

A hearing date will be set by the court. If the individual cannot afford a lawyer, one will be appointed prior to the hearing. The individual has the right to attend the hearing.

The judge, after listening to the information presented by both parties, will make a decision about the person's ability to make informed decisions.

If the judge decides the individual is competent, the guardianship petition will be denied.

If the judge decides the individual is incompetent, the judge will make a substituted judgment decision and either authorize or deny a specific treatment plan. A guardian will be appointed to monitor the plan.

Is the same process followed if a patient is accepting treatment with antipsychotic medications?

Individuals are presumed to be competent to make decisions unless a judge determines otherwise. Therefore, a person who expresses a desire or willingness to take the proposed antipsychotic medications may be treated prior to the appointment of a guardian. However, if a physician thinks an individual remains unable to give informed consent, a guardianship and treatment plan must be obtained as soon as possible.

What is the role of the guardian?

A Rogers guardian is appointed to monitor the court approved treatment plan, the progress of the individual and to make periodic reports to the court. A guardian cannot approve or disapprove the use of antipsychotic medications. Guardians can review medical records, meet with the staff and attend case conferences. Unless limited to monitoring the medication treatment plan, the guardian also has the authority to make other decisions concerning a person's needs.

What is the role of the client's attorney?

All individuals have the right to be represented by an attorney. The attorney's role is to represent the client's wishes—not what the attorney may consider to be in their client's best interests. The attorney should meet and become acquainted with the client. Lawyers also have access to the same medical information available to the guardian.

For how long are antipsychotic treatment plans approved?

The length of time is set by the Probate Court. However, all treatment plans must be reviewed at least annually. Occasionally, a temporary guardianship is obtained to authorize treatment for a 90-day period.

Rogers Guardianships



COMMONWEALTH OF
MASSACHUSETTS

**Department of
Mental Health**

Authorizing the Use of Antipsychotic Medications

Questions and Answers



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Rogers Guardianship: What You Need to Know

What is a Rogers Guardianship?

A guardian is a person appointed by the Probate Court with responsibility for making decisions for an individual who a judge has decided is not competent to make informed decisions. There are different types of guardianships, depending on the person's individual needs. For example, guardians can be appointed to make all personal decisions or their authority may be limited to medical, financial or property issues.

Some guardians are limited to deciding treatment of a person with mental illness with antipsychotic medications. These are commonly referred to as "Rogers" guardianships after a 1983 court case in which the Massachusetts Supreme Judicial Court affirmed the right of hospitalized psychiatric patients to refuse antipsychotic medications in non-emergency situations. The court stated that a "...patient is competent and has the right to make treatment decisions until the patient is adjudicated incompetent by a judge." Therefore, a physician must seek a guardianship if he or she feels someone is not competent to make treatment decisions.



Who makes the determination that a person is incompetent to make decisions regarding antipsychotic medications?

All adults are presumed able to make medication decisions. Only a judge, after a hearing in a Probate Court*, can decide a person is incompetent. The judge will then decide treatment by acting as substitute decision maker and using a "substituted judgment" standard.

What is a substituted judgment standard?

A substituted judgment standard is used by the judge to decide what the person would want if competent to make decisions. The Rogers ruling states the following factors must be taken into account:

- A person's expressed preference regarding treatment
- A person's religious beliefs
- The impact on the family
- The side effects of the proposed treatment
- The prognosis with and without treatment

*For some individuals who are involuntarily committed, the decision about competency and substituted judgment is made in the District Court.

What is the actual process involved in obtaining a Rogers Guardianship?

The process is as follows:

- If a physician thinks an individual is not capable of giving informed consent to treatment with antipsychotic medications, the doctor may seek to have a guardian appointed.
- A guardianship petition and other necessary court papers, including a comprehensive medical certificate, are filed with the Probate Court. If next of kin are known, their names must be included on the petition.
- Whoever files the petition is called the "petitioner." This may be a physician, hospital, facility, state agency or family member. The individual is called the "respondent."
- In order to ensure all interested parties have been notified, the court issues a citation with a return date by which next of kin can object. The citation must be delivered to the individual in person. Next of kin will receive it in person or by certified mail. If next of kin are not known or do not receive notice, the court will order the petitioner to publish the citation in the individual's local newspaper.