No. 327582

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

Holly R. Snyder,
Appellant.

v.

State of Washington, DSHS
Respondent

Appeal from the Superior Court of Spokane County

APPELLANT'S OPENING BRIEF

-

Attorney for Appellant Holly Snyder:
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. MOVING PARTY

Ms. Snyder appeals from a Spokane County Superior Court decision upholding the Board of Appeals Dismissal of her hearing request for "lack of jurisdiction" based upon an "untimely hearing request." The appellant contends that the Department of Social and Health Services failed to comply with RCW 26.44.100 and RCW 26.44.125, which requires increased protection of parent's and children's due process rights. Particularly where the legislature expresses a desire to ensure parents and children are advised orally and in writing "of their basic rights" pursuant to the legislative intent.

II. STATEMENT OF RELIEF SOUGHT

Ms. Holly Snyder moves the court to overturn the Superior Court decision upholding the Board of Appeals decision dismissing the appellant's hearing request. The Superior Court decision incorrectly applied RCW 26.44.100 and RCW 26.44.125 which establishes a legislative intent expressed in RCW 26.44.100. Specifically, "the legislature wishes to ensure that parents and children be advised in writing and orally . . . of their basic rights" and that the department "shall exercise reasonable, good faith efforts to ascertain the location of persons entitled to notification . . .."

III. FACTS

A. Procedural History

The Superior Court upheld the Board of Appeals decision entered November 05, 2013 in a Superior Court decision entered on August 08, 2014. The Appellant filed this Motion for Discretionary Review. CP 65-67. Review was granted December 4, 2014.

On April 1, 2013, the Appellant requested an administrative hearing by certified mail which was received by Office if Administrative Hearings (OAH) on April 4, 2013. (Appendix A p. 3). The Department filed a Motion to Dismiss for Lack of Jurisdiction alleging that Appellant did not request the hearing within 30 days of the April 12, 2011 decision. (Appendix A p. 1). A motion hearing was scheduled and heard on August 27, 2013 and the decision to grant the Department's motion was handed down on September 10, 2013. (Appendix A p. 1).

The Appellant then filed a Petition for Review of Initial Decision on September 20, 2013 where the Department's Motion to Dismiss for Lack of Jurisdiction was upheld; which is the basis for appeal before this Court. CP 63, Appendix B.

B. Facts Relevant to Motion

On March 19, 2010, the Department of Social and Health Services Children's Administration/Child Protective Services (DSHS or the

Department) received a report alleging that the Appellant, Holly Snyder, aged 21 at the time, had abused or neglected a child in her care. (Appendix A p. 1). On March 21, 2011 the Department sent to Appellant, by certified mail, a letter advising her that the allegations as to two of her three children were Founded for "negligent treatment or maltreatment" of a child. *Id.* Specifically, the investigation, intake number 2214260 concluded that, "[d]uring the course of the investigation, the mother admitted that she used a towel to lock the older children in their bedroom at night. Although the mother states that she did so in order to protect the child from getting out of bed and injuring herself in the apartment or wandering out of the apartment this action created a serious risk of substantial harm to the child, especially in case of an emergency." (Appendix A p. 2 quoting the DSHS letter dated March 21, 2011).

The Appellant received and signed for the certified letter on March 31, 2011 at her address of 412 W. Longfellow Spokane, Washington. (Appendix A p. 2). The letter also stated that the Appellant could request an internal review of the Founded findings by completing a "Review Request Form" (RRF). *Id.* The Appellant formally requested an internal review on April 6, 2011 and the Department received the request on April 8, 2011. *Id.* The Appellant requested that the notice of the outcome of the internal review be mailed to her at the Longfellow address. *Id.* The Appellant soon after moved

from the Longfellow address and into her mother's address on Cleveland Street in Spokane Washington. *Id.* The Appellant did not leave a change of address with the United States Postal Service (USPS) nor did she advise the Department of the change of address. *Id.*

The Department received the Appellant's request for internal review and concluded that the Founded finding of neglect was correct. *Id.*. On April 12, 2011 the Department mailed a certified letter to the Appellant explaining that the internal review upheld the finding of negligent treatment and citing RCW 26.44.125 that the Appellant could challenge the determination by sending a written request for administrative hearing to the Office of Administrative Hearings (OAH) within 30 calendar days from the date Appellant received the letter. *Id.*

The letter was returned to the department on May 4, 2011 stamped "Return to Sender." *Id* at 3. The Department made no further attempt to contact the Appellant. *Id.* The Appellant continued to return to the Longfellow address to see if any mail had been received. *Id.* The Appellant did not receive actual notice of the review determination. *Id.* Approximately two years later, the Appellant began an internship at Spokane Community College but was subsequently dismissed from the program during the internship because of the Founded finding of neglect against two of her children. *Id.* The Appellant contacted a lawyer who had her obtain a copy of

her file and upon review of that file Appellant learned of the Departments decision to uphold the finding. *Id.* A hearing was immediately requested but was denied as untimely. *Id* at 1.

IV. GROUNDS FOR RELIEF

Ms. Holly Snyder is entitled under RAP 2.2 (1) because the decision of the Superior Court is a final judgment in a proceeding.

V. ARGUMENT

A. The requirement of RCW 26.44.100 and RCW 26.44.125 establishes a heightened protection to due process rights for parents and children under investigation for child abuse and neglect.

In RCW 26.44.100 the "legislature finds parents and children 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 . . . 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 . . .." By setting forth this language the legislature has stated that the department has a heightened duty to ensure that parents and children are notified of their basic rights "in writing and orally." The language of the statute establishes that the parents are to be "orally" advised of these basic rights "where feasible." The legislature has established a higher duty of the Department to notify parents and children of their due process rights. A basic principle of a

citizens rights' is the right to notice and an opportunity to be heard. *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 58 L.Ed. 1363 (1914).

The fundamental requisites of due process are 'the opportunity to be heard,' *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 58 L.Ed. 1363 (1914), and "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L.Ed. 865 (1950). Thus, 'at a minimum' the due process clause of the Fourteenth Amendment demands that a deprivation of life, liberty or property be proceeded by "notice and opportunity for hearing appropriate to the nature of the case." *Mullane*, at 313, 70 S. Ct. at 657. Moreover, this opportunity "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L.Ed.2d 62 (1965). "A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case." *Bell v. Burson*, 402 U.S. 535, 540, 91 S. Ct. 1586, 1590, 29 L.Ed.2d 90 (1971). The procedural safeguards afforded in each situation should be tailored to the specific function to be served by them. *Goldberg v. Kelly*, 397 U.S. 254, 267, 90 S. Ct. 1011, 25 L.Ed.2d 287 (1970). The Washington legislature has provided such guidance in RCW 26.44.100 and RCW 26.44.125.

RCW 26.44.100 (1) requires increased protections of parents and children's due process rights. The legislature wishes to ensure parents and children be advised in writing and orally "of their basic rights." The statute repeatedly directs that notice "shall" be given to the parents and RCW 26.44.100 (4) further requires the department "shall exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification under this section." Then, RCW 26.44.125 (5) reads: "The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination." The language requires that the receipt of the notice establishes the time frame during which an adjudicative review can be requested. The request for adjudicative review comes within 30 days of the receiving the notice of agency review determination.

The legislative purpose of RCW 26.44.100 is to assure parents and children are aware of their due process rights. RCW 26.44.125 requires that notice to the alleged perpetrator is consistent with RCW 26.44.100. The legislature has established an increased duty of due process in these cases through these statutes which is contrary to the state's position that mailing satisfies the service requirement.

B. RCW 26.44.125 (5) requires specifically: "The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination," and not after the department mailed the notice.

The department advocates that the court ignore the language of the statute. That the court not require the receipt of the notice but accept the service merely by mailing the notice by certified mail. But the language of RCW 26.44.100 (1) establishes a requirement of notice by writing and orally where feasible. Then RCW 26.44.100 (2) requires the department notify the subject of the report. At RCW 26.44.100 (3) it says that notification "shall be made by certified mail, return receipt requested, to the person's last known address." Additionally, RCW 26.44.100 requires the department to "exercise reasonable, good faith efforts to ascertain the location of persons entitled to notification under this section."

The only requirement setting forth when an appellant must make a "timely request for an adjudicative hearing" is triggered by the receipt of the notice. All of this is consistent with the stated legislative purpose of RCW 26.44.100, which is protecting parents and children's due process rights.

The department urges the court to ignore the language and purpose of RCW 26.44.100 and find that receipt of the notice is not required. To support this argument they rely on *City of Seattle v. Foley*, 56 Wn.App 485, 784 P.2d 176, 179 (1990), a case involving the sending of a notice of license suspension. But this case is distinguishable first because there was nothing in the record to show *Foley* lived elsewhere. (*supra* at 179). Further, RCW 46.20.205 requires a licensee to notify the Department of Licensing of a change of address. However, RCW 26.44.100 requires a heightened duty of notice and RCW 26.44.100 (4) requires

the department to "exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification under this section." In this case the burden is on the department and not on the parent to find the current address.

Additionally, the department argues that *McLean v. McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997) does not require actual notice and suggests that this case allows the court to not require actual notice under RCW 26.44.125 and RCW 26.44.100. But as the plain language of RCW 26.44.125 (5) clearly states the "request for adjudicative proceeding must be filed within thirty calendar days after *receiving* the notice of the agency determination." (emphasis added). This is different from the statute in *McLean supra* where the court found the plain language of RCW 26.09.175 (2) does not require actual notice. *McLean v. McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997) is distinguishable from the case before the court because RCW 26.44.100 and RCW 26.44.125 established a heightened due process requirement on the department and require receipt of the decision.

The department's argument must fail. The Department of Licensing may rely upon the statutory requirements of the petitioner updating his address. There is no such duty in the statutes under RCW 26.44. et seq. RCW 26.44.100 and 125 places the greater burden of notification on the department. To allow any other statutory interpretation would render the legislative intent of RCW 26.44.100

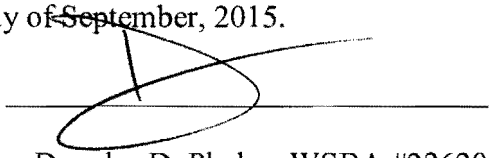
meaningless. It is a basic principle of statutory interpretation that the statute must be applied consistent with the legislative intent.

VI. CONCLUSION

The matter should not be dismissed because the petitioner did not receive the notice required by RCW 26.44.100 and 125. Notice under other statutory scheme requires receipt and not merely mailing.

The interest of justice requires that the appellant be allowed an adjudicative hearing regarding the department's determination. The department has failed to demonstrate the receipt of the notice required by RCW 26.44.125 (5). The department has failed to show they met the requirements of RCW 26.44.100.

Respectfully submitted this 21st day of ~~September~~, 2015.



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APPENDIX A

OAH Review Decision and Final Order

from November 5, 2013

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

BOARD OF APPEALS

In Re:	)	Docket No. 04-2013-L-0617
	)	
HOLLY SNYDER (RAY)	)	**REVIEW DECISION AND FINAL ORDER**
	)	
Appellant	)	Children's Administration – CPS Review

I. NATURE OF ACTION

1. Administrative Law Judge Robert M. Murphy received oral argument regarding a Department *Motion to Dismiss for Lack of Jurisdiction* on August 27, 2013, and mailed an *Initial Order* on September 10, 2013. In this ruling, the Administrative Law Judge (ALJ) determined that the Appellant had failed to timely request an adjudicative procedure. The ALJ granted the Department's *Motion* and dismissed the Appellant's hearing request.

2. The Appellant filed a *Petition for Review of Initial Decision* on September 20, 2013.

II. FINDINGS OF FACT

The undersigned has reviewed the record of the hearing, the documents admitted as exhibits, the *Initial Order*, and the Appellant's *Petition for Review.* The following necessary findings of fact were relevant and supported by substantial evidence in the record.

1. The Appellant is a 25-year-old female.

2. On **March 19, 2010**, the Department of Social & Health Services Children's Administration/Child Protective Services (Department) received a report alleging that the Appellant had abused or neglected a child in her care.

3. On **March 21, 2011**, the Department sent to the Appellant, by certified mail, a letter advising her that the allegations as to "Faith and Natalie only" were "Founded" for "negligent treatment or maltreatment" of a child.

4. Specifically, the letter referenced an investigation denominated, "Intake number

2214260." A brief description (who, what, and where) of the investigation that led to the finding reads:

> During the course of the investigation, the mother admitted that she used a towel to lock the older children in their bedroom at night. Although the mother states that she did so in order to protect the child from getting out of bed and injuring herself in the apartment or wandering out of the apartment, this action created a serious risk of substantial harm to the child, especially in case of an emergency.

5. The Appellant received and signed for the letter on **March 31, 2011,** at 9:09 A.M. The Appellant received the letter at her address at 412 W. Longfellow in Spokane, Washington.

6. The letter further advised the Appellant that she could request an internal review of the Founded findings of child neglect by filling out a "Review Request Form" (RRF).

7. The Appellant formally requested an internal review by completing the RRF on **April 6, 2011.** The Department received the RRF on **April 8, 2011**.

8. The Appellant requested that notice of the outcome of the internal review be mailed to her Longfellow address.

9. Thereafter, the Appellant shortly left the Longfellow address and moved in with her mother on Cleveland Street in Spokane. The Appellant did not leave a change of address with the United States Postal Service (USPS). The Appellant did not advise the Department of her change of address.

10. The Department acknowledged receipt of the RRF. An internal review concluded that the finding of neglect was correct. The Department sent the review outcome to the Appellant by certified mail at the Longfellow address on **April 12, 2011.** This notice advised the Appellant that she could challenge the determination by sending a written request for administrative hearing to the Office of Administrative Hearings (OAH) within 30 calendar days from the date she received the letter. The notice cited RCW 26.44.125.

11. The USPS attempted, unsuccessfully, to deliver the review notice to Appellant on **April 14, 2011, and April 29, 2011.** The USPS returned the letter to the Department on

May 4, 2011. The returned envelope only reads "Return to Sender" it did not state that the addressee was no longer at this address or had moved.

12. The Department did not attempt to further contact the Appellant via personal service, regular mail, or by telephone.

13. The Department did not know that the Appellant had moved from the Longfellow address.

14. After the Appellant moved, she continued to return to the Longfellow address to see if any mail had been received. She did not receive any mail from the new occupants or the owner of the dwelling.

15. The Appellant did not receive actual notice of the review determination.

16. Approximately two years later, the Appellant began an internship at Spokane Community College. She was dismissed from the program during her internship, because there had been a founded finding against her for child neglect.

17. The Appellant contacted attorney, Douglas J Phelps. Attorney Phelps had the Appellant request a copy of her file from the Department. Upon review of the file, the Appellant learned of the Department's decision to uphold the founded finding.

18. On **April 1, 2013,** the Appellant requested an administrative hearing by certified mail, pursuant to RCW 26.44.125. OAH received the request in Olympia on **April 4, 2013.**

III. CONCLUSIONS OF LAW

1. The petition for review was timely filed and is otherwise proper.[1] Jurisdiction exists to review the *Initial Order* and to enter the final agency order.[2]

2. ALJs and Review Judges must first apply the Department of Social and Health Services (DSHS) rules adopted in the Washington Administrative Code (WAC). If no DSHS rule applies, the ALJ or Review Judge must decide the issue according to the best legal

[1] WAC 388-02-0560 through -0585.
[2] WAC 388-02-0215, -0530(2), and -0570.

authority and reasoning available, including federal and Washington State constitutions, statutes, regulations, and court decisions.[3]

3. In an adjudicative proceeding regarding a founded CPS report of negligent treatment or maltreatment of a child, the undersigned Review Judge has the same decision-making authority as the ALJ to decide and enter the *Final Order,* in the same way as if the undersigned had presided over the hearing.[4] This includes the authority to make credibility determinations and to weigh the evidence. Because the ALJ is directed to decide the issues *de novo* (as new), the undersigned has also decided the issues *de novo.* In reviewing the Findings of Fact, the undersigned has given due regard to the ALJ's opportunity to observe the witnesses, but has otherwise independently decided the case.[5] The undersigned reviewing officer does not have the same relationship to the presiding officer as an Appellate Court Judge has to a Trial Court Judge; and the case law addressing that judicial relationship does not apply in the administrative hearings forum.

4. The Washington Administrative Procedure Act directs Review Judges to personally consider the entire hearing record.[6] Consequently, the undersigned has considered the adequacy, appropriateness, and legal correctness of all initial Findings of Facts and Conclusions of Law, regardless of whether any party has asked that they be reviewed.

5. An ALJ has jurisdiction to conduct a hearing only when granted such authority by law. Every decision maker must first determine whether he/she has jurisdiction to decide a matter before proceeding to hear and render a decision on the merits of a case. Jurisdiction cannot be waived and can be raised at any time.[7] "Even in the absence of a contest, where there is a question as to jurisdiction, [the] court has a duty to itself raise the issue."[8] Without

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[3] WAC 388-02-0220.
[4] WAC 388-02-0217(3).
[5] WAC 388-02-0600, effective March 3, 2011.
[6] RCW 34.05.464(5).
[7] *J.A. v. Dep't of Soc. & Health Servs.*, 120 Wn. App. 654, 657, 86 P.3d 202 (2004).
[8] *Riley v. Sturdevant*, 12 Wn. App. 808, 810, 532 P.2d 640 (1975).

jurisdiction, a court or administrative tribunal may do nothing other than enter an order of dismissal.[9]

6. Any person named as an alleged perpetrator in a founded CPS report made on or after October 1, 1998, may challenge that finding.[10] CPS has the duty to notify the alleged perpetrator in writing of any such child abuse or neglect finding,[11] at least in part so the alleged perpetrator can challenge that finding. WAC 388-15-069(1), which has two sentences, authorizes two separate and distinct methods by which CPS may notify alleged perpetrators of a child abuse or neglect finding entered against them.[12]

7. WAC 388-15-069(1) states as follows:

> CPS notifies the alleged perpetrator of the finding by sending the CPS finding notice via certified mail, return receipt requested, to the last known address. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

8. The first sentence in WAC 388-15-069(1) establishes one notification method CPS may use, which is to mail its notice to the alleged perpetrator by certified mail, return receipt requested, to the alleged perpetrator's last known address. If CPS is successful in getting its notice to the alleged perpetrator via this method, then CPS can prove that fact by producing a postal certified mail receipt signed by the alleged perpetrator acknowledging that she received that notice.[13] Proof of service via this certified mail, return receipt requested method, is crucial for the Department as well as for the alleged perpetrator because the alleged perpetrator's 20-day period in which to appeal the CPS finding begins to run with the date she

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[9] *Inland Foundry Co. v. Spokane County Air Pollution Control Auth.*, 98 Wn. App 121, 124, 989 P.2d 102 (1999).
[10] WAC 388-15-081.
[11] WAC 388-15-065.
[12] WAC 388-15-069(2) authorizes another method, personal service, which is irrelevant to this proceeding: "In cases where certified mailing may not be either possible or advisable, the CPS social worker may personally deliver or have served the CPS finding notice to the alleged perpetrator."
[13] WAC 388-02-0065, How does a party prove service, states: "A party may prove service by providing any of the following: (1) A sworn statement; (2) **The certified mail receipt signed by the recipient**; (3) An affidavit or certificate of mailing; (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or (5) Proof of fax transmission.". (Emphasis added).

receives that notice.[14] Because the alleged perpetrator's appeal period is specifically tied to the date she "receives the CPS finding notice," the undersigned concludes that perfected service under the first sentence of WAC 388-15-069(1) requires that the alleged perpetrator actually receive CPS' notice.

9. Because the Department cannot produce a certified mail receipt proving that the CPS finding notice was actually received by the Appellant, the Department was not successful in serving its finding notice to the Appellant pursuant to the certified mail, return receipt method authorized under the first sentence in WAC 388-15-069(1). The Appellant's 20-day period in which to appeal that finding under WAC 388-15-085(2) never began to run. This analysis is correct as far as it goes, but it does not go far enough. Deciding whether the Appellant received actual notice is not enough.

10. The second sentence in WAC 388-15-069(1) authorizes a second method the Department may use to get CPS' notice to an alleged perpetrator. This second method requires the Department to make a "reasonable, good faith effort" to get CPS' notice to the alleged perpetrator. This second-sentence method does not require that the Appellant actually receive the CPS notice. This second-sentence, good-faith-effort service method is separate and distinct from the first-sentence, actual-receipt-of-notice service method because there are two separate and distinct time periods during which the alleged perpetrator may appeal the CPS notice.

11. An alleged perpetrator has 20 days[15] from the date she actually receives the CPS notice, pursuant to the first sentence in WAC 388-15-069(1), to appeal it under

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[14] WAC 388-15-085, Can an alleged perpetrator challenge a CPS finding of child abuse or neglect, states as follows: "(1) In order to challenge a founded CPS finding, the alleged perpetrator must make a written request for CPS to review the founded CPS finding of child abuse or neglect. The CPS finding notice must provide the information regarding all steps necessary to request a review. (2) The request must be provided to the same CPS office that sent the CPS finding notice **within twenty calendar days from the date the alleged perpetrator receives the CPS finding notice** (RCW 26.44.125)." (Emphasis added).

[15] WAC 388-15-089, What happens if the alleged perpetrator does not request CPS to review the founded CPS finding within twenty days, states as follows: "(1) If the alleged perpetrator does not submit a written request within twenty calendar days for CPS to review the founded CPS finding, no further review or challenge of the finding may occur."

WAC 388-15-085(2), but she has 30 days[16] to appeal it under WAC 388-15-089(2) if the Department has only made a reasonable, good faith effort to get the CPS notice to her, under the second sentence in WAC 388-15-069(1). Thus, while the Appellant's 20-day appeal period under WAC 388-15-085(2) never began to run, her 30-day period under WAC 388-15-089(2), did begin running and ran out before the Appellant filed her request for an administrative hearing on April 4, 2013, because the Department did in fact use reasonable, good faith efforts to serve her with the CPS notice.

12. These two different methods of service of a notice to an alleged perpetrator of child abuse or neglect operate concurrently. That is, if the Department is able to actually get the CPS notice into the hands of the alleged perpetrator by mailing it by certified mail, return receipt, then the Department has used the WAC 388-15-069(1) first-sentence method. However, if the Department attempts to get its notice into the hands of the alleged perpetrator by mailing it certified mail, return receipt requested, but fails, then that mailing by certified mail, return receipt requested can turn into good service under the WAC 388-15-069(1) second-sentence method if the Department's mailing efforts constitute a reasonable, good faith effort at putting the notice into the alleged perpetrator's hands. In this case, the Department was not able to serve the Appellant under the first- sentence method, but it was able to do so under the second-sentence method because the steps it took to get its notice into the Appellant's hands were both reasonable and undertaken in good faith.

13. The undersigned has concluded that the Department made reasonable, good faith efforts at getting its CPS notice into the Appellant's hands because the notice was sent to the Appellant's address of record. Furthermore, this was the same address provided by the Appellant on her Review Request Form less than one week earlier, and the Appellant did not change her mailing address with the Department or the USPS.

[16] (2) If the department has exercised reasonable, good faith efforts to provide notice of the CPS finding to the alleged perpetrator, the alleged perpetrator shall not have further opportunity to request a review of the finding beyond thirty days from the time the notice was sent.

14. The above analysis of the second sentence of WAC 388-15-069(1), wherein it is concluded that actual receipt of the CPS notice is not required before the 30-day period in which to appeal the notice under WAC 388-15-089(2) begins running where the Department has made reasonable, good faith efforts to serve the notice, is consistent with published case law in Washington State which establishes that a person who refuses to accept certified mail, return receipt requested, has constructively refused to accept notice.[17] In this matter, the U.S. Postal Service attempted delivery of the finding of negligent treatment or maltreatment of a child to the Appellant's address of record, on April 14, 2011, and on April 29, 2011. The Appellant failed to respond to each of these attempts and therefore constructively refused to accept the Department's notice of a founded finding of negligent treatment or maltreatment of a child.

15. The above analysis of the second sentence of WAC 388-15-069(1) is also consistent with the statutory scheme set out in chapter 24.44 RCW, wherein the Department's foremost obligation is the protection of children and where its obligation to serve alleged perpetrators with notice of its actions is of lesser priority. For example, the Department is required under RCW 26.44.115 only to take "reasonable steps" to notify parents that their children have been taken into protective custody; the Department is required under RCW 26.44.120 only to make "reasonable efforts" to notify non-custodial parents of the same information; and the Department is required under RCW 26.44.030 only to make "reasonable efforts" to identify the person alleging that child abuse or neglect has occurred. Notwithstanding the published case law's preference for merits adjudication versus default orders under Civil Rule 60(b), the Department's regulations do not require actual service of the CPS notice in all instances and the undersigned must apply those regulations as the first

[17] *City of Seattle v. Foley*, 56 Wn. App. 485, 784 P.2d (1990); *McLean v. McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997); and *State v. Baker*, 49 Wn. App. 778, &45 P.2d 1335 (1987).

source of law.[18]

16. As stated above, an alleged perpetrator must request a review of a finding of abuse or neglect in writing, within twenty calendar days after receiving notice of the finding from the Department, or within thirty calendar days after the Department has made reasonable, good faith efforts at getting its CPS notice into the Appellant's hands. If a timely request for review is not made, 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.[19] This Appellant failed to timely request review of the finding of negligent treatment or maltreatment of a child after constructively refusing certified mail on April 14, 2011, and on April 29, 2011. Because this Appellant's request for hearing was not received by the Office of Administrative Hearings until after the regulatory and statutory time period for filing such a request, the founded incident of negligent treatment or maltreatment of a child became final and the ALJ lacked jurisdiction to hear the case on its merits. Therefore, the ALJ correctly dismissed this matter due to lack of subject matter jurisdiction.[20]

17. The undersigned has considered the *Initial Order*, the Appellant's *Petition for Review*, and the entire hearing record. The Initial Findings of Facts accurately reflected the evidence presented on this hearing record and they are adopted as findings in this decision, pursuant to the clarifying modifications outlined above. The initial Conclusions of Law cited and applied the governing law correctly and they are adopted and incorporated as conclusions for this decision.[21] The procedures and time limits for seeking reconsideration or judicial review of this decision are in the attached statement.

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[18] WAC 388-02-0220.
[19] RCW 26.44.125.
[20] *Inland Foundry Co. v. Spokane County Air Pollution Control Auth.*, 98 Wn. App 121, 124, 989 P.2d 102 (1999).
[21] RCW 34.05.464(8).

IV. DECISION AND ORDER

1. There was no jurisdiction for the Administrative Law Judge to hold a hearing on the merits of this matter, because the Appellant failed to timely request an adjudicative hearing to contest the Department's founded finding of negligent treatment or maltreatment of a child.

2. The *Initial Order* on the Department's *Motion for Dismissal* is **affirmed.**

Mailed on the 5th *day of November, 2013.*

THOMAS L. STURGES
Review Judge/Board of Appeals

Attached: Reconsideration/Judicial Review Information

Copies have been sent to: Holly Snyder (Ray), Appellant
Douglas Phelps, Appellant's Representative
Mareen Bartlett, Department's Representative
Sharon Gilbert, Program Administrator, MS: 45710
Robert M. Murphy, ALJ, Spokane OAH

Washington State Department of Social & Health Services

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
BOARD OF APPEALS

PETITION FOR RECONSIDERATION OF REVIEW DECISION

Washington State Health Care Authority

See information on back.

Print or type detailed answers.

NAME(S) (PLEASE PRINT) | DOCKET NUMBER | CLIENT ID OR "D" NUMBER

MAILING ADDRESS | CITY | STATE | ZIP CODE

TELEPHONE AREA CODE AND NUMBER

Please explain why you want a reconsideration of the Review Decision. Try to be specific. For example, explain:

- Why you think that the decision is wrong (why you disagree with it).
- How the decision should be changed.
- The importance of certain facts which the Review Judge should consider.

I want the Review Judge to reconsider the Review Decision because. . .

PRINT YOUR NAME | SIGNATURE | DATE

MAILING ADDRESS	PERSONAL SERVICE LOCATION
BOARD OF APPEALS PO BOX 45803 OLYMPIA WA 98504-5803	DSHS / HCA Board of Appeals Office Bldg 2 (OB-2), 1st Fl. Information Desk 1115 Washington St. SE, Olympia WA
FAX	TELEPHONE (for more information)
1-(360) 664-6187	1-(360) 664-6100 or 1-877-351-0002

DSHS 09-822 (REV. 07/2011)

If You Disagree with the Judge's Review Decision or Order and Want it Changed, You Have the Right to:

(1) Ask the Review Judge to reconsider (rethink) the decision or order **(10 day deadline)**;

(2) File a Petition for Judicial Review (start a Superior Court case) and ask the Superior Court Judge to review the decision **(30 day deadline)**.

DEADLINE for Reconsideration Request - 10 DAYS: The Board of Appeals must RECEIVE your request within ten (10) calendar days from the date stamped on the enclosed Review Decision or Order. The deadline is 5:00 p.m. If you do not meet this deadline, you will lose your right to request a reconsideration.

If you need more time: A Review Judge can extend (postpone, delay) the deadline, but you must ask within the same ten (10) day time limit.

HOW to Request: Use the enclosed form or make your own. Add more paper if necessary. You must send or deliver your request for reconsideration or for more time to the Board of Appeals on or before the 10-day deadline (see addresses on enclosed form).

COPIES to Other Parties: You must send or deliver copies of your request and attachments to every other party in this matter. For example, a client must send a copy to the DSHS office that opposed him or her in the hearing.

Translations and Visual Challenges: If you do not read and write English, you may submit and receive papers in your own language. If you are visually challenged, you have the right to submit and receive papers in an alternate format such as Braille or large print. Let the Board of Appeals know your needs. Call 1-(360)-664-6100 or TTY 1-(360) 664-6178.

DEADLINE for Superior Court Cases - 30 DAYS: The Superior Court, the Board of Appeals, and the state Attorney General's Office must all RECEIVE copies of your Petition for Judicial Review within thirty (30) days from the date stamped on the enclosed Review Decision or Order. There are rules for filing and service that you must follow.

EXCEPTION: IF (and only if) you file a timely reconsideration request (see above), you will have thirty days from the date of the Reconsideration Decision.

Refer to the Revised Code of Washington (RCW), including chapter 34.05, the Washington Administrative Code (WAC), and to the Washington Rules of Court (civil) for guidance. These materials are available in all law libraries and in most community libraries.

If You Need Help: Ask friends or relatives for a reference to an attorney, or contact your county's bar association or referral services (usually listed at the end of the "attorney" section in the telephone book advertising section). Columbia Legal Services, Northwest Justice Project, the Northwest Women's Law Center, some law schools, and other non-profit legal organizations may be able to provide assistance. You are not guaranteed an attorney free of charge.

APPENDIX B

Petition Denying Review from August 8, 2014

WORKING COPY

FILED
AUG 08 2014
SPOKANE COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE

HOLLY SNYDER PETITIONER
v
DSHS RESPONDENT

CASE NO. 13-2-04894-3

ORDER DENYING PETITION FOR REVIEW

I. BASIS

Petitioner moved the court for: Judicial review of administrative review order granting Department's motion to dismiss for lack of jurisdiction.

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:

The administrative order dismissing the hearing was correct due to lack of timely request for hearing. Oral findings incorporated by reference.

III. ORDER

IT IS ORDERED that: The administrative decision is affirmed. oral order incorporated by reference. Petition for Judicial review denied.

Dated: 8/8/2014

Judge Michael P. Price

Presented by:

AAG #41007

As To Form ONLY

ORDER CI-03.0300-7/780WPF