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NO. 65939-1-I

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

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Appellant,

v.

JOEL ROSS,

Respondent.

BRIEF OF APPELLANT

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I. INTRODUCTION

I.G. is a vulnerable adult as defined by the legislature in the Abuse of Vulnerable Adults Act, chapter 74.34 RCW. At the time of the incidences that gave rise to this appeal, I.G. was in her eighties. Her first documented diagnosis of dementia was in 2004. I.G. has other medical problems, has been admitted to a skilled nursing facility three times between 2004 and 2007, is hard of hearing, and is geographically isolated from her family. I.G. has historically been financially responsible, living on a modest pension and social security check and in a home that—until 2006—was unencumbered by a mortgage.

I.G. met Joel Ross when he was working as a nurse's aid in a nursing home where I.G.'s sister was residing. After Ross befriended I.G., she began to give him money. Between 2003 and 2007, I.G. gave Ross between \$60,000 and \$80,000. Of this amount, \$35,000 came from a loan I.G. took against her home for the sole purpose of giving Ross money, although I.G. could not afford the monthly loan payments. Ross has never repaid any of the money he took from I.G. and has no plans to do so. He exerted undue influence over I.G. and caused her to act in a manner that was inconsistent with her past behavior. In doing so, Joel Ross personally and financially exploited a vulnerable adult.

II. ASSIGNMENTS OF ERROR

1. The Superior Court erred and applied the wrong standard of review when it reviewed the facts found by the Department's review judge *de novo*.¹
2. The Superior Court erred when it concluded that the Department's finding that I.G. was a vulnerable adult was not supported by substantial evidence.
3. The Superior Court erred when it reversed the Department's Review Decision and Final Order.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

4. Where there is substantial evidence in the record to support the finding that I.G. had the functional, mental, or physical inability to care for herself and therefore met the definition of a vulnerable adult, should the Final Order be upheld?

¹ The content of appellate briefs is governed by RAP 10.3. Pursuant to RAP 10.3(h), the Appellant's brief must set forth a concise statement of the error a party contends was made by the agency issuing the final order being reviewed. *See also* RCW 34.05.558. However, in this case, the Department contends there was no error in the final agency order, but that the error was committed by the superior court on judicial review. The superior court order on judicial review is superfluous for purposes of this appeal. *Verizon Northwest, Inc. v. Employment Security Dept.*, 162 Wn.2d 909, 915, 194 P.3d 225 (2008); *Markham v. Employment Security Dept.*, 148 Wn. App. 555, 560-61, 200 P.3d 748 (2009). Joel Ross bears the burden of assigning error to the agency's final order. For the purposes of this brief, the Department assumes Mr. Ross is alleging lack of substantial evidence based on the arguments he made in the proceedings below.

5. Where Joel Ross admitted to personally profiting from the assets of a vulnerable adult and to the detriment of that vulnerable adult, should the Final Order finding that he financially exploited I.G. be upheld?

6. Where the Department has shown that Joel Ross exerted undue influence over I.G. and caused her to act in a way inconsistent with her relevant past behavior and to perform services for his benefit, should the Final Order finding that Joel Ross personally exploited I.G. be upheld?

IV. STATEMENT OF THE CASE

A. Procedural History

Following an investigation by Adult Protective Services, the Department of Social and Health Services (Department) determined that Joel Ross personally and financially exploited a vulnerable adult. CP at 135. The Department determined that, between November 2004, and August 2007, Ross accepted more than \$59,000.00 from I.G., a vulnerable adult as defined in the Abuse of Vulnerable Adults Act, chapter 74.34 RCW.² CP at 135. Ross himself does not contest that he took no less than \$80,000.00 from I.G. during the time in question. CP at 37.³

² To protect the confidentiality of the vulnerable adult, only her first name was used during the proceedings and only her first name will be used throughout this brief.

³ Final Order, Finding of Fact (FF) 8. Joel Ross does not expressly assign error to individual Findings of Fact as required by RAP 19.3(h), although his arguments implicate certain findings limited to FF 41 and 42 and no others. Therefore, the FFs referenced by the Department in this Statement of the Case do not appear to be disputed by Joel Ross, and are therefore considered verities on appeal. *Kitsap Cy. V. Central Puget Sound Growth Mgmt. Hrgs. Bd.*, 138 Wn. App. 863, 872, 158 P.3d 638 (2007).

The Department notified Joel Ross of its findings that he personally and financially exploited a vulnerable adult by letter dated November 30, 2007. CP at 135-139. On December 27, 2007, Ross requested an administrative hearing to contest these findings. CP at 140. The hearing request was made pursuant to WAC 388-71-01235, which provides that an alleged perpetrator of exploitation may request an administrative hearing to challenge a substantiated initial finding made by the Department. A hearing was held on July 17, 2008, and July 18, 2008, before an administrative law judge (ALJ). 1RP at 1. The ALJ issued an initial order on September 30, 2008, which upheld the Department's determination that Joel Ross exploited a vulnerable adult. CP at 72-83.

Joel Ross filed a petition for review with the Department's Board of Appeals on October 16, 2008. CP at 69-71. On December 11, 2008, a Department of Social and Health Services review judge issued a Review Decision and Final Order which affirmed the ALJ's initial order finding that Ross personally and financially exploited a vulnerable adult. CP at 31-53. Ross's petition for reconsideration was denied by the Board of Appeals on January 20, 2009. The Review Decision and Final Order is the final administrative order that is the subject of this appeal.

Joel Ross filed a Petition for Judicial Review of Final Administrative Order in Skagit County Superior Court on February 12,

2009. CP at 1. By order and letter ruling filed on August 6, 2010, the Honorable Judge John Meyer reversed the Review Decision and Final Order and held there was not substantial evidence in the record to support a finding that I.G., was a vulnerable adult. CP at 332-334. The court ruled that because it concluded I.G. was not a vulnerable adult, it was unnecessary to reach the issue of whether or not personal or financial exploitation occurred. CP at 334. The Department filed a Notice of Appeal to the Court of Appeals on August 27, 2010. CP at 335.

B. Factual Basis For The Final Order

1. Joel Ross's Relationship With I.G.

Joel Ross was born in 1983. CP at 227. He first met I.G. in 2002, when he was 19 years old. 1RP at 22; CP at 326. At the time, I.G. who was born in 1918, was approximately 84 years old. *Id.* Ross met I.G. when he was working as a certified nursing assistant at Sehome nursing facility. 1RP at 22, 34. At the time, I.G. frequently came to the facility to visit her sister, who was a resident there. 1RP at 23, 24.

Ross worked at Sehome for a year to a year-and-a-half. 1RP at 23. After he stopped working there, he often returned to give his friends a ride home. 1RP at 24. While waiting for his friends he would see I.G. and would “strike up a conversation” with her. *Id.* He testified that “a friendship blossomed” based on “a lot of common ground” and that they

“just got along real well”. *Id.* Ross began to visit I.G. at her home. 1RP at 24. Initially, he visited her “between several times a week to several times a month,” with each visit lasting one to two hours. 1RP at 26, 27. He and I.G. were always alone together during these visits. 1RP at 27. I.G. gave Ross keys to her house. 1RP at 42. On October 27, 2003, Ross gave I.G. a birthday card with a hand written note that read, “[I.G.], you are always on my mind. I’m terribly sorrey (sic) for being so busy all the time. I love you and you look great. Thanx (sic) for putting up with me. – Joel”. CP at 275. I.G. told Ross that she had two daughters, but that both of them lived out of town. 1RP at 26. Ross knew I.G. had been a widow for over 25 years and that she lived alone in her home. 1RP at 28, 267. Ross was unemployed at this time, looking for work and attending community college. 1RP at 26, 27. In 2004, Ross began working at Mount Baker Convalescent Care Center as a certified nursing assistant, where he remained until 2007. 1RP at 37. Ross explained that he continued to visit I.G. because they both “expressed interest in seeing each other” and that they “enjoyed each other’s company and, um, we got along real well and we’ve had fun together and we laughed about similar interests”. 1RP at 27. Ross told I.G. he wanted to become a doctor and he testified that she was very interested in hearing what “his objectives were” regarding school and where he saw himself in a few years. 1RP at 36.

Ross and I.G. talked about him moving into I.G.'s home to take care of her. 1RP at 51-52. According to Ross, he told her "We could realistically consider it, um, upon the completion of my degree." 1RP at 52.

For I.G.'s 87th birthday on October 26, 2005, Ross gave her a card and signed it, "I love you. Thank you for being in my life – Joel." CP 271. When asked whether it was his perception that I.G. saw their relationship as purely friendship or that it had romantic overtones, Ross did not deny that I.G. viewed it as romantic, but instead responded, "it was a very valued friendship and we cared about each other tremendously." 1RP at 44.

Sometimes Ross helped I.G. clean her house, but when he got busier he had less time to help her. 1RP at 27-28. Ross knew I.G. was living on a fixed income of "retirement checks of some kind" but claimed to not know how much the checks were for. 1RP at 29. When asked during the administrative hearing if he had a joint bank account with I.G., Ross responded, "To the best of my knowledge, we were on a joint bank account at Bank of America. Um, again, I can't recall exactly, um, but I believe it was Bank of America". 1RP at 30. When asked why I.G. would want him on a joint bank account versus a family member, Ross testified "She was very insistent that I be involved in her life and she, um, expressed repeated interest that I, um, be there and be on her account." *Id.*

Ross acknowledged he “certainly would be able to access the account if I need - - if I wanted to. 1RP at 31.

When asked during the administrative hearing if he ever deposited funds into the joint account with I.G. he equivocated. 1RP at 31. He first said, “I can’t remember how much, or if, or when”. *Id.* When pressed, he responded “Um, again, to the best of my knowledge, I -- I’m -- I’m going to say no because I’m not sure how much.” *Id.* He later claimed he tried to give money to I.G., but she refused it. 1RP at 42-43. He claimed he would sometimes bring I.G. groceries and things. 1RP at 32. Ross claimed he only took money out of the joint bank account under the direction of I.G. 1RP at 31. Ross testified that he “didn’t inquire about her [I.G.’s] money management”. 1RP at 32. Ross began taking money from I.G. no later than May 2, 2003 when she gave him a check for \$2,000.00. 1RP at 37. Ross did not keep any records of the amounts of money he took from I.G. 1RP at 44.

In December of 2004, medical records indicated I.G. was exhibiting signs of dementia and short term memory loss. CP at 315. Joel Ross had nursing training and was certified by the state as a nursing assistant; he was working on his certificate to become a licensed practical nurse. 1RP at 33. His education includes training in how to recognize signs of cognitive disorders such as dementia and Alzheimer’s. 1RP at 36.

Nevertheless, he testified he did not see signs of dementia or cognitive lapses in I.G.. 1RP at 38. He testified that did not learn I.G. had been diagnosed with dementia in December 2004 until the administrative hearing regarding the findings of exploitation made against him. 1RP at 39.

There is no dispute that between early 2004 and August of 2007, Joel Ross accepted money from I.G. that he used “to furnish [himself] with living expenses, tuition, um, et cetera”. 1RP at 39. Ross took the money from I.G. because,

Um, again, [I.G], um, was very persistent in, um, persuading me to accept the money. She - - she, um, indicated that, um, she - - you know, she worried about me all the time, she told me, and a lot of times, she would actually, um, be on the bring of tears, literally actually crying, I should say, um, because she said she’d lay up all night worrying about me and, you know, it meant so much to her if I allowed her to help me, and that, you know, it would put her at ease and she wouldn’t have to worry about me and it meant a lot to her.

1RP at 40.

In late 2006, I.G. told Ross that she qualified for a loan against her house. 1RP at 46. He claimed that he told her, “you’d better not give any of that to me.” *Id.* However, she did write him a check for \$35,000. *Id.* Ross claimed he took the money only on condition that she let him pay her back. 1RP at 46-47. As of July 18, 2008, the date he testified at the

administrative hearing, he had not paid any of the money back and had made no arrangements to do so. 1RP at 47. When asked what he did with the money and whether he spent the money on himself Ross responded, “In a manner that I.G., um, had, um - - uh, desired me to”. *Id.*

Ross admitted during the administrative hearing that in August 2007, he refused to tell the Adult Protective Services investigator what he spent the money on, and refused to tell the investigator where he banked. 1RP at 47-49. CP 144. He didn’t believe it was any of the investigator’s business. 1RP at 50. Ross admitted that in addition to giving him money, I.G. bought him a telephone and paid his phone bills. 1RP at 50. Ross admitted to taking checks and money from I.G. between November 2004 and August 2007, including the check for \$35,000.00. 2RP at 6-7.

There is no dispute that Joel Ross took at least \$80,000 from I.G. CP at 37; 1RP at 272. Ross used this money to pay for his rent, phone bills, food, tuition, and living expenses. 2RP at 8-9. Ross testified that at no time did he question whether it was appropriate for him to be taking this much money from I.G. 2RP at 10. Ross testified he never asked I.G. what her income level was or inquired about the extent of her assets. 2RP at 11.

2. The Adult Protective Services Investigation.

The Adult Protective Services (APS) investigations into allegations of exploitation of I.G. by Joel Ross were conducted by Rhodora Mann 1RP at 57. Mann has a Bachelors Degree in Psychology and has worked in social services for a number of years. 1RP at 55. As an APS investigator, her job duties include investigating reports of abuse of vulnerable adults and offering protective services including restraining orders, in-home services and relocation assistance. 1RP at 55-56. The population Mann serves consists of vulnerable adults defined by RCW 74.34.020(15) as being a person over the age of 60 that demonstrate a physical, mental, or functional, inability to care for themselves. 1RP 56

Ms. Mann has investigated hundreds of cases of exploitation during her career. 1RP at 84. Mann testified that exploitation cases generally involve the same typical behavior and have a classic scenario involving an isolated elderly adult without much social contact or contact with family. 1RP at 92. The perpetrators of exploitation usually befriend these isolated adults by showing interest in them, offering to help them, run errands for them, take them to the doctor, and offer to pay bills for them. 1RP at 327. Mann testified the victims of exploitation are usually very trusting. 1RP at 93. Often, if the victim recognizes they made a mistake in being too trusting, he or she is frequently too embarrassed to

come forward and ask for help. 1RP at 94. Many times it will appear that the victim consents to the exploitive behavior; however, that it can also be a symptom of declining memory and/or cognitive functioning. 1RP at 95. Mann testified that often victims of exploitation are grateful for the attention of those who exploit them, and that they are just thankful to have someone to talk to. 1RP at 95. As a result, victims often remain loyal to the alleged perpetrator. *Id.*

Mann investigated three referrals pertaining to Joel Ross and I.G. 1RP at 57. The first referral was received by APS on December 9, 2004, and alleged that Ross was financially exploiting I.G. 1RP at 59-60. According to the referral, I.G. had fallen at home, had broken her rib and was recovering at Alderwood Convalescent Center. CP at 311. During the December 2004 investigation, Ms. Mann found that I.G. was a vulnerable adult as defined by RCW 74.34.020. Mann found that I.G. had the physical, mental and functional inability to care for herself. 1RP at 60. *See also* CP at 314. The social worker at Alderwood, Denise Kennedy, reported that I.G. exhibited dementia and short term memory loss. CP at 315. Kennedy also reported that I.G. would sometimes not remember her and would sometimes not recall recent events and conversations. *Id.* Additionally, I.G. was found to be a vulnerable adult because she was residing in a skilled nursing facility. 1RP at 60. *See also*, CP at 314.

Mann also interviewed I.G.'s daughter, Betty Johnson. CP at 315. Ms. Johnson reported that, at that time, I.G. had written over \$5,000.00 in checks to Joel Ross dating back to April of 2004. CP at 315. Ms. Johnson received two letters from Key Bank advising her that her mother had incurred \$1,200.00 in overdraft fees. CP at 315; 1RP at 267. Ms. Johnson reported that I.G.'s house was very cluttered and dirty. CP at 315. She further reported that her mother had begun to refuse to discuss her finances or to discuss the subject of Joel Ross with her daughters. *Id.* Ms. Johnson provided Mann with copies of checks I.G. had written to Joel Ross between May 1, 2004, and November 4, 2004 which totaled over \$5,000.00. CP at 318.

When interviewed by Mann, I.G. herself admitted that she began giving Ross money within about six months of meeting him. CP at 316. She acknowledged that as of December of 2004, she had given him thousands of dollars. CP at 316. I.G. told Mann that Joel Ross used some of that money to buy a computer for himself, as well as to pay for tuition and rent. CP at 316. I.G. said she gave this money to Ross because she supported "his dream of becoming a doctor." *Id.*

Mann asked I.G. how she would characterize her and Joel Ross's relationship. CP at 316. Ms. Mann reported that I.G. seemed confused by this question. *Id.* Mann then asked I.G. whether she considered Ross to

be like a grandson, or whether she had romantic feelings for him. *Id.* I.G. responded that she had asked Joel Ross the same thing. *Id.* I.G. then told Mann, “I love him as a good friend and he loves me. I’ve never met a man that has treated me with more respect.” *Id.* Mann testified that I.G. was “quite infatuated with Joel.” 1RP at 98. I.G. reported that when she was ready to leave the nursing facility in January, Ross would be coming to live with her to provide her with the care and help she needs. CP at 317.

I.G. told Mann that Joel Ross mentioned he had been contacted by the Department. *Id.* Mann had, in fact, left a voice mail message for Ross on December 29, 2004, requesting that he return her call. CP at 317. She left another message for him on January 14, 2005, also requesting that he call her back. CP at 319. Mann left a third voicemail message for Joel Ross on March 25, 2005. *Id.* Mann was not able to make contact with Ross during the course of this first investigation initiated in December 2004. CP at 315.

Mann eventually closed that investigation with a finding of “inconclusive” for financial exploitation on August 19, 2005. CP at 314, 320. Mann testified that, at the time, I.G. appeared to be cognizant of her choice to give Joel Ross her money. 1RP at 63. Mann said that she found indications of financial exploitation, but that with the information she had

she could not make a clear and conclusive finding of exploitation and chose to close her case. 1RP at 64. Mann testified that during the entire course of her first investigation, she did not once make contact with Ross despite her repeated attempts to do so. *Id.* Mann also testified that during this first investigation, she did not have access to I.G.'s medical records, had incomplete information about I.G.'s cognitive functioning, and was not aware that I.G. had been diagnosed with dementia in 2004. 1RP at 65-66. During the first investigation, I.G. did not allow Mann to enter her home. 1RP at 104.

Rhodora Mann's second investigation started after a new referral regarding allegations that Joel Ross financially exploited I.G. and began on September 15, 2005, less than a month after she closed her first investigation. CP at 321; 1 RP at 69. Mann again interviewed I.G., who again admitted to giving Joel Ross money. CP at 324. I.G. also said that Ross would occasionally come around and help her, but that sometimes she wouldn't hear from him for "three weeks because he is so busy with work and school." *Id.* As before, during the course of this second investigation Mann was unable to make contact with Ross despite several attempts to do so. *Id.* Mann went to Ross's apartment on October 5, 2005, and met with his roommate telling him she had attempted to contact Ross several times; she left her card with the roommate. *Id.* Mann again

went to Ross's apartment in November 2005 and also tried to contact him by letter and by phone. *Id.*

On January 13, 2006, Mann closed the investigation after concluding it did not appear I.G. met the definition of a vulnerable adult because, at that time, she was living at home alone and was not receiving any supportive services. CP at 324; 1RP at 69. Mann stated that it appeared I.G. was at least meeting her own needs. 1RP at 76. However, Mann did not have complete information; she testified that I.G. again would not let Mann into the home. 1RP at 104. Further, Mann did not have complete records and remained unaware that I.G. had previously been diagnosed with dementia. 1RP at 70. Mann also did not receive any financial records to show the extent of any exploitation. 1RP at 71. Mann testified that once she concluded that I.G. was not a vulnerable adult, she had no choice but to close the APS investigation. 1RP at 70.

Rhodora Mann's third investigation of allegations that Joel Ross was exploiting I.G. began in August 2007 after yet another referral. 1RP at 58-59; CP at 141. On August 6, 2007, APS received two separate referrals regarding I.G. CP at 147 and 326. One referral again alleged that Joel Ross was exploiting I.G. CP at 147. The other referral alleged

that I.G. was a victim of self neglect.⁴ CP at 326. Mann investigated both reports at the same time.

During the investigation of the reported self-neglect, Mann learned that I.G. was transported to the hospital after falling in her home and lying on the floor for 14 hours. CP at 329-330. I.G. was not taking her prescription medications, had an untreated leg wound, had not been showering or bathing, and had not seen a doctor in nearly a year. *Id.* I.G.'s home was filthy and unsafe. *Id.* See also 1RP at 233. Ms. Mann investigated the allegations and concluded that I.G. was a victim of self neglect. CP at 330. Mann testified that it was clear that I.G. had been with out her medications for about a month. 1RP at 233.

I.G.'s daughter, Betty Johnson, testified at the administrative hearing that in early spring 2007 I.G.'s house was getting progressively dirtier, that her incontinence was getting worse, and that I.G.'s cognitive abilities "weren't that good". 1RP at 282. Johnson testified I.G. began talking to strangers on the phone and giving out her personal information, despite having had a career as a phone operator and "drumming" it into her children to never give information out on the phone. 1RP at 301. Johnson offered to hire someone to help her mother, but I.G. refused. 1RP

⁴ Self neglect means "the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being." RCW 74.34.020(15).

at 283. According to Johnson, by August 2007 the inside of her mother's house was "unliveable"; Johnson had to wear a mask to go inside and clean it. 1RP at 276. The source of the stench was from her mother's incontinence as well as cat feces and urine throughout the house. 1RP at 277. Johnson described the inside of the house as "putrid." 1RP at 283. Mann testified that she saw pictures of I.G.'s home that showed, "the house was in a total state of filth and cluttered and in disarray." 1RP at 103.

After her mother was moved to a nursing home Johnson changed all the locks because Joel Ross had a key. 1RP at 277. In addition, her mother was complaining about "people being in the house . . . she was just positive people were getting into the house". 1RP at 277-78. Inside her mother's home, Johnson found many unpaid bills along with "Hallmark-type" cards from Ross. 1RP at 279. Johnson believed that in her mother's mind there was a romantic relationship between her and Ross. 1RP at 282. Ross had been found guilty of theft in the third degree on March 21, 2002 in an unrelated matter, and when Johnson told her mother about it, I.G. became angry and refused to believe her. CP at 42 (FF 36).

On August 13, 2007, Rhodora Mann attended a care conference at I.G.'s nursing home with I.G., the professionals in charge of her care, and I.G.'s daughter, Betty Johnson, was also present. CP at 144; 1RP at 99-

100. At the beginning of the meeting, I.G. asked if anybody had seen her daughter, Betty. CP at 330; 1RP at 100. Betty Johnson was sitting right next to I.G. in plain sight. *Id.* Mann and Johnson both testified that I.G. did not recognize her own daughter at the care conference. 1RP at 101, 285-286. I.G. continued to have cognitive lapses during the meeting. CP at 145. I.G. admitted she had been falling in her home, but claimed she was “usually able to eventually get up.” CP at 330. I.G. asked to go home, but the professionals in attendance recommended she stay indefinitely at the nursing facility, otherwise her care needs would not be met. CP at 331. In fact, it was unlikely that I.G. would ever be able to return home. 1RP at 298. Johnson testified that she had been given a statement from her mother’s doctor that I.G. was incompetent. 1RP at 304.

The subject of Joel Ross also came up during the care conference. CP at 145, 329. I.G. admitted she was still giving Ross money. *Id.* I.G. said that Ross planned to become a pediatrician. *Id.* I.G. said she had not seen Ross in several weeks, but that she knew he hadn’t taken any money out of the joint bank account she had with him. *Id.* When asked what bank that was, I.G. could not recall the name. *Id.* Ross visited I.G. at her nursing home that night of the care conference, after hours, bringing her flowers. CP at 144. In the following days, I.G. began telling staff at the

nursing home that Ross was going to move in with her. CP at 146. Rhodora Mann concluded her investigation and substantiated findings of self-neglect. IRP at 233.

While investigating the report of self-neglect, Mann also investigated the August 6, 2007, report that Joel Ross was exploiting I.G. CP at 144; IRP at 89. Mann's investigation spanned the time from 2004 to August 2007. IRP at 75. This time, Mann substantiated the allegations *Id.* During her investigation, Mann obtained sufficient information and medical documentation—which included a diagnosis of dementia—to conclude that I.G. was a vulnerable adult when the third referral was received, but also that I.G. met the statutory definition of a vulnerable adult since 2004, the entire time that the exploitation was occurring. IRP at 72, 73, 76-77.

Mann testified that during this third investigation, she was finally able to make contact with Joel Ross. IRP at 77. On August 23, 2007, Mann went to Ross's home. CP at 146; IRP at 111-112. No one answered the door, so she left her business card with a note asking that Ross call her. CP at 146; IRP at 112-113. On October 5, 2007, Mann sent a registered letter to Ross advising him that APS was investigating allegations he financially exploited I.G. and again asking that he contact her; she still received no response. CP at 146; IRP at 113-14. On

October 17, 2007, Mann again went, unannounced, to Ross's house where she was finally able to speak to him. CP at 146. Ross agreed to meet with Mann the following Tuesday. CP at 146.

In the meantime, Mann discovered that I.G. was delinquent in making the payments for a loan against her home that she took out in 2006. CP at 146; 1RP at 102-03. I.G. gave \$35,000 of the proceeds from the loan to Ross. 1RP at 46-47, 102. Although the loan was only ten months old, I.G. was already seven months delinquent in making payments. 1RP at 40, 103. I.G. had also received notice that she was at risk of having her home foreclosed upon. 1RP at 288. Additionally, Mann learned that I.G. had not paid her property taxes in two years, which caused her to lose her senior property tax exemption status. CP at 146; 1RP at 103. Betty Johnson reported to Mann that she had gone through I.G.'s bank records and discovered that her mother had been writing checks to Joel Ross since July 2003. CP at 146.

On October 23, 2007, Rhodora Mann interviewed Ross at the APS office. CP at 147; 1RP at 114. Mann testified that she took notes during the interview and put some of Ross's statements into quotes for her report. 1RP at 114-115. Ross said he and I.G. became close because "she has nobody to talk to" and that neither of her daughters visited more than twice a year. CP at 147. He claimed that he tried to meet with I.G.'s

daughters, making many attempts to contact them. *Id.* He then said, “I’m sure I tried to call Betty once”. *Id.* Ross said that if APS wanted to investigate exploitation, it should investigate Betty Johnson for “getting power of attorney and taking over all [I.G.’s] money against her will”. *Id.*

During the interview, Ross first said that he visited I.G. every weekend and was always cleaning her place for her, but later said he was so busy with school and work that he did not have time to keep her place clean for her. CP at 147. He told Mann that I.G. received a lot of phone and mail solicitations, and that “she was gullible to them.” CP at 147; 1RP at 121. He claimed he warned her about “scammers” and people trying to get access to her money. 1RP at 121. As the interview with APS progressed, Ross became more defensive. CP at 147. Mann testified that Ross got nervous and was not forthcoming with information. 1RP at 118.

When Mann asked Ross about the money he received from I.G., he said “she made me take it,” and that it was a loan. 1RP at 119. When asked if he kept records of the money so he could pay back the “loan” Ross never answered the question. 1RP at 119-120. He just repeated that he never asked I.G. for the money. *Id.* When asked when he last took money from I.G., he replied “It’s been at least a year, maybe last summer.” CP at 147; 1RP at 120. When asked for clarification, Ross said “Maybe July of 2006 . . . I’m sure I haven’t taken any money from [I.G.]

for over a year.” CP at 147; 1RP at 120. In fact, records obtained by APS showed he had accepted money from I.G. just a few weeks prior to the interview, including a check for \$700 on August 3, 2007. CP at 149. Mann attempted to show Ross copies of the cancelled checks that she had received from I.G.’s daughter, Betty Johnson, but that he did not seem interested in looking at them. CP at 147.

Joel Ross admitted that he used the checks given to him by I.G. to pay for his rent, tuition, and books. CP at 148. Mann asked if he knew anything about a \$40,000.00 loan that I.G. took out against her house, but he said he did not know anything about it. CP at 148; 1RP at 122. Mann told Ross that she knew that after receiving the loan proceeds, I.G. wrote him a check for \$35,000.00. CP at 148. Mann showed him a copy of that check with his signature on the back. CP at 148; 1RP at 122. Ross would not confirm that the check bore his signature. CP at 148. Mann then informed Ross that she had documents which confirmed that he deposited the check into his joint account with I.G. and then took out a cashiers check for \$35,000 payable to himself. CP at 148. She asked him what he did with the cashier’s check. *Id.* Ross “seemed to get fidgety and flustered,” and that he told Mann “I don’t know. You’ll have to ask [I.G.] that.” CP at 148; 1RP at 122. The administrative law judge also found

Joel Ross' later testimony regarding the money he took from I.G. to be not credible. CP at 44 (FF 42).

On November 8, 2007, Rhodora Mann met again with I.G. at the nursing facility where she was residing. CP at 150; 1RP at 126. I.G. did not remember meeting Mann previously. *Id.* I.G. appeared very frail and her hearing was so impaired that Mann had to talk right into I.G.'s ear. 1RP at 127. I.G. did not know what month it was. CP at 150. When Mann asked I.G. why she took out the \$40,000 loan, I.G. said that she wanted the money for Joel Ross, to help him with school. CP at 150, 1RP at 127. Ross had told I.G. how difficult his life was with having to work while going to school. CP at 37 (FF 6). I.G. told Mann that Ross's parents couldn't help him and that his father had remarried and was unable to help him. 1RP at 128. When asked what Ross was going to school for, I.G. replied he was going to be a doctor. CP at 150. Mann told I.G. she thought \$35,000 was a lot of money and I.G. responded, "I know, books and gas and food and rent, it's all so expensive; I'm not the only one he's gotten money from." *Id.* Mann asked I.G. who else Joel Ross had taken money from but I.G. said, "I'm not going to give you their names". CP at 150; 1RP at 131.

I.G. told Mann that Joel Ross helped her apply for the loan because she can't see very well and can't hear on the phone. CP at 150; 1RP at

128. Mann testified that I.G. could not remember filling out any paper work and she could not remember the name of the mortgage company. 1RP at 129. I.G. told her daughter, Betty Johnson that “she would not have been able to complete the [loan] process if it hadn’t been for Joel. He had been so helpful.” 1RP at 289. The loan Joel Ross was “helpful” in getting, left I.G. owing more than \$40,000, plus \$5,000 in fees at an interest rate of 11%. 1RP at 320. The loan also had a prepayment penalty that was signed by I.G. which was notarized by a notary. 1RP at 322.

Rhodora Mann testified that I.G. told her Joel Ross was worried about what I.G.’s family would say about the money she gave him, and that Ross had talked to a lawyer about taking the money to make sure he couldn’t get into trouble. 1RP at 129. Mann testified that she asked I.G. whether she was current on her mortgage payments for this new loan, but I.G. would not respond. 1RP at 130-131. The mortgage payments for the loan would have equaled nearly all of I.G.’s pension money if she had been making them. 1RP at 290. I.G. reported that she believed Ross would pay her back someday and that it would “all work out.” CP at 150. Ross has not paid back any of the money he took from I.G., a fact that is not in dispute. 1RP at 289.

During her investigation, Rhodora Mann discovered that I.G. received social security benefits of \$961.00 per month. CP at 150. She

also receives a small pension that brings her total monthly income to less than \$1,500.00 per month. CP at 36 (FF 3). During the course of the third APS investigation, Mann learned that I.G. had previously always been very responsible with her money, never had any financial problems, and had owed no mortgage on her home before taking out the loan for Joel Ross. 1RP at 143; CP 36 (FF 3). I.G.'s daughter, Betty Johnson, testified that her mother would not talk about Joel Ross because Betty was not "real happy about the situation or with him" and that her mother didn't like the things that Betty said about it. 1RP at 262. Johnson testified that both her and her sister, Elaine, were "being asked by my mother to send her money for this and for that because she was short of money." 1RP at 262. They discovered that I.G. was getting notices from the bank about being overdrawn. 1RP at 262.

Ms. Johnson testified that I.G. became secretive and even lied to her family about her money. 1RP at 268. Johnson discovered bills that indicated that I.G. had bought Ross a phone and was paying his phone bill. 1RP at 269. When confronted about giving away her money to Ross, I.G. would say that she wasn't doing it anymore, but then would continue to give him money. 1RP at 270. Johnson testified that during the time I.G. was giving her money to Ross, she was not paying her own bills, had lost her senior tax exemption for her property taxes, had lost her own long

distance phone service, had lost her cable, had no television, and had received threats to have her water and gas shut off. 1RP at 273. Johnson testified that I.G. did not have that much income to begin with, and certainly could not afford to give away what she did have to Ross. 1RP at 273.

Johnson testified that prior to meeting Joel Ross, her mother had never had a friendship like the one that she quickly developed with Ross. 1RP at 307. Johnson testified that, prior to meeting Ross, it was not common for I.G. to give her money away to anyone, because she didn't have money to give. 1RP at 274. Johnson testified that prior to meeting Ross, I.G. had not ever purchased a phone for any body, or offered to pay anyone's phone bills. 1RP at 297. I.G. had never loaned anyone money, and never attempted to take equity out of her house before. 1RP at 297. Johnson testified that in December 2004, she noticed a change in the way I.G. was handling her finances noting that she had found stacks of unpaid bills in the home going back several months. 1RP at 276. She testified that this was out of character for her mother. *Id.* Johnson also explained that, prior to meeting Joel Ross, I.G. had been able to manage to pay her bills, had not received the non-sufficient funds notices from the banks, and had not received the shut-off notices from the utilities that she began to get after meeting Ross. 1RP at 274.

At the conclusion of her investigation, Rhodora Mann found that Joel Ross unduly influenced I.G. and caused I.G. to act in a way that was inconsistent with her past relevant behavior regarding her finances. 1RP at 143. Mann's investigation showed that Ross's actions caused I.G. to be overdrawn at her bank, fail to pay her bills, and fail to pay her taxes; I.G. did not receive any profit or advantage from Ross's actions, and that he did not use I.G.'s money to help her in any way. 1RP at 144, 250.

During the course of the third APS investigation, Mann also reviewed I.G.'s medical records which showed that I.G. was diagnosed with dementia in December 2004. CP at 160. At the time, I.G. had been admitted to Alderwood Park Convalescent Center for 25 days after falling in her home fracturing her coccyx. CP at 160-161. In addition to dementia and short term memory loss, as of December 2004, I.G. was also diagnosed as having congestive heart failure, urinary incontinence, osteoporosis, degenerative joint disease, diabetes, chronic hypertension and a lumbar fracture among other things. CP at 161; 1RP at 209. On November 30, 2004, I.G. was seen by Dr. C. Covert-Bowlds who also diagnosed her with dementia. CP at 163. On March 11, 2006, Dr. Covert-Bowlds examined I.G. again and noted ongoing dementia, diabetes and skin ulcers. CP at 167-168. Prior to her most recent admission to a skilled nursing facility, I.G. had been admitted to a nursing facility on at least two

other separate occasions, for 25 days in 2004 and for 4 days in 2006. 1RP at 204.

V. ARGUMENT

A. Standard Of Review

Under the Administrative Procedure Act (“APA”), Joel Ross bears the burden of demonstrating the invalidity of the Final Order. RCW 34.05.570(1)(a); *Hillis v. Dep’t of Ecology*, 131 Wn.2d 373, 381, 932 P.2d 139 (1997). The Court of Appeals stands in the same position as the superior court and reviews the Final Order by applying the Administrative Procedure Act (APA) standards directly to the agency record. On review, a court may grant relief of an administrative decision only if the party challenging the agency’s final order shows: (1) the agency erroneously interpreted or applied the law; (2) the decision is not based on substantial evidence; or (3) the decision is arbitrary or capricious. RCW 34.05.570(3); *Tapper v. Employment Sec. Dep’t*, 122 Wash.2d 397, 402, 858 P.2d 494 (1993). An administrative agency cannot be said to have acted in an arbitrary or capricious manner if the action is exercised honestly upon due consideration, even though there may be room for two opinions or even though one may believe that conclusion to be erroneous. *Dupont-Ft. Lewis Sch. Dist. No. 7 v. Bruno*, 79 Wn.2d 736, 739, 489 P.2d 171 (1971); *Trucano v. Dep’t of Labor & Indus.*, 36 Wn.App. 758, 761-

762, 677 P.2d 770 (1984). See also *Pierce Cy. Sheriff v. Civil Serv. Comm'n of Pierce Cy.*, 98 Wn.2d 690, 695, 658 P.2d 648 (1983).

The Court reviews de novo both the agency's conclusions of law and its application of the law to the facts. *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 402-03, 858 P.2d 494 (1993); *Terry v. Emp't Sec. Dep't*, 82 Wn. App. 745, 746, 919 P.2d 111 (1996). However, the Court accords weight to the agency's view of the law it administers. *Postema v. Pollution Control Hearings Bd.*, 142 Wash.2d 68, 77, 11 P.3d 726 (2000); *William Dickson Co. v. Puget Sound Air Pollution Control Agency*, 81 Wash.App. 403, 411, 914 P.2d 750 (1996). The Court's review is confined to the record before the administrative law judge and board. RCW 34.05.558; *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wash.2d 568, 587, 90 P.3d 659 (2004).

Factual findings made by the administrative law judge are sustained if they are supported by substantial evidence "when viewed in light of the whole record before the court." *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 607, 903 P.2d 433 (1995). Substantial evidence is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order." *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hrg's Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998) (citation omitted).

The Court can modify conclusions of law if the agency's review judge "erroneously interpreted or applied the law." RCW 34.05.570(3)(d); *Heinmiller*, 127 Wn.2d at 601. The Court may substitute its judgment for that of the reviewing officer, but must accord substantial weight to the agency's interpretations of the law within its area of special expertise. *Macey v. Dep't of Empl. Sec.*, 110 Wn.2d 308, 313, 752 P.2d 372 (1988).

Additionally, the Court may not weigh witness credibility or substitute its judgment for the agency's findings of fact on credibility. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wash.2d 568, 588, 90 P.3d 659 (2004). RCW 34.05.464(4) requires the reviewing court to give "due regard" to the administrative law judge's opportunity to observe the witnesses. *Kabbae v. Dep't of Social and Health Services*, 144 Wash.App. 432, 444, 192 P.3d 903 (2008). The reviewing court must accept the fact finder's views regarding the credibility of witnesses. *Costanich v. Dep't of Social and Health Services*, 138 Wn.App. 547, 556, 156 P.3d 232 (2007).

B. The Abuse of Vulnerable Adults Act

The Abuse of Vulnerable Adults Act (AVA), chapter 74.34 RCW, requires the Department to investigate allegations of abandonment, abuse, exploitation and neglect of vulnerable adults. A "vulnerable adult" is a

person age 60 or over, lacking the functional, mental, or physical ability to care for himself or herself. RCW 74.34.020(15).

The Legislature adopted the AVA to protect vulnerable adults from abuse, financial exploitation and neglect. Chapter 74.34 RCW; *Kabbae v. Dep't of Social and Health Services*, 144 Wash.App. 432, 443, 192 P.3d 903 (2008); *Schumacher v. Williams*, 107 Wash.App. 793, 795, 28 P.3d 792 (2001).

If the Department concludes that an allegation of exploitation is founded on a more likely than not basis, the Department notifies the perpetrator of the finding and the right to contest the finding in an administrative hearing. See WAC 388-71-0100 – 388-71-01280. At the conclusion of the administrative hearing, either the perpetrator or the Department may request administrative review of the initial order by the DSHS Board of Appeals. WAC 388-71-01265. The Board of Appeals' decision is the final decision of DSHS. WAC 388-71-01275(3). DSHS uses final findings to review the background of persons applying for licenses to operate care facilities serving vulnerable adults, persons who seek to work in such facilities who will have unsupervised access to vulnerable adults, and persons who seek to contract with DSHS to provide in-home care to Medicaid clients. The findings are not criminal citations,

nor do they automatically impair or impact a professional license or certification.

C. There is Substantial Evidence in the Record to Support the Finding that I.G. Met the Definition of Vulnerable Adult.

RCW 74.34.020(16) defines a vulnerable adult to include a person who is:

- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (b) Found incapacitated under chapter 11.88 RCW; or
- (c) Who has a developmental disability as defined under RCW 71A.10.020; or
- (d) Admitted to any facility; or
- (e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (f) Receiving services from an individual provider.

Id. Additionally, RCW 74.34.021 defines a vulnerable adult to include persons receiving services from any individual who, for compensation, serves as a personal aide to a person who self-directs his or her own care in his or her home. *Id.*

The Review Judge found that I.G. met the definition of a vulnerable adult. Finding of Fact 41 states:

The ALJ found, and the undersigned concurs, by a preponderance of the evidence that I.G.⁵ met the definition of a vulnerable adult not later than the beginning of 2006 and has been a vulnerable adult continuously since that time.

⁵ In the Review Decision and Final Order, Review Judge James Conant also refers to I.G. by her initials "I.G." to maintain her confidentiality.

CP at 44. On appeal by Joel Ross from the Initial Decision, the Review Judge addressed Ross's assertions that Finding of Fact 41 was not supported by substantial evidence:

The Appellant challenges Finding of Fact 41, arguing that I.G. was not a vulnerable adult as defined in the relevant statute during the period of time he was accused of exploiting her. The Appellant asserts that no proof was provided that I.G. suffered from dementia during the period at issue in this case. The evidence in the hearing record shows I.G. suffered from a myriad of medical afflictions, including dementia and total incontinence of bowel and bladder, which affected her ability to care for herself as early as December 1, 2004. Specifically, a physician entered a primary diagnosis of dementia for I.G. on March 11, 2006, well within the period the Appellant accepted money from I.G. The statute defines "vulnerable adult" to include a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. During the period of time at issue in this case, I.G. was over the age of sixty and was, to sum degree, functionally unable to care for herself due to a number of medical conditions including dementia. The fact that she did survive on her own for periods of times does not prove she was functionally able to care for herself. The fact that she was failing to meet her monthly financial obligations and was failing to keep an acceptably clean abode is evidence of her inability to functionally care for herself. During the period at issue in this case, I.G. was a vulnerable adult as defined by the statute and is entitled to the protections defined therein.

CP at 47.

The Review Decision and Final Order is correct. I.G. met the definition of a vulnerable adult while she was being exploited by Joel

Ross. She was over the age of 60, and lacked the functional, mental and physical ability to care for herself. She was falling down in her home on more than one occasion beginning in December of 2004. CP at 311, 330. When falling, she would lie for hours alone on her floor. CP at 329-330. She was also failing to procure and take her prescribed medications for over a month. IRP at 223. She was failing to see her doctors. CP at 329-330. She was failing to keep herself and her home clean. CP at 315, 329-330; IRP at 276. Her home became unlivable. IRP at 276. She was refusing help. IRP at 283. She was hard of hearing and could not see well. CP at 150; IRP at 127-128. She was isolating herself from her family. CP at 315; IRP at 268. She had memory loss and cognitive problems. CP at 315, 145; IRP at 282. She couldn't recall recent events or conversations. CP at 315. She couldn't identify what month it was. CP at 150. She didn't know the name of her bank or her mortgage company. CP at 145, 329; IRP at 129. She frequently wouldn't recognize people including her social workers and daughter. CP at 150, 315, 330; IRP at 126. She was failing to pay her bills and incurring overdraft charges. CP at 315; IRP at 262, 267, 273, 276. She had utilities shut off and utilities being threatened to be shut off. IRP at 273-274. She lost her senior tax exemption and was at risk of losing her home to foreclosure. IRP at 273. She was incontinent of bowel and bladder. IRP at 277. She had been diagnosed with multiple medical

afflictions including dementia as early as December 1, 2004. CP at 160, 161, 163, 167, 168; 1RP at 209. She had been in and out of nursing care facilities on three separate occasions. CP at 160, 161, 315; 1RP at 204.

Substantial evidence supports the finding that I.G. was a vulnerable adult within the meaning of the statute. In fact, I.G. is the exact person the Legislature had in mind when it enacted Chapter 74.34 RCW to protect vulnerable adults from abuse.

D. There is Substantial Evidence in the Record to Support the Finding that Joel Ross Financially Exploited a Vulnerable Adult.

RCW 74.34.020(6) defines financial exploitation to mean, “the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.” *Id.*

The Review Judge concluded that Joel Ross financially exploited I.G., a vulnerable adult. Conclusion of Law 10, in relevant part, finds:

By his own testimony at hearing and his statements to the Department investigator, the Appellant admits that he used I.G.'s funds for his own benefit on more than (sic) one occasion. [...] The Appellant accepted literally thousands of dollars from an elderly woman who was not independently wealthy nor could be assumed to be independently wealthy based on her modest living accommodations. Even if the Appellant was not aware of I.G.'s actual monthly financial resources, the fact the Appellant was involved in procuring the home loan for I.G. is evidence that he was aware of her limited financial

resources. As well meaning as the Appellant may have been in initially befriending I.G., he seriously compromised this relationship when he accepted and used thousands of dollars from I.G. for his own benefit, especially when he made no real attempts to repay the funds in a timely manner. [...] The ALJ found the Appellant's explanations for what he did as lacking in credibility. The Appellant's concessions that he did receive, and use for his own benefit, thousands of dollars from I.G. under the circumstances found to exist by the ALJ provided an appropriate basis to conclude such actions were improper and constituted financial exploitation.

CP at 49-50.

The Final Order is correct. Joel Ross improperly took no less than \$80,000.00 from a vulnerable adult whose only asset was her home and her sole monthly income totaled less than \$1,500.00 per month. CP at 36 & 37. I.G. had, at best, a modest income, and after meeting Joel Ross and giving him money, she was not able to meet her own financial needs. She was failing to pay her bills and incurring overdraft charges. CP at 315; 1RP at 262, 267, 273, 276. She had utilities shut off and utilities being threatened to be shut off. 1RP at 273-274. She lost her senior tax exemption and was at risk of losing her home to foreclosure. 1RP at 273. Moreover, she encumbered her home which had previously been paid off in order to give Joel Ross even more money. CP at 150. This mortgage left I.G. unable to make the payments on a very unfavorable loan that had

\$5,000.00 in fees, was at an 11% interest rate, and had a prepayment penalty. 1RP at 320, 322.

Joel Ross himself testified that at no time did he question whether it was appropriate for him to be taking this much money from I.G.. 2RP at 10. Joel Ross testified he never asked I.G. what her income level was or inquire about the extent of her assets. 2RP at 11. In fact, Joel Ross's actions resulted in considerable hardship to I.G.. Joel Ross knew his actions were improper. He told I.G. he was concerned what her family would think and that he had gone to talk to a lawyer about whether he could get into trouble. 1RP at 129.

Joel Ross avoided the Department's attempts to contact him for years and when he finally spoke to the investigator, he was not cooperative. He lied to the investigator and stated he did not know anything about the loan I.G. took against her home and that he had not taken money from I.G. in over a year. In fact, he had assisted her in getting the loan and had also taken \$700.00 from her just a few weeks before that very interview. CP at 147-149; 1RP at 120-122. Further, the ALJ also found Joel Ross's testimony on that subject not to be credible. CP at 44; FF 42.

Substantial evidence supports the finding that Joel Ross financially exploited I.G., a vulnerable adult.

E. There is Substantial Evidence in the Record to Support the Finding that Joel Ross Personally Exploited a Vulnerable Adult.

RCW 74.34.020(2)(d) defines personal exploitation, in relevant part, as follows:

(2) "Abuse" means the willful action or inaction that inflicts injury, [...] on a vulnerable adult. [...] Abuse includes [...] exploitation of a vulnerable adult, which has the following meanings:

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

Id.

The Review Judge concluded that Joel Ross personally exploited

I.G., a vulnerable adult:

The preponderance of the evidence in the hearing record supports the finding that I.G. did not have a history of expending considerable sums of money on others, especially non-family members. I.G.'s actions in giving the Appellant a considerable sum of money over time was inconsistent with her past behavior. The Appellant's argument that this was only because she had not experienced a relationship or friendship like theirs is not particularly convincing. The Appellant concedes that I.G. was somewhat gullible when it came to phone solicitations. The Appellant knew or should have recognized that I.G. was elderly, socially isolated, and susceptible to the attentions and affections of a considerably younger male who offered friendship, attention, and assistance. The Appellant's fostering this relationship/friendship to a point where I.G. was willing to give him money well in excess of her financial means is evidence of the undue influence

exercised by the Appellant over I.G. The Appellant was the less vulnerable party to the relationship and should have politely declined any offers of financial assistance or, at the very least, fully informed and involved I.G.'s family or attorney in the decision making process before accepting such substantial sums of financial assistance. The Appellant's actions in this case towards I.G. did constitute personal exploitation as defined under RCW 74.34.020(2)(d).

CP at 50-51.

The Final Order is correct. Joel Ross personally exploited I.G., a vulnerable adult. Joel Ross exerted undue influence over I.G. causing her to act in a way that was very inconsistent with her relevant past behavior, and in a way that benefited Joel Ross alone.

I.G. was an easy target to exert undue influence on. She was lonely and alone. 1RP at 27. I.G. had been widowed for 25 years. 1RP at 267. Her sister had move out of their home and was in a nursing home. 1RP at 23. Her two daughters both lived a long distance away. 1RP at 26. I.G. wanted Joel Ross to move in with her to help care for her and Joel Ross told her that he would "realistically consider" it "upon the completion" of his degree. 1RP at 52. Joel Ross told I.G. of his lofty aspirations of becoming a doctor. CP at 145, 316, 329. Joel Ross complained to I.G. about how hard it was to work and go to school, and how expensive school was. CP at 324, 150.

Joel Ross unduly influenced I.G. by showering her with affections and giving her cards with a hand written notes such as, "I.G., you are always on my mind. I'm terribly sorry (sic) for being so busy all the time. I love you and you look great. Thanx (sic) for putting up with me. – Joel" and another that read "I love you. Thank you for being in my life. – Joel". CP at 271, 275; 1RP at 279. He would visit I.G. at her nursing home at night after hours, bringing her flowers. CP at 144. I.G. acknowledged being confused about her relationship with Joel Ross and asking him whether or not it was romantic in nature. CP at 316. I.G. stated that she had "never met a man that has treated me with more respect." CP at 316. The Department social worker found I.G. to be "quite infatuated with Joel." 1RP at 98. I.G.'s daughter testified she believed that in her mother's mind there was a romantic relationship between her and Joel Ross, so much so that I.G. refused to believe that Joel Ross had been found guilty of theft in the third degree on March 21, 2002 in an unrelated matter. 1RP at 282; CP at 42, FF 36.

Joel Ross told the APS investigator, Ms. Mann, during the course of the interview that I.G. was "gullible" to phone and mail solicitors. CP at 147; 1RP at 121. In fact, he influenced her and prompted her through the mortgage loan process on her home. I.G. stated, "she would not have been

able to complete the [loan] process if it hadn't been for Joel. He had been so helpful." 1RP at 289.

After meeting Joel, I.G. began to act in a way that was very inconsistent with her past relevant behaviors and plainly for the benefit of Joel Ross alone. It was not common for I.G. to give her money away to anyone. 1RP at 274. I.G. had not ever purchased a phone for any body, or offered to pay anyone's phone bills. 1RP at 297. She had also not ever loaned anyone money, or ever attempted to take equity out of her house before. 1RP at 297. I.G. began accumulating stacks of unpaid bills in the home going back several months. 1RP at 276. I.G. had previously been able to manage to pay her bills and had not been getting the non-sufficient funds notices from the banks and the shut-off notices from the utilities. 1RP at 274.

Substantial evidence supports the finding that Joel Ross personally exploited a vulnerable adult by exerting undue influence over her, causing her to act in a way that was very inconsistent with her relevant past behavior, and in order to benefit him alone.

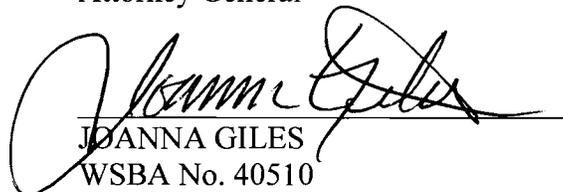
VI. CONCLUSION

I.G. was a vulnerable adult of exactly the description the legislature has sought to protect. She suffered from dementia and lacked the functional, mental, and physical ability to care for herself. Substantial

evidence shows that Joel Ross took advantage of I.G.'s vulnerable condition, and exploited her financially and personally solely for his own financial benefit. His lies to the APS investigator demonstrate his own awareness of his inappropriate and exploitative actions. The Department respectfully requests that this Court reverse the Superior Court and affirm the Agency's Final Order finding that Joel Ross financially exploited and personally exploited a vulnerable adult.

RESPECTFULLY SUBMITTED this 7 day of December,
2010.

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**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Appellant,

v.

JOEL ROSS,

Respondent.

DECLARATION OF
SERVICE

I affirm under penalty of perjury of the laws of the State of Washington that the following is true and correct to my best knowledge and belief:

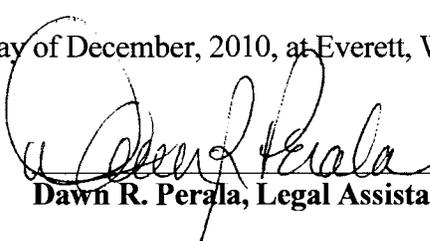
1. My name is Dawn R. Perala and I am employed as a legal assistant for counsel for Appellant.

2. On **December 7, 2010**, I sent via legal messenger and/or regular mail postage paid a true and accurate copy of Brief of Appellant to the following persons:

Court of Appeals, Division I
One Union Square
600 University Street
Seattle, WA 98101

Joel Ross
2401 Orleans St. #1
Bellingham, WA 98229

DATED this 7th day of December, 2010, at Everett, Washington.


Dawn R. Perala, Legal Assistant

