



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Madam A

Applicant²

and

Mr H

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Dr Anita LEUNG CHONG Ngai-ngor

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

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

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

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

Date of Reasons for Order: 24th October 2008.

Background

1. An application for guardianship was lodged on 22 July 2008, in respect of the subject Mr H. Mr H was a 58-year-old man suffering from multiple physical illnesses and stroke causing cognitive deficits. The subject was unable to handle finances.
2. The subject had a gambling habit. Apart from playing mahjong and race betting, he went to casinos in Macau about 8 to 10 times a year. He was also involved in investment activities in stock market. He had records of borrowing personal loans from different financial companies to support his livings. The subject is in debt to a total amount of \$77,991.93 but his total savings is only \$8,144.24.
3. The subject has 3 children in the wedlock with Madam A (the applicant). The daughter contributes a monthly \$2,000 for supporting the family and the other two sons could only be self-relying on their meagre income. Apart from a monthly \$2,000 contribution from the daughter, the family relied on monthly rental income of two industrial flats owned by the wife.

Circumstances leading to the Application

4. The wife contacted the MPF trustee company to enquire about the procedures for withdrawing the subject's MPF entitlements at \$33,529 to support his living expenses. She was then advised to apply for a guardianship order. The wife intended to withdraw money from the MPF account of the subject for his living expenses and paying the debts.

Welfare Plan

5. Miss H, case medical social worker of Renal Dialysis Centre, told that the subject would be discharged home very soon. The wife tended to receive the subject home if he could be discharged. If she was unable to take care of him afterwards, she would consider hiring private residential care services for him while applying for a subvented placement in the long run. But she was worried that the subject could only get limited welfare money for his care if he remained living together with his families. Thus, she once had a plan to have the subject on Comprehensive Social Security Assistance lived in a private aged home if the financial condition of the family remained stringent.

Mental and health conditions

6. The subject's health condition has been fluctuating. He was once discharged home on 17 August 2008 and was taken care of by his wife. However, as he suffered from urinary tract infections, impaired liver function, hypertension, fevers and arterial fibrillation, he was re-admitted into the hospital time after time. He has been staying at the hospital again since 11 October 2008 because of fever.
7. According to the records of the hospital's clinical management system, the subject suffered from renal stone and ureteric stone from 1999 to 2000. His physical health deteriorated from 2005 onwards. He was diagnosed with end stage renal failure in 2007. He received kidney transplantation on 25 April 2008 in the Mainland. Because of acute stroke, he was admitted into the hospital on 9 May 2008. He was transferred to hospital rehabilitation block on 23 June 2008 until August 2008. He was suffering

from low blood pressure and diabetes mellitus. A Percutaneous Transluminal Coronary Angioplasty (PTCA) operation has been suggested for him subject to the progress of his physical condition. He is required to be on special drug to manage the progress of post-renal transplantation. He is attending renal replacement therapy at Renal Dialysis Centre about once a month.

8. The subject was not known to mental health service before, as said by his wife. According to doctors, the subject suffers from a stroke causing cognitive deficits. Their medical reports mentioned that subject had recent infarctions at midbrain, bilateral thalami and at the top of basilar artery as revealed in a Magnetic Resonance Imaging (MRI) of brain conducted on 13 May 2008. He scored 10 out of 30 in a Mini Mental State Examination (MSSE) conducted between May and July 2008.
9. The subject was sitting on a chair when the social enquiry report maker visited him and his wife at the hospital rehabilitation block on 12 August 2008. Subject had slow but coherent speech and was looked tired. He was disorientated in place, time and persons. He mixed up facts of his financial records and his employment history. He did not know too well about his stay at the hospital and could only state that he was residing in a hostel. He had difficulties in introducing members of his family. He was dependent in activities of daily living, except self-feeding. He needed assistance in incontinence care. In mobility, he needed walking aids and even wheelchair assistance.

Hearings at the Board on 24 October 2008

10. The wife said the subject presently stayed at the hospital due to recurrent fevers arising from urinary tract infection. She planned to restore the subject home after the future discharge. The debts to three several banks in the amount of around \$70,000 as recorded in the social enquiry report remained unpaid. She said the bank insisted that the subject must authorize her before any money for repayment could be received. The Board asked her to take private legal advice on this matter. She made some arrangement to enable the hospital cover of the subject's insurance policy to continue. Compensations were received already and she was told that there would be no more compensation from the insurance company. As to the other insurance policies, she gave a confused account.
11. The social enquiry report maker said he did not actively contact the banks for details regarding the credit card debts.

Reasoning of the Guardianship Board

12. In this case, the Board's view is that a Guardianship Order should not be granted solely for the purpose of repaying antecedent debts. The present case falls into this category. Also, the amount of savings (\$8,144.24) at banks and MPF account (\$33,529) was much less than the total indebtedness, currently standing at around \$77,991.93. There is in fact no net equality left. The Board does not see any benefit that could be brought about by receiving the subject into guardianship. Clearly, this case is not suitable for guardianship.

13. The Guardianship Board can only exercise its power under section 59O to make an order if it is satisfied on certain criteria.
14. The Guardianship Board was NOT satisfied that the subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means are available.

DECISION

15. The Guardianship Board observed and applied the principles contained in section 59K (2) and applied the criteria set out in section 59O (3) of the Mental Health Ordinance. The Guardianship Board was satisfied: -
 - (a) The subject is a mentally incapacitated person suffering from a stroke causing cognitive deficits, amounting to a mental disorder, within the meaning of section 2 of the Mental Health Ordinance;
 - (b) the mental disorder the subject in making reasonable decisions in respect of all or a substantial proportion of the matters which relate to the subject's personal circumstances.
16. The Guardianship Board cannot exercise its jurisdiction to make a guardianship order as insufficient evidence has been furnished to satisfy the criteria in section 59O (3) (c) and (d) of the Mental Health Ordinance (Cap 136) namely: -
 - (a) that the particular needs of the subject, may only be met or attended to by guardianship and that no other less restrictive or intrusive means are available in the circumstances; and

(b) that it is in the interests of the welfare of the subject that the subject should be so received.

17. The Guardianship Board, for the reasons set out in its Reasons for Order, DISMISSES the application for guardianship and REFUSES to order that the subject be received into guardianship.

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