NO. 95346-5

.....

SUPREME COURT OF THE STATE OF WASHINGTON

.....

DEOIDE LEA CUNNINGHAM, appellant,

V.

DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent.

.....

RESPONSE TO RESPONDENTS ANSWER ON EMERGENCY MOTIONS

.....

Deoid'e Lea Cunningham, appellant

Karl Ivan Olson significant other 28 years

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STATUTES, RULES & OTHER AUTHORITIES

I. INTRODUCTION

1. This is a response to the response from the AAG who is in disagreement with our motions for exhaustion of administrative remedies, discovery paragraph 6 and our emergency motion request. The AAG was properly served per service rules, Deoide's motions are appropriate under RAP 13.4(b), RAP 13.4(b)(1)(2), RAP 9.10, RAP 9.11 and RCW 34.05.562(1)-(d) and also under RAP 17.4. (b) While supporting RCW 34.05.534(3)(a)(b)(c) with support for RCW 34.05.526. The court will benefit from accepting these motions on an emergent basis in our opinion; which is why we ask the court to approve Deoide's motions and strike the AAG response.

II. IDENTITY OF THE MOVING PARTY

2. The petitioner is Ms. Deoid'e Lea Cunningham assisted by Karl Ivan Olson her significant other and personal caregiver of 28 years.

III. COUNTERSTATEMNT OF RESPONSE

3. Whether the court should grant Deoide's emergency motions

IV. ARGUMENT WHY THE RESPONSE SHOULD BE DENIED AND MOTIONS ACCEPTED.

4. ISSUES OF NON COMPLIANCE WITH SERVICE ALLEGATIONS

We disagree with the respondent response. Service was completed with compliance, however as courtesy to the AAG, She was provided the same Fed Ex

delivery as the court so she would have delivery the same day, but to save money her additional copy that goes to where or whom we do not know, or if this is even a person was mailed a standard parcel other than Fed Ex. I do not believe that this violates compliance and I would like to go on the record that this has never occurred before. Previously we were required to mail copies to three parties , AAG Meader who suddenly withdrew, AAG Krieger current counsel and SOC & Health SRVC AG who we have no idea is. We will continue to follow the rules, with same day service as we always have but we will serve the AAG her two copies by the exact same delivery service next time, which really makes no difference.

5. ISSUE OF NEW EVIDENCE

We disagree with the AAG; The Court of appeals already decided this issue when it administered its authority to consider evidence before this review. COA had the discretion to do so under RAP 9.10 and 9.11, RCW 34.05.562(1) – (d) which makes these issues already part of the merits on appeal, However the issue is that discovery was not made on these specific critical documents that conflict with COA opinions until after the COA provided its opinions. This discovery after those opinions allows the court to accept this evidence because it had not been discovered until after we filed out petition for review in the Supreme Court and that COA was denied an opportunity to consider it. Discovery is discovery, but this discovery is the other half of the question, COA only saw the first parts and since it erred to remand as we asked for full fact finding it is critical at this stage and especially in an emergency motion due to the fact that it will bolster Deoide's

request for review to be accepted in which it should be. Emergency motions save time and correct wrongful decisions such as the one taken against Deoid'e in 2013. Deoid'e was entitled to all her ADSA/DSHS files before the agency record was created so she could prepare an adequate defense based upon the allegations but the allegation was residency and nothing more; which is no longer at issue. The APA 34.05.570 is incomplete due to concealment and violations of due process, therefore the record cannot be limited to the deprived record which again the respondent has attempted to deprive the facts of truth from, as to deceive the courts. Deoid'e had a right to create that record in her defense which is why discovery RCW 34.05.562(1)-(d) is properly before this court. HCA has taken its own "discretionary review " for accuracy and has reversed its actions so why should The Supreme Court be denied the opportunity to conduct its own discretionary review for Deoid'e? Regardless of the respondents response Deoid'e will and should have a review simply as or right RCW 34.05.526 which provides review in COA and the Supreme Court for that one simple fact.

Deoide's right for due process under the APA process was deprived to her, she was denied an attorney, impartial decision makers and proper notice of which the issue was, and resolution on 3/18/2013 when the original action was dismissed, U.S. CONST. amend. XIV, truth was intentionally concealed from the beginning which allowed the agencies to engage in gross misconduct to deprive Deoid'e of life, liberty and property. The respondent uses the APA in response to again try and deny Deoid'e her right to correct the errors so that she will continue to face grave irreparable harm bestowed upon her by constitutional rights violations U.S.

CONST. amend. IV, U.S. CONST. amend V, U.S. CONST. amend. XIV, which in turn violates the WASH. CONST. ART. 1. SEC 2 , WASH.CONST. ART. 1. SEC 3, WASH. CONST. ART. 1. SEC 10 and WASH. CONST. ART. 1. SEC 29. The respondent continues to use appeals violations against the appellant by making a position that the lowers courts simply snuck the issues past the 21 day appeal and 52 day appeal deadlines and concealed evidence until after Judicial review which in their eyes is appropriate and that it was harmless beyond a doubt. The respondent would have this court believe that waiting until an eligibility issue to have dozens of errors arise suddenly and that it was ok to segregate continued benefits from the original appeal filed on 3/8/2013 by concealment and collusion. RCW 34.05.562 allows discovery and there is nothing in that RCW which states that the court may not take into consideration that evidence until certain points. Below lists the wrongful actions taken by HCA and allowed by the OAH which this RCW will allow the court to accept new evidence before review and this is a request for review.

RCW 34.05.562(1) – (d) clearly states that.....

New evidence taken by court or agency.

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

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

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

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

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

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

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

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

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome. The only issue listed above that is slightly different is (2)(d). The law did not change, however, HCA did reverse its position on residency after fact finding in December of 2017 which should help in controlling this outcome, there cannot be an issue of residency any longer because eligibility was proper and Deoid'e was obviously eligible as a Washington State resident at the time in question.

If the HCA may come back 9 years later and correct its actions based upon residence, then this court should be allowed to take into consideration that evidence under RCW 34.05.562(1) – (d) immediately just as HCA did to conduct its own review for this appeals accuracy which will conclude that a reversal is the only proper relief at this time. The original PAN dated 3/4/2013 and the original appeal filed legally and properly under 0109 on 3/8/2013 were dismissed which invalidates this action because the documents used (PAN dated 3/4/2013) is a duplicate, it is a copy and not the original. The court of appeals decided that the original action was upheld but if that is so then the original action must be dismissed as invalid because it was dismissed under another case even if it was concealed, this action is arguably double jeopardy. The original actions were dismissed on 3/18/2013 therefore the original action cannot be upheld to deny eligibility to Deoid'e.

6. COURT OF APPEALS CONFLICT WITH ITS OWN OPINION 13.4(b)(1)(2)

This evidence conflicts with COA opinions due to the fact that it reverses the HCA action taken on 3/4/2013. Again, discovery suspiciously after the 12/15/2017 deadline to submit a request for review should be allowed in an emergency motion because it would have likely affected the COA opinion. Discovery such as this must be considered in an emergency motion due to the fact that it is so overwhelmingly against any further remedies exhaustion to complete. When the COA took its position to make an opinion on the appeal it became part of the merits of this case therefore it should be used as part of review

determination on 4/3/2018. Any actions considered in the COA are part of this record including the position of a filed appeal under 0109 and that it was timely. COA erred by not remanding for fact finding as to why that appeal was not available the second time around in double jeopardy, which is exactly why the evidence was never made available due to concealment. The COA simply refused to publish its opinion so that it would avoid a conflict under RAP 13.4(b)(1) and (2) so that it could not be cited in our original request for review filed on 12/15/2017.

7. THE RESPONDENT DOES NOT DECIDE ORAL ARGUMENT

The respondent does not determine if this matter will be heard orally, that is the discretion of the court.

8. RCW34.05.534(3)(a)(b)(c) EXHAUSTION OF ADMINISTRATIVE REMEDIES

RCW 34.05.534(3)(a)(b)(c) is properly before this court and only this court may provide relief of the grave and irreparable harm that has been placed upon Deoid'e by HCA, DSHS, OAH and the respondent. 5 Years this month the damages continue due to concealment, due process violations and manipulation by the respondent. Deoid'e was eligible for benefits as far back as March of 2013 but DSHS/HCA concealed truth and sabotaged Deoide's entitlement to long-term care benefits under both programs such as HCS and DDA by direct communications that were not true. Only this court review may order a retroactive repair of the grave irreparable harm that the respondent has caused by defending the concealment of truth which it knew was occurring all along. The COA

accepted discovery but it was not able to decide the issues in the light of the whole record because additional discovery was not made until after its final opinion. Because COA accepted those issues they are part of the merits on appeal and the new evidence is the remaining answer which will repair the wrongful actions taken against Deoid'e.

V. CONCLUSION

Deoid'e has shown that she has properly addressed the merits on appeal and that the discovery is under the merits on appeal but that new discovery was simply not available for the COA to consider before it provided its opinions and before our motion for review on 12/15/2017. Deoid'e has complied with all the requirements listed above which is properly before the court and that she offers this to the court in her emergency motions to save the court time and to aid the court in deciding discretionary review. This court should approve her emergency motions and we ask politely that it does. We feel granting this emergency motion will prevent a gross miscarriage of justice.

Submitted with full respect as always.

Deoid'e L Cunningham

Deoid'e Lea Cunningham

Karl Ivan Olson significant other

Karl Ivan Olson

3/10/2018

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Declaration of service.

Date. 3/10/2018

I Karl Ivan Olson, certify that on 3/10/2018 I mailed true copies of the enclosed documents to all the parties listed below by USPS First Class mail.

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

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

Karl Ivan Olson