

**CITATION:** *PH* [2018] QCAT 104

**PARTIES:** PH  
(Adult)

**APPLICATION NUMBER:** GAA3745-18

**MATTER TYPE:** Guardianship and administration matters for adults

**HEARING DATE:** 10 April 2018

**HEARD AT:** Brisbane

**DECISION OF:** **A/Senior Member Guthrie**

**DELIVERED ON:** 13 April 2018

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. Leave is granted for PH to be represented by Ms Vivien Boyd in proceeding GAA3745-18.**
- 2. Until the hearing of the application for review of the appointment of a guardian the decisions of the guardian to consent to PH undergoing a CT scan with contrast and a PET scan are stayed.**

**CATCHWORDS:** GUARDIANS, COMMITTEES, ADMINISTRATORS, MANAGERS AND RECEIVERS – OTHER MATTERS – whether applicant has impaired capacity to make health decisions about her cancer treatment – whether Public Guardian has consented to a procedure which is inconsistent with PH’s long held views – whether substituted decision making is warranted

PROCEDURE – JURISDICTION – STAY OF PROCEEDINGS – where applicant for review sought a stay of decision to undergo PET scan with contrast – where applicant sought a stay of a decision to undergo CT scan with contrast – where stay application considered separately to review of guardian – where evidence that adult’s schizoaffective disorder affecting decision- making capacity – whether applicant could establish prima facie case that review would be successful – whether balance

of convenience in favour of stay – where stay was granted

*Guardianship and Administration Act 2000*  
(Qld), s 128  
*Queensland Civil and Administrative Tribunal Act, 2009* (Qld)

*SFR* [2014] QCAT 612  
*SM* [2014] QCAT 568

**APPEARANCES and REPRESENTATION:**

PH represented by Vivien Boyd, Aged and Disability Advocacy Australia  
Ms S Woolnough, The Office of the Public Guardian  
Mr R Davie, the Office of the Public Guardian  
Dr AS, Pyschiatric Registrar  
IC, Social Worker, applicant

**REASONS FOR DECISION**

- [1] PH is 66 years of age. PH is the primary carer of her adult son. Since 16 February 2018, PH has been an inpatient at a Mental Health Unit at a Brisbane hospital under a treatment authority. In recent times she has been having periods of leave. At the time of the hearing on 10 April 2018, she had been on leave since 4 April and was to return for a review/meeting with her treating team following the tribunal hearing. Leave was granted for PH to be represented in the proceeding. Ms Boyd of ADA Australia represented PH.

**Background**

- [2] On 2 March 2018, IC, a social worker from the hospital, applied to the tribunal for the appointment of an administrator and the appointment of a guardian for PH. An application for an interim order was also made. Those applications were accompanied by a report by medical and related health professional completed by Dr AS, Psychiatric registrar on 2 March 2018.
- [3] Dr AS states that on 28 February 2018 PH had the onset of schizoaffective disorder; manic type; acutely unwell with active delusions. It is also reported that she has malignant cancer of the left breast. The report indicates that she is preoccupied with various paranoid and persecutory delusions including claims that her water supply had been poisoned by a neighbour.
- [4] The report states that her ability to make decisions about her health care is currently impaired due to her paranoid and persecutory delusions. The report states that she is convinced that she only needs 'natural' therapies, worried that prescribed medicine will in fact poison her. Other concerns were also raised about her care of her son due to her delusional illness. past two years due to her delusional illness. Dr AS expressed the opinion

that she does not understand the relevant matters to make an enduring power of attorney and can understand and make only simple health care, lifestyle/accommodation choices and financial affairs decisions.

- [5] No other medical reports have been provided to the tribunal.
- [6] The application for an interim order, raised concerns that PH was accessing her entire superannuation to prepare for 'Mark of the Beast' a religious delusion centred on the world ending. Further, it was stated that she was refusing potentially life-saving treatment for breast cancer. Concerns were also raised about the impact of her decision-making on her son. In relation to her health care, the application for the interim order states:

PH is currently an inpatient of the Older Persons Mental Health Unit... receiving psychiatric treatment under a Treatment Authority for Schizo-affective Disorder, current episode manic with psychotic symptoms. Her mental illness appears to be long-standing, treatment resistant and significantly impacting her decisional capacity for health care, she is refusing potentially life saving treatment for breast cancer.

- [7] It was further stated that PH has significantly reduced insight into her mental illness and is refusing potentially lifesaving treatment due to her long-standing and complex delusional belief system.
- [8] On 6 March 2018, the Tribunal (differently constituted), determined the application for an interim order appointing the Public Trustee of Queensland administrator for PH for all financial matters and the Public Guardian, guardian for health care matters only. Those appointments remain current for three months, or if the Tribunal makes a further order in the matter until the date of the further order whichever is the sooner.
- [9] In making those orders, the Tribunal must have been satisfied, on reasonable grounds, that there was an immediate risk of harm to the adult's health, welfare and property and exercised the discretion in s 129 of the *Guardianship and Administration Act 2000* (the GAA). Such orders can be made without hearing and deciding the proceeding or otherwise complying with the requirements of the GAA including the notice provisions in s 118 of the GAA.
- [10] Such orders usually remains in force until the hearing of the substantive application, in this case the application for the appointment of a guardian and the application for the appointment of an administrator filed by IC. In determining those applications, the Tribunal will consider whether the terms of s 12 of the GAA are satisfied:
- Whether PH has impaired capacity for the particular relevant matter/s with the starting point being that there is a presumption of capacity for all adults
  - Whether there is a need for a decision in relation to the matter or PH is likely to do something in relation to the matter that involves,

or is likely to involve, unreasonable risk to PH's health, welfare or property; and

- Without an appointment either PH's needs will not be adequately met or PH's interests will not be adequately protected.<sup>1</sup>

- [11] Under the interim order, the Public Guardian consented to PH undergoing a CT scan with contrast to the abdomen, chest and pelvis as well as a PET scan with contrast.
- [12] On 28 March 2018, PH through her advocate applied for a stay of a decision of the Public Guardian to consent to her having those scans. PH argues that the scans are against her wishes and her long held beliefs and practices. Further, PH argues that there was inadequate assessment of her capacity for decision-making. The CT scan was to occur on 29 March 2018. At the time of the application, PH was on the waiting list for the PET scan. That scan is now currently arranged for 18 April 2018.
- [13] In addition to the application to stay a decision, PH applied for an interim order and a review of the appointment of the guardian and administrator.
- [14] On 29 March 2018, I made an interim order to stay the Public Guardian's decision to consent to a CT scan and a PET scan until the hearing of the application for a stay. I also made directions for the provision of submissions by the Public Guardian and PH as well as for the provision of any further medical evidence upon which PH wished to rely in relation to the hearing of the stay application. I have considered the documents filed in compliance with those directions as well as the information provided at the oral hearing.

### **Consideration**

- [15] Section 128 of the GAA provides that if a person applies to the tribunal in relation to a decision for an adult about a matter, the person may also apply to the tribunal for a stay of the decision. The tribunal may, by order, stay the decision to secure the effectiveness of the application. The period of a stay must not extend past the time when the tribunal decides the application. The tribunal may amend or revoke its order staying a decision.
- [16] PH has applied for the stay and also applied for a review of the appointment of the interim appointment of a guardian and the administrator.
- [17] The review application focusses on PH's ability to make her own health care decisions and the impact on her mental health if her wishes and views are not followed.

---

<sup>1</sup> In addition the appointment may be on terms considered appropriate by the tribunal: s 12(2) of the GAA.

- [18] I consider that the stay is sought pending the review of the interim order. I can therefore consider and determine the application for a stay under s 128 of the GAA.
- [19] Due to the particular circumstances of this case in particular the nature of PH's health concerns, I consider it preferable that the review of the interim order and IC's application for the appointment of a guardian and an administrator be determined at the same time and as soon as possible. This will ensure that the issue of whether the presumption of capacity is rebutted in this case in respect of the particular health care decisions that need to be made in respect of PH's health care matter other than her mental health care matters can be properly considered and determined. The applications are currently listed to be heard on 30 April 2018.
- [20] A stay application is not designed to operate merely as a means of reviewing a decision made by the guardian that a person may not agree with. A stay application is designed to maintain the status quo until the substantive application can be determined. It is an essential means to stop the operation of a decision that would render the outcome of a substantive application nugatory. If the effectiveness of the substantive application is unaffected by a decision made by the guardian then there is no basis for a stay order.<sup>2</sup>
- [21] In *SM*,<sup>3</sup> the tribunal considering a stay application said:

The tribunal has power under section 128 of the GAA to stay a decision of a decision maker to secure the effectiveness of a pending application about that decision. ... It is well established that an applicant for interlocutory relief such as a stay of a decision pending hearing must make out a prima facie case. SSC must satisfy the tribunal that, if the evidence remains as presented at the time of the stay application, there is a probability that at the hearing she will be granted the relief that she seeks. In addition the tribunal must be satisfied that the balance of convenience is in favour of granting the stay. In such a case the tribunal must find that the inconvenience or injury which is likely to occur to SM if the stay is refused outweighs the impact on SM if a stay were to be granted.

### **Does PH have an arguable case in the review?**

- [22] The report provided by PH's advocate<sup>4</sup> states that the PET scan and CT scan with contrast was agreed to by the Public Guardian without the Public Guardian having had an opportunity to meet with PH and obtain her views and wishes, particularly her longstanding views on natural therapies and her objection to undergoing any procedure that involves 'contrast' medium or exposure to any form of radiation – irrespective of the purported minimal radiation content.

---

<sup>2</sup> *SFR* [2014] QCAT 612 at [22].

<sup>3</sup> [2014] QCAT 568 at [10].

<sup>4</sup> ADA Australia on behalf of PH provided a report dated 9 April 2018.

[23] The report also claims that the applications filed at the instigation of the treating team were essentially due to her presentation at that particular time with paranoia and persecutory delusions and she was in a heightened state. The report states that since that time some information has been clarified and corrected. In respect of concerns regarding PH's son, the acute care team has recently assessed him in the home and determined he was not at risk and no intervention was necessary. It is also claimed she has been able to provide further details to the Independent Patients Rights Adviser and her advocate about the use of her superannuation funds. Further, she has had the opportunity to discuss her long standing views about general healthcare and her established breast cancer with IPRA's and her advocate.

[24] It is stated that PH firmly believes that her choices of treatment or refusal of treatment are representative of long held views and practice throughout her life, rather than a product of delusional thought.

[25] It is stated that PH was diagnosed with breast cancer in April 2017 when her mental health was not in question. She agreed to a mammogram, ultrasound and biopsy. She engaged with breast cancer nurses and attended surgical review. The surgeon advised there was a lump (she recalls 4 cm) in her left breast and 'had spread to under my arm' and surgery was a priority. She declined surgery and stated her preference for natural or alternative treatments.

[26] The report goes on:

For nearly 35 years [PH] has chosen alternatives to traditional medicines and methods, in favour of natural therapies. This includes growing and eating organic vegetables; juicing; and the use of vitamin and mineral supplements.

Consistent with her long-standing preference and history of using natural remedies, [PH] has consistently stated that she will not consent to chemotherapy or any procedure that exposes her to radiation, irrespective of amount.

[PH] understands that medical staff may wish to monitor the progress of her cancer, she is agreeable to ultrasound investigation.

[PH] has clearly and repeatedly stated she will not undergo PET-CT scans with contrast, CT scans with contrast and normal X-rays.

[27] It is recorded that she stated the following to her advocate and Ms Duce from IPRA:

1. *If natural remedies fail, she will die. She has already discussed this with her ex-partner and her son. Her ex-partner is currently caring for her son and will continue to do so in the future.*
2. *[PH] is aware medical staff do not support natural therapies, particularly for cancer treatment and would prefer her to undergo aggressive treatments.*
3. *Surgery could possibly extend her life but she does not want it.*

4. *She is aware and has had discussions with doctors previously that breast cancer can spread to other parts of the body and may have done so already. [PH] clearly stated that no one can guarantee that chemotherapy and/or surgery would 'get it all'.*
5. *[PH] has friends who have had cancer and she has witnessed firsthand the negative effects of chemotherapy and states very clearly 'that is not how I want to spend my last days'.*

- [28] PH has never had a PET scan. PH told the tribunal that she did not want anything in her system that was not good for her immune system. PH wants a 'clean immune system to attack the cancer'. She wishes to use natural products such as organic juices and vitamin supplements to build up her immune system. She said she knows she has cancer; she does not need to know where it is. She said she had lived a healthy life for the last 35 years. Ms Boyd also told the tribunal that PH had accessed research on natural forms of chemotherapy. PH denied telling her treating team that she cannot determine what steps she will take for her treatment until various religious meetings are held or that meetings with religious groups will prove she is 'not mental'.
- [29] PH argues that she has capacity to make decisions in respect of her treatment for cancer. It is argued on her behalf that she has not undergone any proper assessment of her capacity for such decision-making and that the current report does not consider her longstanding views in respect of her preferred course of treatment. Dr AS acknowledged that PH had been reluctant to discuss the cancer diagnosis and treatment with her treating mental health team.
- [30] The Public Guardian has also provided a report<sup>5</sup>. In summary, the report states that PH's views were considered as part of the consent process. Dr AS reported to the Public Guardian that she had limited understanding of the treatment recommendation on 22 March 2018 when consent was sought for a PET scan with contrast. It was reported that she changed her mind about having the treatment depending on whether she spoke with the treating team or the IPRA. It is stated that she was not objecting to the treatment recommendation.
- [31] The health care principle was considered. Dr AS reported to the Public Guardian that a CT scan without contrast had been obtained, but the quality of the image was poor. The MRI without contrast image was also poor. Performing a CT scan with contrast is consistent with good medical practice and will indicate if her cancer has spread. The Public Guardian submits it had no grounds not to consent.
- [32] On 27 March 2018, consent was sought for PH to have a CT scan with contrast. Dr AS stated that PH had consented to the procedure but was now too unwell to understand the recommended treatment. As PH objected to the treatment, s 67 of the GAA was considered. The PG

---

<sup>5</sup> Report of Public Guardian dated 5 April 2018.

reported that Dr AS considered s 67(2) satisfied. Dr AS advised that the recommended treatment was the best alternative and was consistent with best medical practice.

- [33] Dr AS explained to the tribunal that the scans are investigative and would identify the primary source of the cancer and whether the tumour has metastasised. Concern was expressed by Dr AS that any metastases in the brain could be impacting PH's decision making. It was noted that no consent has been given by the Public Guardian for a CT scan of the brain at the current time.
- [34] Dr AS explained that the CT scan will scan the bones and the PET scan the soft tissue. One scan on its own is not sufficient to properly investigate the extent of the cancer.
- [35] It is accepted that PH has not previously been admitted to the hospital where she is currently an inpatient nor has she previously been treated by her current treating team. When PH was diagnosed with cancer a year ago, the tribunal did not receive any application. There is no evidence before me to support a conclusion that PH did not have capacity to make the decisions she made about the management of her treatment for cancer at that time. Dr AS completed his report within a couple of weeks of PH's admission when she was acutely unwell. Dr AS does not consider that there has been much improvement in PH's condition stating that she continues to experience delusion.
- [36] While DR AS expressed the view that she may have been unwell for a considerable period of time including as far back as April 2017 when she received her cancer diagnosis, he also accepted that his views about the impact of PH's mental health condition on such decisions were speculative and he was not aware of that background when completing his report.
- [37] Taking into account that the hearing of the application for review of the appointment of the guardian and administrator under the interim order and the application for appointment of a guardian and the appointment of the administrator will be heard on 30 April 2018, Dr AS expressed the view that while it was better that she have the scans as soon as possible, it was perhaps not so urgent that it couldn't wait until 30 April.
- [38] Based on the material before me, I consider that PH has an arguable case on the review of the appointment of the guardian given it was an interim order. It is arguable that there was no immediate risk of harm at the time of the order. Investigative procedures are required to determine the clinically recommended treatment. Further, there is evidence that PH has held the same views about how she would like her cancer treated since her diagnosis in April 2017. There is evidence that she declined surgery and chemotherapy at that time and that appears to be accepted. Dr AS's report does not reflect that history. Further, it may be that, since the report, there has been some improvement in PH's capacity for such decision making.

**Balance of convenience**

- [39] Based on the information before me including the views of Dr AS, I consider that if the stay is granted the impact on PH is not significant, taking into account the period of time since the diagnosis and that the hearing of the review of the interim orders and the application filed by IC will take place on 30 April 2018. Of course, I accept that with such a diagnosis, it is important that decisions are made quickly.
- [40] If the stay is not granted, then the consent to PH having the scans will be in effect and the scans likely be scheduled before the hearing on 30 April.<sup>6</sup> It is likely that PH will not willingly participate in the scans requiring the treating team to take steps in order for the scans to occur. It was accepted by Dr AS that there will likely be a short period of distress caused to PH and that it would be very difficult to force the scans to occur against PH's will. Medication to reduce PH's anxiety around the process was mentioned.
- [41] If the scans occur before the hearing, PH's review application could be considered nugatory to the extent of those procedures. She will be required to undergo a CT scan with contrast and potentially a PET scan against her wishes. To some extent her case in the substantive application will also be undermined. On balance, I consider that the impact on PH if the stay is refused outweighs the impact on PH if the stay were to be granted.
- [42] For those reasons, I have decided that the stay is granted. I make orders accordingly.

---

<sup>6</sup> PET scan scheduled for 18 April.