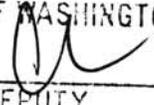


43678-7-II

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COURT OF APPEALS
DIVISION II

2012 NOV 29 PM 1:26

STATE OF WASHINGTON

BY 
DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SOUND SUPPORT, INC. and
JAMES L. and MARY ANNA N. SIBBETT,

Appellants,

vs.

STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES and its
subdivision, DIVISION OF DEVELOPMENTAL DISABILITIES,

Respondent.

REPLY BRIEF OF APPELLANTS

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ORIGINAL

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I.
INTRODUCTION

COME NOW Plaintiffs/Appellants, by and through their counsel, Jeffrey D. Stier, and submit their Reply Brief in this matter.

II.
STATEMENT OF THE CASE

This is an Appellate Reply Brief regarding the superior court's dismissal of these matters pursuant to Defendant's Motion for Summary Judgment ("MSJ") herein. First, Plaintiffs desire to summarize discovery problems that remain unresolved to the date of dismissal of these matters:

A. Defendant Exceeded the Scope of Mr. McIlhenny's September 28, 2011, Letter in Supporting this MSJ.

Defendant's lead counsel specified the documents supporting Defendant's termination of SSI's CSC for default in his September 28, 2011, letter (CP 1323-1333). Despite this Representation, Defendant relied on many unspecified documents in declarations supporting the MSJ herein. Attachment A to this Reply Brief (also at CP 1312) provides detail on this issue. This "moving target" approach by Defendant should not be allowed by this Court-i.e. portions of any declarations of offered by Defendant in support of its MSJ should be stricken to the extent they relied on documents that were not disclosed by DDD in its September 28, 2011, letter.

B. Defendant was Unable to Produce Ms. Facio for Deposition, but Relies Heavily on her Written and Photographic Input in the MSJ.

Defendant relies heavily upon written and photographic input from Anna Facio to support the MSJ. It is the position of Plaintiffs that any portion of a declaration submitted in support of this MSJ at the superior court level that relied on documents that were based on hearsay statements of, and/or photographs taken by, Ms. Facio should be disregarded. 56(e). Attachment B to this Reply Brief illustrates this issue.

C. Defendant did not Produce the Working Notes of the RCS Evaluation Team until After Ms. Rushmeier's Deposition.

On several occasions prior to the deposition of members of the August 2009 RCS Evaluation Team, Plaintiffs requested "working notes" of that team. CP 622, 668-669, 1010, 1034-1039. Defendant continued to insist that the "working notes" were included in the material it had previously produced. CP 680, 683. Later, Defendant just said it could not obtain those notes. CP 678.

Ms. Rushmeier, a member of that August 2009 RCS Evaluation Team testified on March 20, 2012, that she could not respond to many questions of Plaintiffs' counsel without reviewing the "working notes" of the RCS team. CP 1010. Finally, Plaintiffs provided the "working notes" of the August 2009 RCS Evaluation Team on March 29, 2012. *Id.*

D. Mr. Hartford, the Region 6 DDD Administrator and a key player in this matter, evaded process and avoided being deposed.

Mr. Hartford is the person that rejected the St. Andrew Acquisition, Inc. (“Aacres”) Term Sheet and is a relevant player herein. Despite that fact, Mr. Hartford evaded service of the Notice of his Deposition. CP 1004-1007, 1009, 1038. As a result, he never appeared and was never deposed prior to the MSJ, or at all.

E. Defendant Never Produced Relevant Data Despite Agreeing to Do So.

Defendant has undertaken to produce data probative to DDD’s work to Plaintiffs. CP 677, 712, 1114, 1117, 1119-20. This data is important because it is expected to prove that SSI’s conduct (e.g. the findings of RCS in its August 12, 2009, evaluation) did not compare unfavorably to the conduct of other providers. That data has not been produced to date.

**III.
SUMMARY OF RESPONSE ARGUMENTS AND
PLAINTIFFS’ COUNTERARGUMENTS**

Defendant contends case law supports the proposition that “[a]n appellate court may affirm a superior court’s summary judgment ruling on any ground the record adequately supports.” Response Brief at 20.

However, this proposition is not stated in the case law cited by Defendant. Despite Defendant's argument, the applicable standard is that summary judgment is proper where there is "no genuine issue as to any material fact" after viewing all facts and reasonable inferences most favorably to the non-movant. CR 56(c), *Korlund v. DynCorp Tri-Cities Serv's, Inc.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005).

Plaintiffs submit that there was a genuine issue of material fact as to whether SSI was in default of the CSC, and the issue should have been submitted to a jury. Plaintiffs have provided evidence controverting all "bad acts" allegedly relied on by Defendant to support termination of SSI's CSC for default. In addition thereto, investigations performed by RCS personnel close in time to Defendant's termination of SSI's CSC for default do not support the termination. Opening Brief at 12. Defendant utterly fails to mention these non-negative findings by RCS in its Response Brief. Not only could reasonable minds differ—reasonable minds (i.e., the trained and experienced minds of RCS personnel) did differ. The jury should have been allowed to consider the evidence, and determine whether termination for default was justified.

If the jury found that there were not sufficient facts to justify termination for default it should have then been allowed to assess damages

relating to Defendant's negligent investigation and intentional and/or negligent mental distress.

In the alternative, Plaintiffs submit that they were entitled to expectation damages relating to a termination for convenience, and the issue of damages relating to Defendant's refusal to consent to the assignment of the business to Aacres should have been submitted to a jury.

Defendant's argument on these latter points is that:

A. It had an unfettered right to terminate the CSC for convenience without any liability for expectation costs incurred by SSI.

B. Defendant was not under any legal obligation to approve the assignment of the business to Aacres.

IV. ARGUMENT

A. There was a genuine issue of material fact as to whether SSI was in default of the CSC, and the issue should have been submitted to a jury.

As stated above, Defendant argues that the termination for default decision should be upheld by citing a series of SSI "bad acts." Plaintiffs chose to hold back in any factual rebuttal until they could ascertain what "bad acts" Defendant was going to rely on this time.¹ That being said, Plaintiffs now will show that all significant events alleged to support

¹ Defendant having relied, in part, on other "bad acts" in MSJ argument and briefing.

Defendant's termination of SSI, as set forth in the Response Brief, are, at minimum, controverted in the record. Accordingly the issue of the "reasonableness" of the default should have been submitted to a jury.

Defendant makes the following allegations:

1. That there was no provision for Quality Control by SSI.

First of all, the material cited by Defendant on this point is just a litany of what it considers "bad acts" of SSI and does not address the issue of Quality Control ("QC") at all.

Moreover, there is no evidence in the record that a QC officer, or QC control, is even warranted or common amongst providers, or required by the subject CSC or by any WAC provision.

Mr. Sibbett testified clearly that QC has been addressed in SSI's structure. CP 316-319.

2. That the events all occurred after July 2, 2009.

Defendant has cleverly implied that all of the SSI "bad acts" occurred after July 2, 2009. However, many of these acts occurred prior to the time that Defendant executed the CSC with SSI on July 2, 2009.²

At minimum, if Defendant is allowed to use the "bad acts" relied upon in its Response Brief to support its termination for default, the jury,

² And the RCS certification evaluation on August 10-12, 2009, did not cite any of the pre 7/9/09 "bad acts" (or, post 7/2/09 "bad acts" cited by Defendant in its Response Brief, for that matter).

not Defendant, should be the one to decide whether such acts formed a reasonable basis for termination for default.

Defendant attempts to circumvent the point that the July 2, 2009, CSC cut off prior allegations of malfeasance by SSI by arguing that the July 2, 2009, CSC was an “automatic renewal.” Response Brief at 6. As such, Defendant apparently contends that the terms of the CSC are binding on SSI, but apparently not on DDD. This argument is disingenuous for more than one reason:

a. The recertification was for two (2) years (WAC 388-101-3110, CP 744), so SSI would not be subject to an RCS certification analysis for another year. Were it not for Ms. Pesci’s call for a special certification review (CP 220, 744), there would not have been one in 2009. Due to that reality, one of the central premises of the Response Brief is gutted, that “automatic renewal” would allow for “certification [to be] addressed.”

b. The CSC made no mention that it was an “automatic renewal”- i.e. not binding upon DDD-in any of its provisions.

3. That SSI inadequately dealt with the suicidal ideation of BV.

The Response Brief at 9 went on to support the termination for default by B.V.’s suicide note in November 2008, and the reaction of SSI Staff to that note.

First of all, these facts were pre-empted by the July 2, 2009, CSC, and were not raised to RCS for its investigation and evaluations in the summer of 2009.

In the alternative, Mr. Sibbett candidly admitted that the actions of Ms. Beecher and Mr. Manix (the team leader) departed from SSI policy. CP 206-226. Mr. Manix and Ms. Beecher were disciplined as a result of this incident. CP 378. What more can an employer do when its employees ignore the policies of that employer? If there was a flaw in training, it was not cited in the record, nor addressed by RCS in its August 12, 2009, evaluation findings.

4. That SSI inadequately dealt with a mice infestation at JS's home.

In its Response Brief at 9 Defendant cites SSI's handling of a "mice infestation" in a client's home in the Spring of 2009, as a "bad act" of SSI.

First of all, these facts were pre-empted by the July 2, 2009, CSC, and were not raised to RCS in its investigation and evaluations in the summer of 2009.

In the alternative, SSI has provided controverting evidence regarding the alleged "mice infestation." CP 743, 829-833.

5. That SSI inadequately dealt with the immunization records and a broken toilet of JD.

All of these events occurred prior to July 2, 2009, accordingly these facts were pre-empted by the July 2, 2009, CSC, and were not raised to RCS in its investigation and evaluations in the summer of 2009.

In the alternative, the only evidence of these allegations presented by Respondent in its MSJ is the testimony of Meredith Dennis, a non-employee of Defendant and co-owner of one of SSI's competitors, Lifeforce, despite the fact that one of Defendant's own employees, Nancy Stewart, allegedly "witnessed" both of these situations. Ms. Stewart could have easily submitted a declaration to show that these allegations were valid. She did not. Under these circumstances an inference is formed that Ms. Stewart would not back up Ms. Dennis on her allegations. *Wright v Safeway Stores*, 7 Wn.2d 341, 346, 347, 109 P.2d 542 (1941).

In addition, evidence presented through Ms. Dennis should be weighed against her admission that Lifeforce gained over \$1,000,000 in gross income by SSI going out of business. CP 1097.

SSI should be entitled to have a jury review these issues as Ms. Stewart's report(s) on these subjects were never offered, Ms. Dennis was so biased, and the issues were never brought up at all to RCS.

6. That SSI inadequately dealt with the physical and personal environment and cleanliness of KG.

The responses on this issue are contained in CP 733-735, 780-801, 1189-1190, 1195-1296. Those responses state that K.G. was a very difficult autistic client. Due to her tendencies, restrictive procedures were used to protect her from herself. A restrictive procedure is, essentially, anything the provider agency does that intrudes upon a Client's "personal space" for the protection of that Client. In the case of K.G., SSI was operating under a Positive Behavior Support Plan (PBSP) originally authored on November 9, 2005, by a Dr. Morasky (a DDD Psychologist) in apparent compliance with DDD Policies for restrictive procedures. That PBSP was approved by K.G.'s original case manager, Dick Jennings, and her guardian. That PBSP was updated by SSI's Client Services Manager ("CSM"). CP 794-800.

K.G.'s PBSP was well known to DDD staff. In fact, Aimee Kile, a DDD psychologist, did not object to the terms of K.G.'s PBSP as recently as June 30, 2009. CP 801. However, for some reason Defendant felt that K.G. was somehow being harmed by SSI's conduct.

On July 17, 2009, DDD's Beth Fee-Kreibel and Lonnie Keesee conducted a home visit at K.G.'s home.³ Comments at that home visit

³ Ms. Fee-Kreibel researched the restrictive procedure rules before that home visit. CP 734, 802.

centered on KG's access to food. The caseworkers called a complaint into RCS.

On July 20, 2009, Mr. Dubble sent an e-mail to DDD objecting to the conduct (anger) and demands (unreasonable and contrary to the PBSP) of Fee-Kreibel/Keesee at their home visit. CP 500-501.

On July 22, 2009, Nancy Pesci, Field Administrator for Region 6 of DDD (and de facto head of Region 6), visited the home. Ms. Pesci made allegations regarding the stark⁴ condition in K.G.'s house. Mr. Sibbett admitted that the house was rather "stark," but, this was necessary, because K.G. generally threw out anything that would make the residence more "homey." CP 735, 808-810.

Eventually the abuse and neglect investigation resulted in a finding, composed by Mr. Jim Tarr of RCS,⁵ that there was no abuse and neglect of K.G, (CP 621, 642) concluding that:

The AV [alleged victim, i.e. K.G.] had a plan originally provided by a DDD psychologist and signed by AV's legal guardian to restrict access to some food items and cleaning supplies due to health and safety concerns. ***The AV did not go without food.*** The AV would flush items down the toilet, throw garbage, dispose of edible food, damage property and ingest raw or undercooked food. ***The current provider [SSI] did not have to make any repairs to the AV's home for safety reasons.***

⁴ But clean. CP 735, 808-810.

⁵ An investigation requested by Ms. Pesci herself. CP 737-738, 817.

(Emphasis added)

Ms. Pesci further alleged that KG's home was poorly maintained, having dirty carpets, linoleum turning up, and garbage outside and on the roof. These allegations were controverted by Mr. Sibbett. CP 733, 1189.

Ms. Pesci also made allegations regarding K.G.'s poor personal hygiene. Mr. Sibbett openly acknowledged that K.G. did have hygiene issues. CP 1190. That is why the Staff Log documented in detail Staff's efforts to encourage K.G. to shower/bathe, comb her hair, and wear clean clothes. CP 1190, 1196-1296.

Finally, Defendant contends that the observations of K.G. and her home were corroborated by Meredith Dennis, co-owner of one of SSI's competitors, Lifeforce. Once again, any corroboration by Ms. Dennis should be tempered by her admission in her deposition that Lifeforce gained over \$1,000,000 in gross income by SSI being forced out of business by Defendant. (See §IV.A.5 above and CP 1097).

SSI should be entitled to have a jury review of Ms. Dennis' bias, Mr. Sibbett's controversions of the alleged facts, and the fact that Mr. Tarr of RCS completely exonerated Messrs. Sibbett and Dubble from charges that they "abused and neglected" K.G.

Plaintiffs' theory and belief is that Ms. Pesci had a long-standing personality conflict (at least) with Mr. Dubble. (CP 1009, 1012-1020).

This was not helped in the least by Mr. Dubble's letter of July 20, 2009, complaining about the conduct of Ms. Fee-Kreibel and Mr. Keesee on their July 17, 2009, visit to K.G.'s home CP 500-501. This personality conflict apparently incited Ms. Pesci to exaggerate the alleged "bad acts" of SSI in K.G.'s home, and elsewhere.

It is significant to note that the issue of access to K.G.'s food, heavily soiled carpet, and a locked laundry room, were still issues with her new provider, CARR, almost a year after SSI's CSC was terminated for default. CP 1174, 11854-1186. Despite these events in 2010, CARR has neither been investigated nor evaluated by DDD or RCS.

7. That SSI inadequately dealt with medications of clients.

In the Response Brief at 10 Defendant contends that SSI was out of compliance with its medication policies in April and May 2009, as well as in 2008.

All of these events occurred prior to July 2, 2009, accordingly these facts were pre-empted by the July 2, 2009, CSC, and were not raised to RCS in its investigation and evaluations in the summer of 2009.

In the alternative, without the data for other providers that Defendant had undertaken to procure, it is impossible to tell how SSI's admitted medical errors compared to the record of other, so far un-terminated providers.

Defendant mentions that RCS had found “similar medication errors” in its 2008 certification evaluation. SSI completed its corrective action and RCS was satisfied with that corrective action and no further Findings on the subject were made by RCS. CP 162-163, 180-198.

8. That SSI inadequately dealt with physical repairs to Sleater Kinney house.

Defendant is alleging that SSI ignored water leakage, wall damage, and uncovered electrical outlets at the Sleater-Kinney house. Response Brief at 10. These allegations are clearly based upon hearsay and unauthenticated photos of Ms. Facio. See Attachment B.

In the alternative, Mr. Sibbett controverted these allegations in his declaration. CP 1191.

Finally, these allegations never rose to the level of being included in an “incident report” and RCS never investigated the allegations.

9. That SSI kept HS caged up.

Ms. Fee-Kreibel contended in her declaration that HS was caged in his garage by a fence. First of all, the photos of the situation were all taken by Ms. Facio (see Attachment B) and these facts, based upon those photos, in Ms. Fee-Kreibel’s declaration should be excluded.

In the alternative, SSI disputes that the fence was a “cage” (i.e., it in no way restricted HS) and, in fact, it was built with the knowledge and permission of Defendant. CP 1191-1192.

10. That SSI inadequately dealt with a staff assault.

Defendant contends that there was an assault on a client by Frank Ybarra on July 17, 2009,⁶ was improperly dealt with by SSI. Frank Ybarra was fired because of this incident. CP 393-394. What more can an employer do when its employees ignore the policies of that employer? If there was a flaw in Mr. Ybarra’s training, it was not addressed by RCS, nor cited in the record.

11. That DDD tried to get SSI to “straighten out” and, despite this, there allegedly was continued SSI noncompliance.

At 9 the Response Brief alleged that through a “lengthy course of conduct” SSI had notice of its “serious deficiencies.” However, this self-serving contention is only supported by a discussion of random “bad acts” of SSI that departed, in part, from the allegations argued at Superior Court, and none was validated by any negative Finding of RCS. All of these “bad acts” are disputed herein and they cannot form material facts that only turn Defendant’s way.

⁶ The alleged “assault” involved a “hard tap” that left no bruising or red marks. CP 393-394.

12. That the 8/12/09 RCS Evaluation of SSI was negative.

An RCS Evaluation occurred April 2008, and corrective actions were reviewed in September 2008. CP 181-196. As a result, SSI was recertified in 2008 (CP 763-765) and a CSC was let-i.e. the 2008 Findings were not significant.

Attachment C (derived from CP 166-169 and 182-196), compares the 2008 evaluation with the August 12, 2009, evaluation. Frankly, the 2009 evaluation wasn't as "indicting" to SSI as was the 2008 evaluation. Despite this fact, Defendant now argues that the 2009 RCS evaluation of SSI was "negative." It was nothing of the sort. In fact, if it was so negative to SSI, why did Ms. Pesci try to get RCS to conduct further investigations of the K.G. episode after the evaluation? CP 808-810.

In fact, there was no finding of RCS in August 2009 that could not be met by SSI's corrective action (CP166-169) which was mandated by WAC 388-101-3160.

13. SSI's "Bad Acts" Were Caused by a Change in SSI's Management Structure.

Mr. Sibbett controverts Defendant's interpretation of his April 13, 2009, letter in his Supplemental Declaration. CP 821-822.

B. Mr. Sibbett did not agree to the Termination decision.

In its Response Brief at 14-15, Defendant contended that “Sound Support Voluntarily Sought Contract Termination.” There is nothing in the sequence of events (CP 731-745) that shows he did more than acquiesce when it became clear that the decision had been made to terminate and to send SSI’s clients elsewhere.

Likewise, the fact that Mr. Sibbett sought to sell the business to Aacres should not be seen as agreement to the termination, just to the reality that termination was going to happen despite any actions Mr. Sibbett might take at that time. CP 737-739.

This argument does raise another question, if SSI’s “bad acts” were so bad, why does Defendant continue to argue that Plaintiffs agreed to the termination of SSI’s CSC?

C. The attacks upon Plaintiffs’ arguments for jury review of its claims of “negligent investigation,” “negligent infliction of mental distress”, and “intentional infliction of emotional distress” (e.g. outrage) is not “New Matter” so it will not be repeated here.

The attacks upon Plaintiffs’ arguments for jury review of its claims of “negligent investigation,” “negligent infliction of mental distress”, and “intentional infliction of emotional distress” (e.g. outrage) is not “New Matter” so it will not be repeated here.

Argument and cases are contained in Appellants' Opening Brief at 19-20 (negligent investigation), 22-24 (negligent infliction of mental distress), and 24-27 (intentional infliction of emotional distress).

D. In the alternative, SSI was entitled to expectation damages relating to a termination for convenience.

Generally, the argument for utilization of the "covenant of good faith and fair dealing" is not "New Matter" so it will not be repeated here. Argument and cases are contained in Appellant's Opening Brief at 14-16.

Defendant only needs to add that in *Myers v. State*, 152 Wa. App. 823, 218 P.3d 241 (2009), review denied, 168 Wn.2d 1027, 230 P.3d 1060 (2010), is distinguishable on the facts in several ways. First of all, *Myers* involved a negative finding by the investigator (later overturned by administrative appeal) which is distinguishable from the case at bar where there was no finding of abuse or neglect in the first place.

Second, in *Myers*, plaintiff had made no showing of the loss of any significant expenditure as a result of the terminated contract-i.e., she provided care to her sister in the basement of her own house. In contrast, here the Plaintiffs showed significant "sunk" costs incurred in gearing up to meet their obligations under the CSC, wind up costs incurred as a result of the termination, and lost profits. See, generally, CP 872-874.

Further, the contract is silent on the mode of compensation in the event of termination for convenience. Defendant has contended that must mean that no compensation was intended, but, to the contrary, it only is a gap in the contract that needs to be filled in by the court. *Berg v Hudesman*, 115 Wn2d 657, 801 P.2d 222 (1990), Restatement 2d Contracts §204.

E. Plaintiffs properly framed the question of expectation damages for a termination for convenience so it is not asking for an “advisory opinion” on that question.

The “logic” of Defendant’s argument on this point may be that Plaintiffs’ claims are “spurious” because (1) There is no termination for convenience in this case, (2) Any such damages in breach of contract would be subsumed when the trial court dismissed that claim for default, (3) Sound Support is the breaching party and not entitled to damages, and (4) The CSC does not expressly provide for those damages. Furthermore, to the extent lost profits or wind-up costs represent damages for claims not alleged in Sound Support's complaint and argued in the case in chief, they represent an untimely attempt to amend their complaint with a new theory following an unsatisfactory outcome in summary judgment. Response Brief at 27-28. Plaintiffs will take these contentions in order.

The first,⁷ second and third prongs of the argument are really grounded on the issue of whether Defendant's termination of the CSC with SSI was reasonable. As argued above, at this procedural stage of the case (i.e., on review of the trial court's grant of summary judgment), the only inquiry is whether there is a genuine issue of material fact. Plaintiffs have clearly demonstrated that there is a genuine issue, so these factors are not dispositive at this phase of the litigation.

As to the fourth prong of the argument, Defendant is correct when it argues that the CSC is completely silent on the measure of compensation for a termination for convenience. Defendant implies that this must mean that the contract provides that no damages can be awarded. To the contrary, where the contract is silent on a critical component, the Court can insert that critical component. *Berg*, *Infra*. Moreover, if Defendant could do a "for convenience" termination with absolutely no financial consequence, regardless of the amount expended by SSI (or other unsuspecting parties who contract with the State or its subdivisions or agencies), Defendant could easily have included contract language to the

⁷ The first prong, that "[t]here is no termination for convenience in this case," is completely at odds with Defendants argument that "The Contract is Deemed Terminated for Convenience . . ." Response Brief at 23. Defendant cannot, on the one hand, rely on its finding of default, but, on the other hand, invoke the "termination for convenience clause" in the alternative, arguing that damages are somehow subsumed into the default question.

effect that “DDD/DSHS can terminate whenever it feels like doing so, for no reason whatsoever, and have no financial responsibility to SSI when it does so.” The fact that no such language was included, at minimum, leaves open the question of intent of the parties on this provision, which should be determined by a jury. *Berg*, *Infra*. Finally, Defendant is simply incorrect when it says that “lost profits or wind-up costs represent damages for claims not alleged in Sound Support's complaint.” The Amended⁸ Contract Complaint clearly does allege claims for those damages. CP 9-13.

Defendant also claims that wind-up costs and lost profits were not adequately framed by the Assignments of Error in this appellate matter. That is also erroneous in light of the language of Assignment of Error No. 3 and associated issues.

H. Defendant’s investigation was ultra vires.

The proper entity to investigate allegations of malfeasance and abuse and neglect by providers is RCS, not DDD. When Ms. Pesci realized that the RCS evaluation would not back her up, she requested an abuse and neglect investigation of key employees of SSI by RCS (CP 737, 817) to attempt to support her decision to terminate SSI’s CSS. This investigation was conducted by Jim Tarr and his investigation did not

⁸ On other grounds.

substantiate Ms. Pesci's supposition that key employees of SSI ever abused or neglected K.G. CP 621, 642.

Having nothing more to support it, Defendant undertook its own "investigation" of SSI and terminated SSI's CSC under the guise of having contractual power to do so.

Law trumps a contract every time. *Champion v Thurston County*, 163 Wn.2d 69, 77, 80, 178 P.3d 936 (2008). Defendant's "investigation" was ultra vires, as RCS was the only body vested with investigatory authority.

Other than that, argument and cases on this point are contained in Appellants' Opening Brief at 19.

I. In the alternative, the issue of whether Defendant performed its investigation properly should have been submitted to a jury.

Even if the Court is inclined to find that Defendant was authorized to "investigate" the matter, there remained the question of whether that investigation was done properly. For instance, if a jury found that Defendant wrongfully terminated SSI's CSC for default, obviously its "investigation" was faulty and the issue of damages associated with that improper investigation should be determined by a jury.

J. In addition, or in the alternative, SSI was entitled to damages relating to Defendant's refusal to consent to the assignment of the business to Aacres.

In its Response Brief Defendant relies upon the case of *Johnson v. Yousoofian*, 84 Wa. App. 755, 930 P.2d 921 (1997) arguing that it had no obligation to justify its decision where the contract gave it unlimited discretionary authority to deny the assignment. The problem with Defendant's argument is that the contract in this case does not give Defendant unlimited discretionary authority to deny the assignment. In fact, WAC 388-11-3080 gave specific areas where discretion can be used by DDD, arguably none of which applied to SSI-certainly the size of the assignee ("Aacres is already too big") is not in the discretionary criteria. There is a strong argument that DDD had no discretionary authority to deny the request for assignment of SSI's business.

V.
CONCLUSION

It was premature to consider the MSJ as numerous discovery issues remained outstanding. In addition, the MSJ was improperly supported by declarations based on non-specified documents, hearsay, and lack of authentication.

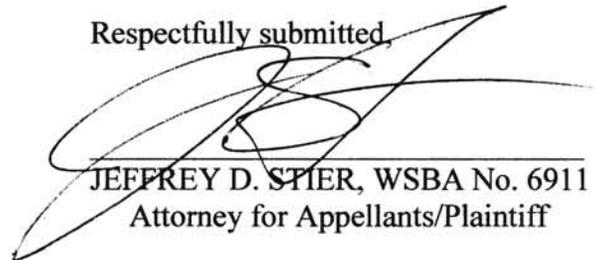
Plaintiffs submit that there was a genuine issue of material fact as to whether SSI was in default of the CSC, and the issue should have been submitted to a jury.

In the alternative, SSI was entitled to expectation damages relating to a termination for convenience.

In addition, the ultra vires nature of Defendant's investigation, or the issue of whether Defendant performed that investigation correctly, should also be for the jury.

In addition, or in the alternative, SSI was entitled to damages relating to Defendant's refusal to consent to the assignment of the business to Aacres.

Respectfully submitted,

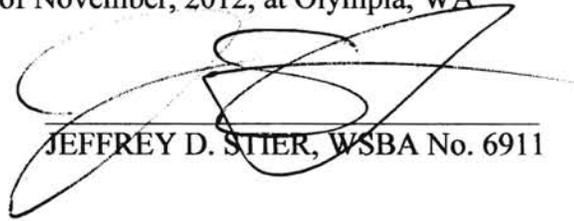
A large, stylized handwritten signature in black ink, appearing to read 'J. Stier', is written over a horizontal line.

JEFFREY D. STIER, WSBA No. 6911
Attorney for Appellants/Plaintiff

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I delivered a copy of the attached document to John McIlhenny.

DATED this 28th day of November, 2012, at Olympia, WA



JEFFREY D. STIER, WSBA No. 6911

Attachment A.xls

Fee-Kreibel Declaration Exhibits	Doc #s	McIlhenny 9/28/11 Docs in Group
A	6633-6634	
B	7356	7356
B	387	
B	6358	
C	4220	
D	391	
E	6360-6362	6361-6362
F	4087	
G	6081	6081
H	12693-12694	
I	12691-12692	12691
J	4140	
J	9190	9190
K	Photos	
L	Photos	
M	Photos	
N	359	
O	690-692	
Total Documents	22	6
% of Documents Not on Mr. McIlhenny's 9/28/11 List	72.73%	

Declarations that Rely on Facio Hearsay

Declaration	CPs for Excerpts/Exhibits Relying Upon Facio Hearsay/Failure to Authenticate
Beth Fee-Kreihbel	77-78, 106, 115-135
Lonnie Keesee	143, 146

ATTACHMENT *B*

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report			
1	ODD Policy, 6.12, Procedures, C.5- Abuse/Neglect Reporting Requirements Including Abuse/Neglect Reporting Procedures	In a review of seven of the seventy-seven staff records, the evaluators found that all staff in the sample had not signed the most current statement regarding Abuse and Neglect dated 7/07.	C. The agency must have written policies and procedures for:	The Agency will immediately begin to utilize the Abuse Statement dated 7/07 for all new employees. Current employees will fill out the new Abuse Statement by May 15, 2008 and a copy put in their employee file. The Employee Services Coordinator will oversee compliance with collecting and filing the Abuse Statements. Provider will send a status report to RCS and ODD by June 1, 2008.	The evaluator reviewed the training records for the employees in the follow up sample and found that all four had signed the July 2008 version of the abuse neglect statement, Attachment A to DDD Policy 6.12, which is the most current one.			
		An interview with the Employee Service Coordinator on 4/28/08 confirmed that these staff had not signed the latest version of the policy about abuse and neglect.	5. Ensuring that each employee and volunteer sign a DOD approved form related to mandatory reporting procedures. This form must be signed by each agency employee and volunteer upon hire or whenever the form is revised and be maintained in each individual's personnel file. The form must also be in the agency's policy and procedures manual.					
2	WAC 388-101-3260(2)- Staff Training	The evaluators reviewed the personnel files for seven of seventy-seven staff, and found that the provider did not ensure that the staff training requirements were met as evidenced by the following:	The service provider must:	A review of all employee files will be made by May 15, 2008 to ensure all training logs of all employees are completed as required. Employees who appear to have not completed the training	During an interview on 9/23/08, the EmployeeServices Coordinator stated that a new form was developed and implemented and that all training records were updated on these new forms.			

ATTACHMENT 

Comparison of 2008 and 2009 RCS Evaluations

April 2008 RCS Certification Evaluation							
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report	Finding No.	Authority
		The evaluators were unable to verify that staff #5 in the sample had received thirty-two hours of training within the first six months of hire.	(2) Within the first six months, ensure that staff receives a minimum of thirty-two total hours of training that meets the training requirements of this chapter.	.viii be notified and proof of completion of .required training will be documented on the Employee Training Log in their employee file by June 1, 2008. The Employee Services Coordinator will oversee compliance with training requirements. Provider will send a status report to RCS and DOD by June 1, 2008.	The evaluator reviewed the training records for the employees in the follow up sam pie and found documentation that staff#1-3 completed at least 32 hours of training within 6 months of hire and staff# 4 comP.leted 27.5 hours within 4 months of hire.		
3	DOD Policy 6.04-Residential Programs Reimbursement System	The evaluator reviewed the provider's 2006 DSHS/DDD cost report and associated payroll. The evaluator was unable to support the ISS hours claimed on Schedule J.	ISS Staff Compensation for reporting purposes on the annual cost report ircludes:ISS staff salaries, wages, stipends and other compensation for staff that are designated as ISS, and prorated for those staff whose time . is split between ISS and administrative functions;	The Administrator will consult with the accountant to determine how hours were calculated for the Cost Report by May 15, 2008. If the hours in the Cost Report are not verified, the Office of Financial Management {OFM) will be notified to see if an am ended Cost Report needs to be filed. The Administrator will oversee cOmpliance; and contact OFM, if necessary. Provider will send a status report to RCS and DOD by June 1, 2008	The evaluator reviewed the summary of hours provided by the provider's accountant along with the 2006 cost report and interviewed the administrator. The administrator reported and docum entation showed that the .paid hours worked" noted on the cost report included some administrative hours. The cost report was revised and resubmitted to the DSHS- OFM office on 5/9/08 arid approved by a representative there with a letter.		

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report			
						1	388-101-3370- Client health services support	
5	WAC 388-101-3390(3)(c)- Physical and safety requirements	The evaluators tested the water temperatures during home visits to the six sampled clients, and found that the provider did not ensure water temperatures were maintained at or below 120 degrees Fahrenheit as evidenced by the following:	(3) The service provider must assist clients in regulating household water temperature unless otherwise specified in the client's individual support plan as follows:	A new gas hot water heater was installed within the past year. The temperature can not be manually set any lower. The Team Leader has repeatedly contacted the landlord regarding the high water temperature.	The evaluator reviewed the documentation sent to RCS and DDD on June 1, 2008, including a summary of actions taken and documentation from the landlord's maintenance person stating that a new regulator was installed on 5/23/08. Water temperature readings at the home on 5/23/08 and 5/25/08 were documented as registering below 120degrees Fahrenheit.			

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report			
		During a home visit on 4/29/08, the evaluator tested client #3's water temperature at 128 degrees.	(c) Regulate water temperature for clients who receive twenty-four hour support and for other clients as specified in the individual support plan.	Until a permanent solution can be determined by the landlord, the agency has implemented (4/29/08) a system of periodically turning off the breaker. The breaker will be tripped at night. The client showers in the morning. Staff will turn the breaker back on for short durations during the day testing the temperature to determine the length of intervals necessary to maintain safety. The Employee Services Coordinator will oversee the plan to reduce the hot water temperature levels. Provider will send a status report (that includes documentation of the water temperature checks) to RCS and ODD by June 1, 2008. This status report will also include documentation of water temperature checks conducted at all client homes.	The evaluator reviewed the water temperature check records for all the homes in the program in September 2008 and found that all were recorded as being below 120 degrees Fahrenheit except for the home of client #3, where the temperature was documented to be 130 degrees on 9/16/08. The provider reported that on that date was the first time the water temperature registered above 120 degrees and that they have been working on it lower in the cause as of			
7	WAC 388-101-3420(2)(3)(4)-Client refusal to participate in services	he evaluators reviewed the records of six of twenty-three clients, and found that the provider did not ensure refusal plans were developed when required as evidenced by the following:	2. Service providers must document each client's refusal to participate in:	The agency will document the client's refusals for Safety and Health Services by getting signed statements from the client on a case by case basis. The Client Services Director will oversee compliance with documenting client refusals: Provider will send a status report to RCS and ODD by June 1, 2008.	The evaluator reviewed an approved ETP from ODD releasing the provider from health, safety, and financial oversight required in DDD Policy. The evaluator also reviewed the refusal plan signed by the client mentioned in this finding and a letter from the client stating what services he would require and would not require.			
		Client #4 has refused the provider's assistance in maintaining physical safety requirements and in receiving health services supports. The provider did not document this refusal with all the required components.	(a) Physical and safety requirements, as outlined in WAC 388-101-3390; and		The evaluator also reviewed staff logs, liSP documentation; medication and health documentation and BSP documentation for the 4 clients in the follow-up sample. The evaluator did not find instances where clients in the sample were refusing services.			

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report			
			(b) Client health services support under WAC 388-101-3370.					
			3. Service providers must document the following:					
			(a) A description of events relating to the client's refusal to participate in these services;					
			(b) That the client was informed of the benefits of these services and the possible risks of refusal;					
			(c) A description of the service provider's efforts to give or acquire the services for the client; and					
			(d) Any, health or safety concerns that the refusal may pose.					
			4. The service provider must:					
			(a) Review this documentation with the client or the client's legal representative at least every six months; and					
			(b) Request that the client or client's legal representative sign and date the document after reviewing it.					
						5	388-101-3540- Managing client funds	

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report			
8	WAC 388-101-3550(I)(c)-Reconciling and verifying client accounts	The evaluators reviewed the financial records of six of twenty-three clients, and found that the provider did not ensure verification of bank statement reconciliations occurred as required as evidenced by the following:	1. For any client funds managed by the service provider, the service provider must:	The system for bill paying, bank statement reconciliations, and verifications was changed in March 2008. Instead of Team Leaders, one individual is assigned to write checks to pay bills, and reconcile statements. Team Leaders are no longer signers on payee accounts, but will still be in charge of updating the financial plans and verifying account transactions and bank reconciliations. The Team Leaders will ensure that the bank account reconciliations are verified within 30 days of receiving the statement.	The evaluator reviewed the bank account information for the 4 clients in the follow up sample for April 2008 through August, 2008 and found that verifications for April through June were not completed monthly. July and August were reconciled and verified by September 15th, and all bank accounts for the clients in the sample were up to date. The Employee Services Coordinator reported that they changed the reconciliation and verification system after the evaluation in April, but more changes needed to be made in August when they realized that verifications were still not occurring.		388-101-3550-Reconciling and verifying client accounts	

April 2008 RCS Certification Evaluation							
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report	Finding No.	Authority
		1. Client #3's April 2007 through November 2007 bank account reconciliations had not been verified until March 2008.	(c) Verify the accuracy of the reconciliation.	The Administrator will oversee compliance with monthly reconciliations and verifications. Provider will send a status report to RCS. and ODD by June 1, 2008.			
9	WAC 388-101-3580(2)(d)-Client financial records	The evaluator reviewed the financial records of six of twentythree clients, and found that the provider did not ensure receipts were maintained as required as evidenced by the following:	(2) The service provider must also keep the following documentation for client financial transactions:	Corrective Action Plan: The provider will send back-up documentation and receipts regarding the money client #1 reimbursed to the agency to RCS and DOD by June 1, 2008. The provider is also looking at revising/implementing a system to more clearly track money fronted to clients.	The evaluator reviewed the documentation listing what bills were paid by the provider on behalf of the client and found the amount equaled the amount reimbursed to the provider by the client in this finding. The Client Services Coordinator stated in an interview on 9/23/08 that a new provision has been included in the IFP for instances like this for clients and that a loan agreement will be attached and receipts maintained.		
		Client #1 wrote a check to the provider in March 2008 for \$2,888.92. There was no receipt in the client's record for this expense. During an interview on 4/29/08, the Administrator stated that the client was paying back the agency for money they had fronted him for living expenses, but confirmed that documentation showing how the amount was determined was not maintained in the client's records.	(d) Receipts for purchases over twenty-five dollars.		The evaluator also reviewed a sample of the new loan documentation and random financial transactions for the 4 clients in the follow up sample and did not find instances where receipts were not maintained as required.		

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report			
10	WAC 388-101-3590(1)- Transferring client funds	The evaluators reviewed the final accounting of finances for the two clients who left the program during the period under review, and found that the provider did not ensure client funds were transferred within required timeframes as evidenced by the following:	(1) When the service provider manages a client's funds and the client changes service providers, the previous service provider must transfer all of the client's funds, except funds necessary to pay unpaid bills, to the client or designee as soon as possible but no longer than thirty days.	The account was closed on 4/29/08 for the client who left in Nov 2007. Part of the remaining funds was returned to Social Security. The rest of the funds will be transferred to the new provider. The provider obtained documentation of the transfer of funds. In the future, the agency will close all accounts as per WAC requirements. The Administrator will oversee compliance with closing bank accounts. Provider will send a status report (that includes copies of the documentation of the transfer of the client's funds) to RCS and DOD by June 1 2008.	The Administrator reported in an interview that information was sent to RCS showing the final accounting of funds for the client in the finding. The evaluator reviewed this documentation.			
		One of the two clients moved to another provider in November 2007. As of 4/29/08, the provider had not yet transferred the funds remaining in the client's account.			The evaluator reviewed the documentation for the final accounting of funds for a client who left the program on July 31, 2008. The bank statement and receipts indicated that funds were transferred as required.			
					The evaluator reviewed the training sign-in rosters for staff meetings in May 2008 and August 2008 and a memo to staff from the Administrator dated 8/25/08. The Administrator reported in an interview on 9/23/08 that they changed pharmacies since the last evaluation and now have a new system for dispensing and tracking medications. The Employee Services Coordinator stated that oversight of medications and staff dispensing them has become more comprehensive.			

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report			
					The evaluator also reviewed Medication Administration Records for the 4 clients in the follow up sample and did not find medication errors that caused clients to be out of medication or errors that were not followed by an Incident Report. Staff in the three homes visited on 8/23/08 reported that the new dispensing system seems to maintain One that the seems more attentive to needs.			
						3	388-101-3610-Client reimbursement	

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report	Finding No.	Authority	

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report			
6	WAC 388-101-3630(l)(a)-Medication services General	The evaluators reviewed the medication records for six of twenty-three clients, and found that the provider did not ensure medications were given as ordered and in a manner that safeguarded client health and safety as evidenced by the following:	1. If the service provider is involved in assisting any client with medications, as identified in the client's individual support plan, the service provider must:	The agency will verify all staff have received training on Medication Oversight in the How To Manual and that the system effectively addresses concerns. The Employee Services Director will ensure Team Leaders are following established procedures for oversight of medication. The Client Services Director will oversee compliance with Medication Oversight. Provider will send a status report (including the training sign-in roster and a copy of the medication procedures from the "How To" manual) to RCS and DOD by June 1, 2008.				
		1. Client #1's December 2007 and January 2008 Medication Administration Records (MARs) showed that the client had been out of one of his psychotropic medications from December 19th to January 9th.	(a) Have systems in place to ensure that medications are given as ordered and in a manner that safeguards the client's health and safety;					
		2. Client #1's February 2008 MAR showed that he had been out of one of his psychotropic medications from February 9th to February 12th.						
		3. Client #6's May 2007 MAR showed that she had been out of one of her psychotropic medications on May 6th.						

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report			
		4. Client #6's July 2007 MAR showed that she had been out of one of her psychotropic medications from July 1st to July 2nd.						
						2	388-101-3860- Positive behavior support plan	

April 2008 RCS Certification Evaluation							Finding No.	Authority
Finding No.	Authority	Investigation	Finding	Corrective Action	Followup Report			
4	WAC 388-101-3890(1)(a)(b)- Restrictive Procedures	The evaluators visited the homes and reviewed the records of the six sampled clients, and found that the provider did not follow restrictive procedure requirements as evidenced by the following:	The service provider may:(a) Only use restrictive procedures for the purpose of protecting the client, others, or property; and (b) Not use restrictive procedures for the purpose of changing behavior in situations where nQ need for protection is present.	Beginning immediately, all staff will be brought into compliance with the Behavior Support Plan and will cease using unauthorized restrictive procedures. By the end of the month, all staff will receive training regarding Positive Behavior Support Plans and Restrictive Procedure requirements by May 31, 2008.	During interviews on 9/23/08, the Administrator and Consumer Assistance Coordinator reported that the team of staff at this client's home were trained immediately to follow the behavior support plan and to ensure the client is provided food throughout the day when she requests it. They also met with that team and all other staff at team meetings and conducted training updates on specific plans 3 separate months.			
		During record review of staff communication logs, the evaluator found staff had withheld food from client #6 when she requested it on 1/29/08, 2/21/08 and 2/25/08. During record review, the evaluator found that client #6's Positive Behavior Support Plan specifically stated staff were to provide food throughout the day for client #6 when requested.		The Client Services Director (CSD) will oversee compliance with implementing Behavior Support Plans. Team Leaders and ISS staff will also review documentation for congruence with PBS plans. Training will occur no later than one week after a concern is observed. Provider will send a status report (that includes the training sign-in roster) to RCS and DOD and by June 1, 2008.	The evaluator reviewed the staff sign-in rosters for Behavior Support Plan training that was conducted at all sites during team meetings in May, July and August of 2008. The evaluator also reviewed staff communication logs, liSP and BSP documentation for the 4 clients in the follow up sample and interviewed staff and did not find instances where staff were not following the Behavior Support Plan guidelines. The client in this finding is client# 4 in the follow up sample.			

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action
1	388-101-3370- Client health services support	The evaluators reviewed the health records of seven of the dients in the sample and found that the provider had no protocol in place for monitoring how long client #7 could go before having a bowel movement The evaluator verified the last time the provider had documented the client had a bowel movement was on 7/18/09. There was no evidence that the provider had conferred with the dient's physician to address the dient's acute constipation.	The service provider must provide instruction and/or support as identified in the individual support plan and as required in this chapter to assist the dient with:	A new documentation log and strategy has been developed to chart the date, time and description of Bowel Movements to be implemented immediately. Immediate instructions for support staff are to notify multiple levels of management. Shift Leader, Team Leader and Client Services Director if there are five days between bowel movements. This is to ensure that follow up with dient #7's Primary Care Physician is immediate or emergency services are sought. Oversight of this documentation will be a twice weekly physical check of the documentation by the Team Leader followed by a report to the Client Services Director. Client #7 has an appointment on 8/20/09 with his primary care physician to assess his gastrointestinal condition. Instructions from the physician regarding an action plan going forward will be implemented.
			(6) Communicating directly with health professionals when needed.	

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action
5	388-101-3540- Managing client funds	The evaluators reviewed a random selection of financial transactions of the 7 clients in the sample whose finances were managed by the provider and found the following:	2. For any client funds managed by the service provider, the service provider must	Sound Support will search for the 2 missing receipts and mileage log for client #5. If verification of the expenses cannot be verified, Sound Support will reimburse the client. Sound Support will also review all the purchases of all clients and ensure all transactions \$25 or more have receipts. If verifications of expenditures cannot be verified Sound Support will reimburse the client for the expense. This will be completed and a written report sent to RCS & DOD by August 31, 2009.

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action
		(a) Client #5 had a check written on B/29/08 for \$55s.00*tor a suit and there was no receipt found.	{f) Retain receipts for each purchase over twenty-five dollars.	
		(b) Client #5 had a check written on 8/6/08 for \$273.50 for lawn mower repairs and there was no receipt found.		
		(c) Client #5_ was self employed and had lawn care business during 2007 and 2008. In 8/08 he dosed his business. During that same month, a check was written for \$1,359.12 for mileage expenses incurred by Sound Support There •was no mileage log found to substantiate this business expense.		
	388-101-3550- Reconciling and verifying client accounts	The evaluators reviewed the providers' system for reconciling and verifying client accounts and found that . none of the client's accounts in the sample had been verified by a second party during 2009.	1) For any client funds managed by the service provider, the se!Vice.provider must	Sound Support will have a z-t person verify all bank accounts and financial transactions from May 2008 to the pres and ensure all transactions are completed according to policy. This will be completed and a written report sent to RCS & ODD by August 31, 2009.

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action
			(c) VerifY the accuracy of the reconciliation	

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action
3	388-101-3610-Client reimbursement	The evaluators reviewed the provider's system for tracking and reimbursing shared household expenses for the 7 clients in the sample whose finances were managed by the provider and found that some household expenses were not shared in a fair and equitable manner as evidenced by:	The service provider must pay the client the total amount involved when:	Sound Support will review all phone bills of all clients from May 2008 to the present. All extra charges that cannot be verified as being done by clients will be paid by Sound Support to the respective clients. All other bills will also be reviewed to ensure any fees that are not the responsibility of the clients are reimbursed to the clients by Sound Support. This will be completed and a written report sent to RCS & DDD by August 31, 2009.
		(a) Client #4 and his housemates had phone bills with last call activated charges during 11/10/08 for \$2.25; 12/08 for \$3.00 and 1/09 for \$2.25. These expenses were shared by the housemates rather than being paid for by the person using this service.	(1).The service provider or staff has stolen, misplaced, or mismanaged client funds;	

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action
		(b) Client #6's phone bills had directory assistance charges on 2/14/09 bill for \$3.50 and on 7/14/09 bill for \$1.75. These bills were shared by all the housemates rather than the person responsible for using the directory assistance for those months.		
		(c) Client #S's telephone bills from 1/09 to date had long distance charges split equally among housemates rather th tracking the long distance charges each month and having the person responsible pay for their own long distance charges.		
		(d) Client #2 had a Direct IV late charge fee of \$5.00 on 6/21109 paid by the clients.		

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action
2	388-101-3860- Positive behavior support plan	The evaluators visited the homes of all of the clients in the program and reviewed the program records for the seven clients in the sample and found the provider did not ensure positive behavior support plans (PBSP) were implemented for client # 7 as evidenced by:	1. The service provider must develop, train to, and implement a written individualized positive behavior support plan for each client when:	An action plan has been developed to clarify and ensure implementation of client #7's PBSP. Per this PBSP, a daily schedule will be posted listing activities for Client #7 that includes outings. This schedule will be developed to offer multiple activities throughout the day, including options for outings. The activity of his choosing will be documented fully on activity narrative forms, including describing efforts to get him involved and respecting his choice. The daily activities will include an hour of vigorous physical exercise as described in his PBSP. The Shift Leader is responsible for ongoing development and creativity in daily schedule choices, the Team Leader is responsible for oversight of schedule and implementation. The Client Services Director will deliver instructions and train Support Staff onsite immediately,
		Client #7's PBSP written on 3/16/08 stated the team leader would create and oversee a daily activity schedule for the client and that the client would have "one hour a day of high energy activity incorporated into his schedule".	(a) The client takes psychoactive medications to reduce challenging behavior or treat a mental illness currently interfering with the client's ability to have positive life experiences and form and maintain personal relationships.	

August 2009 RCS Certification Evaluation				
Finding No.	Authority	Investigation	Finding	Corrective Action
		During a visit to dient 1fT's home on 8/10/09, the evaluator confirmed with staff that there was no written daily activity schedule for the client		
		The evaluator reviewecJ.log notes, health care notes, activity calendars and six month reviews and was unable to verify the client had an activity of high energy incorporated into his daily schedule.		