



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Madam C

Applicant²

and

Mr L

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Dr Peter TSOI Ting-kwok, JP

Member referred to in section 59J (3) (c): Mrs FURNISS LAU Mei-ying

Date of Reasons for Order: 15th October 2008.

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

Background

1. The subject, Mr L, was a 62 year-old man suffering from brain injury, amounting to a mental disorder. He has two sons with his wife. In 2002, the subject had a traffic accident in the Mainland. He was seriously hurt and had to stop working. He is assessed to be unable to arrange for his own accommodation, receiving treatment and managing his finance.
2. After the accident, the subject was compensated for about \$1.6 million. There was around \$1 million left and such amount was kept by the wife and eldest son for supporting the daily living and medical treatment of subject. The wife tried her best to maintain her job as well as taking care of the subject. She made most of the arrangement on subject's finance, daily living and medical need in agreement with two sons.
3. Indeed, the relationship of the family is close and harmonious. According to the staff of the old age home, the wife visits the subject regularly and handled his matters efficiently. The sons also concern about their father and they are familiar with their parents' updated conditions.

Circumstances leading to the Application

4. The central intention of the wife in applying for Guardianship Order and to act as the guardian is to arrange withdrawal of the money in the MPF account (around \$36,000) of subject to avoid further possible loss in value and unnecessary administrative fee.

Welfare Plan

5. Mr L has been waitlisted for a placement of subvented care and attention home since 9 January 2008 with home specific. The wife said the subject was not easy to build up relationship and trust with other carers. As the subject was very familiar with the staff of the preferred care and attention home due to his attendance to the day care service there before, she therefore made the specific preference choice. She would not mind the longer waiting time because she was satisfied with the environment and services of the present private home.

Mental and health conditions

6. Mentally, the subject received psychiatric out-patient treatment from 1997 to 2001 at an interval around 3 to 4 months but the exact diagnosis was unknown to her. The subject had an ideation of jumping from height and had intention to pick up a knife when seeing it after a tour to Taiwan around 10 years ago. Subject underwent a computed tomography (CT) scan for the brain but nothing special was found. The wife said that she did not know details of the subject's mental illness because his daily functioning was not affected and she did not find any problem during daily interactions with him. She said that the subject just took the psychiatric drugs when necessary and was not on a regular basis though he attended regular psychiatric out-patient treatment.
7. The subject had a traffic accident while working in Mainland on 14 January 2002. He was the passenger of a motor vehicle which crashed with a van. He was then seriously hurt and became unconscious. His family arranged the subject to return to Hong Kong and subject was admitted to a local

hospital on 15 January 2002. After admission, the subject had undergone several brain surgical operations including removal of part of the skull and repair of a deformity of the skull from January to May 2002. In July 2002, he was transferred to another rehabilitation hospital for further rehabilitation. In August 2002, the subject was discharged home. During these years, the subject was sometimes admitted to Accident and Emergency Department and received in-patient treatment because of his epilepsy problem. According to the medical record on 31 August 2005, the subject suffered from severe head injury resulting in cognitive impairment, epilepsy, tinnitus, vertigo, hemianopia and malocclusion.

8. Upon discharge from hospital, a female relative from Mainland and an Indonesia domestic helper were arranged to take care of the subject from 2002 to 2004 and from 2004 to 2008 respectively. Since the subject did not relate well with the domestic helper, the family arranged him to be admitted to the present aged home upon expiry of the domestic helper's contract in March 2008. During the period, apart from attending out-patient treatment at neurosurgical clinic, eye clinic, Ear, Nose and Throat (ENT) clinic as well as physiotherapy and occupational therapy in public hospitals, the family also arranged the subject to receive Chinese traditional treatment such as acupuncture. According to the wife, the subject had been arranged to attend eye clinic before because there were excessive tears from the eyes. The doctor assessed that no further treatment could be done in this area and case was closed in November 2006. The subject was arranged to receive out-patient treatment at ENT clinic for his hearing problem after the accident. Nevertheless, after undergoing some operations and treatment, his hearing ability was improved and no further appointment was given after 4 January 2007.

9. During these years especially the first two years after the accident, the subject's physical conditions improved progressively. He is able to eat normal meal, take the food by his left hand since the fingers of right hand have poor functioning, walk slowly without any assistance and go to toilet independently. He just needs others' assistance in bathing. Mentally, he is assessed to be incapacitated to make decision of matters relating to his personal circumstances. As observed, he can recognize his wife but cannot tell her name and their relationship. When reminded by one or two words, he is able to tell the full name of his wife and sons. He only gives response to simple questions by using limited words repeatedly without clear meaning.

10. Since the subject sometimes has emotional problem and loss temper, he continues to attend psychiatric out-patient treatment. He is scheduled to attend another surgical out-patient appointment on 24 June 2008 because of his rectal bleeding problem.

Hearings at the Board on 15 October 2008

11. The wife did not feel that it is a problem to perform a guardian's duties as explained to her and to have a government social worker intervening into her family during the guardianship period. She said she thought it was needed to dispose of the MPF entitlements sooner or later, if not today. She thought of using the money retrieved to pay for the monthly fees of the old age home. She liked to close the outstanding matter of MPF entitlements now. She liked to manage this for the subject while she still had the energy.

12. The social enquiry report maker felt less urgency in this case for a Guardianship Order but it seemed in the eyes of the wife that it was in the best interests of the subject to take out the entitlements of the subject's MPF now, as the future was uncertain. The reporting officer expressed at the hearing that it was a difficult case for her.

Reasoning of the Guardianship Board

13. The Board decides not to receive the subject into guardianship as the Board is not satisfied that there exists particular financial need which could not be satisfied unless a Guardianship Order is granted. The Board noted that there is still around \$1 million as compensation unused to support the subject's livelihood whereas the amount of entitlements of MPF is only around \$30,000. The evidence only shows that the wife simply wishes to retrieve the amount early and close up this pending matter of the subject. She says that there are ongoing administrative charges to maintain the MPF fund and other matters like gradual decrease of the amount of entitlements. Apart from that, the Board did not see any valid and cogent reasons in supporting of the grant of a Guardianship Order which should be granted as the last resort. The Board therefore decided not to follow the recommendation of the social enquiry report maker and accordingly dismissed the application herein. On passing, the Board would like to say that the Board, by dismissing the application, does not mean to have any doubt on the genuineness of the good intention of the applicant in applying.
14. The Guardianship Board can only exercise its powers under section 590 to make an order if it is satisfied on certain criteria.

15. 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

16. 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 brain injury, amounting to a mental disorder, within the meaning of section 2 of the Mental Health Ordinance;
- (b) the mental disorder limits 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.

17. 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.

18. 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-yee)
Chairperson of Guardianship Board