

265 CHIPS: ALCOHOL AND OTHER DRUG ABUSE IMPAIRMENT [WIS. STAT. § 48.13 (11m)]

The petition in this case alleges that (child) is suffering from (an) (a) (alcohol) (or¹ other) (drug) abuse impairment and that (parent) has neglected, refused, or been unable to provide treatment for this impairment. Your role as jurors will be to answer the following questions in the special verdict:

1. As of (the date the petition was filed), was (child) suffering from (an) (a) (alcohol) (or other) (drug) abuse impairment?
2. As of (the date the petition was filed), was (parent) failing to provide treatment?

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."

"Alcohol or other drug abuse impairment" means a condition which is exhibited to a severe degree by [characteristics of] habitual lack of self-control in using alcoholic beverages [or controlled substances] [or controlled substance analogs] to the extent that (child)'s health is substantially affected or endangered or (child)'s social or economic functioning is substantially disrupted.² This condition must be documented by [a qualified alcohol or other drug abuse diagnostician] [an approved treatment facility] in a written assessment.³

A parent is "failing to provide treatment" for (his) (her) child if each of the following is established:

1. that treatment for the child's (alcohol) (or other) (drug) abuse was available;
2. that the parent was aware of the treatment and its availability;

3. that the parent failed to provide the treatment as a result of neglect, refusal, or inability, or some combination of those factors;⁴

4. that the parent's failure to provide the treatment was unreasonable.

In determining whether a parent's failure to provide treatment was unreasonable, you may consider the circumstances surrounding the parent's failure to provide the treatment, including whether the treatment is generally accepted in the practice of psychology or psychiatry; the likely or possible benefits of the treatment; any likely or possible risks or side effects of the treatment; and the financial cost to the parent of the treatment.

Before you may answer either question in the special verdict "yes," you must be convinced by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that the question should be answered "yes." If you are not so convinced, you must answer the question "no."

SPECIAL VERDICT

1. As of (the date the petition was filed), was (child) suffering from (an) (a) (alcohol) (or other) (drug) abuse impairment?

Answer: _____
Yes or No

2. As of (the date the petition was filed), was (parent) failing to provide treatment?

Answer: _____
Yes or No

COMMENT

Wis JI-Children 265 and comment were approved by the Committee in 1999 and revised in 2004. The change in 2004 conformed the burden of proof language to Wis JI-Civil 205.

Wis. Stat. § 48.13(11m) 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:

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing, or unable to provide treatment.

NOTES

1. This statute requires the child to be suffering from an alcohol **and** other drug abuse impairment. The Committee assumes this was a drafting error and that the legislature did not intend to limit application of this subsection only to those children who are both alcoholic **and** dependant on some other illegal drug.

2. This definition is taken from Wis. Stat. § 48.02(1e).

3. This sentence refers to the mandates of Wis. Stat. § 48.31(4) which provides in part:

In cases alleging a child to be in need of protection or services under § 48.13(11m). . . , the court may not find that the child . . . is in need of treatment and education for needs and problems related to the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects unless an assessment for alcohol and other drug abuse that conforms to the criteria specified under § 48.547(4) has been conducted by an approved treatment facility.

4. If the jury needs additional explanation of "neglect," "refusal," or "inability," see Wis JI-Children 250, paragraph 7.