

**39-1437. Same; protective services; duties of secretary of social and rehabilitation services; injunction.** (a) If the secretary determines that an involved adult is in need of protective services, the secretary shall provide the necessary protective services if the adult consents, or if the adult lacks capacity to consent, the secretary may obtain consent from such adult's legal representative. If the involved adult fails to consent and the secretary has reason to believe that the involved adult lacks capacity to consent, the secretary shall determine whether a petition for appointment of a guardian or conservator, or both, should be filed. If such determination is made, the secretary may petition the district court for appointment of a guardian or conservator, or both, for an involved adult pursuant to the provisions of the act for obtaining a guardian or conservator, or both.

(b) If the caretaker or legal representative of an involved adult who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to the adult, the secretary may seek an injunction enjoining the caretaker or legal representative from interfering with the provision of protective services to the adult. The petition in such action shall allege specific facts sufficient to show that the adult is in need of protective services and consents to their provision and that the caretaker or legal representative refuses to allow the provision of such services. If the judge finds, by clear and convincing evidence, that the adult is in need of protective services and has been prevented by the caretaker or legal representative from receiving such services, the judge shall issue an order enjoining the caretaker or legal representative from interfering with the provision of protective services to the adult. The court may appoint a new legal representative, if the court deems that it is in the best interest of the adult.

**History:** L. 1989, ch. 129, § 8; L. 2003, ch. 91, § 16; July 1.