

My Child Turned 18. What Do I Do?

Notes of a Parent.

Guardianship

What is a Guardianship?

A guardianship is an involuntary trust relationship in which one party, called a guardian, acts for an individual called the ward (your son or daughter). The law regards the ward as incapable of managing his or her own person and/or affairs.

What is a Guardian?

A guardian is any adult person, association, or corporation appointed by the Probate Court to assume responsibility for the care and management of the person, the estate, or both, of an incompetent person or minor child. A corporation can only be guardian of the estate and not of the person.

Who needs a Guardian?

A guardian may be appointed for either an incompetent or minor, which are defined by statute as:

Incompetent: Any person who is mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that he is incapable of taking proper care of himself or his property or fails to provide for his family or other persons for whom he is charged by law to provide, or any person confined to a penal institution within this state.

Types of Guardianships

- **Person and/or Estate:** A guardian may be appointed either a guardian of the person, a guardian of the estate, or both. A guardian of the person has custody of, controls, and protects, the person of the ward a guardian of the estate controls and protects the assets or property of the ward.
- **Limited:** A guardian may be appointed with limited powers to make restricted or specific decisions of the ward. The ward retains all powers not granted to the guardian.
- **Emergency:** In an emergency in which significant injury to a prospective ward may occur unless immediate action is taken, the Court may appoint an emergency guardian for 72 hours.

Probate Court of Cuyahoga County

<http://probate.cuyahogacounty.us/guardian.htm>

Contact information:

© PROBATE COURT OF CUYAHOGA COUNTY, OHIO
1 Lakeside Avenue - Cleveland, Ohio 44113
216-443-8764 or 216-443-8765

Guardianship-Continued

Appointment Procedure

1. Application for guardianship is filed in the Probate Court of the County of the ward's residence by an interested party, or on the Court's own motion
2. Application must include a statement of the guardian's willingness to perform as guardian, a bond as required by law, and, in the case of a prospective incompetent ward, a statement of the ward's mental and physical condition from a treating physician, psychiatrist, or licensed psychologist.

APPLICATION FOR APPOINTMENT OF GUARDIAN OF ALLEGED INCOMPETENT (Form 17.0) <http://probate.cuyahogacounty.us/pdf/17.0.pdf>

3. The prospective ward, as well as the adult next of kin, are notified of the impending guardianship and date and time of hearing as prescribed by law. In the case of an incompetent proceeding, the notice and a statement of rights will be served on the prospective ward by a Court Investigator.
4. An investigation is conducted, in the case of a prospective incompetent ward, by a Court Investigator which includes an interview with the prospective ward in order to assist the Court in determining the advisability of guardianship.
5. Formal hearing is conducted by the Judge or Magistrate to determine if a guardian is necessary and whether the guardian is suitable to serve. (This is usually in the Judge or Magistrate office not in a big courtroom)

CourtWise© is a guardian training course designed to provide a general understanding of the guardianship legal process.

<http://probate.cuyahogacounty.us/courtwise/index.htm#>

Notes on Guardianship

Naming a person as your child's guardian in a "Will" is not the same as a "Court appointed" guardian.

Why consider being your son or daughters guardian, because when they turn 18 they are no longer a minor so they make their own decisions.

i.e.: buy or sell property, drop out of school, not agree on their IEP, refuse to go to doctor appointments, deny you access to their medical records...

The courts only appoint one (1) guardian. There is no need for "both parents"...

A guardian must live near a ward. You can't take care of a ward from out of state...

Supplemental Security Income ("SSI")

Home Web Page:

<http://www.ssa.gov/>

How the Process works:

<https://secure.ssa.gov/apps6z/i3369/msg002.jsp>

When we receive your disability report:

- **We review it to make sure all of the information is complete. We may contact you for missing or unclear information.**
- **We will contact you to complete a formal application for benefits, if you haven't already done one.**
- **We send your forms to your State's office that determines if you are disabled under Social Security law.**
- **The State office requests your medical records from the hospitals, doctors, and other treatment sources you listed.**
- **That State office then reviews all the medical records when they are received.**

The state office uses a five-step process to decide if you are disabled under Social Security Law:

Apply Online:

<https://secure.ssa.gov/apps6z/i3369/ee001-fe.jsp>

<https://secure.ssa.gov/apps6z/iRRet/dib>

Question	If Yes	If No
<p>1. Are you working? Note: There are <u>special rules</u> for persons who are blind.</p>	<p>We need information to determine if you are doing "substantial gainful activity" (SGA). SGA means work that involves doing significant and productive physical or mental duties and is done (or intended to be done) for pay or profit. To make this determination, we ask about the work you did including any dates you couldn't go to work, changes you made in your job duties, extra help you got at work, and extra work expenses because of your illnesses, injuries or conditions.</p> <p>If, after considering the items above, your earnings average more than the allowable monthly amount for a given year, we will usually determine that you are doing SGA, and your application will be denied. Click here to view the allowable monthly amounts for this year.</p> <p>If we find that your earnings are below the SGA limit as an employee, or the value of your services as a self-employed person is not SGA, we go to step 2.</p>	<p>If you are not working, we go to step 2.</p>
<p>2. Is your illness, injury or condition (hereafter referred to only as condition) "severe"? Your condition must be severe enough to significantly limit your physical or mental ability to do basic work activities.</p>	<p>If your condition is severe, we go to step 3.</p>	<p>If your condition is not severe, your application is denied.</p>
<p>3. Is your condition one that is in the listing of impairments? We maintain a list that describes impairments that are considered severe enough to prevent you from doing any gainful activity. Gainful work activity is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is made.</p>	<p>If your condition is listed and it has lasted or is expected to last for at least a year or to result in death, your application is approved.</p>	<p>If your condition is of equal severity to an impairment on the list, your application is approved. If it is not of equal severity to an impairment on the list, we go to step 4.</p>
<p>4. Can you do the work you did in the past? If your condition is severe, but not as severe as any impairment described in the listing of impairments, then we determine if you can do the work you did in the past.</p>	<p>If we determine that you can do the same work, your application is denied.</p>	<p>If we determine that you can't do the same work, we go to step 5.</p>
<p>5. Can you do any other work? If you cannot do any work you did in the past, we determine if you can do other work. We consider your medical condition and your age, education, and past work experience in making this determination.</p>	<p>If we determine that you cannot do other work for at least a year, your application is approved.</p>	<p>If we determine that you can do other work, your application is denied.</p>

Supplemental Security Income- Continued

**Disability Evaluation Under Social Security
(Blue Book- September 2008):**

<http://www.ssa.gov/disability/professionals/bluebook/12.00-MentalDisorders-Adult.htm>

Local Social Security Office Address & Phone:

**SOCIAL SECURITY
RM 793 AJC FED BLDG
1240 E 9TH ST
CLEVELAND, OH 44199**

National Toll Free: (800) 772-1213 - TTY: (800) 325-0778

<https://secure.ssa.gov/apps6z/FOLO/Controller>

Notes on SSI:

The government provides SSI benefits to individuals who NEED it. If you are willing to pay for you son or daughter then your son or daughter doesn't need SSI benefits.

Technically at 18 you are not responsible for your son or daughter, but if you are able and willing to support them then your SSI benefits will be reduced.

In the application process you will be asked several questions and how you answer them will determine the amount of benefit/funds you receive.

i.e.: Your son or daughter lives with you. Are you going to charge them for room and board?

- If you answer no because it is your son or daughter that you are discussing, then your son or daughter doesn't NEED as much SSI benefits so the amount they will receive will be reduced/you will NOT get the maximum amount.**
- If you answer yes, you will improve your chances of receiving the maximum amount of benefits.**

Notes on SSI: -continued

i.e.: If you rented the same space to a non-family member, would you charge the same, less, or more?

- **If you answer I would charge less, it appears you are trying to obtain more money than needed.**
- **If you answer more, then it appears you are giving your son or daughter a break because of your relationship, which indicates your willingness to support them.**
- **If you answered the same you are indicating you are charging a fair amount and this will increase your chances of receiving the maximum amount.**
- **I believe "a" relevant number is \$244.00. I charge my daughter \$300.00**

The current maximum amount of SSI benefit is \$674.08

Government payments(SSSI funds) can cover much of a disabled person's expenses. But in order to qualify for them, individuals cannot have assets in their own names that exceed \$2,000 (not including a home, a vehicle and basic personal items).

The thought process is if you can save over \$2,000 or if someone has "willed" you or given you more than \$2,000, you don't NEED SSI benefits.

In 1993, Congress permitted special-needs individuals under age 65 to have trusts funded with their own money -- such as assets from a legal settlement or an inheritance -- and still have access to government benefits. (See Special Needs Trusts Information).

Special-Needs Trusts

Experts often recommend that families create a "special needs" or "supplemental needs" trust. Such trusts will provide funds to pay for certain expenses that enhance a disabled person's quality of life including residential treatment programs, companionship, travel, movie tickets, haircuts purchase of small visual and/or audio equipment for entertainment purposes, such as iPods or DVD players, (according to the trust document) while NOT cutting off access to government benefits, such as Medicaid or Supplemental Security Income (SSI), which is administered by the Social Security Administration.

Funds transferred to a trust are not considered to be assets of the special-needs individual, as long as there's an independent trustee who controls distributions of the money and the disabled person can't just grab cash from the trust at will.

A trust also insures that a qualified individual will be watching over the money, a particular concern for families since many disabled individuals cannot manage money on their own.

There are some other key steps families with special needs should take. Parents should create power-of-attorney or guardianship documents for finances and health care, naming themselves as their child's agent or guardian when their child turns 18. Without this formality, parents of kids over 18 may not be able to have access to their child's medical records or make health-care or financial decisions.

The cost of having a Trust set up is not cheap, but necessary. (Cost range from \$1,000 to 2,000).

Most trusts are funded by life insurance, savings, selling of assets, retirement funds.. after you die.

While you are alive you can just pay for things that you would like to provide for your son or daughter.

The trust funds can be used to pay for expenses beyond what Medicaid or SSI would pay for, including residential treatment programs, companionship, travel, movie tickets, haircuts, purchase of small visual and/or audio equipment for entertainment purposes, such as iPods or DVD players, (according to the trust document)

Medicaid

Medicaid is a federal- and state-funded health care program for eligible individuals with low income. Medicaid provides access to health care services for children, pregnant women, families with children younger than 19, people with disabilities, and adults 65 and older who meet certain financial requirements.

For more information about the Medicaid program, visit <http://jfs.ohio.gov/OHP/consumers>, and/or contact your local county department of job and family services (CDJFS), and/or call the toll-free Medicaid Consumer Hotline at 1-800-324-8680

At some point your son or daughter will not be able to remain on your private health insurance. You can elect to purchase them their own insurance or apply for Medicaid. Note: If your son or daughter is under 21 and living with you a, portion of your income will be considered (Attach 60 days of income/resources...)

How to apply for Medicaid coverage

Step One

Please choose which Ohio Medicaid program you would like to apply for and complete the application.

Step Two

Read the application carefully. Attach copies of your income, resources* (if applicable), proof of citizenship or qualified-alien status, pregnancy (if applicable) and other insurance you may have. If you are applying because you are age 65 or older or disabled, you will need to provide proof of your age or disability as well.

Step Three

Sign and date the application and send the application and any additional materials to your local county department of job and family services. You may either mail, fax or drop off the application. You may also have an authorized representative apply on your behalf.

Voter Registration

Along with your application, you have an opportunity to register to vote or change your address. Please complete form JFS 07200-VR and submit it with your application for benefits. We will submit your form to the local board of elections. If you need assistance completing this form, please ask for help at your local county department of job and family services. **Completing the voter registration form is optional and is not required to apply for any public assistance program.**

<http://jfs.ohio.gov/OHP/consumers/Application.stm>

Online application:

<http://www.odjfs.state.oh.us/forms/file.asp?id=56272>

Miscellaneous

It's also smart to create a "letter of guidance," a document spelling out everything another caregiver should know about their child's special needs, including medical diagnosis, treatment and medications, specific likes and dislikes, and food preferences or aversions. You know things about your children that no one else knows. You should include their daily routine... as well as little things, like what breakfast food makes them happy...

Also include in your letter of guidance this information I am providing you. They will need to know all this.