

**GUARDIANSHIP AND ADMINISTRATION BOARD
HOBART**

Miss M.F. on the application of Mrs F.C., her Mother

GAB No. XXXX

REASONS FOR DECISION

Anita Smith (President)
Catherine Wilding (Member)
Gerard Dibley (Member)

Date of Hearing: 19 October 2006

Guardianship and administration – ‘need’ for a guardian and an administrator – policies of residential organisation in conflict with family relationships – role of ‘person responsible’ – suitability of administrator

Guardianship and Administration Act 1995 (Tas), ss 6, 20, 51, 54

1. Miss M.F. is a 23 year old woman who lives in Hobart in group home accommodation (“GHA”), a residential facility funded by Disability Services. Her mother, Mrs F.C. made an application for appointment as Miss M.F.’s administrator on 31 May 2006. During the investigation of the application, the subject matter of the application was extended to include guardianship issues, consequently Mrs F.C. also sought appointment as Miss M.F.’s guardian.
2. An initial hearing date set for 6 July 2006 was vacated because it appeared that issues leading to the application might be resolved through discussion between relevant parties. When a meeting between relevant parties on 6 September 2006 did not resolve these issues, the applicant requested by letter dated 10 September 2006 that the investigation and hearing of the application proceed.
3. A hearing was convened on 19 October 2006. A list of the documents received by the Board is appended at Appendix “A”. Sections of the

Guardianship and Administration Act 1995 relevant to this decision are appended at Appendix “B”.

4. The following people attended the hearing:

Miss M.F.,	Proposed represented person
Mrs F.C.,	Applicant, Miss M.F.’s mother
Mr K.F.,	Miss M.F.’s brother
Mr J.F.,	Miss M.F.’s father
Jane Blake,	Miss M.F.’s advocate, Advocacy Tasmania
Mrs T.B.,	Miss M.F.’s aunt
Mrs E.X.,	Manager, GHA
Mrs N.Q.,	Support staff member, GHA
Lisa Warner,	Public Guardian
Valerie Hannon,	Staff member GAB (observing)

Disability and Incapacity - Section 51(1)(a) and (b) and 20(1)(a) and (b):

5. A standard form Health Care Professional Report dated 25 May 2006 and completed by Miss M.F.’s long-term General Practitioner, Dr Robert Newton, accompanied the application. Dr Newton sent a further letter dated 3 October 2006 reiterating that he believed that Miss M.F., by reason of having Down’s Syndrome, “ ... is not capable of making decisions regarding her health, money matters and accommodation”. Dr Newton also made it clear that he supported the appointment of Mrs F.C. as administrator.
6. Dr Newton reported that, as a consequence of Miss M.F.’s disability, she cannot reliably make reasonable plans and follow them through, nor can she reliably determine cause and effect relationships. He indicated that she is frequently prone to impulsive acts and is susceptible to undue influence by others. His report was comprehensive with respect to Miss M.F.’s inability to understand the consequences of financial decisions such as operating a bank account, paying bills and budgeting.

7. Although there were differences of opinion between witnesses about aspects of Miss M.F.'s decision-making competence, Dr Newton 's opinion regarding Miss M.F.'s disability and incapacity was not challenged at the hearing. The Board was satisfied that by reason of an intellectual disability arising from Down's Syndrome, Miss M.F. is incapable of making reasonable judgments about matters relating to her estate or her person and circumstances.

Need for a Guardian or Administrator – Section 51(1)(c) and 20(1)(c):

8. Miss M.F. moved to a home operated by GHA in September 2005 with the encouragement of her mother who believed that such a move was an important developmental step for Miss M.F.. Prior to this she and her mother had lived together alone for 10 years.
9. As applicant, Mrs F.C. reported to the Board that when Miss M.F. moved into GHA, she transferred her capacity for handling Miss M.F.'s Centrelink entitlements (the Disability Pension, Mobility Allowance and Rental Assistance) to GHA for management in accordance with GHA's usual financial procedures for residents. She did not, however, transfer operation of a separate account into which Miss M.F.'s income from supported employment is regularly deposited. Mrs F.C. explained that Miss M.F.'s income from her employment had traditionally been quarantined to fund an annual holiday to see Miss M.F.'s sister and brother-in-law, and their young family who live interstate. Both her sister and brother-in-law are medical practitioners, and plan to take over Mrs F.C.'s main caring role for Miss M.F. if ever Mrs F.C. should become incapable. The family, therefore, see continued contact between the sisters as important in preparing for that contingency.
10. GHA staff had requested that Mrs F.C. also transfer operation of the "pay" account and her refusal to do so had triggered a breakdown in

the relationship between Mrs F.C. and GHA staff to the extent that in September 2006 Mrs F.C. resigned a voluntary position that she held on the GHA Management Committee.

11. According to the applicant, further issues contributed to the breakdown of relations between Mrs F.C. and GHA staff. These issues included:
 - (i) Concerns arising from the imposition of budgeting restraints upon Mrs F.C. when purchasing clothes for Miss M.F. at the request of Miss M.F. and /or staff. Mrs F.C. complained that Miss M.F. has very particular clothing requirements and the budget allowed by GHA limited Mrs F.C.'s ability to accommodate those requirements. Mrs F.C. is also in receipt of benefits and not in a position to supplement Miss M.F.'s income.
 - (ii) A perceived lack of respect for Mrs F.C.'s role as Miss M.F.'s person responsible for the purposes of the *Guardianship and Administration Act 1995*, evidenced by an appointment Miss M.F. attended at Family Planning and which GHA staff stated was a 'private' issue giving Mrs F.C. no further information.
 - (iii) A reported statement by a staff member to the parents of a long term male friend of Miss M.F.'s, Mr A.B. , that it would be 'nice' for Mr A.B. to stay overnight with Miss M.F..
 - (iv) The request for the purchase of a larger bed for Miss M.F., intimating (together with (ii) and (iii) above) to Mrs F.C. that moves were afoot to encourage Miss M.F. to commence a sexual relationship with Mr A.B..
 - (v) Concerns about the method of consultation with Miss M.F. by GHA staff on other sensitive issues, such as whether Miss M.F. wanted contact with her father or whether she wanted a tattoo.
 - (vi) Concerns about placement and selection of furniture and equipment for Miss M.F.'s bedroom.

12. The breakdown of the relationship between Mrs F.C. and GHA is relevant to Miss M.F.'s best interests because it has the potential to destabilise her continued accommodation and to impact on the otherwise positive experiences that she gains from her new home. It is also relevant to a 'need' for an appointment of a guardian or administrator because where relationships between significant others in Miss M.F.'s life are in conflict, problems of authority for decision-making by her or on her behalf have arisen.

13. In the letters supplied to the Board prior to the hearing and at the hearing GHA responded to each of the issues raised as follows:
 - (i) Regarding the separate account for her personal income and the budgeting restraints, GHA have developed for all residents a comprehensive written policy of financial management for residents. This policy is consistent with Disability Service Standards and is also supported by individual Personal Plan policies where a resident indicates personal goals and is supported to achieve them. Miss M.F.'s account held separately from other accounts impacted upon the smooth operation of those policies in the following ways (a) Miss M.F. does not have available to her all of the funds that might assist her to reach her stated goals, (b) Miss M.F. is being treated differently to all other residents by having two systems of management of funds (i.e. one managed by her mother and one managed by Miss M.F. under supervision of the staff) and (c) GHA were concerned about accountability issues if there were two systems of management for Miss M.F.'s funds. Mrs F.C.'s demands upon Miss M.F.'s finances for clothes bought and altered were beyond budget limits set. Exceeding the budget does not assist Miss M.F.'s education about budgeting.
 - (ii) GHA had explicitly stated that Mrs F.C. is the 'person responsible' for Miss M.F.. The discussion with Family Planning

was educative and did not impinge upon that relationship. As part of Miss M.F.'s growth towards independence, it is appropriate that she explores some issues in the absence of her mother.

- (iii) & (iv) Miss M.F.'s request for a larger bed was borne only of envy of a fellow resident's larger bed and there is no intention on the part of GHA staff to encourage Miss M.F. into a sexual relationship with Mr A.B. or any other person. The convergence of two or three unrelated incidents had resulted in wrong conclusions being drawn by Mrs F.C. to the effect that staff were encouraging Miss M.F. and Mr A.B. into a sexual relationship.
- (v) Consultation with Miss M.F. by staff members about major decisions is both consistent with Disability Service Standards and respectful of her as an adult making adult choices. Staff members are trained in communication with people with disabilities and competent to put difficult choices to Miss M.F. and impartially facilitate her genuine response.

14. GHA staff members also argued that Miss M.F. not only does not need a guardian or administrator, but that appointment of either would be a factor distinguishing Miss M.F. from the other residents at the home and would be inimical to the smooth operation of the home. Basically they argued that the appointment of an administrator would not fit the model of financial management developed by the organisation. They also argued that Miss M.F. was one of the cleverest residents and therefore did not need an administrator or guardian.

15. The need for an administrator or guardian is assessed independently of the level of capacity and usually relates to factors external to the person such as levels of conflict or complexity of the decisions required. In this case it was the former, given that both Mrs F.C.

and GHA wished to assert contrary influences over overlapping aspects of Miss M.F.'s finances and decision-making.

16. Fundamentally, the Board viewed the conflict expressed in supporting documentation and the hearing as being transitional problems associated with the transfer of influence over decision-making from the historical role of Mrs F.C. and immediate family members to staff members. The Board acknowledges that staff members are working in a necessarily highly regulated industry, requiring conformity to standards of accountability set by funding authorities and by legislation. At the same time, the Board perceived a lack of flexibility in the approach on the part of staff.
17. The Board believed that lack of flexibility was based upon an excessively rigid interpretation of organisational values espoused by GHA. One such value was the assumption that financial management in a supported facility must be rigid and uniform between residents to be effective and accountable. This is not consistent with the overall goal of making life in supported accommodation as normal as possible. In homes shared by young adults, residents can have different methods of financial management according to their different needs and income sources. The Board believed that Miss M.F. need not feel 'singled out' for having different financial systems if all parties cooperate towards accepting a diversity of approach.
18. Another value that the Board took issue with was the implied assumption that following transition, the influence of Mrs F.C. and other members of Miss M.F.'s family should automatically or significantly diminish in favour of the planned strategies developed by the trained staff at the home. Both values seemed to the Board to arise from a possibly unconscious denial by GHA staff of the

importance and normalcy of continued family rituals, relationships and interdependence after a young adult leaves their family home.

19. It flows from this that the Board accepted that the practice of quarantining funds from one source of income towards Miss M.F.'s annual holiday interstate was a matter of importance to Miss M.F. and her family and therefore reflected Miss M.F.'s best interests. It is significant that the other conflicts between Mrs F.C. and GHA, or perhaps their mutual suspicion, seemed to arise from this initial disagreement about management of Miss M.F.'s personal income from her employer.

20. Another issue, which would be better, described as confusion rather than conflict arose from a possible double deduction of rental allowance in one rental period from Miss M.F.'s Credit Union account. Some negotiations are presently required to resolve with the Credit Union the status of Miss M.F.'s account and a possible reimbursement or crediting of the overpayment.

The Board's finding upon the need for a guardian:

21. The issues would contribute to a need for appointment of a guardian (the need for authority over medical matters and the perceived augmentation of a friendship to a sexual relationship) appeared to mostly stem from poor communication between GHA staff and Mrs F.C..

22. Mindful of the principle of finding the least restrictive alternative, the Board took the view that should GHA make the following acknowledgement to Mrs F.C., those communication issues and therefore the need for the appointment of a guardian are abated:
 - (i) That Mrs F.C. is the 'person responsible' for Miss M.F. as defined in section 4 of the *Guardianship and Administration*

Act 1995 for all purposes associated with consent for medical and dental treatment as required by that Act.

- (ii) That before any overnight visitors stay with Miss M.F., that there should be consultation and discussion with Mrs F.C..

Therefore on an undertaking at the hearing given by Mrs E.X. that GHA would acknowledge these issues in writing, the application for appointment of a guardian was adjourned *sine die*.

The Board's finding about the need for an administrator:

- 23. In light of the continued disagreement between GHA staff and Mrs F.C. about the budgeting of Miss M.F.'s day to day finances and the authority to control the separate account holding for her personal income, the Board was satisfied that there is presently a need for the appointment of an administrator. The Board was also satisfied that the appointment of an administrator for at least 12 months represents Miss M.F.'s best interests and is the least restrictive alternative possible for Miss M.F. in the present circumstances.

Persons Eligible as Administrator – Section 54

- 24. The Applicant nominated herself as administrator and consented to such appointment. No other person was nominated for appointment as administrator. Mr J.F. did express some concern late in the hearing that his role as Miss M.F.'s father may be undermined by appointment of her mother as administrator, but this did not amount to an alternative nomination.
- 25. Ms E.X. expressed concern about Mrs F.C. being appointed as administrator because Mrs F.C. might disregard Miss M.F.'s opportunities for development and might underestimate her potential to manage her own finances. In essence, this appeared to be an argument that Mrs F.C.'s 'motherly' approach might not foster independence in Miss M.F.'s financial management.

26. The Board was impressed that Miss M.F. and her mother have a good relationship and that Mrs F.C. has taken significant and tangible steps to encourage her daughter's independence in various aspects of her life. Mrs F.C. acknowledged that she has experienced grief issues and financial restrictions since Miss M.F. left her home, however the Board did not believe that either issue prejudiced her appointment for the purposes of subsection 54(1)(d) of the Act.
27. Miss M.F. stated at the hearing that she wanted her mother to manage her money.
28. Given that Mrs F.C. has been competently administering Miss M.F.'s finances all of Miss M.F.'s life, the Board was satisfied that she was a person with sufficient expertise to continue the task.
29. Additionally, the Board was satisfied that it is in Miss M.F.'s best interests to take some measures to resolve a conflict brewing between Miss M.F.'s family members and GHA staff. The Board perceived that to formalise Mrs F.C.'s informal decision-making role by appointment as administrator for a short period would encourage GHA staff and Mrs F.C. to reach a practical, respectful and mutual understanding about their shared influences over Miss M.F.'s decision-making in all aspects of her life.
30. For that reason the Board appointed Mrs F.C. as administrator for Miss M.F. for three years, but ordered a review after one year of operation. That review is intended to assess whether the underlying conflicts have resolved to such an extent that the need for an administrator has been resolved also.

Conclusion:

31. While some significant criticisms have been made of GHA staff members during proceedings and within these reasons, the Board acknowledges that their actions were motivated by good intentions and a desire to promote consistent adherence to best practice. Where criticism has been made in these reasons, it is with a view to encouraging a more flexible approach in the development and application of organisational policies to acknowledge the diversity of individual residents and their family backgrounds.

THE BOARD ORDERS

1. That Mrs F.C. 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 this order is to be reviewed in twelve months.
4. That the order remains in effect until 18th October 2009.

Anita Smith
PRESIDENT

For and on behalf of:

Catherine Wilding
BOARD MEMBER

Gerard Dibley
BOARD MEMBER

Reasons delivered: 9 January 2007

APPENDIX "A"

Documents received by the Board:

APPLICATION dated 20 May 2006 with attachments:

- Letter from Mrs F.C. to GHA Board of Management dated 24 May 2006
- Commonwealth Bank Account Statements for Miss M.F.

REPORTS:

Dr Newton , Health Care Professional Report, dated 31 May 2006

Dr Newton letter dated 3 October 2006

Anne Perks, GAB Senior Investigation and Liaison Officer, Report

GHA Financial Policy dated April 2005

CORRESPONDENCE:

Letter from Islandstate Credit Union dated 7 June 2006

Letter from Commonwealth Bank dated 9 June 2006

Email from Jane Blake dated 7 September 2006

Letter from Applicant dated 11 September 2006 with attachments regarding notes of meetings and correspondence with GHA

Letter from Applicant dated 9 October 2006 with photographs

Letter from N.D., Teacher TAFE dated 10 October 2006

Letter from Ms K.G., Manager, GHA Community Living Inc. dated 10 October 2006 with attachments:

- Notes of meeting dated 30 November 2005, 23 December 2005, 9 August 2006, 6 September 2006,
- Comments on meeting 9 August 2006 prepared by GHA
- Proposal dated 7 September 2006
- Financial Management Policy dated May 06
- Personal Work Plan Sheets completed by Miss M.F.
- Note of incident from U.X. dated "Fri 6th"
- Position Description for Key Worker

Letter from Mr J.F. dated 17 October 2006

Letter from Mr K.F. dated 18 October 2006

Letter from Ms L.C. (Miss M.F.'s sister) dated 19 October 2006

APPENDIX "B"

Section 3. Interpretation

(1) In this Act, unless the contrary intention appears –

...

"**disability**" means any restriction or lack (resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function) of ability to perform an activity in a normal manner;

...

"**person responsible**" has the meaning given by section 4;

Section 6. Principles to be observed

A function or power conferred, or duty imposed, by this Act is to be performed so that –

(a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and

(b) the best interests of a person with a disability or in respect of whom an application is made under this Act are promoted; and

(c) the wishes of a person with a disability or in respect of whom an application is made under this Act are, if possible, carried into effect.

Section 20. Guardianship order

(1) If the Board, after a hearing, is satisfied that the person in respect of whom an application for an order appointing a guardian or an order appointing an administrator is made–

(a) is a person with a disability; and

(b) is unable by reason of the disability to make reasonable judgements in respect of all or any matters relating to his or her person or circumstances; and

(c) is in need of a guardian—

the Board may make an order appointing a full or limited guardian in respect of that person and any such order may be subject to such conditions or restrictions as the Board considers necessary.

(2) In determining whether or not a person is in need of a guardian, the Board must consider whether the needs of the proposed represented person could be met by other means less restrictive of that person's freedom of decision and action.

(3) The Board must not make an order under subsection (1) unless it is satisfied that the order would be in the best interests of the proposed represented person.

(4) ...

Section 51. Administration orders

(1) If, after a hearing, the Board is satisfied that the person in respect of whom an application for an order appointing an administrator or an order appointing a guardian is made—

(a) is a person with a disability; and

(b) is unable by reason of the disability to make reasonable judgements in respect of matters relating to all or any part of his or her estate; and

(c) is in need of an administrator of his or her estate—

the Board may make an order appointing an administrator of that person's estate.

(2) In determining whether or not a person is in need of an administrator of his or her estate, the Board must consider whether the needs of the proposed represented person could be met by other means less restrictive of the person's freedom of decision and action.

(3) The Board must not make an order under subsection (1) unless it is satisfied that the order would be in the best interests of the proposed represented person.

(4) Where the Board makes an order appointing an administrator of a person's estate, the order is to be that which is the least restrictive of that person's freedom of decision and action as is possible in the circumstances.

(5) ...

54. Persons eligible as administrators

(1) The Board may appoint as an administrator of the estate of a proposed represented person –

(a) ...

(d) any other person, including the guardian of the proposed represented person, who consents to act as administrator if the Board is satisfied that –

(i) the person will act in the best interests of the proposed represented person; and

(ii) the person is not in a position where his or her interests conflict or may conflict with the interests of the proposed represented person; and

(iii) the person is a suitable person to act as the administrator of the estate of the proposed represented person; and

(iv) the person has sufficient expertise to administer the estate.

(2) In determining whether a person is suitable to act as the administrator of the estate of a proposed represented person, the Board must take into account –

(a) the wishes of the proposed represented person, so far as they can be ascertained; and

(b) the compatibility of the person proposed as administrator with the proposed represented person and with his or her guardian, if any.