

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *WMJ* [2021] QCAT 283

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

APPLICATION NO/S: GAA2156-21 Review of the Appointment of a Guardian
GAA3023-21 Review of the Appointment of a Guardian
GAA3024-21 Review of the Appointment of an Administrator
GAA6718-21 Application for an Order about an Enduring Power of Attorney
GAA3026-21 Application for Adult Evidence Order
GAA3027-21 Application for Closure Order

MATTER TYPE: Guardianship and administration matters for adults

REASONS
DELIVERED ON: 10 August 2021

HEARING DATE: 3 June 2021

HEARD AT: Brisbane

DECISION OF: Member Traves

ORDERS: **GUARDIANSHIP**

1. **The Public Guardian is appointed as guardian for WMJ for the following personal matters:**
 - (a) **Accommodation;**
 - (b) **Health care;**
 - (c) **Provision of services, including in relation to the National Disability Insurance Scheme.**
2. **This appointment remains current until further order of the Tribunal. The appointment is reviewable and is to be reviewed in two (2) years.**

ADMINISTRATION

3. **The appointment of Jane Bunn as administrator for WMJ for all financial matters is continued.**
4. **The administrator is to provide an updated financial management plan to the Tribunal within three (3) months.**
5. **The Tribunal grants a partial exemption to the administrator from the requirement to provide accounts but directs the administrator to provide to the Tribunal two (2) months prior to the anniversary of this appointment and annually**

thereafter:

- (a) copies of WMJ's bank statements/passbooks/term deposits for the past year;
 - (b) copy of the latest accommodation account or statement for nursing home/hostel/rental property or other accommodation for the period;
 - (c) copy of receipts for any individual items purchased in excess of \$500.00;
 - (d) for any shares, investments or superannuation, a copy of all dividend notices or statements received during the year; and
 - (e) a signed and witnessed Declaration as to continuing appropriateness for appointment.
6. This appointment remains current until further order of the Tribunal. This appointment is reviewable and is to be reviewed in two (2) years.

ENDURING POWER OF ATTORNEY

7. Any purported Enduring Power(s) of Attorney for WMJ are overtaken by the making of these appointments and, in accordance with s22(2) of the *Guardianship and Administration Act 2000* (Qld) can no longer be acted upon to the extent that these appointment(s) have been made.

LIMITATION ORDERS

THE TRIBUNAL ORDERED AT THE HEARING ON 3 JUNE 2021

8. Pursuant to s 106 of the *Guardianship and Administration Act 2000* (Qld), relevant information be obtained from the adult in the absence of anyone else at the hearing on 3 June 2021.
9. Pursuant to s 107 of the *Guardianship and Administration Act 2000* (Qld), all persons other than the Public Guardian and the Public Trustee of Queensland be excluded from the hearing on 3 June 2021 while the applicants address the Tribunal.

CATCHWORDS: HEALTH LAW – GUARDIANSHIP, MANAGEMENT AND ADMINISTRATION OF PROPERTY OF PERSONS WITH IMPAIRED CAPACITY – OTHER MATTERS – limitation orders – whether adult evidence order should be granted – whether closure order should be made

Guardianship and Administration Act 2000 (Qld), s12, s31, s 106, s 107

Human Rights Act 2019 (Qld), s 13, s 48.

APPEARANCES & REPRESENTATION:

Adult:	WMJ
Applicant/s:	XYZ and ABC
Proposed Guardian/s:	Public Guardian
Proposed Administrator/s:	Public Trustee of Queensland
Current Guardian/s:	Public Guardian
Current Administrator/s:	Jane Bunn
Public Guardian:	Brian McKeown
Public Trustee:	Scott Laman
Advocate:	Vivien Boyd, ADA
Interested Person/s:	Mark Dunn, paid carer

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

REASONS FOR DECISION

- [1] On 3 June 2021 an interim order was made renewing the appointment of the Public Guardian for the following personal matters: the provision of services, including in relation to the National Disability Insurance Scheme; accommodation decisions and health care. That appointment remained current for three months or until the date of a further order, whichever was the sooner. The Tribunal also made directions requiring Jane Bunn, the adult's administrator, to provide bank statements for all bank accounts held by WMJ for the periods 28 October 2019 to 1 January 2020 and 1 January 2021 to 3 June 2021 and to provide a copy of all statements by Jakins Accounting in relation to the NDIS fund managed for WMJ.¹

¹ Tribunal Order of 3 June 2021.

- [2] The requested documents were provided by Ms Bunn. On 12 July 2021 the Tribunal issued further directions requiring Ms Bunn to provide a copy of an affidavit which set out the reasons or justification for certain transactions, namely, the purchase by WMJ of a motor vehicle owned by Leisa Wood (a paid carer and Ms Bunn's daughter) on 6 November 2019 for \$500; the purpose for the \$1 000 cash withdrawal on 7 November 2019 and the purpose for the savings account described as "Hawaii savings".² Ms Bunn was also asked to provide proof that the motor vehicle had been transferred into WMJ's name and whether it was a "conflict transaction" within the meaning of s 37(2) of the *Guardianship and Administration Act* 2000 (Qld) (GA Act).
- [3] Ms Bunn provided the affidavit to the Tribunal and to all active parties addressing those issues on 16 July 2021. Ms Bunn provided a receipt and registration of vehicle document which showed that WMJ had purchased the car, a Kia Cerato, for \$500 and that the car had been transferred into his name. Ms Bunn says that the ownership of the car has given WMJ the freedom to engage in social and community events which he enjoys, enables him to attend medical appointments and to travel outside Toowoomba for shows and displays, for example, the Amberley Air Show and the David Hack Classic. The \$ 1000 cash withdrawal was for the purpose of paying Leisa Wood \$500 for the motor vehicle and for online purchases of around \$500 from Sheplers Inc of the USA of cowboy attire. The Tribunal heard evidence at the hearing that WMJ particularly enjoys watching cowboy and western movies. Ms Bunn says that the Hawaii savings account is a sub account of the term deposit held at Suncorp Bank and was set up to facilitate saving for WMJ's long term goals of travelling to Pearl Harbour, to the Australian International Airshow in Avalon, Victoria and to various places in the USA, including the Alamo, Native American Festivals, Texas and the Arizona Monument Valley. I am satisfied by her explanations.
- [4] At the outset of the hearing of the reviews of the appointment of a guardian and administrator, I made a number of limitation orders, including an adult evidence order and a closure order.
- [5] I heard the applicants for the limitations order in private (XYZ and ABC) and then gave an opportunity for other active parties to be heard on the issue. To enable me to hear from XYZ and ABC I made a closure order under s 107(1)(b) of the GA Act. Under s 107 the Tribunal may make a closure order to exclude a particular person, including an active party from a part of a hearing if the Tribunal is satisfied it is necessary to avoid serious risk of harm or injustice to a person.
- [6] The applicants informed the Tribunal that they considered themselves to be at serious risk of harm in giving evidence in relation to the applications for review, were their identities to be disclosed. They outlined their reasons for forming that view. No objections to the proposed closure order were made by any of the active parties. I am satisfied that the applicants felt intimidated and fearful of Ms Bunn and her husband, Mark Bunn and that they had a reasonable basis for so doing. In my view, it was necessary in the interests of justice for the Tribunal to have the benefit of the applicants' evidence and for that reason, I made a closure order to enable the applicants to give their evidence in private.

² Tribunal Order dated 12 July 2021.

- [7] In view of the submissions that had been made for the purposes of the review, in particular that WMJ was unable to make decisions freely and voluntarily due to undue influence by other persons, I was satisfied it was necessary to avoid serious injustice to WMJ for the Tribunal to obtain information from him in the absence of anyone else, excluding the advocate, the Public Guardian and the Public Trustee. Accordingly, I made an adult evidence order to enable that to occur pursuant to s 106 of the GA Act.

The review of the administration and guardian appointments

- [8] Section 31 of the GA Act governs the appointment review process. Under s 31(2) at the end of the review, the Tribunal must revoke its order making the appointment unless it is satisfied it would make an appointment if a new application for an appointment were to be made.
- [9] Under s 31(3) if the Tribunal is satisfied there are appropriate grounds for an appointment to continue, it may either: continue its order; or change its order, including for example, by changing the terms of the appointment or removing an appointee or making a new appointment.
- [10] The Tribunal, on making a new appointment, must be satisfied of the elements in s 12 of the GA Act. It follows, that the Tribunal must also be satisfied of those matters on review.
- [11] Under s 12 may make an appointment of an administrator for a financial matter or a guardian for a personal matter, for an adult if satisfied:
- (a) the adult has impaired capacity for the matter;
 - (b) there is a need for a decision in relation to the matter or the adult is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the adult's health, welfare or property; and
 - (c) without an appointment that either the adult's need will not be adequately met or their interests will not be adequately protected.
- [12] "Capacity" for a person for a matter is defined to mean:
- ...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.
- [13] In exercising the power to make an appointment under s 12 the Tribunal must apply the general principles in s11B(3) of the GA Act and the *Human Rights Act* 2019 (Qld). In particular, the Tribunal must apply the principles that an adult is presumed to have capacity for a matter;³ that an adult's inherent dignity and worth, and equal and inalienable rights, must be recognised and taken into account;⁴ that the adult is entitled to the same human rights and fundamental freedoms that apply to those with

³ GA Act, s 11B(3), General Principles 1.

⁴ GA Act, s 11B(3), General Principles 2(1).

capacity;⁵ and, to the greatest extent practicable, the adult's views, wishes and preferences must be sought,⁶ recognised and taken into account.⁷

- [14] WMJ has microcephaly and a moderate intellectual impairment⁸ and has a diagnosis of diabetes and end stage kidney disease. Dr Karen Richardson of the Palliative Care Unit at the Toowoomba Hospital was asked by the Public Guardian to provide a health report for WMJ. I have relied on the medical report of Dr Richardson dated 25 January 2021 and on the clinical records she provided. In that report Dr Richardson states that WMJ does not have capacity for complex decisions but can make simple lifestyle and financial decisions. The Emergency Department Clinical Summary authored by Dr Tolcher states "early discussion with EPOA Mark; life long friends with [WMJ] as well as his wife Jane...discussed that he has the mentality of an 8 yo child". I have also relied on a medical report by Dr Paul Tingay, a general practitioner in Gatton, dated 26 May 2021. Dr Tingay states in the report that he was approached to complete it by [WMJ], Jane and Mark. Dr Tingay states that WMJ achieved a MMSE score of 24/30 (tested on 18 May 2021) and that WMJ does not lack capacity for healthcare or lifestyle/accommodation decisions. However, Dr Tingay later qualifies this, by stating that WMJ does not have capacity for complex lifestyle/accommodation decisions or financial decisions but that WMJ can make complex health care decisions.
- [15] I do not consider that WMJ has capacity for complex financial or personal decisions. His health needs are complex and, relying on Dr Richardson's report, WMJ does not appear to understand the nature and effect of decisions regarding his diabetes and kidney disease. In relation to both personal (including healthcare) and financial matters, I am satisfied WMJ has impaired capacity and that the presumption of capacity has been rebutted for both personal and financial matters.
- [16] I turn now to consider separately for each appointment, the issues of need for a decision and the appropriate appointee.

Administration

- [17] WMJ lives on his own in a Department of Housing unit. He is in receipt of the pension and is the recipient of NDIS funding. The full accounts provided to the Tribunal in 2019 showed a total asset base of \$22, 593. The accounts provided from 1 January 2020 to 28 January 2021 showed a closing total asset base of \$24 245. WMJ has 4 bank accounts and there is a high frequency of small value EFTPOS, cash withdrawals and transfers between accounts. In my view, there is a need for ongoing financial management of WMJ's pension and of his NDIS funding, as well as payment of all expenses. WMJ needs the assistance of an administrator to do this.
- [18] The accounts have been reviewed by QCAT's financial management team, including the accounts to redress gaps as requested by the Tribunal on 3 June 2021. Ms Bunn was also directed to provide an affidavit addressing certain issues as outlined above. The examination has not revealed anything untoward in the management of WMJ's finances. In my view, there is, accordingly, no basis to remove Ms Bunn as

⁵ GA Act, s 11B(3), General Principles 2(2).

⁶ GA Act, s 11B(3), General Principles 8(4).

⁷ GA Act, s 11B(3), General Principles 10(3).

⁸ Specialist Palliative Care Service Referral Toowoomba Hospital, 20 November 2020.

administrator.⁹ Further, Ms Bunn's continued appointment as administrator accords with WMJ's expressed views, wishes and preferences, as clearly expressed by WMJ at the hearing and also by his advocate, Ms Boyd.

- [19] Accordingly, I continue the appointment of Jane Bunn as administrator for WMJ, until further order, reviewable in two years.

Guardianship

- [20] WMJ has a current NDIS plan from 13 September 2019 to 12 September 2021 totalling \$234, 388.76. Ms Bunn was appointed as WMJ's NDIS nominee on 8 January 2018. The Public Guardian's Report dated 31 May 2021 states that Ms Bunn identified ProHealth Australia as WMJ's preferred support coordinator. Ms Bunn's husband, Mark Bunn and their daughter, Leisa Wood are WMJ's paid carers. Leisa Wood is paid to provide 6 hours of support for Monday, Tuesday and Wednesday while Mark Bunn is paid to provide support for 6 hours on Thursday and Friday and 2 hours on Saturday and Sunday.¹⁰ I find there is a need for ongoing decisions to be made regarding WMJ's NDIS plan, support coordination and funding and that without an appointment for service provision, WMJ's needs would not be adequately met.
- [21] WMJ has ongoing complex health care needs and his condition is deteriorating. WMJ may require hospitalisation or a future palliative care placement and decisions will be required in relation to those matters.
- [22] Concerns were raised at the hearing regarding the suitability of WMJ's accommodation, particularly in the context of his health care needs. There was also a concerning incident involving a fire at the unit complex where WMJ resides when emergency services attended but WMJ did not answer the door. Given WMJ's deteriorating health and the possibility that WMJ may soon require 24/7 support, a decision maker is required for accommodation matters.
- [23] I am satisfied that the appointment of a guardian is therefore required for the areas of accommodation, the provision of services in relation to the National Disability Insurance Scheme and healthcare.
- [24] The Public Guardian was appointed guardian for decisions in relation to the provision of services, including the NDIS on 18 March 2020. On 11 March 2021 the Public Guardian was also appointed guardian for decisions about accommodation and healthcare.
- [25] In my view, the appointment of the Public Guardian should be continued. I am not satisfied that there is otherwise an appropriate person for appointment.¹¹
- [26] WMJ has no one in his life. He was, according to the medical notes, abandoned at birth. He refers to Jane Bunn as "mummy" although he met her and Mark Bunn around 5 years ago through the tobacco shop that the Bunns owned. On 6 June 2019 it appears that WMJ entered into an enduring power of attorney, purportedly appointing Jane Bunn as attorney for personal/health matters. It also became apparent during the hearing that WMJ had recently made a will. I asked Ms Bunn

⁹ GA Act, s 31(4).

¹⁰ Statement by Jane Bunn filed 31 March 2021.

¹¹ GA Act, s 31(6).

who drove WMJ to the solicitors to make the will, and she replied that she had. WMJ then interjected and, with a raised voice, said that he would not say who was in his will. Ms Bunn has acted as the decision maker for WMJ's NDIS plan although the Public Guardian was the formal appointee. I am not satisfied that WMJ is receiving the support that he should be, given the extent of his NDIS package. The medical professionals that gave evidence described the inability of the carers to give WMJ his insulin or to monitor his glucose levels, the apparent scarcity of food at his premises, his poor health and instances of WMJ being discharged when unwell and against the advice of his treating team.

- [27] In my view, given the above circumstances, it is appropriate to continue the appointment of the Public Guardian and I order accordingly. I note that any purported enduring power of attorney for WMJ is overtaken by the making of this appointment and, in accordance with s 22(2) of the GA Act can no longer be acted upon to the extent that this appointment has been made.
- [28] In making this decision I have taken into account the *Human Rights Act* 2019 (Qld). I am satisfied that WMJ was given the opportunity for his views, wishes and preferences to be made known to the Tribunal. Ms Boyd, advocate for WMJ also assisted in that regard. I have adhered to WMJ's views, wishes and preferences by maintaining Ms Bunn's appointment as administrator. However, I have continued the appointment of the Public Guardian. This should not impact on the friendship that the WMJ and the Bunns claim to have or to the care arrangements, provided the Public Guardian are satisfied that they are appropriate for WMJ's needs. To the extent that WMJ's human rights are limited by the making of these appointments, I am satisfied that such limits are reasonably justified due to the importance of protecting WMJ from serious harm. I am satisfied that there is no less restrictive and reasonably available way to achieve that purpose.