

PRACTICE NOTE

Claims for Disbursements at a hearing

1. Pursuant to the Mental Health Ordinance, the Board may make Guardianship Orders granting a guardian financial powers to hold, receive, or pay a monthly sum for the maintenance or other benefit of a mentally incapacitated person. [Section 59R(3)(f)]
2. After submitting a guardianship application, some relatives or friends of the guardianship subject (“Subject”), despite their limited financial means, would sometimes voluntarily settle certain living expenses and cost of the Subject (“Outstanding Payment”). The Board understands the Outstanding Payment may have sometimes avoided unnecessary public resources to be incurred instead. Based on the Board’s experience in handling these cases, the Board has enhanced the procedures for claiming reimbursement of certain types of payments and hereby publish a revised Practice Note.
3. This Practice Note is issued to the general public as a guide to prepare for hearings. The Board’s exercise of power is not limited by the Practice Notes and may give other directions at hearings. Further guidance may be issued from time to time.
4. Civil claims fall outside the Board’s jurisdiction and power. The Board may appoint guardians who are empowered to mobilize the Subjects’ savings for their future maintenance and benefit. Guardianship proceedings should focus on the present and future needs of the Subject. For any claims for reimbursements of Outstanding Payment for the Subject made in the past, the Board will examine whether the claims fall within the scope of Section 59(3)(f) and whether there is a practical need for reimbursement to be made to the claimants involved and whether the Subject’s interests would be adversely affected by the claims. After the claims are examined, the Board shall, where applicable, state no-objection to the guardian arranging reimbursement of the whole or the part of the Outstanding Payment during the validity of the current Guardianship Order and provide the opinion and reasons thereof.
5. Applicants for reimbursement of Outstanding Payment (“Claimants”) must raise the claim for reimbursement to the social enquiry report writer of the Social Welfare Department (“Report Writer”) during the social inquiry stage, which will then be made available for the Board’s examination at the guardianship hearing.
6. Family members (or friends) show their filial bonding and support towards one another in all sorts of manner, such as to buy food and sundry items and to shoulder certain living expenses without claiming money back from one another. It is not expected that all types of money spent on the Subject before the guardianship application, or while waiting for the guardianship hearing (which may possibly include expenses of family members), should be fully claimed against the Subject, or that Claimants must try to recover all the money previously spent on a Subject as being a routine of guardianship applications, or something to be encouraged. Therefore, the Board shall examine each claim carefully according to the practical situation underlying the advance payments to determine whether they should be reimbursed. Future needs of the Subject must come first. For instance, if the Subject has limited financial resources, and the Claimants fail to duly take

into account that the Subject's available resources were hardly sufficient to support the Subject's upcoming maintenance needs but still make all types of claims without any justifiable need themselves, the claims would not be acceptable.

7. Advance payments made before the guardianship application will not be handled under these procedures.
8. Based on the aforesaid principles, the Board expects Claimants to ensure that claims for reimbursement satisfy the following conditions:
 - (a) The paid expenses can be proven to have been spent entirely on the Subject and in the Subject's best interests;
 - (b) To the Claimant's knowledge, the Subject has no other known debts which must take priority over the claim, and the Claimant may be requested to make a declaration;
 - (c) The paid expenses must be essential and reasonable daily living expenses, including:
 - (i) the Subject's medical expenses, such as hospital fees, surgery fees, community nursing fees and expenses for medical supplies e.g. diapers, restraints, ripple beds, glucose test strips and thickeners;
 - (ii) the Subject's personal expenses, such as personal taxes, care home fees, respite service fees, day care center fees, community service fees, medical insurance premium, clothing and transportation fees;
 - (iii) For Subjects currently receiving home care, the expenses attributable to the Subject must be shared with the household members, such as rent, management fees, utilities fees, government rates and rents and salaries for foreign domestic helper.

(The items listed are examples for references only and not intended to be exhaustive.)
9. Claimants must submit the original receipts or other concrete supporting documents of the claim for reimbursement by the deadline set by the Report Writer. Late application or submissions of supporting documents will not be accepted.
10. Claimants may make the same claim for reimbursement pursuant to the Mental Health Ordinance or other laws to the relevant adjudicating bodies. Once any of the Outstanding Payment is reimbursed, the Claimant may not carry on any duplicate claims. The Claimants are required to update the Board, or any other adjudicating body concerned truthfully on the progress of any claim for reimbursement. The Board's statement of non-objection does not constitute any determination of civil claims. Any other person or adjudicating body may request guardians to suspend the reimbursement or make contrary claims against them.

11. The Board will determine the claim based on the Subject's cash savings, future sources of income, the stability of the said income, the Subject's debts and other objective factors. If the Board has no objection to the whole or any part of the claim, it will authorize the appointed guardian in exercising the financial power under Section 59R(3)(f) of the Mental Health Ordinance to appropriately reimburse the Claimants by installments, provided that the interests of the Subject have first been met. In any event, reimbursements can be made only in installments after the Subject's daily living expenses (i.e. the upcoming monthly maintenance needs) and other outstanding payments to care service providers (e.g. hospitals and care homes) for each month have been settled. The Board's view about particular claims is only applicable within the current guardianship period.
12. Accordingly, Claimants are required to:
 - (a) attend the guardianship hearing in person;
 - (b) explain to the Board how the expenses were for the Subject's maintenance or other benefit within the meaning of section 59R(3)(f);
 - (c) demonstrate that they have sufficient understanding of the Subject's finance that the reimbursement was in the Subject's interests, that there was no conflict of interest between them and the Subject and the amount to be reimbursed are affordable by the Subject taking into account the actual financial situation. Claimants may be required to provide further information and declarations. If there is insufficient information for the Board to make a decision, the claims may be postponed for handling at the review hearing.
13. The Board may impose other conditions or rules regarding claims for reimbursement.
14. All claims for reimbursement will be determined by the Board at the hearing only. Other than in a hearing, no staff of the Board or the Social Welfare Department will make recommendations, agree, endorse or approve any claims for reimbursement.

Guardianship Board
30 September 2025