

MLPP News

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Medical-Legal Partnership Project News

FOCUS

Transitioning the Mentally Retarded Child to Adulthood: The Basics

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This month's focus takes a look at the multitude of questions that surround cognitively impaired children who are about to transition from childhood to adulthood. When a mentally retarded child approaches his/her eighteenth birthday, caregivers often ask providers to explain what options are available to parents and legal guardians regarding independent living, guardianship, education and employment. This section will attempt to answer some of those questions.

Guardianship

As a mentally retarded (MR) individual's eighteenth birthday approaches, parents may be concerned about how their child's needs will be met. The law presumes that an eighteen year old has the capacity to make his own decisions. This is not always true for retarded adults, and a guardian may be necessary.

Who can be a guardian?

Any adult can petition for guardianship. The person requesting guardianship (the petitioner) must apply in the respondent's (MR individual) town.

What must the petition for guardianship include?

First and foremost, the application must allege that the respondent (MR child or adult) is "unable to meet essential requirements for his physical health or safety" and/or is "unable to make informed decisions about matters related to one's care." The following information must also be included: (1) whether there is already a guardian; (2) the extent to which the person is unable to meet the above requirements; (3) other relevant facts to guardianship; and (4) the area of aid needed.

What happens once the petition is filed?

The respondent must be notified in writing and a hearing must be scheduled within 45 days. Notice must include: (1) type of guardianship being requested; (2) legal consequences of guardianship; (3) facts of the application; and (4) right to have a lawyer (one will be appointed by the court when necessary). Other family members are notified when appropriate.

The state Department of Mental Retardation (DMR) must appoint two people to assess the severity of the respondent's retardation, the specific areas in which protection is needed, and the basis for such opinion. In addition, all parties are allowed to present other pertinent information regarding guardianship.

What are the duties of the appointed guardian?

The guardian can be given power to perform any or all of the following duties: find and consent to housing; consent to educational, work and behavioral programs; consent to medical records release; and other powers to facilitate the ward in regaining ability to care for himself.

Residential Options for the MR Adult

What are the residential options?

Most retarded adults live with their families. However, there are several other options:

1. Independent Living

Person lives alone in the community;

2. Supported Living Arrangements

Person lives alone but receives some aide;

3. Community Residential Facility

24 hour care and assistance in a group home setting of 2-6 residents;

4. Community Training Homes

Living arrangements within a trained family which is not his own;

5. Residential Centers

Over sixteen people live together and are provided with 24-hour care.

How does placement in one of these facilities occur?

Placement is made voluntarily or involuntarily. For voluntary admission, the person must apply to DMR. There must be a psychological evaluation which includes (1) a statement that the psychologist has met with the applicant within 90 days of the application; (2) results of psychometric assessment made within the previous year; and (3) an evaluation of the applicant's functioning.

A guardian can also apply for voluntary admission; however, if the ward's wishes are different, admission can only be made involuntarily. For involuntary admission, the probate judge must find that the person is MR and (1) cannot provide for himself in education, habitation, care for personal health and mental health needs, meals, clothing, safe shelter and/or protection of harm; (2) does not have any family or a guardian to care for him; (3) cannot find adequate, appropriate services without help; and (4) cannot be voluntarily placed in a facility.

A hearing must be held within 30 days. As described above, all parties must be given notice and have the right to attend with an attorney. The procedural safeguards outlined in the petition for guardianship are then followed. Clear and convincing evidence is needed for involuntary commitment to DMR. Placement must be made by DMR in the least restrictive facility that is able to adequately meet all of the respondent's needs.

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Education, Day Care, and Employment/Transitional Services

What about continuing education after the eighteenth birthday?

The person's town of residence is obligated to provide special educational services until the 21st birthday. Such services must be coordinated through the town's department of education.

Does DMR provide daycare?

DMR provides group programs that encourage socialization within the community.

What about employment opportunities?

There are many opportunities for gainful employment, either independently or with assistance from others. Those who do not need any assistance are encouraged to seek out "competitive employment" opportunities. These allow independent work within the community and alongside non-disabled colleagues.

When support is needed, there are two options: "supported employment" and "sheltered employment." Supported employment is distinguished from competitive employment by the fact that the worker has a personal "job coach." The coach starts out by aiding in every aspect of the job and gradually does less and less as the person can perform the job on his own. "Sheltered employment," on the other hand, is normally in a factory-like setting, working on projects contracted by the agency.

What about transitional services?

In order to encourage independence, the Department of Social Services (DSS) coordinates a vocational rehabilitation program through public education. The program requires that the schools help train the MR person for specifically-suited jobs. Employment plans must be included in an Individualized Education Plan. Counselors are provided by the state to help the schools formulate these plans.

What other issues should I be familiar with?

Parents and legal guardians often inquire about sterilization procedures for MR adult children. Be advised that the law in Connecticut does not permit sterilization of children, but adults may be sterilized,

Case Spotlight

Supportive Housing and Legal Intervention in Karen's Case

The Case Spotlight section provides an in-depth analysis of a recent MLPP case, and demonstrates how the collaborative intervention of pediatric providers and the MLPP resulted in the improvement of a family's health and well-being.

Gladys Nieves, MLPP Staff Attorney

Background

Karen is a twelve year old girl who suffers from a malignant tumor, a condition that was diagnosed in 1998. Despite consistent treatment, the cancer has spread to her lungs and she is now set to undergo a stem cell transplant, her only hope for survival. On top of all of this, Karen and her family were on the verge of homelessness.

Karen's mother, Cathy, is a single mom who is currently unemployed due to Karen's medical demands. As a result of her unemployment, Cathy simply could not afford to stay in her current apartment with her three children. Moreover, Karen's biological father was defaulting on his child support payments. Thus, other than sporadic contributions from Karen's father, the household income for this family was about \$394.00/month in Supplemental Security Income (SSI).

MLPP Intervention

As a result of the numerous legal difficulties faced by the family, the clinical staff called in the MLPP for vitally needed legal intervention. Working with Karen's hematology/oncology providers, the MLPP successfully

obtained a special "medical needs" Rental Assistance Program (RAP) subsidy voucher for this family. The RAP voucher assists qualified families with the payment of rent in apartments throughout the state. Although RAP vouchers are extremely difficult to obtain, the MLPP expedited the process for this family and obtained the RAP approval within two weeks. The MLPP also identified and referred the family out to the child support enforcement agent in their district, who will assist the family in garnishing Karen's father's wages for purposes of fulfilling his child support obligations.

For further information about this case, or about the MLPP's legal intervention on behalf of children at risk in the greater Hartford area, please contact: Gladys Nieves, MLPP staff attorney, at (860) 545-8581 or send an email to gnieves@ccmckids.org.

We Want to Hear from You!

Please submit questions for the next edition of the MLPP newsletter to jsicklick@law.uconn.edu or, call Jay Sicklick at 860-570-5327.

For information about the Medical-Legal Partnership Project, please check the MLPP website at www.ccmckids.org/mlpp or, check the CCA website at www.kidscounsel.org

pursuant to court order, if a probate court determines it is in the best interest of the ward as determined by a hearing. For more information on this topic, please see the August 2003 MLPP newsletter, which is available online at www.ccmckids.org/mlpp/highlights/0803highlights.pdf or call the Center for Children's Advocacy at (860) 570-5327.

Where can I find more information about transitional services for MR adults/children?

State DMR
www.dmr.state.ct.us
Hartford Association for Retarded Citizens, Inc.
www.harc-ct.org
Connecticut Probate Court
www.jud.state.ct.us/probate