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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 327612
COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

ASHLEY BROWN

Appellant

v.

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
CHILD PROTECTIVE SERVICES

Respondent

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

	Pages Cited
I. INTRODUCTION -----	1
II. ASSIGNMENTS OF ERROR-----	2
III. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR-----	2
IV. STATEMENT OF THE CASE -----	3
V. ARGUMENT -----	12
A. THE DEPARTMENT EXCEEDED ITS STATUTORY AUTHORITY AND ERRONEOUSLY INTERPRETED AND APPLIED THE LAW BY EXPANDING THE DEFINITION OF CHILD NEGLECT IN RCW 26.44 TO INCLUDE A "REASONABLE PERSON" TORT LAW STANDARD AND A HEIGHTENED OR DIFFERENT DUTY OF CARE. -----	16
1. A Finding of Child Neglect May Only Be Based on Evidence of a Serious Disregard of Consequences of Such a Magnitude as to Constitute a Clear and Present Danger. -----	16
2. The Review Judge Erroneously Applied a Reasonable Person Standard Instead of Determining Whether Ms. Brown Acted With Serious Disregard of the Consequences to Such a Magnitude as to Constitute a Clear and Present Danger to K.D. -----	20

3.	The Review Judge Erroneously Applied a Different Standard of Care Instead of Determining Whether Ms. Brown Acted With Serious Disregard of the Consequences to Such a Magnitude as to Constitute a Clear and Present Danger to K.D. -----	21
B.	THERE IS NO SUBSTANTIAL EVIDENCE THAT MS. BROWN'S CONDUCT AMOUNTED TO CHILD NEGLECT. -----	23
1.	There is No Substantial Evidence to Support a Finding That Ms. Brown's Actions Exhibited a Serious Disregard of the Consequences to Such a Magnitude as to Constitute a Clear and Present Danger to K.D. -----	24
a.	Ms. Brown's conduct did not amount to a "serious disregard of the consequences." -----	26
b.	The child's injury did not present as a clear and present danger until the day Ms. Brown took him to the hospital. -----	28
2.	The Review Judge's Finding of Fact 15 that it Would Have Been Apparent at the Time of the Incident that the Burn Needed Medical Attention is Not Supported by Substantial Evidence. -----	31
3.	There is No Substantial Evidence to Support the Review Judge's Rejection of Dr. Keblawi's Opinion that Ms. Brown Acted Reasonably in Not Seeking Immediate Medical Attention for Her Child's Injury. -----	35

4.	There is No Substantial Evidence to Support the Finding that Ms. Brown’s Failure to Seek Immediate Medical Treatment Led to “Additional Blistering, Bleeding, Suffering and Infection that Could Possibly Have Been Avoided or at Least Reduced” -----	37
C.	THE REVIEW JUDGE ERRONEOUSLY INTERPRETED AND APPLIED THE LAW BY CONCLUDING THAT THE ALJ’S DETERMINATIONS REGARDING THE CREDIBILITY OF DR. MESSER AND DR. KEBLAWI AND THE WEIGHT GIVEN TO THEIR OPINIONS “CANNOT BE REVERSED ON REVIEW. -----	39
D.	IT IS ARBITRARY AND CAPRICIOUS FOR THE DEPARTMENT TO UPHOLD A FINDING OF CHILD NEGLECT BASED ON A NEW AND RESTRICTIVE INTERPRETATION OF ITS CHILD NEGLECT REGULATIONS THAT IGNORES THE REQUIREMENTS OF THE GOVERNING CHILD NEGLECT STATUTE AND WHERE THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDINGS OF FACT. -----	41
E.	APPELLANT ASHLEY BROWN IS ENTITLED TO ATTORNEYS’ FEES AND COSTS ON APPEAL IN THE MATTER PURSUANT TO RAP 18.1 AND WASHINGTON’S EQUAL ACCESS TO JUSTICE ACT, RCW 4.84.340-360. -----	41
VI.	CONCLUSION -----	44

TABLE OF AUTHORITIES

	Pages Cited
WASHINGTON CASES	
<i>Burlington Northern, Inc. v. Johnston</i> , 89 Wn.2d 321, 326, 572 P.2d 1085 (1977) -----	26
<i>Callecod v. Washington State Patrol</i> , 84 Wn. App. 663, 673, 929 P.2d 510 (1997), <i>rev. denied</i> , 132 Wn.2d 1004 (1997) -----	23
<i>Cosmopolitan Eng'g Group, Inc. v. Ondeo Degremont, Inc.</i> 159 Wn.2d 292, 296-97, 149 P.3d (2006)-----	41
<i>Garrison v. Washington State Nursing Bd.</i> , 87 Wn.2d 195,196, 550 P.2d 7 (1976) -----	24
<i>Hardee v. Dep't of Social & Health Serv., Dept Early Learning</i> , 152 Wn. App. 48, 215 P.3d 214 (2009), <i>rev. granted</i> , 168 Wn.2d 1006, 226 P.3d 781, <i>affirmed</i> 172 Wn.2d 1, 256 P.3d 339 -----	39
<i>In Re Welfare of Fredericksen</i> , 25 Wn. App. 726, 733, 610 P.2d 371, 375 (1979);-----	18
<i>In the Matter of the Dependency of M.S.D.</i> , 144 Wn. App. 468, 182 P.3d 978 (2008) -----	18, 19
<i>Kittitas County v. E. Washington Growth Mgmt. Hearings Bd.</i> , 172 Wn.2d. 144, 155, 256 P.3d 1193 (2011)-----	16
<i>Language Connection, LLC v. Employment Sec. Dep't</i> , 149 Wn. App. 575, 586, 205 P.3d 924 (2009) -----	43
<i>Marcum v. Dep't of Soc. & Health Servs.</i> , 172 Wn. App. 546, 290 P.3d 1045 (2012)-----	17, 18, 20, 43
<i>Morgan v. Dep't of Soc. & Health Servs.</i> , 99 Wn. App. 148, 153-154, 992 P.2d 1023, 1026 (2000), <i>rev. denied</i> , 141 Wn.2d 1014 (2000) -----	18, 19, 37

<i>Schwartz v. Elerding</i> , 166 Wn. App. 608, 615, 270 P.3d 630 (2012)	-----20, 21, 22
<i>Seymour v. Washington State Dep't of Health, Dental Quality Assur. Comm'n</i> , 152 Wn. App. 156, 172, 216 P.3d 1039 (2009)	-----41
<i>State v. Eike</i> , 72 Wn.2d 760, 765-66, 435 P.2d 680 (1967)	-----26
<i>State v. Pacheco</i> , 125 Wn.2d 150, 154, 882 P.2d 183, 185 (1994)	-----25
<i>Tesoro Refining & Mkt. Co. v. Dep't of Revenue</i> , 164 Wn.2d 310, 322, 190 P.3d 28 (2008)	-----25
<i>Utter v. State, Dep't of Soc. & Health Servs.</i> , 140 Wn. App. 293, 299, 165 P.3d 399 (2007) (quoting <i>City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</i> , 136 Wn.2d 38, 45, 959 P.2d 1091 (1998))	-----13
<i>Washburn v. City of Fed. Way</i> , 178 Wn.2d 732, 757, 310 P.3d 1275 (2013), <i>aff'm on other grounds</i> , 178 Wn.2d 732 (2013)	-----22

STATUTES AND REGULATIONS

RCW 4.84.340-360	-----41, 42
RCW 4.84.340(5)	-----42
RCW 4.84.350	-----2, 3, 43, 44
RCW 4.84.350(1)	-----42
RCW 26.44	-----16, 17, 24, 43, 44
RCW 26.44.010	-----1, 24, 26,
RCW 26.44.020(1)	-----17

RCW 26.44.020(14)	25
RCW 26.44.020(16)	1, 2, 16, 20, 44
RCW 34.05	12
RCW 34.05.464(4)	39
RCW 34.05.530	13
RCW 34.05.570	13
RCW 34.05.570(1)(d)	13
RCW 34.05.570(2)(a)	13
RCW 34.05.570(3)	13, 15

ADMINISTRATIVE CODE

WAC 388-06-0110(3)	13, 14
WAC 388-15-009	24
WAC 388-15-009(5)	1, 2, 24
WAC 388-15-009(5)(a)	43

COURT RULES

RAP 18.1	2, 3, 41, 44
RAP 18.1(c)	42

OTHER AUTHORITIES

WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE, pp. 383, 569, 1749(New Deluxe Edition) (1996)	25
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I. INTRODUCTION

This appeal involves whether the Department of Social and Health Services (DSHS) exceeded its statutory authority when the Board of Appeals (BOA) erroneously interpreted and applied RCW 26.44.020(16) and WAC 388-15-009(5) by defining neglect of a child on the basis of a reasonable person standard and imposing a different standard of care. It also questions whether there is substantial evidence to support the BOA review judge's findings and conclusions that Ms. Brown acted with serious disregard of the consequences to such a magnitude as to constitute a clear and present danger to her son's health, welfare and safety.

Ms. Brown asks this Court to find: (1) that the Department exceeded its statutory authority and erroneously interpreted and applied a definition of neglect to include a reasonable person standard as well as imposed a different standard of care; (2) there is no substantial evidence to support multiple findings of fact; (3) that the BOA review judge also erroneously limited its statutory authority to reweigh the evidence to Ms. Brown's detriment; (4) the Department's order is arbitrary and capricious because of its reliance on an erroneous interpretation and application of the

statute leading the Department to exceed its statutory authority, and there is no substantial evidence to support the findings of fact. Ms. Brown also requests that this court award attorneys' fees and costs under RCW 4.84.350 and RAP 18.1.

II. ASSIGNMENTS OF ERROR

The BOA erred when it affirmed the finding of neglect against Ms. Brown.

III. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

- A. The BOA exceeded its statutory authority and erroneously interpreted and applied RCW 26.44.020(16) and WAC 388-15-009(5) by expanding the definition of neglect to include a reasonable personal standard and a different standard of care. (BOA Review Decision and Final Order – Conclusions of Law Nos. 11-13.)
- B. There is no substantial evidence to support the findings that Ms. Brown's conduct amounted to child neglect. (BOA Review Decision and Final Order – Conclusions of Law Nos. 10-14; BOA Review Decision and Final Order – Findings of Fact Nos. 5 – 19.)

- C. The BOA erroneously limited its statutory authority to reweigh the evidence to Ms. Brown's detriment. (BOA Review Decision and Final Order – Conclusion of Law No. 10.)
- D. The BOA Review Decision and Final Order were arbitrary and capricious where it exceeded its statutory authority by relying on an erroneous interpretation and application of the child neglect standard and where there was no substantial evidence to support the findings of fact.
- E. Ms. Brown is entitled to attorney fees and costs pursuant to RCW 4.84.350 and RAP 18.1.

IV. STATEMENT OF THE CASE

Ashley Brown is the mother of K.D., age two. AR 1.¹ K.D. was injured when he was burned by hot water in a bathtub while under the supervision of Ms. Brown's boyfriend, Joshua Brink. AR 2. At the time of the injury, Ms. Brown was at work. CP 193. After K.D. was injured, Mr. Brink and his friend, Alexa Groce, placed K.D. in cold water and determined that emergency medical care was not required. AR 119-120.

¹ "AR" is reference to the Administrative Record; "CP" is reference to the Clerk's Papers.

When Mr. Brink telephoned Ms. Brown and informed her of the injury, she immediately went home to care for K.D. CP 193. When Ms. Brown arrived home, K.D. was sitting down and not crying. CP 193. She observed the burn which was on his bottom and genitalia, and the burn appeared similar to a sunburn. CP 193.

Ms. Brown went to Walmart later that evening to get burn cream. She also researched burn treatments for toddlers on the internet. CP 193. Mr. Brink also consulted with his mother who had been a pharmacist at Holy Family Hospital and told her about the accident and where K.D. had been burned. CP 194-195. Both the internet research and Mr. Brink's mother advised Ms. Brown to treat the burn with ointment and that if it did not get better in seven days, to go to the hospital. CP 194-195. Mr. Brink's mother also advised Ms. Brown that it was important to keep K.D.'s diaper dry to prevent an infection. CP 194-195.

Throughout the night, Ms. Brown observed K.D. and made sure to change his diaper immediately so the burn would not get infected. CP 195. The next morning, K.D. was doing well and he went about his normal routine. CP 195.

K.D.'s normal routine was to accompany Mr. Brink to work. CP 195. Mr. Brink's employer, Robert Groce, saw K.D. the next

day. CP 167. Mr. Groce reported that K.D. acted normally and that Mr. Groce did not even know about the burn until Mr. Brink asked his opinion about it. CP 169. After observing the burn, Mr. Groce stated that it looked like a sunburn, "just a perfect, little round circle." CP 168.

From the day of the accident until the fifth or sixth day, it appeared as if the burn was healing. CP 197. On the fifth day, there was a small amount of peeling, like a sunburn, but the injury had not blistered. CP 197. During this time, Ms. Brown also consulted a pharmacist at Walmart and told the pharmacist what happened and the location of the burn. CP 197-198. The pharmacist recommended that she treat the burn with cream and Tylenol. CP 197-198. Ms. Brown followed this advice. CP 197-198. Ms. Brown also obtained burn cream from her employer and used it on the injury. CP 199. Her goal was to keep the burn moist to prevent it from peeling. CP 199-225.

Also during this time, K.D. did not appear to be in significant discomfort. CP 200-201. He was active, playing and eating normally, and able to sit down without discomfort. CP 200. However, on day five or six, Ms. Brown began to notice that K.D. started to appear more tired. CP 200. He was not eating as much

and was not as active. CP 200. Ms. Brown began to observe blisters and took K.D. to Providence Holy Family Hospital. CP 200.

At the hospital, K.D. was examined by Dr. Michael Sicilia. AR 224. Dr. Sicilia noted that K.D. was a well-developed child who was active and in no acute distress. AR 222. He also noted that K.D. was active and playful. AR 222. During this exam, K.D. did not have a fever, and Dr. Sicilia did not observe any blistering on the burn. AR 222, 224. K.D. was diagnosed with possible cellulitis and had a slightly elevated white blood count. AR 224. K.D. was given an antibiotic and transported to Providence Sacred Heart Hospital. AR 224.

At Providence Sacred Heart, K.D. was treated by Dr. Michelle Messer. AR 227-229. At the time K.D. was admitted to Providence Sacred Heart, K.D. was awake, alert, and cooperative. AR 228. Dr. Messer examined K.D. while he was sitting on Ms. Brown's lap. AR 228. Except for a note that K.D. whimpered and said "ouie" when she took off his diaper, Dr. Messer did not note any other distress to K.D. AR 228.

Dr. Messer became suspicious about the injury and found that it was inconsistent with the story Ms. Brown told her. AR 229. Dr. Messer treated the wound with burn cream and, due to her

suspicious, contacted CPS and placed an administrative hold on K.D. AR 229. Dr. Messer also took pictures of the burn. AR 86-89.

Ms. Brown was allowed to have contact with K.D. pending a shelter care hearing. CP 260. After the shelter care hearing, K.D. was released to Ms. Brown and her grandmother. CP 260.

On December 14, 2012, the Department mailed Ms. Brown a notice stating that the allegation that she had perpetrated negligent treatment or maltreatment on the child due to failure to seek immediate medical treatment was founded. AR 97-102. Ms. Brown requested review on January 9, 2013, and on January 10, 2013, the Department issued a letter affirming the founded finding. AR 103-104. Ms. Brown timely appealed. AR 57.

An administrative hearing was held before the Office of Administrative Hearings (OAH) on August 28-29, 2013. AR 1. Dr. Messer, Mr. Groce, Jackie Brown, and Ms. Brown all testified at the hearing. CP 14-210. K.D.'s treating pediatrician, Samir Keblawi, provided a declaration. AR 107-108.

Mr. Groce, who is first aid certified, testified that he did not observe any change in K.D.'s behavior in the days after the incident, and that his observation of the burn indicated that medical

attention was not necessary. CP 168-169. Jackie Brown, Ms. Brown's mother, testified that she advised Ms. Brown to treat the wound with ointment and to make sure it did not get infected. CP 182-183.

Dr. Keblawi's declaration stated that he had been K.D.'s treating pediatrician since K.D.'s birth, and that he examined K.D. for a follow-up appointment shortly after K.D. was discharged from the hospital. AR 107. Dr. Keblawi stated that he specializes in pediatrics and that he treats scalding burns on children multiple times per year. AR 107. Dr. Keblawi examined K.D.'s hospital records, including the pictures taken by Dr. Messer, and determined that K.D.'s injury was not inconsistent with Ms. Brown's description of how the burn occurred or her subsequent treatment. AR 107-108. He also stated that it is not out of the ordinary for a parent to begin medical treatment for burns at home, that within the first 24-48 hours a burn, even a second-degree burn, is pink in nature, and that signs of infection include redness and swelling and do not set in until several days after the burn. AR 107-108. Finally, Dr. Keblawi stated that K.D.'s slight elevation of white blood cells indicated that an infection had only recently set in and, therefore, Ms. Brown's timing of medical attention was proper. AR 108.

Dr. Messer testified that the pattern of the burn did not match the story Ms. Brown recited as to how the injury occurred which led her to conclude that Mr. Brink was lying and that the injury had been intentional. CP 82, 86. Dr. Messer stated that K.D. "was not comfortable." CP 86. She also opined that she did not believe simply going to Walmart was what a reasonable person would do in the situation. CP 89.

However, on cross-examination, Dr. Messer struggled to tell the court how the injury would have looked at the time it occurred, how K.D. would have behaved, and how a parent would have known to seek immediate treatment. Specifically, she stated that "the burn itself may have looked different a week before," and that she "would expect that a week's worth of time is going to change the overall look of [it]" CP 88. Dr. Messer further testified that, ". . . it is hard for me to tell for sure if it would have been sloughing already, um, but it would have been fairly deeply red, and *may* have already had blister formation." CP 110-111 (emphasis added). Similarly, when asked whether she could predict the burn's progression over seven days, Dr. Messer again equivocated: "There's the -- the, um, factor of the cream that was being put on it as well. I don't know specifically what cream it was . . . **So I don't**

know. You know, there are things that may have, um, made a burn look better over time” CP 111 (emphasis added).

In forming her opinion about whether it was apparent that immediate medical care was necessary, Dr. Messer relied on physician guides, measurements, and data, all of which are not readily accessible or obvious to non-physician parents. CP 90, 112-113. When asked whether it was conceivable that “strong indications of the severity” of the burn would not be present on the first day or first couple of days, Dr. Messer first answered “No.” CP 90. She then proceeded to elaborate and frame the remainder of her response from the perspective of a medical provider with access to data about water temperature and burns, and not from the perspective of a non-physician parent. CP 90. Specifically, she stated, “there is very good data out there that you can pull up that will say this temperature leads to a burn this quickly, and this depth. So, um, this would have been *apparent* fairly quickly.” CP 90 (emphasis added).

Dr. Messer testified, however, that she was unsure whether any part of the injury included a third-degree burn, and that she needed to consult her “reference guide” to distinguish between second and third-degree burns. CP 112-113. She also needed to

consult a guide to determine whether the total area of the burn would have been significant enough to require medical treatment within the first seven days:

We do have, um, a, uh – I'm trying to think what the word is – a guide, basically, um, that says what the percentage of the burn – of burn you have . . . Um, so the, um – if you just were to measure this burn, and place it elsewhere, like say on his abdomen, um, I would still be thinking you need to bring that in, um, prior to seven days.

CP 108-109. Dr. Messer estimated that the size of K.D.'s burn was "about" 10 inches, and that the size warranted immediate medical care. CP 58-59. Dr. Messer, however, offered no explanation for how a non-physician parent would know that 10 inches is the size for which medical care is necessary to treat a burn.

As to what type of treatment K.D.'s injury would have received had emergency medical care been sought sooner, Dr. Messer was unclear:

. . . It might have – it might have, you know needed to – to be debrided **at some point, or not**. It's hard for me to really tell you that. But, um – but – but this, um – it's hard for me to say. It depends on – for debridement . . . so that **may** have been a treatment, then, that would have been for prescribed for this, um, had he been seen earlier.

CP 111-112 (emphasis added).

However, she opined that she often treats burns with cream. CP 111. Dr. Messer further speculated that the pain K.D. would have experienced in the days following the injury would have been "pretty bad." CP 114.

On October 15, 2013, the ALJ presiding over that hearing issued an initial order, upholding the DSHS' finding of neglect. AR 38-43. Ms. Brown filed a petition for review with the BOA on November 5, 2013. AR 25-37. The BOA issued a Review Decision and Final Order affirming the ALJ's initial order on January 2, 2014. AR 1-24.

Ms. Brown filed a Petition for Judicial Review in the DSHS matter on January 31, 2014, in Spokane County Superior Court. CP 1-21. The superior court heard oral argument on her petition, and issued an order on August 19, 2014, upholding the Department's decision.

Ms. Brown timely filed this appeal.

V. ARGUMENT

Under the Administrative Procedure Act (APA), RCW 34.05 *et seq.*, an individual who is substantially prejudiced by a state agency adjudicative order may seek judicial review of both the individual order, and the state agency regulations on which the

order was based. RCW 34.05.570(3); see also RCW 34.05.570(1)(d); RCW 34.05.530; RCW 34.05.570(2)(a). The reviewing court may set aside the agency's final adjudicative order based on a determination that the order, or the statute or rule, on which the order is based, exceeds the agency's statutory authority, is arbitrary or capricious, is not supported by substantial evidence, or the agency has erroneously interpreted or applied the law. RCW 34.05.570(3). An appellate court applies the standards in RCW 34.05.570 "directly to the record before the agency, sitting in the same position as the superior court." *Utter v. State, Dep't of Soc. & Health Servs.*, 140 Wn. App. 293, 299, 165 P.3d 399 (2007) (quoting *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998)).

Ms. Brown is substantially prejudiced by the Department's finding of neglect against her. A finding of child neglect has serious consequences for the individual against whom it is made. An individual with a finding against them is disqualified from a variety of employment opportunities. WAC 388-06-0110(3). The Department's regulations require a background check on ". . . individuals who may have unsupervised access to children or to individuals with a developmental disability in department licensed

or contracted homes, or facilities which provide care.” WAC 388-06-0110(3). The following people must undergo background checks with the Department:

- (a) A volunteer or intern with regular or unsupervised access to children;
- (b) Any person who regularly has unsupervised access to a child or an individual with a developmental disability;
- (c) A relative other than a parent who may be caring for a child;
- (d) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child.

WAC 388-06-0110(3).

The DSHS' finding of neglect prohibits Ms. Brown from being able to work in the childcare or health care professions. WAC 388-06-0110(3). It would prevent her from volunteering in K.D.'s school or accompanying him on school field trips. WAC 388-06-0110(3). Under the DSHS' background requirements, she will also be prohibited from caring for a vulnerable adult relative under contract with the Department.

The consequence of a founded finding of child neglect is long and far reaching. The finding is a lifetime finding and once made, cannot be removed from the background check. Unlike

criminal convictions, the finding will never age off the background check, and there is no way to show "rehabilitation" in an effort to have the finding removed from the background check. It is, therefore, critical that the elements of the neglect statute be strictly met before the Department makes a determination on whether someone has committed child abuse or neglect. The broad and lifelong impact the finding will have on Ms. Brown makes her substantially prejudiced by the Department's action.

The Department's order upholding the finding of child neglect against Ms. Brown should be set aside by the Court, pursuant to RCW 34.05.570(3), because: (1) the Department exceeded its statutory authority and erroneously interpreted and applied the law by expanding the statutory definition of negligent treatment or maltreatment of a child to include a tort law reasonable person standard and imposing a different standard of care; (2) the review judge erroneously limited its statutory authority to reweigh the evidence; (3) the Department's order upholding a finding of neglect is not supported by substantial evidence; and (4) the order is arbitrary and capricious.

A. THE DEPARTMENT EXCEEDED ITS STATUTORY AUTHORITY AND ERRONEOUSLY INTERPRETED AND APPLIED THE LAW BY EXPANDING THE DEFINITION OF CHILD NEGLECT IN RCW 26.44 TO INCLUDE A "REASONABLE PERSON" TORT LAW STANDARD AND A HEIGHTENED OR DIFFERENT DUTY OF CARE.

The BOA's Review Decision and Final Order is outside the agency's statutory authority and is based on an erroneous interpretation and application of the Child Abuse and Neglect statute, RCW 26.44.020(16). The decision erroneously applied a tort law reasonable person standard and, consequently, a different standard of care to Ms. Brown's actions. The statutory definition is strictly limited to "serious disregard of the consequences" of the action. The court reviews an error of law de novo. *Kittitas County v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 155, 256 P.3d 1193 (2011).

1. A Finding of Child Neglect May Only Be Based on Evidence of a Serious Disregard of Consequences of Such a Magnitude as to Constitute a Clear and Present Danger.

The plain language of Washington's statute related to child neglect unambiguously requires that a finding of neglect be based on evidence establishing a serious disregard of consequences of such magnitude as to constitute a clear and present danger. RCW 26.44.020(16). The statute provides no authority for the

Department to change or expand the statutory definitions, in rule or practice, of abuse or neglect, or negligent treatment or maltreatment of a child. RCW 26.44 *et seq.*

The legislature has defined “abuse” or “neglect”, in relevant part, as “injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety . . . or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child.” RCW 26.44.020(1).

Negligent or maltreatment is further defined as:

[A]n act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety

RCW 26.44.020 (16).

Washington courts have consistently rejected the Department's attempts to expand the definition of neglect. See, e.g., *Marcum vs. Dep't of Soc. & Health Servs.*, 172 Wn. App. 546, 290 P.3d 1045 (2012). The *Marcum* court held that “DSHS lacks authority to promulgate and interpret a rule that fundamentally shifts the standard required to make a neglect finding.” *Id.* at 559.

In *Marcum*, the Department's review judge ruled that a licensed child care provider's failure to provide “supervision”

authorized a *per se* finding of neglect without the need to make the required findings that the care provider's actions constituted "a serious disregard of the consequences to the child of such magnitude that it creates a clear and present danger to the child's health, welfare, or safety" as required by both the statute and regulation. *Id.* The *Marcum* court reversed and held that the legislature's unambiguous statutory definition of neglect required that a finding of child neglect must establish, "an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that *evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety.*" *Id.* at 558. (Italics in original.)

Marcum is consistent with other decisions where the court strictly applied the definition of neglect. See *Morgan v. Dep't of Soc. & Health Servs.*, 99 Wn. App. 148, 153-154, 992 P.2d 1023, 1026 (2000), *rev. denied*, 141 Wn.2d 1014 (2000); *In Re Welfare of Fredericksen*, 25 Wn. App. 726, 733, 610 P.2d 371, 375 (1979); *In the Matter of the Dependency of M.S.D.*, 144 Wn. App. 468, 182 P.3d 978 (2008). In *Morgan*, the court reviewed DSHS' revocation of a foster care provider's license who was accused of neglecting children in her care by (1) leaving a 14-year-old developmentally

delayed child at a skating rink without adult supervision and the child suffered a seizure; (2) using profanity with the children in her care; and (3) slapping a child. *Id.* In upholding the revocation, the court found that all of these actions established a serious disregard of consequences constituting a clear and present danger to the child's health, welfare and safety. *Id.* at 154, 1026.

This same statutory standard has also been applied in the dependency context. *M.S.D.*, 144 Wn. App. at 468. In *M.S.D.*, the Department alleged a mother had committed neglect by failing to protect the seven-year-old child from the risk posed by the mother's boyfriend who had been convicted of assaulting a small child ten years prior. *Id.* at 481-482. The court reversed the dependency, concluding that the finding of neglect was not supported by substantial evidence because the Department failed to show that the boyfriend's prior assault conviction constituted a clear and present danger to the child's health, welfare, or safety. *Id.* at 481-482.

The statutory standard for a finding of neglect requires that Ms. Brown's actions or inactions constituted a serious disregard of consequences to such a serious magnitude as to constitute a clear and present danger to her son's health, welfare, or safety.

RCW 26.44.020(16). In making such a determination, the Department may not add or substitute other requirements or make or interpret its rules in a manner that fundamentally changes this standard. *Marcum*, 172 Wn. App. at 559.

2. The Review Judge Erroneously Applied a Reasonable Person Standard Instead of Determining Whether Ms. Brown Acted With Serious Disregard of the Consequences to Such a Magnitude as to Constitute a Clear and Present Danger to K.D.

In its Conclusion of Law No. 11, the BOA review judge found that “any reasonable person would have sought medical care for the child right away.” AR 12 (emphasis added). Applying a reasonable person standard found in tort law exceeds the review judge’s statutory authority because a finding of neglect must be based on whether Ms. Brown acted with serious disregard of the consequences to such a magnitude as to constitute a clear and present danger to K.D. and not on what a reasonable person would have done.

In a negligence claim under tort law, there must be a showing of breach of duty. *Schwartz v. Elerding*, 166 Wn. App. 608, 615, 270 P.3d 630 (2012). Breach occurs when a person fails “to exercise such care as a reasonable person would exercise

under the same or similar circumstances.” *Id.* Applying a reasonable person standard to the statutory definition of neglect introduces an objective standard and changes the definition of neglect from a subjective “serious disregard” of the likely “clear and present danger” consequences. With this addition the question shifts from looking at whether Ms. Brown’s actions constituted a serious disregard, to instead comparing her actions to those expected of a reasonable person.

This application of the a reasonable person definition of neglect is inconsistent with the plain language of the statutory and regulatory definitions and therefore exceeds the authority granted to the agency. Absent actual evidence that Ms. Brown’s actions were in “serious disregard of consequences of such magnitude as to constitute a clear and present danger” in the days leading up to the hospital visit, this court should conclude that the BOA committed error of law when it upheld the Department’s finding of child neglect.

3. The Review Judge Erroneously Applied a Different Standard of Care Instead of Determining Whether Ms. Brown Acted With Serious Disregard of the Consequences to Such a Magnitude as to Constitute a Clear And Present Danger to K.D.

In its Conclusion of Law No. 11, the BOA review judge found that “it was [Ms. Brown’s] lack of medical knowledge . . . at the time

as to the possible consequences of the burn injury, that should have compelled the Appellant to seek immediate medical attention for her child.” AR 12. Applying a different, and arguably heightened, standard of care instead of examining whether Ms. Brown acted with serious disregard to the consequences to such a magnitude as to constitute a clear and present danger to K.D. exceeds the review judge’s statutory authority and was error of law.

In a negligence claim under tort law, there must be a showing of duty. *Schwartz v. Elerding*, 166 Wn. App. 608, 615, 270 P.3d 630 (2012). A person has the duty to exercise reasonable care to avoid the foreseeable consequences of their actions. *Washburn v. City of Fed. Way*, 178 Wn.2d 732, 757, 310 P.3d 1275 (2013), *aff’m on other grounds*, 178 Wn.2d 732 (2013).

Here, however, the court expanded the statutory definition of neglect to include not only foreseeable consequences but also consequences that are not foreseeable. CP 12. However, the statutory standard requires a manifest “clear and present danger” and a “serious disregard” of these consequences. By requiring Ms. Brown to take the “safe rather than sorry route” and seek medical attention because she was not medically trained and may not have been aware of the possible consequences of the burn, the BOA

review judge imposed an impossible standard for Ms. Brown to meet and one that could only have been met with hindsight. It created for her a requirement to always immediately seek medical attention if she does not know for sure if it is unnecessary to do so.

This is an untenable standard to impose, and it fails to examine Ms. Brown's actions to determine whether she acted with a serious disregard to the consequences to such a magnitude that it constituted a clear and present danger to K.D. during the time in question. Absent a finding that Ms. Brown's actions met the statutory definition, and not a "reasonable person" standard, in the days leading to the hospital visit, the court should find that the BOA conclusion was an error of law.

B. THERE IS NO SUBSTANTIAL EVIDENCE THAT MS. BROWN'S CONDUCT AMOUNTED TO CHILD NEGLECT.

An order is not supported by substantial evidence where there is not "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order." *Callegod v. Washington State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510 (1997), *rev. denied*, 132 Wn.2d 1004 (1997). Here, there is no substantial evidence to support a finding that Ms. Brown neglected K.D.

1. There Is No Substantial Evidence to Support a Finding That Ms. Brown's Actions Exhibited a Serious Disregard of the Consequences to Such a Magnitude as to Constitute a Clear And Present Danger to K.D.

The legislative intent of the neglect statute is to prevent nonaccidental injury. RCW 26.44.010. Specifically, the statute declares that government intervention is warranted in instances of "nonaccidental injury, neglect" RCW 26.44.010. In this way, the legislature has limited state intervention in families to cases that involve an element of purposeful or intentional harm. RCW 26.44.010. This intent becomes codified in the legislature's definition of neglect that requires that a finding of neglect can only be made when there has been a "serious disregard of the consequences to the child of such magnitude that it creates a clear and present danger to the child's health, welfare, and safety." RCW 26.44.020(14); WAC 388-15-009(5).

Neither the statute nor regulation defines the terms "serious," "disregard," "clear," or "present." RCW 26.44, *et seq.*; WAC 388-15-009, *et seq.* Under well-settled principles of statutory construction, words in a statute are given their ordinary meaning. *Garrison v. Washington State Nursing Bd.*, 87 Wn.2d 195, 196, 550

P.2d 7 (1976). This principle applies with equal force to the interpretation of administrative regulations. *Tesoro Refining & Mkt. Co. v. Dep't of Revenue*, 164 Wn.2d 310, 322, 190 P.3d 28 (2008).

Because these terms are not defined by the statute or regulation, it is appropriate to look to a dictionary or case law to ascertain their ordinary meaning. *State v. Pacheco*, 125 Wn.2d 150, 154, 882 P.2d 183, 185 (1994). The common definition of "serious" is "of, showing, or characterized by deep thought . . . of grave or somber disposition, character, or manner . . . requiring thought, concentration, or application." WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 1749 (New Deluxe Ed. 1996). The common definition of "disregard" is "to pay no attention to . . ." and "to treat without due regard, respect, or attentiveness." WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 569 (New Deluxe Ed. 1996). The term "clear" is defined as "free from confusion, uncertainty, or doubt; free from ambiguity." "Present" is defined as "being, existing, or occurring at this time or now; current." WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 383 (New Deluxe Ed. 1996).

Applying these definitions to the situation at hand, it is clear that in order to negligently treat or maltreat a child, an individual must have ignored, to an excessive or impressive degree, the consequences of his or her actions to that child.² In addition, the consequences to which the child is exposed must be unmistakable and free from ambiguity. This interpretation of the statutory and regulatory definition of neglect is in accordance with the legislative intent of RCW 26.44.010 *et seq.* See *Burlington Northern, Inc. v. Johnston*, 89 Wn.2d 321, 326, 572 P.2d 1085 (1977) (holding that “[i]n interpreting a statute, it is the duty of the court to ascertain and give effect to the intent and purpose of the legislature, as expressed in the act”).

- a. Ms. Brown's conduct did not amount to a "serious disregard of the consequences."

There is no evidence to establish that Ms. Brown's conduct amounted to a "serious disregard" of K.D.'s injury. Upon learning of the injury from her boyfriend, she immediately left work to tend to her son. CP 191. When she arrived home, K.D. was not crying and he was sitting on his bottom. CP 193. Ms. Brown immediately

² Notably, although in a different context, the Washington State Supreme Court has defined "disregard" as "an aggravated kind of negligence or carelessness, falling short of recklessness but constituting a more serious dereliction than hundreds of minor oversights and inadvertences encompassed within the term negligence." *State v. Eike*, 72 Wn.2d 760, 765-66, 435 P.2d 680 (1967).

observed the injury, which had the appearance of a sunburn. CP 193. She then went to Walmart to obtain more cream to apply to the burn and consulted the Internet where it was recommended that she treat the burn with ointment and observe the burn for up to seven days. CP 193.

Mr. Brink also called his mother who had been a pharmacist at Holy Family Hospital. CP 194-195. Mr. Brink described what had occurred and where the burn was and his mother recommended using ointment to treat the burn for infection over the next week. CP 194-195. Ms. Brown also consulted with her mother and described both the appearance and location of the burn. CP 182-183. Ms. Brown's mother recommended that Ms. Brown observe the burn closely to ensure an infection does not set in. CP 182-183.

Ms. Brown made sure they checked K.D.'s diaper frequently to ensure that it was not soiled and kept the area dry to avoid infection. CP 195. Ms. Brown also followed up by seeking advice from a pharmacist at Walmart. CP 197-198. She described the appearance of the burn and where it was located. CP 197-198. The Walmart pharmacist recommended that Ms. Brown treat the burn with a burn cream and Tylenol. CP 197-198. Ms. Brown

followed this advice. CP 197-198. The burn began to improve over the next few days, and then it began worsening, upon which Ms. Brown took K.D. to the hospital. CP 197, 200.

Under the plain language of the statute, Ms. Brown's actions did not amount to a "serious disregard of the consequences." She did not fail to "pay attention to" or treat the injury "without due regard, respect, or attentiveness." In fact, she duly regarded the child's care, observed the lack of distress, contacted persons whose advice she had reason to trust and followed advice given. This Court should conclude that under the proper neglect standard, there is no substantial evidence to support a finding that Ms. Brown's actions constituted a "serious disregard of the consequences."

- b. The child's injury did not present as a clear and present danger until the day Ms. Brown took him to the hospital.

K.D.'s injury did not present as a "clear and present danger" until the day Ms. Brown took him to the doctor. Witnesses who observed K.D. immediately after the injury and in the following days, including Robert Groce (Mr. Brink's employer) and Ms. Brown, stated that K.D. acted and behaved normally. CP 167-169,

200-201. Mr. Brink and his friend, Alexandra Groce, were both present when the K.D. was burned by hot bath water. Mr. Brink and Ms. Groce applied cold water and determined that the burn did not appear to need emergency medical care. AR 119-120. When Ms. Brown arrived home immediately after the injury, K.D. was active and able to sit on his bottom without pain. CP 193. K.D. also ate normally during this time and did not appear to be in pain unless he wet or soiled his diaper. CP 193.

Ms. Brown's initial observation of the injury was that it appeared to be like a sunburn. CP 193. Mr. Groce's observation of the injury the following day was consistent with Ms. Brown's assessment. CP 167-197. In the days immediately after the injury, it appeared to be healing. CP 197, 201.

It was not until the fifth or sixth day that Ms. Brown began to observe some changes in K.D, such as decreased appetite and activity. CP 200. When, after maintaining this improved appearance, the burn began to worsen, Ms. Brown became concerned that an infection had set in and took K.D. to the hospital. CP 200-201.

At Providence Holy Family Hospital, K.D. was initially seen by Dr. Sicilia who diagnosed K.D. with "burn cellulitis," and

observed K.D. to be a “well-developed child,” who presented as “active and playful,” and who had no fever, and whose skin had “normal turgor” with no rash. AR 223-224. During his examination, Dr. Sicilia observed no blistering on K.D. and no “acute distress.” AR at 223-224.

Dr. Keblawi, K.D.’s pediatrician, reviewed K.D.’s blood work from the hospital visit and found that there had been a “slight elevation of his white blood cells,” which meant that the onset of infection was recent. AR 108. Dr. Keblawi explained that “an infection is considered *septic* when bacteria overwhelm the bloodstream,” but because K.D. was **not** septic, “timing of medical attention was proper after redness increased.” AR 108 (emphasis in original).

The injury did not present a clear and present danger until it began to worsen after a period of improvement. It was at that time that Ms. Brown sought medical attention. This Court should conclude that under the plain language meaning of the child neglect statute, there is no substantial evidence of a “clear and present danger” from the time of the injury to the time Ms. Brown sought medical attention.

2. The Review Judge's Finding of Fact 15 That it Would Have Been Apparent at the Time of the Incident That the Burn Needed Medical Attention Is Not Supported By Substantial Evidence.

Dr. Messer's own testimony casts significant doubt as to how the injury would have initially presented itself, what difference, if any, seeking immediate medical care would have made, and to what extent, if any, would K.D. have been in pain. Throughout her testimony, Dr. Messer equivocated regarding what the burn would have initially looked like. She stated that "the burn itself may have looked different a week before," and that she "would expect that a week's worth of time is going to change the overall look of [it]" CP 90. Dr. Messer additionally testified, ". . . It is hard for me to tell for sure if it would have been sloughing already, um, but it would have been fairly deeply red, and *may* have already had blister formation." CP 110-111 (emphasis added). Similarly, when asked whether she could predict the burn's progression over seven days, Dr. Messer again equivocated: "There's the -- the, um, factor of the cream that was being put on it as well. I don't know specifically what cream it was . . . **So I don't know.** You know, there are things that may have, um, made a burn look better over time" CP 111 (emphasis added).

In forming her opinion about whether it was apparent that immediate medical care was necessary, Dr. Messer relied on physician guides, measurements, and data, all of which are not readily accessible or obvious to non-physician parents. CP 90, 112-113. When asked whether it was conceivable that “strong indications of the severity” of the burn would not be present on the first day or first couple of days, Dr. Messer first answered “No.” CP 90. She then proceeded to elaborate and frame the remainder of her response from the perspective of a medical provider with access to data about water temperature and burns, and not from the perspective of a non-physician parent. CP 90. Specifically, she stated, “there is very good data out there that you can pull up that will say this temperature leads to a burn this quickly, and this depth. So, um, this would have been *apparent* fairly quickly.” CP 90 (emphasis added).

Dr. Messer further testified, however, that she was unsure whether any part of the injury included a third-degree burn, and that she needed to consult her “reference guide” to distinguish between second and third-degree burns. CP 112-113. She also needed to consult a guide to determine whether the total area of the burn would have been significant enough to require medical treatment within the first seven days:

We do have, um, a, uh – I'm trying to think what the word is – a guide, basically, um, that says what the percentage of the burn – of burn you have . . . Um, so the, um – if you just were to measure this burn, and place it elsewhere, like say on his abdomen, um, I would still be thinking you need to bring that in, um, prior to seven days.

CP 108-109. Dr. Messer estimated that the size of K.D.'s burn was "about" 10 inches, and that the size warranted immediate medical care. CP 110-111. Dr. Messer, however, offered no explanation for how a non-physician parent would know that 10 inches is the size for which medical care is necessary to treat a burn.

As to what type of treatment K.D.'s injury would have received had emergency medical care been sought sooner, Dr. Messer was unclear:

. . . It might have – it might have, you know needed to – to be debrided **at some point, or not**. It's hard for me to really tell you that. But, um – but – but this, um – it's hard for me to say. It depends on – for debridement . . . so that **may** have been a treatment, then, that would have been prescribed for this, um, had he been seen earlier.

CP 111-112 (emphasis added).

Interestingly, applying cream to the burn might have been another possible treatment, as Dr. Messer stated that there are "particular creams that [she] [has] usually used for burns on kids."

CP 111.

Dr. Messer further speculated that the pain K.D. would have experienced in the days following the injury would have been "pretty bad." CP 114. Yet, when asked whether K.D. seemed to be in pain when she observed him at the hospital on December 7, 2012, Dr. Messer simply responded, "he was not comfortable." CP 86. This observation is inconsistent with her own notes that indicated that K.D. was awake, alert, and cooperative during the examination. AR 228. She also noted that he sat on Ms. Brown's lap and only whimpered or said "ouie" when his diaper was removed. AR 228. It is also inconsistent with that of Dr. Sicilia, who examined K.D. that same night and found him to be "active and playful," and a "well-developed" child in no acute distress. AR 223. It is also inconsistent with the testimony of Ms. Brown and Mr. Groce that K.D.'s behavior was normal in the days following the onset of the burn. CP 167-169, 200-201.

Dr. Messer's speculation is at odds with her own observation and with the accounts of the four adults who observed K.D. in the first few days following the incident. CP 167-169, 200-201; AR 119-120, 223, 228. None of those four individuals (one of whom had first aid training) believed that immediate medical care was warranted. Additionally, Dr. Keblawi, K.D.'s pediatrician, reviewed the hospital records and pictures of the injury and

concluded that Ms. Brown acted reasonably in not seeking immediate medical care. AR 107. Dr. Sicilia observed K.D. on the same evening as Dr. Messer did, and did not observe any blistering, but observed K.D. to be “active and playful” and in no apparent distress. AR 223-224.

Dr. Messer’s opinion is not consistent with other evidence in the record and lacks a reliable degree of certainty. This Court should conclude that there is no substantial evidence to support a finding that it would have been apparent that K.D.’s injury needed immediate medical attention at the time of the incident.

3. There Is No Substantial Evidence to Support the Review Judge’s Rejection of Dr. Keblawi’s Opinion that Ms. Brown Acted Reasonably In Not Seeking Immediate Medical Attention For Her Child’s Injury.

The court’s rejection of Dr. Keblawi’s opinion was largely due to the fact that Dr. Keblawi only submitted a sworn declaration, while Dr. Messer offered live in-person testimony. AR 11. Dr. Messer’s testimony, however, is not consistent with other evidence, including other witness testimony, while Dr. Keblawi’s opinion is consistent. CP 167-169, 200-201; AR 107-108, 119-120, 224. As a pediatrician, Dr. Keblawi treats many scald burn cases per year on children. AR 107. According to him, second-degree burns are pink in the first 24 to 48 hours, which is consistent with Mr. Groce’s

observation that, a day after the burn occurred, "the child's buttocks were reddened in a perfect, little round circle." AR 107; CP 167-169. At that point, Mr. Groce, who has first aid training, did not recommend medical attention for the child and observed the child's behavior to be normal. AR 167-169.

Dr. Keblawi further opined that signs of infection include an increase of redness and swelling that begins several days following a burn. AR 107-108. He understood that Ms. Brown sought medical treatment for K.D. when the burn in the diaper area showed signs of increased redness and swelling. AR 107-108. Dr. Keblawi reviewed the pictures of the burn taken at Sacred Heart Medical Center on December 7, 2012, and opined that the "redness and swelling shown in those pictures were not inconsistent" with Ms. Brown's account of events. AR 108. Dr. Keblawi's opinion that "timing of medical attention was proper after redness increased" is based on his review of K.D.'s blood work from Sacred Heart Medical Center and his conclusion that infection had only recently set in because K.D. was *not* septic. AR 108.

Dr. Keblawi's opinion that "it is not out of the ordinary for a reasonable parent to begin medical treatment of such burns at home," as Ms. Brown did, is consistent with the emergency room intake report from Providence Holy Family Hospital, and with the

opinions of the four adults who observed K.D. during the first two days following the injury. This Court should conclude that the review judge's rejection of Dr. Keblawi's opinion is not supported by substantial evidence on the record.

4. There is No Substantial Evidence to Support the Finding That Ms. Brown's Failure to Seek Immediate Medical Treatment Led to "Additional Blistering, Bleeding, Suffering, and Infection That Could Possibly Have Been Avoided, or At Least Reduced"

The review judge appears to have relied on Dr. Messer's speculative and uncorroborated testimony in making this finding, which was mislabeled a conclusion of law.³ Findings of fact by an administrative agency which are labeled as conclusions of law will be treated as findings of fact when challenged on appeal. *Morgan*, 99 Wn. App. at 148.

As discussed above, Dr. Messer herself was not sure whether debridement would have even been a prescribed treatment for K.D. had he been seen earlier. CP 111-112. She also speculated as to how the injury would have initially presented itself, but was nevertheless adamant that Ms. Brown should have immediately sought emergency medical care for K.D. CP 110-111. In contrast, Dr. Keblawi reviewed K.D.'s blood work from when he

³ This finding appears in Conclusion of Law 13 of the *Review Decision and Final Order*. AR at 13.

was admitted to Sacred Heart Medical Center, and concluded that the infection had only recently set in, K.D. was not septic, and concluded, therefore, that the timing of Ms. Brown's decision to seek medical care was proper. AR 108.

Dr. Keblawi further opined that “[he] has no concerns about [K.D.] being denied necessary medical treatment for his well-being, as Ms. Brown has shown she is attentive toward his medical needs.” AR 108. Additionally, Dr. Sicilia specifically noted that he saw “no blistering” when he examined K.D. and observed that K.D. was “well-developed,” “active and playful,” and with normal skin turgor with no fever or rash and was not in distress. AR 223-224.

Aside from Dr. Messer's speculation, the review judge does not rely on any other evidence that additional blistering, bleeding, suffering, and infection could have been avoided or reduced by seeking immediate medical care. This Court should conclude that there is no substantial evidence to support the mislabeled finding of fact that Ms. Brown's failure to seek immediate medical treatment led to “additional blistering, bleeding, suffering, and infection that could possibly have been avoided or at least reduced by procuring immediate medical attention for the child.”

C. THE REVIEW JUDGE ERRONEOUSLY INTERPRETED AND APPLIED THE LAW BY CONCLUDING THAT THE ADMINISTRATIVE LAW JUDGE'S DETERMINATIONS REGARDING THE CREDIBILITY OF DR. MESSER AND DR. KEBLAWI AND THE WEIGHT GIVEN TO THEIR OPINIONS "CANNOT BE REVERSED ON REVIEW."

Under the APA, a review judge has the same decision-making authority as the ALJ, which includes the authority to make credibility determinations and weigh evidence. RCW 34.05.464(4); *Hardee v. Dep't. of Social & Health Serv., Dep't. Early Learning*, 152 Wn. App. 48, 215 P.3d 214 (2009), *rev. granted*, 168 Wn.2d 1006, 226 P.3d 781, *affirmed* 172 Wn.2d 1, 256 P.3d 339. A reviewing officer must only give due regard to the ALJ's opportunity to observe witnesses. *Id.*

Here, the review judge mischaracterized Ms. Brown's argument in her Memorandum in Support of Petition for Review that the review judge should reweigh the evidentiary value of Dr. Messer's testimony and Dr. Keblawi's declaration. AR 28-37. Though Ms. Brown never challenged the ALJ's "credibility determinations," the review judge characterized her request to reweigh evidence as a credibility challenge. AR 11-12.

After mischaracterizing Ms. Brown's request to reweigh the evidence as a credibility challenge, the review judge then

erroneously concluded that the challenged credibility findings cannot be reversed on review.

The challenged credibility determinations were neither made arbitrarily nor capriciously and do not constitute an abuse of discretion by the ALJ. They cannot be reversed on review.

AR 11-12.

By requiring proof that an ALJ's determination on credibility or weight of evidence was made arbitrarily and capriciously or was otherwise an abuse of discretion, the review judge acts contrary to the APA and limits his own decision-making authority to the detriment of Ms. Brown who has asked only for the review judge to reweigh the evidence. Rather, the BOA review judge had the authority to reweigh the evidence and, while giving due regard to the ALJ's credibility determinations, could make its own credibility determinations. This Court should conclude that the review judge erroneously interpreted and applied the law by misconstruing his own statutory decision-making authority in a way that limited the relief available to Ms. Brown to her detriment. The Court should also reverse the BOA's Review Decision and Final Order for this reason.

D. IT IS ARBITRARY AND CAPRICIOUS FOR THE DEPARTMENT TO UPHOLD A FINDING OF CHILD NEGLECT BASED ON A NEW AND RESTRICTIVE INTERPRETATION OF ITS CHILD NEGLECT REGULATIONS THAT IGNORES THE REQUIREMENTS OF THE GOVERNING CHILD NEGLECT STATUTE AND WHERE THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDINGS OF FACT.

An agency action is arbitrary and capricious if it is made in disregard of the facts and circumstances. *Seymour v. Washington State Dep't of Health, Dental Quality Assur. Comm'n*, 152 Wn. App. 156, 172, 216 P.3d 1039 (2009). In the present case, the BOA's Review Decision and Final Order is based on an erroneous interpretation and application of the statutory definition of child neglect, as the review judge applied a reasonable person, tort law standard and a heightened or different duty of care standard not found in the child neglect statute. The Review Decision and Final Order is also not based on substantial evidence on the record. The Court should conclude that the BOA Review Decision and Final Order is arbitrary and capricious.

E. APPELLANT ASHLEY BROWN IS ENTITLED TO ATTORNEYS' FEES AND COSTS ON APPEAL IN THIS MATTER PURSUANT TO RAP 18.1 AND WASHINGTON'S EQUAL ACCESS TO JUSTICE ACT, RCW 4.84.340-360.

Attorneys' fees are available to the prevailing party where authorized by "contract, statute, or a recognized ground in equity." *Cosmopolitan Eng'g Group, Inc. v. Ondeo Degremont, Inc.*, 159

Wn.2d 292, 296-297, 149 P.3d 666 (2006). In the present case, Ms. Brown is entitled to recover her attorneys' fees under Washington's Equal Access to Justice Act ("EAJA"), RCW 4.84.340-360, which provides in pertinent part:

Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

RCW 4.84.350(1).

Here, Ms. Brown is a "qualified party,"⁴ and will have prevailed if the Court reverses the Department's action affirming the founded finding of child neglect.

Upon establishing that Ms. Brown is a "qualified prevailing party," the Department can avoid an attorneys' fees award only by convincing the Court that its action affirming the founded finding of child neglect, which was unsupported by substantial evidence, arbitrary and capricious, and made through an erroneous

⁴ A "qualified party" for purposes of an EAJA award is defined as "an individual whose net worth did not exceed one million dollars at the time the initial petition for judicial review was filed" RCW 4.84.340(5). Ms. Brown's affidavit of financial need confirming her financial eligibility for an EAJA award will be separately filed and served no later than ten days prior to oral argument in this matter as required by RAP 18.1(c).

interpretation and application of the law, was “substantially justified.” See *Language Connection, LLC v. Employment Sec. Dep’t*, 149 Wn. App. 575, 586, 205 P.3d 924 (2009). To meet this burden, the Department would have to demonstrate that its action “had a reasonable basis in law and fact.” *Id.*

In *Marcum*, the court held that even though the Department “exceeded its statutory authority in adopting a *per se* rule for founded neglect when a caregiver violates WAC 388-15-009(5)(a), it had a reasonable basis -- the protection of Washington’s children -- for doing so.” The court declined to award Ms. Marcum attorney fees because it held that the Department’s actions were not “substantially unjustified.” *Marcum* at 561. With the *Marcum* ruling, however, the Department was “put on notice” that it was not appropriate to apply legal standards outside of the plain language of RCW 26.44 to a child neglect case. There is no rational basis for the Department to have augmented or circumvented the requirements of RCW 26.44 in making a finding of neglect in Ms. Brown’s case.⁵

⁵ Moreover, *Marcum* was wrongly decided on this point. The court equated “reasonable basis” with “substantially justified.” As indicated above, “reasonable basis” is a much lower standard than “substantially justified”. Under the *Marcum* court’s ruling, the general state interest in “the protection of Washington children” would justify all illegal abuse findings and render RCW 4.84.350 meaningless by denying attorney fees with respect to any judicial challenge to Department action.

All of the requirements in the EAJA for authorizing an award of reasonable attorneys' fees to Ms. Brown are met in this case. The Court should authorize an award of fees and costs, including reasonable attorneys' fees, pursuant to RAP 18.1 and RCW 4.84.350.

VI. CONCLUSION

The Court should conclude that the Department's neglect finding is based on an erroneous interpretation and application of the law that exceeded the Department's statutory authority because it included a reasonable person standard and a heightened or different duty of care standard not found in the abuse and neglect statute in RCW 26.44. The Court should also conclude that the legislative intent for that statute is to prevent "nonaccidental injury," and that the statutory definition of "negligent treatment or maltreatment" in RCW 26.44.020(16) is unambiguous and plain on its face, whereby applying the plain language meaning of "serious disregard" and "clear and present" to the facts of this case is, therefore, appropriate. Finally, the Department's Review Decision and Final Order is not based on substantial evidence on the record.

The Court should set aside the DSHS Board of Appeals Review Decision and Final Order issued in Ms. Brown's case; set aside the agency action finding her to have committed child

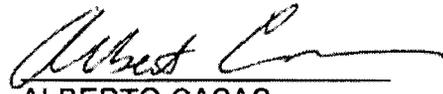
neglect; and authorize an award of reasonable attorneys' fees and costs to Ms. Brown.

Respectfully submitted on January 15, 2015.

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