

PART IV: SECOND ASSESSMENT, REASSESSMENT, COURT REVIEW AND ENDING PGT AUTHORITY

WHAT IS THIS?

Part IV: Second Assessment, Reassessment, Court Review and Ending PGT Authority:

- Explains process and timing for a request for second assessment
- Outlines situations in which an adult must be reassessed and the exceptions
- Describes roles of health authorities and the PGT in coordinating second assessments and reassessments
- Explains the consequence of determination on second assessment or reassessment
- Describes the process for requesting court review of a determination of incapability
- Explains the ways that PGT authority as statutory property guardian may end

This is important because...

After a certificate of incapability has been issued, an adult has a right to request a second assessment, reassessment and court review of the determination of incapability, in accordance with the rules in the SPG Regulation. There are also a number of circumstances in which an adult must be reassessed that the health authorities and PGT need to be aware of. A second assessment and reassessment follow the same procedures and criteria as an initial assessment.

The roles and responsibilities of QHCPs and HADs continue throughout these processes and on to when statutory property guardianship may end.

RELATED LEGISLATION NOTED

- *Adult Guardianship Act*
- *Statutory Property Guardianship Regulation*
- *Representation Agreement Act*



RELATED FORMS AND PACKAGES

- Form 1 – AGA Report of Assessment of Incapability and Details of Assessment
- HAD Acceptance of Determination of Capability
- Cancellation of Certificate of Incapability



SECOND ASSESSMENT AND REASSESSMENT

An adult for whom a certificate of incapability has been issued has rights to a second assessment, reassessment and court review of the determination of incapability. Each process is outlined below. A second assessment and reassessment follow the same procedures and criteria as an initial assessment.

SECOND ASSESSMENT

An adult for whom a certificate of incapability has been issued has a right to a second assessment of their incapability. *[AGA s. 33(3)(a)]*

REQUEST FOR SECOND ASSESSMENT

Within 40 days after the date the PGT gives or sends the advice that the PGT is the adult's statutory property guardian, the adult, or a person acting on behalf of the adult, may request a second assessment of the adult's incapability. *[SPG Regulation s. 13]* If the request is made to the PGT or a health authority its staff will:

- Consult with the adult to confirm a second assessment is being requested
- If the request is made by a person acting on behalf of the adult, consult with the adult to determine if they want and are willing to participate in the assessment (ensuring they understand the process, possible outcomes and costs associated with a second assessment)

REASSESSMENTS

An adult who has the PGT as statutory property guardian must be reassessed if:

- The PGT informs the health authority that a reassessment should occur
- The adult requests a reassessment and they have not been reassessed within the preceding 12 months
- The court orders that a reassessment occur

[AGA s.34]

PGT INFORMS HEALTH AUTHORITY THAT A REASSESSMENT SHOULD OCCUR

The PGT will advise the health authority that a reassessment should occur where the PGT has information to indicate that the adult's capability may have changed. The health authority must then reassess the adult regardless of whether they have been reassessed in the last 12 months. *[AGA s. 34(b)]*

ADULT REQUESTS A REASSESSMENT

An adult who has the PGT as their statutory property guardian must be reassessed if they request a reassessment and have not been reassessed within the preceding 12 months. *[AGA s.34(c)]* The adult can request a reassessment, at any time, after the certificate of incapability is issued. If the adult's request is made within 40 days after the PGT advises the adult that the PGT is the adult's statutory property guardian, the request should be considered to be a request for a second assessment, not a reassessment. If the request is made after the 40 days, the request should be considered a request for a reassessment.

Because an adult can request a reassessment every 12 months, it is important that health authorities and the PGT record the dates of any assessments. The date of an assessment, second assessment or reassessment is the date the Form 1 – AGA Report of Assessment of Incapability is signed. The adult will have to wait 12 months from the first reassessment to request another reassessment.

COURT ORDERS REASSESSMENT

If an adult applies to court following a determination of incapability on a second assessment or reassessment, the court can order the adult to submit to an assessment of incapability (see “Court Review” below). *[AGA s.34(d)]*

PROCESS AND ROLE OF THE HEALTH AUTHORITIES AND PGT IN COORDINATING SECOND ASSESSMENT, AND REASSESSMENT REQUESTED BY THE ADULT

★ If the request for a second assessment, or a reassessment, is made to the PGT or a health authority, the PGT or health authority will assist with facilitating the assessment for the adult. Generally, the health authority that will assist in facilitating the assessment is the health authority in the area where the adult is living. If the request for a second assessment is made by a person acting on behalf of the adult, the PGT or health authority would check to confirm the adult has no dispute with the person acting on their behalf.

PGT and health authority staff will also consult with one another to determine the best manner to proceed in facilitating the assessment.

CONDUCTING THE SECOND ASSESSMENT AND REASSESSMENT

With a few exceptions, the same requirements that apply to conducting the initial assessment apply to the second assessment and reassessment.

One difference of note is in respect of the test of incapability when conducting a second assessment or reassessment. The same test that applies to the initial assessment applies to a second assessment and reassessment, but, in addition, the QHCP is required to take into consideration any changes in the adult’s incapability since the previous assessment and the adult’s understanding of those changes.

[SPG Regulation s. 9(2)]

In assessing capability on reassessment, the QHCP should also take into account that the adult has not been responsible for managing their financial affairs during the period they have had a statutory property guardian. In some cases, the PGT may make arrangements to allow the adult greater opportunity to demonstrate their level of functioning with respect to the management of the adult’s financial affairs.

★ A second assessment is similar to obtaining a second opinion. Best practice is that if possible, the second assessment be conducted by different QHCPs than those that conducted the initial assessment of incapability.

In the case of reassessment, the health authority should consider whether the reassessment can be done by the QHCP who conducted the initial assessment who is in the best position to observe

changes in the adult’s capability. However, there may be circumstances where a new QHCP is preferred, such as when the adult has raised concerns about the objectivity of the same person doing the assessment. Reassessments should be handled like initial assessments; who should conduct the reassessment depends on what makes sense in the circumstances.

The QHCP(s) conducting the second assessment or reassessment should review the prior assessment information.

CONSEQUENCE OF DETERMINATION ON SECOND ASSESSMENT OR REASSESSMENT

On completing the assessment, the QHCP should forward the Form 1 – AGA Report of Assessment of Incapability and the Details of Assessment to the HAD or the PGT, depending on health authority practice. If the PGT receives the Form 1 – AGA Report of Assessment of Incapability and the Details of Assessment, the PGT will ensure it is forwarded to the appropriate HAD. The QHCP should also offer the adult copies of both the Form 1 – AGA Report of Assessment of Incapability and the Details of Assessment.

DETERMINATION OF INCAPABILITY

In conducting a second assessment or reassessment, the QHCP must follow the same assessment procedure as outlined in Part II: Assessment. If, following a second assessment or reassessment, a QHCP determines the adult remains incapable of managing their financial affairs, the PGT continues to be their statutory property guardian. The adult may apply to the court for a review of the determination that they are incapable.

If the PGT requested the reassessment, the QHCP will advise the PGT of the determination of incapability and the PGT will advise the adult of the right for a court review of the determination.

In the case of reassessments that determine the adult continues to be incapable, which could be many years later, the PGT would use its discretion on whether to advise the health authority.

DETERMINATION OF CAPABILITY

Statutory property guardianship ends if, following the second assessment or reassessment:

- A QHCP determines that the adult is capable of managing their financial affairs and notifies the adult and the HAD of the determination
- The HAD reviews the determination and ensures the PGT and health authority have been consulted and that all relevant information has been considered, and
- The HAD accepts the determination of capability and notifies the PGT of the determination using the form HAD Acceptance of Determination of Capability

[AGA s.37(b)]

If the HAD accepts the determination, the HAD should:

- Notify the adult of the acceptance of the determination
- Inform the adult the PGT will be notified of the determination as soon as possible and that the PGT will work with the adult to transfer the control of the adult’s assets back to them

The PGT will generate the Cancellation of Certificate of Incapability.

If the HAD does not accept the determination of capability, they will need to document the reasons why and determine the next steps. This may include gathering more information, requesting explanations, asking for a component of the assessment to be repeated or for a re-evaluation. Examples of reasons why the assessment may not be accepted include the assessment did not comply with regulations governing the assessment process or there is a flaw in the assessment.

COURT REVIEW

The adult, following a determination they are incapable of managing their financial affairs on a second assessment or reassessment, may apply to the Supreme Court for a review of that determination. *[AGA s. 35]* If the adult or someone acting on their behalf applies to court, the health authority or the PGT, whoever hears about it first, should contact the other. The parties to the court review include:

- The adult who has been determined to be incapable
- The health authority that designated the HAD who issued the certificate of incapability
- If ordered by the court, a committee of person appointed by the court under the PPA

The court has authority to order the adult to attend at the time and place the court directs and submit to an assessment of incapability.

When an application is made to the court to review a determination of the adult's incapability, the court may confirm or reject the determination of incapability and order the statutory property guardianship is ended.

ENDING AUTHORITY OF THE PGT

There are a number of ways that statutory property guardianship ends: *[AGA s. 37(3)]*

- A QHCP determines that the adult is capable of managing their financial affairs following a second assessment or a reassessment, notifies the HAD and the HAD accepts the determination
- The PGT is the statutory property guardian and the PGT is satisfied that the adult no longer needs a statutory property guardian and has provided notice to the adult that they no longer need a statutory property guardian
- The court ends the statutory property guardianship under AGA s. 35
- The court appoints a committee responsible for managing the adult's affairs under the PPA

If statutory property guardianship ends, the certificate of incapability is cancelled. *[AGA s. 37(4)]* The PGT no longer has authority over the adult's financial affairs and the adult will have authority to manage their financial affairs, unless the court has appointed a person to be committee of estate under the PPA.

PGT IS SATISFIED THE ADULT NO LONGER NEEDS A STATUTORY PROPERTY GUARDIAN

PGT case managers may become aware the adult may no longer need the services of the PGT, or the adult may request the PGT consider ending its authority. The PGT will discuss this with the adult and consider relevant factors including:

- The wishes of the adult
- What has changed about the adult’s circumstances and how it has changed
- Whether the original need or reason for authority continues
- The adult’s ability to manage their financial affairs on their own
- Whether informal arrangements such as direct deposits would be sufficient
- Current diagnosis and prognosis of any relevant medical illnesses
- Likelihood of need for service in near future
- The presence of a trusted person in the adult’s life who could be authorized by the adult to make decisions or assist with decisions for routine management of financial affairs under a *s. 7 Representation Agreement* or act as pension trustee
- Risks to adult’s assets if the PGT does not stay involved

Before making a final decision, the PGT also consults with health and social supports in the adult’s life including relevant health authority staff and the adult’s physician to ensure that all information has been taken into consideration. The PGT also considers whether it may be more appropriate in the circumstances for a reassessment and confirmation of capability by the QHCP and HAD.

The PGT will end its authority on the date the PGT signs the Cancellation of Certificate of Incapability.

ADULT IS CAPABLE OF MANAGING THEIR FINANCIAL AFFAIRS

When a second assessment or a reassessment is conducted, the statutory property guardianship will end if the QHCP conducts the assessment, determines that the adult is capable of managing their financial affairs and the HAD accepts the QHCP’s determination. Before making a final decision, the HAD should confirm that the PGT and involved health authority staff have been consulted to ensure that all information is accurate. If the HAD accepts the determination, the HAD must notify the PGT using the HAD Acceptance of Determination of Capability. The PGT ends its authority on the date the HAD Acceptance of Determination of Capability is signed; therefore, this form should be faxed to the PGT the same day that it is signed.

NOTICE OF CANCELLATION BY THE PGT

If the statutory property guardianship ends, the PGT will:

- Prepare a Cancellation of Certificate of Incapability
- Generally provide the Cancellation of Certificate of Incapability to the adult, spouse and near relatives who were notified of the issuance of the certificate
- Take the necessary steps to give the adult control over their financial affairs
- Send the Notice of Cancellation to third parties such as the health authority that issued the certificate, and financial institutions to confirm the PGT is no longer acting on behalf of the adult.

ENDING STATUTORY PROPERTY GUARDIANSHIP BY COURT ORDER

The court may confirm or reject the determination of incapability and end the statutory property guardianship.

A statutory property guardianship also ends if someone in the adult's life applies to be the adult's private committee of estate under the PPA and is appointed by the court to be committee.

DEATH OF THE ADULT

On the death of the adult, the committee of estate retains authority necessary only to maintain the estate until transfer to the executor or other person authorized to administer the estate.