

The Guardian



Tasmanian health service appeals decision allowing elderly amputee to live on yacht

Man known as J, who was held against his will in hospital for eight months, faces second court battle

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An elderly amputee who recently won a legal challenge to be permitted to live on his yacht, after being held against his will in hospital, is now gearing up for second court battle.

In April, the man, who is known as J in supreme court documents, was given the all clear to return to his boat after being held in hospital under a guardianship order for eight months.

The Tasmanian health service is now appealing the decision on three legal grounds and the case is expected to go back to court in August.

J's lawyer, Christian Street, told Guardian Australia that his client was a private man.

"J does not wish to comment on the substance of any of the matters currently under review, but we can confirm he is back living on his yacht and enjoying his freedom," Street told the Guardian.

Lawyers for the health service will argue the judge erred by re-hearing all the evidence before Tasmania's guardian and administration board, failed to properly apply a legal test and should

not have made findings of fact.

The man had lived alone on a yacht until 11 May 2018 when it ran aground in a storm. He visited a pharmacy and sought advice about his foot, which was causing him discomfort.

The pharmacist told him to go to the Royal Hobart hospital and he was admitted with a gangrenous foot. He underwent four operations and on 4 July his right leg was amputated above the knee.

When he was close to being discharged, after undergoing rehabilitation, the man told hospital staff that he intended to return home to his yacht, which he planned to berth at a marina.

An occupational therapist and physiotherapist visited the yacht in mid-August and decided it couldn't be modified to accommodate his physical requirements and satisfy safety considerations.

J refused to consider living elsewhere, so a hospital social worker filed an application to the guardian and administration board. The board concluded that J lacked capacity to make reasonable decisions about his accommodation.

J's appeal to the Tasmanian supreme court considered a report by doctor Madeline Black that characterised J as having a disability - "cognitive impairments presumed secondary to cerebral small vessel ischaemia in the setting of poorly controlled type 2 diabetes".

"[J's] poor insight, reasoning, judgment and decision making skills put him at high risk in the community," Black wrote. "He does not appreciate the many safety concerns associated with living onboard a boat."

J's legal team relied on evidence from geriatrician Dr Jane Tolman, who found he scored well on all cognition tests and saw no evidence of "cognitive impairments" or "poor safety awareness".

"He demonstrated insight into the difficulties of his amputation, the nature of his stump wound, and his plans for the future, including a prosthesis, modifications to his yacht, the need for a personal alarm and how to obtain one," she said.

Tolman found him to have above average problem-solving skills and to be very focused about how to achieve his goals. She said he had not led a "conventional life".

The aged care royal commission and the upcoming national inquiry into the disability sector have both been looking at the issue relating to the independence of older Australians and people with a disability.

On Thursday, the royal commission heard evidence that elderly people are being denied the dignity of risk.

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