



# SAT

State  
Administrative  
Tribunal

Western Australia

## ***Guardianship and Administration Act 1990***

### **DECISIONS BULLETIN**

**No 2 October 2006**

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No written statements of reasons were delivered this month but a selection of decisions of interest from previous months is published in this Bulletin. The full text of decisions and reasons can be found on the Tribunal's website at [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au)

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**AB [2005] WASAT 303  
22 NOVEMBER 2005  
MS F CHILD (MEMBER)**

**Guardianship and administration - Need for a guardian - Represented person diagnosed with cognitive impairments and mental illness - Discharged from involuntary status under the *Mental Health Act 1996* - Need for a guardian to decide accommodation and medical treatment including psychiatric treatment of the represented person**

The Tribunal appointed the Public Advocate as limited guardian for a 67 year-old man with a diagnosis of a severe cognitive impairment and psychiatric illness. The functions of the guardian were to consent to treatment and to determine where the man should live on his discharge from hospital.

The man was a patient at a psychiatric treatment facility where he had been treated as an involuntary patient under the *Mental Health Act 1996*. However, at the time of the hearing before the Tribunal, he had been discharged from involuntary status and it appeared that there was no formal authority for his continued treatment or detention. The Tribunal considered that there was a need for lawful authority to consent to medical treatment, as the patient was incapable of giving consent due to his cognitive impairments. A guardian was also required to determine where he should live on his discharge from hospital. The Tribunal considered that this decision should be made independent of service providers.

As there was no-one in the man's family able to act on his behalf in relation to his health care, personal and financial decision-making, the Public Advocate was appointed limited guardian to consent to medical treatment and to decide where he should live, and the Public Trustee was appointed plenary administrator to manage his financial affairs.

**DB and JM and JW [2006] WASAT 68  
22 MARCH 2006  
JUSTICE M L BARKER (PRESIDENT), MS J TOOHEY (SENIOR MEMBER),  
MR J MANSVELD (MEMBER)**

**Guardianship and administration - Remuneration paid to an administrator - Remuneration fixed by the Tribunal - Remuneration cannot be incurred prior to an**

**order for administration - Public Trustee role in examining accounts of an administrator - Public Trustee method of accounting for remuneration not in accordance with the operation of the *Guardianship and Administration Act 1990* - Right of review by an administrator to a decision by the Public Trustee to declare a loss to an estate**

DB and JM were appointed the joint administrators of the estate of JW in December 2003 for 12 months. They had provided professional services to JW for some years and at the date of their appointment as administrators were owed fees for work done prior to their appointment.

In March 2004, the former Guardianship and Administration Board authorised the administrators to be paid remuneration and fixed an amount for the 12 months of the administration order pursuant to the provisions of the *Guardianship and Administration Act 1990*.

During the first year of the administration the administrators paid themselves for what was owed them at the start of the administration as well as a portion of the fees incurred after the administration commenced. At the end of the first year the estate of JW owed some of the remuneration incurred in that year.

The Public Trustee, in his role of examining the accounts of private administrators, made a decision that the fees actually paid to the administrators in the first year of the administration, which included payment of fees owed at the start of the administration, should be classified as remuneration of the administrators. According to the Public Trustee this meant that the administrators had been paid remuneration for the first year of the administration in excess of that allowed by the Guardianship and Administration Board in the order made in March 2004. The Public Trustee further decided that a loss had occurred to JW's estate and that the administrators should repay the loss which was represented by the amount of fees allegedly overpaid.

The administrators sought review of the Public Trustee's decision.

The Tribunal decided that the amount of professional fees owed by the JW to DB and JM prior to their being appointed her administrators was a debt of her estate at the commencement of the administration order and was not to be classified as remuneration for the purposes of the order made by the Guardianship and Administration Board in March 2004. This meant that the fees incurred by JW's estate in the first year of the administration were less than provided for in the order of March 2004 and no loss to her estate had occurred.

The Tribunal cancelled the overpayment of remuneration calculated by the Public Trustee and authorised the administrators to refund themselves the amount they had paid JW's estate at the direction of the Public Trustee.

**KM and MM [2006] WASAT 89**

**3 APRIL 2006**

**MS D DEAN (MEMBER), MR E LEIPOLDT (SENIOR SESSIONAL MEMBER), MS C HILL (SENIOR SESSIONAL MEMBER)**

**Guardianship and administration - Application for appointment of a guardian and an administrator - Capacity - Guardianship decisions required with respect to accommodation - Public Advocate appointed limited guardian for six months -**

**Daughter and brother-in-law appointed plenary administrators - Administrators authorised to exercise powers previously vested in the represented person in his capacity as guardian of the Family Trust**

The applicant sought the appointment of a guardian and an administrator for her father, MM.

MM had a significant estate including a family business and a family trust which he had been managing until he became too ill to do so. The represented person had been diagnosed with end stage renal failure and short-term memory loss making it impossible for him to manage his large and complex estate.

MM had been living with, and in the care of, a long-term female friend prior to moving into nursing home care. He made it clear to the Tribunal that he was most unhappy with the nursing home where he was residing at the time of the hearing. He wanted to move back to live with his friend until a bed in the nursing home of his choice became available. Because of the deterioration of his medical condition and the complexity of his care needs, it was unlikely that he would be able to move back with his friend in the short-term. There was significant conflict between the family and the friend making it impossible for them to make decisions about appropriate accommodation for him.

The Tribunal appointed the Public Advocate limited guardian with the functions of making decisions about where and with whom MM was to live and with whom he was to have contact.

MM made it clear to the Tribunal that if an administrator was to be appointed, he wanted it to be someone within his family. The Tribunal took into account the fact that the applicant had been informally managing MM's estate since his illness precluded him from doing so himself and appointed the brother-in-law and the applicant joint plenary administrators

**MJB and MMB [2006] WASAT 154**

**15 JUNE 2006**

**JUDGE J ECKERT (DEPUTY PRESIDENT), MS J TOOHEY (SENIOR MEMBER),  
MR M ALLEN (SENIOR MEMBER)**

**Guardianship and Administration – Administration – Application by husband to be appointed administrator of wife's estate – Review under s 17A of the *Guardianship and Administration Act 1990 (WA)* by Full Tribunal of decision by single member to appoint Public Trustee as plenary administrator and to revoke enduring power of attorney in favour of husband – Intention to borrow substantial amount of money secured over jointly owned property – Findings that wife is a person who cannot make reasonable judgments in respect of her estate and is in need of an administrator – Finding that husband has a conflict of interest between his desire to discharge an existing debt by further borrowings and the financial best interests of his wife – Decision of single member affirmed**

This proceeding involved the review under s 17A of the *Guardianship and Administration Act 1990* by a Full Tribunal of a decision of a single member to appoint the Public Trustee as the plenary administrator of the estate of MMB and to revoke an enduring power of attorney made by MMB in favour of her husband, MJB, who had applied to be appointed as the guardian and administrator of MMB. The single member had also dismissed an application by MJB to be appointed as guardian of MMB because there was no need for a guardian to be appointed, but that decision was not contested at the review hearing.

It was not in dispute, and the Tribunal found on the evidence, that MMB was a person who was unable, by reason of the mental disability of dementia, to make reasonable judgments in respect of her estate. The principal matters in issue were whether there was a need for an administrator and, if there was, whether MJB should be appointed.

The Tribunal decided that, in the light of MJB's desire to increase substantially the borrowings of MJB and MMB secured over the jointly owned home in order to discharge a debt due by MJB to the Australian Taxation Office rather than to realise some speculative share investments to discharge the debt, there was a need for an administrator. However, the Tribunal was not satisfied that MJB was a person who would act in MMB's best interests as required by s 68 of the *Guardianship and Administration Act 1990* (WA).

The Tribunal affirmed the earlier decision appointing the Public Trustee as plenary administrator and revoking the enduring power of attorney.

**FHB and PJB [2006] WASAT 194**  
**18 JULY 2006**  
**MR J MANSVELD (MEMBER)**

**Guardianship and administration - Guardianship - Fluctuating capacity - Person unable to look after her own health and safety - Is in need of a guardian - The needs of the person - Who should be guardian**

An application for guardianship was made for a 75-year-old woman by her husband. There had been concerns raised in the woman's family about some of the decisions he had made for her. The husband had applied for guardianship to seek certainty in the decision-making, by having one person with the formal authority to make decisions for the woman.

The woman suffered from a degenerative neurological condition which impacted on her physical well-being and her mental state. She required 24 hour care. There was some disagreement as to her capacity to make reasonable judgments about her personal health care and living situation. Even those family members who submitted she was capable, agreed that her mental state and decision-making capacity fluctuated.

The Tribunal decided that the represented person was unable to make reasonable judgments in respect of matters relating to her person. The Tribunal also decided that she was incapable of looking after her own health and safety and was in need of oversight, care and control in the interests of her own health and safety.

The Tribunal decided that the woman was in need of a guardian. The evidence showed that the woman required considerable assistance with her daily activities, that her mental state was very fragile and that her functioning was affected when she was placed under stress. The appointment of a guardian would provide a mechanism whereby personal decisions for the represented person could be planned and executed with the certainty that was required to ensure that she had stable and consistent care. It would not of itself reduce the tensions that existed between family members.

The Tribunal decided to appoint the husband as the woman's plenary guardian, despite the beliefs of some family members that he had not made appropriate decisions for her. The Tribunal was satisfied that the husband would act in the best interests of the represented person and saw no reason why he should not be appointed her guardian.

**VM and Y [2006] WASAT 245**

**21 AUGUST 2006**

**MS J TOOHEY (SENIOR MEMBER), MS F CHILD (MEMBER), MR E LEIPOLDT  
(SENIOR SESSIONAL MEMBER)**

**Guardianship – Administration – Intervention in Enduring Power of Attorney – Capacity at date of hearing – Capacity to execute Enduring Power of Attorney – Capacity to execute Deed of Gift - Conduct of executor of husband's will – Conflict of interest – Investigation by administrator in the best interests of the proposed represented person – Donees of Enduring Power of Attorney directed not to exercise powers during the period of the investigation**

The applicant asked the Tribunal to appoint an administrator for her mother, Y, and to intervene in an Enduring Power of Attorney granted by Y to the applicant's brothers, P and M. The applicant believed that her brothers' conduct before and since their father's death had been in their own interests rather than their mother's and, as a result, her estate, which the applicant said should have been substantial, was reduced. In particular, the applicant cited the failure of her brother, P, as executor of their father's estate, to transfer to Y two parcels of land left by her husband. She also questioned her mother's capacity to execute a Deed of Gift by which she transferred to P and M her interests in the family business.

The applicant also asked the Tribunal to appoint a guardian for her mother because of conflict between herself and P about arrangements to visit her mother.

The Tribunal was satisfied that Y no longer had capacity to manage her financial affairs at the time of the hearing. It could not be satisfied, on the medical evidence, that she lacked capacity to execute the Enduring Power of Attorney in favour of her sons. It made no finding as to her capacity some time later to execute the Deed of Gift.

At the time of the hearing, as a consequence of the executor's failure to transfer to Y the land left by her husband, and having gifted to P and M all of her interests in the family business, Y owned only her pension and \$5000 in the bank.

The Tribunal decided that an independent investigation of her estate was in Y's best interests and appointed the Public Trustee for that purpose. Because of Y's express wishes that her sons manage her financial affairs, it decided not to revoke the Enduring Power of Attorney but directed P and M not to use it for any purpose, except in connection with the transfer of the land to Y which P and M undertook to do forthwith. The Public Trustee was appointed for three months at the end of which the order would be reviewed in light of the Public Trustee's report on the outcome, or progress, of the investigation.