



SAT

State
Administrative
Tribunal

Western Australia

Guardianship and Administration Act 1990

DECISIONS BULLETIN

No 1 September 2006

This Bulletin contains summaries of written reasons published by the Tribunal in September 2006. The full text of decisions and reasons can be found on the Tribunal's website at www.sat.justice.wa.gov.au

**RG [2006] WASAT 265
1 SEPTEMBER 2006
MS F CHILD (MEMBER)**

Guardianship and Administration - Psychiatric illness - Involuntary patient under the *Mental Health Act 1996* - Need for a guardian to determine where she should live, to consent to services, medical treatment and contraception, and to act as guardian ad litem for legal proceedings – Section 110 of the *Mental Health Act* – Role of Chief Psychiatrist – Community treatment order

The Tribunal appointed the Public Advocate as plenary guardian of a woman with a dual diagnosis of mental illness and substance misuse.

The psychiatric evidence before the Tribunal indicated that the woman was not capable of making decisions in relation to her personal matters or in relation to her financial affairs, and because of this, she was at risk due to the impact of her illness and her drug use on her living and financial situation.

The Public Trustee was appointed plenary administrator to manage her financial affairs.

The Tribunal did not accept the submission of the Public Advocate that the woman's accommodation and health care needs could be addressed under the provisions of the *Mental Health Act 1996* (WA) as she was an involuntary patient under a community treatment order. The Tribunal determined that the woman was in need of a guardian, as the terms of a community treatment order which might in the future apply to the woman and require her to have treatment in a specified place, was not currently in force. Even if it were the case that such an order could be made in the future, the Tribunal concluded that the function of a guardian to determine where the woman should live was wider than the power to specify the place where she should receive psychiatric treatment and more fully addressed her needs.

The provisions in the *Mental Health Act 1996* (WA) by which the Chief Psychiatrist can consent to medical treatment of an involuntary patient in an approved hospital did not apply to her as she was not in hospital.

Because of the extensive needs of the woman in all areas of her life, the Tribunal appointed the Public Advocate with plenary powers.

MR N and MRS N [2006] WASAT 267

1 SEPTEMBER 2006

JUDGE J ECKERT (DEPUTY PRESIDENT), MS J TOOHEY (SENIOR MEMBER), MR S JONGENELIS (SENIOR SESSIONAL MEMBER)

Review - Section 17A - Guardianship order - Administration order - Capacity - Need - Suitability for appointment

This proceeding involved the review under s 17A of the *Guardianship and Administration Act 1990* (WA) by a full Tribunal of a decision of a single member to appoint the Public Advocate as the limited guardian of Mrs N and the Public Trustee as plenary administrator of her estate.

It was not in dispute, and the Tribunal found on the evidence, that Mrs N was a person for whom orders could be made. The principal matters in issue were whether there was a need for guardianship and administration orders and, if so, whether Mr N should be appointed as guardian and administrator.

The Tribunal decided that Mrs N was in need of oversight, care and control and she was in need of a guardian. Further, she was not able to make reasonable judgments in respect of her estate and was in need of an administrator. The Tribunal was not satisfied that Mr N was suitable to be appointed Mrs N's guardian or administrator.

The Tribunal affirmed the earlier decisions of the single member appointing the Public Advocate as limited guardian to make decisions about Mrs N's accommodation, medical treatment and contact with others and the Public Trustee as Mrs N's plenary administrator.

RE VAH; EX PARTE DBH [2006] WASAT 274

8 SEPTEMBER 2006

MS F CHILD (MEMBER)

Guardianship and administration - Access to medical reports - Represented person deceased - Access not for the purposes of *Guardianship and Administration Act 1990* - Application dismissed

These reasons relate to a determination by the Tribunal that an application for inspection and access to documents be dismissed.

The application, by the daughter and former administrator and guardian of VAH (the represented person), was made for release of medical evidence submitted for hearing of the applications in respect of the represented person for guardianship and administration heard by the Tribunal in 2005.

The application for release of the documents followed the death of the represented person and was for the stated purpose of determining which of the wills of the represented person was her last valid will.

The application was refused because the purpose for which release of the medical evidence is sought is outside the purposes of the *Guardianship and Administration Act 1990*

(WA) and is contrary to the public interest in maintaining the integrity of the Tribunal's processes in dealing with applications made under that Act.

**TT and NT [2006] WASAT 273
8 SEPTEMBER 2006
MS V O'TOOLE (SESSIONAL MEMBER)**

Enduring power of attorney – Section 109(1)(b) *Guardianship and Administration Act 1990* (WA) – Audit of accounts

An application was made for the Tribunal to order that accounts and records, managed by the donee under an Enduring Power of Attorney, be subject to an independent audit pursuant to s 109(1)(b) of the *Guardianship and Administration Act 1990* (WA).

The Tribunal was not satisfied that there was any evidence that the donee was not acting in the donee's best interests under the Enduring Power of Attorney.

As the Tribunal considered that there must be strong grounds for intervention in the operation of an Enduring Power of Attorney and strong grounds were not shown to exist, the application was dismissed.

**RJC [2006] WASAT 279
12 SEPTEMBER 2006
MS F CHILD (MEMBER)**

Guardianship and administration – Psychiatric illness – Patient discharged from involuntary status under the *Mental Health Act 1996* but detained in hospital – Need for a guardian to decide accommodation and services and to consent to medical treatment – Appointment of the Public Advocate as guardian no other person suitable or willing

The Tribunal appointed the Public Advocate as the guardian of a man with a long-term mental illness, who at the time of the appointment was a patient at Selby Lodge, an approved hospital under the *Mental Health Act 1996* (WA).

At the time of the appointment, the patient had been discharged from involuntary status under the *Mental Health Act 1996* but was effectively detained in hospital.

The psychiatric evidence before the Tribunal indicated that the patient was not capable of making judgments in matters relating to his person and was therefore a person for whom a guardianship order could be made.

As there was no one with lawful authority empowered to make decisions for him in relation to his treatment and care, and the contact he had with other persons, a guardian was appointed with these functions.

The Tribunal also considered that there was a need for a guardian to act on behalf of the patient in the planning for his future accommodation and care so that he could return to live in the community on his discharge from hospital. There was also a need for a guardian with the relevant authority to liaise with the Public Trustee, his appointed administrator, so that the discharge plan could include decisions about expenditure from his estate on any accommodation plan developed.

A and J [2006] WASAT 287

21 SEPTEMBER 2006

MS J TOOHEY (SENIOR MEMBER), DR G HAMILTON (SENIOR SESSIONAL MEMBER), MR S JONGENELIS (SENIOR SESSIONAL MEMBER)

Guardianship - Administration - Intellectual disability - Guardianship order sought in order to monitor proposed represented person's relationship with fiance - Proposed represented person vulnerable to exploitation and abuse - Fiance convicted of sex-related offences - Conflicting capacity evidence - No immediate need for a guardian alleged - Proposed represented person in need of oversight and care but not in need of a guardian - Most of proposed represented person's estate subject of a trust - Capable of managing financial affairs - Not in need of an administrator

The applicant asked the Tribunal to appoint a guardian and an administrator for her sister, J, who has an intellectual disability. J was the sole beneficiary of a trust established by her deceased father and was expected to receive a damages payout in relation to a motor vehicle accident. The applicant believed that J was at risk of financial, sexual and emotional exploitation and abuse by her fiance who had recently served two years imprisonment for the sexual assault of one of J's friends who was also intellectually disabled.

The applicant did not seek to end J's relationship with her fiance but wanted a guardian appointed to monitor the relationship and, if necessary, to stop contact between J and her fiance and his friends. The applicant wanted an administrator appointed to stop the possibility of financial abuse.

The Tribunal found that J's intellectual disability impaired her decision-making capacity in ways that made her vulnerable to exploitation and abuse. However it was satisfied, in all the circumstances, that J was sufficiently able to identify potential and actual abuse, and, if necessary, to seek assistance from the support services and others around her, and that assistance and support would be available to her. It found that the potential for financial abuse was limited by the fact that most of J's estate was the subject of a trust and beyond the scope of an administrator's authority.

The Tribunal gave weight to J's strongly expressed wishes to maintain her relationship with her fiance and her independence from her family. It also took into account that the applicant did not say there was an immediate need for a guardian, but that a need might arise in the future. It also took into account the applicant's concession that there was probably a less restrictive means of meeting any financial needs than a formal appointment.

The Tribunal decided that, on the balance of the evidence before it, J was not in need of a guardian or an administrator.

PK and LM [2006] WASAT 285

22 SEPTEMBER 2006

MS D DEAN (MEMBER), MR S JONGENELIS (SENIOR SESSIONAL MEMBER), MS R CARROLL (SENIOR SESSIONAL MEMBER)

Application for to review of administration order - Leave to apply for a review - Application for guardianship - Capacity - Need - Best interests - Family conflict - Need for independent decision-maker

PK suffered a series of debilitating strokes leaving him unable to make reasonable decisions for himself. Prior to his illness he had lived with LM for six years in a defacto relationship in a country town. PK had three adult children from his first marriage as well as involved and supportive siblings.

LM applied to the Tribunal for a guardian and an administrator to be appointed for her defacto husband. The Tribunal appointed the Public Trustee plenary administrator of the estate and dismissed the application for guardianship on the basis that there was no need for a guardian. The family were in agreement with PK's ongoing placement in a nursing home and any medical decisions could be managed under s 119 of the *Guardianship and Administration Act 1990* (WA) which authorised LM as the de-facto wife to make those decision.

Some months after these decisions were handed down, the son made an application for guardianship, because the agreement made by the family about PK's accommodation had broken down when the wife removed PK from the nursing home and they both went to live with friends. A short time later the wife made an application for the administration order to be reviewed on the basis that it wasn't working effectively.

The Tribunal made a decision to confirm the order appointing the Public Trustee plenary administrator of the estate on the basis that the estate of PK and his wife was complex and entwined, resulting in the wife being unclear as to what was hers and what was PK's. In addition, it was clear that the wife was having trouble coming to terms with the fact that decisions needed to be made about their country property, which may need to be rented out to generate income for PK's care needs.

The order was made for six months on the basis that this would give the Public Trustee time to rationalise and clarify estate details, after which it may be possible and appropriate for a family member to take on the role of administrator.

The Tribunal made an order appointing the Public Advocate limited guardian of PK with the functions of deciding where and with whom he was to live, what contact he was to have with others and to what services he should have access. It was also considered by the Tribunal that once the accommodation and services decisions had been made and appropriate contact arrangements had been set in place, there might be no further need for a guardianship order.

**LA [2006] WASAT 297
29 SEPTEMBER 2006
MS F CHILD (MEMBER)**

Guardianship and administration - Review of orders - Represented person with severe physical disabilities and intellectual disability - Vulnerable and dependent on carers - Family members not involved in care or in decision-making - Need for guardian with formal authority to decide accommodation, services, to consent to health care and to determine contact with others - Paid carer not appointed guardian as such an appointment would be contrary to the intention of the Act

On review of a guardianship order made under the *Guardianship and Administration Act 1990* (WA), the State Administrative Tribunal reappointed the Public Advocate as limited guardian for a 29 year old woman with physical and intellectual disabilities. There was a need for a guardian independent of service providers to decide matters relating to the

woman's accommodation, the services to which she should have access, to consent to treatment on her behalf and to determine the contact she should have with others.

The woman experienced significant medical problems associated with her physical disabilities and was at the time of the review hearing recovering from major surgery. Although the woman was settled in her accommodation placement and received an excellent level of care, there was no one available and appropriate from her family to decide personal matters on her behalf. The Tribunal determined that it was not in the woman's best interests that decisions of this nature be made by the service providers or by her paid carer. It was appropriate that an independent guardian with the formal authority to decide matters in relation to her person be re appointed.

The Tribunal considered that although her carer had played an important role in her life, provided an excellent level of care to the woman and was committed to her best interests, that it was not the intention of the *Guardianship and Administration Act 1990* that paid carers act in the role of a guardian for a person in their care.

The Public Trustee was confirmed as the plenary administrator of the estate of the woman. No one else was proposed to play this role and there was a need for independent management of her finances in her best interests.