



SUBSTITUTE DECISIONS BY AND FOR OLDER ADULTS AND THEIR FAMILIES

Pamela B. Teaster*

**VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY LIBRARIES**



Sadie Ludlow lived her entire life in the same town. Over and over, she says that she wants to die in her bed. She is 82 years of age. She married a miner who was killed, in his late twenties, by a mine explosion. Sadie worked as a housekeeper to make ends meet. She never remarried, and she and her husband had no children. Sadie has a sister who phones her, but her sister lives in the West, and is 79 years of age.

In recent years it has been difficult for Sadie to gather the wood for heating, clean the house, and take care of her property. Sadie has a great deal of trouble remembering people; she forgets names of people who come to her house, and she does not always remember the date. She regards everyone as her friend. Neighbors come by to help Sadie from time to time, but no one is able to attend to her needs on a regular basis. Sadie is thin and has very little food in the house. She has arthritis in her knees so badly that sometimes she sits for a whole day at a time.

Sadie may need someone to help her make decisions because she is no longer able to take care of her own needs. Sadie is not unlike many adults who also may need assistance in decision making. Life-saving technologies, our increased longevity, persons with developmental disabilities who outlive their parents, persons in the end stages of HIV, and the deinstitutionalization of persons in mental health facilities - these are all reasons for us to understand issues of substitute decision making.

*Assistant Professor & Extension Specialist, Gerontology, Virginia Tech



VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

Virginia Cooperative Extension programs and employment are open to all, regardless of race, color, religion, sex, age, veteran status, national origin, disability, or political affiliation. An equal opportunity/affirmative action employer. Issued in furtherance of Cooperative Extension work, Virginia Polytechnic Institute and State University, Virginia State University, and the U.S. Department of Agriculture cooperating. J. David Barrett, Director, Virginia Cooperative Extension, Virginia Tech, Blacksburg; Lorenza W. Lyons, Administrator, 1890 Extension Program, Virginia State, Petersburg.
VT/013/0202/5M/222710/350253



VIRGINIA STATE UNIVERSITY

LD
5655
A762
no 350-
253
c 2

DECISION MAKING BASICS

This publication provides you with definitions of some tools to use for substitute decision making. You may want to decide who would be appropriate to make decisions for you, and you may be asked to make decisions on behalf of others. You will want to choose someone who is capable of honoring your wishes. Read on to understand decision making basics about informal tools representative payees, powers of attorney, trusts, and guardianship.

Least Restrictive

Alternative - This legal doctrine means that you must consider a choice that gives the most choices to a person whose freedoms might be restricted. Adults want to live in environments that allow them maximum freedom, or the least restrictive alternative. Keep this concept in mind when making decisions for someone concerning where and how he or she will live.

What is the least restrictive place for Sadie to live? How can you tell?

Before considering mechanisms for making decisions for others, you need to understand two decision making standards, substituted judgment and best interests.

Substituted Judgment - Use this standard to make a decision according to the way the individual would make it. The substitute decision maker substitutes his or her judgment with that of the person on whose behalf the decision is being made.

Best Interests - Use this standard when, due to functional impairments, an individual does not

understand the consequences of a request or when a decisional preference is not known (Molumphy & Shivers, 1998). Making a decision using a best interests standard uses more of the decision maker's values and preferences and less of those for whom the decision is being made.

The substituted judgment standard is preferred over the best interests standard. It honors the wishes of the individual by making decisions according to their point of view.

What decision making standard best fits Sadie Ludlow's circumstances? Why?

Sometimes we may need people to help us make decisions as well as make decisions for others. There are more restrictions on powers that give more authority to someone else to make more decisions on your behalf. Below are some explanations about decision making tools, both informal and formal. They are in order of least to most restrictive.

**“YOU MAY WANT TO
DECIDE WHO WOULD BE
APPROPRIATE TO MAKE
DECISIONS FOR YOU, AND
YOU MAY BE ASKED TO
MAKE DECISIONS ON
BEHALF OF OTHERS.
YOU WILL WANT TO
CHOOSE SOMEONE WHO
IS CAPABLE OF HONORING
YOUR WISHES.”**

INFORMAL TOOLS FOR SUBSTITUTE DECISION MAKING

When an individual is unable to handle financial affairs, some informal mechanisms may be put in place. Direct deposit is one informal mechanism. Dollar amounts are simply deposited, on an assigned day, to a certain account. This allows money to go into an account without having to endorse checks and cash them. More and more institutions use this method of payment, for example, the Social Security Administration. Carefully checking bank statements ensures that money is deposited correctly.

Another informal mechanism for handling finances is that of signing a check or checks and having a trusted family member, friend, or professional fill them out to make an authorized payment. A similar method of payment is to include two or more names on a checking account to make payments by more than one person.

FORMAL TOOLS FOR SUBSTITUTE DECISION MAKING

Representative Payee - If someone is unable to manage benefits properly due to mental or physical disabilities or problems with drugs or alcohol, a representative payee may be appropriate. A payee is designated by the Social Security Administration or other federal agency to receive an individual's check for the sole purpose of paying the bills. Relatives, friends, or an agency may ask to become the payee. If a suitable person is not found, the Social Security Administration may help locate someone. Anyone may refer a person to become a representative payee.

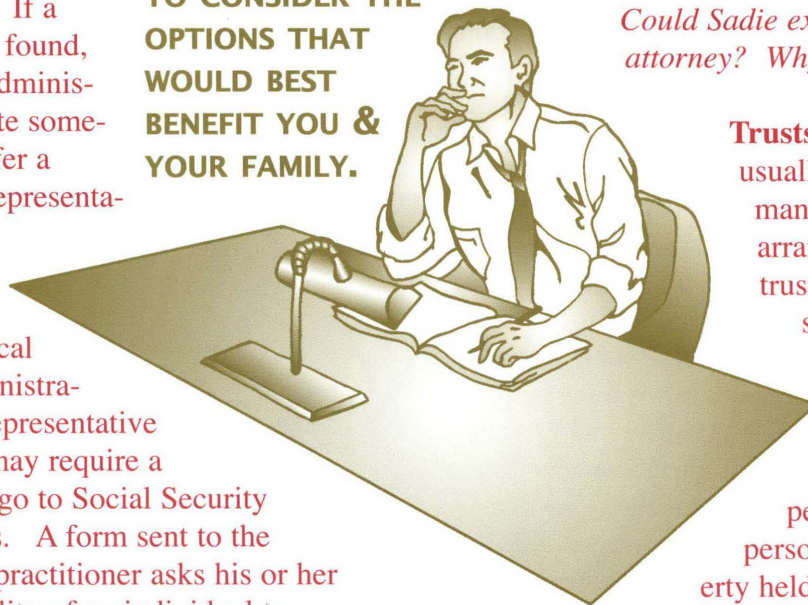
To obtain a representative payeeship, call the local Social Security Administration office. A field representative will investigate and may require a prospective payee to go to Social Security to fill out other forms. A form sent to the individual's medical practitioner asks his or her opinion about the ability of an individual to handle financial affairs. The process takes approximately 90 days. Representative payees usually make an annual accounting to the Social Security office (Quinn & Tomita, 1997).

Power of Attorney (POA) - The power of attorney is a written statement that allows one or more persons to act or represent another person. A person signing a power of attorney must be competent prior to signing the document. The act of signing must be completely voluntary. By signing, an individual gives away some control over his or her life, either permanently or temporarily. An individual who serves in this role may be either a friend, relative, or financial advisor. The person signing the POA (the principal) may remove the power at any time. An individual or a lawyer may draft a POA. In either case, it must be notarized.

Powers of attorney may be *limited* or *general*. Limited powers are for a specific act, such as the

authority to cash a check. General powers of attorney grant the authority to handle all financial affairs and are usually used if a person has physical limitations. Durable powers of attorney may be for health care or for finances. The durable clause means that the document survives the individual's incompetence (ability to make reasoned decisions and understand their consequences). Usually, the POA for health care (medical decisions) and the POA for finances (manage property) are different documents.

**TAKE THE TIME
TO CONSIDER THE
OPTIONS THAT
WOULD BEST
BENEFIT YOU &
YOUR FAMILY.**



Could Sadie execute a power of attorney? Why or why not?

Trusts - Trusts are usually for financial management. In a trust arrangement there is a trustee who is usually someone other than the creator of the trust. The trustee may be any qualified person or bank. The person who gives property held in trust is called the trustor. A trust may go into

effect at the time of death or during the trustor's lifetime. A trust may have any number of conditions attached to it. The trustee understands that he or she acts in the best interests of persons who are the beneficiaries of the trust. Trusts may be revoked at any time (Kapp, 1995).

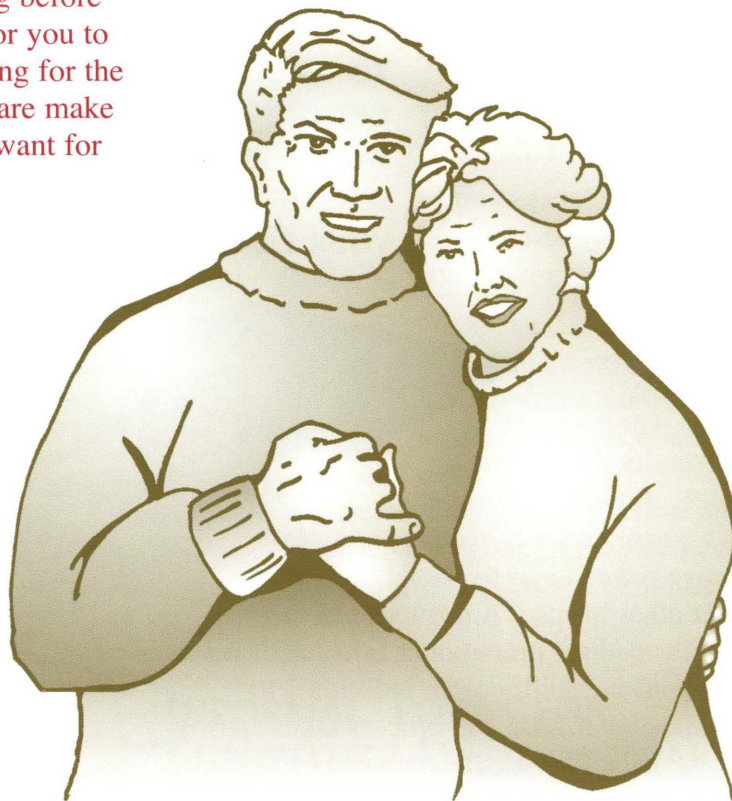
Guardianship - Guardianship is a very restrictive form of decision making for someone else. A guardian addresses personal decisions for someone else, and a conservator addresses financial decisions. The same person could be both a guardian and a conservator. Guardians (term usually applied to both) may be either private citizens, or they may be public agencies or organizations. Guardianships are granted if a judge decides that an individual, the incapacitated person, is incompetent. Guardians/conservators must be bonded. They must file a yearly financial accounting with the Commissioner of Accounts.

What type of substitute decision making tools would be best for Sadie? Who could do these things for her? Can you identify needs for decision making that Sadie might have in the future?

A FINAL WORD...

Tools for substitute decision making are available to help people live their lives to their fullest potential, in spite of impairments. It is important for you to communicate your wishes long before some circumstance might make it hard for you to tell someone about your wishes. Preparing for the future will help those about whom you care make informed choices about what you really want for them, for others, and for yourself.

If you have questions or are interested in other human development information on older adults and their families, contact your local Virginia Cooperative Extension Office. Family and Consumer Sciences agents offer a variety of educational programs related to family life, personal fitness, nutrition and food safety.



IF YOU WOULD LIKE FURTHER INFORMATION ON TOPICS CONCERNING OLDER ADULTS PLEASE SEE
VCE PUBLICATIONS: 350-251, 350-252 & 350-254

REFERENCES

- Kapp, M. B. (1995). Key words in ethics, law, and aging: A guide to contemporary usage. New York: Springer Publishing.
- Molumphy, J.T., & Shivers, H.H. (1998). Virginia handbook for guardians and conservators: A practical guide for court-appointed guardians and conservators of older adults. (2nd ed.). Richmond, VA: Virginia Guardianship Association.
- Quinn, M. J., & Tomita, S.K. (1997). Elder abuse and neglect: Causes, diagnosis, and intervention strategies (2nd ed.). New York: Springer Publishing.