

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In the matter of: _____ :
 :
 : C.M. #: _____
A person with a disability :
 :

Final Order for Appointment of Co-Guardians of the Person and Property

WHEREAS, on _____ a hearing was held on the guardianship petition;

WHEREAS, Petitioners _____ and _____ are the _____ of _____

(hereinafter called “person with a disability”), and the interested party(ies) has/have waived notice and consented (agreed) to or has/have received notice on the appointment of _____ and _____ as guardians of the person and property of the person with a disability;

WHEREAS, _____, Esquire, the previously appointed attorney *ad litem* for the person with a disability, has filed his/her report;

WHEREAS, the Court having reviewed the petition and affidavits, considered the medical report, and considered the statements made and evidence presented at the hearing, finds that _____ is a person with a disability by reason of mental or physical incapacity. By reason thereof, such person is unable to properly manage and/or care for his/her person and property without a guardian and is in danger of substantially endangering his/her

health, becoming subject to abuse by other persons, becoming the victim of designing persons and/or is in danger of dissipating or losing such property by becoming the victim of designing persons.

IT IS HEREBY ORDERED, this _____ day of _____, 20_____, as follows:

1. _____ and _____, acting jointly or individually, are hereby appointed guardians of the person and property of _____, a person with a disability.

2. Before entering upon their duties as guardians pursuant to this Order, _____ and _____ shall each execute a bond to be taken in the name of the State of Delaware in the amount of \$ _____ with/without surety as a condition for the faithful performance of their duties as guardians, and shall be filed within seven (7) days of the date of this Order. No copy of the final order will be released until the bonds are filed. Any person or entity presented with a valid order from the Court may use that order as proof that the bonds have been executed and filed.

3. The guardians appointed herein are granted such powers, rights and duties which are necessary to protect, manage and care for the person and property of the person with a disability as provided for in 12 Del. C., Ch. 39. Unless otherwise noted herein, these powers, rights and duties are plenary, and this

appointment supersedes and supplants the authority previously exercised by, or entrusted to, any individual or entity as surrogate decision maker or agent under a power of attorney or advance healthcare directive. In exercising these powers, rights and duties, the guardians must comply with the clear and unambiguous preferences and directions in the person with a disability's advance healthcare directive, if any, and must petition to act contrary thereto.

4. The guardians shall open one bank account at _____.

All income must be directed to that account as soon as practicable, and all assets must be placed in that account unless the assets are held in a Miller Trust or other similar trust. Bank accounts not held in trust must be closed and the balance of the account transferred to the guardianship account. The account shall be titled, as close as is reasonably practicable, "Court of Chancery Guardianship Account for _____, _____ and _____, Guardians. Withdrawals Only by Order of the Court" except that the guardians may withdraw up to \$_____ total per month without further notice of the Court. Otherwise, the guardians may not make any withdrawals from the account without first having a Court Order to do so.

A. The guardians are authorized, if needed, to deposit the monthly withdrawal amount into a second account at the same bank titled in the name of the guardianship. The purpose of the second account is to allow payments for monthly

expenditures from the monthly withdrawal amount, if those expenditures cannot be paid from the original account. The guardians may establish a recurring monthly automatic transfer from the first account to the second account to transfer the monthly allotment beginning on the date the accounts are opened and recurring on or about the same day of each month thereafter until otherwise ordered by the Court.

B. The monthly allotment is the maximum amount that may be expended by the guardians each month. The guardians should not expend the full allotment every month unless necessary for, and in the best interest of, the person with a disability. The guardians must make purchases and payments directly from the guardianship account through checks or debit card transactions and retain, and submit with the accountings required herein, supporting receipts and invoices. The guardians may be held liable for (1) lump sums withdrawn from the guardianship account(s) in cash, (2) any unsupported expenditures and (3) any expenditures made above the monthly allotment, unless leave is granted.

C. The guardians may, without further order of the Court, withdraw from an individual retirement account (“IRA”) or similar retirement account titled in the name of the person with a disability or the person with a disability’s guardianship any requirement minimum distribution to avoid income tax penalties and liabilities

for failure to make such a withdrawal. Any such withdrawal shall be deposited into the guardianship account and then subject to withdrawal limits.

D. No additional order or authority is required to close existing accounts, regardless of the amount of the closing distribution that shall be deposited into the guardianship account and then subject to withdrawal limits.

5. The guardians shall within thirty (30) days submit proof to the Register in Chancery that the terms of this Order have been complied with and the bank account(s) provided for in this Order has/have been opened in accordance with the provisions of this Order.

6. The guardians may establish an Irrevocable Income Trust (also known as a “Miller Trust”) should such an account be necessary to qualify the person with a disability for the Delaware Medical Assistance Program (“Medicaid”). A copy of any such trust must be provided to the Court within thirty (30) days of its funding and the trustee shall be required to file accountings pursuant to Court of Chancery Rule 114(c), unless accountings are waived by further court order.

7. The guardians shall file an inventory within thirty (30) days of the date of this order.

8. The guardians shall file an accounting at least once each year and at any other time the Court directs.

A. The guardians shall file the first accounting within nine (9) months from the date of this order. The first accounting shall cover a period of six (6) months beginning with the date of this order.

B. Each subsequent accounting shall cover a twelve (12) month period and shall begin on the date following the date the previous accounting ends. The annual accountings are due on or before the first business day of the calendar quarter in which the guardians were appointed.

C. All accountings shall include documentation of the value of each account and receipts for each disbursement.

9. The guardians are authorized to apply to become, or continue to act, as the representative payee for social security benefits.

10. The guardians shall file an annual update and medical statement with the Register in Chancery every year, which is due on or before the first business day of the calendar quarter in which the guardians were appointed. The annual update and medical statement shall include the current mailing address of the person with a disability and the guardians, and a current medical statement from an approved medical practitioner setting forth the current medical status of the person with a disability and addressing the need for continued guardianship.

11. The guardians are required to pay \$ _____ to _____, Esquire, from the guardianship account within thirty (30)

days of the date of this order, for his/her services as the attorney *ad litem* for the person with a disability. If the guardians determine that there are insufficient funds to pay, the petitioner(s) is/are required to pay the attorney *ad litem*'s fee within thirty (30) days of notification from the guardians. The attorney *ad litem* is hereby discharged from further service as attorney for the person with a disability.

12. The Register in Chancery of this Court is appointed agent of the guardians to accept service of process on behalf of the guardians as to any claim arising out of the guardianship if, by reason of the guardians' absence from this State, they cannot be served.

13. Any powers of attorney previously executed by the person with a disability are invalidated by the guardianship pursuant to 12 Del. C. § 49A-108(a).

14. The guardians are authorized to prepare, sign, verify and file on behalf of the person with a disability all income and other Federal or State tax returns pursuant to 12 Del. C. § 3923(d)(8).

15. In the event of the death of the person with a disability, the guardians shall notify the Office of Register in Chancery within ten (10) days. The guardians shall file a final accounting within thirty (30) days of the death of the person with a disability and a petition to terminate within ninety (90) days of the death of the person with a disability.

16. If the person with a disability becomes Medicaid qualified, the guardians shall provide proof of that qualification and a copy of any signed trust instrument with the Register in Chancery's Office within thirty (30) days.

17. An order from the Court of Chancery is required to authorize the opening of any safe deposit box, to sell a motor vehicle, or to sell or encumber any real property of the person with a disability.

Magistrate in Chancery