
Guardianship – Questions & Answers (April of 2014)

Do we need documentation of both guardianship of estate and person?

Yes.

Guardian of person:

Under the new guardianship law of 2006, courts are required to make specific findings regarding who (the person or the guardian) make certain decisions. Therefore, when the consumer has a guardian of person the guardianship documentation must be obtained and attached to the case file prior to application. Documentation should be official court guardianship documents that include the type of guardian and the areas of decision-making where the guardian has authority to act. Based upon documentation received it should be determined who (the person or the guardian) can make certain decisions and provide necessary signatures and consents.

Guardian of estate:

A guardian of the estate is an individual appointed a court to care for the property and finances of a person. The guardian of the estate has no authority over personal and health care decisions unless also appointed as the individual's guardian of the person.

Under the new 2006 guardianship law, courts are required to make specific findings regarding who (person or guardian) makes certain financial decisions. Based upon the guardianship terms and the financial issue presented, the guardian of estate must be consulted and his or her consent received. Therefore, documentation of guardianship of the estate should be obtained and attached to the case file prior to application. Documentation should be official court guardianship documents that include the type of guardian and the areas of decision-making where the guardian has authority to act.

If a person has a power of attorney (financial, medical, etc.) do they need to sign related documents, make decisions, or be involved in their DVR case?

A power of attorney does not need to be created by a court order. Any person can sign a power of attorney document which gives another person the authority to act on his or her behalf. Usually, a power of attorney does not take away any rights of the individual, rather it authorizes another person to authorize or make certain transactions. When a person has granted power of attorney to someone else, it needs to be explored further to determine what they specifically have power of attorney over and how that applies to the DVR case.

In some cases, it may be appropriate to include the power of attorney; however, it must be with the written consent of the consumer.

Specific questions related to a case should be directed to your supervisor who can consult further as needed.

Should a representative payee for a consumer co-sign the application, fiscal responsibility, or IPE?

No. Having a payee does not take away the consumers rights to make decisions for themselves.

A representative payee is an individual or organization appointed by SSA to receive Social Security and/or SSI benefits for someone who cannot manage or direct someone else to manage his or her money. There may also be a representative appointment for other types of state and federal benefits.

In some cases related to the funds a consumer receives from DVR, benefits analysis, wages, reporting changes that would impact a consumers benefits, etc. it may be important to include the payee; However, it must be with the written consent of the consumer

Documentation that the person is the payee is not required in the file.