

CITATION: PBA [2012] QCAT 82

PARTIES: PBA

APPLICATION NUMBER: GAA401-12

MATTER TYPE: Guardianship and administration matters for adults

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Ron Joachim, Member**

DELIVERED ON: 23 February 2012

DELIVERED AT: Brisbane

ORDERS MADE:

1. **The Adult Guardian is appointed as guardian for restrictive practices (general) for PBA.**
2. **The guardian for restrictive practices (general) is to provide any updated Positive Behaviour Support Plan to the Tribunal six (6) weeks prior to the expiry of the order.**
3. **Unless the Tribunal orders otherwise, this appointment remains current for twelve (12) months.**

DIRECTIONS

4. **The Guardian is further directed to provide a further report to the Tribunal by 4:00pm, Monday 27 March 2012 addressing:**
 - (a) **the extent to which the positive strategies in the plan have been implemented;**
 - (b) **what has been the impact of the plan in respect of the frequency, intensity and duration of the behaviours of concern;**
 - (c) **how often the restrictive practices have been used;**
 - (d) **how the adult's quality of life has been approved;**
 - (e) **what challenges there have been in implementing the plan.**

CATCHWORDS: Guardianship – restrictive practices – where adult subject to physical and mechanical restraint –

where Adult Guardian appointed guardian for restrictive practices – where Adult Guardian's report to Tribunal is inadequate

Guardianship and Administration 2000, ss 31, 80ZD

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

REASONS FOR DECISION

- [1] The Adult Guardian was appointed by the Tribunal on 6 October 2011 as guardian for restrictive practices for a period of 4 months. The Tribunal made directions that the guardian was to provide a report to the Tribunal by 4pm on 6 December 2011 addressing the extent to which the positive practices in the plan have been implemented, what has been the impact of the plan in respect of the frequency, intensity and duration of the behaviours of concern, how often have the restrictive practices been used, how has the adult's quality of life been improved and what challenges there have been in implementing the plan.
- [2] When the Tribunal conducts a review of the appointment it does so under ss 31 and 80ZD of the *Guardianship and Administration Act 2000*.
- [3] The first matter the Tribunal needs to consider is whether PBA has capacity for decision making for restrictive practice matters. PBA has Cerebral Palsy and intellectual disability. She has high support needs in all areas of her life and she has no formal system of communication. The Tribunal is satisfied the presumption of capacity, which is defined in schedule 4 of the *Guardianship and Administration Act 2000*, is rebutted for restrictive practice matters.
- [4] The Tribunal now turns to the various matters it needs to take into account when considering whether to appoint a guardian for restrictive practice. PBA constantly places her right hand in her mouth and this has resulted in infections and skin break down. She is subject to the restrictive practice of mechanical restraint by use of an arm splint to prevent PBA from putting her hand in her mouth. She is also subject to physical restraint by way of downward pressure on her right forearm at times. Decisions required are to approve the use of these restrictive practices.
- [5] The Tribunal is satisfied that the arm splint does constitute mechanical restraint. The Tribunal is satisfied that PBA's behaviour has previously resulted in harm to herself and there is a need for decisions about restrictive practices. The Tribunal is further satisfied that without an appointment PBA's behaviour is likely to cause harm to herself and her interests will not be adequately protected. The only option for appointment is the Adult Guardian. The Adult Guardian will be appointed for a 12 month

period with an updated plan being required if there is one six weeks prior to the expiration of the order.

- [6] The Tribunal will direct the Adult Guardian to provide a further report to the Tribunal in respect of the same matters which were directed at the last hearing of this matter.
- [7] The Tribunal is extremely disappointed that the Adult Guardian did not respond to the Tribunal's directions made in October and referred to in paragraph 1 of these reasons. The Adult Guardian's report to the Tribunal merely advised that the Adult Guardian is unable to provide comment in relation to this direction. The Tribunal finds this staggering. In another matter the Tribunal made similar directions to the Adult Guardian and a report as requested in that matter was provided after the guardian consulted with the service provider. It is apparent to the Tribunal that it is possible for the Adult Guardian to obtain the necessary information from the service provider. The Adult Guardian, by being appointed guardian, has some responsibility to ensure that the positive strategies in the plan are being implemented and to have some idea of the impact of the plan on the adult's behaviour and also the extent to which the restrictive practices have been used. In PBA's case this responsibility does not appear to have been taken on.
- [8] The Tribunal will direct the guardian to provide a report to the Tribunal by 4pm, Monday 27 March 2012 addressing the extent to which the positive strategies in the plan have been implemented, what has been the impact of the plan in respect of the frequency, intensity and duration of the behaviours of concern, how often the restrictive practices have been used, how the adult's quality of life has improved and what challenges there have been in implementing the plan. The Tribunal expects a more fulsome response on this occasion.