90871-1

Supreme Court No.

Court of Appeals No. 70354-4-1

SUPREME COURT OF THE STATE OF WASHINGTON

Yevgeny Semenenko and Natalya Semenenko,

Appellant/Petitioner,

v.

Department of Social and Health Services,

Respondent/Respondent.

PETITION FOR REVIEW

Meagan MacKenzie, WSBA #21876
Deborah Perluss, WSBA #8719
NORTHWEST JUSTICE PROJECT
711 Capitol Way S., Suite 704
Olympia, Washington 98501
Tel. (360) 753-3610 ext. 222
Meaganm@nwjustice.org
Attorneys for Petitioners Yevgeny and
Natalya Semenenko

ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES

Statutes

TABLE OF AUTHORITIES

Other Authorities

Rules

I. Identity of Petitioners

Petitioners Yevgeny and Natalya Semenenko appealed an administrative finding by the Department of Social and Health Services (DSHS or the Department) that they committed child abuse. The Court of Appeals upheld an administrative order that dismissed their appeal, thus denying them a hearing on the merits of the finding. The Semenenkos challenge the order on the ground that the Department exceeded its statutory authority by entering the finding well after the mandatory deadline required for it to do so. Alternatively, they seek a hearing on the merits, which the Semenenkos were denied because they failed to request internal agency review within 20 days of receiving notice of the findings.

II. Court of Appeals Decision

The Court of Appeals issued its unpublished opinion on August 11, 2014.[1] The Court denied the Department's Motion to Publish the Decision on September 4, 2014.[2]

III. Issues Presented for Review

1. Did the Court of Appeals err in ruling that the Department's failure to comply with a mandatory statutory time limit was merely a "procedural irregularity" that does not render the findings entered outside that time limit *ultra vires* and therefore void?

---

[1] Appendix at 1-14 (Decision).
[2] Appendix at 15 (Order Denying Motion to Publish)

2. Did the Court of Appeals err in ruling that a 20-day statutory deadline to request internal agency review of an administrative abuse finding is an absolute bar to obtaining a hearing, even though the controlling regulations allow relief from default for "good cause"?

IV. Statement of the Case

Yevgeny and Natalya Semenenko immigrated to the United States from Estonia and the Ukraine, respectively, in 1989. They speak English conversationally but have difficulty understanding complex legal concepts in English. (CP 14, 23-24). In 2009, the Semenenkos struggled to help their 17 year old daughter, Letitciya, the youngest of their five children, fight her severe drug addiction. With the help of a counselor, their daughter finally agreed to inpatient treatment. (CP 61, 63-64).

On November 9, 2009, the Semenenkos and their daughter arrived at the drug rehabilitation center around 2:00 a.m. Shortly after arrival, Letitciya went into the bathroom, locked the door and refused to come out. When the Semenenkos were finally able to enter the bathroom, they saw Letitciya using intravenous drugs. Fearing for her life, the Semenenkos tried to intervene and asked the facility clerk to call 911. (CP 14-15, 61). The Semenenkos ultimately were able to remove Letitciya from the bathroom and block the door when she tried to re-enter. Letitciya was heavily drugged, fell to the ground, and a struggle ensued. (CP 61-62).

The incident was captured on videotape.[3] DSHS received the report of possible abuse on or around November 10, 2009. (CP 92, 96).

The Department sent a Child Protective Services (CPS) social worker to the Semenenkos' home. The social worker visited the home on two or more occasions, and the Semenenkos had multiple conversations with CPS. (CP 19, 33). After a few weeks, the CPS worker told the Semenenkos that all issues had been resolved and the case was being closed. (CP 9, 34). The Semenenkos received a letter dated December 3, 2009 confirming that CPS had closed their case. (CP 8, 9, 34). The notice gave no indication that CPS found the Semenenkos to have abused their daughter or that an investigation was still pending. (CP 8).

On April 16, 2010, after no contact for over four months, and more than two months past the statutory deadline, the Department sent a four page letter to each of the Semenenkos informing them it had determined the November 9 incident was "child abuse". (CP 92-101). Letitciya was with her parents when they received the letters, and all three of them were confused and upset. (CP 9, 15, 34). Because Letitciya speaks better English than her parents, she called the CPS supervisor who signed the letter, explained that her parents had never abused her, and asked how to correct the error. (CP 9, 34).

[3] The record suggests that the videotape was of poor quality. (CP 61).

The DSHS supervisor told Letitciya that since the case was closed, the letter must be a mistake and not to worry about it. (CP 9, 15, 34). The supervisor gave no other advice. (CP 34). In reliance on this information, the Semenenkos did not seek review of the finding or make any further inquiry. (CP 9, 16, 62, 74).

In November, 2010, Natalya Semenenko was fired from her job as a caregiver when a periodic background check disclosed the CPS finding of abuse.[4] Along with the stigma of being named a child abuser, Natalya lost her income and health insurance for the family. (CP 62).

On March 25, 2011, the Semenenkos sought review of the finding. (CP 106-07). DSHS denied review because more than 20 days had passed since the Semenenkos received written notice of the finding. (CP 106-07). The Semenenkos requested an administrative hearing to challenge the determination. (CP 105). On October 5, 2011, with the Semenenkos acting *pro se*, an Administrative Law Judge granted the Department's Motion to Dismiss because they did not request internal agency review within 20 days. (CP 77). The DSHS Board of Appeals affirmed on May 10, 2012. (CP 66-72). The Semenenkos filed a petition for judicial review in King

[4] Such a finding is an automatic and mandatory bar to any position involving unsupervised contact with children or vulnerable adults. The employer is required to run the background check and may not employ anyone with a disqualifying finding in such a position. *See* RCW 74.39A.056 (2), "Background Check Central Unit," DSHS website at http://dshs.wa.gov/bccu/ *See also* WAC 388-06-0700 *et seq.*

County Superior Court on June 28, 2012. The King County court upheld the administrative decision on April 16, 2013. (CP 1, 39). The Semenenkos filed a notice of appeal on May 14, 2013. (CP 38). The Court of Appeals affirmed on August 11, 2014.

V. Argument for Why Review Should Be Accepted

A. The Court of Appeals erred when it ruled that DSHS' failure to comply with a mandatory 90-day deadline by which it must investigate and make a finding that a report of child abuse is founded or unfounded is merely a "procedural irregularity" and does not render the finding void. [5]

Yevgeny and Natalya Semenenko are suffering what DSHS concedes are the devastating consequences[6] of being tagged as child abusers. Natalya was fired from her job, and they both are permanently barred from any position involving unsupervised contact with a child or vulnerable adult.[7] The consequences of the agency finding are harsher than many criminal convictions.[8] The Semenenkos have consistently denied they committed abuse, and they have never had a hearing on the merits to show they are innocent.

---

[5] In 2010, the 90-day time limit was set out in RCW 26.44.030(11)(a). The statute was amended effective Dec. 1, 2013 (Laws of 2012, ch. 259 § 3). The identical provision is now in RCW 26.44.030(12)(a), which petitioners use for ease of reference.

[6] Respondent's Brief on Appeal at 1.

[7] WAC 388-113-0030.

[8] For example, a criminal conviction for simple or fourth degree assault, second or third degree theft, or forgery does not automatically disqualify an applicant from employment with access to vulnerable adults. RCW 43.43.842(2). Further, while criminal convictions can be sealed, vacated or expunged, DSHS findings cannot. RCW 9.94a.640, RCW 9.95.240, RCW 9.96.060, RCW 13.50.50.

The Court should grant review under RAP 13.4(b)(4) because the Court of Appeals held that the 90-day statutory time limit within which DSHS *must* act under RCW 26.44.030(12)(a) is merely "procedural" and of no force or effect with respect to the agency's authority to issue abuse findings. The Court of Appeals did not analyze the language of the 90-day statute, the underlying legislative policy, the lack of any agency rationale for the delay, or the impact on the Semenenkos. The Department's failure to comply with the statutory deadline is not isolated to this case.[9]

While excusing the Department's non-compliance with a deadline set by the legislature and its own rule, the Court of Appeals held that a statutory deadline within which the Semenenkos should have asked for internal agency review (RCW 26.44.125(2)) *is* so inherently rigid that missing it is a jurisdictional bar to a hearing, regardless of cause.

This case raises a fundamental question: Does the Department's authority to enter a permanent, irreversible finding of abuse extend beyond the legislature's expressly imposed time limit? These findings impair substantial rights. The legislature requires the Department to conclude

---

[9] *See* Court of Appeals, *slip op.* p. 8, referencing other recent cases subject to judicial review on this basis. *See also, Tacoma News Tribune,* quoting DSHS Secretary Kevin Quigley, on the agency's failure to meet its statutory mandate: "[t]there should be zero cases open more than 90 days." http://www.thenewstribune.com/2014/09/08/3368784_dshs-secretary-says-agency-running.html?sp=/99/289/&rh=1

investigations promptly to further its multi-faceted intent to protect children, the family unit, and the due process rights of the accused. With one limited exception, RCW 26.44.030(12)(a) requires that "in no case shall the investigation extend beyond 90 days." The public must be able to rely on an express legislative mandate that limits the power of a state administrative agency to take extraordinary extra-judicial action.

The Court of Appeals misconstrued the legislature's explicit limitation on the grant of this extraordinary authority. Under the Court of Appeals ruling, the statutory language is rendered meaningless, and DSHS has no effective limit on its authority or requirement of prompt action to investigate possible abuse and take appropriate steps. This case raises an issue of substantial public interest, one of first impression, which should be determined by the Supreme Court.

1. The 90-day statutory limit in RCW 26.44.030(12)(a) is clear and unambiguous.

The legislature was cognizant of the extraordinary power it was instilling in the Department to make extra-judicial findings of abuse – determinations that not only create a significant stigma, but can impair the ability of a person to work for the rest of his/her life. As an administrative agency, DSHS has only those powers expressly conferred upon it.[10] It is

[10] *State v. Munson,* 23 Wn. App. 522, 524, 597 P.2d 440 (1979) ("Administrative agencies are creatures of the legislature without inherent or common-law powers and may

authorized to investigate and issue findings on a report of alleged child abuse within 90 days. RCW 26.44.030(12)(a). The time frame furthers the legislative intent to promptly protect children who are in danger of abuse. DSHS issued findings against the Semenenkos 158 days past the report of possible abuse, well beyond the statutory limit. By failing to comply with the deadline, DSHS exceeded the scope of its legislative authority, and the findings should be declared void.

The statute is mandatory as expressed and as to purpose:

> For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation *shall be* conducted within time frames established by the department in rule. *In no case shall the investigation extend longer than ninety days from the date the report is received,* unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. *At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.*
>
> RCW 26.44.030(12)(a), emphasis added.

The statute authorizes DSHS to set timelines for its investigation subject to the 90-day limit. DSHS' own regulation sets a goal that, "CPS attempts to complete investigations within forty-five days", but otherwise

---

exercise only those powers conferred either expressly or by necessary implication."); *Kabbae v. Dep't. of Soc. and Health Serv.*, 144 Wn. App. 432, 440, 192 P.3d 903 (2008) ("...an agency only has those powers that are conferred either expressly or by necessary implication.")

adopts the statutory mandate as the absolute limit: "in no case shall the investigation extend beyond ninety days."[11] The Court of Appeals acknowledged that DSHS failed to comply with the 90-day limit.

DSHS has never argued that the one exception to the time limit applies in this case. But the presence of an exception itself reinforces the mandatory nature of the statute. Only if the legislature intended 90 days as a strict deadline would it be necessary to explicitly carve out an exception. DSHS has no authority outside the exception to enter an abuse finding once the legislatively imposed 90-day deadline has passed.

In determining the Department's failure to meet the deadline was "a procedural irregularity", the Court of Appeals minimizes the importance the legislature placed on the requirement: "*In no case* shall the investigation extend longer than ninety days from the date the report is received.... At the completion of the investigation, *the department shall* make a finding that the report of child abuse or neglect is founded or unfounded." RCW 26.44.030(12)(a), emphasis added.

"In no case" is more than merely procedural; it establishes a substantive mandate that defines and limits the scope of the Department's authority to issue a finding of abuse. In *State ex. rel. Petroleum Transp. Co.,* this Court held that, in regard to the State's issuance of a trucking

[11] WAC 388-15-021(7).

permit, the statutory mandate that "[n]o permit or extension thereof shall be granted...." meant exactly what it says, and that "no" and "shall" allow for no exception.[12] In this case, the statutory mandate "*in no case shall*" similarly allows for no exception.

2. *The 90-day time limit carries out the legislative intent to protect children, ensure family stability, and protect the due process rights of those accused of child abuse.*

In ruling that the "Department's failure to make the finding within 90 days was not an *ultra vires* act," the Court of Appeals cites *South Tacoma Way LLC. v. State,* 169 Wn.2d 118, 123, 233 P.3d 871 (2010). *Slip op.* at 8.[13] However, the Court of Appeals misreads *South Tacoma Way* as authorizing any agency action that is arguably within its general authority over the subject matter at issue, without regard to the specific statute and underlying legislative policy that limits the scope of that authority. In *South Tacoma Way,* this Court distinguished between an agency's non-compliance with substantive and procedural statutes for purposes of finding agency action *ultra vires*. But the Court did not limit its analysis to that distinction. The holding requires a court to analyze a

---

[12] *State ex. rel. Petroleum Transp. Co., et. al. v. Washington Public Service Commission,* 35 Wn.2d 858, 862, 216 P.2d 177 (1950) ("The department is a creature of statute and must obey the mandate of the legislature in word and spirit.")

[13] The Court of Appeals decision erroneously states that "it is undisputed that the Department was authorized to make a finding of child abuse." With due respect to the Court of Appeals, the Semenenkos have always argued that the agency lacked authority once the 90-day deadline passed, and that premise is the crux of the issue in this case.

statutory requirement on its own terms as to whether it is substantive or procedural and if procedural, whether agency non-compliance is inconsistent with the underlying legislative policy. If so, violation of a procedural requirement is *ultra vires*, rendering the agency action void.[14]

The *South Tacoma Way* Court distinguished that case from the situation in *Noel v. Cole.*[15] In *Noel,* this Court recognized the continuing "vitality" of the *ultra vires* doctrine as to governmental entities. The Court ruled that "[a]n agency may lack authority to make a contract for a multitude of reasons. It may simply lack *any* power to contract in the government's name. More commonly, an agency steps outside its authority by failure to comply with statutorily mandated procedures."[16] In *Noel,* the procedural defect was the agency's failure to prepare an Environmental Impact Statement - a mandatory statutory requirement - prior to selling timber on land held in trust for educational purposes. This Court held the contract of sale was void, even though the agency had "general authority" to sell timber on such land.[17] The Court should grant review of this case to clarify this important aspect of *South Tacoma Way.*

---

[14] *South Tacoma Way*, 169 Wn.2d at 125.
[15] 98 Wn.2d 375, 655 P.2d 245 (1982).
[16] *Id.* at p. 378.
[17] *Id.*

3. *Proper application of South Tacoma Way in this case renders the abuse finding void.*

The Court of Appeals did not undertake the analysis required under *South Tacoma Way.* In order to determine if an agency action in violation of a statutory mandate is void, a court must look to the specific language and underlying policy of the statute. The primary purpose of RCW 26.44 is to protect children. This includes alleged victims and children who might be exposed to harm in the future. By requiring DSHS to conclude investigations and render an abuse determination (as founded or unfounded) within 90 days, the legislature furthers the intent to swiftly determine the potential for harm and take appropriate protective action. The mandatory time limit also furthers the legislature's explicit emphasis on protecting the due process rights of parents and others in the course of child abuse investigations:

> [P]arents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process, that protection of children remains the priority of the legislature, and that this protection includes protecting the family unit from unnecessary disruption.
>
> RCW 26.44.100(1).[18]

---

[18] *See, Tyner v. Dept. of Social and Health Serv.,* 141 Wn.2d 68, 79, 1 P.3d 1148 (2000) ("The procedural safeguards protect both children and family members; children are protected from potential abuse and needless separation from their families and family members are protected from unwarranted separation from their children.")

The 90-day limit is also consistent with the overall legislative purpose. The legislature recognizes the explosive impact of an abuse finding.[19] The legislature is careful to acknowledge the harmful impacts of empowering an administrative agency to make quasi-criminal findings and the need to protect the fundamental rights of persons accused, while also pursuing the duty to protect children. "When the plain language is unambiguous—that is, when the statutory language has but one meaning—the legislative intent is clear, and the statute will not be interpreted otherwise."[20] The Department has a duty to quickly resolve reports of abuse: to act quickly to protect children by timely, affirmative intervention when that is warranted, and to timely dismiss reports that cannot be substantiated. Affected families should not be faced with uncertainty of an indefinite duration as to the status of their relationships, livelihoods and/or potential for interference by the state.

The established time limit to complete the investigation and issue findings is not merely aspirational or procedural; it is fundamental to the purposes the legislature intends to fulfill. The Court should accept review (1) to provide clear guidance on the impact of the Department's failure to

[19] RCW 26.44.010.
[20] *State v. Thompson*, 151 Wn.2d 793, 801, 92 P.3d 228 (2004).

meet the statutory deadline and (2) to clarify when a statutory limit on agency action renders action outside the limit *ultra vires* and hence void.

B. The administrative remedy of "good cause" for not complying with a deadline to request agency review provides relief from default.

This Court should also review the Court of Appeals ruling that "good cause" under WAC 388-02-0020 is unavailable to provide relief from default due to an untimely request for internal agency review of abuse findings because such relief is not authorized by the internal review statute, former RCW 26.44.125(2).[21] Administrative findings of abuse have severe, permanent consequences. Courts disfavor defaults, and administrative findings that have similar force and effect as court orders should be afforded the same relief as allowed in judicial tribunals.[22]

WAC 388-02 governs all administrative hearings involving DSHS agency action and supplements the APA.[23] In the vast majority of DSHS administrative hearings, aggrieved parties are *pro se*.[24] Thus the Court of

---

[21] The 2012 amendments expand the time period for which an alleged abuser can request internal review to 30 days. Laws 2012, c 259 §11. It also separated subsection (2) into two sections and added an exception: "unless he or she can show that the department did not comply with the notice requirements of RCW 26.44.100."

[22] *See, e.g. Ames v. Dept. of Labor and Industries,* 176 Wn. 509, 513-14, 30 P.2d 239 (1934) ("Certainly the department, like the courts, must consider equitable rules in all proper cases."); *Rodriguez v. Dept. of Labor and Industries,* 85 Wn.2d 949, 540 P.2d 1359 (1975) (applying equitable tolling of statute of limitations to farmworker who due to limited English and extreme illiteracy was unable to understand agency order.)

[23] WAC 388-02-0005.

[24] Brodoff, Lifting Burdens: Proof, Social Justice, and Public Assistance Administrative Hearings, 32 N.Y.U. Rev. L. & Soc. Change 131, 133 (2008).

Appeals decision raises a serious issue of substantial public interest that should be determined by the Supreme Court.

WAC 388-02-0020 provides that a party who failed to appear, act or respond to an agency action may be excused for "good cause":

> (1) Good cause is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the ALJ must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.
> (2) Good cause may include, but is not limited to, the following examples.
> (a) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or
> (b) You could not respond to the notice because it was written in a language that you did not understand.

The regulation does not limit "good cause" to the two examples listed, but mandates that Civil Rule 60 be used as a guideline.

RCW 26.44.125 provides in relevant part:

> (1) A person who is named as an alleged perpetrator after October 1, 1998, in a founded report of child abuse or neglect has the right to seek review and amendment of the finding as provided in this section.
> (2) Within twenty (now thirty) calendar days after receiving written notice from the department under RCW 26.44.100 that a person is named as an alleged perpetrator in a founded report of child abuse or neglect, he or she may request that the department review the finding .... The request must be made in writing. If a request for review is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.

WAC 388-02-0020 serves the same equitable purpose as CR 60(b): to relieve litigants of adverse legal consequences by default under certain circumstances. Just as CR 60(b) provides relief from failure to meet response timelines in civil actions established by statute or court rule,[25] so too does WAC 388-02-0020 with regard to agency action under the APA.

The Semenenkos can demonstrate good cause and should be relieved from a quasi-criminal finding of child abuse made without a hearing on the merits.[26] The Semenenkos received inconsistent communications in writing from DSHS. In December 2009, DSHS notified the Semenenkos their child welfare case was closed. (CP 8). The Department sent contradictory letters four months later. (CP 92-99). There is no evidence controverting the testimony that their daughter called the phone number on the finding letters and spoke with the person the letters identified as a "CPS Supervisor", who told her the letters were a mistake and not to worry about it. (CP 35, 94, 98).

The Semenenkos meet the basic elements necessary to prevail under CR 60(b). They (1) have a defense to the allegations; (2) they failed to timely seek review because they were misled in the need to do so; (3)

---

[25] *See, e.g. White v Holm,* 73 Wn.2d 348,352, 438 P.2d 581 (1968).

[26] Moreover, if RCW 26.44.125(2) is held to be an absolute bar to an administrative hearing, then a significant issue exists as to whether the internal agency review requirement is an unconstitutional barrier to due process. If so, then application of the bar to preclude the right to a hearing is unconstitutional and should be invalidated.

there was at the least a "procedural irregularity" due to the untimely entry of the finding and the confusing contradictory notices; (4) they acted with due diligence after discovering the finding had been made final by default; and (5) DSHS will not be prejudiced if the finding is vacated.[27]

The Court of Appeals determined that the failure to ask for internal review within 20 days of receiving notice creates an absolute bar to any process for disputing an administrative finding that one has committed child abuse. In essence, the Court of Appeals ruled that failure to timely seek internal agency review under RCW 26.44.125 is a jurisdictional bar to obtaining an adjudicative proceeding under the APA. In reaching this conclusion, the Court of Appeals did not analyze the legislative intent of the internal review requirement. However, in determining whether a filing deadline is jurisdictional, a court must examine the legislative intent.[28]

The United States Supreme Court has recently tried to bring "some discipline to the use of the term 'jurisdiction'...", adopting a "bright line" test to ascertain the intent of certain agency deadlines in legislation.[29] In

---

[27] *White v. Holm*, 73 Wn.2d at 352; *Sacotte Const., Inc. v. National Fire & Marine Ins. Co,* 143 Wn. App. 410, 417, 177 P.3d 1147 (2008).

[28] *Nickum v. City of Bainbridge Island,* 153 Wn. App. 366, 376, 223 P.3d 1172 (2009) (equitable tolling applied to administrative filing deadline) citing *In re Pers. Restraint of Hoisington,* 99 Wn. App. 423, 431, 993 P.2d 296 (2000) (no reference to jurisdiction in filing statute indicates legislative intent that deadline not jurisdictional).

[29] *Sebelius v. Auburn Regional Medical Ctr.*, 133 S.Ct 817, 824, 184 L.Ed.2d 627 (2013) (The Court inquires whether Congress has "clearly stated" that the rule is jurisdictional; absent a clear statement, courts should treat the restriction as nonjurisdictional).

Henderson v. Shinseki, the Court distinguished between Congressional intent to establish a jurisdictional time bar or a "processing rule" in holding that a 120-day statutory Veterans Claims Court filing deadline is subject to waiver.[30] Noting that the administrative Veterans claim review process is informal and non-adversarial, the Supreme Court held that even though the 120-day limit for seeking review was expressed in mandatory terms, the statutory scheme did not demonstrate Congress' intent that the limit is jurisdictional.[31] In other cases, the U.S. Supreme Court has ruled that applying a technical reading to an administrative filing deadline would be "particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process."[32]

Similarly, this Court should construe the internal review requirement at issue here as non-jurisdictional. Like the Veterans claim process, the internal review is an informal, non-adversarial supervisorial review of a determination that abuse has occurred.[33] Accused persons typically seek review unassisted by lawyers. The legislature framed the

---

[30] *Henderson v. Shinseki,* 131 S.Ct. 1197, 1204-05, 179 L.Ed.2d 159 (2011) (noting the Veterans Court is part of a unique administrative scheme and not an article III court).
[31] *Id.* at 1206.
[32] *Zipes v. Trans World Airlines, Inc.,* 455 U.S. 385, 396-97, 102 S.Ct. 1127 (1982) (filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling), *quoting Love v. Pullman Co,* 404 U.S. 522, 597, 92 S.Ct. 616, 30 L.Ed.2d 679 (1972); *see also Sebelius v. Auburn Regional Medical Ctr., supra* (internal agency appeal deadline not jurisdictional).
[33] *See* WAC 388-15-093, describing the internal review process and information considered.

internal review process as a "*right* to seek review" and permissive: "an alleged perpetrator ...*may* request that the department review the finding...." RCW 26.44.125(2), emphasis added. The statutory requirements of the finding notice do not include information that the review is jurisdictional. The notice must only state that there is "a right to submit a written response...which...shall be filed in the department records." RCW 26.44.125(2)(c).

The internal review may or may not change the finding, but in any event, it is not a substitute for due process and in no way meets the due process requirements of *Goldberg v. Kelly.*[34] While the statutory language precludes the opportunity for an adjudicative hearing for failure to seek internal review, construing the statute as jurisdictional does not comport with the legislative policy reaffirming "that all citizens, including parents shall be afforded due process." RCW 26.44.100(1).

Thus, if the Court grants review and upholds the Court of Appeals ruling that DSHS can arbitrarily breach the statutory 90-day time limit, the Court should also reverse the Court of Appeals decision that WAC 388-02-0020 offers no basis for relief from default in seeking internal agency review under RCW 26.44.125.

---

[34] 397 U.S. 254, 266, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); *see also, Jacquins v. Dept. of Social and Health Serv.*, 69 Wn. App. 21, 26, 847 P.2d 513 (1993) (due process requires those it regulates to receive full and fair opportunity for a hearing on the merits).

C. Should the Court accept review and petitioners prevail, they seek reasonable attorney fees under RCW 4.84.350.

The Semenenkos have sought relief through every avenue of review available to them. Under the law, they should prevail, and the Court should find that DSHS' actions were not substantially justified under RCW 4.84.350.

VI. Conclusion

For all of the foregoing reasons, the Court should grant review under RAP 13.4(b).

RESPECTFULLY SUBMITTED this 3rd day of October, 2014

NORTHWEST JUSTICE PROJECT

Meagan MacKenzie, WSBA #21876
Deborah Perluss, WSBA #8719
Attorneys for Yevgeny and Natalya Semenenko

Appendix

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

YEVGENY SEMENENKO and NATALYA SEMENENKO, Appellants, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL & HEALTH SERVICES, Respondents.	No. 70354-4-I DIVISION ONE UNPUBLISHED OPINION FILED: August 11, 2014

BECKER, J. — When the Department of Social and Health Services reaches a formal conclusion that allegations of child abuse are founded, the person against whom the finding is entered must petition for internal review within 20 days of receiving notice. When that deadline is not met, review of the finding of child abuse is not available.

In November 2009, appellants Yevgeny and Natalya Semenenko were looking for help in dealing with their drug-addicted teenage daughter, Letitcyia. On November 10, 2009, at 2 a.m., they brought the girl to a licensed drug treatment center for admission. She resisted being admitted, and a physical struggle ensued in which the parents allegedly pushed and kicked her. The

Department received a report alleging that the Semenenkos physically abused their daughter at the treatment center.

The Department responded to this incident in two ways: by opening a case with Family Voluntary Services and by initiating an investigation through Child Protective Services. These two units of the Department are both within the Division of Children and Family Services.

On December 3, 2009, the Semenenkos received a form letter informing them that the case with Family Voluntary Services was being closed:

> Your case with ( ) Child Protective Services (X) Family Voluntary Services ( ) Child Welfare Services ( ) Family Reconciliation Services will be closed effective December 11, 2009.

The letter recommended that they continue to attempt to get Letitcyia into an in-patient treatment facility and attend support groups and classes about drug addiction. It provided contact information for requesting further services from the Division of Children and Family Services.

On April 5, 2010, Child Protective Services sent Yevgeny a certified letter to inform him of the results of the investigation into the report of physical abuse of Letitcyia and his rights concerning those results. The letter stated that the allegations were "Founded." It explained, "When an allegation is 'Founded,' it means that CPS investigated the allegation and, based on the information available, has determined that it was more likely than not that the abuse and/or neglect occurred and you are the person responsible for the abuse and/or neglect." A similar letter was sent to Natalya. The Semenenkos received their letters on April 22 and 29 respectively.

The letters informed the Semenenkos that "Founded" reports by Child Protective Services are kept in the computer system of the Department's Children's Administration where, though they are "confidential and cannot be released to the public," they can be released for purposes of determining "if you can be licensed or employed to provide care for children or vulnerable adults."

Once notified that the investigation ended with a founded report of child abuse, the Semenenkos had 20 days to request a Department review:

> Within twenty calendar days after receiving written notice from the department under RCW 26.44.100 that a person is named as an alleged perpetrator in a founded report of child abuse or neglect, he or she may request that the department review the finding. The request must be made in writing. If a request for review is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.

Former RCW 26.44.125(2) (2008).[1] The notification letters advised them of the 20-day deadline:

> CA [Children's Administration] must receive your written request for a review within 20 calendar days from the date you receive this letter. **If CA does not receive the request within 20 calendar days of the date you receive this letter, you will have no further right to challenge the CPS findings.**

The Semenenkos did not request review until almost a year later.

In November 2010, Natalya lost her job as a caregiver for the elderly when her employer performed a routine periodic background check and discovered her name on the Department's database of founded allegations of child abuse.

---

[1] Effective June 7, 2012, the legislature extended the deadline to 30 days. LAW OF 2012, ch. 259 § 11.

On March 25, 2011, the Semenenkos requested a review of the child abuse finding. The Department acknowledged their request in a responding letter sent on April 18, 2011. This letter advised the Semenenkos that they were beyond the 20-day deadline for requesting review. The letter informed the Semenenkos that they could "challenge this" by requesting the Office of Administrative Hearings to hold a hearing.

On May 12, 2011, the Office of Administrative Hearings received a letter from the Semenenkos requesting a hearing:

> We were accused in responsibility to our daughter abuse in April 2010. CPS told us that case is closed after they got all information from us and our child Letitciya.
>
> For almost a year we did not know that charges filed on our criminal records, after what I lost my job. We are good parents! There is no abuse in our family and we are requesting an administrative hearing to confirm our innocence in this matter.
>
> Please help!

The Department moved to dismiss on the basis that the Semenenkos did not request review of the child abuse finding within the 20-day deadline of former RCW 26.44.125(2).

On October 5, 2011, an administrative law judge issued an initial order granting the Department's motion to dismiss. While expressing sympathy for the Semenenkos' circumstances, the judge concluded that under former RCW 26.44.125(2), he had no authority to allow them to proceed with a hearing on the merits of the child abuse finding because they had not requested review within 20 days of receiving notice in April 2010.

The Semenenkos petitioned for review by the Board of Appeals. Their petition referred to November 2009 as the "time of our desperation" in dealing with their daughter's chemical dependency. They said they misunderstood the letter of December 3, 2009, from Family Voluntary Services and thought it said the child abuse investigation had been closed.

> Now, looking back at this paper we see that only the family services were closed not CPS, we misunderstood because the mark stood next to the CPS services. Then, for 4 months we received nothing and heard nothing. In April 2010 we received a letter stating that "we were guilty." We didn't understand, and thought it was some kind of mistake, we wanted to call CPS ourselves but our daughter Letitciya was very angry about the situation and wanted to call herself. She found the phone number on the letter and talked to someone, saying "my parents are not child abusers." She asked the person on the phone "what should we do? How can we fix this?" The lady told us that we don't need to do anything, because the case is closed. That gave us the impression that everything was over.
>
> . . . if we had known the truth and been given proper information on what to do we would have settled this from the start. . . . Therefore, we ask for you to give us a chance to speak and let us be heard . . . . Having an opportunity to have this hearing will hopefully put us all at a fresh start.

On May 10, 2012, the Board of Appeals affirmed the order of dismissal and on June 1, 2012, the Board denied a motion for reconsideration. The Board concluded that the Department could not grant relief. Because the Semenenkos had not timely requested internal review of the founded child abuse finding, they were not entitled to a hearing on the merits of that finding.

On June 28, 2012, the Semenenkos filed a petition for judicial review of the decision by the Board of Appeals. They asked the court to order a fair hearing to consider the child abuse finding on the merits. The court granted the Department's motion to dismiss. This appeal followed.

This court stands in the same position as the trial court when reviewing an administrative agency decision. Hardee v. Dep't of Soc. & Health Servs., 172 Wn.2d 1, 6, 256 P.3d 339 (2011). The party challenging the validity of agency action has the burden of demonstrating its invalidity. RCW 34.05.570(1)(a). Judicial review of administrative agency orders is governed by the Administrative Procedure Act, which provides the grounds on which such an order may be challenged. RCW 34.05.570(3). The Semenenkos contend the Department acted outside its statutory authority or jurisdiction, failed to follow a prescribed procedure, erroneously interpreted or applied the law, or issued an order not supported by substantial evidence. RCW 34.05.570(3)(b)-(e).

Department delay in completing the investigation

The Semenenkos argue that the Department acted outside its jurisdiction when it made the finding of child abuse after taking longer to finish the child abuse investigation than is permitted by statute. They request that we reverse the superior court order of dismissal, declare the child abuse finding void, and order the Department to remove their names from any registry of known child abusers.

When the investigation of the Semenenkos began in November 2009, a statute required the Department to complete an investigation into alleged child abuse within 90 days of receipt:

> For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. *In no case shall the investigation extend longer than ninety days from the date the report is received*, unless the investigation is being conducted under a written protocol pursuant to RCW

> 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

Former RCW 26.44.030(11)(a) (2009)[2] (emphasis added). The agency rules promulgated under this statute state that the agency attempts to complete investigations within 45 days but "in no case shall the investigation extend beyond ninety days." WAC 388-15-021(7).

The Department did not meet the 90-day deadline. The investigation began in November 2009 and was not concluded until April 2010. The Semenenkos argue that the Department's failure to complete its investigation within 90 days renders the child abuse finding void as an ultra vires act.

The Semenenkos cite CR 60(b)(5). A void *judgment* can be attacked at any time under CR 60(b)(5). Cole v. Harveyland, LLC, 163 Wn. App. 199, 205, 258 P.3d 70 (2011). Because a child abuse finding is not a judgment, CR 60(b)(5) does not apply. However, a line of authority not cited by the parties establishes that an ultra vires act by a state agency can be attacked as "void" if the agency was without any authority to act on the subject. S. Tacoma Way, LLC, v. State, 169 Wn.2d 118, 123, 233 P.3d 871 (2010). And like a void judgment, a truly ultra vires act is generally subject to challenge and invalidation at any time. S. Tacoma Way, 169 Wn.2d at 124. We will therefore assume that

---

[2] This chapter was amended effective December 1, 2013. LAWS OF 2012, ch. 259, § 3. As amended, this provision appears at RCW 26.44.030(12)(a). The language is unchanged.

missing the statutory 20-day deadline for seeking review would not prevent the Semenenkos from obtaining relief from the child abuse finding if the finding were void as an ultra vires act.

The Department responds that the finding cannot be void because the 90-day time limit is only directory, notwithstanding the legislature's use of the word "shall." Whether the 90-day time limit is mandatory or directory is an important issue, but it need not be decided in this case. Even if the Department's failure to complete its investigation within 90 days violated a mandatory requirement, the finding that resulted from that investigation is not ultra vires.

A government action is truly ulta vires only if the agency was without authority to perform the action. S. Tacoma Way, 169 Wn.2d at 122. Here, it is undisputed that the Department was authorized to make a finding of child abuse. The Department's failure to make the finding within 90 days was a procedural irregularity, not an ultra vires act. See S. Tacoma Way, 169 Wn.2d at 121-26. We conclude the finding of child abuse is not void and the Semenenkos are not entitled to have it vacated.

The Semenenkos attached two unpublished trial court orders as appendices to their reply brief to show that some superior courts have vacated findings of child abuse when shown that the Department's investigation was not completed within 90 days. The Department has moved to strike. In view of our resolution of the 90-day issue, it is unnecessary to consider the motion to strike.

Equitable estoppel

Alternatively, the Semenenkos contend the Department is equitably estopped from enforcing the 20-day deadline against them. "Equitable estoppel is based on the principle that: 'a party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who has justifiably and in good faith relied thereon.'" Kramarevcky v. Dep't of Soc. & Health Servs., 122 Wn.2d 738, 743, 863 P.2d 535 (1993), quoting Wilson v. Westinghouse Elec. Corp., 85 Wn.2d 78, 81, 530 P.2d 298 (1975). A party asserting equitable estoppel against the government must prove the following by clear, cogent, and convincing evidence: (1) a party's admission, statement, or act inconsistent with its later claim; (2) action by another party in reliance on the first party's act, statement, or admission; (3) injury that would result to the relying party from allowing the first party to contradict or repudiate the prior act, statement, or admission; (4) necessary to prevent a manifest injustice; and (5) the exercise of governmental functions must not be impaired as a result of estoppel. Kramarevcky, 122 Wn.2d at 743-44. Equitable estoppel against the government is disfavored. Kramarevcky, 122 Wn.2d at 743.

The Semenenkos claim they were confused by the December 3, 2009, letter informing them that the case with Family Voluntary Services was being closed. They thought it meant that the child abuse investigation had been closed and there was nothing more they needed to do to be cleared of the child abuse allegation. They say that in April 2010 when they received the letters informing them of the child abuse finding, their daughter Letitciya called the Department to

clarify. They claim the Department specifically told them, through Letitciya, that the letters must be a mistake and to ignore them.

The information allegedly communicated to Letitciya over the telephone cannot serve as the basis for finding equitable estoppel against the government because the Semenenkos do not show the person on the phone with Letitciya was someone with authority to speak for the Department. Thus, it is not clear, cogent, and convincing evidence of a statement by the Department inconsistent with its later claim that the letters sent in April 2010 triggered the 20-day deadline. Cf. Ruland v. Dep't of Soc. & Health Servs., 144 Wn. App. 263, 182 P.3d 470 (2008). In Ruland, no one could dispute that the inconsistent communication occurred. The assistant attorney general made the predicate statement on the record at a prehearing conference. Here, the Semenenkos did not identify the person who allegedly made the statement on behalf of the Department. Because their evidence is insufficient to prove an inconsistent statement, their claim of equitable estoppel fails.

Good cause excuse

The Semenenkos also argue that the statutory 20-day deadline for requesting internal review is not enforced where there is a showing of "good cause." They ask this court to find they had good cause excusing their untimely request for review. They request that the matter be remanded for an adjudicative hearing where they would have the opportunity to argue the merits of the child abuse finding.

The Semenenkos cite a regulation promulgated under the Administrative Procedure Act, RCW 34.05.020. The regulation is entitled "What does good cause mean?" WAC 388-02-0020. The regulation defines "good cause" and provides guidance for an administrative law judge who is asked to make a finding of good cause:

> (1) Good cause is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the ALJ must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.
>
> (2) Good cause may include, but is not limited to, the following examples.
>
> (a) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or
>
> (b) You could not respond to the notice because it was written in a language that you did not understand.

WAC 388-02-0020.

The regulation explains how an administrative law judge will interpret and apply the term "good cause" in a proceeding where the term is relevant. The regulation does not provide general substantive authority to invoke good cause as an excuse whenever a party fails to meet a statutory deadline. Here, the statute establishing the deadline, former RCW 26.44.125(2), does not provide substantive authority permitting the Department to waive the 20-day deadline when good cause is shown.

The Semenenkos point out in their reply brief that the applicability of WAC 388-02-0020 was raised in a similar case, Ryan v. Department of Social & Health Services, 171 Wn. App. 454, 287 P.3d 629 (2012). The Department agreed in that case that WAC 388-02-0020 applies to late hearing requests made by an

alleged perpetrator of abuse. Ryan, 171 Wn. App. at 464. But the Department has not made the same concession in this case, and the appeal in Ryan was decided on other grounds. The opinion contains no holding pertinent to the applicability of WAC 388-02-0020.

We conclude the Semenenkos were not entitled to have the Department apply WAC 388-02-0020 as a basis for considering whether they had a good cause excuse for missing the 20-day deadline for requesting review. Because the Semenenkos did not timely seek internal review of the child abuse finding, they are not entitled to a hearing on the merits of that finding.

Notice requirements

The Semenenkos also argue that they are exempt from the consequences of missing the review deadline because the Department did not comply with the notice requirements of RCW 26.44.100.

Under RCW 26.44.100(2), the subject of a child abuse report must be notified of a finding of child abuse when the investigation is completed. Under former RCW 26.44.125(2), an alleged perpetrator who has received "written notice under RCW 26.44.100" must request review within 20 days or review will not be available. As the result of an amendment effective June 7, 2012, the 20-day deadline for seeking review does not apply if the Department did not comply with the notice requirements of RCW 26.44.100:

> If a request for review is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding, unless he or she can show that the department did not comply with the notice requirements of RCW 26.44.100.

RCW 26.44.125(3) (new language is underlined).

The Semenenkos contend that the notification letters they received in April 2010 did not comply with the notice requirements in RCW 26.44.100 because the Department did not complete the investigation within 90 days. Even if the new language in RCW 26.44.125 applies retroactively, which has not been demonstrated, it is not helpful to the Semenenkos. The Department's delay in completing the investigation does not make the notice of the completed investigation deficient under RCW 26.44.100 RCW. The requirement that the Department complete its investigation within 90 days is found in a different statute, RCW 26.44.030.

Missing administrative record

The Department Board of Appeals was supposed to transmit a certified copy of the administrative record to the superior court. Although the Board notified the parties that it had done so, the administrative record was never properly filed in superior court. The administrative record is before us on appeal as a result of the parties' agreement to supplement the record.

The Semenenkos deduce that the superior court must not have reviewed the administrative record. They contend the court's failure to consider their petition in light of the actual record requires the order of dismissal to be reversed and remanded.

The record is important to judicial review of a decision by a lower tribunal. The superior court should not undertake judicial review of an agency decision without a record. Nevertheless, if that is what occurred here, remand is not

necessary because this court stands in the same position as the superior court. The decision under review is the Department's decision to dismiss the Semenenkos' claims without allowing them an evidentiary hearing on the merits of the child abuse finding. As the issues are entirely legal, nothing would be accomplished by a remand.

The order of dismissal is affirmed. The Semenenkos' request for an award of attorney fees is denied.

Becker, J.

WE CONCUR:

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

YEVGENY SEMENENKO and NATALYA SEMENENKO, Appellants, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL & HEALTH SERVICES, Respondent.	)	No. 70354-4-I ORDER DENYING MOTION TO PUBLISH OPINION

Respondent, Department of Social & Health Services, has filed a motion to publish the opinion filed on August 11, 2014. The court has determined that said motion should be denied. Now, therefore, it is hereby

ORDERED that respondent's motion to publish the opinion is denied.

DONE this 4th day of September, 2014.

FOR THE COURT:

Becker, J.
Judge

RCW 26.44.030 (In relevant part) Reports-Investigation:

(12)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

[2013 c 273 § 2; (2013 c 273 § 1 expired December 1, 2013); 2013 c 48 § 2; (2013 c 48 § 1 expired December 1, 2013); 2013 c 23 § 43; (2013 c 23 § 42 expired December 1, 2013). Prior: 2012 c 259 § 3; 2012 c 55 § 1; 2009 c 480 § 1.]

RCW 26.44.100 Information about rights — Legislative purpose — Notification of investigation, report, and findings.

(1) The legislature finds parents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process, that protection of children remains the priority of the legislature, and that this protection includes protecting the family unit from unnecessary disruption. To facilitate this goal, the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this chapter, provided that nothing contained in this chapter shall cause any delay in protective custody action.

(2) The department shall notify the parent, guardian, or legal custodian of a child of any allegations of child abuse or neglect made against such person at the initial point of contact with such person, in a manner consistent with the laws maintaining the confidentiality of the persons making the complaints or allegations. Investigations of child abuse and neglect should be conducted in a manner that will not jeopardize the safety or protection of the child or the integrity of the investigation process.

Whenever the department completes an investigation of a child abuse or neglect report under chapter 26.44 RCW, the department shall notify the subject of the report of the department's investigative findings. The notice shall also advise the subject of the report that:

(a) A written response to the report may be provided to the department and that such response will be filed in the record following receipt by the department;

(b) Information in the department's record may be considered in subsequent investigations or proceedings related to child protection or child custody;

(c) Founded reports of child abuse and neglect may be considered in determining whether the person is disqualified from being licensed to provide child care, employed by a licensed child care agency, or authorized by the department to care for children; and

(d) A subject named in a founded report of child abuse or neglect has the right to seek review of the finding as provided in this chapter.

(3) The notification required by this section shall be made by certified mail, return receipt requested, to the person's last known address.

(4) The duty of notification created by this section is subject to the ability of the department to ascertain

the location of the person to be notified. The department shall exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification under this section.

(5) The department shall provide training to all department personnel who conduct investigations under this section that shall include, but is not limited to, training regarding the legal duties of the department from the initial time of contact during investigation through treatment in order to protect children and families.

[2005 c 512 § 1; 1998 c 314 § 8; 1997 c 282 § 2; 1993 c 412 § 17; 1985 c 183 § 1.]

RCW 26.44.125 Alleged perpetrators—Right to review and amendment of finding—Hearing.

(1) A person who is named as an alleged perpetrator after October 1, 1998, in a founded report of child abuse or neglect has the right to seek review and amendment of the finding as provided in this section.

(2) Within thirty calendar days after the department has notified the alleged perpetrator under RCW 26.44.100 that the person is named as an alleged perpetrator in a founded report of child abuse or neglect, he or she may request that the department review the finding. The request must be made in writing. The written notice provided by the department must contain at least the following information in plain language:

(a) Information about the department's investigative finding as it relates to the alleged perpetrator;

(b) Sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded reports;

(c) That the alleged perpetrator has the right to submit to child protective services a written response regarding the child protective services finding which, if received, shall be filed in the department's records;

(d) That information in the department's records, including information about this founded report, may be considered in a later investigation or proceeding related to a different allegation of child abuse or neglect or child custody;

(e) That founded allegations of child abuse or neglect may be used by the department in determining:

(i) If a perpetrator is qualified to be licensed or approved to care for children or vulnerable adults; or

(ii) If a perpetrator is qualified to be employed by the department in a position having unsupervised access to children or vulnerable adults;

(f) That the alleged perpetrator has a right to challenge a founded allegation of child abuse or neglect.

(3) If a request for review is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding, unless he or she can show that the department did not comply with the notice requirements of RCW 26.44.100

(4) Upon receipt of a written request for review, the department shall review and, if appropriate, may amend the finding. Management level staff within the children's administration designated by the secretary shall be responsible for the review. The review must be completed within thirty days after receiving the written request for review. The review must be conducted in accordance with procedures the department establishes by rule. Upon completion of the review, the department shall notify the alleged perpetrator in writing of the agency's determination. The notification must be sent by certified mail, return receipt requested, to the person's last known address.

(5) If, following agency review, the report remains founded, the person named as the alleged perpetrator in the report may request an adjudicative hearing to contest the finding. The adjudicative proceeding is governed by chapter 34.05 RCW and this section. The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination. If a request for an adjudicative proceeding is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.

(6) Reviews and hearings conducted under this section are confidential and shall not be open to the public. Information about reports, reviews, and hearings may be disclosed only in accordance with federal and state laws pertaining to child welfare records and child protective services reports.

(7) The department may adopt rules to implement this section.

[2012 c 259 § 11; 1998 c 314 § 9.]

WAC 388-02-0020 What does good cause mean?

(1) Good cause is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the ALJ must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.

(2) Good cause may include, but is not limited to, the following examples.

(a) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or

(b) You could not respond to the notice because it was written in a language that you did not understand.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0020, filed 9/1/00, effective 10/2/00.]

WAC 388-15-093 What happens after the alleged perpetrator requests CPS to review the founded CPS findings of child abuse or neglect?

(1) CPS management level staff or their designees who were not involved in the decision making process will review the founded CPS finding of child abuse or neglect. The management staff will consider the following information:

(a) CPS records;

(b) CPS summary reports; and

(c) Any written information the alleged perpetrator may have submitted regarding the founded CPS finding of abuse and/or neglect.

(2) Management staff may also meet with the CPS social worker and/or CPS supervisor to discuss the investigation/finding. After review of all this information, management staff decides if the founded CPS finding is correct or if it should be changed.

(3) Management staff must complete their review of the founded CPS finding within thirty calendar days from the date CPS received the written request for review.

[Statutory Authority: RCW 26.44.125 (2) and (4). WSR 13-17-126, § 388-15-093, filed 8/21/13, effective 9/21/13. Statutory Authority: RCW 74.13.031, 74.04.050, and chapter 26.44 RCW. WSR 02-15-098 and 02-17-045, § 388-15-093, filed 7/16/02 and 8/14/02, effective 2/10/03.]