

**FILED**

**JAN 11 2016**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 327582

COURT OF APPEALS DIVISION III  
OF THE STATE OF WASHINGTON

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**Holly R. Snyder,**  
*Appellant.*

v.

**State of Washington, DSHS**  
*Respondent*

---

Appeal from the Superior Court of Spokane County

---

*APPELLANT'S REPLY BRIEF*

---

Attorney for Appellant Holly Snyder:  
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Appellant, Holly Snyder, by and through her attorney of record, Douglas D. Phelps, submits this reply brief in response to the brief submitted by the government. By this Reply Brief, no attempt is made to set forth a response to each of respondent's contentions, most of which are fully covered by the opening brief. Only those points requiring additional comment will be raised to assist this court in resolving the pertinent issues.

## I. ARGUMENT

### **B. The Appellant is entitled to have the Court review the Board's decision and final order under RCW 34.05.570(3) and RAP 2.2(1).**

Ms. Holly Snyder is entitled under RAP 2.2 (1) because the decision of the Superior Court is a final judgment in a proceeding. The Appellant is also entitled to review under RCW 34.05.570(3)(a), (d) because the order is in violation of constitutional provisions and the agency has erroneously interpreted or applied the law.

In RCW 26.44.100 the "legislature finds parents and children are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process . . . To facilitate this goal, the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this

chapter . . .” By setting forth this language the legislature has stated that the department has a heightened duty to ensure that parents and children are notified of their basic rights “in writing and orally.” Here, the legislature has established a higher duty of the Department to notify parents and children of their due process rights. A basic principle of a citizens rights’ is the right to notice and an opportunity to be heard. *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 58 L.Ed. 1363 (1914).

RCW 26.44.100 (1) requires increased protections of parents and children’s due process rights. The legislature wishes to ensure parents and children be advised in writing and orally “of their basic rights.” The statute repeatedly directs that notice “shall” be given to the parents and RCW 26.44.100 (4) further requires the department “shall exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification under this section.” Then, RCW 26.44.125 (5) reads: “The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination.” The language requires that the receipt of the notice establishes the time frame during which an adjudicative review can be requested. The request for adjudicative review comes within 30 days of the receiving the notice of agency review determination.

The legislative purpose of RCW 26.44.100 is to assure parents and children are aware of their due process rights. RCW 26.44.125 requires that notice

to the alleged perpetrator is consistent with RCW 26.44.100. The legislature has established an increased duty of due process in these cases through these statutes which is contrary to the state's position that mailing satisfies the service requirement.

Contrary to the Government's contentions, the Appellant did not raise the issue that RCW 34.05.570(3) and RCW 26.44.125 establish a heightened protection to due process rights for parents and children for the first time on appeal. This issue was raised under the Brief in Opposition to Motion to Dismiss, Petition for Review of Administrative Decision, and the Appellant's Brief to the Superior Court. (See Attached).

## VI. CONCLUSION

The matter should not be dismissed because the petitioner did not receive the notice required by RCW 26.44.100 and 125. The interest of justice requires that the appellant be allowed an adjudicative hearing regarding the department's determination.

Respectfully submitted this 11<sup>th</sup> day of January, 2016.

  
\_\_\_\_\_  
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APPENDIX A

Brief in Opposition to Motion to Dismiss

STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
BOARD OF APPEALS

PETITION FOR REVIEW OF INITIAL DECISION (APPEAL)

See information on back.

Print or type detailed answers. Add more pages if needed. You may use your own form.

Holly (Ray) Snyder      04-2013-L-0617      \_\_\_\_\_  
Name(s) (please print)      Docket Number      Client ID or "D" Number

2908 E. Cleveland      Spokane      WA      99207  
Mailing Address      City      State      Zip Code

(509) 953-0063  
Telephone Area Code and Number

Please explain why you want the initial decision or order changed. Try to be specific. For example, tell us:

- Why you think that the decision is wrong (why you disagree with it).
- If the findings of facts are wrong, based on what was presented at the hearing.
- How the decision should be changed.

I ask for review of the initial decision because... the order is ~~contrary~~ contrary to law as argued in the hearing brief and before the ALJ. The RCW sets forth that the state must ensure that the petitioner has notice of the state's actions. That the RCW sets forth and requires the state agency do more than merely mail a notice by certified mail. (See Hearing Brief) The determination here is contrary to the RCW and the Washington State Constitution (see hearing brief and hearing record). The decision is contrary to due process requirements both statutory and constitutional required.

I have attached 12 (number) pages.

**Deadline: Received on or before 21 days from mail date of Initial Decision**  
Send or deliver your Appeal (Request for Review) to the OFFICE OF APPEALS:

Mail to: Board of Appeals  
PO Box 45803  
Olympia WA 98504-5803

WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re to: )  
) No. 04-2013-L-0617  
)  
)  
) MOTION AND BRIEF  
) IN OPPOSITION TO  
HOLLY E. SNYDER (RAY) ) MOTION TO DISMISS  
Appellant )  
\_\_\_\_\_ )

Comes now, Holly E. Snyder in opposition to the Department of Social and Health Services (Department hereinafter) by and through her attorney Douglas D. Phelps, of Phelps & Associates, PS, and moves that the Department's request to dismiss be denied.

**FACTS**

Holly Snyder was served by the Department of Social and Health Services with an initial letter dated March 21, 2011 by certified mail which was received by the Appellant on March 31, 2011. (Respondent's Exhibits A and B) The appellant submitted a timely request for internal review, received by the Department on April 08, 2011. (Respondent's Exhibit C)

On April 12, 2011, the Department sent a certified letter to Appellant at the

prior address, 412 W. Longfellow, Spokane, WA 99205. (Respondent's Exhibit E) That letter was never received by the Appellant and was never refused. (Declaration of Appellant A-1) It is important to note that the letter was never received by the appellant. (Appellant's A-1) and (Respondent's Exhibit E) Additionally, that had the appellant received the letter (Exhibit D) it state's your "written request for this hearing must be received by the Office of Administrative Hearings within 30 calendar days from the date you receive this letter." The letter refers to RCW 26.44.125 as the basis for the requirement for the receipt of notices.

The petitioner here was not living at the 412 W. Longfellow address where the registered mail was sent. The appellant was residing at 2908 E. Cleveland, Spokane, WA 99207. (Appellant's A-1) There is no record of any further attempts by the Department to contact Ms. Holly E. Snyder to provide her with notice of the results of the internal interview.

#### **APPLICABLE LAW**

The revised code of Washington 26.44.100 addresses: "Information about rights-Legislative purpose-Notification of investigation, report, and Findings." In the first section (1) of this statute the legislature "finds parents and children often are not aware of their due process rights when agencies are investigating allegations of child

abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process.....To facilitate this goal, the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this chapter.....” Then in section (2) of RCW 26.44.100 it requires “The department shall notify the parent, guardian, or legal custodian of a child.” Section (3) sets out notice by certified mail with return receipt requested. Then section (4) requires the department “shall exercise reasonable, good faith efforts to ascertain the location of persons entitled to notification under this section.”

Another Revised Code applicable to this issue is RCW 26.44.125, the title of this statute is “Alleged perpetrators-Right to review and amendment of finding-Hearing.” In subsection (2) of the statute it refers back to RCW 26.44.100 where the legislature addresses concerns that parents and children in these matters are afforded their due process rights. The right to review begins when the “department has notified the alleged perpetrator under RCW 26.44.100”. Then subsection (5) of RCW 26.44.100 reads: “The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination.” There is nothing in the statute addressing the mailing of the notice but only addressing receipt of the notice as

establishing a duty to request a hearing.

Here the notice was sent out by the Department but not received by the appellant. The statute does not say within 30 days of mailing the notice but refers to “receiving the notice.” Consistent with the requirement of receipt of the notice being necessary to trigger the duty to request the hearing. The statute similarly reads: “Your written request for this hearing must be received by the Office of Administrative Hearings within 30 calendar days from the date you receive this letter.” (Respondent’s Exhibit D)

### **PROCEDURAL HISTORY**

The appellant never received the notification as shown in Respondent’s Exhibit D. The appellant had moved from the 412 W. Longfellow address as demonstrated by the appellant’s declaration. (Appellant’s A-1) Upon discovering that there was a finding still in place the appellant requested the adjudicative proceeding consistent with RCW 26.44.125 (5). As the appellant never received the notice required by RCW 26.44.100 and RCW 26.44.125 she was not required to request a hearing until the notice was received.

### **ARGUMENT**

**A. The requirement of RCW 26.44.100 and RCW 26.44.125 establishes**

**a heightened protection to due process rights for parents and children under investigation for child abuse and neglect.**

In RCW 26.44.100 the “legislature finds parents and children are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process.....To facilitate this goal, the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this chapter.....” By setting forth this language the legislature has stated that the department has a heightened duty to ensure that parents and children are notified of their basic rights “in writing and orally.” The language of the statute establishes that the parents are to be “orally” advised of these basic rights “where feasible.” The legislature has established a higher duty of the Department to notify parents and children of their due process rights. A basic principle of a citizens rights’ is the right to notice and an opportunity to be heard. *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 58 L.Ed. 1363 (1914)

The fundamental requisites of due process are ‘the opportunity to be heard,’ *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 58 L.Ed. 1363 (1914), and “notice reasonably calculated, under all the circumstances, to apprise interested parties of the

pendency of the action and afford them an opportunity to present their objections,’  
*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657,  
94 L.Ed. 865 (1950) Thus ‘at a minimum’ the due process clause of the Fourteenth  
Amendment demands that a deprivation of life, liberty or property be proceeded by  
‘notice and opportunity for hearing appropriate to the nature of the case.’ *Mullane*, at  
313, 70 S. Ct. at 657. Moreover, this opportunity ‘must be granted at a meaningful time  
and in a meaningful manner.’ *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187,  
1191, 14 L.Ed.2d 62 (1965) “A procedural rule that may satisfy due process in one  
context may not necessarily satisfy procedural due process in every case.” *Bell v.*  
*Burson*, 402 U.S. 535, 540, 91 S. Ct. 1586, 1590, 29 L.Ed.2d 90 (1971) The procedural  
safeguards afforded in each situation should be tailored to the specific function to be  
served by them. *Goldberg v. Kelly*, 397 U.S. 254, 267, 90 S. Ct. 1011, 25 L.Ed.2d 287  
(1970) The Washington legislature has provided such guidance in RCW 26.44.100 and  
RCW 26.44.125.

In the case RCW 26.44.100 (1) requires increased protections of parents and  
children’s due process rights....the legislature wishes to ensure parents and children be  
advised in writing and orally “of their basic rights.” The statute repeatedly directs that  
notice “shall” be given to the parents and RCW 26.44.100 (4) requires the department

“shall exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification under this section.” Then RCW 26.44.125 (5) reads: “The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination.” The language requires that the receipt of the notice establishes the time frame during which an adjudicative review can be requested. The request for adjudicative review comes within 30 days of the receiving the notice of agency review determination.

The legislative purpose of RCW 26.44.100 is to assure parents and children are aware of their due process rights. RCW 26.44.125 requires that notice to the alleged perpetrator is consistent with RCW 26.44.100. The legislature has established an increased duty of due process in these cases through these statutes which is contrary to the state’s position that mailing satisfies the service requirement.

**B. RCW 26.44.125 (5) requires specifically: “The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination,” and not after the department mailed the notice.**

The department advocates that the court ignore the language of the statute. That the court not require the receipt of the notice but accept the service merely by mailing

the notice by certified mail. But the language of RCW 26.44.100 (1) establishes a requirement of notice by writing and orally where feasible. Then RCW 26.44.100 (2) requires the department notify the subject of the report. At RCW 26.44.100 (3) it says that notification “shall be made by certified mail, return receipt requested, to the person’s last known address.” Additionally, RCW 26.44.100 requires the department to “exercise reasonable, good faith efforts to ascertain the location of persons entitled to notification under this section.”

The only requirement setting forth when an appellant must make a “timely request for an adjudicative hearing” is triggered by the receipt of the notice. All of this is consistent with the stated legislative purpose of RCW 26.44.100 which is protecting parents and children’s due process rights.

The department urges the court to ignore the language and purpose of RCW 26.44.100 and find that receipt of the notice is not required. To support this argument they rely on *City of Seattle v. Foley*, 56 Wn.App 485, 784 P.2d 176, 179 (1990) a case involving the sending of a notice of license suspension. But this case is distinguishable first because there was nothing in the record to show *Foley* lived elsewhere. (*supra* at 179) Further, RCW 46.20.205 requires a licensee is responsible to notify the Department of Licensing of a change of address. But RCW 26.44.100 requires a

heightened duty of notice and RCW 26.44.100 (4) requires the department to “exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification under this section.” In this case the burden is on the department and not on the parent to find the current address.

Additionally, the department argues that *McLean v. McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997) does not require actual notice and suggests that this case allows the court to not require actual notice under RCW 26.44.125 and RCW 26.44.100. But as the plain language of RCW 26.44.125 (5) clearly states the “request for adjudicative proceeding must be filed within thirty calendar days after receiving the notice of the agency determination.” This is different from the statute in *McLean supra* where the court found the plain language of RCW 26.09.175 (2) does not require actual notice. *McLean v. McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997) is distinguishable from the case before the court because RCW 26.44.100 and RCW 26.44.125 established a heightened due process requirement on the department and require receipt of the decision.

The department’s argument must fail. The Department of Licensing may rely upon the statutory requirements of the petitioner updating his address. There is no such duty in the statutes under RCW 26.44. et seq. RCW 26.44.100 and 125 places the

greater burden of notification on the department. To allow any other statutory interpretation would render the legislative intent of RCW 26.44.100 meaning less. It is a basic principle of statutory interpretation that the statute must be applied consistent with the legislative intent.

**CONCLUSION**

The matter should not be dismissed because the petitioner did not receive the notice required by RCW 26.44.100 and 125. Notice under other statutory scheme requires receipt and not merely mailing.

The interest of justice requires that the appellant be allowed an adjudicative hearing regarding the department's determination. The department has failed to demonstrate the receipt of the notice required by RCW 26.44.125 (5). The department has failed to show they met the requirements of RCW 26.44.100.

Respectfully submitted this 27 day of June, 2013



---

DOUGLAS D. PHELPS, WSBA #22620  
Attorney for Appellant

WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

In Re to: )  
) No. 04-2013-L-0617  
)  
)  
) DECLARATION OF  
) APPELLANT  
HOLLY E. SNYDER (RAY) )  
Appellant )  
\_\_\_\_\_ )

I, Holly Snyder, declare and state:

1. My name is Holly Snyder and I am over the age of 18 and competent to testify in this matter.
2. I never received any “notice of the agency review determination” after my request for “internal review”.
3. During that time I have moved from the 412 W. Longfellow and was living at 2908 E. Cleveland, Spokane, WA 99207.
4. There was nothing in the notice I received that said to provide the Department with my current address if I moved.
5. The Department failed to deliver any notice to me of the decision made on April 12, 2011 because at that time my address was 2908 E. Cleveland,

Spokane, WA 99207.

6. Had the Department contacted me by delivering the April 12, 2011 letter to me I would have timely requested an appeal.
7. Recently I was denied an opportunity to complete my internship with Spokane Community College due to this finding.
8. Upon obtaining the records with my attorney's assistance, we found out the Department had made this determination and never delivered any notice to me.
9. As I never "received notice of the agency review determination" I requested the hearing with my attorney's assistance.
10. I am unsure why the Department failed to make only phone contacts or make any efforts to obtain my address and deliver the notice as required by RCW 26.44.125(4)

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Spokane, WA (City and State) on June 26, 2010 (Date).

Holly Snyder  
HOLLY SNYDER  
Appellant

APPENDIX B

Petition for Review of Administrative Decision

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON )  
Respondent )  
vs. )  
HOLLY E. SNYDER )  
Appellant/Petitioner )

No. **13204894-3**  
PETITION FOR REVIEW  
OF DECISION OF  
BOARD OF APPEALS  
REVIEW JUDGE

COMES NOW the Appellants, HOLLY E. SNYER, by and through her attorney, Douglas D. Phelps of Phelps & Associates, P.S., and seeks Judicial Review of the Review Decision and Final Order of Board of Appeals Judge Thomas Sturges entered November 05, 2013 (Exhibit A) pursuant to RCW 34.05.514.

Appellants mailing address is 2908 E. Cleveland, Spokane, WA 99207.

Appellants are represented by Douglas D. Phelps, Attorney at Law, 2903 N. Stout Road, Spokane, WA 99206.

The respondent is the State of Washington, Department of Social and Health Services, Board of Appeal, PO Box 45803, Olympia, WA 98504.

Appellants seek review based upon the record from the hearings conducted and the filings and documents contained within the file. Additionally, the failure to notify the appellant pursuant to RCW 26.44.100 and RCW 26.44.125 requires reversal. Further, that

Petition for Review  
Of Administrative Decision

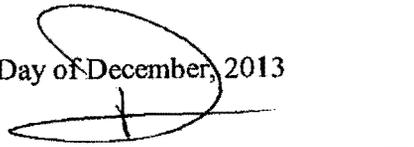
PHELPS & ASSOCIATES, PS  
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the failure to notify the appellant of the decision is a denial of due process under *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 58 L.Ed. 1363 (1914). The WAC as set for the in the administrative order does not comport with the requirements of the Revised Code of Washington and therefore do not fully implement the statute or the legislative intent. Lastly, the appellant reserves the right to cite such other basis that are present in the record from the hearings held at the administrative level.

The Appellant requests injunctive relief and such other relief that the court deems proper and just.

Respectfully submitted this 2 Day of December, 2013



Douglas D. Phelps, 22620  
Attorney for Appellants

Petition for Review  
Of Administrative Decision

PHELPS & ASSOCIATES, PS  
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**EXHIBIT A**  
**Review Decision and Final Order**

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STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

PHELPS & ASSOCIATES

NOV 05 2013

BOARD OF APPEALS Attorneys At Law

In Re:	)	Docket No.	04-2013-L-0617
	)		
HOLLY SNYDER (RAY)	)	REVIEW DECISION AND FINAL ORDER	
	)		
Appellant	)	Children's Administration – CPS Review	

DSHS BOARD OF APPEALS

I. NATURE OF ACTION

1. Administrative Law Judge Robert M. Murphy received oral argument regarding a Department *Motion to Dismiss for Lack of Jurisdiction* on August 27, 2013, and mailed an *Initial Order* on September 10, 2013. In this ruling, the Administrative Law Judge (ALJ) determined that the Appellant had failed to timely request an adjudicative procedure. The ALJ granted the Department's *Motion* and dismissed the Appellant's hearing request.

2. The Appellant filed a *Petition for Review of Initial Decision* on September 20, 2013.

II. FINDINGS OF FACT

The undersigned has reviewed the record of the hearing, the documents admitted as exhibits, the *Initial Order*, and the Appellant's *Petition for Review*. The following necessary findings of fact were relevant and supported by substantial evidence in the record.

1. The Appellant is a 25-year-old female.
2. On March 19, 2010, the Department of Social & Health Services Children's Administration/Child Protective Services (Department) received a report alleging that the Appellant had abused or neglected a child in her care.
3. On March 21, 2011, the Department sent to the Appellant, by certified mail, a letter advising her that the allegations as to "Faith and Natalie only" were "Founded" for "negligent treatment or maltreatment" of a child.
4. Specifically, the letter referenced an investigation denominated, "Intake number

COPIES

2214260." A brief description (who, what, and where) of the investigation that led to the finding reads:

During the course of the investigation, the mother admitted that she used a towel to lock the older children in their bedroom at night. Although the mother states that she did so in order to protect the child from getting out of bed and injuring herself in the apartment or wandering out of the apartment, this action created a serious risk of substantial harm to the child, especially in case of an emergency.

5. The Appellant received and signed for the letter on **March 31, 2011**, at 9:09 A.M. The Appellant received the letter at her address at 412 W. Longfellow in Spokane, Washington.

6. The letter further advised the Appellant that she could request an internal review of the Founded findings of child neglect by filling out a "Review Request Form" (RRF).

7. The Appellant formally requested an internal review by completing the RRF on **April 6, 2011**. The Department received the RRF on **April 8, 2011**.

8. The Appellant requested that notice of the outcome of the internal review be mailed to her Longfellow address.

9. Thereafter, the Appellant shortly left the Longfellow address and moved in with her mother on Cleveland Street in Spokane. The Appellant did not leave a change of address with the United States Postal Service (USPS). The Appellant did not advise the Department of her change of address.

10. The Department acknowledged receipt of the RRF. An internal review concluded that the finding of neglect was correct. The Department sent the review outcome to the Appellant by certified mail at the Longfellow address on **April 12, 2011**. This notice advised the Appellant that she could challenge the determination by sending a written request for administrative hearing to the Office of Administrative Hearings (OAH) within 30 calendar days from the date she received the letter. The notice cited RCW 26.44.125.

11. The USPS attempted, unsuccessfully, to deliver the review notice to Appellant on **April 14, 2011**, and **April 29, 2011**. The USPS returned the letter to the Department on

May 4, 2011. The returned envelope only reads "Return to Sender" it did not state that the addressee was no longer at this address or had moved.

12. The Department did not attempt to further contact the Appellant via personal service, regular mail, or by telephone.

13. The Department did not know that the Appellant had moved from the Longfellow address.

14. After the Appellant moved, she continued to return to the Longfellow address to see if any mail had been received. She did not receive any mail from the new occupants or the owner of the dwelling.

15. The Appellant did not receive actual notice of the review determination.

16. Approximately two years later, the Appellant began an internship at Spokane Community College. She was dismissed from the program during her internship, because there had been a founded finding against her for child neglect.

17. The Appellant contacted attorney, Douglas J Phelps. Attorney Phelps had the Appellant request a copy of her file from the Department. Upon review of the file, the Appellant learned of the Department's decision to uphold the founded finding.

18. On April 1, 2013, the Appellant requested an administrative hearing by certified mail, pursuant to RCW 26.44.125. OAH received the request in Olympia on April 4, 2013.

### III. CONCLUSIONS OF LAW

1. The petition for review was timely filed and is otherwise proper.<sup>1</sup> Jurisdiction exists to review the *Initial Order* and to enter the final agency order.<sup>2</sup>

2. ALJs and Review Judges must first apply the Department of Social and Health Services (DSHS) rules adopted in the Washington Administrative Code (WAC). If no DSHS rule applies, the ALJ or Review Judge must decide the issue according to the best legal

<sup>1</sup> WAC 388-02-0560 through -0585.

<sup>2</sup> WAC 388-02-0215, -0530(2), and -0570.

authority and reasoning available, including federal and Washington State constitutions, statutes, regulations, and court decisions.<sup>3</sup>

3. In an adjudicative proceeding regarding a founded CPS report of negligent treatment or maltreatment of a child, the undersigned Review Judge has the same decision-making authority as the ALJ to decide and enter the *Final Order*, in the same way as if the undersigned had presided over the hearing.<sup>4</sup> This includes the authority to make credibility determinations and to weigh the evidence. Because the ALJ is directed to decide the issues *de novo* (as new), the undersigned has also decided the issues *de novo*. In reviewing the Findings of Fact, the undersigned has given due regard to the ALJ's opportunity to observe the witnesses, but has otherwise independently decided the case.<sup>5</sup> The undersigned reviewing officer does not have the same relationship to the presiding officer as an Appellate Court Judge has to a Trial Court Judge; and the case law addressing that judicial relationship does not apply in the administrative hearings forum.

4. The Washington Administrative Procedure Act directs Review Judges to personally consider the entire hearing record.<sup>6</sup> Consequently, the undersigned has considered the adequacy, appropriateness, and legal correctness of all initial Findings of Facts and Conclusions of Law, regardless of whether any party has asked that they be reviewed.

5. An ALJ has jurisdiction to conduct a hearing only when granted such authority by law. Every decision maker must first determine whether he/she has jurisdiction to decide a matter before proceeding to hear and render a decision on the merits of a case. Jurisdiction cannot be waived and can be raised at any time.<sup>7</sup> "Even in the absence of a contest, where there is a question as to jurisdiction, [the] court has a duty to itself raise the issue."<sup>8</sup> Without

<sup>3</sup> WAC 388-02-0220.

<sup>4</sup> WAC 388-02-0217(3).

<sup>5</sup> WAC 388-02-0600, effective March 3, 2011.

<sup>6</sup> RCW 34.05.464(5).

<sup>7</sup> *J.A. v. Dep't of Soc. & Health Servs.*, 120 Wn. App. 654, 657, 86 P.3d 202 (2004).

<sup>8</sup> *Riley v. Sturdevant*, 12 Wn. App. 808, 810, 532 P.2d 640 (1975).

jurisdiction, a court or administrative tribunal may do nothing other than enter an order of dismissal.<sup>9</sup>

6. Any person named as an alleged perpetrator in a founded CPS report made on or after October 1, 1998, may challenge that finding.<sup>10</sup> CPS has the duty to notify the alleged perpetrator in writing of any such child abuse or neglect finding,<sup>11</sup> at least in part so the alleged perpetrator can challenge that finding. WAC 388-15-069(1), which has two sentences, authorizes two separate and distinct methods by which CPS may notify alleged perpetrators of a child abuse or neglect finding entered against them.<sup>12</sup>

7. WAC 388-15-069(1) states as follows:

CPS notifies the alleged perpetrator of the finding by sending the CPS finding notice via certified mail, return receipt requested, to the last known address. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

8. The first sentence in WAC 388-15-069(1) establishes one notification method CPS may use, which is to mail its notice to the alleged perpetrator by certified mail, return receipt requested, to the alleged perpetrator's last known address. If CPS is successful in getting its notice to the alleged perpetrator via this method, then CPS can prove that fact by producing a postal certified mail receipt signed by the alleged perpetrator acknowledging that she received that notice.<sup>13</sup> Proof of service via this certified mail, return receipt requested method, is crucial for the Department as well as for the alleged perpetrator because the alleged perpetrator's 20-day period in which to appeal the CPS finding begins to run with the date she

<sup>9</sup> *Inland Foundry Co. v. Spokane County Air Pollution Control Auth.*, 98 Wn. App 121, 124, 989 P.2d 102 (1999).

<sup>10</sup> WAC 388-15-081.

<sup>11</sup> WAC 388-15-065.

<sup>12</sup> WAC 388-15-069(2) authorizes another method, personal service, which is irrelevant to this proceeding: "In cases where certified mailing may not be either possible or advisable, the CPS social worker may personally deliver or have served the CPS finding notice to the alleged perpetrator."

<sup>13</sup> WAC 388-02-0065, How does a party prove service, states: "A party may prove service by providing any of the following: (1) A sworn statement; (2) The certified mail receipt signed by the recipient; (3) An affidavit or certificate of mailing; (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or (5) Proof of fax transmission." (Emphasis added).

receives that notice.<sup>14</sup> Because the alleged perpetrator's appeal period is specifically tied to the date she "receives the CPS finding notice," the undersigned concludes that perfected service under the first sentence of WAC 388-15-069(1) requires that the alleged perpetrator actually receive CPS' notice.

9. Because the Department cannot produce a certified mail receipt proving that the CPS finding notice was actually received by the Appellant, the Department was not successful in serving its finding notice to the Appellant pursuant to the certified mail, return receipt method authorized under the first sentence in WAC 388-15-069(1). The Appellant's 20-day period in which to appeal that finding under WAC 388-15-085(2) never began to run. This analysis is correct as far as it goes, but it does not go far enough. Deciding whether the Appellant received actual notice is not enough.

10. The second sentence in WAC 388-15-069(1) authorizes a second method the Department may use to get CPS' notice to an alleged perpetrator. This second method requires the Department to make a "reasonable, good faith effort" to get CPS' notice to the alleged perpetrator. This second-sentence method does not require that the Appellant actually receive the CPS notice. This second-sentence, good-faith-effort service method is separate and distinct from the first-sentence, actual-receipt-of-notice service method because there are two separate and distinct time periods during which the alleged perpetrator may appeal the CPS notice.

11. An alleged perpetrator has 20 days<sup>15</sup> from the date she actually receives the CPS notice, pursuant to the first sentence in WAC 388-15-069(1), to appeal it under

<sup>14</sup> WAC 388-15-085, Can an alleged perpetrator challenge a CPS finding of child abuse or neglect, states as follows: "(1) In order to challenge a founded CPS finding, the alleged perpetrator must make a written request for CPS to review the founded CPS finding of child abuse or neglect. The CPS finding notice must provide the information regarding all steps necessary to request a review. (2) The request must be provided to the same CPS office that sent the CPS finding notice within twenty calendar days from the date the alleged perpetrator receives the CPS finding notice (RCW 26.44.125)." (Emphasis added).

<sup>15</sup> WAC 388-15-089, What happens if the alleged perpetrator does not request CPS to review the founded CPS finding within twenty days, states as follows: "(1) If the alleged perpetrator does not submit a written request within twenty calendar days for CPS to review the founded CPS finding, no further review or challenge of the finding may occur."

WAC 388-15-085(2), but she has 30 days<sup>16</sup> to appeal it under WAC 388-15-089(2) if the Department has only made a reasonable, good faith effort to get the CPS notice to her, under the second sentence in WAC 388-15-069(1). Thus, while the Appellant's 20-day appeal period under WAC 388-15-085(2) never began to run, her 30-day period under WAC 388-15-089(2), did begin running and ran out before the Appellant filed her request for an administrative hearing on April 4, 2013, because the Department did in fact use reasonable, good faith efforts to serve her with the CPS notice.

12. These two different methods of service of a notice to an alleged perpetrator of child abuse or neglect operate concurrently. That is, if the Department is able to actually get the CPS notice into the hands of the alleged perpetrator by mailing it by certified mail, return receipt, then the Department has used the WAC 388-15-069(1) first-sentence method. However, if the Department attempts to get its notice into the hands of the alleged perpetrator by mailing it certified mail, return receipt requested, but fails; then that mailing by certified mail, return receipt requested can turn into good service under the WAC 388-15-069(1) second-sentence method if the Department's mailing efforts constitute a reasonable, good faith effort at putting the notice into the alleged perpetrator's hands. In this case, the Department was not able to serve the Appellant under the first-sentence method, but it was able to do so under the second-sentence method because the steps it took to get its notice into the Appellant's hands were both reasonable and undertaken in good faith.

13. The undersigned has concluded that the Department made reasonable, good faith efforts at getting its CPS notice into the Appellant's hands because the notice was sent to the Appellant's address of record. Furthermore, this was the same address provided by the Appellant on her Review Request Form less than one week earlier, and the Appellant did not change her mailing address with the Department or the USPS.

<sup>16</sup> (2) If the department has exercised reasonable, good faith efforts to provide notice of the CPS finding to the alleged perpetrator, the alleged perpetrator shall not have further opportunity to request a review of the finding beyond thirty days from the time the notice was sent.

14. The above analysis of the second sentence of WAC 388-15-069(1), wherein it is concluded that actual receipt of the CPS notice is not required before the 30-day period in which to appeal the notice under WAC 388-15-089(2) begins running where the Department has made reasonable, good faith efforts to serve the notice, is consistent with published case law in Washington State which establishes that a person who refuses to accept certified mail, return receipt requested, has constructively refused to accept notice.<sup>17</sup> In this matter, the U.S. Postal Service attempted delivery of the finding of negligent treatment or maltreatment of a child to the Appellant's address of record, on April 14, 2011, and on April 29, 2011. The Appellant failed to respond to each of these attempts and therefore constructively refused to accept the Department's notice of a founded finding of negligent treatment or maltreatment of a child.

15. The above analysis of the second sentence of WAC 388-15-069(1) is also consistent with the statutory scheme set out in chapter 26.44 RCW, wherein the Department's foremost obligation is the protection of children and where its obligation to serve alleged perpetrators with notice of its actions is of lesser priority. For example, the Department is required under RCW 26.44.115 only to take "reasonable steps" to notify parents that their children have been taken into protective custody; the Department is required under RCW 26.44.120 only to make "reasonable efforts" to notify non-custodial parents of the same information; and the Department is required under RCW 26.44.030 only to make "reasonable efforts" to identify the person alleging that child abuse or neglect has occurred. Notwithstanding the published case law's preference for merits adjudication versus default orders under Civil Rule 60(b), the Department's regulations do not require actual service of the CPS notice in all instances and the undersigned must apply those regulations as the first

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<sup>17</sup> *City of Seattle v. Foley*, 56 Wn. App. 485, 784 P.2d (1990); *McLean v. McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997); and *State v. Baker*, 49 Wn. App. 778, 845 P.2d 1335 (1987).

source of law.<sup>18</sup>

16. As stated above, an alleged perpetrator must request a review of a finding of abuse or neglect in writing, within twenty calendar days after receiving notice of the finding from the Department, or within thirty calendar days after the Department has made reasonable, good faith efforts at getting its CPS notice into the Appellant's hands. If a timely request for review is not made, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.<sup>19</sup> This Appellant failed to timely request review of the finding of negligent treatment or maltreatment of a child after constructively refusing certified mail on April 14, 2011, and on April 29, 2011. Because this Appellant's request for hearing was not received by the Office of Administrative Hearings until after the regulatory and statutory time period for filing such a request, the founded incident of negligent treatment or maltreatment of a child became final and the ALJ lacked jurisdiction to hear the case on its merits. Therefore, the ALJ correctly dismissed this matter due to lack of subject matter jurisdiction.<sup>20</sup>

17. The undersigned has considered the *Initial Order*, the Appellant's *Petition for Review*, and the entire hearing record. The Initial Findings of Facts accurately reflected the evidence presented on this hearing record and they are adopted as findings in this decision, pursuant to the clarifying modifications outlined above. The Initial Conclusions of Law cited and applied the governing law correctly and they are adopted and incorporated as conclusions for this decision.<sup>21</sup> The procedures and time limits for seeking reconsideration or judicial review of this decision are in the attached statement.

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<sup>18</sup> WAC 388-02-0220.

<sup>19</sup> RCW 26.44.125.

<sup>20</sup> *Inland Foundry Co. v. Spokane County Air Pollution Control Auth.*, 98 Wn. App 121, 124, 989 P.2d 102 (1999).

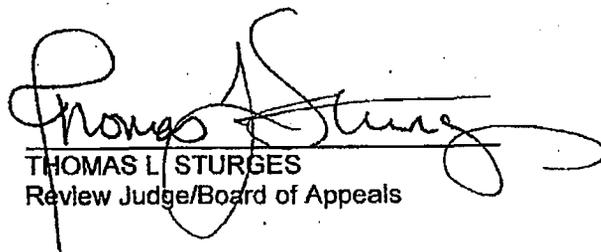
<sup>21</sup> RCW 34.05.464(8).

**IV. DECISION AND ORDER**

1. There was no jurisdiction for the Administrative Law Judge to hold a hearing on the merits of this matter, because the Appellant failed to timely request an adjudicative hearing to contest the Department's founded finding of negligent treatment or maltreatment of a child.

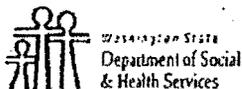
2. The *Initial Order* on the Department's *Motion for Dismissal* is affirmed.

Mailed on the 5<sup>th</sup> day of November, 2013.

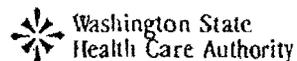
  
THOMAS L. STURGES  
Review Judge/Board of Appeals

Attached: Reconsideration/Judicial Review Information

Copies have been sent to: Holly Snyder (Ray), Appellant  
Douglas Phelps, Appellant's Representative  
Mareen Bartlett, Department's Representative  
Sharon Gilbert, Program Administrator, MS: 45710  
Robert M. Murphy, ALJ, Spokane OAH



STATE OF WASHINGTON  
 DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
 BOARD OF APPEALS  
**PETITION FOR RECONSIDERATION OF  
 REVIEW DECISION**



See information on back.  
 Print or type detailed answers.

NAME(S) (PLEASE PRINT)		DOCKET NUMBER	CLIENT ID OR "D" NUMBER
MAILING ADDRESS	CITY	STATE	ZIP CODE
TELEPHONE AREA CODE AND NUMBER			

Please explain why you want a reconsideration of the Review Decision. Try to be specific. For example, explain:

- Why you think that the decision is wrong (why you disagree with it).
- How the decision should be changed.
- The importance of certain facts which the Review Judge should consider.

I want the Review Judge to reconsider the Review Decision because...

PRINT YOUR NAME SIGNATURE DATE

<u>MAILING ADDRESS</u> BOARD OF APPEALS PO-BOX 45803 OLYMPIA WA 98504-5803	<u>PERSONAL SERVICE LOCATION</u> DSHS / HCA Board of Appeals Office Bldg 2 (OB-2), 1st Fl. Information Desk 1115 Washington St. SE, Olympia WA
<u>FAX</u> 1-(360) 664-6187	<u>TELEPHONE (for more information)</u> 1-(360) 664-6100 or 1-877-351-0002

RECONSIDERATION REQUEST

Page \_\_\_\_ of \_\_\_\_

If You Disagree with the Judge's Review Decision or Order and Want it Changed,  
You Have the Right to:

- (1) Ask the Review Judge to reconsider (rethink) the decision or order (10 day deadline);
- (2) File a Petition for Judicial Review (start a Superior Court case) and ask the Superior Court Judge to review the decision (30 day deadline).

**DEADLINE for Reconsideration Request - 10 DAYS:** The Board of Appeals must RECEIVE your request within ten (10) calendar days from the date stamped on the enclosed Review Decision or Order. The deadline is 5:00 p.m. If you do not meet this deadline, you will lose your right to request a reconsideration.

**If you need more time:** A Review Judge can extend (postpone, delay) the deadline, but you must ask within the same ten (10) day time limit.

**HOW to Request:** Use the enclosed form or make your own. Add more paper if necessary. You must send or deliver your request for reconsideration or for more time to the Board of Appeals on or before the 10-day deadline (see addresses on enclosed form).

**COPIES to Other Parties:** You must send or deliver copies of your request and attachments to every other party in this matter. For example, a client must send a copy to the DSHS office that opposed him or her in the hearing.

**Translations and Visual Challenges:** If you do not read and write English, you may submit and receive papers in your own language. If you are visually challenged, you have the right to submit and receive papers in an alternate format such as Braille or large print. Let the Board of Appeals know your needs. Call 1-(360)-664-6100 or TTY 1-(360) 664-6178.

**DEADLINE for Superior Court Cases - 30 DAYS:** The Superior Court, the Board of Appeals, and the state Attorney General's Office must all RECEIVE copies of your Petition for Judicial Review within thirty (30) days from the date stamped on the enclosed Review Decision or Order. There are rules for filing and service that you must follow.

**EXCEPTION:** IF (and only if) you file a timely reconsideration request (see above), you will have thirty days from the date of the Reconsideration Decision.

Refer to the Revised Code of Washington (RCW), including chapter 34.05, the Washington Administrative Code (WAC), and to the Washington Rules of Court (civil) for guidance. These materials are available in all law libraries and in most community libraries.

**If You Need Help:** Ask friends or relatives for a reference to an attorney, or contact your county's bar association or referral services (usually listed at the end of the "attorney" section in the telephone book advertising section). Columbia Legal Services, Northwest Justice Project, the Northwest Women's Law Center, some law schools, and other non-profit legal organizations may be able to provide assistance. You are not guaranteed an attorney free of charge.

APPENDIX C  
Appellant's Brief to the Superior Court

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SPOKANE - TIME 2:10

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SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON	)	
DEPARTMENT OF SOCIAL AND	)	
HEALTH SERVICES	)	
Respondent/Plaintiff,	)	NO. 13-2-04894-3
	)	DSHS Docket No. 04-2013-L-0617
vs.	)	
	)	<b>APPELLANT'S OPENING BRIEF</b>
HOLLY SNYDER (RAY)	)	
Appellant/Defendant.	)	

**I. FACTS**

On March 19, 2010, the Department of Social and Health Services Children's Administration/ Child Protective Services (DSHS or the Department) received a report alleging that the Appellant, Holly Snyder, aged 21 at the time, had abused or neglected a child in her care. (Review Decision p. 1) On March 21, 2011 the Department sent to Appellant, by certified mail, a letter advising her that the allegations as to two of her three children were Founded for "negligent treatment or maltreatment" of a child. (Review Decision p. 1). Specifically, the investigation, intake number 2214260 concluded that, "During the course of the investigation, the mother admitted that she used a towel to lock the older children in their bedroom at night. Although the mother states that she did so in order to protect the child from getting out of bed and injuring herself in the apartment or wandering out of the apartment this action created a serious risk of substantial harm to the child,

1 especially in case of an emergency.” (Review Decision p. 2 quoting the DSHS letter dated March 21,  
2 2011).

3  
4 The Appellant received and signed for the certified letter on March 31, 2011 at her address of  
5 412 W. Longfellow Spokane, Washington. (Review Decision p. 2). The letter also stated that the  
6 Appellant could request an internal review of the Founded findings by completing a “Review  
7 Request Form” (RRF). (Review Decision p. 2). The Appellant formally requested an internal  
8 review on April 6, 2011 and the Department received the request on April 8, 2011. (Review  
9 decision p. 2). The Appellant requested that the notice of the outcome of the internal review be  
10 mailed to her at the Longfellow address. (Review Decision p. 2). The Appellant soon after moved  
11 from the Longfellow address and in to her mother’s address on Cleveland Street in Spokane  
12 Washington. (Review Decision p. 2). The Appellant did not leave a change of address with the  
13 United States Postal Service (USPS) nor did she advise the Department of the change of address.  
14 (Review Decision p. 2).

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20 The Department received the Appellant’s request for internal review and concluded that the  
21 Founded finding of neglect was correct. (Review Decision p. 2). On April 12, 2011 the Department  
22 mailed a certified letter to the Appellant explaining that the internal review upheld the finding of  
23 negligent treatment and citing RCW 26.44.125 that the Appellant could challenge the determination  
24 by sending a written request for administrative hearing to the Office of Administrative Hearings  
25 (OAH) within 30 calendar days from the date Appellant received the letter. (Review Decision p. 2).  
26 The letter was returned to the department on May 4, 2011 stamped “Return to Sender.” (Review  
27 Decision p. 3). The Department made no further attempt to contact the Appellant. (Review decision  
28 p 3). The Appellant continued to return to the Longfellow address to see if any mail had been  
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1 received. (Review decision p. 3). The Appellant did not receive actual notice of the review  
2 determination. (Review Decision p. 3). Approximately two years later. The Appellant began an  
3 internship at Spokane Community College but was subsequently dismissed from the program during  
4 the internship because of the Founded finding of neglect against two of her children. (Review  
5 Decision p. 3). The Appellant contacted our offices who had her obtain a copy of her file and upon  
6 review of that file Appellant learned of the Departments decision to uphold the finding. (Review  
7 Decision p. 3).  
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### 11 PROCEDURAL HISTORY

12 On April 1, 2013, the Appellant requested an administrative hearing by certified mail which  
13 was received by OAH on April 4, 2013. (Review Decision p. 3). A pre-hearing was scheduled for  
14 June 6, 2013 with a hearing set for October 18, 2013 and motions to be filed by June 28, 2013.  
15 (Review Decision p. 59). The Department filed a Motion to Dismiss for Lack of Jurisdiction on  
16 June 13, 2013 based on the fact that Appellant did not request the hearing within 30 days of the April  
17 12, 2011 decision. (Review Decision p. 35). Appellant's attorney (this office) filed a response on  
18 June 27, 2013. (Review Decision p. 23). A motion hearing was scheduled and heard on August 27,  
19 2013 and the decision to grant the Department's motion was handed down on September 10, 2013.  
20 (Review Decision p. 15). The Appellant then filed a Petition for Review of Initial Decision on  
21 September 20, 2013 where the Department's Motion to Dismiss for Lack of Jurisdiction was upheld;  
22 which is the basis for appeal before this Court. (Review Decision p. 1).  
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### 30 II. ISSUE PRESENTED

1 1) Does RCW 26.44.125(5) and RCW 26.44.100(4) establish a heightened protection to due process  
2 rights for parents and children under investigation by DSHS?  
3

### 4 III. LEGAL AUTHORITY

5 The revised code of Washington 26.44.100 addresses: "Information about rights-Legislative  
6 purpose-Notification of investigation, report, and Findings." In the first section (1) of this statute the  
7 legislature "finds parents and children often are not aware of their due process rights when agencies are  
8 investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including  
9 parents, shall be afforded due process.....To facilitate this goal, the legislature wishes to ensure that  
10 parents and children be advised in writing and orally, if feasible, of their basic rights and other specific  
11 information as set forth in this chapter....." Then in section (2) of RCW 26.44.100 it requires "The  
12 department shall notify the parent, guardian, or legal custodian of a child." Section (3) sets out notice by  
13 certified mail with return receipt requested. Then section (4) requires the department "shall exercise  
14 reasonable, good faith efforts to ascertain the location of persons entitled to notification under this  
15 section."  
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22 Also applicable to this issue is RCW 26.44.125, the title of this statute is "Alleged perpetrators-  
23 Right to review and amendment of finding-Hearing." In subsection (2) of the statute it refers back to  
24 RCW 26.44.100 where the legislature addresses concerns that parents and children in these matters are  
25 afforded their due process rights. The right to review begins when the "department has notified the  
26 alleged perpetrator under RCW 26.44.100". Then subsection (5) of RCW 26.44.100 reads: "The request  
27 for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the  
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1 agency review determination.” There is nothing in the statute addressing the mailing of the notice but  
2 only addressing receipt of the notice as establishing a duty to request a hearing.  
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#### 5 IV. ARGUMENT

6 In RCW 26.44.100 the “legislature finds parents and children are not aware of their due process  
7 rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms  
8 that all citizens, including parents, shall be afforded due process.....To facilitate this goal, the  
9 legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their  
10 basic rights and other specific information as set forth in this chapter.....” By setting forth this language  
11 the legislature has stated that the department has a heightened duty to ensure that parents and children  
12 are notified of their basic rights “in writing and orally.” The language of the statute establishes that the  
13 parents are to be “orally” advised of these basic rights “where feasible.” The legislature has established a  
14 higher duty of the Department to notify parents and children of their due process rights. A basic  
15 principle of a citizens rights’ is the right to notice and an opportunity to be heard. *Grannis v. Ordean*,  
16 234 U.S. 385, 394, 34 S. Ct. 779, 58 L.Ed. 1363 (1914).  
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23 The fundamental requisites of due process are ‘the opportunity to be heard,’ *Grannis v. Ordean*,  
24 234 U.S. 385, 394, 34 S. Ct. 779, 58 L.Ed. 1363 (1914), and “notice reasonably calculated, under all the  
25 circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity  
26 to present their objections,’ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct.  
27 652, 657, 94 L.Ed. 865 (1950) Thus ‘at a minimum’ the due process clause of the Fourteenth  
28 Amendment demands that a deprivation of life, liberty or property be proceeded by ‘notice and  
29 opportunity for hearing appropriate to the nature of the case.’ *Mullane*, at 313, 70 S. Ct. at 657.  
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1 Moreover, this opportunity 'must be granted at a meaningful time and in a meaningful manner.'  
2 *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L.Ed.2d 62 (1965) "A procedural rule  
3 that may satisfy due process in one context may not necessarily satisfy procedural due process in every  
4 case." *Bell v. Burson*, 402 U.S. 535, 540, 91 S. Ct. 1586, 1590, 29 L.Ed.2d 90 (1971) The procedural  
5 safeguards afforded in each situation should be tailored to the specific function to be served by them.  
6 *Goldberg v. Kelly*, 397 U.S. 254, 267, 90 S. Ct. 1011, 25 L.Ed.2d 287 (1970) The Washington  
7 legislature has provided such guidance in RCW 26.44.100 and RCW 26.44.125.  
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11 In the case RCW 26.44.100 (1) requires increased protections of parents and children's due  
12 process rights....the legislature wishes to ensure parents and children be advised in writing and orally  
13 "of their basic rights." The statute repeatedly directs that notice "shall" be given to the parents and RCW  
14 26.44.100 (4) requires the department "shall exercise reasonable, good-faith efforts to ascertain the  
15 location of persons entitled to notification under this section." Then RCW 26.44.125 (5) reads: "The  
16 request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of  
17 the agency review determination." The language requires that the receipt of the notice establishes the  
18 time frame during which an adjudicative review can be requested. The request for adjudicative review  
19 comes within 30 days of the receiving the notice of agency review determination.  
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24 The legislative purpose of RCW 26.44.100 is to assure parents and children are aware of their  
25 due process rights. RCW 26.44.125 requires that notice to the alleged perpetrator is consistent with  
26 RCW 26.44.100. The legislature has established an increased duty of due process in these cases through  
27 these statutes which is contrary to the state's position that mailing satisfies the service requirement.  
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30 The department advocates that the court ignore the language of the statute. That the court not  
31 require the receipt of the notice but accept the service merely by mailing the notice by certified mail. But  
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1 the language of RCW 26.44.100 (1) establishes a requirement of notice by writing and orally where  
2 feasible. Then RCW 26.44.100 (2) requires the department notify the subject of the report. At RCW  
3 26.44.100 (3) it says that notification "shall be made by certified mail, return receipt requested, to the  
4 person's last known address." Additionally, RCW 26.44.100 requires the department to "exercise  
5 reasonable, good faith efforts to ascertain the location of persons entitled to notification under this  
6 section."  
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9 The only requirement setting forth when an appellant must make a "timely request for an  
10 adjudicative hearing" is triggered by the receipt of the notice. All of this is consistent with the stated  
11 legislative purpose of RCW 26.44.100 which is protecting parents and children's due process rights.  
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14 The department urges the court to ignore the language and purpose of RCW 26.44.100 and find  
15 that receipt of the notice is not required. To support this argument they rely on *City of Seattle v. Foley*,  
16 56 Wn.App 485, 784 P.2d 176, 179 (1990) a case involving the sending of a notice of license  
17 suspension. But this case is distinguishable first because there was nothing in the record to show *Foley*  
18 lived elsewhere. (*supra* at 179) Further, RCW 46.20.205 requires a licensee is responsible to notify the  
19 Department of Licensing of a change of address. But RCW 26.44.100 requires a heightened duty of  
20 notice and RCW 26.44.100 (4) requires the department to "exercise reasonable, good-faith efforts to  
21 ascertain the location of persons entitled to notification under this section." In this case the burden is on  
22 the department and not on the parent to find the current address.  
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27 Additionally, the department argues that *McLean v. McLean*, 132 Wn.2d 301, 937 P.2d 602  
28 (1997) does not require actual notice and suggests that this case allows the court to not require actual  
29 notice under RCW 26.44.125 and RCW 26.44.100. But as the plain language of RCW 26.44.125 (5)  
30 clearly states the "request for adjudicative proceeding must be filed within thirty calendar days after  
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1 receiving the notice of the agency determination.” This is different from the statute in *McLean supra*  
2 where the court found the plain language of RCW 26.09.175 (2) does not require actual notice. *McLean*  
3 *v. McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997) is distinguishable from the case before the court  
4 because RCW 26.44.100 and RCW 26.44.125 established a heightened due process requirement on the  
5 department and require receipt of the decision.  
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10 Further, the Review Decision relies on WAC 388-15-069 (1) and WAC 388-15-089 (2) in  
11 deciding that there are two methods for DSHS to get notice to an alleged perpetrator. (Review Decision  
12 p. 6-7). However this creates a conflict in the notice requirements which due-process dictates be  
13 decided in favor of the alleged perpetrator, in this case the requirement in WAC 388-15-069 (1) which  
14 requires notice to be received by the alleged perpetrator.  
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17 Additionally, DSHS did not know that the Appellant had moved (See Review decision p. 3);  
18 therefore the reasonable good-faith efforts to provide notice under RCW 26.44.100 dictate that perhaps a  
19 phone call to the alleged perpetrator be made particularly when they are under an assumption that the  
20 person is at the same address yet mail is being returned.  
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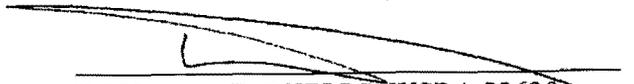
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23 The department’s argument must fail. The Department of Licensing may rely upon the  
24 statutory requirements of the petitioner updating his address. There is no such duty in the statutes  
25 under RCW 26.44. et seq. RCW 26.44.100 and 125 places the greater burden of notification on  
26 the department. To allow any other statutory interpretation would render the legislative intent of  
27 RCW 26.44.100 meaning less. It is a basic principle of statutory interpretation that the statute  
28 must be applied consistent with the legislative intent.  
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V. CONCLUSION

For the foregoing reasons, the Review Decision should be overruled, and the founded finding of negligent treatment or maltreatment against Ms. Snyder should be vacated.

DATED THIS 9<sup>th</sup> day of May, 2014

  
DOUGLAS D. PHELPS, WSBA 22620  
ATTORNEY FOR APPELLANT