

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *AJC* [2020] QCAT 16

PARTIES: **In applications about matters concerning *AJC***

APPLICATION NO/S: GAA9028-19 (Appointment of an Administrator);  
GAA9029-19 (Appointment of a Guardian); GAA10639-  
19 (Appointment of a Guardian); GAA10640-19  
(Appointment of an Administrator)

MATTER TYPE: Guardianship and administration matters for adults

DELIVERED ON: 21 January 2020

HEARING DATE: 18 October 2019

HEARD AT: Ipswich

DECISION OF: Member Hemingway

ORDERS:

- 1. The Application by BPN for the appointment of a guardian for *AJC* is dismissed.**
- 2. The Application by *AXY* for the appointment of a guardian for *AJC* is dismissed.**

## **ADMINISTRATION**

- 3. The Public Trustee of Queensland is appointed as Administrator for *AJC* for all financial matters.**
- 4. The Tribunal dispenses with the requirement for the administrator to provide a financial management plan.**
- 5. The Tribunal directs the administrator to provide accounts to the Tribunal when requested.**
- 6. This appointment remains current until further order of the Tribunal. This appointment is reviewable and is to be reviewed in two (2) years.**
- 7. The application by *AXY* for the appointment of an administrator for *AJC* is dismissed.**

CATCHWORDS: HEALTH LAW – GUARDIANSHIP, MANAGEMENT AND ADMINISTRATION OF PROPERTY OF PERSONS WITH IMPAIRED CAPACITY – ADMINISTRATION AND FINANCIAL MANAGEMENT – capacity – presumption of capacity – forensic order implications – whether there is a requirement for a decision-maker for personal and or financial matters to be appointed – satisfaction of unreasonable risk to adult – whether the finding of

impaired capacity requires the appointment of a decision-maker – Appropriateness of appointees

*Guardianship and Administration Act 2000 (Qld)*, s 5, s 7, s 12(1)(a), s 12(1)(b), s 12(1)(c), s 14, s 15, s 16, Schedule 1, Schedule 4

*Mental Health Act 2016 (Qld)*, s 12, s 288, s 289

**APPEARANCES &  
REPRESENTATION:**

Applicant: Self-represented, supported by Carers Queensland Representative GVD

**REASONS FOR DECISION**

**Background**

- [1] AJC ('the adult') is aged 40 and is an inpatient of a secure unit of a mental health facility. He has a long-standing diagnosis of schizophrenia resulting in cognitive deficits. His illness is said to be treatment-resistant. His illness is complicated by a history of substance abuse and often manifests in delusions at times focused on AXY. AJC is subject to a Forensic Order under the *Mental Health Act 2016 (Qld)*.<sup>1</sup>
- [2] The Forensic Order was imposed as a result of a criminal offence where the adult whilst delusional, stabbed his uncle with a knife. The Clinical Report Forensic Order refers to violence and aggression towards himself and others as features of AJC's mental health issues.
- [3] Two applications were made to QCAT. AXY seeks the appointment of herself and the RFM as administrators for AJC.
- [4] BPN's application seeks the appointment of a guardian for decisions about personal matters for the adult, in particular decisions about where the adult should live, service provision, health care decisions limited to decisions which are not embraced by the Forensic order to which the adult is subject.
- [5] BPN proposed that the Public Guardian should be appointed for those personal decisions.
- [6] BPN proposed that the Public Trustee of Queensland should be appointed as the adult's administrator for his financial affairs.
- [7] On 13 September 2019, BPN brought an application for an interim order seeking to withdraw his application for the appointment of an administrator and guardian for AJC.
- [8] The Tribunal refused this application and the matter proceeded to an oral hearing on 18 October 2019.

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<sup>1</sup> *Mental Health Act 2016 (Qld)*, s 12, s 288.

- [9] The jurisdiction of the Tribunal to appoint a guardian or administrator rests on an initial finding by the Tribunal that an adult has impaired capacity for a decision about a matter and that without an appointment his needs will not be met, or his interests will not be adequately protected.<sup>2</sup>

### **The Issues**

- [10] The issues for the Tribunal at the hearing of the two applications in Brisbane on 29 April 2019 were:
- (a) Does AJC have capacity for relevant matters?
  - (b) If not, is there a need for decisions to be made to the extent that, without the appointment of a guardian and or guardian, AJC's needs will not be adequately met and his interests adequately protected?
  - (c) If so, who is appropriate for appointment as AJC's guardian and or administrator?

### **Capacity**

- [11] The *Guardianship and Administration Act 2016* (Qld) ('the Act'), Schedule 4, defines capacity as:

*capacity*, for a person for a matter, means the person is capable of—

- (a) understanding the nature and effect of decisions about the matter; and
  - (b) freely and voluntarily making decisions about the matter; and
  - (c) communicating the decisions in some way.<sup>3</sup>
- [12] AJC is presumed to have capacity in accordance with section 7 of the Act and General Principle 1 under Schedule 1 of the Act. Unless there is sufficient evidence to rebut that presumption, it must stand. The standard of proof required to rebut the presumption is the balance of probabilities.<sup>4</sup>
- [13] The Tribunal was provided with a report entitled Clinical Report Forensic Order (Mental Health) Review - Mental Health Review Tribunal dated 10 July 2019.
- [14] The report outlines the psychiatric history of the adult commencing at age 21 in 1999. It states that AJC's illness is characterised by persecutory delusions, disorganisation and negative symptoms complicated by substance abuse and violent behaviours.<sup>5</sup>
- [15] Under the influence of his delusions subsequent to using cannabis, he was found to have stabbed his uncle. AJC was then placed on a Forensic Order on 17 August 2001. He was incarcerated for a period at Arthur Gorrie Correctional Centre.

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<sup>2</sup> *Guardianship and Administration Act 2000* (Qld), s 12.

<sup>3</sup> *Guardianship and Administration Act 2000* (Qld), Schedule 4.

<sup>4</sup> *Re Bridges* [2001] 1Qld R, 574, 585.

<sup>5</sup> Clinical Report Forensic Order (Mental Health) Review 10/07/19, page 3.

- [16] His medical history includes multiple relapses; involving hospital admissions, use of prohibited substances, and deterioration whilst in the community, increased paranoia as well as periods of flashbacks to the stabbing where he stated to the medical team that he did not wish to act on the thoughts which came to him.
- [17] In the Clinical Report Forensic Order (Mental Health) Review report, Dr S described numerous episodes of mistrust, aggression and paranoid symptoms shown by AJC. Often this behaviour is directed towards AXY.<sup>6</sup>
- [18] AJC continues to have delusions, aggression directed to family, other residents and staff. The Clinical Report Forensic Order (Mental Health) Review states that there have been further occasions where the adult has made threats or acted on his aggressive impulses.
- [19] Ongoing violent incidents continue to occur. He has been secluded on several occasions in regard to these actions. His medication is adjusted to provide some relief to the symptoms.
- [20] The result of a neuropsychological assessment (conducted by a psychologist in high security) showed a marked cognitive difficulty across a wide variety of areas including memory, planning, organisation, processing speed, attention and cognitive flexibility.<sup>7</sup>
- [21] AJC continues to require significant medical intervention to manage his condition.
- [22] Many of AJC's delusions concern money; the management of it by AXY or others and there is a repetitive pattern of frustration, anger and concern in regard to this issue.
- [23] AJC continues to be subject to a Forensic order with limited access to the community conditions. His cognitive deficits were in evidence when recently, AJC required repeated prompting, when on *on grounds* leave, to find his way back to the High Secure Unit.
- [24] The Tribunal was provided with a Financial Integrity Assessment report dated 27 March 2019. The report identifies a lack of insight into the necessary skills required to establish effective money management routines.
- [25] The recommendations of the Report were that AJC required assistance to support his financial decisions and assistance with planning and forecasting expenses. This included both day to day and complex financial matters. This analysis of AJC's financial skills is explored in more detail in the following paragraphs.

#### **Does AJC lack capacity for personal and financial decisions?**

- [26] AJC is subject to a Forensic order the terms of which control where he lives and what services he receives as well as community access and his activities. Whilst in the current location the informal decision-makers have progressed his entitlements to the NDIS funding for which he may be eligible. His mental health care is controlled by the terms of the Forensic order.

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<sup>6</sup> Clinical Report Forensic Order (Mental Health) Review, 10/07/19, pages 5, 9.

<sup>7</sup> Ibid 7.

- [27] In other respects non mental-health care decisions are being made by the Statutory Health Attorney, AXY, who believes the current arrangements are working well.
- [28] Based upon this information, there are currently no decisions required for AJC to make. In any event the Tribunal is satisfied that AJC would struggle to make basic personal decisions due to his cognitive impairment which would impact his ability to consider and make a personal decision.
- [29] The Tribunal is satisfied that the medical evidence and extensive history of mental illness indicate that AJC has significant cognitive impairment resulting from his diagnosis which affect his ability to retain information, to analyse it, to scrutinise it and to come to a decision.
- [30] His capacity is analysed in the Occupational therapy Report (Financial Integrity Assessment) dated 27 March 2019 which states that he has;

Treatment Refractory schizophrenia and extensive psychiatric history. His illness is characterised by persecutory delusions, disorganisation and negative symptoms, complicated by substance abuse and associated with violent behaviours. Relapses are characterised by paranoid delusions that others are poisoning him with illicit substances or medications (and that SAS/Army are protecting him. Grandiose delusions that he is Jesus, God, or Noah) or has connections with royalty), delusions of reference from number plates and auditory and olfactory hallucinations, and paranoid delusions regarding his money and management of his finances<sup>8</sup>

- [31] The medical report and assessment, and analysis of his responses in the Financial Integrity Assessment report establish that AJC does not have capacity according to the required standard to make financial decisions.
- [32] His understanding is limited and there are concerns regarding the informal assistance with respect to finances, which he has been receiving. AJC attended the hearing by teleconference but was not able to make any meaningful contributions to the discussion.
- [33] I have noted the adult's preference, in the event an administrator is appointed for AXY to be appointed.
- [34] The Financial Integrity Assessment notes the deficits in the financial domain;

occur in the current context of schizophrenia and against a background of substance misuse and assessed cognitive difficulties. The author notes that capacity is context –specific, in that the greater the complexity of the decision-makers situation, the higher the demands on the decision-makers ability to understand appreciate reason and make a choice. Through discussion with AJC regarding his broader financial situation, it appears that AJC may have impaired capacity for decision making in relation to his financial matters, both simple and complex.<sup>9</sup>

- [35] The Tribunal accepts this finding based upon the testing and analysis in the Financial Integrity Assessment that the presumption of capacity is rebutted and

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<sup>8</sup> Clinical Report Forensic Order (Mental Health) Review, 10/07/19, pages 3-4.

<sup>9</sup> Occupational therapy Report (Financial Integrity Assessment) dated 27 March 2019, page 12.

concludes that AJC has impaired decision- making capacity for personal and financial matters.

**Is there a need for a decision maker for personal decisions?**

- [36] AJC is currently subject to a Forensic order which was made originally on the 17 August 2001. It was last confirmed on review by the Mental Health Review Tribunal on the 10 July 2019.
- [37] He has resided and is required to reside at the M Location since 12 December 2017 following a transfer from E hospital where he had resided for the previous twelve months.
- [38] The Adult is able to access limited community treatment (LCT)<sup>10</sup> leave which is escorted absences on and off the grounds with a health service staff employee. The LCT Forensic order state that the patient is to be progressed on a *staged and graduated basis*.
- [39] LCT imposes a curfew, with no leave permitted prior to 7am or after 6pm. The Conditions stipulate that the patient must not consume illicit drugs or alcohol to excess and is to be subject to random testing in this regard.
- [40] AJC is not permitted to drive without permission of the treating psychiatrist. There is provision for supervised absence with an approved persons (approved by the authorised doctor.)<sup>11</sup>
- [41] There is currently no discharge planning. The treating team report that there is currently no plan to increase his leave provisions.
- [42] AJC has a granny flat at AXY's residence which is intended to be his residence when he is able to leave hospital.
- [43] AJC is able to access NDIS support through his informal arrangements. AXY advised the Tribunal that she is well able to advance his interests in this regard.
- [44] Any non-mental health concerns are being managed informally under the Statutory Health Attorney regime.
- [45] The Tribunal is satisfied that limited personal decisions are available to AJC due to the Forensic order provisions and that AJC's personal decisions are being made satisfactorily and there is no identified need for the appointment of a guardian.

**Is there a need for the appointment of an administrator?**

- [46] A Financial Integrity Report ('the Report') was prepared after testing AJC.<sup>12</sup> An occupational therapist assessed AJC in regard to his current financial situation with a view to whether he could manage when he transitioned to the wider community and his current performance in managing his own finances and what assistance he may require.

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<sup>10</sup> Forensic order, 10/07/19, page 13.

<sup>11</sup> Forensic Order, dated 10/07/2019.

<sup>12</sup> Occupational therapy Report (Financial Integrity Assessment) dated 27 March 2019, Page 1-15.

- [47] The Report writer assessed AJC in the areas of; Everyday Financial abilities, Financial Judgement, Estate management, Cognitive functioning related to financial tasks Debt management and support services. In all areas except *debt management* in which he was found to be in the average range, he achieved a low standard scores.
- [48] The Report states that AJC does not know his financial affairs with any degree of accuracy. AJC demonstrated partial awareness of his income and expenses but did not consider he needed to budget or plan for expenses.
- [49] He has no history of full time employment and a history of aggressive incidents in the workplace including a threat to staff due to a wage dispute.<sup>13</sup>
- [50] The report writer gave a number of examples of AJC's flawed reasoning in regard to financial matters. For example, AJC told the report writer that he was having difficulty repaying a car loan so he would, "smash his ute into things so, "they wouldn't want it back."<sup>14</sup>
- [51] AJC stated that did not understand the concept of credit and said he never used it. He said that he spent all his money on payday and then not going anywhere.
- [52] AJC gave inconsistent responses in regard to his understanding of his finances; including the amount and whereabouts of his savings.<sup>15</sup>
- [53] AJC stated that he was aware his mother looked after his money and he was okay with that because "she asks me". However the Report writer states that:

Clinical records from 2012 feature reports of financial difficulty, overdrawing his account, thinking that the bank has ripped him off, demanding money from his mother and not stopping until she relents, borrowing money from his mother and having to repay his entire pension amount when paid.

- [54] AJC has difficulty keeping track of his finances. He was unable to accept that his finances were from a Centrelink income and insisted on repeated checking of a fixed but delusional belief as to the amount he was due. He insisted at times that he was being ripped off<sup>16</sup>
- [55] The Report concludes that the cognitive deficits and the symptomology of his illness impact the adult's ability to manage his financial affairs. AJC stated that he does not know how to access his money and that it is safer in many places. He has no history of saving or planning a budget. Most transactions on his behalf are in cash. Numerous parties are able to access his bank account.
- [56] The Tribunal concludes that AJC is vulnerable to financial exploitation due to his limited understanding of financial decision-making.

### **Who is the most appropriate person to be appointed?**

- [57] The possibilities for appointment are the Public Trustee of Queensland who is independent, available and competent to perform the role of administrator.

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<sup>13</sup> Occupational therapy Report (Financial Integrity Assessment) dated 27 March 2019, page 3.

<sup>14</sup> Occupational therapy Report (Financial Integrity Assessment) dated 27 March 2019, page 3.

<sup>15</sup> Occupational therapy Report (Financial Integrity Assessment) dated 27 March 2019, page 9.

<sup>16</sup> Occupational therapy Report (Financial Integrity Assessment) dated 27 March 2019, page 4.

- [58] The Public Trustee of Queensland is proposed as administrator by BPN.
- [59] Private appointees are proposed by AXY. They are AXY and RFM who is the sister of AJC.
- [60] It is not disputed that AXY has a close and continuing relationship with AJC. Limited information was expressed to the Tribunal of RFM's relationship with AJC. RFM remains a signatory to AJC's bank account along with another sibling. RFM was of the view that this arrangement of her having access to AJC's bank account did not result in any risk to AJC. The reasons for this arrangement was not explained by her to the satisfaction of the Tribunal.
- [61] AXY has informally managed AJC's finances for about 20 years. AJC resided in a granny flat attached to AXY's property until 2016 when he was admitted to full-time psychiatric care. AXY remains a long-standing and trusted support and strong advocate for AJC.
- [62] The Tribunal also notes the views and wishes of AJC. He states several times that he wishes AXY to be his financial administrator. This opinion must be weighed by the Tribunal in terms of his diagnosis and his cognitive impairment.
- [63] The Tribunal gives limited weight to this long -standing informal arrangement of AXY and AJC due to the controversial financial management practices adopted by AXY.
- [64] The Tribunal's notes that the informal financial arrangements which lack both transparency and accountability pose considerable risk to AJC's interests. AXY does not understand or accept that her practices are inherently risky.
- [65] The Tribunal also takes into account the references to the ongoing conflict between AXY and AJC over money matters.
- [66] There is a well -documented history of conflict over money and frustration between AJC and AXY relating to the management by AXY of AJC's finances.
- [67] Part of AJC's diagnosis is a propensity for delusions. His delusions focus on a belief that his money has been stolen and that he has had financial abuse. AXY is often the focus of these beliefs and there is a cycle of allegation of abuse and continuing interpersonal conflict with AXY over money.
- [68] AJC's delusions have contributed to the conflict with AXY and others. In 2016, AJC believed AXY was poisoning his meals or drug dealers were entering his property and putting drugs in his food.
- [69] In November 2016, AJC accused AXY of stealing his money and manipulating him. In July 2017 he was treated with multiple treatments of ECT therapy and medical evidence is that he responded well to this treatment.
- [70] In November 2018 he was secluded after becoming unwell. In the period December 2018 he was again aggressive with AXY and ended a visit early. He punched a window when requested to stop swearing. He also made threats against staff.



- [71] In the period December 2018 to February 2019, reports indicate that he had unsuccessful visits with family and was intermittently irritable and blameful towards his AXY on the telephone.
- [72] At the confirmation of his Forensic order on review on the 9 February 2018 later on 12 February 2018 he became distressed and punched a chair stating that he wanted to leave with AXY.
- [73] AJC has become angered with AXY when she failed to attend a visit. There were further instances of aggression towards AXY. AJC was unable to explain the triggers for this, but identified, 'confrontations with his AXY.'
- [74] AJC continues to express the view that AXY is mismanaging his money. Medical opinion is that the ongoing accusations have a delusional basis. Concern was expressed that AXY may be unsafe in continuing her role. Limits were therefore placed upon on phone calls between them.
- [75] AXY disputes this description of the interaction between AJC and her and maintains that she is best placed to manage his finances.
- [76] The Tribunal takes into account that the perceived conflict with AXY may result from the delusions to which AJC is subject and over which he has no control. The origin of the beliefs does not make them less concerning for the risk they pose to AJC's well-being. This is a factor of concern to the Tribunal.
- [77] In addition there are real concerns for the Tribunal concerning how AXY has managed AJC's funds. These impact any decision about the appropriateness of AXY being appointed as administrator in terms of section 15(1) of the *Guardianship and Administration Act 2000* (Qld).
- [78] There have been considerable discrepancies in the way AJC's funds have been managed by AXY. On examination of AJC's in 2019, the treating team concluded that an amount of \$15,420 appeared to be unaccounted for. After inquiry by the treating team, AXY deposited \$12,000 into AJC's NAB account on 14 February 2019.
- [79] It is noted in the Financial Integrity Assessment that despite this deposit by AXY, \$700 continued to be withdrawn in cash from his account representing his entire pension less the amount he pays for accommodation fees.
- [80] AXY explained some of her actions in terms of misunderstanding Centrelink requirements and following her own particular practices involving managing AJC's funds.
- [81] The Tribunal was told in the hearing that AXY has informally managed the adult's funds; but that both the RFM and AJC's brother are able to access AJC's account. This gives rise to the question of how accountability would be ensured by AXY if numerous parties can freely access AJC's account. The reason for this this practice was not clarified satisfactorily for the Tribunal.
- [82] When questioned on the appropriateness of this arrangement, neither the applicant AXY nor RFM regarded this practice as inherently inappropriate. They demonstrated no insight or interest in the need to ensure accountability.

- [83] The Tribunal was also advised that AXY had retained around \$12,000 in cash of AJC's money at home. AXY explained this practice as appropriate as she did not know when AJC might require the funds and that AJC required them to be visible to him. There is no current proposal for AJC to leave hospital. This explanation is also unsatisfactory and lacking credibility.
- [84] AXY thought that the storing of large amounts of cash, "in different places" at home was something that AJC would favour and did not regard it as risky.
- [85] The Tribunal finds that AXY lacks insight into the high standard of accountability required where a person manages funds on behalf of a person with impaired capacity.
- [86] AXY struggles with understanding the need for transparency and accountability in managing the finances of AJC.
- [87] AXY showed no evidence of the need to keep and maintain records of expenditure of AJC's funds. Most transactions of AJC's funds are in cash.
- [88] AXY and RFM's beliefs regarding financial management indicate that it is unlikely AXY or RFM understand the duties of the administrator or would be likely to seek or accept advice. Both were resolute in their view that their practices was appropriate.
- [89] There is an inability on the part of these proposed administrators to apply the general principles in regard to the safe-guarding of AJC's finances.
- [90] The Tribunal finds that AXY lacks insight into the inappropriate nature of her conduct in managing money for AJC. AXY primarily deals in cash transactions, stores large amounts of cash at home, fails to keep records or to ensure accountability for his finances by restricting the number of persons able to access to his bank account.
- [91] There was no satisfactory explanation of the reason for this particular practice. All siblings are adults and the other signatories appear to both have capacity for financial decisions.
- [92] The Tribunal considers the responses of AXY to inquiries regarding the management AJC's funds as unsatisfactory as they are imprudent and fail to accord with the duties of an administrator.
- [93] The evidence is that AXY is in the habit of acceding to the requests from AJC for funds and there is continued disputation around this issue.
- [94] The evidence is that, under the current financial arrangements, AJC lends money and cigarettes to others and that this creates conflict and works against the best health outcomes for AJC.
- [95] The evidence is that \$700 is withdrawn in cash from AJC's account each fortnight and is not accounted for.
- [96] In the circumstances of this case, the Tribunal finds that the appointees proposed by AXY do not meet the appropriate considerations of section 15(1) of the Guardianship and Administration Act 2000.

- [97] AXY is found to lack insight into the general principles and how they apply to the situation for AJC. AXY has misguided and strong views on financial management which are at odds with the legislative duties of an administrator.
- [98] Likewise RFM's application to be appointed joint administrator is rejected for the same reasoning.
- [99] The Tribunal, in reaching this decision has taken into account the close bond between family members and the strong advocacy of AXY for AJC. However, the progression of the AJC's illness and its impact on him and others is not promoted by a continuation of the current financial arrangements.
- [100] The Tribunal is of the view that the stabilisation of the financial affairs of AJC and removal of opportunity for conflict is desirable. The appointment of an independent appointee will provide predictability and may promote better health outcomes for AJC.
- [101] The current informal financial arrangements are haphazard and chaotic. An independent appointee will be best placed to achieve financial stability, security and predictability.
- [102] The Tribunal therefore concludes that there is need for an independent appointee as Administrator or the adult is likely to do something involving or is likely to involve unreasonable risk to finances or property and that without appointment his needs will not be adequately met or interests not adequately protected.<sup>17</sup>
- [103] The application for the appointment of the Public Trustee of Queensland is granted and I have made the appropriate orders.

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<sup>17</sup> *Guardianship and Administration Act 2000 (Qld)*, s 12.