

GUARDIANSHIP AND ADMINISTRATION BOARD
HOBART

MRS JJW, application for a settlement or gift

GAB No. 1114/2003

REASONS FOR DECISION

Ms Kereth West (Chair - Board member)
Mr Paul Mayne (Board member)
Ms Ann Tullgren (Board member)

21 May 2003

Gift from represented person's estate – consideration of President's policy – equal gifts to 3 of the person's 4 daughters – gift would not affect estate and exclusion of estranged daughter is consistent with her wishes

Guardianship and Administration Act 1995 (Tas), s 58

1. An application to the Board to approve a gift under Section 58 of the Act from the estate of Mrs JJW was made by Mrs KF, Mrs JJW's administrator and daughter. Mrs KF requested that the Board approve the gifting of a total of \$7,500 to be shared equitably between her sisters ER, AR and herself. Mrs KF requested \$2,500 to assist her with anticipated medical expenses for her son. She requested the gifts for her sisters in the interests of fairness.
2. After due consideration the Board approved the application to gift the \$7,500 as specified above. In making this decision the Board was of the unanimous opinion that the gifts were appropriate under Section 58 (a) of the Act which specifies gifts can be made for the maintenance or benefit of the represented person's family.
3. The Board specifically considered the factors identified in the statement pertaining to S58 by John Blackwood, President dated 13th October 1999:

A. The wishes of the represented person if they can be ascertained

The Board accepted the Investigation Officer's (IO's) report that Mrs JJW was not capable of understanding or commenting on the application. The IO's conclusion was derived from his meeting with the represented person and confirmed by nursing staff.

B. Any effect the gift would have on the represented person's pension

The Board was satisfied that the proposed gift was under Centrelink's maximum gift threshold and would have no impact on Mrs JJW's entitlements.

C. The size of the proposed gift relative to the represented person's estate

The amount requested was approximately one-seventh of Mrs JJW's total estate. The Board considered financial statements provided annually by the administrator and ascertained that Mrs JJW's current income from the pension exceeds her expenditure. Nursing Home Staff advised the IO that all Mrs JJW's needs are met.

D. Nature of the proposed gift

The applicant stated in her application and at the hearing that the proposed gift was consistent with the type of gift that Mrs JJW would have been likely to make. This belief was not disputed in the hearing.

E. Whether the gift compliments or conflicts with the represented person's will.

The application was completely consistent with the wishes specified in Mrs JJW's will dated 27th July, 1995.

F. Whether the making of the gift might materially affect the represented person's quality of life

In view of the evidence that Mrs JJW's income exceeds her expenditure, the Board was satisfied that the gift would not affect her quality of life in any way.

G. Whether the making of the gift is appropriate taking into account the represented person's interests and circumstances both past and present.

The applicant described a reciprocal relationship between the represented person and herself and her immediate family in the application. The Board was of the opinion that the description was consistent with information provided in the original report from the Senior Investigating Officer for the initial administration hearing in March 2001 and concluded that the gift would be appropriate given the past relationships. The Board concluded that the gift would not impact on present or future circumstances.

H. The views of the represented person's family and other interested parties

Two of the proposed beneficiaries of the gift were present at the hearing and supportive of the application. Ms MR, Mrs JJW's daughter from her first marriage and half sister to the applicant, expressed concerns at accessing her mother's estate prior to her death and questioned the difficulties of the applicant to meet the anticipated medical costs. There was clear conflict between family members with MR being estranged from her mother and sisters for many years. Contact with Mrs JJW appears to have recommenced only since her admission to the nursing home with severe dementia in February 2001. The Board accepted MR's concerns but was guided by Mrs JJW's will which we believed clearly identified the relationship with her daughters KF, ER and AR as primary.

**Kereth West
Board Member**