S

No. 95346-5

COA No. 73713-9-I

In the Supreme court of the state of Washington,

RE, In the matter of Ms. Deoid'e Lea Cunningham appellant

v.

State of Washington, respondent

On review from the superior court for the state of Washington for Skagit county

Petition for Review in the Supreme Court

Karl Ivan Olson POA/REP

Caregiver/petitioner for appellant

2714 J ave , Anacortes WA, 98221

360 420 8065

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A. IDENTITY OF THE PETIOTIONER

Deoid'e L. Cunningham, appellant below , a proud developmentally disabled and disabled United States citizen with all equal rights to appeal, review and the provisions of the constitution of the united states, asks this court to accept review of the court of appeals' decision terminating review. See part B.

B. COURT OF APPEALS DECISION

Petitioner Deoid'e Cunningham , seeks review of the court of appeals decision entered on October 9th 2017 affirming judicial review and the administrative decision to not reinstate her hearing request date 11/15/2017 related to an alleged default on 5/20/2014 that she did not have good cause for failing to appear despite the fact that she did have several undetected terminal conditions and that this matter was originally dismissed on 3/18/2013 but concealed by HCA and the ALJ, AAG also giving its opinion that the appeal was "misfiled", asking for review to deny her request to reconsider on 11/15/2017 based upon new discovery.

C. ISSUES PRESENTED FOR REVIEW

Deoid'e Cunningham was terminally ill before the hearing but it was unknown, Deoide's constitutional rights were violated. she also had good cause for many reasons to not appear on 5/20/2014

Deoid'e originally and previously defended her eligibility on this issue at hearing on 3/18/2013 (discovery 2016 and 2017) Discovery paragraph 6 (just released by HCA/OAH November 2017 after appeal denied) revealed that the PAN dated 3/4/2013 on DD client eligibility was concealed by DSHS/HCA and the ALJ at hearing on 3/18/2013, Commissioner Mary N. Neel denied the states motion to strike that evidence. New evidence paragraph 6 produces a transcript of that appeal being concealed by the ALJ and HCA attorney on 3/18/2013 violating the 14th amendment right for hearing that day on this issue because HCA was denied the only legal action that could preserve the actions for another date which was a continuance, ALJ Wagner concealed the rulings and did not make a tape record or entry into the records and also lied about the appeal being present filed or misfiled it was still legally filed and dependent on another legal order to save it, this is why it was not available per Commissioner Neels ruling, it was concealed. The appellant was owed due process that day on 3/18/2013 on this issue but that was violated by concealment. Improper notice for due process clause

3.Concealment of issues. RCW 9A.72, RCW 9A.72.010 and RCW 9A.72.150 tampering with physical evidence and interfering with official proceedings were committed by HCA and the ALJ who did act in collusion on 3/18/2013 and continuously through the process

during docket 07-2012-HCA-0109 and 06-2012-HCA-0508, Court of appeals wrongfully ruled/decided on an alleged "misfiled" appeal to which it had every obligation to remand back to superior court for fact finding on if the appeal was properly filed and dismissed on 3/18/2013 under docket 07-2012-HCA-0109 .Court of appeals wrongfully refused to remand back to superior court for a full fact finding investigation in both continued benefits and legitimacy of this appeal due to the PAN of 3/4/2013 properly filed under docket 07-2012-HCA-0109 which was not continued. COA should not have concluded that the decision makers in OAH were truthful, honest, impartial, unbiased and created a fair process to this appellant. Concealment of evidence has produced an unfair process. 4.Upholding the constitution is always in the public's best interest and especially for our most vulnerable citizens such as the appellant and her NSA. Newly discovered paragraph 6 is The state of Washington HCA holds a contract against OAH and all the staff , ALJs and review Judges who paid by the agency that is terminating or aggrieving the appellants eligibility. Goldberg V. Kelly 379, US , 254 (1970) pg 255 "the decision maker must be impartial"

STATEMENT OF THE CASE

(additional citations may be found in the briefs) chronological accounting from June 2012 through December 2017. On 6/27/2012 HCA (healthcare authority) formerly DSHS (department of social and health services) mailed a PAN (planned action notice) to the appellant Deoid'e Cunningham and her NSA (Necessary Supplemental Accommodation Representative) Mrs Nancy L. Olson notifying her that her waiver services would end on 7/31/2012 unless she appealed by 3/31/2012. The appellant, through her immediate POA (power of attorney) Karl Olson appealed timely, requested continued benefits and authorized with her POA , her attorney in fact Karl Olson to represent her in the matter. The case of docket 07-2012-HCA-0109 was created. On 9/7/2012 the HCA sent another PAN dated 9/7/2012 and immediately terminated the provider Karl Olson alleging that the appellant and Karl were legally married. The appellant timely appealed asking for continued benefits and named Karl Olson as her representative. The Planned actions were consolidated under docket 07-2012-HCA-2012 but after petitioning the OAH from October 2012 through January 2013 to separate the issues , Assistant Chief Justice Mary Radcliff wrote a letter to the appellant confirming her support to separate the issues and order a notice of hearing and assignment of a new and separate ALJ. On 3/4/2013 the HCA (healthcare authority) mailed yet another PAN (planned action notice) dated 3/4/2013 terminating the DD (developmental disabilities) client eligibility of Deoid'e Cunningham on an alleged residency issue effective 4/1/2013 unless an appeal for an administrative hearing was filed by 3/31/2013. NSA (necessary

supplemental accommodation representative) Nancy L. Olson filed an appeal with Olympia OAH (office of administrative hearings) on 3/7/2013 with the assistance of the OAH agent and approval of her supervisor who authorized the appeal to be faxed if completed by 4pm PST that same day while authorizing a waiver of the same day hard copy of that fax. Nancy Olson was informed by OAH to fax the PAN before 4 pm that day and hearing request and keep a copy of the confirmation, do nothing else. Nancy Olson called for help from The appellants case manager Norma Garza and her supervisor Rod Duncan on 3/6/2013 and again on 3/7/2013 asking for a fair hearing and that continued benefits be continued during the appeal, Nancy also asked them for help filing the appeal which HCA is obligated to do by law, neither Garza or Duncan returned the 4 voicemail calls for help so Nancy Olson called OAH who assisted her kindly. The appeal was filed and transferred to the proper venue of the Seattle OAH where it was filed on 3/8/2013 under docket number 07-2012-HCA-0109 where it continued the benefits that can only be maintained if a hearing request on the PAN if first filed with OAH by 3/31/2013, without filing for a hearing timely and without that hearing request challenging the PAN being properly filed under a hearing docket or given its own docket number one is denied continued benefits and a hearing, OAH may add PANs to existing cases at its will or if a party motions to. On 3/18/2013 the appellant appeared and prepared to have her hearing on two issues but HCA withdrew after the judge denied 2 requests to continue the hearing(ALJ concealed the continuance denials from the tape and records) and that representative for the appellant Karl Olson refused to continue the hearing. The judge denied the initial motion by HCA Olson who rejected it with support from Judge Wagner ruling good cause to continue was not found , HCA withdrew and

moved to dismiss the hearing. Judge Wagner did not record or tape record the denials on the continuances (strangely but did conceal the hearing request at hearing on 3/18/2013 along with Rep Kelly Clark whom each had the filed appeal in front of them at that time. According to her case manager Norma Garza the appellant was awarded her assessment based upon dismissal of the case of 2 issues including DD client eligibility with confirmation that the appeal was indeed filed timely and actually part of the hearing that was dismissed at the request of the HCA (completed on 3/20/2013 and 3/24/2013) based upon the dismissals of the 2 actions and awarded 145 MPC (Medicaid personal care hours per month for one year) but 2 months later past the 21 day review deadline and again after the 52 days to appeal for review deadline , HCA , Garza and Duncan all claimed the appeal was never filed with OAH which is now exposed as a false statement, a lie, even at the hearing on 3/18/2013 the HCA and ALJ (administrative law judge) along with case managers Garza and Supervisor Duncan, concealed the filed PAN dated 3/42013 and hearing request because the state was denied its continuances that are required to continue the actions a continuance would have preserved the actions for another date and time, hearing and produced a notice of hearing(. On May 24th 2013 , 59 days later Rod Duncan finally wrote a letter claiming the appeal was never received by OAH (Mr Duncan was at the hearing on 3/18/2013 and had a copy of the appeal in hand). Deoide's benefits continued because the case was dismissed but the caregiver was not paid because the OAH was awaiting a ruling from another ALJ on an alleged marriage issue between Deoid'e and Karl, OAH ruled for Deoid'e one year later in September of 2013 that they were not legally married. Deoid'e endured intimidation from the AAG/HCA who tried to scare her out of pursuing the appeal on the 3/4/2013 PAN

but it failed. Mr Duncan's letter, now a letter of premeditation and collusion requested proof of the appeal , not to start another hearing but reinstate benefits he tried to say were not available but already had been provided due to the timely hearing request and dismissal on 3/18/2013 he lied about. For whatever reasons and double jeopardy OAH began a second action on the same PAN dated 3/4/2013 that was concealed from the appellant on 3/18/2013 , when NSA Olson responded with proof she was told to hold on to by OAH in march of 2013. The AAG , OAH and HCA continued to conceal the filed evidence that was not discovered until 2016 when it was placed in front of Commissioner Mary N. Neel of court of appeals, HCA objected to discovery but Commissioner Neel denied the motion to strike and entered the proof into evidence. Additional discovery continued and still continues to this day. HCA failed to appear at a hearing on 8/13/2013 on this issue but was never made to answer or appear at a contested FTA (failed to appear) or default hearing as was the appellant. HCA continued to lie and deny access to all the appellant files she was entitled to see before the hearing. In January the ALJ denied continued benefits and concealed the 21 day appeal information by removing it from the order, again a second time that same week after asking for reconsideration the ALJ did not provide the 21 day appeal information required by law, Deoid'e did not appeal to the board of appeals because the 21 day notice was removed by ALJ Boivin. Deoide's witnesses were denied access by telephone as they were out of state and continuances requested by numerous Doctors, counselors and others were all denied. Deoid'e was also faced with appearing in Seattle at 9am on one issue and this issue at 9am in Mount Vernon , but could not appear for either due to at that time mysterious malaise and supleveda (exacerbations to existing illness) Deoid'e telephone ADA

(Americans with disabilities act of 1974 and 1990) accommodations of a telephone hearing with a special time between 11am and 2pm we suddenly denied during the double jeopardy hearing on 5/20/2014. Deoide's eligibility still remained viewable on the ACES (agency client eligibility system) website that was available to all and anyone who needed to see if she filed an appeal and if she was still a DD client. Because Deoid'e did not appeal the denial of continued benefits due to concealment of the appeal deadline notice her exhaustion of remedies failure was blamed on her wrongfully. Deoid'e appealed to judicial review timely but was denied and so was her reconsideration due to the superior court Judge refusal to remand and investigate why the ALJ concealed the 21 day appeal which was discovered in time at judicial review. Judge John Meyer simply coerced Deoid'e into re applying at the request of the AAG who could not explain why the 21 day notice was concealed while Judge Meyer held in his hand the order to deny benefits that had been altered to conceal the 21 day notice deadline. Deoid'e timely appealed to division one and continued to make incredible discoveries that the appeal was timely, concealed and dismissed on 3/18/2013 but division one would not remand (COA opinion dated 10/9/2017)for a full fact finding investigation, the appellant to this date is refused access to her files which she requested in January of 2013 and years before . The case was medically continued for a year and ADA accommodations were reinstated to Deoid'e by OAH per physician's letters. Additional health issues were discovered that were affecting Deoid'e and now have been addressed and therapy initiated. Medication management has changed many medications that affected Deoid'e which did contribute to her illnesses on 5/20/2014 and more discoveries just received In November 2017 confirm concealment, collusion of the PAN dated 3/4/2013 by HCA, AAG and OAH this entire

time. The court of appeals denied Deoide's appeal on 10/9/2017 and her request to reconsider on 11/15/2017. Deoid'e, her NSA, the community of Skagit county and Captain Eric G. Petersen(USN Veteran Retired), the appellants bother in law seek this courts review. As of November 2017 additional paragraph 6 discovery continues including the official transcripts of the 3/18/2013 hearing where the ALJ, Rep Clark, Ms Garza and Mr Duncan all conceal at that hearing that the PAN appeal on 3/4/2013 DD client eligibility was in their hands , The transcript is void evidence claimed by HCA in the service record episodes and some of their emails including evidence the appellant cited properly years ago.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

(1) THE APPELLANT IS TERMINALLY ILL AND IT WAS UNKNOW, THE APPELLANTS CONSTITUTIONAL RIGHTS UNDER THE 14TH CONSTITUTIONAL AMENDMENT XVI CLAUSE FOR DUE PROCESS WERE VIOLATED MULTIPLE TIMES ON MULTIPLE POINTS AND AT SEVERAL HERINGS ON THE SAME ISSUE, THEREFOR ALSO VIOLATING THE WASHINGTON STATE CONSTITUTION ART. 1 SEC 2, 3, 10 AND 29

Deoid'e was denied an impartial decision maker demanded by the United States 14th Constitutional Amendment XIV due process clause and the Washington State constitution. On 1/9/2014 and again in the same week on 1/15/2014 the decision maker , ALJ Boivin did commit a gross misdemeanor of law under RCW 9A.72.010(1)(4) and (6) , RCW 9A.72.150(1)(a)(b)(2) and (3) when she intentionally and manually removed/concealed the 21 day appeal notice from her order. The so called impartial decision maker who later denied Deoides request to reinstate her hearing after the 5/20/2014 default did commit under RCW 9A.72.150 (1)(a)(b)(2) and (3) concealment/alter/mutilate/destroyed/removes at an official proceeding and after the proceedings The ALJ physically concealed/removes, alters/ destroys/mutilates the 21 day appeal notice required and preprinted on the forms by RCW 34.05.461"entry of orders", WAC 388-02-0520(a) and RCW 34.05.485(3) so that her order could not be reviewed by a higher court and possibly reversed and that it could be remanded to discover where the original appeal was filed. The ALJ also concealed the date the order becomes final WAC 388-02-0525. This is significant because this ALJ later denies the

appellant reinstatement of her appeal and a continuance before hearing to retain an attorney also a due process right under *Goldberg* v. *Kelly* 397 U.S. 254 , 262 (1970) and the due process clause amendment. The 14th amendment due process clause demands the right to an attorney an attorney must be allowed but not provided . It is incomprehensible that anyone would think this ALJ could provide a fair and impartial ruling/judgement after she did what she did. She violated Deoides 14th amendment right for due process *Goldberg* v. *Kelly* 397 U.S. 254, 262 (1970) & U.S. CONST. amend. XIV for an impartial decision maker who did not follow the rules and laws . Even as Deoid'e was terminally ill and always will be but it was undiscovered before the hearing and not until 2015, 2016 and still in 2017, it did prevent her from making the hearing on 5/20/2014. Deoid'es eligibility was reliant of this impartial ALJ to be fair but this caregiver of nearly 28 years does not feel that any decision maker who commits a gross misdemeanor on multiple orders, refused to follow rules and laws could render an impartial decision later and certainly not to deny counsel , deny reinstatement of an appeal order to the same party she or he aggrieved. Clearly violating the rules as this ALJ did not one time but twice in the same week she denied the appeal rights to Deoid'e and I do not feel she could be impartial after that point in January 2014. In April and May of 2014 the ALJ denied the right to an attorney and then finally denied the request to reinstate the hearing default. This criminal act provides a serious conflict in the ALJ to give her final ruling to be impartial at all, if she would commit this act she could not be fair. Chief Justice Lorraine Lee was notified on 1/10/2014 at the same time as reconsideration was requested but without the 21 day appeal information we depend on it was impossible to know what options were available to the appellant and this did happen

twice that week. There was no error later on as division one contended because the ALJ made a decision to remove the notice that is pre filled on the order forms, even at that since this is a HCA issue the first order is always an initial order which I have just discovered in 2017. Why it was so critical to conceal the original hearing request from a review judge comes later and it is very concerning, it is another due process issue and that it is a serious constitutional significance to the public both in which RAP 13.4(b)(1)(3)and(4) require that the Supreme Court accept this review request. With issues of the US Constitution it applies also to the WASH. CONST. ART. 1 Sec 2, 3, 10 and 29. Cases such as *State* v. *Sieyes* , 225 P.3d 995, 1003 (WASH 2010) and the *State* v. *Manussier*, 921 P.2d 473, 483 -84 (WASH.1996 give the Supreme Court serious considerations into the government's actions to violate the constitution.

(2) THIS ISSUE WAS RESOLVED ON 3/18/2013 @ 11AM UNDER DOCKET 07-2012-HCA-0109 WHEN THE CASE WAS DIMSSED WHEN HCA REFUSED TO PROCEED AND MOTIONED TO DISMISS THE HEARING WHILE THE HCA AND ALJ CONCEALED THE ORIGINAL APPEAL ON THIS ISSUE OF A PAN DATED 3/4/2013 ON DD CLIENT ELIGIBILITY RESIDENCY.

This matter originated in June of 2012 and so began the case of # 07-2012-Hca-0109 to which this PAN dated 3/4/2013 was filed originally, even as the State contends that it was "misfiled" it was still legally submitted by HCA and filed just as the appeal from NSA Nancy Olson was filed under the same docket. If This case were not to be conducted on 3/18/2013 or filed under that docket # an individual "notice of hearing" WAC 388-02-0110(1) would have been mailed to the NSA/appellant with specific information about the date, time and place for the hearing but it does not exist. In fact out of 256 total

pages of evidence 187 pages were dedicated to DD client eligibility PAN dated 3/4/2013 including most importantly the HCA original pre termination notice dated 3/4/2013. The HCA representative kelly Clark requested per WAC 388-02-0380(2) and WAC 388-02-0387(2)that the PAN of 3/4/2013 be consolidated with a PAN dated 6/27/2012 on waiver services termination after a continuance to which the ALJ Leslie A.Wagner (LAW) and the appellant representative Karl Olson only objected to the continuance. Karl olson supported the group hearing of issues but refused to delay the hearing which ALJ Wagner affirmed and denied every motion by HCA to continue but the evidence was allowed and so were the PANs, no order to separate was made WAC 388-02-0385(1). Four days after receiving the appeal which division one confirms timely to continue benefits , for a hearing , OAH must provide a copy to HCA, WAC 388-02-0250 and file it which it did under case 07-2012-HCA-0109 therefore in our opinion it could not be misfiled. ALJ Wagner was to rule at the beginning of the hearing on whether the HCA could show good cause to continue the matter but both motions to continue were denied and the hearing proceeded per WAC 388-02-0280(5) because the continuances were all denied. ALJ Wagner did not follow RCW 34.05.449(4) or WAC 388-02-0350 and tape the proceedings in whole or enter a written order that she denied the continuances. If a continuance would have been granted at hearing, a new notice of hearing WAC 388-02-0280(4) would have been mailed and thus preserving the states allegations of termination against the appellant for another date and time . Without a continuance it is my view that the original allegations of ineligibility are voided and that Deoid'e was owed proper notice of any new termination actions against her such as a new PAN . This is critical because at hearing and only after HCA was denied its continuances and after the ALJ

turned on the tape recorder HCA denied that the appeal for a hearing by NSA Nancy Olson had been received by OAH, which was then supported by ALJ Wagner. Discovery Paragraph 6 in 2016 revealed that HCA and the ALJ concealed that the appeal was present at that hearing with discovery in PDR records obtained by the appellant. HCA and the ALJ lied , concealed it from the official proceedings on 3/18/2013. RCW 9A.72.010(1)(4)(6) RCW 9A.72.080, RCW 9A.72.150(1)(a)(2) were all committed again on this 3/4/2013 PAN on DD client eligibility, the same PAN ALJ Boivin concealed the 21 day appeal notice order on, it was so important to the state and "impartial decision makers" to conceal this due to the facts that I see these issues legally dismissed on 3/18/2013. Official transcripts just received from an Oregon transcribing agency in November of 2017 reveal HCA Representative Kelly A. Clark , HCA hearing representative and ALJ Wagner colluding to conceal the appeal RCW 9A.72.010(1)(4) and (6) that did continue benefits from NSA Olson filed by OAH on 3/8/2013 WAC 388-02-0070(2) and (3) date of filing(2) filing is complete (3). Why we ask was it so important for the ALJ and HCA to work together to conceal the appeal? HCA and division one affirm the appeal was timely to continue her benefits but we ask why did division one not remand back to Superior Court for fact finding? It was willing originally to remand for fact finding as to the question of continued benefits during appeal but reversed its opinion. The lower courts rely on ALJ Boivins decision to deny reinstatement of the appeal default on 5/20/2014 but they do not ask why these so called impartial decision makers conceal evidence or why they alter documents, and how they could depend on any rulings, orders that deny the appellant after those actions. Division one is wrong to decide this issue without further fact finding but again with the constitutional

violations it is likely that they wish the supreme court to decide this even as I feel strongly they failing the constitutional rights of Deoid'e under *Goldberg* v. *Kelly* 397 U.S. 254, 262 (1970) & U.S. CONST. amend. XIV & WASH. CONST. ART. 1, SEC 2, 3, and 29. RAP 13.4(b)(1)(3) and (4) includes in my opinion cases such as the *State* v. *Sieyes* , 225 P.3d 995, 1003 (WASH 2010) and the *State* v. *Manussier*, 921 P.2d 473, 483 -84 (WASH.1996) clearly bolster the supreme courts opinions and actions to defend the US constitutional rights for Washington state citizens under the WA state constitution. The Supreme Court of Washington State stands even more ferociously against any constitutional rights violations when pertaining to Government or State agencies in which this case does take precedence in a public program eligibility action that has serious questions into the constitution of the United States and Washington State RAP 13.4(b)(3) . This matter is of the greatest public interest RAP 13.4(b)(4) because it is likely to happen again and many rely on public assistance to survive below poverty which makes this very important for the poor and vulnerable who need it most. When issues such as this come to the supreme Court our public needs justice and also to remind the lower courts that the constitution will not be violated and especially to those who in this public rely upon for daily existence. *Goldberg* v. *Kelly* 397 U.S. 254, 262 (1970) who gives us the due process clause for fairness has positively impacted the lives of millions and the past justices did agree(5) that the public interest and their welfare was more important than the states financials which at this time of year in December becomes more visual and that we remind ourselves to those in need.

(3) DEOIDE DID NOT RECEIVE PROPER AND TIMELY NOTICE OF TERMINATION AFTER THESE HEARING MATTERS WERE

CONCEALED , DISMISSED ON 3/18/2013 WHEN HCA WITHDREW. DEOIDE WAS PRESENT TO DEFEND HER ELIGIBILITY ON BOTH ISSUES AND REFEUSED TO CONTINUE THE HEARING

When HCA representative Clark and ALJ Wagner colluded to conceal that the appeal was present for the hearing on 3/18/2013 and that it was timely to continue benefits it must be understood that a hearing must be filed for first before benefits can be continued. The ALJ and representative for HCA did perjure themselves by making statements that they knew were not true. After the 21 day initial order and making sure to pass the 52 day review rules timeline HCA Supervisor Rod Duncan mailed a letter to Deoid'e on the 59th day of post dismissal. Mr Duncan claimed that the appeal was never received, although he was at the hearing and had in his hands a filed appeal from NSA Olson and that benefits we unavailable due to the appeal not being filed which we know now as a false statement or a lie. Deoid'e retained her eligibility which remained on the states ACES website and in our opinion she retained her benefits because HCA withdrew while Deoid'e was there to deal with two issues on eligibility. Again, ALJ Wagner and HCA lied and concealed , perjured themselves about the appeal be present but they did not mail a proper and new notice to the NSA to inform her that she needed to send in proof of her appeal again on the same allegations that she was not eligible for a residency issue. Because the hearing on 3/18/2013 was dismissed and continuances denied but concealed from the records, HCA would need to create and take a new PAN with new timelines so that the NSA could appeal and prevent this situation WASH. CONST. ART. 1, SEC 2, 3 10 and 29. U.S. CONST. amend. XIV Due process clause under *Goldberg* v. *Kelly* 397 U.S. 254, 262 (1970) requires adequate notice of hearing which in this case again is

denied, the NSA clearly filed a timely challenge to the termination and that a hearing did take place but that HCA withdrew after the appellant demanded to proceed. Only a continuance preserves actions and even if the cases were misfiled the original allegations of ineligibility needed to be reinitiated because they were dismissed and that these are time sensitive documents that must be acted upon timely. Deoid'e should have been mailed a new PAN and the process started over but in my opinion she retained her eligibility because the state and ALJ lied at the hearing on 3/18/2013 and that they did have the DD client eligibility PAN dated 3/4/2013. They lied because they knew only a continuance would and could only legally preserve the original actions against the appellant. Mr Duncans letter dated 5/24/2013 is insufficient under *Goldberg* v. *Kelly* 397 U.S. 254, 262 (1970) & U.S. CONST. amend. XIV to require the NSA to answer the call twice on the same issue and at this point I feel Deoid'e is placed in a "double jeopardy" violation under the 5th constitutional right U.S. CONST. amend V not to be tried twice on the same issue, she is not a defendant as a criminal but she is still defending against civil allegations that she violated a rule and was ineligible for public benefits , arguably failing to send an official PAN required by *Goldberg* v. *Kelly* 397 U.S. 254, 262 (1970) violates her rights for due process of notification. Again RAP 13.4(b)(1)(3) and (4) will strongly support the need for the Supreme Court review of this case. Mr Duncans letter has no PAN value and it simply was a trick to conceal the truth and award HCA an illegal "de novo" since HCA was denied continuances, It is again of serious public interest that the Supreme Court review this case due to the extremely dangerous actions of the state officials who work with our states most vulnerable adults and that at any time they can and obviously will conceal the truth and violate a vulnerable

adults due process rights a second time when they are pre mature to file PANs without being prepared to follow through. Deoid'es Washington State Constitutional rights For administration of justice WASH. CONST. ART 1, SEC 2, 3 , 10 and 29 are violated by concealment of the appeal on 3/18/2013, it was intentional to delay because the continuances were denied. The parties agreed to administrative efficiently and the transcription from this matter just received by discovery paragraph 6 reveals the ALJ speaking of preventing this delay and that in part her denials of the continuances were based upon this right. All the evidence was present , everything was there but HCA was not prepared and they were not ready which is why a continuance was sought but denied and concealed from the records WAC 388-02-0512 the ALJ must tape the entire record but she did not . The only reason benefits continued were from dismissal and victory for the appellant, she was there and ready but HCA was not, HCA lost its opportunity to terminate the appellants eligibility when they lied , concealed and withdrew, the ALJ also conceals that Deoid'e demanded her hearing that day but HCA would not proceed. That is a default against HCA. The Supreme Court has great interest in this case as does the public who relies upon assistance from these government programs and agents who are to be impartial and follow the rules, when they violate them the public is at risk and when serious questions with the constitution, Both US and WA state cases such as the *State* v. *Sieyes* , 225 P.3d 995, 1003 (WASH 2010) and the *State* v. *Manussier*, 921 P.2d 473, 483 -84 (WASH.1996) give additional scope and authority for this case to be reviewed by the Supreme Court . 34.05.562 on admission of new evidence are all violated by HCA and will/should allow the new transcript of the hearing on 3/18/2013 for review, This has allowed a great deal of new evidence in 2015,2016 and again in 2017 to be presented as

was Commissioner Mary Neels discovery ruling in 2016 accepting the appellants proof that the appeal was timely. Evidence omitted was concealed which is separate but will change the outcome if it had not been concealed. Government agencies require that this court review the constitutional violations of laws and processes due. Again the public has an extreme interest in this case because it is the public tax monies that are here to help the public while the public needs to know when their government is violating the laws. The constitution is mandatory WASH. CONST. ART. 1 sec 29 and the constitution is the supreme law of the land WASH. CONST. ART. 1 sec 2 , No person shall be deprived of freedom with due process of law, WASH. CONST. ART. 1 sec 3 and 10

4. CONFLICT OF INTEREST EXISTS BETWEEN HCA, OAH AND THE APPELLANTS DUE PROCESS RIGHTS BECAUSE OF MONEY

There is a serious conflict of interest I have just discovered and with a contract for payment between HCA and OAH, its staff and Judges including the HCA Board of appeals, Whose decision makers are actually paid by the agency who has terminated or about to terminate a recipients benefits. Although the decision maker may not have had anything to do with the action by HCA I do not feel it is possible for any clients on HCA caregiver programs to receive an impartial decision so in the public's interest and for the future to all those who survive because of their benefits this matter must be reviewed by the supreme court RAP 13.4(b)(2)(3) and (4) because the public should not have to suffer like Deoid'e has with a decision makers who broke the laws and violated due process and the RCWs and WACs. I also feel as a caregiver of nearly 28 years in homecare that this Supreme Court is very concerned for our constitutional rights and the welfare of all who call Washington State Home. *State* v. *Sieyes* , 225 P.3d 995, 1003 (WASH 2010) and the

State v. *Manussier*, 921 P.2d 473, 483 -84 (WASH.1996) , *Goldberg* v. *Kelly* 397 U.S. 254, 262 (1970) U.S. CONST. amend. XIV & WASH. CONST. ART 1, SEC 2, 3 , 10 and 29.

Conclusion.

The Constitution of the United States Of America and the Washington State Constitution are being denied and terribly, this is *Goldberg* V. *Kelly* all over again but worse. For the serious questions involving our supreme laws of the land and that it is a dire need for the public interest that this be corrected we ask that this Court take review and reverse the Court of Appeals decision to deny reinstatement of the hearing on 5/20/2014 but also either order the appellants DD client eligibility reinstated because this matter was not misfiled and even if it were it was still legally dependent on an order to continue which was not granted on 3/18/2013, please take this very complex and damaging case and restore the constitutional rights to Deoid'e. We feel she is still eligible and always has been since 3/18/2013 when the ALJ and HCA lied about the appeal evidence being filed at hearing. The case was dismissed, HCA and the ALJ concealed the timely appeal and that's why we feel this court should order a reinstatement of DD client eligibility retroactively to March 18th, 2013 because the HCA was premature and was denied two continuances that were not tape recorded. We feel Deoid'e was not required to appear a second time on 5/20/2014 because is terminally and we did not know.

Dated this 14th day of December 2017.

Respectfully submitted at Christmas,

Karl Ivan Olson , 28 year caregiver and Significant other for Deoid'e L. Cunningham

Karl Ivan Olson Deoid'e L Cunningham

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
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Seattle, WA
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November 15, 2017

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CASE #: 73713-9-I
Deoide Lea Cunningham, Appellant v. State of WA., DSHS, Respondent
Skagit County No. 14-2-02007-7

Counsel:

Enclosed please find a copy of the order denying motion for reconsideration entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

khn

Enclosure

c: The Hon. John M. Meyer
Reporter of Decisions

FILED
11/15/2017
Court of Appeals
Division I
State of Washington

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

DEOIDE LEA CUNNINGHAM, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	No. 73713-9-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Deoide Cunningham, has filed a motion for reconsideration of the opinion filed in the above matter on October 9, 2017. Respondent, State of Washington, has not filed a response to appellant's motion. The court has determined that appellant's motion should be denied. Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

FOR THE COURT:

Becker, J.

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

DEOIDE LEA CUNNINGHAM, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	No. 73713-9-I ORDER DENYING APPELLANT'S MOTION FOR RECONSIDERATION, GRANTING RESPONDENT'S MOTION FOR RECONSIDERATION AND WITHDRAWING AND SUBSTITUTING OPINION

Appellant, Deoide Cunningham, and respondent, Department of Social and Health Services, have filed motions for reconsideration of the opinion filed in the above matter on July 31, 2017.[1] A majority of the panel has decided that appellant's motion should be denied and respondent's motion should be granted. The opinion filed on July 31, 2017, shall be withdrawn and a substitute opinion shall be filed. Now, therefore, it is hereby

[1] On August 3, 2017, appellant filed a motion for extension of time to "respond to latest ruling," which this court interpreted as a request for additional time to seek reconsideration of this court's opinion. On August 21, 2017, appellant filed a 239-page motion for reconsideration as well as a separate 9-page document appearing to request the consideration of supplemental evidence, both of which were considered by this court. Accordingly, appellant's request for additional time appears to be moot.

ORDERED that the appellant's motion for reconsideration is denied. It is further

ORDERED that the respondent's motion for reconsideration is granted. And it is further

ORDERED that the opinion filed on July 31, 2017, shall be withdrawn, and a new opinion shall be filed.

Becker, J.

Spearman, J.

Appelwick, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEOIDE LEA CUNNINGHAM, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)	No. 73713-9-I DIVISION ONE UNPUBLISHED OPINION FILED: October 9, 2017

BECKER, J. — When Deoide Cunningham failed to appear for an administrative hearing, an administrative law judge entered an order of dismissal in favor of the Department of Social and Health Services. The administrative law judge subsequently denied Cunningham's motion to vacate the dismissal for good cause. Cunningham does not challenge the administrative law judge's finding that she lacked good cause but rather contends that the administrative law judge erred in failing to consider certain evidence. We find no error in the administrative law judge's findings regarding good cause and affirm.[1]

[1] Respondent sought reconsideration of this court's prior opinion, filed July 31, 2017, based on authority not cited in its original brief. In the interests of justice, we exercised our authority to consider this authority and amended our opinion. RAP 12.2, 12.4.

Cunningham has previously received services and financial benefits from the department as a client of the Development Disabilities Administration. On March 4, 2013, the department notified Cunningham in writing that it was terminating her eligibility for these services effective April 1, 2013, because Cunningham was no longer living in Washington. The notice informed Cunningham that she had until June 4, 2013, to appeal the termination but that she was required to file her appeal by March 31, 2013, in order to continue receiving services pending the appeal.

Cunningham, through her representative, Karl Olson, filed a notice of appeal and requested an administrative hearing with the Office of Administrative Hearings.[2] The record shows that Cunningham faxed the notice of appeal to the Office of Administrative Hearings on March 7, 2013. However, it was misfiled in one of Cunningham's other open cases. Cunningham faxed the notice of appeal a second time on June 3, 2013. An administrative hearing was scheduled for May 20, 2014, at 9:00 a.m. The Office of Administrative Hearings issued an order requiring Cunningham and any of her witnesses to appear in person "due to significant issues of credibility."

At a continuance hearing on December 17, 2013, Cunningham requested to continue receiving services pending the appeal. On January 9, 2014, an administrative law judge issued an order denying continued benefits because

[2] Olson is Cunningham's caregiver and significant other.

Cunningham had not appealed the eligibility termination in time. Cunningham did not specifically appeal this order.

Neither Cunningham nor Olson appeared at the May 20 hearing. Nor did they contact the court or otherwise explain their absence. The administrative law judge dismissed Cunningham's appeal.

Cunningham moved to vacate the dismissal, claiming that she had good cause to miss the hearing. Cunningham stated that she had a medical appointment on May 20 and her primary care physician "has asked for all hearings to be continued until issues are identified and therapy initiated." In support of her motion, Cunningham submitted four letters from Dr. Seth Cowan, a naturopathic physician. The first, dated June 10, 2014, stated:

> Ms. Cunningham has multiple serious medical problems. Stress related to DSHS hearings may exacerbate her conditions. Therefore, please allow her power of attorney, Karl Olson, to represent her for related hearings, including via telephone calls and in-person interviews.

The second, also dated June 10, 2014, stated:

> Please excuse Mr. Olson from his appointment on 05/20/14. He was being seen in my office that day.

The third, dated July 10, 2014, stated:

> Please provide special accommodations for Deoide Cunningham by contacting her primary care giver and representative, Karl Olson prior to scheduling further meetings or hearings due to her complex medical situation. If possible, please conduct meeting and hearings via phone. The best time for Ms. Cunningham and Mr. Olson are mid-day between 11 am and 1 pm due to care giving routines and typical scheduled therapy appointments.

The fourth, dated August 12, 2014, stated:

> Ms. Cunningham has a complex medical history including seizure disorder, severe constipation and chronic pain. It is my understanding that she required an urgent medical intervention on May 20, 2014, which required her to miss a scheduled DSHS hearing. Please consider reinstating her hearing.

In response, the department submitted an affidavit in which Dr. Cowan stated that Olson's May 20 appointment had been at 1:40 p.m., several hours after the 9:00 a.m. hearing, and was for the purpose of discussing Cunningham's condition, not for an emergent medical matter. Dr. Cowan also stated that Cunningham had not been a patient of his on May 20 and he had not even met her until June 6. Dr. Cowan stated that he was "still unaware of the scope and severity of Ms. Cunningham's purported medical conditions, and that the statement he provided to OAH regarding Ms. Cunningham's condition was at Mr. Olson's request and was based solely on information provided by Mr. Olson."

An administrative law judge denied the motion to vacate the dismissal. The administrative law judge found that Dr. Cowan did not have any personal knowledge of the contents of his statements and that the letters were insufficient to establish "a link between Ms. Cunningham and Mr. Olson's medical conditions and their inability to attend a hearing." The administrative law judge concluded that Cunningham had not shown good cause for failing to attend the May 20 hearing.

As to Cunningham's continued benefits, the administrative law judge found that Cunningham had not filed her notice of appeal until June 3, 2013, and

was thus not entitled to continued benefits. The administrative law judge further found:

> 4.10 The motion for a continuance was therefore heard on December 17, 2013. . . . At the same time, Mr. Olson raised, for the first time, the issue of continued benefits under docket number 06-2013-A-0805 claiming Ms. Cunningham had timely requested a hearing by fax on March 7, 2013. The available evidence was reviewed, argument taken, and Mr. Olson was given additional time to provide more evidence of his alleged timely fax.
>
> 4.11 On December 23, 2013, Mr. Olson submitted additional documentation by certified mail, return receipt requested. (A letter from the purported March 7, 2013 fax sender and another copy of the purported fax transmission.) On January 6, 2014, DSHS filed a response. On January 9, 2014, an order denying continued benefits was issued.

In a footnote, the administrative law judge noted:

> More importantly, even if continued benefits had been granted based on the purported timely request, they would have terminated, pursuant to WAC 388- 825-150 (11)(c), when Ms. Cunningham failed to appear for hearing on May 20, 2014. There is no right to resume continued benefits pending hearing when a petition to vacate is filed. Even if the letters or other evidence was persuasive that the ruling denying continued benefits was in error, there is no legal basis to grant continued benefits at this point. He may appeal that issue (as he had earlier been instructed) if and when he appeals this initial decision.

Cunningham filed a petition for review with the department's Board of Appeals. A review judge adopted the administrative law judge's findings that Cunningham had not established good cause for her failure to appear at the administrative hearing. The review judge declined to consider Cunningham's challenge to the denial of continued benefits, finding that Cunningham had not sought review of the January 9 order denying continued benefits.

Cunningham sought review in Skagit County Superior Court, which also affirmed the administrative law judge's decision. Cunningham appeals.

In reviewing an administrative action, we sit in the same position as the superior court, applying the standards of the Administrative Procedure Act, chapter 34.05 RCW, directly to the record before the agency. Brighton v. Dep't of Transp., 109 Wn. App. 855, 861-62, 38 P.3d 344 (2001). To the extent they modify or replace the administrative law judge's findings of fact and conclusions of law, a review judge's findings and conclusions are relevant on appeal. Tapper v. Emp't Sec. Dep't, 122 Wn.2d 397, 406, 858 P.2d 494 (1993). The party challenging an agency's action bears the burden of demonstrating the invalidity of the decision. Brighton, 109 Wn. App. at 862 (citing RCW 34.05.570(1)(a)).

We review an agency's factual findings to determine whether they are supported by substantial evidence. Port of Seattle v. Pollution Control Hr'gs Bd., 151 Wn.2d 568, 588, 90 P.3d 659 (2004). Substantial evidence is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the agency action. Port of Seattle, 151 Wn.2d at 588. We will overturn an agency's findings only if they are "clearly erroneous" and we are "'definitely and firmly convinced that a mistake has been made.'" Port of Seattle, 151 Wn.2d at 588, quoting Buechel v. Dep't of Ecology, 125 Wn.2d 196, 202, 884 P.2d 910 (1994). We view the "evidence and reasonable inferences therefrom in the light most favorable to the party who prevailed at the administrative proceeding below." Kirby v. Emp't Sec. Dep't, 185 Wn. App. 706, 713, 342 P.3d 1151 (2014), review denied, 183 Wn.2d 1010 (2015).

Cunningham primarily challenges the administrative law judge's decision denying continued benefits pending the appeal. Cunningham contends that the administrative law judge violated her right to due process and her right to present a complete defense when it "concealed" or "destroyed" the notice of appeal she faxed on March 7.

The department acknowledges that Cunningham timely filed her notice of appeal to be entitled to continued benefits. See WAC 388-825-130(3) (individual must request administrative hearing within 10 days in order to maintain current services during the appeal process). Because the notice of appeal had been misfiled, the administrative law judge was not aware of it. Therefore, the administrative law judge's finding that Cunningham was not entitled to continued benefits because of her untimely filing was erroneous.[3]

However, because we affirm the dismissal of Cunningham's appeal, thereby upholding the department's termination of her benefits, the erroneous finding was harmless. Even if Cunningham had received benefits during the pendency of her appeal, she would not be entitled to them now, as Medicaid beneficiaries are not entitled to keep benefits received pending a hearing when

---

[3] The department contends that the issue of continued benefits is not properly before us on appeal because Cunningham did not timely appeal the January 9 order. But it is not clear that the January 9 order was an appealable order. The order does not provide Cunningham with notice of her right to appeal. See WAC 388-02-0520(9) and (10) (requiring an administrative law judge to include in its decision "how to request changes in the decision and the deadlines for requesting them" and "the date the decision becomes final according to WAC 388-02-0525). Furthermore, the administrative law judge's initial order clearly stated that Cunningham could appeal the denial of continued benefits as part of her appeal of the initial order.

the agency's original action to terminate them is sustained. See 42 C.F.R. § 431.230(b) ("If the agency's action is sustained by the hearing decision, the agency may institute recovery procedures against the applicant or beneficiary to recoup the cost of any services furnished the beneficiary.").

Cunningham also contends that the administrative law judge "concealed" or "destroyed" evidence that the department had withdrawn the March 4 notification in a different proceeding. But, even based on the documents Cunningham has provided from this unrelated proceeding, Cunningham's claim has no basis in fact.

Finally, Cunningham contends that the review judge failed to consider two additional letters that she provided in support of her motion to vacate. The first, dated May 5, 2014, is from Kenneth Dunning, a licensed mental health counselor. According to Dunning, who has reportedly provided counseling for Olson since 2001, Olson has "complained that he is having difficulty maintaining a level of mental acuity over prolonged periods" and "believes this difficulty impairs his ability to deal with matters involving intense concentration." The second, dated May 16, 2014, is from Mary Stone, a licensed mental health counselor. According to Stone, who has seen both Cunningham and Olson for counseling since February 2007, Cunningham "is unable to represent herself due to a seizure disorder and other medical conditions" and Olson "has difficulty with concentration and reasoning, and would not be able to adequately . . . represent

himself or Ms. Cunningham at this time."[4] But Cunningham fails to establish that these letters, attached as an appendix to her opening brief, were actually provided to the administrative law judge. Nor does Cunningham articulate how either of these letters would be relevant to the question of whether she was unable to appear in person on May 20.

We affirm the superior court's order affirming the administrative law judge's decision.

Becker, J.

WE CONCUR:

Spearman, J.

Appelwick, J.

[4] Cunningham also included copies of identical letters written by Stone, dated February 16, 2014, and December 26, 2013.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEOIDE LEA CUNNINGHAM, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	No. 73713-9-I DIVISION ONE UNPUBLISHED OPINION FILED: July 31, 2017

BECKER, J. — When Deoide Cunningham failed to appear for an administrative hearing, an administrative law judge entered an order of dismissal in favor of the Department of Social and Health Services. The administrative law judge subsequently denied Cunningham's motion to vacate the dismissal for good cause. Cunningham does not challenge the administrative law judge's finding that she lacked good cause but rather contends that the administrative law judge erred in failing to consider certain evidence. We find no error in the administrative law judge's findings regarding good cause but remand for further fact-finding on the issue of whether Cunningham was entitled to continued benefits during the pendency of her appeal.

Cunningham has previously received services and financial benefits from the department as a client of the Development Disabilities Administration. On

March 4, 2013, the department notified Cunningham in writing that it was terminating her eligibility for these services effective April 1, 2013, because Cunningham was no longer living in Washington. The notice informed Cunningham that she had until June 4, 2013, to appeal the termination but that she was required to file her appeal by March 31, 2013, in order to continue receiving services pending the appeal.

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[1] Olson is Cunningham's caregiver and significant other.

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Cunningham moved to vacate the dismissal, claiming that she had good cause to miss the hearing. Cunningham stated that she had a medical appointment on May 20 and her primary care physician "has asked for all hearings to be continued until issues are identified and therapy initiated." In support of her motion, Cunningham submitted four letters from Dr. Seth Cowan, a naturopathic physician. The first, dated June 10, 2014, stated:

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Cunningham primarily challenges the administrative law judge's decision denying continued benefits pending the appeal. Cunningham contends that the

administrative law judge violated her right to due process and her right to present a complete defense when it "concealed" or "destroyed" the notice of appeal she faxed on March 7.

The department acknowledges that Cunningham timely filed her notice of appeal to be entitled to continued benefits. See WAC 388-825-130(3) (individual must request administrative hearing within 10 days in order to maintain current services during the appeal process). Because the notice of appeal had been misfiled, the administrative law judge was not aware of it. Therefore, the administrative law judge's finding that Cunningham was not entitled to continued benefits because of her untimely filing was clearly erroneous. We remand to the superior court with instructions to remand to the board for further fact-finding on this issue. See RCW 34.05.562(2)(b), (c) (a superior court has authority to remand a matter back to the agency if it finds that "new evidence has become available that relates to the validity of the agency action at the time it was taken" or "the agency improperly excluded or omitted evidence from the record.")[2]

Cunningham also contends that the administrative law judge "concealed" or "destroyed" evidence that the department had withdrawn the March 4

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[2] The department argues that the issue of continued benefits is not properly before us on appeal because Cunningham did not timely appeal the January 9 order. But it is not clear that the January 9 order was an appealable order. The order does not provide Cunningham with notice of her right to appeal. See WAC 388-02-0520(9) and (10) (requiring an administrative law judge to include in his/her decision "how to request changes in the decision and the deadlines for requesting them" and "the date the decision becomes final according to WAC 388-02-0525"). Furthermore, the administrative law judge's initial order clearly stated that Cunningham could appeal the denial of continued benefits as part of her appeal of the initial order.

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[3] Cunningham also included copies of identical letters written by Stone, dated February 16, 2014, and December 26, 2013.

We remand for further fact-finding on the issue of whether Cunningham was entitled to continued benefits during the pendency of her appeal. In all other respects, we affirm.

Becker, J.

WE CONCUR:

Spearman, J.

Appelwick, J.

WIKIPEDIA

Goldberg v. Kelly

Goldberg v. Kelly, 397 U.S. 254 (1970) [1], is a case in which the Supreme Court of the United States ruled that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires an evidentiary hearing before a recipient of certain government welfare benefits can be deprived of such benefits.

The individual losing benefits is entitled to an oral hearing before an impartial decision-maker as well as the right to confront and cross-examine witnesses and the right to a written statement setting out the evidence relied upon and the legal basis for the decision.[2] There is no right to a formal trial. The case was decided 5-3. (There was a vacancy on the Court because of the resignation of Abe Fortas.)

Contents

Issues

1. Does the Fourteenth Amendment of the United States Constitution

Goldberg v. Kelly

Supreme Court of the United States

Argued October 13, 1969
Decided March 23, 1970

Full case name	*Goldberg, Commissioner of Social Services of the City of New York v. Kelly, et al.*
Citations	397 U.S. 254 (https://supreme.justia.com/us/397/254/case.html) (*more*) 90 S. Ct. 1011; 25 L. Ed. 2d 287; 1970 U.S. LEXIS 80
Prior history	Appeal from the United States District Court for the Southern District of New York

Holding

The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires a full evidentiary hearing before a recipient of certain government benefits is deprived of such benefits.

Court membership

Chief Justice
Warren E. Burger

Associate Justices
Hugo Black · William O. Douglas
John M. Harlan II · William J. Brennan, Jr.
Potter Stewart · Byron White
Thurgood Marshall

Case opinions

Majority	Brennan, joined by Douglas, Harlan, White, Marshall
Dissent	Burger
Dissent	Black
Dissent	Stewart

Laws applied

U.S. Const. amend. XIV

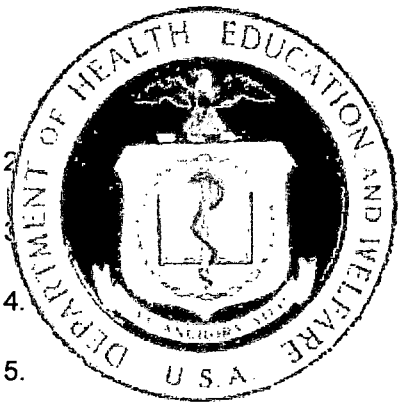
2. demand a hearing before the termination of statutorily defined welfare benefits?

Does a pre-termination "informal hearing" in a welfare case satisfy the requirements of the Fourteenth Amendment?

Does the Fourteenth Amendment require a full "evidentiary hearing" prior to termination of welfare benefits?

4. Does the welfare recipient have the right to counsel or an attorney at an evidentiary hearing?

5. To what extent does the welfare administrative decision maker need to be impartial?



Federal welfare was administered by the new Department of Health Education and Welfare.

Holdings

1. Welfare benefits are a matter of statutory entitlement for persons qualified to receive them and so procedural due process is applicable to their termination.[3]

2. The interest of the eligible recipient in the uninterrupted receipt of public assistance, which provides him with essential food, clothing, housing, and medical care and the State's interest that his payments not be erroneously terminated clearly outweigh the State's competing concern to prevent any increase in its fiscal and administrative burdens.[4]

3. A pre-termination evidentiary hearing is necessary to provide the welfare recipient with procedural due process.[5]

(a) Such hearing need not take the form of a judicial or quasi-judicial trial, but the recipient must be provided with timely and adequate notice detailing the reasons for termination and an effective opportunity to defend by confronting adverse witnesses and by presenting his own arguments and evidence orally before the decision maker.[6]

(b) Counsel need not be furnished at the pre-termination hearing, but the recipient must be allowed to retain an attorney.[7]

(c) A decision must rest "solely on the legal rules and evidence adduced at the hearing."[8]

(d) The decision maker need not file a full opinion or make formal findings of fact or conclusions of law but should state the reasons for his determination and indicate the evidence he relied on.[9]

(e) The decision maker must be impartial, and although prior involvement in some aspects of a case will not necessarily bar a welfare official from acting as decision maker, he should not have participated in making the determination under review.[9][10]

Discussion

Goldberg v. Kelly, 397 U.S. 254 (1970)

Syllabus | Case

U.S. Supreme Court

Goldberg v. Kelly, 397 U.S. 254 (1970)

Goldberg v. Kelly

No. 62

Argued October 13, 1969

Decided March 23, 1970

397 U.S. 254

Syllabus

Appellees are New York City residents receiving financial aid under the federally assisted Aid to Families with Dependent Children program or under New York State's general Home Relief program who allege that officials administering these programs terminated, or were about to terminate, such aid without prior notice and hearing, thereby denying them due process of law. The District Court held that only a pre-termination evidentiary hearing would satisfy the constitutional command, and rejected the argument of the welfare officials that the combination of the existing post-termination "fair hearing" and informal pre-termination review was sufficient.

Held:

1. Welfare benefits are a matter of statutory entitlement for persons qualified to receive them, and procedural due process is applicable to their termination. Pp. 397 U. S. 261-263.

2. The interest of the eligible recipient in the uninterrupted receipt of public assistance, which provides him with essential food, clothing, housing, and medical care, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens. Pp. 397 U. S. 264-266.

3. A pre-termination evidentiary hearing is necessary to provide the welfare recipient with procedural due process. Pp. 397 U. S. 264, 397 U. S. 266-271.

(a) Such hearing need not take the form of a judicial or *quasi*-judicial trial, but the recipient must be provided with timely and adequate notice detailing the reasons for termination, and an effective opportunity to defend by confronting adverse witnesses and by presenting his own arguments and evidence orally before the decisionmaker. Pp. 397 U. S. 266-270.

Page 397 U. S. 255

(b) Counsel need not be furnished at the pre-termination hearing, but the recipient must be allowed to retain an attorney if he so desires. P. 397 U. S. 270.

(c) The decisionmaker need not file a full opinion or make formal findings of fact or conclusions of law, but should state the reason for his determination and indicate the evidence he relied on. P. 397 U. S. 271.

(d) The decisionmaker must be impartial, and, although prior involvement in some aspects of a case will not necessarily bar a welfare official from acting as decisionmaker, he should not have participated in making the determination under review. P. 397 U. S. 271.

294 F.Supp. 893, affirmed.

RAP 13.4
DISCRETIONARY REVIEW OF DECISION TERMINATING REVIEW

(a) How to Seek Review. A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review must serve on all other parties and file a petition for review or an answer to the petition that raises new issues. A petition for review should be filed in the Court of Appeals. If no motion to publish or motion to reconsider all or part of the Court of Appeals decision is timely made, a petition for review must be filed within 30 days after the decision is filed. If such a motion is made, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish. If the petition for review is filed prior to the Court of Appeals determination on the motion to reconsider or on a motion to publish, the petition will not be forwarded to the Supreme Court until the Court of Appeals files an order on all such motions. The first party to file a petition for review must, at the time the petition is filed, pay the statutory filing fee to the clerk of the Court of Appeals in which the petition is filed. Failure to serve a party with the petition for review or file proof of service does not prejudice the rights of the party seeking review, but may subject the party to a motion by the Clerk of the Supreme Court to dismiss the petition for review if not cured in a timely manner. A party prejudiced by the failure to serve the petition for review or to file proof of service may move in the Supreme Court for appropriate relief.

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

(c) Content and Style of Petition. The petition for review should contain under appropriate headings and in the order here indicated:

(1) Cover. A title page, which is the cover.

(2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with reference to the pages of the brief where cited.

(3) Identity of Petitioner. A statement of the name and designation of the person filing the petition.

(4) Citation to Court of Appeals Decision. A reference to the Court of Appeals decision which petitioner wants reviewed, the date of filing the decision, and the date of any order granting or denying a motion for reconsideration.

(5) Issues Presented for Review. A concise statement of the issues presented for review.

(6) Statement of the Case. A statement of the facts and procedures relevant to the issues presented for review, with appropriate references to the record.

(7) Argument. A direct and concise statement of the reason why review should be accepted under one or more of the tests established in section (b), with argument.

(8) Conclusion. A short conclusion stating the precise relief sought.

(9) Appendix. An appendix containing a copy of the Court of Appeals decision, any order granting or denying a motion for reconsideration of the decision, and copies of statutes and constitutional provisions relevant to the issues presented for review.

(d) Answer and Reply. A party may file an answer to a petition for review. A party filing an answer to a petition for review must serve the answer on all other parties. If the party wants to seek review of any issue that is not raised in the petition for review, including any issues that were raised but not decided in the Court of Appeals, the party must raise those new issues in an answer. Any answer should be filed within 30 days after the service on the party of the petition. A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer. A party filing any reply to an answer must serve the reply to the answer on all other parties. A reply to an answer should be filed within 15 days after the service on the party of the answer. An answer or reply should be filed in the Supreme Court. The Supreme Court may call for an answer or a reply to an answer.

(e) Form of Petition, Answer, and Reply. The petition, answer, and reply should comply with the requirements as to form for a brief as provided in rules 10.3 and 10.4, except as otherwise provided in this rule.

(f) Length. The petition for review, answer, or reply should not exceed 20 pages double spaced, excluding appendices, title sheet, table of contents, and table of authorities.

(g) Reproduction of Petition, Answer, and Reply. The clerk will arrange for the reproduction of copies of a petition for review, an answer, or a reply, and bill the appropriate party for the copies as provided in rule 10.5.

(h) Amicus Curiae Memoranda. The Supreme Court may grant permission to file an amicus curiae memorandum in support of or opposition to a pending petition for review. Absent a showing of particular justification, an amicus curiae memorandum should be received by the court and counsel of record for the parties and other amicus curiae not later than 60 days from the date the petition for review is filed. Rules 10.4 and 10.6 should govern generally disposition of a motion to file an amicus curiae memorandum. An amicus curiae memorandum or answer thereto should not exceed 10 pages.

(i) No Oral Argument. The Supreme Court will decide the petition without oral argument.

[Originally effective July 1, 1976; amended effective September 1, 1983; September 1, 1990; September 18, 1992; September 1, 1994; September 1, 1998; September 1, 1999; December 24, 2002; September 1, 2006; September 1, 2009; September 1, 2010; December 8, 2015; September 1, 2016.]

RCW 34.05.461

Entry of orders.

(1) Except as provided in subsection (2) of this section:

(a) If the presiding officer is the agency head or one or more members of the agency head, the presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available;

(b) If the presiding officer is a person designated by the agency to make the final decision and enter the final order, the presiding officer shall enter a final order; and

(c) If the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.

(2) With respect to agencies exempt from chapter 34.12 RCW or an institution of higher education, the presiding officer shall transmit a full and complete record of the proceedings, including such comments upon demeanor of witnesses as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted.

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(5) Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.

(6) If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in RCW **34.05.425**. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(7) The presiding officer may allow the parties a designated time after conclusion of the hearing for the submission of memos, briefs, or proposed findings.

(8)(a) Except as otherwise provided in (b) of this subsection, initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown. The initial or final order may be served on a party via electronic distribution, with a party's agreement.

RCW 34.05.449

Procedure at hearing.

(1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order entered by the presiding officer pursuant to applicable rules. A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency.

[1989 c 175 § 18; 1988 c 288 § 414.]

NOTES:

Effective date—1989 c 175: See note following RCW **34.05.010**.

RCW 9A.72.010

Definitions.

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

(2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable;

(b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he or she made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(c) It is a statement, declaration, verification, or certificate, made within or outside the state of Washington, which is certified or declared to be true under penalty of perjury as provided in RCW 9A.72.085.

(3) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute or regulatory provision or when the oath is administered by a person authorized by state or federal law to administer oaths;

(4) "Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;

(5) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury; the term juror also includes any person who has been drawn or summoned to attend as a prospective juror;

(6) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

[2001 c 171 § 2. Prior: **1995 c 285 § 30; 1981 c 187 § 1; 1975 1st ex.s. c 260 § 9A.72.010.]**

NOTES:

Reviser's note: As to the constitutionality of subsection (1) of this section, see *State v. Abrams*, 163 Wn.2d 277, 178 P.3d 1021 (2008).

Purpose—2001 c 171: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting, without changes, legislation relating to the crime of perjury, as amended in sections 30 and 31, chapter 285, Laws of 1995." **[2001 c 171 § 1.]**

Effective date—2001 c 171: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [**2001 c 171 § 4.**]

Effective date—1995 c 285: See RCW **48.30A.900**.

RCW 9A.72.080

Statement of what one does not know to be true.

Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false.

[2011 c 336 § 394; 1975 1st ex.s. c 260 § 9A.72.080.]

RCW 9A.72.150

Tampering with physical evidence.

(1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or

(b) Knowingly presents or offers any false physical evidence.

(2) "Physical evidence" as used in this section includes any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a gross misdemeanor.

[2011 c 336 § 397; 1975 1st ex.s. c 260 § 9A.72.150.]

RCW 34.05.562

New evidence taken by court or agency.

(1) The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;

(b) Unlawfulness of procedure or of decision-making process; or

(c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record; or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome.

[1988 c 288 § 514.]

Amendment 2 - Right to Bear Arms. Ratified 12/15/1791.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment 3 - Quartering of Soldiers. Ratified 12/15/1791.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment 4 - Search and Seizure. Ratified 12/15/1791.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5 - Trial and Punishment, Compensation for Takings. Ratified 12/15/1791.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6 - Right to Speedy Trial, Confrontation of Witnesses. Ratified 12/15/1791.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses

14th Amendment

The Fourteenth Amendment addresses many aspects of citizenship and the rights of citizens. The most commonly used – and frequently litigated – phrase in the amendment is "equal protection of the laws", which figures prominently in a wide variety of landmark cases, including Brown v. Board of Education (racial discrimination), Roe v. Wade (reproductive rights), Bush v. Gore (election recounts), Reed v. Reed (gender discrimination), and University of California v. Bakke (racial quotas in education). See more...

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0060, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0065 How does a party prove service? 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.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0065, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0070 What is filing? (1) Filing is the act of delivering documents to OAH or BOA.

(2) The date of filing is the date documents are received by OAH or BOA.

(3) Filing is complete when the documents are received by OAH or BOA during office hours.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0070, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0075 How does a party file documents? (1) A party may file documents by delivering them to OAH or BOA by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax transmission if the party mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(2) A party cannot file documents by e-mail.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0075, filed 9/1/00, effective 10/2/00.]

RESOLUTION OF DISPUTES

WAC 388-02-0080 What are your options for resolving a dispute with DSHS? (1) If you disagree with a DSHS decision or action, you have several options for resolving your dispute, which may include the following:

(a) Any special prehearing alternative or administrative process offered by the program;

(b) Prehearing meeting;

(c) Prehearing conference; and

(d) Hearing.

(2) Because you have a limited time to request a hearing, you must request a hearing within the deadline on the notice of DSHS action to preserve your hearing right.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0080, filed 9/1/00, effective 10/2/00.]

HEARING RIGHTS AND REQUESTS

WAC 388-02-0085 Do you have a right to a hearing? (1) You have a right to a hearing only if a law or DSHS rule gives you that right. If you are not sure, you should request a hearing to protect your right.

(2) Some DSHS programs may require you to go through an informal administrative process before you can request or have a hearing. The notice of DSHS action sent to you should include information about this requirement if it applies.

(3) You have a limited time to request a hearing. The deadline for your request varies by the DSHS program involved. You should submit your request right away to protect your right to a hearing, even if you are also trying to resolve your dispute informally.

(4) If you request a hearing, one is scheduled.

(5) If DSHS or the ALJ questions your right to a hearing, the ALJ decides whether you have that right.

(6) If the ALJ decides you do not have a right to a hearing, your request is dismissed.

(7) If the ALJ decides you do have a right to a hearing, the hearing proceeds.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0085, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0090 Who may request a hearing? Either you or your representative may request a hearing.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0090, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0095 What if you have questions about requesting a hearing? If you have questions about how, when, and where to request a hearing, you should:

(1) Contact the DSHS program involved, OAH, or BOA;

(2) Review the notice sent to you of the DSHS action or decision; or

(3) Review the applicable law or DSHS rule.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0095, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0100 How do you request a hearing? (1) You may request a hearing in writing or orally, depending upon which program is involved. The DSHS notice and applicable laws and rules should tell you whether the request must be in writing or may be made orally.

(2) If you are allowed to make an oral request, you may do so to a DSHS or OAH employee in person or by telephone or voice mail.

(3) You may send a written request by mail, delivery service, personal service, or by fax if you mail a copy the same day. You should send written requests to the location on the notice or to OAH at the location specified in WAC 388-02-0025(2).

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0100, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0105 What information do you give when requesting a hearing? (1) Your hearing request must contain enough information to identify you and the DSHS action. You should include:

(a) Your name, address, and telephone number;

(b) A brief explanation of why you disagree with the DSHS action;

(c) Your client identification or case number, contract number, or any other information that identifies your case or the program involved; and

(d) Any assistance you need, including a foreign or sign language interpreter or any other accommodation for a disability.

(2) You should also refer to a program's specific rules or the notice to see if additional information is required in your request.

(3) OAH may not be able to process your hearing request if it cannot identify or locate you and determine the DSHS action involved.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0105, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0110 What happens after you request a hearing? (1) After you request a hearing, the OAH sends the parties a notice containing the hearing date, time, and place. This document is called the notice of hearing. The parties may also receive a written notice of a prehearing conference. You may receive a notice of a prehearing conference either before or after receiving the notice of the hearing.

(2) Before your hearing is held:

(a) The department may contact you and try to resolve your dispute; and

(b) You are encouraged to contact the department and try to resolve your dispute.

(3) If you do not appear for your hearing, an ALJ may enter an order of default or an order dismissing your hearing according to WAC 388-02-0285.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0110, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0110, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0115 May you withdraw your hearing request? (1) You may withdraw your hearing request for any reason and at any time by contacting DSHS or OAH in writing or orally with the ALJ and the other parties. After your request for withdrawal is received, your hearing is cancelled and OAH sends an order dismissing the hearing. If you withdraw your request you may not be able to request another hearing on the same DSHS action.

(2) If you withdraw your hearing request, you may only set aside the dismissal according to WAC 388-02-0290.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0115, filed 9/1/00, effective 10/2/00.]

INTERPRETERS

WAC 388-02-0120 Do you have the right to an interpreter in the hearing process? If you need an interpreter because you or any of your witnesses are a person with limited English proficiency, OAH will provide an interpreter at no cost to you.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0120, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0125 What definitions apply to limited English proficient (LEP) parties? The following definitions apply to LEP parties:

"Hearing impaired person" means a person who, because of a hearing or speech impairment, cannot readily speak, understand or communicate in spoken language.

"Intermediary interpreter" means an interpreter who:

(1) Is a certified deaf interpreter (CDI); and

(2) Is able to assist in providing an accurate interpretation between spoken and sign language or between types of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter.

"Limited English proficient (LEP)" includes limited English speaking persons or other persons unable to communicate in spoken English because of a hearing impairment.

"Limited English-speaking (LES) person" means a person who, because of non-English speaking cultural background or disability, cannot readily speak or understand the English language.

"Qualified interpreter" includes qualified interpreters for a limited English-speaking person or a person with a hearing impairment.

"Qualified interpreter for a limited English-speaking person" means a person who is readily able to interpret or translate spoken and written English communications to and from a limited English-speaking person. If an interpreter is court certified, the interpreter is considered qualified.

"Qualified interpreter for a person with a hearing impairment" means a visual language interpreter who is certified by the registry of interpreters for the deaf or National Association of the Deaf and is readily able to interpret or translate spoken communications to and from a hearing impaired person.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0125, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0130 What requirements apply to notices for limited English-speaking parties? If OAH is notified that you are a limited English-speaking person, all hearing notices, decisions and orders for you must:

(1) Be written in your primary language; or

(2) Include a statement in your primary language:

(a) Indicating the importance of the notice; and

(b) Telling you how to get help in understanding the notice and responding to it.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0130, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0135 What requirements apply to interpreters? (1) OAH must provide a qualified interpreter to assist any person who:

(a) Has limited English proficiency; and

(b) Is a party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) Relatives of any party and DSHS employees may not be used as interpreters.

(4) The ALJ must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service. To do so, the ALJ considers the interpreter's:

(a) Ability to meet the needs of the hearing impaired person or limited English speaking person;

(b) Education, certification and experience;

(c) Understanding of the basic vocabulary and procedures involved in the hearing; and

(d) Ability to be impartial.

WAC 388-02-0230 When is the ALJ assigned to the hearing? The OAH assigns an ALJ at least five business days before the hearing. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing. If requested by a party, the OAH must send the name of the assigned ALJ to the party by e-mail or in writing at least five business days before the party's scheduled hearing date. For division of child support cases, the OAH will only be required to assign an ALJ at least five days before the hearing if such a request is specifically made by one of the parties.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0230, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0230, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0235 May a party request a different judge? A party may file a motion of prejudice against an ALJ under RCW 34.12.050. A party may also request that an ALJ or review judge be disqualified under RCW 34.05.425.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0235, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0240 How does a party file a motion of prejudice? (1) A party may request a different ALJ by sending a written motion of prejudice to the OAH before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony. A motion of prejudice must include an affidavit or statement that a party does not believe that the ALJ can hear the case fairly.

(2) Rulings that are not considered discretionary rulings for purposes of this section include but are not limited to those:

(a) Granting or denying a request for a continuance; and

(b) Granting or denying a request for a prehearing conference.

(3) A party must send the written motion of prejudice to the chief ALJ at the OAH headquarters identified in WAC 388-02-0025(1) and must send a copy to the OAH field office where the ALJ is assigned.

(4) A party may make an oral motion of prejudice at the beginning of the hearing before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony if:

(a) The OAH did not assign an ALJ at least five business days before the date of the hearing; or

(b) The OAH changed the assigned ALJ within five business days of the date of the hearing.

(5) The first request for a different ALJ is automatically granted. The chief ALJ or a designee grants or denies any later requests.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0240, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0240, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0245 May an ALJ or review judge be disqualified? (1) An ALJ or review judge may be disqualified for bias, prejudice, or conflict of interest, or if one of the parties or a party's representative has an ex parte contact with the ALJ or review judge.

(2) Ex parte contact means a written or oral communication with the ALJ or review judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(3) To ask to disqualify an ALJ or review judge a party must send a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge. A party must promptly make the petition upon discovery of possible bias, conflict of interest or an ex parte contact.

(4) A party must send or deliver the petition to the ALJ or review judge assigned to the case. That ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0245, filed 9/1/00, effective 10/2/00.]

NOTICES

WAC 388-02-0250 What happens after you request a hearing, and when must the OAH provide notice of the hearing and prehearing conference? (1) The OAH must send a copy of your hearing request to the department, unless the OAH received your hearing request from the department. The OAH should send it to the department within four business days of the OAH receiving your request.

(2) The OAH must send a notice of hearing to all parties and their representatives at least fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

(3) If the OAH schedules a prehearing conference, the OAH must send a notice of prehearing conference to the parties and their representatives at least seven business days before the date of the prehearing conference except:

(a) The OAH and/or an ALJ may convert a scheduled hearing into a prehearing conference and provide less than seven business days notice of the prehearing conference; and

(b) The OAH may give less than seven business days notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 388-02-0280 (3)(b).

(4) The OAH and/or the ALJ must reschedule the hearing if necessary to comply with the notice requirements in this section.

(5) If the ALJ denies a continuance after a prehearing conference, the hearing may proceed on the scheduled hearing date, but the ALJ must still issue a written order regarding the denial of the continuance.

(6) You may ask for a prehearing meeting even after you have requested a hearing.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0250, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0250, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0255 What information must OAH include in the notice of hearing? (1) A notice of hearing is a written notice that must include:

(a) The names of all parties who receive the notice and, if known, the names and addresses of their representatives;

(b) The name, mailing address, and telephone number of the ALJ, if known;

(c) The date, time, place, and nature of the hearing;

(d) The legal authority and jurisdiction for the hearing; and

(e) The date of the hearing request.

(2) OAH also sends you information with your notice of hearing telling you the following:

(a) If you fail to attend or participate in a prehearing conference or a hearing, you may lose your right to a hearing. Then the ALJ may send:

(i) An order of default against you; or

(ii) An order dismissing the hearing.

(b) If you need a qualified interpreter because you or any of your witnesses are persons with limited English proficiency, OAH will provide an interpreter at no cost to you.

(c) If the hearing is to be held by telephone or in person, and how to request a change in the way it is held.

(d) How to indicate any special needs for yourself or your witnesses, including the need for an interpreter in a primary language or for sensory impairments.

(e) How to contact OAH if a party has a safety concern.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0255, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0260 May the department amend a notice? (1) The ALJ must allow the department to amend (change) the notice of a department action before or during the hearing to match the evidence and facts.

(2) The department must put the change in writing and give a copy to the ALJ and all parties.

(3) The ALJ must offer to continue (postpone) the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier department notice.

(4) If the ALJ grants a continuance, the OAH must send, a new hearing notice at least fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0260, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0260, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0265 May you amend your hearing request? (1) The ALJ may allow you to amend your hearing request before or during the hearing.

(2) The ALJ must offer to continue (postpone) the hearing to give the other parties more time to prepare or present evidence or argument if there is a significant change in the hearing request.

(3) If the ALJ grants a continuance, the OAH must send a new hearing notice at least fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0265, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0265, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0270 Must you tell DSHS and OAH when your mailing address changes? (1) You must tell DSHS and OAH, as soon as possible, when your mailing address changes.

(2) If you do not notify DSHS and OAH of a change in your mailing address and they continue to send notices and other important papers to your last known mailing address, the ALJ may assume that you received the documents.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0270, filed 9/1/00, effective 10/2/00.]

CONTINUANCES

WAC 388-02-0275 What is a continuance? A continuance is a change in the date or time of a prehearing conference, hearing or the deadline for other action.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0275, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0280 Who may request a continuance? (1) Any party may request a continuance either orally or in writing.

(2) Before contacting the ALJ to request a continuance, a party should contact the other parties, if possible, to find out if they will agree to a continuance. If you are unable to contact the parties, the OAH or the department must assist you in contacting them.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agreed to the continuance.

(a) If the parties agree to a continuance, the ALJ must grant it unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance. The prehearing conference will be scheduled as required by WAC 388-02-0197 and 388-02-0250.

(4) If the ALJ grants a continuance, the OAH must send a new hearing notice at least fourteen calendar days before the new hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

(5) If the ALJ denies the continuance, the ALJ will proceed with the hearing on the date the hearing is scheduled, but must still issue a written order regarding the denial of the continuance.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0280, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0280, filed 9/1/00, effective 10/2/00.]

DISMISSALS

WAC 388-02-0285 What is an order of dismissal? (1) An order of dismissal is an order sent by the ALJ to end the hearing. The order is made because the party who requested the hearing withdrew the request, failed to appear, or refused to participate, resulting in a default.

(2) If your hearing is dismissed because you did not appear or refused to participate, the DSHS decision stands.

(2) DSHS may be able to help you copy and send your documents to the ALJ and any other parties.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0370, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0375 What happens at your hearing? At your hearing:

(1) The ALJ:

(a) Explains your rights;

(b) Marks and admits or rejects exhibits;

(c) Ensures that a record is made;

(d) Explains that a decision is mailed after the hearing;

(e) Notifies the parties of appeal rights;

(f) May keep the record open for a time after the hearing if needed to receive more evidence or argument; and

(g) May take actions as authorized according to WAC 388-02-0215.

(2) The parties may:

(a) Make opening statements to explain the issues;

(b) Offer evidence to prove their positions, including oral or written statements of witnesses;

(c) Question the witnesses presented by the other parties; and

(d) Give closing arguments about what the evidence shows and what laws apply.

(3) At the end of the hearing if the ALJ does not allow more time to send in evidence, the record is closed.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0375, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0380 What is a group hearing? (1) A group hearing may be held when two or more parties request a hearing about similar issues.

(2) Hearings may be combined at the request of the parties or the ALJ.

(3) All parties participating in a group hearing may have their own representative.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0380, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0385 May a party withdraw from a group hearing? (1) A party may withdraw from a group hearing by asking the ALJ for a separate hearing.

(2) If a party asks to withdraw from a group hearing before the ALJ makes a discretionary ruling or the hearing begins, the ALJ must give the party a separate hearing.

(3) If a party later shows good cause, the ALJ may give the party a separate hearing at any time during the hearing process.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0385, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0387 How may you request that a hearing be consolidated or severed when multiple agencies are parties to the proceeding? The following requirements apply only to adjudicative proceedings in which an applicant or recipient of medical services programs set forth in chapter 74.09 RCW seeks review of decisions made by more than one agency.

(1) When you file a single application for an adjudicative proceeding seeking review of decisions by more than one agency, this review shall be conducted initially in one adjudicative proceeding. The administrative law judge (ALJ) may sever the proceeding into multiple proceedings on the motion of any of the parties, when:

(a) All parties consent to the severance; or

(b) Either party requests severance without another party's consent, and the ALJ finds there is good cause for severing the matter and that the proposed severance is not likely to prejudice the rights of an appellant who is a party to any of the severed proceedings.

(2) If there are multiple adjudicative proceedings involving common issues or parties where there is one appellant and both the health care authority and the department are parties, upon motion of any party or upon his or her own motion, the ALJ may consolidate the proceedings if he or she finds that the consolidation is not likely to prejudice the rights of the appellant who is a party to any of the consolidated proceedings.

(3) If the ALJ grants the motion to sever the hearing into multiple proceedings or consolidate multiple proceedings into a single proceeding, the ALJ will send out an order and a new notice of hearing to the appropriate parties in accordance with WAC 388-02-0250.

[Statutory Authority: RCW 74.09.741 and 34.05.020. WSR 12-05-043, § 388-02-0387, filed 2/10/12, effective 2/25/12.]

EVIDENCE

WAC 388-02-0390 What is evidence? (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents or copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony given with the opportunity for cross-examination by the other parties may be given more weight by the ALJ.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0390, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0395 When may the parties bring in evidence? (1) The parties may bring evidence to any prehearing meeting, prehearing conference, or hearing, or may send in evidence before these events.

(2) The ALJ may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

(a) They have good cause for missing the deadline; or

(b) That the other parties agree.

(3) If the ALJ gives the parties more time to submit evidence, the parties may send it in after the hearing. The ALJ may allow more time for the other parties to respond to the new evidence.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0395, filed 9/1/00, effective 10/2/00.]

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0330, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0335 Do you have to pay for a subpoena? There is no cost to prepare a subpoena, but you may have to pay for:

(1) Serving a subpoena;

(2) Complying with a subpoena; and

(3) Witness fees according to RCW 34.05.446(7).

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0335, filed 9/1/00, effective 10/2/00.]

HEARING METHODS

WAC 388-02-0340 How is your hearing held? (1) Hearings may be held in person or by telephone conference.

(2) A telephone conference hearing is where all parties appear by telephone.

(3) An in-person hearing is where you appear face-to-face with the ALJ and the other parties appear either in person or by telephone.

(4) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

(5) Parties and their witnesses may appear in person or by telephone conference. The ALJ may require parties and/or their witnesses to appear in person if the ALJ determines there is a compelling reason, and the compelling reason is stated in a hearing notice or prehearing order.

(6) After a telephone conference hearing begins, the ALJ may stop, reschedule, and convert the hearing to an in-person hearing if the ALJ determines there is a compelling reason to do so.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0340, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0340, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0345 Is an ALJ present at your hearing? (1) If your hearing is scheduled as an in-person hearing, an ALJ is physically or visually present.

(2) If your hearing is scheduled as a telephone conference, an ALJ is present by telephone.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0345, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0350 Is your hearing recorded? The ALJ must record the entire hearing using audio recording equipment (such as a digital recorder or a tape recorder).

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0350, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0350, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0355 Who may attend your hearing? (1) All parties and their representatives may attend the hearing.

(2) Witnesses may be excluded from the hearing if the ALJ finds good cause.

(3) The ALJ may also exclude other persons from all or part of the hearing.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0355, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0360 May a party convert how a hearing is held? (1) The parties have the right to request that:

(a) A hearing format be converted (changed) to an in-person hearing or a telephone conference; or

(b) A witness appear in person or by telephone conference. The OAH must advise you of the right to request a change in how a witness appears.

(2) Except as provided in subsection (4) of this section, a party requesting a change in how a hearing is held must show a compelling reason. A party must also show a compelling reason to change the way a witness appears (in-person or by telephone conference). Some examples of compelling reasons are:

(a) A party does not speak or understand English well.

(b) A party wants to present a significant number of documents during the hearing.

(c) A party does not believe that one of the witnesses or another party is credible, and wants the ALJ to have the opportunity to see the testimony.

(d) A party has a disability or communication barrier that affects their ability to present their case.

(e) A party believes that the personal safety of someone involved in the hearing process is at risk.

(3) A compelling reason to convert how a hearing is held can be overcome by a compelling reason not to convert how a hearing is held.

(4) In public assistance cases, a party has the right to request that a hearing be changed without showing a compelling reason to the ALJ. Public assistance programs include:

(a) Temporary assistance for needy families (TANF);

(b) Working connections child care;

(c) Disability lifeline;

(d) Medical assistance;

(e) Food assistance; and

(f) Refugee assistance.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0360, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0360, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0365 How does a party convert how a hearing is held or how the witnesses or parties appear? (1) If a party wants to convert the hearing or change how their witnesses or other parties appear, the party must contact OAH to request the change.

(2) The ALJ may schedule a prehearing conference to determine if the request should be granted.

(3) If the ALJ grants the request, the ALJ reschedules the hearing or changes how the witness or party appears.

(4) If the ALJ denies the request, the ALJ must issue a written order that includes findings of fact supporting why the request was denied.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0365, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0370 How are documents submitted for a telephone conference? (1) When a hearing is conducted by telephone, an ALJ may order the parties to provide the hearing documents at least five days before the hearing, so all parties have an opportunity to view them during the hearing.

(2) There are five elements of equitable estoppel. The standard of proof is clear and convincing evidence. You must prove all of the following:

(a) The department made a statement or took an action or failed to take an action, which is inconsistent with a later claim or position by the department. For example, the department gave you money based on your application, then later tells you that you received an overpayment and wants you to pay the money back based on the same information.

(b) You reasonably relied on the department's original statement, action or failure to act. For example, you believed the department acted correctly when you received money.

(c) You will be injured to your detriment if the department is allowed to contradict the original statement, action or failure to act. For example, you did not seek help from health clinics or food banks because you were receiving benefits from the department, and you would have been eligible for these other benefits.

(d) Equitable estoppel is needed to prevent a manifest injustice. Factors to be considered in determining whether a manifest injustice would occur include, but are not limited to, whether:

(i) You cannot afford to repay the money to the department;

(ii) You gave the department timely and accurate information when required;

(iii) You did not know that the department made a mistake;

(iv) You are free from fault; and

(v) The overpayment was caused solely by a department mistake.

(e) The exercise of government functions is not impaired. For example, the use of equitable estoppel in your case will not result in circumstances that will impair department functions.

(3) If the ALJ concludes that you have proven all of the elements of equitable estoppel in subsection (2) of this section with clear and convincing evidence, the department is stopped or prevented from taking action or enforcing a claim against you.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0495, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0495, filed 9/1/00, effective 10/2/00.]

RECORD CLOSURE

WAC 388-02-0500 What may an ALJ do before the record is closed? Before the record is closed, the ALJ may:

(1) Set another hearing date;

(2) Enter orders to address limited issues if needed before writing and mailing a hearing decision to resolve all issues in the proceeding; or

(3) Give the parties more time to send in exhibits or written argument.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0500, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0505 When is the record closed? The record is closed:

(1) At the end of the hearing if the ALJ does not allow more time to send in evidence or argument; or

(2) After the deadline for sending in evidence or argument is over.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0505, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0510 What happens when the record is closed? No more evidence may be taken without good cause after the record is closed.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0510, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0512 What is included in the hearing record? (1) The ALJ must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders and exceptions;

(h) A complete audio recording of the entire hearing, together with any transcript of the hearing;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record after an ex parte communication.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0512, filed 1/31/11, effective 3/3/11.]

HEARING DECISIONS

WAC 388-02-0515 What happens after the record is closed? (1) After the record is closed, the ALJ must enter an initial or final order and send copies to the parties.

(2) The maximum time an ALJ has to send a decision is ninety calendar days after the record is closed, but many department programs have earlier deadlines. Specific program rules may set the deadlines.

(3) OAH must send the official record of the proceedings to the BOA. The record must be complete when it is sent, and include all parts required by WAC 388-02-0512.

[Statutory Authority: RCW 34.05.020, 34.05.220. WSR 11-04-074, § 388-02-0515, filed 1/31/11, effective 3/3/11. Statutory Authority: RCW 34.05.-020. WSR 00-18-059, § 388-02-0515, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0520 What information must the ALJ include in the decision? The ALJ must include the following information in the decision:

(1) Identify the hearing decision as a DSHS case;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) Find the facts used to resolve the dispute based on the hearing record;

(4) Explain why evidence is credible when the facts or conduct of a witness is in question;

(5) State the law that applies to the dispute;

(6) Apply the law to the facts of the case in the conclusions of law;

(7) Discuss the reasons for the decision based on the facts and the law;

(8) State the result and remedy ordered;

(9) Explain how to request changes in the decision and the deadlines for requesting them;

(10) State the date the decision becomes final according to WAC 388-02-0525; and

(11) Include any other information required by law or DSHS program rules.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0520, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0525 When do initial orders become final? If no one requests review of the initial order or if a review request is dismissed, the initial order is final twenty-one calendar days after it is mailed.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0525, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0525, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0530 What if a party disagrees with the ALJ's decision? (1) If a party disagrees with an ALJ's initial or final order because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 388-02-0540 through 388-02-0555.

(2) If a party disagrees with an initial order and wants it changed, the party must request review by a review judge as provided in WAC 388-02-0560 through 388-02-0595.

If a party wants to stay the DSHS action until review of the initial order is completed, the party must request a stay from a review judge.

(3) Final orders entered by ALJs may not be reviewed by a review judge.

(4) If a party disagrees with an ALJ's final order, the party may request reconsideration as provided in WAC 388-02-0605 through 388-02-0635. You may also petition for judicial review of the final order as stated in WAC 388-02-0640 through 388-02-0650. You do not need to file a request for reconsideration of the final order before petitioning for judicial review. DSHS may not request judicial review of an ALJ's or review judge's final order.

[Statutory Authority: RCW 34.05.020, 34.05.220, 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0530, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0530, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0530, filed 9/1/00, effective 10/2/00.]

CLERICAL ERRORS IN ALJ DECISIONS

WAC 388-02-0540 How are clerical errors in ALJ decisions corrected? (1) A clerical error is a mistake that does not change the intent of the decision.

(2) The ALJ corrects clerical errors in hearing decisions by issuing a second decision referred to as a corrected decision or corrected order. Corrections may be made to initial orders and final orders.

(3) Some examples of clerical error are:

(a) Missing or incorrect words or numbers;

(b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or

(c) Math errors when adding the total of an overpayment or a child support debt.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0540, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0540, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0545 How does a party ask for a corrected ALJ decision? (1) A party may ask for a corrected ALJ decision by calling or writing the OAH office that held the hearing.

(2) When asking for a corrected decision, please identify the clerical error you found.

[Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0545, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0545, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0550 How much time do the parties have to ask for a corrected ALJ decision? (1) The parties must ask the ALJ for a corrected decision on or before the tenth calendar day after the order was mailed.

(2) If you ask the ALJ to correct a decision, the time period provided by this section for requesting a corrected decision of an initial order, and the time it takes the ALJ to deny the request or make a decision regarding the request for a corrected initial order, do not count against any deadline, if any, for a review judge to enter a final order.

[Statutory Authority: RCW 34.05.020, 34.05.220, and 42 C.F.R. 431.10 (e)(3), 45 C.F.R. 205.100 (b)(3), chapter 34.05 RCW, Parts IV and V. WSR 08-21-144, § 388-02-0550, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371 § 211. WSR 02-21-061, § 388-02-0550, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0550, filed 9/1/00, effective 10/2/00.]

WAC 388-02-0555 What happens when a party requests a corrected ALJ decision? (1) When a party requests a corrected initial or final order, the ALJ must either:

(a) Send all parties a corrected order; or

(b) Deny the request within three business days of receiving it.

(2) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(3) If the ALJ denies a request for a corrected initial order and the party still wants the hearing decision changed, the party must request review by a review judge.

(4) Requesting an ALJ to correct the initial order does not automatically extend the deadline to request review of the initial order by a review judge. When a party needs more time to request review of an initial order, the party must ask for more time to request review as permitted by WAC 388-02-0580(2).

(5) If the ALJ denies a request for a corrected final order and you still want the hearing decision changed, you must request judicial review.

PREAMBLE

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

ARTICLE I
DECLARATION OF RIGHTS

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 6 OATHS - MODE OF ADMINISTERING. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SECTION 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

SECTION 9 RIGHTS OF ACCUSED PERSONS. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

SECTION 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [**AMENDMENT 88,** 1993 House Joint Resolution No. 4200, p 3062. Approved November 2, 1993.]

Amendment 34 (1957) — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment:* Provided, however, *That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 34, 1957 Senate Joint Resolution No. 14, p 1299. Approved November 4, 1958.]

Amendment 4 (1904) — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment.* Provided, however, *That this article shall not be so construed as to forbid the employment by the state of a chaplain for the state penitentiary, and for such of the state reformatories as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 4, 1903 p 283 Section 1. Approved November, 1904.]

Original text — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.*

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed

trial by an impartial jury of the county in which the offense is alleged to have been committed, and the right to appeal in all cases; and, in no instance, shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

SECTION 23 BILL OF ATTAINDER, EX POST FACTO LAW, ETC. No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

SECTION 24 RIGHT TO BEAR ARMS. The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

SECTION 25 PROSECUTION BY INFORMATION. Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law.

SECTION 26 GRAND JURY. No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order.

SECTION 27 TREASON, DEFINED, ETC. Treason against the state shall consist only in levying war against the state, or adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

SECTION 28 HEREDITARY PRIVILEGES ABOLISHED. No hereditary emoluments, privileges, or powers, shall be granted or conferred in this state.

SECTION 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

SECTION 30 RIGHTS RESERVED. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

SECTION 31 STANDING ARMY. No standing army shall be kept up by this state in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

SECTION 32 FUNDAMENTAL PRINCIPLES. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

SECTION 33 RECALL OF ELECTIVE OFFICERS. Every elective public officer of the state of Washington expect [except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided. **[AMENDMENT 8,** 1911 p 504 Section 1. Approved November, 1912.]

SECTION 34 SAME. The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay: *Provided,* That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five per cent. **[AMENDMENT 8,** 1911 p 504 Section 1. Approved November, 1912.]

SECTION 35 VICTIMS OF CRIMES — RIGHTS. Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel. **[AMENDMENT 84,** 1989 Senate Joint Resolution No. 8200, p 2999. Approved November 7, 1989.]

ARTICLE II
LEGISLATIVE DEPARTMENT

SECTION 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washing-

DIVISION ONE COURT OF APPEALS SEATTLE. 73713-9-I

73713-9-I Cunningham Vs. Dshs

Declaration of service. Request for Supreme Court review

Date. 12/15/2017

I Karl Ivan Olson, declare under the penalty of perjury that on December 15th, 2017 I served true and correct copies of the request for supreme court review , filed on December 15th, 2017 and a true and correct copy of this declaration, by U.S Mail at the Addresses below;

Kathryn Krieger AAG 7141 cleanwater DR SW PO BOX 40124 Olympia WA, 98504

Mr Meader Has withdrawn.

Soc & Hlth Svc AG office 7141 cleanwater DR SW PO BOX 40124 Olympia WA 98504

Karl Ivan Olson
Deoidé Lea Cunningham