



**ORDER FOR RENEWAL AND VARIATION
OF GUARDIANSHIP ORDER**

Mental Health Ordinance (Cap. 136)¹

(Section 59U)

BETWEEN

The Director of Social Welfare

Guardian²

and

Madam WT

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J(3)(b): Miss CHIEN Man-hung

Member referred to in section 59J(3)(c): Ms CHAU Sook-haan

Date of Reasons for Order: 31st August 2011.

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 S59U(4)(a) of Mental Health Ordinance

Background

1. The subject, Madam WT, was a 79 year-old woman suffering stroke in April 2007. The subject was a singleton and used to live with his nephew's family in public housing unit before 1998. Afterwards, she moved to a flat for senior citizens till hospitalization. On discharge from hospital, she moved to a private old age home. In order to mobilize her savings (around HK\$560,000) for her welfare needs, the niece-in-law filed an application for Guardianship Order in June 2007.
2. Due to the disagreement of the subject's siblings, the niece-in-law gave up to be the guardian of subject and agreed the Board to appoint Director of Social Welfare as the guardian of subject for a period of one year with all powers (s.59R(a)-(f)).

1st review (8 September 2008)

3. Under the guardianship period, the subject was assessed to have dysphasia and difficulty to manage large amount of savings. Her health condition had an overall improvement. She can walk with the aid of a stick. The subject's savings left at bank was around HK\$500,000.
4. The Board decided that the Director of Social Welfare should continue to be the guardian of subject for 3 years with the same powers in original order.

2nd review (31 August 2011)

5. Under the 1st review period, in July 2011, the case social worker submitted a progress social enquiry report for 2nd review hearing. The report maker stated that the subject still lived in the same private old age home. She had a satisfactory and stable health condition. There was no hospitalisation record during the review period but had regular medical follow-ups at a clinic. Her savings at bank left was decreased to around HK\$370,000.

6. Yet, paragraph 19 of the progress social enquiry report stated:

“The subject adjusted well and lived happily in the present private aged home. A placement in a subvented care and attention home in New Territories was offered to the subject in September 2009. As the subject was affirmative that she did not want to change her residential placement, upon discussion with her niece-in-law, the offered placement in a subvented care and attention home was declined in November 2009.....”

7. After the Board sent a requisition to the report maker asking why the public guardian rejecting the offer of placement, the report maker filed an supplemental information and stated that:

“.....the niece-in-law had paid a site visit to the offered home. As revealed by the niece-in-law, the offered home operated on a larger scale. However, the lighting was not as good as the licensed private aged home which the subject is living and there was no individual TV set for

every resident..... As the subject felt satisfied with care, the food and environment of the present private old age home, she enjoyed the living in the present aged home and she had build a harmonious and satisfactory relationship with the home staff. She was affirmative that she did not want to change her residential placement. In view of the subject's strong resistance to change aged home, the offered placement in the subvented care and attention was declined in November 2009.....”

Hearings at the Board on 31 August 2011

1. The public guardian said the subject did not have any waitlisting for subvented placement as at present.
2. The Board explained to her why the subvented placement offered in 2009 should not be rejected by the public guardian. The main reason was that short term adjustment is worthwhile in view of the long term gain of quality service at a subvented care and attention home. There was, as far as the Board was given to know, nothing on the file record of the public guardian showing that a detail comparative analysis had been made. It was also doubtful if the public guardian had ever visited the care and attention home under offer at the material time. The Board also noted that the placement under offer at that time was also situated at the same district of New Territories where relatives were living and thus there was no point arising on inconvenience of future visits.

3. The nephew said he simply liked the subject to enjoy her own resources; the present place was good and there seemed no need to move the subject to other places.
4. The wife of nephew said the subject disliked the moving to the subvented care and attention home as offered. [The Board pointed out that, as recorded in paragraph 23 of the progress social enquiry report, the subject was unable to make sound judgment because she was a mentally incapacitated person.]

Issues and Reasoning

Reasoning for continuing to receive the subject into guardianship

5. The Board received and adopted the progress social enquiry report and the views and reasoning for recommending Guardianship Order 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.

Reasoning for continuing to appoint the legal guardian

6. The Board was very disappointed at the public guardian's rejection of the offer of the subvented care and attention home placement in November 2009 because, after considering the public guardian's representations in reply to the Board's requisition, it was an act contrary to the best interests

of the subject.

7. The public guardian was reminded that rejecting a subvented placement was super major accommodation cum daily care decision which must obtain prior specific approval of the Board.
8. Nevertheless, 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

9. 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 renewed 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.

10. 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 last resort person to continue to be appointed the guardian of the subject.

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