



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

Applicant²

and

Madam CSM

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Dr David DAI Lok-kwan

Member referred to in section 59J (3) (c): Mrs Margaret KWONG CHEUNG Yuk-ye

Date of Reasons for Order: 22nd February 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

Background

1. Madam CSM, the subject, was a 67-year-old woman with dementia. She used to live with her husband and daughter in a public housing unit while other three sons lived apart. The subject was suffering from hypertension, diabetes and atrial fibrillation and bilateral knees contracture with limited mobility. She was mainly depended on her husband for daily care and financial supports from her children for maintenance.

2. On 16 March 2007, she was admitted to a Hospital Authority hospital due to fevers and feeding problem and then transferred to a convalescence hospital since 27 March 2007. Due to deteriorations of the subject, her family members were unable to look after her at home and a placement at private residential care home for the elderly has to be arranged by the medical social worker for Madam CSM to facilitate her discharge from hospital. But the family members of subject considered that the subject was not suitable for discharge due to her deteriorated health conditions and they had financially difficulty to support the elderly home fees. The medical officer of the convalescence hospital recommended higher disability allowance and Comprehensive Social Security Assistance (CSSA) for the subject in April 2006, but the savings (about HK\$45,000) of subject exceeded the eligibility limit for CSSA.

3. Two days before the hearing, the social enquiry report maker filed an supplementary information to the Board and stated that:

“..... the daughter informed the applicant [i.e. the medical social worker] that subject has three insurance policies: (a) life insurance with the face amount of US\$51,000 and cash

value of US\$18,325.73; (b) life insurance with guarantee sum insured of US\$13,000 and investment account of US\$4,884.62; and (c) medical insurance with monthly premium of HK\$137. Taking into account the total value of the subject's insurance policies which exceed the savings limit of CSSA, the daughter of subject was suggested to explore the possibility of withdrawing fund from the insurance policies for settling the elderly home fee so as to lower the subject's savings below the CSSA limit. If not, the daughter and siblings might need to shoulder the elderly home fee after making use of subject's higher disability allowance.....”

4. In the supplementary report, the report maker also stated that he advised the husband not to withdraw money from subject's bank account to settle the hospital fees and daily expenses even the husband said to have financial difficulty.

Mental and health conditions

5. According to the two supporting medical reports, Madam CSM had been diagnosed to be suffering from senile dementia with poor prognosis. Her memory has been progressively deteriorating for two years with increasing dependence on others for daily living activities. She was unable to recognize her family members and no meaningful communication with others. She was bedbound, on foley tube and Ryle's tube feeding, using diapers owing to double incontinence and being totally dependent on others for her daily living activities. The subject was also under restraint to prevent her from pulling her tubes.

Circumstances leading to application

6. Since May 2007, when Madam CSM's health condition was stable and was fit for discharge, the hospital staffs have repeatedly invited subject's family members for meetings to discuss the discharge and welfare plans. But they were unco-operative and failed to attend those meetings without giving any reasons. The family members remained passive and took little action to identify placement at suitable private old age home to facilitate the subject's discharge from the hospital. Then, the medical social worker of convalescence hospital filed a guardianship application to the Board and proposed the Director of Social Welfare to be the guardian in order to manager subject's affairs.

Hearings at the Board on 22 February 2008

7. The applicant said although on Ryles' tube, the subject was fit for discharge. The meeting on 31 January 2008 was only a case review by the medical team, which came to the conclusion that subject should be discharged. Out of the previous five meetings with the family as mentioned in the social enquiry report, none of those were attended by family members, despite repeated urges. Regarding the respective meetings scheduled on 8, 17 and 22 May 2007, she attempted to make an appointment with a son of the family. Regarding the scheduled meeting on 1 June 2007, she asked the elder son, the youngest son and the daughter of the subject to attend. Lastly, for the meeting scheduled on 23 June 2007, she asked three children of the subject to join. She and the ward nurses occasionally met with the daughter and discussed on the discharge plan. The daughter told that she could not make the decision on discharge.

8. The applicant was worried about the effect of (i) the cash value (USD\$18,325.73) and (ii) the guaranteed sum and the investment account. After checking with Field Unit recently, the cash value would pose as a hindrance for an application for CSSA for the subject.

9. The second son of subject said he hoped the subject could be admitted to a subvented placement. He and his elder brother were having their own family burdens. His elder sister and younger brother could only make their ends meet. The family expressed all along that they could not afford fees for a private old age home. Yet, the applicant just asked them to consider sending the subject to a private old age home. Neither did the family member have the adequate knowledge to give daily care for subject at home, e.g. change of feeding tubes. He knew the subject was waitlisted for a subvented placement a few years ago. [The social enquiry report maker confirmed that waitlisting was started in 2005.]

10. The applicant explained to the second son of subject that a day centre placement was offered to the subject before and according to her records, the subject was admitted on 1 March 2005. This day placement was given as a result of subject's earlier application in 2004. The file was then closed. Upon the recent hospitalization, she found out this situation. However, she further noted that the medical social workers of another Hospital Authority hospital have already re-applied for a nursing home placement for the subject in April 2005. She explained that it would need normally five years to wait. Then, consistent with usual practice, she suggested to discharge subject to a private old age home. Financially, she also explained to the family that welfare funding of government could help. She then arranged a file opened at a Field Unit. However, the Field Unit replied that the amount of savings of the subject exceeded the eligibility

threshold at that time. Then later in September 2007, she found out that the level of savings of the subject dropped substantially and thus she called up the relevant Field Unit again. However, it replied later that the application had no progress as no contact was possible with the family. The applicant did not proactively make any contact with the family either. The file at Field Unit was subsequently closed. Nevertheless, a CSSA application could be re-opened any time. Speaking from her experience, the applicant said no Bought Place Scheme placement was possible as subject was waitlisted for a nursing home placement. The CSSA amount on a singleton basis with higher disability allowance and diet allowance would be at \$6,000, with extra diapers allowance.

11. On the issue of the cash value of the subject's insurance policies affecting the eligibility for CSSA, the Board indicated to the applicant that there was a need for the Director of Social Welfare to first decide, if Guardianship Order were granted today, whether she would definitely apply for a Part II order in order to vary the terms of relevant insurance policies and to take out the cash value for the use and benefit of the subject. If not, then, there appeared to have no point for the Director of Social Welfare to pursue this guardianship application further. The Board conveyed to the applicant that it was so clear that Part IVB, Mental Health Ordinance provided very limited financial jurisdiction to a legal guardian.
12. The applicant supplemented that the daughter refused to agree to make any change to the insurance policies. The Board doubted if the daughter could validly do this.

13. The applicant agreed to take a short adjournment to seek her supervisor's advice.
14. After recess, the applicant told the Board that her supervisor confirmed that, after a grant of Guardianship Order, the Director of Social Welfare would apply for a Part II order to deal with the cash value of the insurance policies of the subject and a guardian was needed to deal with accommodation and financial issues in the meantime.
15. The second son of subject said his sister contributed to the payment of insurance premium all along. He asked if the family would have a further chance to object to any act touching the insurance policies of the subject. He would inform his sister on the decision today.
16. The maker of social enquiry report, on behalf of the Director of Social Welfare, said he had nothing to add.

REASONING

17. The Board accepts and adopts the views of the two medical doctors as contained in the two supporting medical reports as well as the views and recommendations of the social enquiry report and accordingly decided to receive the subject into guardianship in order to protect and promote the interests of welfare of subject. Upon considering the evidence, the Board believed that the present case was a problematic discharge case from a Hospital Authority hospital. The Board had reasons to believe that since early May 2007, the family has not been co-operative with the medical team to discharge the subject to a residential care home from the hospital, which

was, in the view of the Board, not a suitable place for long term accommodation of the subject, who was a demented elderly woman. The social enquiry report also showed that the family members split in disagreement as to the long term welfare plan for the subject. In such circumstances, a legal guardian was needed to be appointed in order that all necessary welfare and financial arrangement could be made for the subject. Understandably, the family members were worried of the financial burden on them by the continual payments of the aged home fees of the subject. In the long run, it would seem that CSSA was needed to be granted to the subject. Such welfare assistance was hindered (as revealed by filing of the Supplemental Information by the social enquiry report maker two days before the hearing, namely, 20 February 2008) by the existence of the cash value and other monetary entitlements of some insurance policies of the subject. In this regard, the Director of Social Welfare should apply for a Part II order to dispose of this problem if she could not find other solutions, e.g. the agreement of the relating insurance company to release the cash value. One other point that the Director of Social Welfare should note with care was that the second son of the subject had mentioned that the premium of the insurance policies were all along paid by the subject's daughter. The Director of Social Welfare should therefore take proper legal advice on the matters like the existence of equity or beneficial interests of the daughter over the cash value. In this connection, the applicant also told the Board that the daughter objected to make any change to the existing insurance policies of the subject.

18. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report, the Director of Social Welfare to be appointed as the guardian of the subject in this case. Due to the attitude held by the family members, it would defeat the purpose of a

Guardianship Order if any of them was appointed as the legal guardian of the subject.

DECISION

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

- (a) That the subject, as a result of vascular dementia, 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 and finances;

In this case, the predominant needs of the subject remained to be satisfied are, namely, decision to be made on discharge from hospital, future welfare plan, future accommodation 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.

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