

234 CHIPS: GUARDIAN UNABLE OR NEEDS ASSISTANCE TO CARE FOR; UNWILLING OR UNABLE TO SIGN PETITION [WIS. STAT. § 48.13(4m)]

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

1. Is (guardian) unable or in need of assistance to care for (child)?
2. Is (guardian) unwilling or unable to sign the petition requesting jurisdiction?

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

"Unable or in need of assistance to care for" means that (guardian) is unable to provide the level of care necessary to meet the needs of the child despite reasonable efforts of (guardian). In making this determination, you may consider all facts and circumstances bearing on the child's need for care and (guardian)'s ability to provide that care, including age, physical conditions, health, and special needs.

If you are convinced by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that (guardian) is unable or in need of assistance to care for (child), you should answer question No. 1 "yes." If you are not so convinced, you must answer question No. 1 "no."

In answering question No. 2, "unwilling" means a willful and intentional failure to provide. If you are convinced by evidence that is clear, satisfactory, and convincing to a

reasonable certainty, that (guardian) is (unwilling) (unable) to sign the petition, you should answer the question "yes."

SPECIAL VERDICT

1. Is (guardian) unable or in need of assistance to care for (child)?

Answer: _____
Yes or No

If the answer to question No. 1 is yes, answer question No. 2:

2. Is (guardian) unwilling or unable to sign the petition requesting jurisdiction?

Answer: _____
Yes or No

COMMENT

This instruction and comment were approved in 2009.

Wis. Stat. § 48.13(4m) 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:

(4m) Whose guardian is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;