



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

Guardian²

and

Madam LING

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Ms Connie TSANG Fook-yee

Member referred to in section 59J (3) (c): Mr Stephen HO Kam-yu

Date of Reasons for Order: 8 May 2009.

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 LING is an 76-year-old woman with Alzheimer's disease. She used to live with her husband in a private flat under her sole name. The couple did not have child in their wedlock. After retirement, except taking overseas trips initially, they spent most of their time at home and only joined the extended family's gatherings on the 1st day of Lunar New Year.
2. On 26 January 2009, the first day of Lunar New Year, when the nephew visited the couple, he found that the subject's husband was dead and the subject had unclear mind. The subject was sent to hospital for treatment and assessment. The medical social worker could not trace other relatives of the subject and the nephew had difficulties in looking after the subject. After the subject was assessed to have Alzheimer's disease, the medical social worker filed an application for Guardianship Order and proposed the Director of Social Welfare to be the guardian in order to manage her assets and decide the welfare plan.
3. During the enquiry period, the elder brother of subject was found and he visited the subject at hospital. The subject could recognise her elder brother and name him correctly. The elder brother was willing to involve in the subject's welfare matters, but due to his advance age and his need to take care of his demented wife, he finally agreed to propose the Director of Social Welfare to be the guardian.
4. According to the social enquiry report, the subject owned a private flat under her sole name, savings at bank over \$5.8 million under 10 different accounts, stocks and securities over \$1.2 million and she is the beneficiary

of the estate (over \$2 million) of her late husband. The elder brother has kept settling most of the subject's expenses.

5. The relatives of the subject were unwilling to involve in the subject's welfare matters. They proposed to have the Director of Social Welfare as the guardian. They also preferred the subject to be admitted to a subvented old age home. They were willing to settle all the expenses of the subject before the granting of Guardianship Order.
6. After admission to the present private old age home, the subject adjusted well. The nephew arranged two half-hour physiotherapy sessions per week for the subject, as the subject was weak in limbs and cognitive function. The relatives also appointed a solicitor to file an application for a Part II committee order in order to fully utilize the subject's assets for her welfare matters.

Mental and health conditions

7. The subject mentioned that she had weak health. She was assessed to have Alzheimer's disease. The subject had poor time concept and need to wear diapers. She is confused in mind. Physically, the subject could walk without aids, eat independently and her vision is good. She usually puts on safety vest in order to avoid her from walking away or standing on bed. Hand restrainers are also used when she sleeps in order to avoid her from taking off her pants and diapers.
8. The subject usually put her hand on her left chest, but she failed to give details and expressed herself clearly. According to medical records, the subject first consulted Cardiology unit in 2001 and transferred to general unit

in 2005. On 4 March 2009, the doctor stated that the subject suffers from chronic ischaemic heart disease on the discharge summary. According to the medical report, the subject was suspected to suffer from cancer of corpus and cancer of cervix. Depending of the investigation results, the doctor may consider future treatments for the subject.

Hearing at the Board on 8 May 2009

9. At the hearing, the elder brother of the subject says he cannot think of any particular question to ask so far. He agrees to the amount of reimbursement as assessed by the social enquiry report maker, Miss F, being the previous expenses of subject paid by him.
10. Mr S, the nephew of the subject, says he has no objection to the application herein and the appointment of the Director of Social Welfare as guardian for the subject. He asks if the financial limit of the Board could be relaxed. He agrees to the amount of reimbursement as assessed by the social enquiry report maker, being the previous expenses of subject paid by him.
11. He asks if there is anyway to find out the details of assets of the subject's late husband.
12. Mr H, another nephew of the subject says he will start a full time job in June in Beijing. He agrees with the view of the Mr S. He is worried about the limited financial jurisdiction of the Board which may not be enough for the future medical needs of the subject. Both he and Mr S would like to use the subject's money for her purposes and believe that the subject is rightly entitled to do so.

13. He is in ad-hoc charge of the intending application of a Committee Order for the moment. The Board requires the relatives to make a clear decision on who to proceed with the application eventually.
14. The applicant, medical social worker of the hospital, says she has nothing to add.
15. Miss F, the maker of social enquiry report, on behalf of the Director of Social Welfare, says the subject has been admitted to the present old age home on 7 April 2009. The Board indicates to her that a Part II recommendation will be given today. The Board also confirms with Miss F on the newly retrieved account of the subject at bank. Miss F replies that her new Appendix (to the report) filed today includes that account as well. The Board would thank Miss F in handing up the most updated Appendix at the beginning of the hearing.
16. She confirms that management fees and other utilities of the flat of subject are outstanding at \$2,741.20. Secondly, the outstanding hospital fees are respectively \$6,005 and \$816. Apart from these two items, there are no other outstanding debts.
17. She confirms that the key to the flat of the subject is now kept by the police.
18. The Board notes that Miss F's report is full of details and evidence of good efforts being given to assist the Board in this matter. The Board would thank Miss F for this. Nonetheless, the Board would like to make some suggestions to Miss F hereinbelow on the refinement of future reporting. This will also serve as clarifications for reference in the future case management in the present case.

- (i) Each box in “Savings” column of the Finance and Capacity Table [“the Appendix”] should only contain one bank account. (As one can see here, the 4th box contains two accounts with their own unique account numbers).
- (ii) In case of full description of all accounts is given in the body of the report, all accounts bearing their own account numbers should be given. (In this report, one of the two accounts in the aforesaid 4th box is missing).
- (iii) The setting out of details of each bank account should follow the exact descriptions per bank search results and should not mix with information from bank statements obtained from other sources. This will enhance precision, consistency and checking efficiency. As one can see, bank products and account types nowadays are proliferating and various banks have different attitude or reaction towards descriptions of bank accounts stipulated in a Guardianship Order.
- (iv) There are generally two types of outstanding payments, namely, “outstanding debts” and “claims for reimbursement by relatives and friends”. While it is usual for reimbursement claims to be assessed by way of a template commonly used, it is advisable, and hence of much value, to include “outstanding debts” as a 2nd part to the template. This will make ways easier for the future case worker. In this case, a long (and rather winding) description of outstanding debts and reimbursement claims are updated in the Supplemental Information

but no updated Appendix is filed together with it. It is advisable to file with the Board an updated Appendix with precise description of outstanding debts. Whether including them (i.e. outstanding debts) into a 2nd part of the template for reimbursement claim is strictly a matter of personal choice of writing style. But the Board would nevertheless encourage the use of a 2nd part to the template for benefits of consistency and elimination of the risks of omission to include this head in the Guardianship Order.

- (v) As it is not unusual to find out typing or other clerical mistakes in the Appendix or template, and coupling with the fact of evolving and changing amounts of various items or types of expenses due to passage of time, report makers should accept that it is very common and usual to file amended/updated Appendix and template together with the Supplemental Information, or at a time nearer to the hearing date. Not only this will enhance precision and currency but would also greatly assist the Board, the future case handling by the guardian or case social workers and the overall financial management of the subject.
- (vi) A follow through of the above advice by the Board will certainly also enhance the efficiency at a hearing.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

19. The Board accepts and adopts the views of the two medical doctors as contained in the two supporting medical reports as well as the supplementary report dated 4 May 2009 and the views and recommendations as contained therein and accordingly decided to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.

Reasoning for choosing the legal guardian

20. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report, the proposed guardian the Director of Social Welfare to be appointed as the guardian of the subject in this case.

DECISION

21. The Guardianship Board is satisfied on the evidence and accordingly finds:-

- (a) That the subject, as a result of Alzheimer's disease, is suffering from a mental disorder within the meaning of section 2 of the Ordinance which warrants the subject's reception into guardianship;

- (b) The mental disorder limits the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which relate to the subject's personal circumstances;
- (c) The subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means are available as the subject lacks capacity to make decisions on accommodation, her own welfare plan, treatment plan and finances, which has resulted in the subject's bank accounts being frozen and the bills for hospital and old age home could not be paid;

In this case, the predominant needs of the subject remained to be satisfied are, namely, decision to be made on future treatment plan and finance;

- (d) The Board concluded that it is in the interests of the welfare of the subject that the subject should be received into guardianship.

22. The Guardianship Board applied the criteria in section 59S of the Ordinance and was satisfied that the Director of Social Welfare was the only appropriate person to be appointed as guardian of the subject.

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