



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

1st Applicant²

Mr LKW

2nd Applicant³

and

Madam LMK

Subject⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Dr WONG Chee-wing

Member referred to in section 59J (3) (c): Mrs Annie YEOH WONG Wing-wo

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

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

Date of Reasons for Order: 24th September 2007.

Background

1. The subject, Madam LMK, was a 77-year-old woman suffering from acquired brain injury. After the subject's husband passed away some 30 years ago, she used to live with her step-son ("son"), the 2nd applicant in a public housing unit. The son was born by another wife of subject's husband. Apart from the son and his natural mother, the subject did not have any family members or close relatives in Hong Kong. The subject started to depend on Comprehensive Social Security Assistance (CSSA) in July 1997. In 2000, the son, 2nd applicant also began to receive CSSA under the same account. The son is the principal applicant and thus responsible for managing the entire CSSA money.

Mental and health conditions

2. The subject suffered from breast cancer for which the subject had undergone an operation back in 2004. Owing to brain injury, her physical health, mental condition, self-care ability and mobility deteriorated significantly in the recent half year. She is presently lying on the bed most of the time, needs to wear diapers and is dependent in most daily activities like bathing. She has bedsores for which a debridement would be arranged. The subject could talk but she was poor in memory, disorientated in time and place and had confused conversations. Her MMSE score on 31 May 2007 was 7 out of 30.

Circumstances leading to application

3. The subject was admitted to a Hospital Authority hospital subsequent to a fall at home on 30 January 2007. She became weak in health condition and could not walk. The son rejected all social services and insisted the subject to resume living with him at home after discharged from the hospital instead of living at an old age home for better caring. On 21 March 2007, the subject was discharged back home. Since then, the natural mother of the son had paid daily visits to the subject until the meal delivery service was arranged as from 4 April 2007. On the other hand, bathing service from the home help team for the subject was pending the installation of handrails in the toilet.

4. Paragraphs 13 to 15 of the social enquiry report stated that:

“Unfortunately, the subject, accompanied by the natural mother of the son was sent to Hospital Authority hospital again because of another fall at home on 23 April 2007. According to the Medical Officer’s assessment on her health condition upon admission, the subject had bedsores, right hand and hip fracture. She was hungry and did not wear diapers but pieces of towels. As revealed, the subject had the problem of feeding herself by her left hand. On the other hand, the son had not yet arranged any reimbursement of the diaper fee under the CSSA scheme nor had he bought any new diapers at that time. The son, after repeated contacts from the ward staff, subsequently attended a meeting at [the] Hospital Authority hospital with the medical officer, medical social worker, ward nurse and the caseworker of Integrated Family Service Centre to discuss the discharge plan for the subject on 7 May 2007. Although the son

agreed upon advice in the meeting that he would search for a suitable private aged home placement as an immediate discharge plan for the subject, he later changed his mind and insisted that the subject should be discharged back home. On 24 May 2007, he attended an interview with the occupational therapist of [the] Hospital Authority hospital during which he was assessed as unable to complete the tasks of changing diaper and clothing for the subject, or assisting her to turn around on the bed. A home assessment was also arranged on 29 May 2007. The occupational therapist commented that some major modifications should be done in the unit to meet the special needs of the subject if she had to return home for accommodation. The son was finally concluded as incompetent in taking care of the subject alone.

After discussion in a further multi-disciplinary meeting in Hospital Authority hospital on 31 May 2007 for which the son failed to attend despite invitation, it was suggested that an application for Guardianship Order was necessary in order to formulate a suitable welfare plan for the subject. The responsible caseworker therefore filed the application on 6 June 2007.

Welfare plan

As advised by the Senior Medical Officer of the Hospital Authority hospital, the subject was in need of active care and assistance in view of her needs for close supervision in daily matters arising from her poor mobility and self-care ability. He opined that returning to the original home environment, even with arrangement of social services like frequent visits from the home help team, was not

desirable as compared with institutional care. When the subject was physically fit for discharge, admission to a private aged home could be an interim measure while pending the waitlisting for a subvented placement. Financially, splitting of CSSA payment between the subject and the son would be recommended if necessary.”

5. After the report maker submitted the social enquiry report to the Board on 9 July 2007, the son filed an application to the Board and proposed himself to be the guardian of subject.

Recommendation of the Director of Social Welfare

6. Subsequently, the social enquiry report maker filed a supplementary report to the Board on the issue of suitability of the son to be the guardian. The report maker stated that:

“..... He [son] would accept institutional care for the subject only if she further deteriorated in health or there was [yet] another accident after she returned home. Because of his strong preference of home restoration for the subject which was not recommended according to the professional views, I would consider the son not suitable to act as the private guardian for safeguarding the best interests for the subject.”

7. In other words, the report maker recommended to appoint the Director of Social Welfare as guardian in order to protect and promote the best interests of the subject.

Hearings at the Board on 24 September 2007

ISSUES

8. The 1st applicant (i.e. case social worker) said she did not have objection to the consolidation of the two applications. She did not file this case with the Central Registry of elder abuse. She said the MDCC meeting had a different view as to whether the present case was an elder abuse.

9. The son of subject, 2nd applicant and proposed guardian, said he confirmed that he did not have objection to the consolidation of the two applications. He agreed that the two recent fall incidents were due to his fault to which he should be responsible for. He worried that the subject was too frail and would soon die. As the subject brought him up, he would like to do his best for the subject at this time and took subject home for care. Influenced by the hostel living of his daughter, he was not impressed by the care in an institution as there were so many residents and too little staff. He said that he seldom left home himself but the subject fell on her way to toilet at late nights at both incidents. He said he could not guard against all accidents. Being invited to comment on the contents of the two social enquiry reports, he said he agreed that all of the people today were concerned to her mother, the subject, and had no particular comments to make. He said on admission to hospital on 23 April 2007, subject was seen as hungry because subject mixed up her meal pattern. But on his own admission, subject did not take dinner that night. He said he was aware of the need of intensive care for the subject. However, he remained of the view that he should not give up providing care to the subject as he was not a person who gave up easily. He sometimes said there was no need to have a public guardian and sometimes he said he did not object to it. He did not mind what the

decision would come today. He asked if an aged home was the final destination for the subject who could never return home. He said subject's right hand lost its function and he was once advised to give consent to a surgery in a Hospital Authority Hospital for the subject. But he did not attend the meeting with the doctor, who gave the advice, to sign the consent form. Since then, he could not find the same doctor again.

10. Madam DA (an Indonesian), the wife of 2nd applicant, said she understood Cantonese. She said she would help to give care to the subject together with her husband, 2nd applicant. She now depended on her husband for a living and might look for a job in future. [The 2nd applicant said his wife had the experience of taking care of elders.]
11. The maker of social enquiry report, on behalf of the Director of Social Welfare, said subject was wrapped with towels (and not paper towels) instead of diapers when she was admitted to hospital on 23 April 2007. [The 2nd applicant said the towels could absorb the urine better as the subject had bedsores. He said the towels were placed as inserts to the diapers of the subject that night. He said subject was in fact given diapers that night.]
12. The previous case social worker and the current case social worker said they have nothing to add.

REASONING

13. The Board concluded that the subject should be received into guardianship as the facts of this case clearly pointed to various inadequacies of daily care being given to her at home by his son, the 2nd Applicant, which resulted in

repeated falls in January and April 2007. The Board also took into account of the deplorable state of the subject on admission to hospital on her second fall on 23 April 2007 as described in Paragraph 13 of the social enquiry report. The subject therefore was in need of a guardian to work out her long term care and welfare plan as the son did not agree to residential care as advised and assessed by medical officers. In this respect, the Board took into account of the matters reported in Paragraphs 13, 14 and 15 of the social enquiry report and observed that it would not be in the best interest of the subject to have her restored home. The Board particularly noted that the son was assessed by the hospital occupational therapist on 24 May 2007 as unable to perform some basic personal care duties. The hospital occupational therapist also assessed that the home environment was not suitable for the subject's special needs unless some major alteration works were done. With strong insistence of the son to return the subject home, there emerged a clear need in this case that a guardian must intervene in order to safeguard the interests of welfare of the subject.

Suitability of proposed guardian

14. Irrespective of the motive or intention of the son in pleading to return subject home to his care, it remained that the interests of the subject was always the paramount concern of the Board. In view of the opposing view of the son towards the future welfare plan, as against the unanimous view of the healthcare team, the Board therefore did not find the 2nd applicant, a suitable person to be appointed the guardian of the subject and therefore the Director of Social Welfare became the most suitable person to be so appointed. Besides, the Board had serious reservations on the son's ability to act as the guardian, as he was seen to be uncooperative with the health care team, and his capability of taking care of the subject.

DECISION

15. The Board directed the two applications herein be consolidated.

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

- (a) That the subject, as a result of acquired brain injury, 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 treatment plan, which has resulted that the son did not agree to residential care for the subject, even though the subject can no longer take care of herself;

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 future treatment plan;

(d) The Board concluded that it is in the interests of the welfare of the subject that the subject should be received into guardianship.

17. The Guardianship Board applied the criteria in section 59S of the Ordinance and was satisfied that the Director of Social Welfare was the only appropriate person to be appointed as guardian of the subject.

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