

Guardianship and Administration Board
HOBART

**MR S.G.N., on the application of THE DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

GAB No. XXXX/2006

REASONS FOR DECISION

Anita Smith (Chair)
Kim Barker (Board member)
Elizabeth Dalglish (Board member)

Date of Hearing: 6 June 2006

Administration – person with an intellectual disability – impulsivity - choices about accommodation
limiting availability of funds

Guardianship and Administration Act 1995 (Tas), s 50, 51 and 54

1. This is an application under section 50 of the *Guardianship and Administration Act 1995* for the appointment of an administrator for Mr S.G.N. of Tasmania.
2. Mr S.G.N. is a 63 year old man who lives alone in a privately rented unit. He is in receipt of Centrelink benefits (including rent assistance) and some rental income from a property owned by his mother.
3. The applicant was represented by Mr S.G.N.'s case manager, Ms K.L. from Community Options South. The application was received on 5 April 2006 together with a letter from the applicant. The Health Care Professional Report by Dr K was received on 11 May 2006. Following an investigation by staff of the Board, the matter was heard on 9 June 2006.
4. The hearing was attended by Mr S.G.N., his advocate M.S. from Speakout, his Disability Services Service Co-ordinator D.N., D.Q. from Community Options, Jonathon Campton from Murdoch Clarke representing Mr S.G.N.'s sisters who are also his mother's enduring attorneys, Rosie Jörs from the Public Trustee and Lee Perry an Investigation and Liaison Officer of the Board.

5. In addition to the application and the Health Care Professional Report, the Board had available to it the following documents:

- Account statement by Commonwealth Bank dated 19 May 2006
- Letters dated 17, 19 and 26 May 2006 from Murdoch Clarke
- Rent statements for a property
- Orders made by the Board in respect of the estate of Mrs K.N., Mr S.G.N.'s mother
- A report from the estate of Mrs K.N. regarding the property
- A report from the attorneys for Mrs K.N.
- Correspondence between Mr S.G.N. and his sisters
- Letter dated 25 May 2006 from the applicant
- An estimate of the charges of the Public Trustee
- A report from the Board's Investigation and Liaison Officer

Section 51(1)(a) – Evidence of a disability:

6. Dr K is Mr S.G.N.'s general practitioner. His report confirms that Mr S.G.N. has an intellectual disability, which has been lifelong and is unchanging. The Board was satisfied that Mr S.G.N. is a person with a disability.

Section 51(1)(b) – Evidence of being unable by reason of the disability to make reasonable judgments in respect of matters relating to his estate:

7. Dr K's report also states that Mr S.G.N. is prone to spend his money without regard to his expenses. He is unable to reliably make reasonable plans and follow them through and cannot determine cause and effect relationships. As an example, Dr K stated that Mr S.G.N. is prone to spending money without thought and according to his immediate wants.

8. Similar behaviours were demonstrated in Ms K.L.'s letter accompanying the application and also discussed in the hearing. The pattern of Mr S.G.N.'s spending has been one of 'boom and bust'; spending money on luxuries such as concert tickets when the pension is paid, but then not having money for food, bus fares or medication. The Board was satisfied that Mr S.G.N. is unable by reason of his disability to make reasonable judgments in respect of his estate.

Section 51(1)(c) - Evidence of a need for an administrator

9. Mr S.G.N. had, until recently, lived all of his life with his mother, Mrs K.N.. She entered nursing home accommodation in January 2005. At that time, her attorneys, Mr S.G.N.'s sisters, decided to sell the family home, which required Mr S.G.N. to find alternative accommodation.
10. According to Mr S.G.N.'s evidence, when he lived with his mother, she met most of his financial needs and paid for necessary items. The Board inferred from this that his income from benefits was then available for him to use for discretionary spending. There is no doubt that Mr S.G.N. has suffered great upheaval since his mother's move to nursing home accommodation. In addition to his grief at their separation and her poor health, he has moved from his family home and neighbourhood and been forced to fund his own necessities and activities. While he lived under the protection of his mother, Mr S.G.N. was never responsible for money and was not forced to make choices between wants and needs.
11. Food is provided for Mr S.G.N. by a commercial service and Meals on Wheels. He requires a level of assistance with daily activities. He aims to live in semi-supported accommodation in the future. Mr S.G.N. has private medical insurance, podiatry and pharmacy needs.
12. The proceedings of the Board in relation to the enduring power of attorney for Mrs K.N. were relevant in that the order of the Board required the attorneys to recognise a life interest that Mr S.G.N. had in his mother's real estate by purchasing a unit from the proceeds of sale of the family home in a suburb of Hobart. Following an agreement for purchase of the property, Mr S.G.N. indicated he did not want to live in that unit. The orders of the Board relating to Mrs K.N.'s attorneys confirmed that Mr S.G.N. is responsible for all of the costs of maintaining the unit and is entitled to the income from rental from that unit.
13. Unfortunately during the proceedings under the *Powers of Attorney Act 2000* the attorneys, his sisters, and Mr S.G.N. became significantly estranged. He

now has no family support except from his mother who is significantly ill. Correspondence before the Board indicated a very deep rift in the family.

14. All parties, except Mr S.G.N., agreed at the hearing that many of the financial strains that Mr S.G.N. experiences stem from his refusal to live in the unit and that extra income would be available for his needs and wants should he agree to live there. However, he continues to refuse to live in the unit and rents alternative accommodation.
15. Ms K.L.'s letter accompanying the application detailed attempts that she had made to assist Mr S.G.N. with budgeting, but which have been overwhelmed by his impulsivity. Mr S.G.N. also has the complex responsibility of acting as landlord of the unit and being responsible for maintenance costs. An agent has been retained to assist with this responsibility. In a later letter dated 25 May 2006 Ms K.L. also indicated that in the event that his mother dies, Mr S.G.N. will need assistance to recover his interest in her estate.
16. The Board concluded that there is a need for the appointment of an administrator.

Mr S.G.N.'s wishes:

17. Ms K.L. recorded that Mr S.G.N. was happy for the appointment of the Public Trustee as his administrator. At the hearing he indicated that he would like support with his financial management. However, it appeared that he had only a limited understanding of what that would mean, seeming to believe that appointment of an administrator might put him back to a financially carefree existence such as he enjoyed while living with his mother. When the Board explained that the Public Trustee could decide that he could not afford a concert ticket and deny him funds to purchase it, he was not so acquiescent.

Section 51(2),(3) and (4) - Mr S.G.N.'s best interests and the alternative that is least restrictive of his freedom of decision and action:

18. It is clear that all of the support that Mr S.G.N. has had from Disability Services and Community Options has not had the effect of limiting his

impulsive spending. He is experiencing shortfall in his income for necessary expenditure because of his spending on entertainment and because of the financial drain of not occupying the unit. All other options having been exhausted, the Board was satisfied that the appointment of an administrator is in Mr S.G.N.'s best interests and represents the alternative that is least restrictive of his freedom of decision and action.

Section 54 – Persons eligible as administrators:

19. The application nominated only the Public Trustee. No other nominations arose from the investigation or hearing processes.

CONCLUSION:

After hearing an application by Community Options in respect of Mr S.G.N. of Tasmania (hereinafter called the 'represented person')

The Board was satisfied that the represented person

- is a person with a disability, and
- is unable by reason of the disability to make reasonable judgements in respect of his estate, and
- is in need of an administrator;

THE BOARD ORDERS

1. That The Public Trustee be appointed as administrator of the estate of the represented person.
2. That the powers and duties of the administrator be those conferred by Division 4 of Part 7 of the *Guardianship and Administration Act 1995*.
3. That the order remains in effect until 8 June 2009.

Anita Smith
CHAIR

For and on behalf of:

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BOARD MEMBER

BOARD MEMBER

Statement of reasons delivered on 21 September 2006