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NO. 676423 – I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

SUE HONG

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

FOR THE STATE OF WASHINGTON

Respondent.

APPELLANT'S BRIEF

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I. IDENTITY OF APPELLANT

Appellant, Sue Hong (“Hong”) requests this Court to reverse the King County Superior Court Hon. Brian Gain’s decision affirming the Department of Social and Health Services of the State of Washington’s (“DSHS”) revocation of Hong’s license to operate an adult family home. Administrative Law Judge and a Review Judge had upheld the revocation.

II. DECISION

On January 27, 2010, the Administrative Law Judge issued an initial order upholding the license revocation. CP 120-129. On September 22, 2010, the reviewing judge affirmed the initial decision, issuing a final order. CP 97-117. On July 29, 2011, the Honorable Brian Gain of the King County Superior Court denied Hong’s Petition for Review affirming revocation of Hong’s adult family home license. CP 277-278.

III. ASSIGNMENT OF ERROR

1. The ALJ and the Review Judge erred when they upheld DSHS’s license revocation.

IV. ISSUES PRESENTED BY APPEAL

1. Was there substantial evidence to support the ALJ and the Reviewing Judge’s decisions upholding DSHS’s revocation of Hong’s adult family home license?

2. Did the ALJ and the Reviewing Judge exceed their authorities when they upheld the Hong's license revocation despite DSHS' failure to prove an alleged abuse of resident by a caregiver?

V. SUMMARY OF ARGUMENT

In summary, when DSHS revoked Hong's adult family home license, it was based on the allegation that a caregiver at her home had verbally and sexually abused a resident. DSHS alleged that Hong had known about the allegations but failed to remove the caregiver for 8 days. The ALJ who presided over a 4 day hearing specifically found, however, that there was no evidence of any abuse, verbal or sexual, and that Hong did not have any knowledge of any alleged abuse. Nevertheless, the hearing ALJ upheld the revocation based on other grounds such as a lack of completing the criminal background check and allowing this caregiver unsupervised access to residents and Reviewing Judge affirmed.

However, DSHS's own administrator who was part of issuing the revocation testified that the decision was based on allegation of abuse and Hong's lack of action despite knowledge. The administrator testified that lack of criminal background check does not warrant license revocation.

Hong submits that DSHS failed to prove its allegations and the ALJ and the Review Judge did not have the authority to uphold a remedy which was based on allegation of abuse that DSHS failed to prove.

Accordingly the ALJ's and the Review Judge's decisions affirming the license revocation are not supported by substantial evidence and must be reversed.

VI. STANDARD OF REVIEW

Under RCW 34.05.570, the findings of fact are reviewed based on a substantial evidence standard and conclusions of law are reviewed de novo. Substantial evidence is defined as a substantial quantity of evidence to persuade a fair minded person of the truth or correctness of the order. *Campbell v. Board for Volunteer Firefighters*, 111 Wash. App. 413, 45 P.3d 216 (2002), *review denied*, 148 Wash. 2d 1016, 64 P.2d 650 (2002); *Public Utilities Dist. No. 1 of Pend Oreille County v. State, Dept. of Ecology*, 146 Wash. 2d 778, 51 P.3d 744 (2002).

VII. ATTORNEY'S FEES AND COSTS

Hong requests her attorney's fees and costs as asserted below under RCW 4.84.350 and RAP 18.1

VIII. PROCEDURAL HISTORY OF THE CASE

November 18, 2008, DSHS served on Hong a Notice of Stop Placement of Admissions and Revocation of License. CP 132-135. An administrative hearing before Administrative Law Judge ("ALJ") Ronald Fleck was held on May 18 through 20, and on June 10, 2009. On January 27, 2010, the ALJ issued an initial order upholding the license revocation.

CP 120-129. Hong appealed to the reviewing judge and on September 22, 2010, the Review Judge affirmed the initial decision. CP 97-117. Hong then requested reconsideration and on November 22, 2010, her request was denied. CP 32-43. Hong timely filed a petition to the King County Superior Court. CP 1-43. On July 29, 2011, Hon. Brian Gain of the King County Superior Court issued an order denying Hong's Petition. CP 277-278.

IX. STATEMENT OF THE CASE

A. The Residents and the Caregivers. The Heritage House Adult Family Home is located at 22515 10th Avenue S., Des Moines, WA 98198. Since 1994, Sue Hong has been licensed to operate an adult family home with a mental health specialty, with a maximum of 6 residents. Hong also lives on the premises with her own family. Vol. 3, p. 5.¹

In 2010, she had 4 residents. Vol. 1, p. 28. A new resident, Karyn² moved in on October 17, 2008. Karyn had been in hospice care, and was under medication. However, after a few days, her condition improved greatly, enough so that she could largely take care of herself. Her mental

¹ As a part of Clerk's Papers under Sub #6, Hong designated the Administrative Record ("AR"), and the transcript from the Administrative Hearing. The transcript will be referred to by its volume and numbers.

² The resident's name will be referred to by her first name only.

condition was alert and responsive. Vol. 1, pp. 117-118. She was even capable of administering her own insulin shots. Vol. 2. , p. 161.³

Just prior to Karyn's arrival, Hong had hired a caregiver, Theo LaFargue on October 8, 2008. LaFargue had worked for Hong in 1998 when he worked for her for a year. Vol. 1, p. 40, Vol. 3, p. 10. Since then, he had been working as a caregiver at another facility. Vol. 3, pp. 10-11. According to Hong, she submitted a criminal background check for LaFargue on October 8, 2008 and was waiting for the result. Vol. 1, pp. 40-42. However, testimony at the administrative hearing revealed that Hong had not included her BCCU⁴ identification number and it was not processed. AR 140. The criminal background check on file at DSHS showed that it was from 1998. AR 123.

Hong had another caregiver named Veronica who alternated with LaFargue. Hong had provided training to LaFargue about the residents and when Karyn moved in, she discussed with LaFargue on how to provide care to Karyn. As Karyn's condition improved, Hong told LaFargue that he needed to adjust his care as her needs changed. Vol. 3 pp. 13-15.

³ Insulin shot consisted of injecting a pen like needle device on her abdomen. Upon completion, one hears a "click" sound. Vol. 3, p. 14.

⁴ BCCU stands for Background Check Central Unit and an ID number is assigned to the facility. See: www.dshs.wa.gov/BCCU/bccuaccount.shtml.

On or about October 23, 2008, LaFargue had an argument with a nurse from Group Health who was visiting Karyn daily about how to care for Karyn. According to the nurse, because Karyn's condition had improved and she could take care of her insulin shots, Karyn did not need as much care as before. During the argument, LaFargue told the nurse that Karyn needed to move out. Vol. 2, p. 163-164.

Hong, who was in another area of the house, overheard some of the exchange between the visiting nurse and LaFargue including LaFargue's statement that Karyn had to move out. Hong did not authorize such a statement, and on that very same evening, she told LaFargue that she was letting him go. According to Hong, LaFargue asked to stay until mid November, but Hong told him that he would need to move out as of end of October, 8 days away. Vol. 3, pp. 17-20.

On October 27, 2008, Hong had a meeting with a visiting social worker from Group Health, Carla Tiegen, who told her that LaFargue may have inappropriately touched himself in front of Karyn. Hong then asked Tiegen to meet with Karyn together in her room. When Hong met with Karyn and Tiegen, a nurse from Group Health, Calista Pollack, was also in the room. Upon questioning by Hong, Karyn, who was completely lucid and responsive, stated that LaFargue had not been "sexual" and that what she saw was LaFargue fixing his crotch area. Karyn stated that she was

“comfortable” working with LaFargue and that everything was “ok.” Based on this conversation, however, Hong instructed LaFargue not to provide any more direct care to Karyn. Vol. 3, pp. 23-26. LaFargue left the home on October 31, 2008.

B. Anonymous Complaint and Revocation of License.

Unbeknownst to Hong, on October 25, 2008, someone filed an anonymous complaint with the DSHS complaint hotline. According to the complaint, a volunteer who had been working with Karyn had reported that a caregiver had been “intrusive and abusive.” It also stated that Hong had said she had relieved the caregiver but that he was going to be there until the end of the month. AR 258-259.⁵

Based on the anonymous complaint, Lisa Foster, a licensed nurse and an investigator with DSHS, conducted a follow up investigation. According to Foster, the nature of the complaint was abuse and she interviewed Hong, several residents, some of the staff at Group Health who was providing care to Karyn.⁶ She determined that on October 23, a Group Health nurse “notified” Hong that LaFargue had verbally abused

⁵ The person who called the complaint hotline was Dori Papke, a nurse with Group Health. According to Papke, she heard from a volunteer, Nathan Dabney, that the caregiver was engaged in inappropriate behavior. Vol. 2, p. 138.

⁶ Foster testified that it was “allegation of verbal abuse against a resident by a staff member, who was then – although allegedly terminated was being allowed to stay in the home with access to the residents. That was why I went.” Vol. 2, p. 8.

Karyn but that Hong failed to act by not letting LaFargue go until October 31.

On November 18, 2008, DSHS delivered a Stop Placement of Admission and Revocation of License (“Revocation”) on Hong. AR 116-119. The basis for the Revocation was as follows:

WAC 388-76-10020 License-Ability to provide care and services. The licensee failed to understand her responsibility to protect residents from abuse by staff. Failure to remove a caregiver from the home for eight days after being notified of verbal abuse of one resident contributed to the resident being subjected to further abuse and intimidation by the caregiver and placed all residents at risk of abuse.

WAC 388-76-10135(4)(6) Qualifications-Caregiver. The adult family home failed to ensure one staff was qualified prior to providing care to four residents... This is a repeat or uncorrected deficiency previously cited on July 11, 2008.

WAC 388-76-10160 (3) Criminal history background check-Required. The adult family home failed to send a criminal history background check for one caregiver prior to hire and allowed him to have unsupervised access to residents. Failure of the adult family home placed all four residents at risk of harm. This is a repeat or uncorrected deficiency previously cited on March 6, 2008.

WAC 388-76-10670 (3)(4). Prevention of abuse. The adult family home failed to

protect residents from abuse after being made aware on October 23, 2008 of verbal abuse of one resident by one staff member. In addition, the staff member was reported to exhibit sexually inappropriate behavior on October 27, 2008. ...

AR 116-119

Foster prepared the Statement of Deficiencies (“SOD”) that described the violations in greater detail. AR 120-125. Specifically, the SOD stated that on October 23, 2008, a member of the Group Health hospice staff let Hong become aware of LaFargue’s yelling and screaming at Karyn. Then on October 27, 2008, Hong was notified of LaFargue’s sexually inappropriate behavior. AR 121. The SOD also described Hong’s failures to complete the criminal background check on LaFargue.

C. Deposition of Investigator and Amended Notice of Revocation. Hong appealed the DSHS decision to revoke her license and requested an administrative hearing. Prior to the hearing, Hong deposed DSHS’s investigator, Lisa Foster. At her deposition, Foster was asked about the Statement of Deficiencies (SOD) that she prepared and her handwritten notes. Foster admitted that she did not have any documentation that Hong was notified of verbal abuse. Vol. 3, p. 119.⁷

⁷ The deposition of Foster was not made a part of the administrative record. However, during the administrative hearing, Foster acknowledged her deposition testimony.

After the deposition, on April 20, 2009, DSHS issued an Amended Notice of Revocation, AR 133-135. DSHS added WAC 388-76-10160(1)(a-b),(2)(a)(b),(3)(4), criminal background check required and WAC 388-112-0245(3) stating that one of the caregivers failed to update her food handler training.

D. Administrative Hearing. The Administrative hearing was held on May 18-20 and on June 10, 2009 before the Administrative Law Judge Ronald Fleck. At the hearing, none of the witnesses, including for DSHS and Hong, testified that Hong was ever notified of alleged verbal abuse on Karyn by LaFargue. Only one witness, a Group Health volunteer, Nathan Dabney testified that LaFargue and Karyn had argued in Karyn's room. Vol. 2, pp.106-107.

Specifically, DSHS's investigator Lisa Foster, who interviewed witnesses, prepared the notes, and the evidence, admitted that she did not have evidence to show that Hong had prior knowledge of any verbal abuse on Karyn by LaFargue. Contrary to what she wrote on the License Revocation, AR 116-119, and the SOD, AR 120-125, there was no evidence that Hong knew about the alleged verbal abuse prior to license revocation.

ALJ Fleck: Okay. On the 23rd, on October 23rd, what is your evidence that

someone told Ms. Hong that Theo yelled at resident one (Karyn)?

The Witness (Foster): And that is the accumulation of the – that we had – that we discussed in the beginning of today’s testimony, which would be the social worker’s interview where she said the nurse notified them, and then read the notes that she notified them, the nurses interview that she notified her.

ALJ Fleck: And I’ve read those notes as well, and I guess the confusion starts to come when in reading those notes I didn’t see -- and in fact in your testimony I haven’t heard anything that said that Theo shouted at resident one. What I have read in your notes and which was reported was that Theo shouted at Ms. Hong. That Theo shouted at the nurse. Where – what evidence do you have that says that Theo shouted at resident one? And if what you’re doing is just drawing conclusions that that should have made her aware, you should tell us that. But if you have evidence that on October 23rd someone told Ms. Hong that Theo shouted at resident one, I think that’s what Mr. Chung is asking.

The Witness (Foster): no. Then I guess, no, I don’t know.

Vol. 3, pp. 122-123.

Lisa Foster testified that it was her “impression and understanding” that the Group Health nurses had told Hong about the abuse, Vol. 3, p. 130.

Janice Schurman, DSHS’s Adult Family Home Specialist who participated in the decision to revoke, testified that the revocation decision

was premised on Hong's alleged knowledge that LaFargue had verbally abused Karyn.

Q. Would it be fair to say that this alleged notice that she received, allegedly on October 23, was a critical factor in deciding the remedy which you chose which was revocation?

A. Yes.

Q. For that matter, if she had not been notified results may have been different, correct?

A. Yes.

Vol. 4, pp. 120-121.

Schurman stated that other remedies such as fines or conditions were not appropriate because of the allegation of abuse and Hong's failure to respond:

Looking at the conditions, this was a situation where Ms. Hong had been informed by professional people that they had observed and heard one of her caregivers being verbally abusive and intimidating to a resident who was on a hospice. Once Ms. Hong was notified of that, she did not do anything to ensure that that caregiver was gone. That would have been our expectation was then a provider is informed of an abusive caregiver, their remedy is to get rid – their first primary duty and responsibility is to protect their vulnerable adults that are dependent on them for quality of life.

Vol. 4, p. 95.⁸

She further testified that normally, for problems such as lack of criminal background check do not warrant a license revocation.

Civil fines are generally issued when the actions are the violations of regulations and are easily correctable. And they are simple, easily correctable actions of violations and we would be looking at civil fines at that point. We have the authority to do \$100 per violation, up to \$100 per violation. That would be something like Criminal History Background Checks where some provider has failed to ensure her caregivers have Criminal History Background Checks. They have generally been cited one time and they haven't fixed it. We cite them again and we impose a civil fine. Because that's easily within the provider's ability to fix at that time.

Vol. 4, p. 93

After the testimonies of Foster and Schurman, on June 10, 2010, the final day of the hearing, DSHS issued and served its Second Amended Notice of Revocation on Hong at the hearing. AR 177-179. In this Second Amended Notice, DSHS added new charges WAC 388-76-10175(3)(4) stating that Hong allowed LaFargue to have unsupervised

⁸ With respect to alleged sexual abuse, Schurman also testified that she was only relying on the investigative reports and was not even aware of Hong's meeting with Karyn and the Group Health workers who felt that Hong had been very responsive and confirmed this interview with Foster. Vol. 4, p. 122. See Vol. 2, p.94.

access to resident despite the fact that his criminal background clearance had not been received.

E. Initial Decision and Final Decision. On January 27, 2010, the ALJ issued his initial order, upholding the license revocation. Specifically, the ALJ found that there was no verbal or sexual abuse by the caregiver LaFargue and that Hong had no knowledge of any alleged abuse.

9. The undersigned agrees with the Appellant that she was without knowledge of Mr. LaFargue's behavior until the date she terminated him, October 23, 2008. It was not until after that date that she informed that a verbal and sexual abuse allegation had been made. The undersigned does not find that the Appellant allowed Mr. LaFargue to abuse Ms. _____. He did not commit any sexually inappropriate behavior and although he may have been invading Ms. ____'s space when speaking to her, those actions do not rise to the level of verbal abuse.

See ALJ's Initial Order, CP 127. (underline added).

He also found that that "there was no abuse or neglect in this case by LaFargue..." CP 128. However, the ALJ upheld the revocation stating that Hong lacked the understanding of her responsibilities and that despite completing the background check, she had left LaFargue to care for the residents without direct supervision. CP 127-128.

The Reviewing Judge affirmed. In addition to finding that all 7 WAC sections were violated, the Reviewing Judge held that LaFargue had been abusive to Karyn. CP 27-28. The Reviewing Judge also denied Hong's request for reconsideration. CP 84-95.

After Hong petitioned to Superior Court, Judge Gain denied the petition and upheld the license revocation.

X. LEGAL ARGUMENT

A. Because DSHS Failed to Prove Alleged Abuse, the License Revocation Lacked Substantial Evidence. This Court must grant relief if the agency's order is not supported by substantial evidence or is arbitrary and capricious. *Brown v. DSHS*, 145 Wn. App. 177, 185 P.3d 1210 (2008). When party asserts that an agency action is not supported by substantial evidence, the court must examine the record to determine if sufficient evidence exists to persuade a fair-minded person of the correctness of the order. *Id.*, (citing *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn. 2d 568, 588, 90 P.3d 659 (2004)).

When DSHS first revoked Hong's license on November 18, 2008, it cited 4 separate violations. They were:

1. WAC 388-76-10020 Ability to Provide Care and Services;
2. WAC 388-76-10670 (3)(4) Prevention of Abuse;
3. WAC 388-76-10135 Qualifications-Caregiver;

4. WAC 388-76-10160(3) Criminal History Background Check.⁹

CP 132-135.

First, DSHS cited Hong for failing to remove the caregiver LaFargue for “8 days after being notified of verbal abuse.” The Notice stated that Hong was made aware of the verbal abuse on Karyn by LaFargue on October 23, 2008. The Statement of Deficiencies (SOD) describing the above violations similarly stated that Hong had failed to take action after receiving notice that LaFargue had verbally abused a resident and also that he had engaged in sexually inappropriate behavior. CP 136-142.

Abuse is defined as “...willful action or inaction that inflicts (sic) injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult,” and sexual abuse requires a form of nonconsensual sexual contact.” WAC 388-76-10000; *See also, Brown v. DSHS*, 145 Wn. App. 177, 183, 185 P.3d 1210 (2008) (abuse requires a willful action to inflict injury).

As mentioned above, the ALJ found that the conduct of the caregiver did not amount to any abuse. After 4 days of listening to

⁹ The reference to “repeat or uncorrected deficiency” in the notice of revocation is incorrect because the prior citations concerned other caregivers and they had all been corrected. Vol. 4, p. 70. The DSHS licensor responsible for Hong’s adult family home admitted at the administrative hearing that she did not tell her manager who was deciding on the revocation that all prior deficiencies had been corrected. Vol. 4, pp. 74-75.

testimony of 11 witnesses from DSHS and 5 witnesses called by Hong, the ALJ found that “(H)e did not commit any sexually inappropriate behavior and although he may have been invading Ms. _____ space when speaking to her, those actions do not rise to the level of verbal abuse.” Conclusions of Law No. 9, CP 127.¹⁰

Second, DSHS cited Hong for failing to complete the criminal background check on LaFargue. CP 132-133. According to the SOD, CP 138, Hong had completed a criminal history background inquiry dated October 8, 2008. However, Hong had not included her home’s BCCU account number. According to the DSHS background check unit, the most current background inquiry of LaFargue was dated February, 1998. DSHS also cited Hong for leaving LaFargue alone with the residents without having his background check completed. By the time the lack of criminal background check was brought to her attention, Hong had already fired LaFargue and he left on October 31, 2008.

However, as stated above, the lack of criminal background check was not the primary basis for DSHS’s license revocation. DSHS’s own

¹⁰ The Review Judge’s conclusion of law disagreeing with the hearing ALJ that LaFargue’s conduct constituted “abuse” is not supported by substantial evidence. CP 116-117. *Costanich v. DSHS*, 138 Wn. App. 547, 156 P.3d 232 (2007) (a review judge must give significant deference and cannot change the ALJ’s hearing decision unless “there are irregularities, findings are not supported by substantial evidence based on the entire record, decision includes errors of law...”). Here, there was no evidence of any “injury, unreasonable confinement, intimidation, or punishment as required by WAC 388-76-10000. Although she was under a hospice care, at the time of the alleged argument with LaFargue, Karyn was able to express herself and mentally alert.

witness, Janice Schurman, testified that “So yes, it’s part of the picture, but if it was just that standing alone, it might by a civil fine.” Vol. 4, p. 102. (underline added).¹¹

As Schurman repeatedly stated, the primary concern for DSHS was that Hong had had not removing the alleged abuser immediately on October 23, instead of waiting 8 days until October 31. Vol. 4, pp. 95-102. DSHS mistakenly believed that LaFargue had been abusive to Karyn and that a Group Health nurse notified Hong of this abuse on October, 23. DSHS was concerned that Hong failed to take any action and kept LaFargue in the house until October 31.

Hong submits that because DSHS failed to prove the allegations of abuse, it was arbitrary and capricious for the ALJ to uphold DSHS’s decision to revoke Hong’s license. Because the evidence of Hong’s

¹¹ She further testified:

Civil fines are generally issued when the actions are the violations of regulations and are easily correctable. And they are simple, easily correctable actions of violations and we would be looking at civil fines at that point. We have the authority to do \$100 per violation, up to \$100 per violation. That would be something like Criminal History Background Checks where some provider has failed to ensure her caregivers have Criminal History Background Checks. They have generally been cited one time and they haven’t fixed it. We cite them again and we impose a civil fine. Because that’s easily within the provider’s ability to fix at that time.

Vol. 4, p. 93

alleged knowledge of the purported abuse was critical in revoking her license, the ALJ's and the Review Judge's decisions upholding DSHS's action was without substantial evidence.¹²

B. The ALJ and the Reviewing Judge Exceeded Their Authority When They Upheld the Revocation Despite of Lack of Evidence and Despite DSHS' Own Statements to the Contrary. In *Conway v. DSHS*, 131 Wn. App. 406, 120 P.3d 130 (2005), the Washington Court of Appeals held that a reviewing ALJ did not have the authority to substitute her judgment for that of the Department in choosing which remedy to impose. The court held that "the ALJ had the authority to review the propriety of DSHS's discretionary decision to revoke Conway's (licensee) license but did not have the authority to impose a different remedy. *Id.* at 419.

Given DSHS's own testimony that Hong's alleged prior knowledge was critical in DSHS's decision to revoke Hong's license and that without such alleged knowledge revocation would not have been appropriate, ALJ's decision to uphold the license revocation was

¹² Other violations cited in DSHS's first and second amended notices regarding training and TB testing are without substantial evidence. AR 133-135, 177-179. LaFargue had 120 days from the hire to complete training. Also, LaFargue had 3 weeks after the completion of the first TB test (October 2) to complete the two step test. Although he was allowed to stay for one more week, Hong terminated LaFargue on October 23 and he was leaving the home on October 31.

improper. As the *Conway* court held, the ALJ's role is to view the evidence to see if it supports the DSHS's remedy. If the evidence is lacking, he cannot support the remedy which would be tantamount to imposing and substituting his own judgment.

C. This Court Should Award Hong Attorney's Fees and Costs.

Under the Equal Access to Justice Act ("EAJA"), Hong is entitled to their reasonable attorneys' fees up to \$25,000. RCW 4.84.350. A qualified party who prevails in an administrative action is entitled to its attorneys' fees unless the department's action was substantially justified. RCW 4.84.350(1). Substantially justified means justified to a degree that would satisfy a reasonable person. *Moen v. Spokane City Police Dep't*, 110 Wn. App. 714, 42 P.3d 456 (2002). The court has broad discretion in awarding fees. *Id.*

In light of the foregoing, DSHS's action was not substantially justified. Hong should be awarded her fees. Pursuant to RAP 14.1, Hong also request that this Court award them their costs incurred on this appeal.

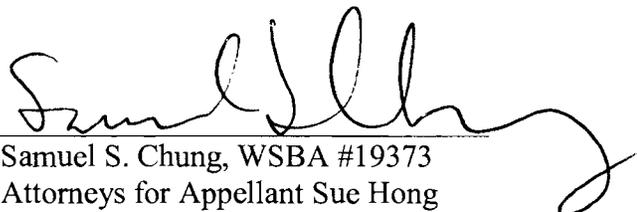
XI. CONCLUSION

Hong acknowledges that besides the allegation of abuse, DSHS cited her with other violations such as the failure to follow through with criminal background check on LaFargue, leaving him unsupervised and for failing to document orientation and training. However, there is no

dispute that the allegations of the purported verbal and sexual abuse formed the primary basis of the revocation.¹³ At the hearing, DSHS failed to prove that Hong knew about the alleged verbal or sexual abuse by LaFargue. In fact, ALJ who presided over the hearing specifically found that there was no verbal or sexual abuse and the caregiver was simply invading the resident's space. Consequently, Hong respectfully submits that the ALJ and the Review Judge's decisions are not supported by substantial evidence and should be reversed.

RESPECTFULLY SUBMITTED this 17th day of January, 2012.

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By 
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Attorneys for Appellant Sue Hong

¹³ In closing argument, DSHS's attorney referred to the allegation of abuse as the "elephant in the hearing room. That's really the reason that we are here today, or primary reason that we are here today." Vol. 5, p. 23.

CERTIFICATE OF SERVICE

The undersigned certifies that on this day he caused to be served in the manner noted below, a copy of the document to which this certificate is attached, on the following counsel of record:

Diane Dorsey
Assistant Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

via Email
 via Mail

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct on January 17, 2012.

Samuel S. Chung



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