



SAT

State
Administrative
Tribunal

Western Australia

Guardianship and Administration Act 1990

DECISIONS BULLETIN

No 8 April 2007

This Bulletin contains summaries of written reasons published by the Tribunal in April 2007. The full text of decisions and reasons can be found on the Tribunal's website at www.sat.justice.wa.gov.au. If you would like the monthly bulletin emailed to you directly, please enter your email address and details at our subscription page.

**JD [2007] WASAT 80
5 APRIL 2007
MS D DEAN (MEMBER)**

Need for guardian - Public Advocate appointed guardian as no other willing to be appointed - Functions of a guardian - Limited guardian required to act as next friend and make medical decisions

The represented person, an 18-year-old severely disabled young man, was made a ward of the state as a baby and was raised by foster carers. He had little or no contact from this time with his birth family. On reaching the age of 18, the represented person's wardship expired. This precipitated an application to the Tribunal by the Department for Community Development for the appointment of a guardian.

The represented person was in receipt of funding to provide for the 24 hour care he required and would continue to require for the rest of his life. The funding was administered by the Disability Services Commission. The represented person's foster carers were keen to continue to care for him and to make any necessary decisions about his lifestyle and welfare. Unfortunately, DSC policy precluded them, as paid carers, from taking on the role of formally appointed guardians. At the time of the hearings, discussions were taking place between the several involved government departments with the view to changing the policy thus allowing paid carers to be appointed guardians in cases such as this.

The represented person had multiple medical problems which required ongoing treatment and monitoring. His health was so fragile that it was difficult to predict when he would next require hospitalisation and a medical procedure.

The Tribunal was advised at the hearing that there were two criminal compensation actions in the courts when the matter was heard by the Tribunal and the matters had been briefed to the State Solicitors' Office on the represented person reaching 18 years and no longer a ward of the State.

The Tribunal found that the represented person was a person for whom an order could be made and that he was in need of a guardian. As there was no-one willing to take on the

role of guardian, the Tribunal appointed the Public Advocate limited guardian to make decisions in relation to medical matters and to act as next friend in respect of the outstanding criminal compensation actions. Given the fact that the ongoing discussions between government departments could result in the foster carers being eligible to take on the role of guardian in the foreseeable future, the Tribunal made a six month order.

HAJC [2007] WASAT 96

30 APRIL 2007

DR E LEIPOLDT (SENIOR SESSIONAL MEMBER)

Administration order – Guardianship order – Wishes of represented person – Best interests – Public Advocate

HAJC was a 92-year-old woman, diagnosed with dementia. She was living at home. Her two daughters applied for an administration order and a guardianship order. They said they could not attend to all of their mother's finances without the authority of an administration order. They had attended to some matters informally but now faced transactions where they could not act informally; with regard to guardianship, their mother was vulnerable in her own private residence due to the effects of dementia. They believed a decision for alternative accommodation was imminent. Their mother opposed this and they believed that a guardian was needed to make this decision. The Tribunal appointed NHP and PJB as joint plenary administrators and the Public Advocate as limited guardian with regard to deciding where their mother is to live.

DL [2007] WASAT 97

30 APRIL 2007

MS F CHILD (MEMBER)

Guardianship and Administration - Guardianship - Review - Need for order - Represented person with acquired brain injury - Family members not involved in care or in decision-making - Need for guardian with authority to consent to treatment and to medication for the purposes of behavioural control or restraint

On review of a plenary guardianship order made under the *Guardianship and Administration Act 1990*, the Tribunal reappointed the Public Advocate as limited guardian for a 54-year-old man with an acquired brain injury who had lived in residential care for many years. There was a continuing need, in the view of the Tribunal, for a guardian independent of service providers to consent to health care on his behalf and to determine if he should be given medication to control his behaviour.

The man experienced significant health problems including a history of severe head injury, epilepsy, insulin dependent diabetes, deteriorating eyesight, gait problems and other physical disabilities and had at times shown aggressive and other challenging behaviours. Both the man's parents were dead and although he had two sisters, neither were involved in his care or in decision-making about his medical treatment or other personal matters.

The Tribunal determined that it was in the man's best interests that decisions of this nature are made by an independent guardian. The Public Advocate was appointed with authority to consent to treatment on his behalf and to consent to the use of medication to control his behaviour, sometimes called chemical restraint, if it was necessary for his protection or the protection of others and the least restrictive means by which his aggressive behaviours could be managed.

The Tribunal considered that the plenary order was no longer necessary and that a limited order was sufficient to meet his needs.