

Agency Service Coordination Manual

5.4 Substitute Decision Maker Applications

Background

A Substitute Decision Maker (SDM) may be appointed for a vulnerable adult who needs decisions made, but is incapable of making those decisions by themselves or with the assistance of their support network. The appointment of an SDM is based on criteria contained in The Vulnerable Persons Living with a Mental Disability Act (VPA) and, where appropriate, the recommendations of a community-based hearing panel. The Vulnerable Persons' Commissioner decides whether to appoint an SDM and what the powers and duration of that appointment will be. For more information on Substitute Decision Makers, the hearing panel process, and the Commissioner's decision, please visit the [Vulnerable Persons' Commissioner Office \(VPCO\) website](#).

In all cases, the powers of an SDM will apply only to the areas in which the vulnerable person is incapable either alone or with assistance of a support network and needs decisions to be made. Further, the appointment will last only as long as the vulnerable person is believed to need an SDM (e.g., until a property is sold or a legal or health matter is resolved). An SDM may be appointed to make decisions concerning the vulnerable person's personal care or property or both. One or more substitute decision makers may be appointed for a vulnerable person, to act independently (i.e., one SDM for personal care and another one for property) or to act jointly (i.e., share the same powers) or to serve as an alternate (i.e., empowered when the primary SDM is unavailable to act).

The process for applying for an SDM is designed so that the vulnerable person has an opportunity to participate in procedures, to be notified of decisions taken, and to appeal decisions made on his or her behalf.

This procedure describes the roles and responsibilities for agency and department staff throughout the SDM application, hearing and decision processes.

Process

When May a Substitute Decision Maker be Necessary?

Upon application, the Commissioner will consider the appointment of an SDM for personal care and/or property for a person the applicant believes to be a vulnerable person and in need of an SDM. A person may need an SDM if they:

- appear to be a vulnerable person (i.e., an adult with a mental disability who needs assistance to meet their basic needs);
- appear incapable of personal care and/or managing their property by themselves or with the involvement of a support network (i.e., the person is unable to understand information relevant to making a decision or to appreciate the reasonably foreseeable consequences of a decision or lack of a decision);

- appear to need decisions made on their behalf with respect to personal care and/or property; and/or
- the appointment appears to be reasonable under the circumstances.

Applications for a Substitute Decision Maker

- Any person may apply on behalf of a vulnerable person, on an emergency or non-emergency basis for the appointment of an SDM or for the termination, variation, suspension or replacement of an existing SDM appointment.
- The agency designate, during ongoing planning or as decisions arise, assesses the individual's ability to manage their personal care and/or property. The agency designate can consult with the SSN or CSW at anytime, or directly with the VPCO.
- If the agency designate has concerns related to the individual's decision making, the agency designate will meet with the individuals support network to discuss whether application for an SDM is appropriate, and who may be a suitable to serve in this capacity.
- The agency designate, or a member of the individual's support network, will complete the Application for the Appointment of a Substitute Decision Maker, compile appropriate supporting documentation and submit to the VPCO as described on the application.
 - The agency designate's contact information should be listed as the individual's social worker/case coordinator.
- In response to the application:
 1. The VPCO may forward a Preliminary Investigation Working Document to either the regional office or agency in order to ensure that a current clinical assessment exists regarding the vulnerable person's impaired intellectual functioning and that there is evidence of the vulnerable person's impaired adaptive behaviour. The agency designate, as the key worker involved with the vulnerable person, will be responsible to complete this document.
 2. If the criteria for the appointment of an SDM are not met, the Commissioner may dismiss the application. The Commissioner may request that the regional office take reasonable steps to involve a support network and/or develop or review an Individual Plan with the vulnerable person. The agency designate will be responsible for these actions.
 3. Where the criteria for an SDM appointment appear to be met, the Commissioner refers the application to a hearing panel.
 4. The Commissioner may consider an application for the termination, variation, suspension or replacement of an SDM appointment, or the appointment of an emergency SDM, without referring the matter to a hearing panel.

- Upon referral to the hearing panel, the VPCO will send documentation to the agency designate regarding the SDM hearing. The agency designate will serve the individual with the Notice of Hearing, complete the Declaration of Service and return it to the VPCO as described in the documentation.
 - The Notice of Hearing must be described to the individual in a manner that the individual will understand.
 - In a rural area where travel and distance is a factor, the agency delegate may choose to mail the Notice to the vulnerable person and make arrangements to have a conference call on a specific date and time with the vulnerable person and an individual supporting the person. The agency designate will review and explain the Notice during this call.
- The vulnerable person will receive a copy of the application and any supporting documents provided. Additionally, the application and the materials that will be considered by the panel will be available for review prior to the hearing for anyone copied on the Notice. Upon the request of anyone copied on that Notice, a copy of the hearing panel package, which includes the application and supporting documentation, can be sent to them (there is a cover letter indicating that no copies are to be made and the entire package is to be returned within a specific time frame).
 - The agency designate is encouraged to consider the content provided as part of supporting documentation of the application, in the event the package is requested by the vulnerable person or a member of their support network.
- The agency designate will participate in the SDM hearing and provide information as requested. The hearing panel will make a recommendation to the Commissioner, who will make a final decision regarding the appointment.
- If an SDM appointment is made, the agency designate will educate staff regarding the implications of the appointment and will maintain a copy of the SDM documentation on the individual's file.

Review of an SDM Appointment

- The agency designate will continue to review SDM appointments and review dates during annual planning meetings.
- The VPCO will forward a notice of review six months prior to the review date.
- Should agency designate not receive notice, agency designate will contact VPCO when expiry occurs within four months
- If an SDM appointment is renewed, the agency designate will educate staff regarding the implications of the appointment and maintain a copy of the SDM documentation on the individual's file.

Emergency Applications

- As described on the VPCO website, there are the different applications to address emergency situations that may arise:
 - Appointment of an emergency SDM maker where no legal decision maker is in place to act on behalf of a vulnerable person.
 - An emergency variation application where there is a need to vary an existing SDM appointment.
 - An emergency suspension and replacement application when there is a need to temporarily suspend the appointment of an existing SDM and appoint a replacement in the interim.
- If the agency designate, in collaboration with the individual's support network, determines that an emergency SDM application is warranted, the agency designate will complete the Emergency Application for the Appointment of a Substitute Decision Maker and submit as described on the application.
 - The agency designate may consult with the VPCO at any time in order to determine which situations constitute an emergency application.
- If the Commissioner appoints an emergency SDM, the agency designate will educate staff regarding the implications of the appointment and will maintain a copy of the SDM documentation on the individual's file.
- The duration of an emergency SDM appointment cannot exceed 30 days. The Commissioner may extend the emergency appointment for an additional 30 days if, while the emergency appointment is in effect, a regular application is received requesting the appointment of an SDM.

Variation of an Existing SDM Appointment

- As described on the VPCO website, an application to vary an SDM appointment is required in situations where there is a need to:
 - vary the powers or duties of the existing SDM;
 - vary the terms and conditions of the appointment;
 - vary the duration of the appointment, but not extend it beyond five years from the effective date of the original appointment; or
 - appoint an eligible person as an additional or alternate SDM, on such terms and conditions as the Commissioner considers appropriate.
- If the agency designate, in collaboration with the individual's support network, determines that a variation of appointment is required, the agency designate will complete the Variation of an Appointment of a Substitute Decision Maker and submit as described on the application.

- If the Commissioner provides a variation to the appointment, the agency designate will educate staff regarding the implications of the appointment and maintain the SDM documentation on the individual's file.

Termination and Replacement of an Existing SDM

- As described on the VPCO website, a termination and/or replacement application is required in situations where:
 - The vulnerable person no longer needs an SDM to act on their behalf; or
 - Where a replacement SDM is needed because the existing SDM:
 - has died;
 - is unable or unwilling to act in this role;
 - has failed to act in accordance with the legislation or the terms and conditions of their appointment;
 - has acted in a manner which is improper or endangers the well-being or property of the vulnerable person; or
 - is no longer suitable to act as the vulnerable person's SDM.
- If the agency designate, in collaboration with the individual's support network, determines that an SDM appointment should be terminated or the SDM replaced, the agency designate will complete the Termination of the Appointment and/or Replacement of a Substitute Decision Maker and submit as described on the application.
- The agency designate will participate in the SDM hearing and provide information as requested during the hearing.
- If the Commissioner terminates or replaces an SDM appointment, the agency designate will educate staff regarding the implications of the appointment and maintain the SDM documentation on the individual's file.

Appointment of Public Guardian and Trustee as SDM

- Should the Commissioner appoint the Public Guardian and Trustee (PGT) as the SDM for the individual, the agency designate will notify the SSN of the appointment.
- The SSN will transfer the file to the dedicated CSW to complete the delegated tasks of the PGT.
- The agency designate will follow procedures as described related to case management for individuals with the PGT appointed as SDM.

Standards

- Substitute decision making should be invoked only as a last resort when a decision is required and the vulnerable person is unable to make that decision themselves or with the assistance with their support network.
- The agency designate is responsible for completion of appropriate SDM paperwork, serving required notices to individuals and participating in SDM hearings.
- In the event an individual wishes to appeal a decision made by the Commissioner, the agency designate will support the individual in doing so.
- Any changes to the SDM appointment needs to be communicated to the SSN or CSW within 5 business days.
- In the event an SDM has been granted the power to decide where, with whom and under what conditions a vulnerable person is to live, and the vulnerable person refuses, an Application and Order for Apprehension may be granted. In these circumstances, the agency designate will consult with the SSN or CSW on how to proceed.