

Limited Guardianship and Conservatorship

THE PERSPECTIVE OF THE QHCP

FACTORS INDICATING CONSIDERATION OF A LIMITED G/C

- Ability to independently perform or direct the activity
- insight and awareness of limitations
- Diagnosis and Prognosis
- Availability of Resources for Support
- Compliance with and Acceptance of Need for Care
- Risk for Susceptibility to Undue Influence

INDEPENDENT ABILITY TO PERFORM OR DIRECT ACTIVITIES

- Behaviorally-based (OBSERVABLE) evidence of ability to independently perform (or direct) care
 - ADLs
 - Instrumental ADLs
- Sources of Documentation
 - Medical Records
 - Financial Records (errors, additional signatories, changes in role)
 - Informant-based reports (must consider potential bias)
- Does the functioning reflect **INDEPENDENCE** or **ROUTINE** (habit)

INSIGHT AND AWARENESS OF LIMITATIONS

- Evidence of Insight and Awareness of Functional Limitations is usually revealed by:
 - Congruence among
 - ALP's self-reported level of functioning
 - objective documentation of functioning
 - Informant-based reports of functioning

DIAGNOSES AND PROGNOSSES

- **Full, or Plenary Guardianship recommended:**
 - Progressive neurodegenerative disorders
 - imply a POOR PROGNOSIS, in which inexorable cognitive deterioration is a core aspect of the diagnosed condition
 - Consider **ethical concerns** associated with the inevitable expense of repeatedly returning to court due to attempts to carve out limitations in G/C

DIAGNOSES AND PROGNOSSES

- **Limited G/C should be considered:**
 - **Stable conditions**
 - Developmental Disorders
 - Down Syndrome (decline may occur later in life)
 - Developmental Delay
 - **Potentially Treatable Conditions**
 - Substance Abuse
 - Serious Mental Illness

DIAGNOSES AND PROGNOSSES

- Always consider level of Insight and Awareness regarding realistic prospects for treatment
- **Substance Abuse**
 - Often characterized by denial and minimization
- **Severe Mental Illness**
 - Behavioral record of treatment compliance

AVAILABILITY OF RESOURCES

- What resources does the AIP have available for assistance without G/C?
 - VA
 - Family
 - Networks of social and charitable agencies

AVAILABILITY OF RESOURCES

- Strong resources that do not require AIP to actively initiate or engage MAY represent opportunities to consider limited G/C
 - VA provides a safety net of healthcare and many social services
 - Some Trusts provide financial stability without need for Conservator
 - living circumstances may provide oversight without need for G/C

AVAILABILITY OF RESOURCES

- Do resources require AIP to INDEPENDENTLY initiate access?
 - If not, G/C might not be needed for this area of functioning
 - VA provides a safety net with outreach for at-risk veterans
 - A family with means might provide stable housing or care
- If independent initiation is required, is AIP CAPABLE of accessing and engaging resources?
 - If AIP is not capable or fails to access and engage with resources, then G/C is probably needed for that area of functioning

COMPLIANCE AND ADHERENCE

- Does Compliance with treatment recommendations and care reflect evidence of insight and awareness of limitations?

OR

- Does compliance reflect pathological dullness and passivity?
 - Loss of executive ability to critically consider pros and cons
 - Does compliance reflect risk for susceptibility to undue influence?
- Consider whether compliance reflects a CHANGE in behavior

SUSCEPTIBILITY TO UNDUE INFLUENCE

- **DEPENDENCE**
 - Physical, cognitive, emotional, psychological
- **ISOLATION**
 - Inability to independently and privately initiate and respond to communications with a variety of family, friends, and professionals
- **COGNITIVE IMPAIRMENT**
 - Increasing levels of cognitive impairment exacerbate the maladaptive effects of other factors

WHAT'S AT STAKE? RISKS AND BENEFITS

- Limitations in G/C may be determined by the potential Risks and Benefits
 - Large estate or assets usually invites closer scrutiny
- Contested G/C may be more likely to result in consideration of Limited G/C than a simple, uncontested G/C

**QUESTIONS FOR A DECISION TREE:
“YES” RESPONSES BELOW SHOULD PROMPT
CONSIDERATION OF LIMITED G/C**

- Is AIP able to independently perform or direct the activity?
- Does AIP show evidence of insight and awareness?
- Does AIP present with a stable or treatable condition?
- Is AIP able to engage with resources for support?
- Is AIP compliant with treatment or accepting of assistance?
- Is risk for susceptibility to undue influence low?

EXAMPLE: HOMELESSNESS

- Does the condition of Homelessness justify G/C?
 - Consider circumstances associated with homelessness
 - A choice?
 - The result of a downward spiral?
 - Secondary to other conditions?
 - Serious Mental Illness (SMI: Bipolar Disorder, Schizophrenia)
 - Chronic and Severe Substance Abuse
 - Lack of resources
 - Is there an underlying condition that is treatable?
 - Does homelessness invariably reflect self-neglect?