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STATE OF WASHINGTON

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TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR.....1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....1

C. STATEMENT OF THE CASE.....4

D. ARGUMENT.....6

**1. Appellant's constitutional right to substantive due process was violated because no impartial decision maker has heard testimony and oral argument.....6**

        a. Appellant's arguments are constitutional error and validity of which can only be heard at judicial review.....6

        b. The first impartial decision maker, Judge Hogan, did not take oral presentation of argument and evidence.....7

**2. The Superior Court violated Appellant's right to due process when it denied his motion for new trial due to an unexpected illness that ordinary prudence could not have guarded against...8**

**3. Appellant's right to liberty and property have been violated by unfair and unreasonable intrusions by governmental agencies in furtherance of illegitimate concerns unsupported by the Respondent's inconsistency and by Respondent's later claim or position.....9**

        a. Respondent has failed to justify their inconsistency in application of rules and standards.....9

E. CONCLUSION.....10

**TABLE OF AUTHORITIES**

**United States Supreme Court Decisions**

Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2D 287  
(1970).....3, 5, 7, 10

Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18  
(1976).....9

**United States Constitution**

U.S. Const. amend. XIV.....1, 2, 3

**Washington Constitution**

Const. art. I § 3.....1, 2, 3

**Washington Statutes**

RCW 34.05.570.....1, 3, 4

**Washington Court Rule**

CR 59.....2

A. ASSIGNMENTS OF ERROR

1. Appellant's constitutional right to substantive due process was violated because no impartial decision maker has heard testimony and oral argument.

2. The Superior Court violated Appellant's right to due process when it denied his motion for new trial due to an unexpected illness that ordinary prudence could not have guarded against.

3. Appellant's right to liberty and property have been violated by unfair and unreasonable intrusions by governmental agencies in furtherance of illegitimate concerns unsupported by the Respondent's inconsistency and by Respondent's later claim or position.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Citizens have a fundamental liberty and property interest with regard to welfare entitlement. If those interests are to be infringed upon the right to be heard orally before an impartial decision maker. U.S. Const. amend. XIV; Const. art. I, § 3. When an aggrieved party seeks judicial review for these programs it can be for problems listed in RCW 34.05.570. Appellant informed the court of his intended form of review and the transcripts and record show that plaintiff was seeking

redress for an inconsistent/invalid application of the rules. The ALJ had clearly stated that the ALJ could not hear matters regarding invalidity of a rule at those hearings and recognized the Appellant was exhausting administrative remedies as required to seek judicial review. Has any impartial decision maker, capable of hearing the factual basis for this case, heard oral argument to meet the requirements of substantive due process in welfare entitlement cases?

2. A party's right to due process is violated when the court with notice of unforeseeable circumstances refuses to rehear a trial in which a party was not present. U.S. Const. amend. XIV; Const. art. I, § 3; CR 59. When a party has a right to oral argument and is not able to be present due to unforeseeable circumstances it is the courts obligation to provide, with timely notice and motion to the court, a chance for a party to have their oral argument heard before the court and to consider that argument. Appellant informed the court of his illness and circumstances of which prevented him from attending his trial. These issues are and were directly related to the disability that Appellant suffers and are the basis for assistance, of which is the nature of this case. This included how dire his finances were at the time including 4

days without food to make sure his service animals were functioning and maintained, all of which precluded him from finding alternative options to attend his trial. Did the court err in denying Appellant's request for a new trial due to unforeseeable circumstances and/or deny him due process in not allowing him to be present to provide oral argument?

3. Welfare entitlements are, "a matter of statutory entitlement for persons qualified to receive them, it may be realistic today to regard welfare entitlements as more like 'property' than a 'gratuity'." Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2D 287 (1970); U.S. Const. amend. XIV; Const. art. I, § 3; RCW 34.05.570. Uncontested testimony given by the Appellant at the Administrative Law Hearing spoke to the inconsistency by the department on two fronts. First the Department had already provided an ETR in Appellant's previous review hearings. Second that the department had admitted that in most cases they do not collect reimbursement for ABD. It is Appellant's stance that these 2 inconsistencies without explanation by Respondent support his request for judicial review. Has Respondent's inconsistency shown a violation of the reasonable and fair intrusions by government

agencies into Appellants property and liberty rights/interests guaranteed by the US and Washington State Constitution?

C. STATEMENT OF THE CASE

Dameas Duranzan, “appellant”, began receiving DSHS Welfare Entitlement's, “ABD”, in 2012. He had been on this program for over a year when benefits were terminated, CP 25. Appellant began the process of administrative review eventually learning that the Administrative Law Judge, “ALJ”, could not consider his arguments as the Administrative Review process did not allow for invalidity or unenforceable arguments, CP 4-5.

At the conclusion of the Administrative process with a final order from the Board of Appeals, “BOA”, Appellant submitted a Petition for Review Of Administrative Order, CP 1-3. This appeal was to address a multitude of concerns in compliance with RCW 34.05.570(3)(a)-(f),(h)(i).

Appellant filed his opening brief on March 13, 2015, CP 24-31. In this brief Appellant cites several instances of concern starting with the fact that ALJ's cannot review constitutional error, or individual challenges to the rule, CP24-25. Appellant further proceeds to

document the history of this case and references a previous waiver and exception to the rule, "ETR", of which points to the inconsistency of the Respondent, CP 25. This information was provided as testimony, the ALJ granted this testimony as the record was incomplete as provided by the department, CP 25.

Appellant had prepared to argue these inconsistencies as well as the other issues included in the original petition for review but when Trial was held on May 8, 2015 Appellant was unable to be present due to funds and illness and the case was dismissed without Trial, CP 32-33. Plaintiff after recouping from his illness, filed a Motion to rehear May 15, 2015, CP 34-36. Appellant sought to provide oral argument as is required for substantive due process as established in *Goldberg v. Kelly*. His motion was denied, CP 37, and Appellant filed an appeal with this court July 2, 2015.

D. ARGUMENT

1. **Appellant's constitutional right to substantive due process was violated because no impartial decision maker has heard testimony and oral argument.**

a. Appellant's arguments are constitutional error and validity, of which can only be heard at judicial review.

In this case there is no available resolution in the Administrative Law process for individuals seeking redress for invalidity or constitutional violation. Yet for the purposes of exhaustion one must go through a process with no remedy available to be able to gain access to the remedial courts. Impartiality is impossible when you cannot consider a valid argument with a factual basis for a claim, especially those that have not been objected to. In their restrained capacity for this particular type of issue the ALJ system is incapable of impartiality.

The first individual capable of being impartial was Judge Hogan. However due to the aforementioned issues no trial was had and no impartial decision maker has been able to have oral argument for substantive due process. “The recipient must be provided with timely and adequate notice detailing the reasons for termination, and an effective opportunity to defend by confronting adverse witnesses and by presenting his own arguments and evidence orally before the

decisionmaker.” Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2D 287 (1970).

Effective opportunity does not exist for constitutional error or validity arguments if the ALJ cannot hear them. The reasoning continues that if an effective opportunity only exists at the Judicial Review level the first impartial judge to hear an issue would be the Judicial Review Judge.

b. The first impartial decision maker, Judge Hogan, did not take oral presentation of argument and evidence.

As previously cited the first effective opportunity to argue Appellant's case was the court where Judicial Review was sought. In providing this information to the court, CP 29 line 27, Appellant had hoped to resolve the previous issues brought up at the Motion to Compel hearing regarding the intent of Appellants filing. With this information in mind and with the aspect of Goldberg v. Kelly the lack of oral argument is inconsistent with other rulings of the courts. It constitutes a failure to provide Appellant with substantive due process and due process of law.

**2. The Superior Court violated Appellant's right to due process when it denied his motion for new trial due to an unexpected illness that ordinary prudence could not have guarded against.**

Appellant was already without his ABD at the time of this trial, had been without any benefits for almost a month and was struggling to maintain his well being. He was sick and had no means of transportation even a way to pay for public transport. Normally able to handle this by bartering for assistance Appellant was even further disparaged as his only source for bartering was delayed due to mailing issues, CP 35 line 4. With his previously existing conditions of injury to his ankle, knee and hip as well as the illness, walking was out of the question or moot as he would have been over 2 hours late after a 3+ hour walk, CP 35 line 13.

When determining the amount of process due, the court should weigh three factors: (1) The interests of the individual in retaining their property, and the injury threatened by the official action; (2) The risk of error through the process used and probable value, if any, of additional or substitute procedural safeguards; (3) The costs and administrative burden of the additional process, and the interests of the government in

efficient adjudication. Id: Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2D 18 (1976).

3. **Appellant's right to liberty and property have been violated by unfair and unreasonable intrusions by governmental agencies in furtherance of illegitimate concerns unsupported by the Respondent's inconsistency and by Respondent's later claim or position.**

When considering Substantive Due Process and the rules of invalidity of actions taken by the Respondent it is necessary to provide notice to the court that at this time the Appellant is again receiving the same exact welfare entitlements as were in dispute before the lower courts. In fact there has been no change to Appellant's qualifications since his initial 2012 claims other than an increased debt, homelessness and now loss of a service animal for functionality, the last of which was not the case at the approval of benefits in October, 2015.

This current position should lead this court and any court to recognize the Equitable Estoppel issues with Respondents case.

- a. Respondent has failed to justify their inconsistency in application of rules and standards.

As previously stated the respondent has failed to ever contest the fact that their regularly waive reimbursement of ABD when

individual's finally obtain SSI. They also have never contested that Appellant had been receiving benefits for over a year and had been subject to previous reviews and no such actions were taken against Appellant due to an ETR. When considering these 2 undisputed facts the concern comes to reason that the inconsistency of their behaviors and modal are not reasonable or fair in application. With this Appellant urges this court to recognize the quote from Goldberg v. Kelly regarding effective opportunity.

#### E. CONCLUSION

Appellant's substantive due process and due process of law rights were violated when (1) the Superior Court denied him the ability to orally present argument and evidence and (2) refused to provide him a new trial due to unforeseeable circumstances.

In addition the Respondent unfairly and unreasonably interfered with Appellant's liberty and property interests/rights when they inconsistently applied the rules of their agency in application of revoking Appellant's ABD.

Appellant therefore asks this Court to reverse the order dismissing petition for review and remand for a new hearing. Alternatively Appellant asks that this court find that the Respondent acted inconsistently and order Respondent to provide all of Appellant's lost months of benefits and other fees and costs.

DATED this 10 day of March, 2016.

Respectfully submitted,

S/ Dameas Duranzan  
Pro Se

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IN THE APPELLATE COURT OF THE STATE OF WASHINGTON  
DIVISION II

In re:

Dameas Duranzan,  
Appellant,

vs.

Department of Social and Health Services  
Respondent.

Case No. 47788-2-II

**CERTIFICATE OF SERVICE**

I certify that on March 10, 2016, I served AAG William McGinty and his assistant  
"APPELLANT'S OPENING BRIEF" via email as previously agreed upon in accordance with  
GR 30(4)

I certify under penalty of perjury under the laws of the State of Washington that the  
foregoing is true and correct.

Signed this 10 day of March, 2016 in Tacoma Washington.

S/ Dameas Duranzan  
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