



**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 HL

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J(3)(b): Miss Emma CHAN Tak-mun

Member referred to in section 59J(3)(c): Ms WONG Lai-ming

Date of Reasons for Order: 8th April 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 HL, was a 87 year-old woman suffering from senile dementia for, at least, since 2007. She got married in 1972 and had no child. The couple used to live in a private flat till the husband passed away in 1970s. Then, the subject lived with her husband's relatives until her admission to hospital. The subject started to show significant overall deterioration since early 2006. She was found to have fallen down from bed in December 2006 several times; resulting from which the subject was eventually sent to hospital. She was then assessed to suffer from senile dementia.
2. Due to the last fall incident, a surgery on the subject was done on 22 December 2006 and she was later discharged to an emergency placement on 2 February 2007. The medical social worker filed a guardianship application in order to facilitate her final discharge plan, i.e. to admit the subject to a private old age home and mobilise her sizeable savings (over 1 million dollars) at bank. The relatives of subject in Hong Kong expressed their difficulty to assist subject to manage finance and welfare matters as they were avoiding disputes with other relatives who lived in overseas. But, the relatives were willing to visit the subject regularly.
3. On 12 April 2007, the Board conducted a hearing and appointed the Director of Social Welfare as the guardian of subject for a period of one year with all powers (s.59R(a)-(f)) to make decisions on subject's behalf.
4. During the first review period, the subject moved to a private aged home and waitlisting for subvented care and attention home. Due to feeding problem and hypoglycaemia, the subject was admitted to hospital for 3 days.

After the dosage of medication reduced, the feeding problem subsided gradually. In October 2007, cellulitis was found on subject's right foot ankle. Wound dressing service was given by the community nurse and medical follow ups by community geriatric assessment team (CGAT) and out-patient clinic at 16 and 24 weeks intervals respectively were arranged.

1st review (7 April 2008)

5. At the 1st review hearing on 7 April 2008, the case social worker said that the subject was hospitalized last June due to poor appetite which was perhaps as a result of drowsy effect of haloperidol. In the district, the present aged home was the best private aged home, which also participated in the Enhanced Bought Place Scheme of the Social Welfare Department. The subject was given some cycling exercises by the home physiotherapist. On the question of whether the subject should be moved up to a better quality self-finance non-profit-making aged home, after much discussions, the worker was a bit worried of the future high monthly fees charged by such kind of aged homes plus the professional fees of the future committee to be appointed by High Court. The Board also encouraged the case social worker to consider psychiatric consultation for the subject to see if she should be prescribed with mediations specific for dementia, even on self-purchase basis. Subject has continued to incoherent and irrelevant speeches and poor memory.
6. 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. The Board also recommended the public guardian to consider psychiatric consultation for the subject to see if there should be prescriptions of medications specific for dementia, even on self-purchase basis and

self-purchase physiotherapy sessions for the subject for rehabilitation and maintenance purpose.

2nd review (8 April 2011)

Background to 2nd review

7. The second review period, in May 2008, the subject admitted to a (subvented) Enhanced Bought Placement Scheme placement and occupied a single room. The staff have good knowledge over the subject's conditions and keep good records of her activities, medical follow-ups as well as medication.
8. After admitted to present home, the visiting private doctor conducted a medical assessment for the subject. The doctor concluded that the subject had no delusion, violent and disturbing behaviour and did not require psychiatric intervention.
9. In late February 2009, the visiting private doctor found that the subject had a tumor around 5 cm x 5 cm at her lower back. The subject was referred to Surgical Department of a Hospital Authority hospital for assessment and private consultations were sought from general practitioners in March 2009. According to three doctor's advice, the tumor of subject was likely benign and further intrusive investigation was not recommended in view of her stable health conditions, advanced age, asymptomatic and lack of non-remarkable physical findings. The subject's tumor was regularly monitored by the visiting private doctor.

10. The subject received in addition to the medical follow-ups at a family medicine centre at two to three months interval, weekly home-based physiotherapy on self-purchase basis. Due to the under-weight of subject, the subject was supplemented with nutrition milk.

Hearings at the Board on 8 April 2011

11. The case social worker, on behalf of the Director of Social Welfare, said the visiting medical private doctor (not a psychiatrist) was specially arranged by the former case social worker to assess the subject if she needed anti-psychotic drugs. Revisiting the relevant recommendation made at the last hearing, the Board did not find this matter appropriately handled as the Board only recommended specifically “psychiatric consultation”, meaning assessment by a specialist psychiatrist. By now, it would seem to the Board the window period, if any, has long gone.
12. The Board explained there was no need to authorize using the remaining bank account of the subject in the next renewed period as the DSWI account held substantial savings.

Issues and Reasoning

Reasoning for continuing to receive the subject into guardianship

13. The Board accepted and adopted 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.

Reasoning for continuing to appoint the legal guardian

14. 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

15. 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.
16. 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-yee)
Chairperson of Guardianship Board