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WASHINGTON STATE  
SUPREME COURT

NO. 95346-5  
COA NO. 73713-9-I

RECEIVED  
JAN 29 2018  
Washington State  
Supreme Court

Supreme court of The State Of Washington

Deoid'e Lea Cunningham, appellant

v.

Department of social and health services, respondent

Reply to answer to petition for review and motion to supplement paragraph 6

RAP13.4(d)

Deoid'e Lea Cunningham , appellant  
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could retain legal advice and an attorney, Page 5 of the initial order for docket # 06-2014-A-0765 which is wrong as it is supposed to be an "HCA" case at line 4.19 , Deoid'e was denied a continuance to retain an attorney before the 5/20/2014 hearing which is not the correct issue at court of appeals notation ruling. Deoid'e was entitled to a short continuance to retain an attorney. PGS 12-13

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11. Yes, the ALJ and HCA representative did conceal the hearing request that did secure continued benefits after it was processed and properly filed under docket # 07-2012-HCA-0109. Continued benefits can only be awarded if a hearing request is filed timely which the COA supported. The ALJ and HCA each had copies of the filed hearing request filed for hearing on 3/18/2013 which was heard under sworn testimony. The ALJ and HCA each concealed the truth and made false statements under oath that the appeal was present. The ALJ intentionally left/kept 40 minutes of the hearing off the tape and did not cite the time she initiated the recording

concealing the time hearing began to cover up the gap. The ALJ denied 2 continuances that HCA wanted but the transcript reveals that the 2 issues were agreed to be heard on that day for efficiency, HCA and the ALJ colluded to hide the hearing request so HCA could award themselves more time because they were not prepared. PGS 15-17

12. Has HCA conducted a review for accuracy involving Washington State benefits during this exact timeframe of eligibility ? Yes, and has a major impact on this matter because HCA has made a modification. Has HCA determined that an error was made and that Deoid'e was still a Washington State resident eligible for benefits? Yes and DDA/HCA may not terminate DD client eligibility if Deoid'e was a Washington State resident eligible for State benefits which the review corrects. PGS 17-20

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**B. IDENTITY OF THE PETITIONER**

Deoid'e lea Cunningham, appellant below and client at issue in this case, replies to the respondents answer to her petition for review because it appears respondent has raised new issues. 13.4(b)(d)

**C. NEW ISSUES PRESENTED BY RESPONDENT AND HCA FOR REVIEW**

1. Has HCA determined after a review for accuracy in December of 2017 that Deoid'e was a Washington state resident fully eligible for State benefits? Was the appellant truly living in California according to HCA/DSHS rules on eligibility, thus violating WAC 388-823-0025(1)? Did the appellant violate

the DDA client eligibility requirement? WAC 388-823-1020 or WAC 388-823-0050? provided on the planned action notice dated 3/4/2013? Was the appellant not a legal resident of Washington State based upon HCA/DSHS eligibility requirements? thus making her ineligible for Washington State benefits WAC 388-823-1020 or WAC 388-823-0050? Or WAC 388-823-0025(1)?

2. Was the appellant pursuing a degree in California at the time of termination?
3. Was this case properly provided a HCA case number which properly provided the appellant with required notification of the action?
4. Does the AG/AAG decide HCA/DSHS eligibility reviews for accuracy?
5. Does the AG/AAG determine if clients are residents eligible for benefits?
6. Did Deoid'e not attempt to contact OAH and notify them why she could not appear on 5/20/2014? Was Deoid'e informed by OAH or HCA on how to do so? Did she try to tell them she could not appear?
7. Was Deoid'e being denied an attorney before the COA appeal? Did she ask for an attorney in COA? Deoid'e was denied time to retain an attorney before the hearing on 5/20/2014.
8. Were OAH and HCA told by a doctor that Deoid'e would only be able to attend the hearing by telephone? Is this why HCA and OAH ordered her to appear?
9. AAG/AG is trying to remove issues accepted and considered by COA and they are trying to confuse the issues.

10. Judge Meyer's denial of continued benefits in superior court was invalid and so was ALJ Boivins 1/9/2014 orders that concealed the 21 day appeal information. Judge Meyer and ALJ Boivin both helped to conceal the truth in a timely manner. If benefits were continued by March 2013 filing which was timely then that's where the hearing was properly filed to continue those benefits. COA and Judicial review failed to remand for further fact finding into the validity of the issue of continued benefits which is now in question by the recent modification allegations that Deoid'e was indeed eligible for meeting the residency requirement.
11. Did ALJ Wagner and HCA representative Kelly Clark conceal the truth about the filed hearing request PAN dated 3/4/2013 on DD client eligibility at an official proceeding under sworn testimony on 3/18/2013.
12. Has HCA conducted a review for accuracy involving Washington State benefits during this timeframe of eligibility that has a major impact on this matter and made a modification?

**D. INTRODUCTION COUNTERSTATEMENT OF THE CASE AND OF NEW ISSUES FOR REVIEW PRESENTED BY RESPONDENT.**

Deoid'e is a Washington state resident and was a fully eligible Washington State resident according to HCA review conducted for accuracy in December of 2017 (Exhibit A appendix 4 ) and always has been according to WAC 388-823-1020 , WAC 388-823-0050 and WAC 388-823-0025(1) and certainly at time indicated in this matter (CP PGs 4, 63 , 64 ) (Appendix A , B ). The Respondent cites a totally different WAC which is now moot in its response to this court. This is not the



same WAC included in the termination notice which is a new issue but neither HCA nor DDA may terminate Deoides DD client eligibility for failing the residency requirement if she was a legal Washington State resident fully eligible for State benefits. The Respondent has cited a new issue, WAC 388-823-0025(1) incorrectly because on the PAN (planned action notice ) dated 3/4/2013 on DD client eligibility HCA and DDA cite WAC 388-823-1020 , WAC 388-823-0050 which is the original termination allegation. However, DDA may not terminate eligibility on residency if the client (Deoid'e) was a resident legally eligible for State Benefits. Deoid'e has been wrongfully terminated under the false claims she was not a resident eligible for State benefits during the time of this matter which are included. Deoid'e was not pursuing an education at the time of termination and was a legal Washington State resident according to the Review conducted by HCA in December of 2017. It is different from the WAC the AG/AAG now recites in new issues. According to DSHS/HCA rules Deoid'e was not living in California and was still a Legal Washington State resident eligible for all her benefits ( Exhibit A appendix 5) because one is eligible to be absent or temporarily out of state if the HCA formula is supported in WAC 388-468-0005 or when HCA determines so( Exhibit A appendix 5 ) . After a complaint filed and a review conducted HCA has determined that Deoid'e was eligible and that an error had been made on her termination of eligibility which requires a delicate determination on legal residency and non-residency must be construed carefully. Temporary absence with good cause or proof to continue as a Washington state resident is shown to HCA which is up to the HCA to decide not the AG. Exhibit

A appendix 5 now indicates an error had been made and that Deoid'e was a Washington state resident who was eligible contrary to the AG answer dated 1/16/2018. The AG answer brief could be considered a false statement as it no longer true to be admitted because the authorizing agency who initiated the termination on 3/4/2013 has changed its action. This is a new issue which we could not submit or argue prior to OAH, Judicial review, or the court of appeals or our petition for review in supreme court due on 12/15/2017 . RCW 34.05.562 (1)(a)(b)(c)(2)(a)(b)(i)(ii)(c)(d) will allow new evidence to be taken by this court as it, under several points would change the action had it been made available in 2013 or at any point before now. Specifically,

RCW 34.05.562 New evidence taken by court or agency.( Exhibit A, appendix 5 and exhibit B appendix 5.)

- (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:
  - (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.

These are all facts that would allow this very important evidence into the review while supporting a conflict between the original action and the action after the review was conducted in 2017. Either way, the HCA has changed its residency position on months directly related, relevant and admissible to this matter of eligibility. It appears that the AG has no grounds for a defense with the correction made and that Deoid'e was a resident per HCA rules and that she was eligible for all her benefits which conflict the 1/16/2018 answer statement PG. 3 , 1<sup>st</sup> paragraph by Mr Ferguson and Ms. Krieger. The benefits of eligibility in this matter are the same benefits dependent on the exact same rules of formula to determine eligibility but the WAC is not the same as issued in 2013 (CP PGS 4, 63, 64 ). However, DDA did not have the authority to terminate Deoid'e because internal review determines she was fully eligible as a Washington Resident and therefore was wrongfully terminated on 3/4/2013. The review includes benefits directly related to the agency action PAN dated 3/4/2013 which falls under the scope of this matter entirely. Deoid'e was eligible and HCA indicates this in its letter dated 12/19/2017, which does not support and in fact contradicts Mr Fergusons and Ms Kriegers brief dated 1/16/2018, every other defense since 2013 on this action and questions seriously the AG position that it still has a case here. It is arguable that this matter should be remanded back to superior court for fact finding or OAH which would be futile due to mishandling of this matter, one

would question that granting a waiver of exhaustion of administrative remedies RCW 34.05.534(c) would be justified due to the grave and irreparable damages these past 6 years. One could even order reinstatement of DD client eligibility immediately and retroactively because the main issue was and is residency that has now been challenged and corrected by an internal review for accuracy conducted by HCA who is the only authority to take action. Should the appellant have even been terminated on 3/4/2013? That is a fact that must be investigated if it should have happened at all. Because The Court of appeals decided to consider and make opinions on additional issues it is absolutely proper to consider the new evidence and issues beyond a simple default which appears to be moot by HCA review, Ms. Cunningham is entitled to relief because the office of administrative hearings and HCA have made to many procedural errors including concealment of evidence, false statements under oath and perjury which is directly related to its decision to reverse its position that MS Cunningham was not a resident (Exhibit A appendix 5 )including dates involved in this action which did trigger the action. Deoides 14<sup>th</sup> amendment due process rights were violated ( Appendix H ) ( Appendix J at lines 21 -24, CP PG 32 )( Goldberg v. Kelly 254 U.S 397 262 (1970)( CP PG 4, 9, 10 )

E. ARGUMENT WHY THE RESPOSE FROM THE RESPONDENT TO DENY PETITION FOR REVIEW SHOULD BE DENIED. WHY NEW ISSUES RAISED BY THE RESPONDENT SHOULD SUPPORT DEOIDES PETITON FOR REVIEW TO THE SUPREME COURT TO BE ACCEPTED. DEOIDE DID NOT VIOLATE THE RESIDENCY RULES.

(1) The issue on appeal is residency and nothing more which has now been clarified by an internal review by HCA finding a reversal in the HCA actions on residency ( exhibit A appendix 5 ). Deoid'e was not living in California according to HCA rules on residency which find she was absent or temporarily out of state which retains her DD client eligibility and all her benefits wrongfully cited that she was ineligible for in the respondents 1/16/2018 answer brief. WAC 388-823-0025(1) is an incorrect termination citation which is still dependent on HCA rules on retention of residency if out of state that maintains residency for the client. WACs 388-823-1020 and 388-823-0050 will preserve benefits if the HCA determines that you meet the formula which Deoid'e did per HCA review which is exactly what this matter is dependent upon for DD client eligibility and falling under the exact same review that HCA has conducted and modified. The HCA may review for accuracy its actions and may reverse or modify its actions as it correctly has in this case but HCA and DDA may not wrongfully terminate DD client eligibility on a residency issue if the appellant (Deoid'e ) was a legal resident of Washington State. Medicaid disability eligibility is and must be the first and foundational program determination before all and any other benefits can even be applied for, but a client is still considered a resident when HCA decides that and not the AG. It is impossible for the HCA to have it both ways which must be corrected by the Supreme Court review. This action must also be modified if HCA has determined now, nearly 5 years later, that Deoid'e was an eligible Washington state resident eligible for all and any HCA

programs she was entitled to, including her right to remain an eligible DD client that has wrongfully been taken away from her according to HCA.

Deoid'e cannot be terminated by an HCA program only to be corrected by the original and main eligibility agency modification by HCA on residency dated 12/19/2017. By preserving her legal residency in Washington State , DDA/HCA had no authority to terminate eligibility originally or at this point maintain termination since the HCA has modified its position. HCA and the AG cannot have this eligibility situation both ways, it's either you are or are not a resident which clearly has been erroneous on the HCA part to have taken its action in 2013. Deoid'e was wrongfully terminated in 2013 by DDA.

- (2) Deoid'e was not enrolled in any academic programs out of state when she was terminated in 2013 and it was Deoid'e who notified HCA that she was going to be out of state with support of her doctor who dictated then faxed letters to HCA and OAH that she was intermittently out of state. The AG is false in its newly raised issues that it was discovered by HCA that Deoid'e was out of state at the time of HCA actions, Deoid'e's doctor and herself with help from her caregiver Karl Olson and her NSA Nancy Olson notified HCA and provided many letters that she was out of state temporarily/intermittently which is part of being allowed an absence or temporary absence while retaining residency in Washington State. Maintaining residency is determined by the agency such as HCA or case managers based upon HCA formula rules such as intent or other rules such as WAC 388-823-1020 and WAC 388-468-0005 which is medical and the HCA program for Division of developmental

disabilities administration under the HCA who wrongfully determined in 2013 that there was an eligibility issue on residency now corrected. Only remand can discovery why this happened as it appears HCA never should have taken action by its own documents. Had HCA properly followed its own rules and procedures as it did under the 2017 review, Deoid'e would never have been terminated as a non-resident which HCA clearly has a formula and procedure it followed to correct the action on residency. The DDA termination PAN (CP PGS 4, 63, 64 ) dated 3/4/2013 cites WAC 388-823-0050 which is secondary to the HCA review action based upon formula which did retain Deoid'e as a true , correct and fully eligible Washington State resident who is and was eligible for benefits the AG wrongfully accuses her of on PG. 3 , Paragraph #1 in its answer dated 1/16/2018. Deoid'e did not violate the residency rules.

- (3) The OAH improperly and incorrectly designated the docket number an Administrative case “A” which is false, the proper Docket should have been an “HCA” (CP PGS 4, 63 , 64 ) case that has entirely different rules under APA procedures which did violate Deoid'e 14<sup>th</sup> due process rights. ALJ Boivin and the BOA review judge concealed the true docket and along with ALJ Boivins concealment of the 21 day appeal notice ( appendix H and I ) (CP PGS 37 -44) damaging her exhaustion of administrative remedies and her appeal rights for fairness. Later, the OAH “flipped” the “A” to an “HCA” case in an attempt to confuse the appelland and the courts which it did indeed do. Because OAH never retracted or attempted to correct the issue it was not an error. The appelland has the right to be properly notified to her appeal

timelines and rules of procedure when the ALJ initiates an order. RCW 34.05.461. U.S. CONST. amend XIV and ( Appendix H ) ( Appendix J at lines 21 -24, CP PG 32 )( Goldberg v. Kelly 254 U.S 397 262 (1970)( CP PG 4, 9, 10 )

(4) The AG does not review cases for accuracy which is the authority and right of the agency, HCA ( exhibit A appendix 5 ) to do so at will which it apparently has. What evidence did they miss which corrected their error? Why did the error happen in the first place? Only a full remand would reveal that action but at what cost to Deoid'e? she should be granted a review of this case and given relief of a hearing or granted reinstatement of her eligibility due to the grave and irreparable harm that has become to her. RCW 34.05.562

(1)(a)(b)(c)(2)(a)(b)(i)(ii)(c)(d) would approve a full remand for fact finding and argument into the HCA 12/19/2017 review and correction while the paragraph 6 discover transcript would support argument as to why HCA and the ALJ colluded to conceal the DD client eligibility hearing request on 3/18/2013. Deoid'e has not violated the residency requirements.

(5) It is the HCA agency that determines eligibility ( exhibit A appendix 5 )and not the AG. When taking action the HCA may also review its actions for accuracy which may correct an error and resolve an action. This paragraph 6 discovery evidence is clear that an error has been made, evidence missed or improperly kept from the records allowing Deoid'e to have her entitled benefits wrongfully terminated( CP PGS 4, 63, 64 ). Review has made discovery dated 12/19/2017 which was conducted in the beginning of 2017



and completed in December 2017. Deoid'e may be absent from the state and still be eligible for the benefits ( exhibit A appendix 5 )the AG wrongfully declares she was not eligible for years ago, Deoid'e in fact was eligible then and has been wrongfully terminated and wrongfully denied benefits since 2012.

- (6) Deoid'e and her representative did try to fax the OAH on 5/20/2014 but the fax at OAH would not accept, she even tried to call which also was rejected. Letters from Sharon Middleton ( exhibit B appendix 4 )(longtime bay shore office supply employee) and Capt. Eric G. Petersen (USN Retired)(exhibit A appendix 4 ) provide attestation of the attempt . Deoid'e and her representative requested a continuance prior to the hearing on 5/20/2014 due to medical issues, OAH was forewarned and that Deoid'e would only be able to appear by telephone per doctors contact on 3/15/2013.
- (7) In a motion prior to hearing on 5/20/2014 was included a request for time to retain an attorney for Deoid'e which was denied, a short continuance should not have been denied so she could retain an attorney with her representative suffering post concussive syndrome (CP PG 4 appendix I). Letters from Ken Dunning LMHC and Mary Stone LMHC given to Seth Cowen ARNP (CP PG 4 appendix I ) who based his letters and opinion s upon, he did not blindly write his medical letters without professional support. Neither Deoid'e or her representative could attend because Deoid'e was not able to appear in person ( CP PG 4 appendix I ) and OAH did not initiate or allow a telephonic hearing to which was a very reasonable accommodation according to the WSBA 2017

ADA options, some hearings are even brought into the home of the client, why could the hearing not be conducted in the home of Deoid'e? PG 5 at line 4.19 of the initial order under 06-2014-A-0765 states that Karl Olson filed a motion to continue the matter so that Deoid'e could retain legal advice and retain an attorney but DSHS objected so she was denied the right to hire an attorney which the U.S CONST. amend XIV provides to her, there was no reason to deny her time to retain an attorney or to have extra time to investigate what happened to her filed appeal. The HCA was granted extra time so should have been Deoid'e to retain an attorney. By concealing the appeal in March 2013 HCA awarded itself an illegal continuance and delayed Deoid'e right to unnecessary delay of administration of justice U.S. CONST. amend. V and WA STATE.CONST. ART 1. SEC 10.

- (8) On 3/15/2013 the Friday before the original DD client eligibility hearing, HCA was confronted by Deoid'e's former primary doctor that Deoid'e would only be able to attend a hearing if by telephone and that OAH and HCA were being excessive in their demands upon Deoid'e, The doctor refused and denied HCA a mandatory appearance by Deoid'e and the ALJ sided with the doctor and refused on order to appear until the second time around under this double jeopardy case. Deoid'e simply could not appear in person which triggered HCA and the ALJ to conceal the hearing request filed timely because the continuances were denied and HCA was premature and ill prepared.

- (9) The AAG/AG are trying to remove the issues COA accepted to consider and confuse the court. COA accepted the evidence and offered its opinions making them part of this record.
- (10) Judge Meyers order to deny continued benefits was invalid in addition to ALJ Boivins but they each refused to remand so that the truth would not be discovered that the appeal was filed under docket 07-2012-HCA-0109 which paragraph 6 discovery provides to this answer to the respondents answer, it is a new issue. Judge Meyer decided continued benefits were decided under other administrative actions but the appeal was timely to continue benefits ( Court of appeal opinion dated October 9<sup>th</sup> 2017 ) misfiled or not that is where continued benefits were decided and neither Judicial review or OAH would remand as to why this issue took place, CP PGS 1-153 argue that there was an issue which should have been remanded for fact finding but would only lead to discovery that HCA and OAH concealed the filed hearing request ( Exhibit B appendix 5 and )( Exhibit M appendix 1 ). Even as the COA reversed its opinion and gave a new one the COA opinion is in conflict with itself because COA did not remand for full fact finding on the truth on the 3/4/2013 PAN that the ALJ and HCA concealed that day on 3/18/2013. RAP 13.4(b)(2), (3) and (4) is clearly an issue of the public interest due to concealment by the agencies with support from the ALJ an unfair and impartial decision maker, serious questions into U.S constitutional rights along with WA State Constitutional rights through actions by the courts and judges.

(11) Yes, ALJ Wagner and HCA attorney and Representative Kelly Clark did conceal the filed hearing request under sworn testimony at the official proceeding on 3/18/2013 @ 11am. ALJ Wagner and Rep Clark concealed evidence and did make false statements at the hearing under oath and did then commit perjury because they had a copy of the properly filed appeal dated 3/4/2013 on DD client eligibility. Commissioner Neel denied the states motion to strike the evidence because it was relevant and that it had not been available at the time which was factually untrue. HCA and OAH knew the truth and concealed it at hearing; the AG had no intentions to reveal it until it was discovered in 2016 which lead to the excuse of "misfiled" but was filed in time to continue benefits. Paragraph 6 discovery , RCW 34.05.562

(1)(a)(b)(c)(2)(a)(b)(i)(ii)(c)(d) allows this critical and disturbing evidence (exhibit B appendix 5 ) to be submitted which supports ( Exhibit 1 appendix M ) filed in COA previously which is a copy of the CD PDR records of the recorded hearing on 3/18/2013. The official transcript ( Exhibit B appendix 5 )concealed and denied until after the 12/15/2017 deadline for review to the Supreme Court now confirms the ill intentions of HCA and the ALJ/OAH to steal the residency issue that day. The transcript produces clear proof that the DD eligibility issue on the 3/4/2013 PAN was to be heard for efficiency in the ALJ and HCA reps owns testimony but because the appellant refused to allow a continuance there was no choice for HCA and OAH but to conceal it so that HCA would have time to better prepare itself, thus violating Deoid'e right to unnecessary delay U.S. CONST. amend. V and WA. STATE. CONST. ART.

1, SEC. 10, administration of justice. These are not impartial decision makers and there was no due process for Deoid'e. When the ALJ lied along with the HCA rep her fair hearing was denied. The ALJ and HCA committed crimes. The transcript is clear and undeniable (Exhibit B appendix 5 ) and RCW 34.05.562 (1)(a)(b)(c)(2)(a)(b)(i)(ii)(c)(d). HCA and the OAH with the AG had years to come forward and tell the truth, this appeal was not misfiled, it was hidden so more time could be awarded illegally after good cause was not shown to continue the hearing and continuances denied but left off the official record because the ALJ did not make a tape of some 40 minutes of the hearing, the transcript is void evidence including the time she started the tape. This evidence is extremely relevant here and as we provided in our briefs and the clerks papers (CP PGS. 1-153 ) the entire time, the evidence was available but the court refused to remand for fact finding. In this case and other cases such as State v. Hudlow, 99 Wn.2d 1, 15-16, 659 P.2d 514 (1983); Darden, 145 Wn.2d at 621. Relevant evidence is "evidence having a tendency to make the existence of any fact that is of consequence . . . more probable or less probable than it would be without the evidence." ER 401. All facts tending to establish a party's theory are relevant. Lamborn v. Philips Pac. Chem . Co 89 Wn 2d 701, 706, 565. P.2d 215 (1978) . These cases parallel this matter in that the evidence was there all along but without due process and the lower courts remanding or asking for fact finding as to where the appeal was that continued benefits and why was it in the words of Commissioner Neel "unavailable"? it is clear that OAH , HCA and the AG wanted it to be

concealed to hide the truth and steal Deoide's eligibility and Benefits she is entitled to. This evidence discovery would have changed this whole case and it must now, had it been made available by the state or OAH it would have been discovered sooner had the lower courts simply did what they are required to do when serious questions arise, remand for fact finding. These representatives of our state had years to tell the truth but they worked together to conceal evidence which is very incriminating. The appellant is a defendant and she must defend her position and benefits. The appellant's evidence need only be relevant to be admissible (Appendix I). State v. Darden, 145 Wn. 2d 612, 622, 41 P.3d 1189 (2002). "(I) if relevant, the burden is on the state to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial." Jones, 168 Wn.2d at 720 (quoting Darden, 145 Wn.2d at 622).

- (12) Yes, HCA has conducted a review for accuracy and now has modified its action that Deoid'e should have been maintained as a Washington State resident during the timeframe at issue in this matter and that she was eligible contrary to the AG/AAG answer dated 1/16/2018. This is in direct conflict with its action dated 3/4/2013 ( CP 4, 63, 64 ) this is a new issue under paragraph 6 discovery per RCW 34.05.562 (1)(a)(b)(c)(2)(a)(b)(i)(ii)(c)(d). This evidence would have had and will have a major impact on this matter. Deoid'e should have a waiver from further exhaustion of administrative remedies ( CP PGS 1 – 153 , Exhibits A – K ) ( appellants opening brief all exhibits ) The appellant is a defendant and she must defend her position and

benefits. The appellant's evidence need only be relevant to be admissible ( Appendix I ). State v. Darden, 145 Wn. 2d 612, 622, 41 P.3d 1189 (2002). "(I) if relevant, the burden is on the state to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial." Jones, 168 Wn.2d at 720 (quoting Darden, 145 Wn.2d at 622). The next evidence was not in existence until December of 2017 which could not be considered therefore, The denial of the right to present a complete defense is constitutional error ( CP PGS 3-14 , 25 )( Appendix B, H, I and J, K ). Crane, 476 U.S. at 690; jones, 168 Wn.2d at 724. Constitutional error is presumed prejudicial and the state bears the burden of proving the error was harmless. State v. Miller, 131 Wn.2d 78,90, 929 P.2d 372 (1997).

"The presumption may be overcome if and only if the reviewing court is able to express an abiding conviction, based on its independent review of the record that the error was harmless beyond a reasonable doubt that is, that it cannot possibly have influenced the jury adversely to the defendant and did not contribute to the verdict obtained." State v. Ashcraft, 71 Wn. App. 444, 465, 859, P.2d 60 (1993)( Appendix K ). Constitutional error is harmless only if this court is convinced beyond a reasonable doubt any reasonable trier of fact would reach the same result absent the error and " the untainted evidence so overwhelming it necessarily leads to a finding of guilt." State v. Easter, 130 Wn.2d 228, 242, 922 P.2d. 1285 (1996). The review evidence reverses the eligibility termination and could not be presented to the courts until now which means Deoide's constitutional rights were denied and are now. This

new evidence from the internal HCA review challenges/contradicts the respondent's defense and briefs; The transcript clearly reveals concealment on this key DD client eligibility issue of the PAN dated 3/4/2013. The HCA review places serious questions to this court that Deoid'e was eligible for the benefits which are integrated into this matter; In this case of eligibility on residency, HCA has changed its position declaring in writing that Deoid'e was a resident of Washington State and that she was fully eligible for her HCA benefits. Residency must be construed carefully and it seems that HCA has realized its error. Deoid'e will have relief from this action because it should never have happened. DDA/HCA cannot terminate the eligibility of Deoid'e in 2013 because she was determined under review in 2017 to be a legal resident of Washington fully eligible for DDA benefits under the scope and chronological timeline involved in this matter. If she now has been determined eligible which HCA has determined then she was eligible then in 2013 and should not have been terminated, Deoid'e was wrongfully terminated by DDA and should be reinstated immediately as a DD client, retroactively by the Supreme Court after accepting this review. This is a serious issue of the public interest now more than ever RAP 13.4(b) (4) and questions constitutional issues under RAP 13.4(b)(3). This new evidence is relevant and has a direct impact upon this case which is about eligibility on residency that has been modified/reversed by HCA to affirm an error was made and that Deoid'e should have been declared as "absent from Washington temporarily" which maintains full and legal Washington State eligibility requirements that the AG



wrongfully cites in its brief dated 1/16/2018 that Deoid'e was not eligible for State benefits. HCA review defends Deoid'e.

F. CONCLUSION.

Based upon the respondents response, new issues raised and counterstatements including new issues with the discovery paragraph 6, RCW 34.05.562(1)-(d) evidence such as the HCA 2017 internal review for accuracy ( Exhibit A appendix 5 ) that has reversed the HCA position that Deoid'e was not a Washington State resident to now was indeed a legal and fully eligible client for HCA and DDA state benefits in this matter directly we ask that the court deny the respondents response to deny our petition for review to the Supreme Court and accept our matter for review. We also ask the court to accept the newly discovered evidence that changes this eligibility issue which brought us here and provide relief to Deoid'e who obviously was wrongfully terminated in 2013 because HCA declares she was a Washington State resident at time in this matter. We ask that the court accept the new evidence of the transcript ( Exhibit B appendix 5 ) that supports our previous position of serious questions under US and WA State constitutional Laws for Due process that we have steadfast held all this while. Please consider a waiver of the exhaustion of administrative remedies RCW 34.05.534(c) due to the grave and irreparable harm that HCA/DDA and the AG have caused upon the wrongful termination of Deoides DD client eligibility these past 5 years. Deoid'e was fully eligible for State Benefits per HCA review.

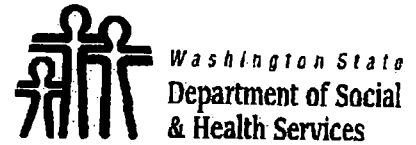
Thank you, Karl Ivan Olson Representative for Deoid'e L Cunningham



20



MOUNT VERNON CSO  
PO BOX 11699  
TACOMA WA 98411-6699



\*Exhibit A, Appendix 5

12/18/17

DEOIDE CUNNINGHAM  
2714 J AVE  
ANACORTES WA 98221-3835

Phone #  
TTY/TDD # 800-209-5446  
Toll Free # 877-501-2233

Client ID # 002713278

Dear DEOIDE L CUNNINGHAM

We sent you a letter on 04/03/17 to let you know you were overpaid for the following benefits:  
( ) Cash ( ) Food (X) Medical.

This is to let you know about a change.  
( ) The type of overpayment has changed.  
(X) The amount of the overpayment has changed.

Month/Year	Amount Paid to You	Amount You Should Have Been Paid	Total Overpayment
10/2008	\$766.78	\$766.78	\$0.00
09/2011	\$121.95	\$121.95	\$0.00
10/2011	\$121.95	\$121.95	\$0.00
11/2011	\$121.95	\$121.95	\$0.00
12/2011	\$121.98	\$121.95	\$0.00

Month/Year	Amount Paid to You	Amount You Should Have Been Paid	Total Underpayment

Total: \$0.00

Your overpayment amount has changed because:

IN OUR LETTER FROM 4/3/2017 WE INFORMED YOU ABOUT MEDICAL ASSISTANCE OVERPAYMENT FOR 10/2008 AND THE PERIOD 9/2011-12/2011 IN THE TOTAL AMOUNT \$1254.58.

YOU CASE WAS REVIEWED FOR ACCURACY. THE DEPARTMENT DETERMINED THAT YOUR ABSENCE FROM WASHINGTON STATE DURING THE PERIOD IN QUESTION SHOULD BE CONSIDERED TEMPORARY, HENCE THE MEDICAL OVERPAYMENT HAS BEEN MODIFIED TO \$0.

APPLICABLE RULES: WAC 388-468-0005(11)(version 2008-2011).

C E R T I F I C A T E

STATE OF OREGON        )  
                                  )  ss.  
County of POLK         )

I, the undersigned, do hereby certify:

That the foregoing Audio Transcription of the above was transcribed under my direction; that the transcript is a full, true and complete transcript of the proceedings, including all questions, objections, motions and exceptions; except for those portions shown as Inaudible, if any;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof; That I am herewith delivering the same to the Clerk of the above-entitled Court.

IN WITNESS WHEREOF, this 17th Day of November 2017.

/s/ Marisa L. Walker  
Marisa L. Walker, Residing  
At Dallas, Oregon

1 and, two, whether Ms. Cunningham's services -- eligibility  
2 should be terminated -- services, and -- and I don't -- I  
3 don't think I'll -- I'm going to be the judge on either one  
4 of those, I mean, necessarily. And I'm not on the -- Mr.  
5 Olson's case. Um, and then -- yeah, and the other one  
6 hasn't even come in, but it won't necessarily be assigned  
7 to me, so, um, you know, maybe that's, um --

8 MR. OLSON: Good for you.

9 JUDGE WAGNER: In the meantime, though, you can -- it  
10 doesn't mean that you and the Department can't work -- you  
11 know, try and work out something.

12 MR. OLSON: We're always waiting and willing to talk,  
13 Your Honor.

14 JUDGE WAGNER: All right. Well, is there any --  
15 anything else that needs to be addressed today, um, from  
16 your standpoint, Mr. Olson?

17 MR. OLSON: No, ma'am.

18 JUDGE WAGNER: How about your standpoint, Ms. Clark?

19 MS. CLARK: No, Your Honor. Thank you.

20 JUDGE WAGNER: Yeah, all right. Well, thank you all  
21 for being available to participate. That will conclude the  
22 proceedings, and we are off the record.

23 (END OF RECORDING)

24

25

1 in the eligibility proceeding, both to get the medical  
2 records and the school records, and, um -- uh, that --  
3 that's already in the works, and the -- uh, had hoped for  
4 some cooperation, and -- and I understand that, given that  
5 I'm an attorney, and that we have an AG that -- actually,  
6 I've found out that I could, in fact, uh, issues subpoenas  
7 for the Department, um, and so we're working on that, I --  
8 I (Inaudible) concern on that, um, and, uh, bearing with me  
9 for now.

10 JUDGE WAGNER: And Mr. Olson, any questions or  
11 concerns, or do you want to try and set up something? You  
12 said you'd been waiting and waiting. Did you want try and  
13 set something up with the Department to -- what I'm hearing  
14 is that the -- you know, the Department does not want the,  
15 um -- the Department just wants to ensure that, you know,  
16 the information it gets is correct, and, you know, et  
17 cetera, and we'd like to work with you not, um -- so it  
18 sounds like Ms. Cunningham is due for an annual assessment,  
19 so perhaps that will be set up (Inaudible), but that's  
20 beyond the scope.

21 I mean, at this point, the Department has rescinded  
22 the Planned Action Notice, so there's nothing -- I will  
23 dismiss the case based upon that, but I know that does  
24 leave two -- I think two pending hearings. One in regard  
25 to whether Mr. Olson should be terminated as, uh, provider,

1 to -- you can't call it in. You have to fill it out, and  
2 you have to send it in, or fax it in, and then, uh --

3 JUDGE WAGNER: So you -- you've sent your request to  
4 the Office of Administrative Hearings?

5 MR. OLSON: Yes, Your Honor.

6 JUDGE WAGNER: Okay. Very good. Well, I imagine  
7 that'll show up there, then, shortly. Was there-- Ms.  
8 Clark, is there a reason that you're anxious about that?

9 MS. CLARK: I'm anxious about everything. I'm  
10 (Inaudible), but no, it's -- it's just, I -- in terms of  
11 efficiency I agree with both of you that we need to get  
12 things -- we need to get through these things, uh, both  
13 because we're concerned about Ms. Cunningham, and there are  
14 issues that need to be resolved, and I'm just trying to  
15 figure out any way that we could --

16 JUDGE WAGNER: So what I -- I, uh, I mean, what you've  
17 stressed before at the prior prehearing is you've got  
18 concerns about getting access to medical, and getting  
19 access to Ms. Cunningham, et cetera, and, um, I think --  
20 yeah, I didn't -- I, you know, my -- I didn't think that I  
21 necessarily have the right to order -- like I didn't know  
22 what my authority would be to order medical records, and  
23 so, you know, it may be that your AG, or somebody has to  
24 get involved.

25 MS. CLARK: We -- we are, um, going to be doing that

1 JUDGE WAGNER: No. I don't -- I think it -- I think -  
2 - I don't want to take it. I mean, because I think --  
3 doesn't that -- does it not have to be in writing?

4 MS. CLARK: Well, it -- one of the rules, uh, actually  
5 requires Department staff that if a, um -- if a person  
6 requests assistance in requesting a hearing on a Department  
7 action, that they are required to facilitate that hearing  
8 request.

9 JUDGE WAGNER: Well, and we take hearing requests too,  
10 um, but I would say that, um --

11 MS. CLARK: (Inaudible) might facilitate things if he  
12 wants a hearing, then Ms. Garza could actually file a  
13 hearing request on his behalf on her behalf.

14 JUDGE WAGNER: Would -- would you like that, Mr.  
15 Olson, or have you already filed a request?

16 MR. OLSON: Uh, the paperwork has already been filed,  
17 Your Honor, and we'll just have to wait until we get a  
18 reply.

19 JUDGE WAGNER: What do you mean wait -- wait until you  
20 get a reply? What do you mean?

21 MR. OLSON: Well, somebody will contact us, uh,  
22 hopefully to set up, uh --

23 JUDGE WAGNER: Oh, the office of -- so you're saying  
24 you --

25 MR. OLSON: (Inaudible) that's what we do. You have

1 -- that -- you didn't think about it, I didn't think about  
2 it. None of us here at the table thought about it until  
3 recently. I apologize.

4 JUDGE WAGNER: Okay. Any -- Mr. Olson, anything else  
5 from you, or --

6 MR. OLSON: I have nothing more to say. I -- I'm  
7 sorry.

8 JUDGE WAGNER: That's all right. So you have or are  
9 going to submit a hearing request on behalf of Ms.  
10 Cunningham in response to the recent, uh, Planned Action  
11 Notice terminating her -- her eligibility and her services,  
12 is that right?

13 MR. OLSON: Yes, Your Honor. This thing's completely  
14 out of control.

15 JUDGE WAGNER: All right. So, um -- all right. Well  
16 -- and I know that Ms. -- the Department was asking for --  
17 for persons to appear et cetera for this particular  
18 hearing. It seemed pretty apparent to me that there's a --  
19 a break -- uh, at a minimum there's some kind of breakdown  
20 of communication, so, you know, Department, and Mr. Olson,  
21 you -- you may need to consider who you might have to  
22 subpoena for those hearings, et cetera.

23 MS. CLARK: Your Honor, can -- is it possible in this  
24 proceeding for him to make a request for hearing on that  
25 action on the record?



1 JUDGE WAGNER: Okay. I didn't realize that one --  
2 that somebody could turn around, cooperate, and that would  
3 undo a termination.

4 MS. CLARK: I hadn't thought about it in real, um --  
5 real terms or real life, uh, until I think probably about  
6 2:00 Saturday morning, in which I was wondering what would  
7 be the effect? Because we -- (Inaudible) services if  
8 they're eligible. She can be eligible -- actually, she  
9 remains eligible, uh, for services, and, um, even with you  
10 granting her motion to rescind -- uh, to dismiss -- based  
11 upon our decision -- she, uh, remains eligible to receive  
12 services, just not for Mr. Olson until there's a decision  
13 in that matter. So there's no harm to her, uh, but she --  
14 again, she will have to, um, agree to the very things I  
15 requested a moment ago in order to continue to receive  
16 those services. And if -- if you think about it, Your  
17 Honor, there's certain things that are -- when you make the  
18 decision (Inaudible) on assessments, it's generally for  
19 that assessment period. If you make, uh, decisions  
20 regarding eligibility terminations or denials, that's --  
21 that's it until there's new evidence or new documentation  
22 submitted, or a new application.

23 So with this situation, there is nothing that I could  
24 see that would prevent them from agreeing to everything  
25 right after we spent the day on this hearing, so I -- that

1 isn't withdrawing the hearing request. The hearing request  
2 is yours, but the hearing request is -- is based upon, you  
3 know, there being some jurisdictional basis for the  
4 hearing, so the Department is rescinding the Planned Action  
5 Notice, um, dated -- what is it? Is it March -- let's see.  
6 Nope. It is June 27, 2012, um, terminating the waiver  
7 services. So, um, I'll just indicate that the hearing is  
8 dismissed based upon the withdrawal of the -- the Planned  
9 Action Notice.

10 Um --

11 MR. OLSON: Your Honor, if I could just --

12 JUDGE WAGNER: Yes?

13 MR. OLSON: -- clarify for you?

14 JUDGE WAGNER: Yes.

15 MR. OLSON: I don't mean to be obstinate, or -- or  
16 hardheaded, or persistent. I -- I do re --

17 MR. WRIGHT: You're entitled to be a -- a advocate for  
18 your agency.

19 MR. OLSON: We -- we truly do want to have a hearing,  
20 um, on these issues because we truly are concerned about  
21 Deoide's health, and safety, and -- and personal care  
22 needs. Um, we -- I just, uh -- I'm not trying to deprive  
23 anybody from getting this fleshed out. It needs to be  
24 fleshed out, um, but I believe under the circumstances we -  
25 - as a last resort, I made this motion to rescind, and --

1 going to have these issues addressed in an eligibility  
2 hearing that is also terminating services, and this is not  
3 a, um -- this is not a, uh -- uh, request for hearing that  
4 is contingent upon an assessment, for which I know that  
5 some judges believe creates the right to a hearing. This  
6 is a hearing that provides -- this Planned Action Notice  
7 provides the Office of Administrative Hearings  
8 jurisdiction, um, to have a hearing on this, and given the  
9 resistance to cooperate demonstrated on the record at this  
10 proceeding, I am rescinding the Planned Action Notice on  
11 behalf of the Department, and my position is that that  
12 deprives the Court from any further jurisdiction to have a  
13 hearing on this particular matter.

14 JUDGE WAGNER: Well, I think it -- it does. Did you  
15 want to be heard about -- on that, Mr. Olson?

16 MR. OLSON: Well, Your Honor, if the Department is  
17 withdrawing their request for the hearing, or whatever,  
18 like that, then, um, that's up to them. I mean, we've  
19 waited, and we're -- I mean, I just don't feel that it's  
20 fair to have been waiting this long for -- for them to come  
21 and -- and help us with this, and that's why I -- we --  
22 we've got to move on with this. It's --

23 JUDGE WAGNER: Okay.

24 MR. OLSON: That's --

25 JUDGE WAGNER: All right. Well, the -- the Department

1 MS. CLARK: Uh, we made this motion and asked him  
2 three simple questions, and I want to make it real clear  
3 for the record that his refusal to agree to -- at hearing,  
4 at this point -- to agree to what's required by the  
5 regulations, um, as far as I'm concerned, he might turn  
6 around and agree to everything tomorrow while your  
7 decision's still pending, but, um, this is the last  
8 opportunity. I'm, uh -- it -- it really is simple, and I --  
9 -- I resent the fact that it can't be -- we talked about  
10 everything else. It's a simple yes or no, and if --

11 JUDGE WAGNER: Well, understand that's your position --  
12 --

13 MS. CLARK: I'd like --

14 JUDGE WAGNER: -- but I'm not hearing the yes, so I  
15 mean, I don't know what you want me to --

16 MS. CLARK: (Inaudible) to a hearing -- would you  
17 agree to an assessment today or tomorrow, Mr. Olson? Yes  
18 or no?

19 MR. OLSON: Let's move forward with the hearing.

20 MS. CLARK: No, it's not -- that's not the option. Um,  
21 Mr. Olson, you've demonstrated already, uh, exactly the  
22 issue here, and I think the Judge has heard enough about  
23 this motion. My second motion is a motion to rescind the  
24 Planned Action Notice for this hearing. Um, it is clear to  
25 me that it is pointless to have this hearing when we're

1 MS. CLARK: Mr. Olson?

2 MR. OLSON: -- uh, forms that you requested, and --

3 JUDGE WAGNER: Okay. All right. You know what? You  
4 know what? You know what? We're going to go forward with  
5 the hearing. We're going forward with the hearing because,  
6 as I said, I think we get into these circular things.  
7 Nothing is accomplished, and if the Department needs to  
8 offer some documents post hearing with an opportunity for  
9 Mr. Olson to respond on behalf of Ms. Cunningham, I'm going  
10 to -- I'm going to address it that way, but I don't want to  
11 spend any more time arguing about whether somebody will or  
12 won't sign a consent, will or won't make somebody  
13 available, et cetera, so we're going.

14 MS. CLARK: I -- if he cannot answer yes or no to  
15 those three points --

16 JUDGE WAGNER: Well, he hasn't, and -- and I'm not  
17 going to -- I mean, you know, he's got a different  
18 perspective on this. I don't know who's -- who's right,  
19 who's wrong. I don't want to spend any more time, um, and  
20 then find out that, uh, there's misunderstanding that --

21 MR. OLSON: Let's move forward with the hearing, Your  
22 Honor. We've waited long enough for cooperation here, and  
23 I -- that's all I've got to say.

24 MS. CLARK: Your Honor?

25 MR. OLSON: Ms. Clark --

1 JUDGE WAGNER: I'm not going to do the assessment, and  
2 I don't - I'm not trying to say that you should agree to  
3 any of those things. But what the Department is saying is  
4 if you agree that they can come out and do their annual  
5 assessment, number two that Ms. Cunningham will be  
6 available and participate in that annual assessment, and  
7 three that -- that a waiver is -- or consent form is signed  
8 that, basically, is for a year's period of time, I guess --  
9 if you agree to those three things, the Department doesn't,  
10 you know, would -- would -- would, uh, you know -- would,  
11 uh, say that --

12 MR. OLSON: I under -- I (Inaudible) --

13 JUDGE WAGNER: Yes or no?

14 MR. OLSON: -- understand what you're saying, Your  
15 Honor. I'm just, uh --

16 MS. CLARK: We just need a --

17 MR. OLSON: I -- I --

18 MS. CLARK: We just need a yes or no, Mr. Olson.

19 MR. OLSON: Well, I'm aware of that, Ms. Clark, but  
20 I'm sitting here trying to figure out why it had to wait  
21 until today that you guys are wanting to finally come.

22 MS. CLARK: This is not going to be argued.

23 MR. OLSON: (Inaudible) and meet with us today --

24 MS. CLARK: Yes or no?

25 MR. OLSON: And we've given you the --

1 JUDGE WAGNER: Okay.

2 MR. OLSON: -- everything you've asked for.

3 MR. WRIGHT: Okay.

4 MR. OLSON: We have waited months for you guys to act  
5 on that stuff.

6 JUDGE WAGNER: Okay. Well, this is a -- I don't know  
7 what happened. What did or didn't occur, but today, here  
8 and now, you know, the Department is asking Mr. Olson, do  
9 you agree to an annual assessment in the next couple of  
10 days? Do you agree to sign a waiver, uh, con -- consent --  
11 rather a consent form that's consistent with what waiver  
12 clients sign, which would not have a -- a -- you know, it  
13 would be for a year's period of time, not like the day of  
14 hearing. And, uh, the -- would you agree that Ms.  
15 Cunningham is going to be an active participant in the  
16 assessment. And if -- if you can't say yes, yes, yes, then  
17 Department's withdrawing its motion, and -- and I don't  
18 want to spend a lot more time arguing about this, or  
19 discussing it because, to me, it seems like it's a very --  
20 we're going on circles, and I would just rather, you know --  
21 -- if you don't want to agree to those things, uh, then I'd  
22 rather just -- just say so, and -- and then we'll go  
23 forward with the hearing.

24 MR. OLSON: Well, you -- you can come and do the --  
25 the annual assessment, Your Honor.

1 - I actually have noted it, and it was submitted in a sworn  
2 declaration -- and I'm not under oath now, but the doctor  
3 told me that she is perfectly capable of participating  
4 actively in an assessment. He, uh -- he sees nothing wrong  
5 with that, and that she's perfectly capable of actively  
6 participating in testifying by -- I stress by telephone --  
7 in her own hearings. And -- and if -- if Mr. Olson cannot  
8 agree to the conditions that we have an assessment that she  
9 be allowed, and that she does actively participate, uh,  
10 we're not going to ask her to do pushups, and you know, I  
11 will not -- this is talking about sitting in a room, kind  
12 of like she sits in classrooms. Um, we're talking about  
13 sitting in her own room, and actually engaging in  
14 conversation as she is supposed to do in order to  
15 cooperate. If he can't ensure that we have this annual  
16 assessment, and number two that she actively participate,  
17 and number three, that she signs a consent form for the  
18 year -- for the waiver year, so that we can coordinate and  
19 not feel like we're getting information that's screened  
20 through Mr. Olson solely, um, then I withdraw my motion to  
21 continue.

22 MR. OLSON: We provided the --

23 MS. CLARK: I'm not asking what you provided.

24 JUDGE WAGNER: Okay. So let's just --

25 MR. OLSON: Ms. Clark, we have provided --



1 to get the assessment performed, we have not been, um,  
2 unwilling to participate. We've always participated --

3 MS. CLARK: But Deoide --

4 MR. OLSON: (Inaudible) home care assessment. May I  
5 finish, please?

6 MS. CLARK: Not Deoide.

7 MR. OLSON: We've always been -- well, Deoide has been  
8 able to participate at times, to the best that she can.  
9 She has been -- had a letter written, I believe from Dr.  
10 Whitehead asking for, uh, her to sit out one time because  
11 of the stress. Um, Dr. Whitehead's letter (Inaudible), uh,  
12 were just, like he says, I have a copy of the letter that  
13 was faxed right here. You know, we didn't mean for, uh,  
14 that letter to trigger determination on the 21<sup>st</sup> of her  
15 waiver. We just -- I reported future activity. Uh, Dr.  
16 Whitehead had recommended additional time, and -- and  
17 that's all. But that was about -- it was about what was  
18 best for Deoide at that time.

19 MS. CLARK: Your Honor, uh, the fact is moot. You're,  
20 uh, at least aware of last -- 2012's assessment, uh, and  
21 the testimony from that hearing is that she did not  
22 participate. She was laying there, uh, and did not  
23 participate enough to -- uh, was not allowed, or did not  
24 respond to any questions. Um, it is required that she  
25 participate, and the -- and the doctor told me, and I, uh -

1 He -- he realized the limitation of the consent form. I  
2 explained that to his office assistant. I said, "I really  
3 don't have much time here." She goes, "Oh, I see that."  
4 And so the doctor came on the line. We had about a ten-  
5 minute conversation, and those two points he made. So what  
6 I'm asking, Your Honor, is -- you know, I'm moving to  
7 continue solely on the conditions that Karl -- Mr. Olson,  
8 as Deoide's apparent agent, agrees to a -- the annual  
9 assessment, either today, or this week -- next couple of  
10 days -- that Deoide actively participate. That she be  
11 allowed to be asked questions, and be observed, and  
12 actively participate, and that they sign a consent  
13 consistent with waiver clients in order for us to be able  
14 to assess and coordinate necessary services. Those are  
15 pretty easy things, I would think, for somebody to agree to  
16 if they their wife or, uh, girlfriend's interest at heart.

17 MR. OLSON: Well, my goodness, um, that's kind of  
18 below the belt. But we've been waiting, um, for somebody  
19 to work with us -- uh, work with us on whether we could,  
20 uh, make things to where delegation was not needed or  
21 whatever. We've had to go this alone, but if you guys  
22 won't come out to the house, um, for --

23 JUDGE WAGNER: Well, sounds like Ms. Garza is willing  
24 to come out to the house today or tomorrow.

25 MR. OLSON: Well, if that's what it takes, Your Honor,

1 JUDGE WAGNER: Is she listening?

2 MR. OLSON: No, she's not listening.

3 MS. CLARK: Where is she?

4 MR. OLSON: She's lying down in the bedroom.

5 MS. CLARK: Um --

6 MR. OLSON: I'm at the other end of the house, so that  
7 she's not exposed to it. I mean, the -- the -- the stress  
8 is -- is the reason why I try to take care of this. Um,  
9 did anybody -- did you guys get the last, uh, letter from  
10 Dr. Whitehead? I mean, trying to clarify --

11 JUDGE WAGNER: I received a letter from Dr. Whitehead,  
12 um, dated March 8<sup>th</sup> that was received at the office March  
13 15<sup>th</sup>. I just got it today.

14 MS. CLARK: I received that letter on Friday, and --  
15 and accepted his invitation to call him if I had any  
16 questions.

17 MR. OLSON: Uh-huh.

18 MS. CLARK: And that's what I was making reference to  
19 earlier that he does not believe, um, an in-person  
20 assessment in which Deoide participates -- not just is  
21 present, but participates um, is unreasonable, given her  
22 conditions. And he said, "It is not, um, unreasonable for  
23 her to be able to participate in hearings by telephone that  
24 she requested." And I specifically asked those things, but  
25 I was short in our conversation because he had patients.

1 MR. OLSON: Well, yeah, we -- we --

2 JUDGE WAGNER: You wouldn't have had --

3 MR. OLSON: Nobody's wanted to come, and meet with us,  
4 or do anything. I mean, we're -- we're just waiting --

5 JUDGE WAGNER: Okay. So what would be a good --

6 MR. OLSON: (Inaudible). Oh, sorry.

7 JUDGE WAGNER: What would be a good day, then, for the  
8 Department to come out and do Ms. Cunningham's annual  
9 assessment?

10 MR. OLSON: Well, I mean, uh -- uh, well, any -- I  
11 guess anytime. It's just, uh, when? I mean, somebody has  
12 to, um --

13 JUDGE WAGNER: When do you want to go out Department?

14 MS. CLARK: Uh, Ms. Garza can go out today.

15 JUDGE WAGNER: Okay.

16 MS. CLARK: Can I -- Your Honor, may I ask if, um --  
17 is, uh -- and I probably should ask (Inaudible) should ask  
18 (Inaudible), I guess. Whoever's in the room hearing the  
19 proceedings, is -- is Ms. Cunningham present, and -- and  
20 listening to this?

21 JUDGE WAGNER: Is Ms. --

22 MS. CLARK: (Inaudible), Your Honor.

23 JUDGE WAGNER: Is Ms. Cunningham present, Mr. Olson?

24 MR. OLSON: She does not participate in the hearings  
25 for -- for stress reasons.

1 agreeing -- her signing a consent form that is appropriate  
2 for a (Inaudible) client. In other words, that it -- it  
3 allows communication between a provider's -- uh, medical  
4 providers for the waiver year. If he does not agree to  
5 that -- those two things, I withdraw my motion to continue.

6 JUDGE WAGNER: Well, according to -- okay. So Ms.  
7 Clark, from you, though, if -- if he did those things, then  
8 there wouldn't be any need for a hearing.

9 MS. CLARK: If he does those things, we don't have a  
10 need for this hearing.

11 JUDGE WAGNER: Okay. So Mr. Olson, are -- you're  
12 saying that you -- you want to have a hearing, uh,  
13 assessment scheduled?

14 MR. OLSON: Your Honor, we've been waiting for months  
15 -- since October -- since we agreed to take the last  
16 assessment. And I signed the agreements for the last  
17 assessment. I mean, we tried to make it work without the  
18 nurse delegation. We can't make it, so we've agreed to the  
19 last assessment. Um, have (Inaudible) -- we've been  
20 waiting for the annual assessment. Um, we've waited for  
21 any meeting we can get to try, and, uh, resolve this, or --

22 JUDGE WAGNER: Okay. Well, isn't -- isn't the annual  
23 assessment -- wasn't that due last -- I mean, it wouldn't  
24 have been due before February, correct? You said you'd  
25 been waiting, but --

1 JUDGE WAGNER: Did you read my order?

2 MR. OLSON: Uh, yeah --

3 JUDGE WAGNER: That was -- my order says --

4 MR. OLSON: (Inaudible).

5 JUDGE WAGNER: (Inaudible) --

6 MR. OLSON: They were there -- I still have those  
7 records dated, um, December 19<sup>th</sup>, but the Department wanted  
8 their own release, as Ms. Clark said at our, uh -- our pre  
9 -- our hearing that we had earlier this month, and --

10 JUDGE WAGNER: Is there a reason that you limited the  
11 consent to today's date?

12 MR. OLSON: Well, I mean, it's, uh, today is the  
13 hearing, um, about all of that stuff going on, and I --  
14 there really isn't any, uh, reason to go beyond, uh,  
15 today's date. I mean, this thing -- you know, we were --  
16 been ready to meet for a long time, and --

17 MS. CLARK: Your Honor, I --

18 MR. OLSON: That's why --

19 MS. CLARK: If I --

20 MR. OLSON: -- I think the hearing needs to go on  
21 today.

22 MS. CLARK: Your Honor, my motion to continue the  
23 hearing is conditional upon, uh, Miss -- Mr. Olson as,  
24 apparently Decoide's agent, agreeing to schedule the overdue  
25 annual assessment almost immediately, and second upon his

1 JUDGE WAGNER: Okay.

2 MR. OLSON: I -- I mean, we're just -- we've been, uh  
3 -- you know, we've signed, uh, the 2012 assessment  
4 agreement. We've been waiting to -- to meet to take the  
5 delegation, or -- I mean, we've been waiting for months,  
6 and nobody has wanted to come and get records, meet, or, uh  
7 -- because I've trouble with finances. I -- we've  
8 requested meetings with the Department. They won't come  
9 out. They won't come out. You had to order them to -- to  
10 come and get the records.

11 MS. CLARK: Objection.

12 MR. OLSON: And then --

13 JUDGE WAGNER: No, I didn't --

14 MR. OLSON: (Inaudible).

15 JUDGE WAGNER: Uh, Mr. Olson?

16 MR. OLSON: (Inaudible).

17 JUDGE WAGNER: Mr. Olson? I didn't order them to come  
18 get the records. I ordered you to make the records  
19 available because you said --

20 MR. OLSON: Right, and --

21 JUDGE WAGNER: Right.

22 MR. OLSON: Exactly. And I would have, but because  
23 that really wasn't the request. I thought, "Well" --

24 JUDGE WAGNER: No, my --

25 MR. OLSON: My (Inaudible) --

1 MR. OLSON: Your Honor, that was based on the request  
2 of the Department. They wanted their own releases, and we  
3 talked about this at --

4 JUDGE WAGNER: Okay.

5 MR. OLSON: -- the prehearing conference.

6 JUDGE WAGNER: Did you get the record -- did you get  
7 copies of the records that were provided to the Department?

8 MR. OLSON: Well, I -- like I said, I -- we had them  
9 in December. We were waiting. We wanted them to come out.  
10 Um, then they wanted their own copies, so we figured we  
11 just better sign the releases, and so that they would have  
12 100 percent of, uh, exactly what they asked for. I mean --

13 JUDGE WAGNER: Okay.

14 MR. OLSON: -- we talked about this.

15 JUDGE WAGNER: This doesn't --

16 MR. OLSON: Waiting --

17 JUDGE WAGNER: Did you receive, um, documents at the  
18 end of last week from Ms. Cunningham's healthcare  
19 providers?

20 MR. OLSON: Did I?

21 JUDGE WAGNER: Yes. Were -- did you get copies with  
22 any kind of indication that these -- that these had been  
23 provided to the Department of Social and Health Services or  
24 the Health Care Authority?

25 MR. OLSON: Uh, no. Uh-uh.



1 I almost feel like what you're concerned about has more to  
2 do with the upcoming hearing, which is not necessarily my  
3 hearing. It's not necessarily consolidated with this  
4 hearing, or, you know -- it's another judge, another  
5 matter. So I'm not sure --

6 MS. CLARK: I'm thinking maybe if -- if you inquire of  
7 Mr. Olson several things. One whether he received the  
8 records, whether he's ready to testify about -- anything  
9 about them, because I -- I will establish relevance to this  
10 issue.

11 JUDGE WAGNER: All right. Did you get medical  
12 records, Mr. Olson?

13 MR. OLSON: I -- what do you mean, Your Honor?

14 JUDGE WAGNER: The --

15 MR. OLSON: I just --

16 JUDGE WAGNER: -- medical records apparently that you  
17 provided. Do -- do you keep copies for yourself? Did you  
18 take medical records to the CSO last week?

19 MS. CLARK: No, the (Inaudible) provided releases,  
20 Your Honor.

21 JUDGE WAGNER: Okay.

22 MS. CLARK: (Inaudible) directly from the providers.

23 JUDGE WAGNER: Okay.

24 MS. CLARK: Most of these.

25 JUDGE WAGNER: All right.

1 him about them.

2 JUDGE WAGNER: Okay. But -- but, I mean, what do her  
3 medical records have to do with cooperation?

4 MS. CLARK: The refusal to provide access is one of  
5 the keys.

6 JUDGE WAGNER: Okay. But you can tell -- I mean,  
7 there is evidence of that, right? So there's evidence of  
8 her -- I mean arguably, you're going to say -- or present  
9 evidence that there was refusal, and -- I mean, I -- and of  
10 course, I have to hear from -- from Mr. Olson, but -- okay.  
11 So --

12 MS. CLARK: I -- what I don't want to do is have a  
13 hearing on this evidence, have a decision that -- that is  
14 going to say, "Yeah, up until the date of this hearing,  
15 they weren't cooperating, and then they turn and cooperate.

16 JUDGE WAGNER: Well, what's the harm, though, I guess?  
17 What's the harm of that?

18 MS. CLARK: Harm is -- I don't see that anybody's  
19 harmed. On the other hand, I don't see how anybody's  
20 harmed with a continuance, given that there will be an  
21 eligibility hearing requested. But here's the thing.

22 JUDGE WAGNER: But there -- but those are necessarily  
23 going to be consolidated, and I -- what I see with this is  
24 that it's been pending since July, there's -- I mean, it's  
25 just -- I think it's difficult to get things scheduled, and

1 I don't exactly understand what it is that you have in  
2 exhibit form that you just got on Friday that is so  
3 important that I see.

4 MS. CLARK: Uh, medical records, Your Honor, that --  
5 that, uh, establish, um, for the last year -- medical  
6 records from several providers that are going to be  
7 important in determining services that are important in  
8 terms of evidence as to both credibility and the extent of  
9 their cooperation.

10 I mean, I -- I could give you an example, but I don't  
11 want to get ahead of myself and testify. I told you that I  
12 did speak with Dr. Whitehead. He has indicated that he saw  
13 no reason -- in spite of the letters that he sent out, he  
14 saw no reason why they should not participate in annual  
15 assessments, um, and be able to discuss her condition, uh,  
16 as needed with him, and I suppose other providers. He also  
17 said that the letters that he's written saying, "No, you  
18 can't come out for 90 days." You know the ones I'm  
19 referring to. That we can't have any scheduled hearing.  
20 He said, "Well, that's all based on what they told me.  
21 I've never seen that. There's -- we need the opportunity  
22 to determine, um, and -- and provide this to you.

23 And I don't even know -- well, several things. I  
24 don't know whether Karl's got a copy of these records or  
25 not because we just got them on Friday. I'm going to ask

1 that they received it, and they are requesting it. And  
2 that's why I've been calling your office daily almost. I'm  
3 sorry for bugging them, but, uh, to determine whether or  
4 not that has been. Your Honor, that is a, um -- the issue  
5 for us is we have a hearing that I -- I -- I've been  
6 preparing for it for some time. We've got new information  
7 that you don't have that need to become exhibits, but --  
8 but that also, if they don't agree to extend the consent,  
9 um --

10 JUDGE WAGNER: Okay. You -- so --

11 MS. CLARK: (Inaudible) the hearing, or not, so you  
12 say, "No, they weren't cooperating," they could suddenly  
13 cooperate, and then we're back at, you know -- it -- it  
14 just seems that --

15 JUDGE WAGNER: This seems like a very circular  
16 argument because if it -- I mean, if they're not going to  
17 consent, they're not going to consent. If they're inclined  
18 to consent after being -- I mean, I -- I just don't  
19 understand what exhibits you have that I -- are necessary  
20 and relevant to this hearing, and if you do have something,  
21 then you could -- I'll consider, um, keeping the record  
22 open for that to be submitted post hearing, um, but I'm not  
23 -- I just --

24 MS. CLARK: Well --

25 JUDGE WAGNER: Let me hear from Mr. -- I mean, I guess

1 MS. CLARK: I'm not saying this doesn't have any -- it  
2 doesn't have any -- it doesn't have any, um, effect after  
3 this hearing, and after -- it doesn't have any effect after  
4 this hearing, because they could turn right around and  
5 cooperate, and there's no problem.

6 JUDGE WAGNER: Okay, but --

7 MS. CLARK: (Inaudible). So what I'm saying is that  
8 we can have a hearing, and then they'll change their minds.  
9 So I just want to point out how many times that you're  
10 aware of, having been the ALJ in a couple of matters now,  
11 that there have been hearings requested, failures to  
12 appear, reinstatements, assessments scheduled, assessments  
13 canceled. I just -- I -- I --

14 JUDGE WAGNER: Well, I -- I mean, I know -- I sense  
15 your frustration, but I -- I don't see how not having a  
16 hearing is going to -- if -- if -- if the Appellant and/or  
17 her representative are not so inclined, how not having a  
18 hearing is, you know, going to put -- you know, move the  
19 process forward. It seems that really the critical Planned  
20 Action Notice is the one that was issued last week, or the  
21 week before that has not -- for which -- to my knowledge,  
22 we have not received a hearing request.

23 MS. CLARK: Uh, Mr. Olson has confirmed to Ms. Garza  
24 that he did send in that paperwork, or is going to send in  
25 that paperwork. One doesn't know which, but he confirmed

1 MS. CLARK: So your decision, when you write it, and  
2 send it out after today's hearing, will accomplish when  
3 Deoide and Karl agree to the annual assessment, and agree  
4 to cooperate in terms of having, uh -- uh, a full waiver  
5 here -- consent form. It renders any decision moot. It  
6 renders this hearing pointless. If they -- even if right  
7 up until now they say, "I won't cooperate." You make a  
8 determination when you send out your decision in a month.  
9 By then they may have cooperated, and it makes this whole  
10 thing moot.

11 On the other hand, I'm asking for a continuance -- I'm  
12 renewing the motion for continuance because of the late  
13 disclosure of records that you order and agreed we had a  
14 right to. I'm asking for that renewal based upon the  
15 information that's in them, and the need to have a more --  
16 um, a broader consent that is consistent with what a case  
17 manager needs, and agreement by, uh, Mr. Olson on behalf of  
18 -- acting as agent for Deoide to agree to those two things.

19 JUDGE WAGNER: But I guess what I'm saying is we  
20 talked about that before. If he's not willing to do that,  
21 then isn't that the end of the story? I mean --

22 MS. CLARK: Until after the -- until after the  
23 hearing, then he agrees to do that, and --

24 JUDGE WAGNER: Well, I know, but that's purely  
25 speculative. I mean --

1 records, and I can tell you that we're limited -- I -- I  
2 can tell that what's in the medical records are sufficient  
3 to cause some concern as to whether our annual assessments  
4 of recent years have any basis in fact. I can tell you  
5 that -- that, um -- uh, I spoke to Dr. Whitehead (phonetic)  
6 on Friday afternoon, after perusing the records that we got  
7 Friday afternoon, and that based on what we see in the  
8 records, that it would be irresponsible for the Department  
9 not to follow up with these providers, uh, in further --  
10 well, let me -- let me phrase it this way. It would be  
11 irresponsible not to follow up with them, but here's what  
12 makes this whole hearing unnecessary. All they need to do  
13 is schedule an annual assessment with their case manager,  
14 and sign a release for medical information so that for the  
15 waiver year, they can, um, coordinate and participate, uh,  
16 in ensuring that what services we are paying for, um, is  
17 appropriate.

18 JUDGE WAGNER: Well, I understand that's your  
19 position, but it has -- but your position is also that that  
20 hasn't happened, and so why wouldn't we go forward today?  
21 I mean, I guess I just want (Inaudible) saying -- you're  
22 pretty clear -- have been pretty clear that, um, in the  
23 prior prehearing (Inaudible) that there's a lack of  
24 cooperation, and that lack of cooperation is a basis, as I  
25 understand it, to terminate the waiver services.

1 putting this off.

2 MS. CLARK: Well, and -- and, uh, maybe I'm making an  
3 offer of proof that Ms. Garza and Mr. Duncan can both  
4 confirm that part of -- of the -- the -- the regulations  
5 require an annual -- at least an annual assessment. It  
6 also requires the person to cooperate in monitoring that,  
7 um -- uh, service plan, and to be able to have access for  
8 that waiver year to coordinate, and get information from,  
9 uh, medical professionals dealing with a client, and there  
10 will be test -- there would be testimony that that is a  
11 routine thing that we -- people on the -- the --  
12 (Inaudible) the waivers, they do the annual assessment, and  
13 additional assessments as necessary, but they also provide  
14 a, uh, release for medical information for that waiver  
15 year. Uh --

16 JUDGE WAGNER: So I -- I -- I understand your  
17 position, but I guess I'm wondering like why can't you both  
18 -- what is it that continuing the hearing today -- I -- I'm  
19 not understanding, and I -- I mean, I'm not saying -- you  
20 know, like a point -- I just don't understand why  
21 continuing this hearing on the waiver service issue for the  
22 basis of lack of cooperation, what setting this hearing  
23 over is going to get -- I mean, what -- what there is out  
24 there that you can't provide to me today in that regard.

25 MS. CLARK: I can tell you what's in the medical



1 activity, and accepting services agreed to in the ISP as  
2 necessary to meet health and welfare, uh, needs." Um,  
3 although that same (l) has a (g) that, um, she does not  
4 make herself available for annual assessments, um, she made  
5 herself available for the last assessment that has ever  
6 occurred, and that was February of 2012, on which we had a  
7 hearing last June.

8 We have not -- based upon -- her new annual assessment  
9 is past due, and we do not whether -- know whether they  
10 would agree to schedule that annual assessment or not.  
11 Regardless of whether this hearing is pending, or is heard,  
12 she remains eligible for her -- um, her waiver services,  
13 um, just not through Mr. Olson at this point, and that's a  
14 separate hearing, and that's pending a -- a decision. So  
15 she -- she's still eligible to receive waiver services, but  
16 even if, um, this hearing wasn't until December, and she  
17 continued to be eligible to receive her services, she would  
18 still have to have an annual assessment, according to the  
19 rule. And so --

20 JUDGE WAGNER: I guess I'm just wondering what -- I  
21 mean, what you don't have today to put forth to support  
22 your position that you think setting the carrying over  
23 until a later date is going to give you. If -- if the  
24 consent is only good through today. I mean, I guess I'm  
25 just not understanding what is going to be accomplished by

1 not cooperating with implementing the -- the waiver service  
2 plan.

3 JUDGE WAGNER: Okay. But you're also saying that she  
4 -- that she's not a resident of Washington, correct?

5 MS. CLARK: We are not specifically -- specifically  
6 requesting that no finding of fact -- if this proceeds to  
7 hearing today -- that no finding of fact as to her legal  
8 residency be made. Um, we have included, uh, some of the  
9 records that -- that tend to show that she has been  
10 pursuing an education both in and outside of this state for  
11 the sole purpose, if we go to hearing today -- for the sole  
12 purpose of it relating to witness credibility. So we -- we  
13 are not asking you to make a finding of whether she was a  
14 resident, or making a finding as to where she was on any  
15 given period of time, just that it appears inconsistent  
16 with anything that we were aware of before, and it does  
17 have some impact on -- in terms of credibility and evidence  
18 regarding her actual, um, personal care assistance needs.

19 So what I'm -- I guess I'm asking, Your Honor, these  
20 records are important. If -- if the issue is -- and maybe  
21 you -- you can -- you can further identify your thinking in  
22 -- in -- in this light, but this is a termination of  
23 services. Waiver and waiver services based on upon, um,  
24 388-845-0060(1). Uh, sub -- (h), "The refusal to cooperate  
25 in service planning, quality assurance, and monitoring

1 that those consent forms, which is Department Exhibit 4-2,  
2 are not records that were in existence back in December of  
3 2012, as Mr. Olson referred to them, but they are consent  
4 forms that are signed that very day of the motion hearing.  
5 And you'll note that they were for a very, very limited  
6 time. Actually, they expired today.

7 We got, uh, most of those records on Friday, um, have  
8 not had a chance to inquire further, and we don't have an  
9 opportunity, based on those consent forms, to inquire after  
10 today. Um, so -- and those -- and the medical records that  
11 we can see are going to require discussion about, uh -- as,  
12 uh -- about, uh, Decoide -- I'm going to refer to it as  
13 Decoide's actual health and DDD care assistance needs. And  
14 without the ability to inquire further with these limited  
15 consents, our efforts are -- are, uh -- we're kind of  
16 hamstrung. These records, given that they were ordered to  
17 be provided, um -- and with the intention of their being  
18 used for this hearing, we -- we haven't been able to -- to,  
19 um, (Inaudible) as exhibits to you.

20 JUDGE WAGNER: But how did that -- I mean, I guess --  
21 well, uh, several things. One, did -- when the notice was  
22 issued way back when, you must have felt that you had the,  
23 you know, information necessary to support it. Number --

24 MS. CLARK: The information necessary that they had  
25 not supplied access to her physicians, and that they were

1 JUDGE WAGNER: Yes?

2 MS. CLARK: I, um -- I -- I will be, um, making a  
3 record renewing that motion based upon additional  
4 information we just got last Friday. Um, but I -- I -- I  
5 understand -- I -- I do understand the basis for your  
6 denial of that motion, um -- uh, at the prehearing and the  
7 motion hearing.

8 JUDGE WAGNER: All right. Well, are you -- so you --  
9 if you're going to bring a motion, I guess you should bring  
10 it now.

11 MR. OLSON: Well, Your Honor, as you have seen from  
12 the exhibits, um, a couple of things. In our hearing on  
13 March 4<sup>th</sup>, um, Mr. Olson represented that he had a -- a  
14 number of records since December, uh, and keep, uh, being  
15 available to, uh, DDD, and specifically to Ms. Garza, the  
16 case manager. Um, you had, uh -- we had asked if we could  
17 come pick them up, and we agreed that we can come back --  
18 come over the next day between a certain time to pick those  
19 records up.

20 And then later that same day of the motion hearing,  
21 you -- your office was notified, and I was notified that  
22 Mr. Olson delivered them to the, um, Mt. Vernon DDD office  
23 and scanned them, and sent them to -- or that -- that they  
24 had been scanned and sent to Ms. Garza. That was on the  
25 afternoon of March 4<sup>th</sup>. Uh, you probably have noticed, um,

1 MS. CLARK: The Notice Terminating Eligibility also,  
2 uh -- uh, notifies termination of services, so the -- that  
3 -- that Planned Action Notice encompasses more than what  
4 today's Planned Action Notice hearing is about.

5 JUDGE WAGNER: Right. Today's Planned Action Notice  
6 relates to waiver services, correct?

7 MS. CLARK: Correct.

8 JUDGE WAGNER: Okay. Um, I felt that we needed to go  
9 forward, um, and could go forward, and I didn't want to put  
10 off -- and miss -- Mr. Olson had expressed -- um, he did  
11 not want this matter continued, and so given that, and  
12 given that the matter has been pending quite some time, um,  
13 and I think the difficulty of getting things scheduled, and  
14 agreements to getting things scheduled, et cetera, that I  
15 did not see the -- the reason, while it might be more  
16 efficient, the whole thing in one proceeding, I didn't  
17 think that we were prohibited, or there was any reason not  
18 to go forward today, um, with the parties' understanding  
19 that if there is a hearing request made on the -- the  
20 termination of, um, eligibility and services, then there  
21 would -- you know, there would be another hearing, uh,  
22 likely with another judge, but I felt that we could go over  
23 today on the waiver services.

24 Um, and so I just wanted to explain that. Um --

25 MR. OLSON: Your Honor?

1 JUDGE WAGNER: All right. I've turned on the  
2 recorder, and we're on the record in the matter of Deoide  
3 Cunningham, an administrative proceeding for the Health  
4 Care Authority. The Docket Number is 07-2012-HCA-0109. It  
5 is Monday, um, March 18, 2013. My name's Leslie Wagner.  
6 I'm the Administrative Law Judge assigned to this case, and  
7 I'm at my office in Seattle.

8 Appearing by telephone on behalf of Deoide Cunningham  
9 is her representative, Mr. Karl Olson. Appearing my  
10 telephone on behalf of the Health Care Authority and the  
11 Developmental Disabilities Administrations, formerly  
12 Division of Developmental Disabilities, is Ms. Kelly Clark.  
13 And, um, also, with Ms. Clark, Ms. Norma Garza, and Mr.  
14 (Inaudible) Duncan, and Ms. Robbie Rigby.

15 Today is scheduled a hearing on the Hearing Request  
16 made on behalf of Ms. Cunningham in response to a Notice  
17 Terminating Waiver Services, as I understand it. And, um,  
18 preliminarily, I wanted to address the fact that the  
19 Department had asked for a continuance of the hearing, and  
20 I had denied that. I, uh -- the hearing today. You, uh --  
21 you'd requested it, Ms. Clark, at the prehearing, and I  
22 denied, and then you -- you renewed you request because,  
23 um, the Department is -- has issued another Notice, as I  
24 understand it, to Ms. Cunningham, just terminating, uh,  
25 eligibility, is that right?

WITNESSES

Pages

Colloquy, pages 5-39.

Ex B, App 5

EXHIBITS

ID AD REJ

None admitted.



Proceedings Transcribed by: Marisa Walker

WHEREUPON, the following proceedings were had and done, to  
wit:

BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE HEALTH CARE AUTHORITY

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IN RE:	)	
	)	
DEOIDE CUNNINGHAM,	)	DOCKET NO.: 07-2012-HCA-0109
	)	
APPELLANT.	)	
	)	
	)	
	)	
	)	

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VERBATIM REPORT OF PROCEEDINGS  
(FROM TAPED PROCEEDINGS)

BE IT REMEMBERED that the foregoing proceedings were taken from the hearing in the above-referenced matter heard on March 18, 2013, before Administrative Law Judge Leslie Wagner.

The Appellant, Deoide Cunningham, was represented by Karl Olson.

The Department was represented by Kelly Clark.