacy skills, district planning time & lunch,
Best Western Premier Park Hotel

12:15 p.m.: Cross the street to the State
Capitol

12:30 p.m.: **Group photo**, State Capitol –
Martin Luther King, Jr. Entrance (accessible)

1:00 – 3:00 p.m.: **Legislative visits**, advocacy
activities/networking, check-out and
debriefing, State Capitol Offices and North
Hearing Room—2nd Floor

Your voice can make a difference!

Aging Advocacy Day 2023 activities focus on connecting aging advocates with their legislators to this year’s WAAN priorities: ADRC Investment (incl. Elder Benefit Specialist funding); Paid and Unpaid Long-Term Care Support (including Family Caregiver Tax Credit, WI Family and Medical Leave expansion, and Medicaid wage lifts), Home Delivered Meal Service funding, and Transportation funding (the priorities are subject to change).

Registration began March 15, 2023, at: <https://gwaar.org/aging-advocacy-day-2023> or contact your local aging unit or ADRC. **Registration deadline is April 26, 2023.** #WIAgingAdvocacyDay #WIAAD
☐





Additional Food Resources and Assistance By the GWAAR Legal Services Team (for reprint)

March 2023 marks the end of FoodShare Emergency Allotments, which means all FoodShare members' benefits will return to original amounts based on household size, income, and other expenses.

If you need additional help with food, there may be several options in your area.

- **Meal sites** are places people can go and eat a prepared meal, such as a soup kitchen, emergency shelter, or dining site.
- **Food pantries** are places people can get food to take home and prepare at no cost.
- **Home-delivered meals** are brought to an individual's home if they are unable to leave the home or prepare meals themselves.
- **The Commodity Supplemental Food Program (CSFP)** is a program that provides free monthly food packages to low-income adults aged 60 years and older. The package includes nutritious food that is worth about \$70 and is meant to supplement a person's diet.
- **The Food Distribution Program on Indian Reservations (FDPIR)** provides USDA Foods to income-eligible households living on Indian reservations and to Native American households residing in designated areas near reservations.
- **Local religious or cultural centers** may have food donations, even for non-members of the organizations.

You may also consider other financial assistance programs so you can free up money to buy food, such as:

- WHEAP (Wisconsin Home Energy Assistance Program), which helps eligible households pay a portion of their heating and electric energy costs.
- Numerous other public programs that can help people renovate and weatherize existing housing, fill energy needs, and access public housing and rent assistance.

To locate resources, contact any of the following:

- **211 Wisconsin.** Call 211, 877-947-2211 or visit the website <https://211wisconsin.communityos.org/> to connect with nonprofit and government resources, such as any of those listed below.
- **Income Maintenance or Tribal Agencies**
- **Local Aging and Disability Resource Centers or Aging Units**
- **Local City or County Housing Authority**
- **Local Rural and Economic Development Offices**
□

7 Things to Know About Medicare Insulin Costs

By the Department of Health and Human Services, USA

1. **As of January 1, 2023, your Medicare drug plan can't charge you more than \$35 for a one-month supply of each Part-D covered insulin product, and you don't have to pay a deductible for your insulin.** You'll pay \$35 (or less) for a one-month supply of each Part-D covered insulin product, even if you get Extra Help to lower your prescription drug costs.

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(Medicare Insulin Costs, continued from page 5)

2. If you get a 2- or 3-month supply of Part D-covered insulin, your costs can't be more than \$35 for each month's supply. For example, if you get a 2-month supply of a Part D-covered insulin, you won't pay more than \$70 for that 2-month supply.

3. If you get a Part D-covered insulin product and pay more than \$35 for any month's supply between January 1, 2023 and March 31, 2023, your Part D plan must reimburse you within 30 calendar days for the amount you paid that's over \$35 per month's supply. (Part D plans have until March 31, 2023, to update their systems to make sure you're charged the correct amount.) If you haven't received reimbursement within 30 days, contact your plan.

4. If you use a covered insulin product and decide you'd like to be in a different Part D plan for 2023, you can add, drop, or change your Part D coverage one time between now and December 31, 2023. If you change plans mid-year, your True Out-of-Pocket (TrOOP) costs will carry over from your old plan to your new one. Call 1-800-MEDICARE (1-800-633-4227) if you take insulin and want to change your plan. TTY users can call 1-877-486-2048.

5. If you use a disposable insulin patch pump, you'll continue to get your insulin through your Part D plan, and the insulin for your pump won't cost more than \$35 for a month's supply of each covered insulin product. If your Part D plan covers disposable insulin patch pumps, the pump is considered an insulin supply. Because it isn't an insulin product, the pump isn't subject to the \$35 cap and might cost more than \$35.

6. If you use a traditional insulin pump that's covered under Medicare Part B's durable medical equipment benefit, the \$35 cap on your insulin costs starts July 1, 2023. Beginning July 1, 2023, your cost for a month's supply of Part B-covered insulin for your pump can't be more than \$35, and the Part B deductible won't apply. If you have Medicare Supplement Insurance (Medigap) that pays your Part B coinsurance, that plan should cover the \$35 (or less) cost for insulin.

7. Want to learn more about Medicare's coverage and your costs for insulin?

- Visit [Medicare.gov/coverage/insulin](https://www.medicare.gov/coverage/insulin).
- Visit [Medicare.gov/about-us/inflation-reduction-act](https://www.medicare.gov/about-us/inflation-reduction-act).
- Call 1-800-MEDICARE (1-800-633-4227). TTY users can call 1-877-486-2048. □

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**.





What is an Authorization for Final Disposition and who can sign it?

An [Authorization for Final Disposition](#) is an advance directive that allows an individual to choose a representative to make decisions about funeral arrangements and what should happen to the person's remains after death. The individual can give specific guidance to their representative about whether they would prefer burial, cremation, or some other disposition, as well as their preferences for funeral or memorial service arrangements. They can also name successor representatives in case their first choice is unwilling or unable to act.

Any adult of sound mind can sign an Authorization for Final Disposition. It can be signed in front of two witnesses unrelated to the individual or in front of a notary. Like a power of attorney or living will, the individual is the only person who can execute their Authorization for Final Disposition; agents under a power of attorney document and guardians cannot sign on the person's behalf.

If someone dies without an Authorization for Final Disposition, Wisconsin's statutes include [a list](#) of who can make decisions about a person's remains and funeral arrangements. While immediate family is prioritized, for those who may not have any family willing or able to handle disposition, the list includes a guardian of the person or any other person who is willing to control the disposition and attest that they have made a good-faith effort to contact others higher on the list.

Can a guardian execute a will on behalf of the ward?

The right to execute a will is one right that may be removed in a guardianship proceeding. If the right to execute a will is removed from the ward, no one, including the guardian, is able to exercise that right on behalf of the ward. Wis. Stat. § 54.25(2)(c)(3).

If a guardianship order determines that the ward cannot get a driver's license, can the ward operate an ATV or a snowmobile?

Maybe. Wisconsin does not require someone operating an ATV or snowmobile to have a driver's license. However, the state does require that people who were born after a certain date (1/1/85 for snowmobiles, 1/1/88 for ATVs) take a safety course and get a safety certificate from the Department of Natural Resources if they will be operating the vehicle on land they don't own.

In addition, for both types of vehicles, state laws and regulations provide that the owner or person having charge of the vehicle cannot "knowingly authorize or permit any person to operate" the vehicle if the person is incapable of operating it due to a physical or mental disability or because they are under the influence of intoxicants. See Wis. Stat. § 350.08 (snowmobiles); Wis. Adm. Code NR § 64.08 (ATVs). □



Title: *J.C. v. R.S.*

Court: Court of Appeals, District IV

Date: February 16, 2023

Citation: [2022AP1215](#)

Case Summary

This case involves an appeal of a protective placement order. R.S., who had a diagnosis of dementia, argued that the petitioner had failed to correctly establish R.S. had a degenerative brain disorder that was or was likely to be permanent. The Court agreed with R.S. and reversed the order for the protective placement, finding that the evidence for granting the underlying guardianship was deficient and that the granting of the guardianship could not be relied on as evidence for some of the elements needed for a protective placement. In particular, the Court noted that the competency report for the guardianship had been completed by a physician's assistant where the statutes require a physician or psychologist and that the PA had not testified during the guardianship proceeding. The decision emphasizes the due process rights of the individual and the importance of following evidentiary standards.

Case Details

In June 2021, R.S.'s daughter, acting *pro se*, filed a petition for guardianship of her mother. The court filing included a competency evaluation written by a physician's assistant. In July, R.S.'s daughter also filed a petition for protective placement. R.S. did not contest the guardianship and it was granted in August 2021 following a hearing before a court commissioner. She did contest the protective placement, and in October 2021, the circuit court held an evidentiary hearing on that petition and ordered the protective placement. R.S. appealed the protective placement, arguing that it was not the least restrictive means of placement and that the evidentiary standards were not followed to prove all the elements of Wis. Stat. § 55.08.

The four elements of a protective placement under Wis. Stat. § 55.08 (1)(a)-(d) are that the individual (1) has a "primary need for residential care and custody," (2) is an "adult who has been determined to be incompetent by the circuit court," (3) is "so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to himself or herself" because of a "degenerative brain disorder...or other like incapacities," and (4) has "a disability that is permanent or likely to be permanent." R.S. did not dispute elements (1) and (2). During the circuit court hearing, R.S. argued that the third and fourth elements had not been proven. R.S.'s daughter argued that those elements could be demonstrated through the findings made when the guardianship was granted.

For the third element, R.S. argued that she needed some assistance with daily tasks. R.S.'s daughter, with whom she had been living, and a Dane County social worker testified that R.S.'s condition had deteriorated and that she needed extensive supervision and assistance with all basic tasks. She tended to wander outside the home near a busy road, left burning cigarette butts on the carpet and her clothing, had unsteady balance and was at risk of falls, and would refuse to bathe. The circuit court found the testimony by R.S.'s daughter and the social worker to be credible and sufficient to show R.S. was incapable of caring for herself and concluded that the third element had been met. The Court of Appeals did not find any basis on which to overturn the circuit court's finding that R.S. posed a substantial risk of harm to herself.

However, the Court disagreed with the circuit court's conclusion that the harm was due to a "degenerative brain disorder" and that the disorder was permanent. The Court noted that while situations where the need for protective placement arises are stressful and difficult, due process cannot be ignored for efficiency.

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(J.C. v. R.S., continued from page 8)

Protective placement has procedural protections because it limits the individual's liberty to choose where they live, often indefinitely, and due process must be followed to ensure no abuse. That includes ensuring that evidence meets the proper standard and follows Wisconsin's statutory requirements.

During the protective placement hearing, the social worker testified that she had reviewed R.S.'s medical records, that R.S. had a diagnosis of dementia, and that the diagnosis was permanent. R.S.'s daughter relied on the fact that her mother had not contested the guardianship – which also requires that the individual have a permanent impairment such as a degenerative brain disorder – as a concession to this element in the protective placement case. The circuit court agreed.

The Court of Appeals noted a number of procedural deficiencies in the guardianship proceeding that made the circuit court's finding insufficient. First, the Court noted that guardianship is not grounds for involuntary protective placement or the provision of protective services. Wis. Stat. § 54.58.

Second, there was no transcript of the guardianship hearing. R.S. requested the transcript, but for an unknown reason the recording is missing and the court reporter could not provide a transcript. Although failure to provide a transcript is often held against an appellant, in this instance the Court noted that this was not R.S.'s fault and did not hold it against her. The Court did however express concerns about the fact that the hearing recording was missing.

Third, the Court determined that the guardianship on which the protective placement hearing relied should not have been granted. Under Wis. Stat. § 54.10(3)(c)(2), the guardianship court must consider a report containing the professional opinion of a physician or psychologist as to the proposed ward's

condition and its duration. The report's standards are defined in Wis. Stat. §54.36(1), including the requirement that the competency examination be performed by a physician or psychologist. This report must be filed even in an uncontested guardianship hearing. *R.S. v. Milwaukee Cnty.*, 162 Wis. 2d 197, 470 N.W.2d 260 (1991). (Note: The similar initials are coincidental).

The report filed for R.S. was by a physician's assistant, who does not meet the definition of "physician" as defined for Chapter 54 under Wis. Stat. § 448.01(5). The Court of Appeals also noted that competency report included a box to indicate whether the completing professional was a physician or psychologist and that the "physician" box had been checked, misrepresenting the examiner's credential. Because there was not a proper report filed, the court commissioner should not have granted the guardianship.

In addition, the substance of the physician's assistant's report was hearsay and not admissible evidence unless the physician's assistant testified and was subject to cross-examination. While this often is not raised as an issue in an uncontested guardianship, the Wisconsin Supreme Court held that in a contested guardianship, the professional who created the § 54.36(1) report must testify. *R.S. v. Milwaukee Cnty.*, 162 Wis. 2d at 210. The Court of Appeals in this case stated that this same principle must also be applied to contested protective placement proceedings. The physician's assistant who created the report for the guardianship court did not testify during the protective placement proceeding.

The Court of Appeals held that the evidentiary concerns with the PA's report in the underlying guardianship proceeding were sufficient to call into question those elements for the protective placement, since the protective placement relied on the grant of guardianship to prove them, and reversed the order for protective placement.

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(J.C. v. R.S., continued from page 9)

The Court also noted that although the guardianship itself was not under appeal, a protective placement proceeding that takes place more than 12 months after a guardianship is ordered must review the finding of incompetency, and that any new petition for protective placement will therefore not be able to rely on the 2021 guardianship order to prove the existence of a permanent impairment. See Wis. Stat. § 55.075(3). □

Title: *Milwaukee County v. D.H.*

Court: Court of Appeals, District I

Date: March 7, 2023

Citation: [2022AP1402](#)

Case Summary

“Dan” appealed an involuntary medication and treatment order under Ch. 51, alleging the County failed to satisfy its burden to prove its medical expert gave him a reasonable explanation of the prescribed involuntary medications and treatment. The Court agreed, reversed the order, and remanded with directions to vacate the order.

Case Details

Dan had been under successive commitment and involuntary medication orders since he was found incompetent to stand trial on a second-degree sexual assault charge in 2016. At the end of 2021, the county petitioned to extend Dan’s commitment and medication order. The commitment extension hearing was heard on December 3 and granted. Two weeks later, a different judge heard the petition for involuntary medication and treatment.

At the second hearing, Dr. Odette Anderson testified that Dan had “schizoaffective disorder,” and exhibited “irritable mood, agitated mood at times, grandi-

osity in his thinking, expansive mood at times,” and would switch between extreme moods. She testified about his treatment plan, which included 7 different prescriptions administered 15 times a day. Her testimony gave brief one-sentence descriptions of why he took Risperidone, Sertraline, valproic acid, Lorazepam, Risperidone, Escitalopram, and Benzotropine. When asked about “injectable alternative[s]” she replied there was no exact alternative, but that Haloperidol was a substitute for three of his main medicines.

Dr. Anderson testified that she spoke to Dan about the medication prescribed, talking about both biological effects and how it would affect the goals he had expressed, such as moving to a less restrictive unit. She told Dan about the risks and side effects, saying “mood side effects can happen,” as well as weight gain, and sedation. She also testified that Dan would have intermittent periods where he refused medication, during which Haloperidol would be administered via injection as a substitute for three other medications. She noted that over several months Dan had six seclusion restraint events, but after the involuntary medication order expired in early December 2021, he stopped taking the medication consistently and had two seclusion restraint events in one day. She testified the only new medication added was escitalopram, which was added two months earlier.

Dr. Anderson also testified that when she had attempted to discuss medication with Dan, he would repeatedly say that he takes his medication, and that he did demonstrate understanding of the long term benefits, such as moving to a less restrictive ward. She testified that Dan has not complained about side effects. She believed that Dan’s decision to not cooperate with medical treatment was not based on informed consent because his current medical conditions affected his ability to do so and he was not competent to make choices about psychotropic medications on his own.

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(Milwaukee County v. D.H., continued from page 10)

The circuit court granted the medication order, finding that “the medication ha[d] been explained to him” and “he is incapable of expressing an understanding of the advantages and disadvantages of accepting the medication,” calling it “substantial incapacity of applying the understanding.” Dan appealed the order on the basis that the County failed to offer clear and convincing evidence to support the order.

An individual has “the right to exercise informed consent with regard to all medication and treatment unless the committing court...makes the determination, following a hearing, that the individual is not competent to refuse medication or treatment.” Wis. Stat. § 51.61(g)(3). The County must prove by clear and convincing evidence that the patient was incompetent to refuse medication. *Outagamie Cnty. v. Melanie L.*, 2013 WI 67, ¶37, 349 Wis. 2d 148, 833 N.W.2d 607. The Court emphasized the need to follow the statutory standard.

The Court reviewed the steps needed to determine if the burden has been met as laid out in Wis. Stat. § 51.61(1)(g)4 and *Melanie L.* The first step is to determine whether the “County has presented by clear and convincing evidence that the individual was given a reasonable explanation...to accepting a particular medication or treatment.” This should include why a drug was chosen, advantages, side effects, and alternatives. The explanation should be timely, repeated, and reinforced.

Second, the County must prove the individual was either “incapable of understanding” or “substantially incapable of expressing an understanding” of the advantages and disadvantages of accepting or refusing the medication. Since an individual has the right to refuse medication, the determination needs to concern whether the person is able to understand, process, and apply the infor-

mation to themselves. *Melanie L.*, 349 Wis. 2d 148, ¶178.

Dan argued that the circuit court failed to establish the correct burden of proof and erred in finding that Dr. Anderson gave a “reasonable” explanation of the medications. The Court concluded that while the circuit court did not include the words “clear and convincing,” it used the proper standard. The Court agreed with Dan, however, that the circuit court erred in finding in regard to the reasonableness of the explanation.

The Court pointed to “significant gaps in the thoroughness” of Dr. Anderson’s explanation. The testimony concerning advantages and disadvantages, choice of drugs, alternatives, side effects, and Dan’s understanding of his illness was “generalized” and possibly did not comply with *Melanie L.* The Court listed three weaknesses making the explanation unreasonable.

First, the record showed that Dr. Anderson did not explain the advantages and disadvantages of Haloperidol, despite relying on it as the “preferred alternative and injectable option for three other drugs.” There was no explanation as to why Dan was prescribed three other medications when one was acceptable alternative.

Second, the escitalopram discussion was too brief, referencing anxiety, but did not say why it was added two months prior, if there was an ongoing conversation about it, or if it replaced a different medication or responded to a new symptom. The doctor may have even misheard a question about the drug, referring to it as Tylenol when asked, but nowhere else in the record is Tylenol mentioned.

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(*Milwaukee County v. D.H.*, continued from page 11)

Third, Dr. Anderson seemed to minimize the side effects. She only mentioned probable side effects on mood, weight, and sedation, but in *State v. Green*, an expert medical witness testified to sedation, slurred speech, a tremor, muscle restlessness, Parkinson-like shaking, weight-gain, blood sugar, cardiac and heart rhythm effects. *State v. Green*, 2021 WI App 18, ¶23, 396 Wis. 2d 658, 957 N.W.2d 583 (citation omitted). Furthermore, she testified a medication was being used to counter side effects, but not which ones were being prevented. She also mentioned that Dan was at high risk of developing side effects because of the combination of his medications, but did not continue into how that was factored into his treatment.

In another case, although the doctor’s testimony was brief, it mirrored the statutory language. *Winnebago Cnty. v. Christopher S.*, 2016 WI 1, ¶154, 366 Wis. 2d 1, 878 N.W.2d 109. This case was further distinguished by the fact the recommitment and medication petitions were held at the same time. Here, there were different judges and the hearings were two weeks apart. In *Christopher S.*, there had been “ample evidence” that the doctors had explained all needed aspects; that evidence was not present in this case. The Court noted that *Christopher S.* did not overrule *Melanie L.*; testimony, however brief, must meet the statutory standard, including the necessity of a particular medication.

Here, the Court found that the doctor’s testimony was unreasonable and unacceptable because it was “generalized and perfunctory.” The County failed to prove Dan was provided with a reasonable explanation of the medications and all related aspects. Furthermore, the County did not show by clear and convincing evidence that Dan was “substantially incapable of applying” or “incapable of expressing” the matters at hand. The case was remanded with directions to vacate the involuntary medication and treatment order. □

Happy Spring!

