



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Madam W

Applicant²

and

Mr H

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): Mr Francis CHAU Yin-ming

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

Date of Reasons for Order: 6th October 2009.

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 H, was a 71 year-old man suffering from Cerebral Vascular Accident (CVA) since July 2005. He was married with 2 adult children. His wife was a housewife so far. Now she was the main carer of subject with the assistance from the younger son who was unemployed for a year. The elder son was living apart with his girlfriend. The subject used to be the sole breadwinner of the family. After the subject retired from 1998, the couple relied on their savings which was at around HK\$300,000 at the time of applying for guardianship. There was a sum of \$100,000 in the joint account of the couple while the remaining savings in the sole name accounts of the subject.

2. In September 2005, the wife would like to mobilize the savings of the subject to pay for his expenses. Then, she applied for guardianship order and proposed herself to be the guardian. The Guardianship Order granted by the end of October 2005 for a year and appointed the wife to be the guardian with the financial limit to HK\$6,500. The Board also agreed that half of the savings in the joint account of the couple belonged to the wife. The guardian should only withdraw to an extent of half of total amount on maturity.

3. In October 2006, the Board reviewed the Guardianship Order of the subject. The subject still stayed at home. The wife got more used to taking care of the subject than before. The younger son assisted in bathing the subject. The subject had no skin problem. The case social worker reported that the guardian had some difficulty to prepare the monthly financial records for checking. The Board renewed the Guardianship Order and continued to appoint the wife to be the guardian of subject for 3 years with a new

financial limit to HK\$7,000.

4. In February 2009, the Board received a letter from the Social Security Field Unit about the guardian-wife who applied for CSSA for herself and her family.
5. In October 2009, the Board conducted a review hearing for the case. The Board noted the following paragraphs from the progress social enquiry report:

“Without Mr H’s financial support, Madam W gradually exhausted her savings from selling her dowry in 2008. Although Madam W had approached the Social Security Field Unit to apply for CSSA, her initial application was turned down. Accordingly, it was because the household savings, which mainly came from Mr H, were exceeded the prescribed limit under the prevailing CSSA policy. Desperately, Madam W mobilized the sinking balance in her bank (guardian) account to settle the household bills. When Madam W’s financial problem was revealed, the case social worker immediately referred her and younger son, who had been unemployed for a year, to apply for CSSA disregarding Mr H’s savings. With the assistance rendered by the Guardianship Board to verify the financial situations of Mr H and Madam W, CSSA was finally granted to Madam W and younger son in late March 2009.

As at 21.8.2009, Madam W had spent \$37,699.83 of the sinking balance in her bank (guardian) account to pay for the

essential flat renovation, to purchase household necessities and to settle the surgical operation fee of Mr H's beloved pet dog.....”

6. The Board sent a requisition form to the case social worker to clarify the expenses of the guardian. The Board noted the supplementary information stated: -

“During the guardianship period, all the monthly expenditure statements are checked regularly and most of them are in order.The guardian apologized for using Mr H's asset to resolve her financial problem and she promised to repay him by instalments in the future. The 1st instalment at \$2,000 was paid into the guardian's account.....”

Most of the spending such as essential flat renovation, purchase household necessities and Mr H's pet dog's surgical fee etc., are for the benefit and daily use of Mr H. While the guardian shared to use the spending, she promised to repay Mr H by instalments in the future.

The supervising officer has requested the guardian to provide the receipts on-and-off, but the latter said that no receipts were available for some of the items.....”

Mental and health conditions

7. According to the wife of subject, the subject had undergone an operation for his heart in 1990. The subject was found to have a small bubble in his

brain over 10 years ago. No surgical operation was done due to the high risk of the operation. Due to the CVA of subject in 2005, he is still suffering from right hemiplegia resulting in bed-ridden, double incontinence, speech deficits and confused mental conditions. He is only capable of managing some simple words and waiving his left hand for expressing himself. The subject is diagnosed as suffering from senile dementia and stroke causing some cognitive deficits. His conditions are progressively deteriorating.

Hearings at the Board on 6 October 2009

8. The case social worker says the progress social enquiry report maker handed over the case to her on 8 September 2009. In respect of paragraph 10 of the progress social enquiry report, the Board expresses its view that there appears to be concealment of material facts, be it intentional, reckless or inadvertent. In this regard, the Board refers to the Appendix 5 of the supplemental information containing 8 questionable expenses and paragraph II.1.(b) of the same document.

9. In respect of those expenses, the case social worker holds the view that the dog has a close bondage with the subject and makes the subject happy and the surgical and food expenses on the dog were justified because the dog benefited the subject. The Board explains to her that the view is erroneous and blatantly wrong in principle and the same principle also applies to the gifts of money and expenses for the livelihood of the guardian herself. The case social worker tries to argue that it is a “social worker” perspective. Upon hearing this, the Board gets even more worried that she and her

colleagues lack insight and understanding of the monitoring role of the Director of Social Welfare in a statutory guardianship case. The Board also points out that the problem of intermeddling with the subject's money has arisen for almost ten months according to Appendix 4 of the progress social enquiry report, but no action to rectify it was taken, nor a report was ever made to the Board.

10. The Board holds a serious view on this matter as the same is tantamount to a breach of trust and the Director of Social Welfare is apparently condoning it. Regarding other timely social welfare assistance that could be made available to the guardian, the case social worker says according to the file record, the former case social worker has tried to persuade the guardian to apply for CSSA but the guardian declined due to face issue. The Board believes it all the more points towards the fact of lacking proper monitoring and control in this case. The Board is very disappointed with the overall performance of the case social worker and those supervising her.

11. The guardian says she knows that the problematic expenses under discussion were wrong and she apologized.

Reasoning of the Guardianship Board

12. The Board accepts and adopts the views of doctor as contained in the medical report dated 11 August 2009 and as well as the progress social enquiry report and the views and recommendations as contained therein and accordingly decided not to renew the Guardianship Order.

13. Taking into account of the continual and satisfactory care provided to the subject by the family, the Guardianship Board concludes that the subject's best interests and welfare needs can be met without the renewal of the guardianship order.

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