



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

Guardian²

and

Madam NSY

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Ms Kitty CHAU Shuk-king

Member referred to in section 59J (3) (c): Ms YUEN Yuen-yau

Date of Reasons for Order: 15 September 2010.

¹ Sections cited in this Order shall, unless otherwise stated, be under Mental Health Ordinance (Cap. 136) Laws of Hong Kong.

² S2 of Mental Health Guardianship Board Rules and S59U(4)(b) of Mental Health Ordinance

³ S2 of Mental Health Guardianship Board Rules and S59N(4)(a) of Mental Health Ordinance

Background

1. The subject, Madam NSY is an 63-year-old woman with Alzheimer's disease. She used to live with her husband and 2 children at a jointly (subject & husband) own property. After the son got married and gave birth to 2 children, they still lived together till 1998. The subject's husband passed away in 2000. In recent years, the subject showed deteriorating orientation to place and time. She lost her way home and went missing repeatedly. In February 2009, after a report of missing for 4 days, the subject was moved to the son's flat for close supervision and care by the daughter-in-law who resigned from her job then. To facilitate the subject's rehabilitation and relieving the stress of the carer, the subject started to receive respite services and attend full-time day care centre.
2. The subject had around \$570,000 savings in bank accounts and became the sole owner of the flat, which was occupied by the daughter, after her husband passed away. The subject was receiving the Normal Disability Allowance (NDA) \$1,280 per month and the daughter-in-law was the appointee. The monthly expenses of the subject, in addition to food and other household expenses, were day care centre service fees \$1,300 and travelling expenses around \$600 per month.
3. The son and daughter-in-law intend to take care the subject at their home continuously. But due to financial stress, they felt difficult to sustain such a care plan. The son just started his own business that did not gain any profits in past few months. The daughter-in-law quitted her job as factory worker in April 2009 in order to take care the subject at home. The couple needed to support the daily expenses of subject, also was required to pay mortgage of their own flat, plus educational expenses of their three teenage

children as well as other household expenses.

4. The son and daughter-in-law have considered employing a foreign domestic helper so that the daughter-in-law could go out for work. Yet, they were worried that the helper might not understand the subject's native dialect and her needs. The couple proposed that the subject should pay the daughter-in-law as carer at a fee of \$5,000-\$6,000 per month and extra \$2,000 for daily expenses. They also aimed to apply for a Part II (Committee) order in order to sell or rent out the subject's flat for supporting the expenses of subject after exhausted her savings.
5. The daughter of subject also showed concerns to the subject. She appreciated the effort of the brother's family in caring for the subject. Whenever the daughter had two or more consecutive days off, she would bring the subject to the old abode for home stay and out for leisure around in Hong Kong. The daughter basically agreed to the present care plan. However, she did not agree to the monthly amount \$8,000 to be paid to the brother's family and she considered \$5,000-\$6,000 was already more than reasonable. After a heated quarrel in June 2009 between the son and daughter, they only communicated through the children of son.
6. At the guardianship hearing, the Board granted an Guardianship Order and appointed Director of Social Welfare as guardian for a year. The Board also wrote a special clause on the Reasons:

“In the particular circumstances of this case, the Board exceptionally approves the payment of monthly wages to the subject's daughter-in-law at a monthly sum of \$5,000. But the Board must state that this case should not be regarded as a precedent case. The Board also imposes two conditions while

approving this arrangement: (1) During the subsistence of this arrangement, the daughter-in-law should not engage in any full or part time engagement or employment, whether there is emoluments in cash or in kind or other advantages in return. (2) The income from disability allowance of the subject shall be counted towards the total income of the subject with which the expenses of subject shall be discharged, including setting off against the wages payable to the daughter-in-law.”

7. Before the review hearing, the Board received the progress social enquiry report and stated that:

“22. The subject maintained a stable livelihood and enjoyed a harmonious family life under the home care arrangement of elder son’s family. She was provided with adequate physical care and proper supervision on her physical and mental condition with support of the day care service. The support, care and concern from the grandchildren were also crucial for the subject’s well being. Home care arrangement was undoubtedly the preferable arrangement for her. However, the subject’s elder son family showed fluctuating decisions on the caring and financial plan for the subject during the supervision period in view of their own financial condition, the daughter-in-law’s psychological burden arising from the caring role and the uncooperativeness of the subject’s daughter on handling the subject’s property.

31.the daughter-in-law requested the extra \$2,000 monthly to cover the subject's expenses for meal and daily maintenance from October 2009 to the present. She also requested to arrange another reimbursement for her monthly salary and daily maintenance for the subject from April to September 2009.....”

8. On the supplementary information, there were stated that:

“6. The financial condition of daughter-in-law's family was updated with the public guardian regularly. She always expressed that it was their responsibility to support the subject financially. But in view of their unstable income, the couple agreed to seek further advice from the Guardianship Board on their request during the Review Hearing on 15.9.2010.”

Mental and health conditions

9. According to the medical reports, the subject was reported to have global deterioration of cognitive functions. She was disoriented to time, person and place. According to the police's record, there were 15 missing reports of the subject. The subject recognized her family members well and was receptive to advices from them in daily activities and enjoyed structured home lifestyle. Her emotion was clam and stable. The subject could walk independently and was able to manage basic self-care, including feeding, dressing and bathing under the close supervision from time to time.

10. The subject attended day care centre with escort service from 10 a.m. to 5 p.m. from Monday to Friday. The daughter-in-law and the grandchildren would take turn to escort the subject to take the Rehabus every morning. The subject appeared cheerful and talkative. She received physiotherapy twice a week and orientation training once a month.

Review hearing at the Board on 15 September 2010

11. The daughter-in-law said during the period under review, she received \$5,000 wages from the public guardian only. She used the disability allowance for minor expenses of the subject and payment of day centre fees. She sought reimbursement of her wages for the period from April to September 2009 together subject's meals and lodge expenses at a total sum of \$7,000 per month (i.e. 5 months x \$7,000) [i.e. a period before first Guardianship Order]. She also sought reimbursement of \$2,000 a month for the subject's meals and lodge expenses from October 2009 till the present. [The Board so authorized.]
12. She and her husband (i.e. the subject's son) confirmed that they had, in the past, withdrawn such requests of reimbursements from time to time and revived their requests time and again. The daughter-in-law said that she first mentioned to the case social worker [i.e. the present delegated guardian] on the non-payment of \$2,000, being the meal and lodge expenses under request in January 2010. Of such request of meal and lodge expenses, she only told the earlier case worker before [i.e. the former delegated guardian]. She kept talking to the case social worker on this matter and was asked for supporting receipts. Her family finances were stringent all along. Without proof of receipts, the case social worker only suggested a sum slightly over \$1,000 to be payable. Later, the family finances became

better, and she dropped the idea of seeking the meal and lodge expenses. Her family finances were fluctuating all along. She and her husband would continue to keep the subject at their home continually for care.

13. The present delegated guardian and case social worker, on behalf of the Director of Social Welfare, said, referring to appendix 2 to her report (i.e. the breakdown of meal and lodge expenses), she found it acceptable to have no supporting receipts regarding the item on expense of meals. On why no meal and lodge expenses were ever paid during the period under review, she said that she did discuss with her supervisor and the Social Welfare Department Headquarters on the approval of the requests of \$2,000 for meal and lodge expenses each month for the subject. She was told to write to Guardianship Board for advice, which she did. However, the daughter-in-law later withdrew her request later. The Board pointed out that there was nothing that worth writing to the Board and the public guardian had ample authority and managerial discretion to deal with and decided on this rather straight-forward matter. It was extremely unusual for the public guardian to write for advice or direction on minor amount of monthly maintenance expenses of subject persons.
14. The son's family inclined to employ an Indonesian domestic maid to take care of the subject in future. [The Board made it clear that once the domestic maid has arrived to work, the authorized wages to the daughter-in-law will cease. The daughter-in-law said she agreed and would resume working outside herself.]
15. The case social worker observed that the son's home was a suitable place for the subject to stay. Both the daughter-in-law and the three grandchildren were good to the subject. The care provided by the

daughter-in-law was good and adequate. Her view was that family members would be able to provide better care to the subject than a domestic maid.

16. The son said, behind him, his wife applied for a personal loan to pay for her daughter's tuition fees for an associate degree course. On intermittently withdrawing from the request for reimbursements of \$2,000 a month for the subject's meal and lodge expenses, it was because the case social worker said she would like to seek the view of the Board first.

Issues and Reasoning

Reasoning for continuing to receive the subject into guardianship

17. The Board accepted and adopted the views of doctor as contained in the medical report dated 9 August 2010 as well as the progress social enquiry report and the views and recommendations as contained therein and accordingly decided to continue to receive the subject into guardianship in order to protect and promote the interests of welfare of subject. It was quite disappointed to see that the subject was not provided for her own maintenance (like meal and household expenses) during the whole period under review. The Board found that the public guardian should have made the decision swiftly to pay for the meal and lodge expenses of the subject much earlier. The writing to the Board for the so-called advice in March 2010 was quite uncalled for. To avoid further hardship to the son's family and for clarity, the Board exceptionally, and not without much reluctance, decided on this matter over the monthly maintenance of the subject by this order.

Reasoning for continuing to appoint the legal guardian

18. The Board accepted and adopted the view of the progress social enquiry report maker who recommended the Director of Social Welfare to continue to be appointed as the guardian of the subject in this case.

DECISION

19. The Board was satisfied and accordingly found that the subject remained a mentally incapacitated person for whom a guardian should be appointed as the order has resulted in maintenance of the subject's welfare and health. The subject still needed a guardian to make substitute decisions, as the subject lacked capacity to make reasonable decisions on personal and welfare matters including decision on financial matters. For the same reasons as stated in the original Guardianship Order, the Board was satisfied that there remained no less restrictive or intrusive alternative to guardianship. The Board concluded that it was in the interests of the welfare of the subject to continue to be under guardianship and that the original guardianship order should be renewed.

20. The Guardianship Board applied the criteria in section 59S of the Mental Health Ordinance and was satisfied that the Director of Social Welfare was the most appropriate person to continue to be appointed the guardian of the subject.

(Mr Charles CHIU Chung-ye)
Chairperson of Guardianship Board