

232 CHIPS: PARENT (GUARDIAN) UNABLE OR NEEDS ASSISTANCE TO PROVIDE NECESSARY SPECIAL TREATMENT OR CARE [WIS. STAT. § 48.13(4)]

The petition in this case alleges that (parent) (guardian) is unable or in need of assistance to provide necessary special treatment or care for (child). Your role as jurors will be to answer the following question in the special verdict:

1. Is (parent) (guardian) unable or in need of assistance to provide necessary special treatment or care for (child)?

The burden of proof is on (petitioner) to convince you by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that the question should be answered "yes."

(Petitioner) must prove that (child) is in need of special treatment or care and that the (parent) (guardian) is unable or needs assistance, despite reasonable efforts by the (parent) (guardian), to provide that special treatment or care. "Special treatment or care" means professional services which need to be provided to (child) or (child)'s family to protect the well-being of the child, to prevent placement of (child) outside of the home, or to meet the special needs of (child). This term includes, but is not limited to, medical, psychological, or psychiatric treatment; alcohol or other drug abuse treatment; or other services that are necessary and appropriate.

If you are convinced by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that (parent) (guardian) is unable or needs assistance to provide necessary special treatment or care for (child), you should answer the question "yes." If you are not so convinced, you must answer the question "no."

SPECIAL VERDICT

1. Is (parent) (guardian) unable or in need of assistance to provide necessary special treatment or care for (child)?

Answer: _____
Yes or No

COMMENT

Wis JI-Children 232 and comment were originally approved by the Committee in 1996 and revised in 1997 and 2004. The title was revised in 2009. Editorial corrections were made in 2010. The comment was updated in 2008, 2009, 2011, and 2015.

Wis. Stat. § 48.13(4) reads:

48.13. Jurisdiction over children alleged to be in need of protection or services.

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

(4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child

In the Committee's view, this section was not intended to allow a parent who has made insignificant or minimal effort to obtain jurisdiction by claiming "inability." The phrase "despite reasonable efforts" was included to make it clear that "unable to care for" means more than "unwilling" and presumes some reasonable effort by the parent.

Guardian Unwilling or Unable to Sign the Petition. For cases involving a guardian who is unwilling or unable to sign the petition requesting jurisdiction, see Wis JI-Children 234 and 234A.

Expectant Mother; Special Treatment or Care to Unborn Child and Child When Born.

The term "special treatment or care" also includes:

professional services which need to be provided to the expectant mother of an unborn child to protect the physical health of the unborn child and of the child when born from the harmful effects resulting from the habitual lack of self-control of the expectant mother in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree. Wis. Stat. § 48.02(17m).

Unable or Needs Assistance to Provide Necessary Special Treatment or Care. The explanation of "unable or in need of assistance" in this instruction was cited with approval in an unpublished opinion in 2014; see *John M.S. v. Marcy J.S.*, Appeal No. 2013AP2644-FT (one-judge decision, March 12, 2014).