DEPARTMENTAL POLICY AND PROCEDURE

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| **Policy Number:** | 2.66 | **Written By:** | **Approval Date(s):** | **Approved By:** |
| **Title of Policy:** | Guardianship Expenses |  |  |  |
| **Type:** | Client Services |  | 9-21-16 |  |
| **Unit:** | Aging & Disability Services |  |  |  |
| **Sub-unit:** | Adult Protective Services |  |  |  |
| **Corresponding Policy Number(s):** | | | | |

# POLICY:

Under Section 54.34 (1) any person, including an individual, corporation or government agency, may petition a court to appoint a guardian for an individual. A County agency may petition for guardianship as long as it is the least restrictive condition necessary to achieve the protection of the adult at risk.

APS Social Workers will assess the following to determine if the proposed ward is in need of County provided guardianship and/or protective placement services:

* Imminent risk of serious harm to self or others
* Inability to carry out necessary tasks without County intervention
* Financial ability of the household to purchase services independently
* Evaluation of personal support network available, including family members, friends, neighbors, etc. who might serve as guardians
* County of residency

In the event it is determined that the proposed ward has the financial ability to purchase private legal services for the guardianship proceeding, the county will direct the person who the county is in contact with concerning the ward to obtain private legal representation. A proposed ward will be deemed to have the financial ability to obtain private legal services if the proposed ward is not eligible for Medical Assistance.

If a guardianship and/or protective placement will be provided by County, the APS social worker will prepare the petition and necessary related paperwork, and provide the necessary service of the petition.

# Legal Expenses in Guardianship Proceedings

Courts may order that certain fees and costs of proceedings for guardianship or protective services or protective placement be paid from the ward or individual’s funds, where appropriate. Pursuant to Section 54.46 (3) (a), if a guardian is appointed, the court shall award, from the assets of the ward, payment of the petitioner’s reasonable attorney fees and costs, unless the court finds that it would be inequitable to do so after considering the five factors specified in the statute. Likewise, Section 55.075 (4) (a) gives the court the authority to award payment of the petitioner’s attorney fees and costs from the assets of the individual in protective services or protective placement proceedings unless it would be inequitable to do so based on the five factors specified in the statute:

1. The petitioner’s interest in the matter, including any conflict of interest that the petitioner may have had in pursuing the guardianship.
2. The ability of the ward’s estate to pay the petitioner’s reasonable attorney fees and costs.
3. Whether the guardianship was contested and, if so, the nature of the contest.
4. Whether the ward has executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had engaged in other advance planning for financial and health care decision making.
5. Any other factors that the court considers to be relevant.

Section 54.46 (3) (a) and Section 55.075 (4) (a) allow the court to award compensation to the petitioner from the ward or individual’s estate for legal expenses related to guardianship and protective services or protective placement. If the county is the petitioner, it can seek such an award from the court.

# PROCEDURE:

When a guardianship is sought, the petitioner must have the proposed ward examined by a physician or psychologist and provide a written report to the court in accordance with Section 54.36 (1). The Department will attempt to obtain the required report in the least costly manner possible before pursuing a competency evaluation through a contracted psychologist. The cost of the examination and/or report is paid by the petitioner, but the petitioner could bill the ward for that cost if ordered by the court.

The County DHHS board approved the following fees associated with guardianships and protective placement hearings:

* Temporary guardianship only - $350.00
* Permanent guardianship only - $500.00
* Permanent and temporary guardianship - $600.00
* Permanent guardianship and protective placement - $700.00
* Permanent and temporary guardianship and protective placement - $750.00
* Petition for successor guardianship with hearing - $200.00
* Petition for protective placement only (when GN previously established) - $200.00
* Annual review (Watts) - $30.00
* Jury trial – Hourly Rate

This amount includes the elements of the guardianship process listed previously which are allowed by statute to be paid out of the ward’s funds. A court order for payment of this fee will be sought at the time of hearing. No fee will be charged to persons who do not have the ability to pay, as described above.

Monthly guardian fees

Under Wisconsin guardianship law, a guardian is entitled to reimbursement and compensation as determined by the court. Reasonable expenses incurred in the execution of the guardian’s duties must be reimbursed. Courts use the following factors in determining “just and reasonable” compensation:

* The reasonableness of the services rendered.
* The fair market value of the services rendered.
* Any conflict of interest of the guardian.
* The availability of another to provide the services.
* The value and nature of the ward’s assets and income, including the sources of ward’s income
* Whether the ward’s basic needs are being met.
* The hourly or other rate proposed by the guardian for the services.

County APS social workers will make a concerted effort to seek and access the services of a volunteer guardian for every County guardianship case. Background checks will be completed by the acting APS social worker on all potential volunteer guardians. When all avenues have been exhausted and a volunteer guardian is not available, the APS social worker will request the services of a paid guardian while taking the above factors into consideration.

Wards will pay the monthly fees for the services of a paid guardian from their own incomes and/or assets when those fee payments are ordered by the Court. Each case will be appraised on a case-by-case basis taking into consideration consumer need and County resources and responsibility. The department reserves the right to waive the fee based on individual case circumstances.