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In the Matter of the
GUARDIANSHIP OF SANDRA LAMB

DSHS REPLY BRIEF ON CROSS-APPEAL

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I. ARGUMENT IN REPLY

On cross-appeal, DSHS has challenged the Superior Court's allowance of fees for the Hardmans' "community outreach" activities. DSHS Response Brief and Opening Brief on Cross-Appeal (Br. of DSHS) at 43-49. In response, the Hardmans have merely incorporated unspecified portions of their reply brief, with very little specific reference to their "community outreach" fees. Guardians' Reply to DSHS Response Brief and Response to Opening Brief on Cross-Appeal (Resp. Br. of Hardmans) at 32-33. The Hardmans' argument in favor of political advocacy fees is not an adequate response to DSHS's challenge of community outreach fees; whether a guardian may properly charge his disabled wards *pro rata* for community outreach activities is a separate question from whether a guardian may properly charge his wards for time spent lobbying.¹ The Hardmans have not shown that their community outreach activities are defensible as part of a guardian's duties based on legal, historical, or policy considerations. Furthermore, the Hardmans have not shown that their community outreach activities will be necessary

¹ The Hardmans do argue that a guardian "is in a natural position to advocate in... government and *community forums*["] Resp. Br. of Hardmans at 14. They do not appear to be making any argument about the kinds of activities that the Superior Court labeled "community outreach" since they go on to explain that they are talking about those forums "where governmental decisions directly affect" the services of the incapacitated person. *Id.* Presumably they do not mean to suggest that professional development and public relations activities are directly related to governmental decisions.

or beneficial to Ms. Lamb or Ms. Robins in particular; nor have they shown that they may receive fees for engaging in community outreach activities, beyond the \$175 per month cap set by WAC 388-79-030.

A. There Is No Legal Basis to Include Community Outreach as a Guardianship Activity

The trial court order in this case did not specify precisely which of the Hardmans' activities were included in the court's award for community outreach fees, Br. of DSHS at 43; *see* CP 61; CP 236; but the order does contrast community outreach activities with two other categories of activities: "political and lobbying activities" and "usual and customary guardianship activities." CP 61-62; CP 236-37. The Hardmans' so-called "community outreach" activities seem to include both professional activities that may increase the future effectiveness of the Hardmans (though not benefit each ward directly), and community activities that may increase public awareness of disabled individuals generally (though not of each ward particularly). *Professional development* activities seem to include attending Friends of Fircrest meetings, CP 135; developing beneficial relationships and confidential sources of information, CP 193; and "work[ing] with communications professionals to maximize effectiveness." CP 135.² *Public relations*

² DSHS discussed the Hardmans' professional development activities in its Opening Brief on Cross-Appeal. Br. of DSHS at 45-46.

activities seem to include organizing a community organization of friends and family members of Fircrest residents, organizing Fircrest tours, producing newsletters and various informational materials and videos, participating in neighborhood master planning, and “lobbying” the public through various media outlets, CP 135; and volunteering on a state task force as a representative of the non-profit Friends of Fircrest. CP 196-97.³ The Hardmans do not explain how any of these activities fall within the scope of a guardian’s powers and duties.

1. A guardian cannot exercise every personal right on the ward’s behalf.

The Hardmans argue broadly that “a guardian steps into the shoes of the incapacitated person” to exercise her rights. Resp. Br. of Hardmans at 11. When addressing political rights, they assert that “[w]hether [those] rights have been taken away or not, there is no possibility to exercise them without and through a guardian.” *Id.* at 12-13 (emphasis omitted).⁴ To the extent they mean to say that a guardian has the authority to exercise all of his ward’s personal rights without exception, the Hardmans are mistaken. Any analysis that comports with existing law must recognize that some

³ In its opening brief DSHS specifically listed several examples. Br. of DSHS at 43; *see also id.* at 7-8 (listing “Other advocacy activities” than political efforts).

⁴ Presumably they mean this statement as a practical matter in this case, in which the wards suffer from severe mental retardation. There is no doubt that, in general, if a ward retains a specific right (such as the right to vote, or the right of free association), she need not exercise that right through her guardian.

rights are peculiarly personal in such a way that a guardian—even a full guardian of the person and estate—may not exercise them on the individual’s behalf. For instance, while a guardian may have a duty to protect his ward’s constitutional criminal rights, he cannot exercise or waive them for her. Br. of DSHS at 20. A guardian might arrange assistance for a ward to exercise her right to vote if she retained that right; but if the ward had been judged incapable of exercising that right for herself, the guardian would have no authority to substitute his judgment for that of the ward in order to cast the ward’s vote. *Id.*⁵

It is unclear where, if anywhere, the Hardmans would draw a principled line distinguishing those rights that a guardian may exercise on behalf of his ward from those he cannot. DSHS has explained that the rights potentially involved when the Hardmans engage in community outreach⁶—peculiarly personal rights such as free speech and free association—are not subject to a guardian’s substituted exercise on the ward’s behalf. Br. of DSHS at 44-45. That a guardian may assist the ward in asserting those rights, RCW 11.92.043(4), is not to say that he may substitute his voice and community associations for hers.

⁵ As the Hardmans point out, they are not casting ballots on behalf of their wards. Resp. Br. of Hardmans at 12. The Hardmans do not argue that they could in fact exercise those rights, or that a court could grant them the power to do so; yet they fail to explain how such rights, clearly beyond the guardian’s powers, fit into their theory.

⁶ It is not evident that the Hardmans’ community outreach activities actually involve exercising the rights of Ms. Lamb or Ms. Robins at all. *Infra* at 10-11.

2. ***Hamlin* and *Colyer* do not support the view that all of a ward's personal rights may be exercised by the guardian.**

In articulating their view of a guardian's broad authority to exercise seemingly all of his ward's personal rights, the Hardmans cite to *In re Guardianship of Hamlin*, 102 Wn.2d 810, 689 P.2d 1372 (1984), and *In re Welfare of Colyer*, 99 Wn.2d 114, 660 P.2d 738 (1983) (overruled in part by *Hamlin*, 102 Wn.2d at 818-21). Resp. Br. of Hardmans at 11. *Colyer*, as modified by *Hamlin*, created a common-law scheme for deciding when life support to an incapacitated person can be discontinued without direct judicial intervention and in the absence of the patient's advance directive. Under that scheme the patient's physicians, family members, and guardian can together make the decision to withdraw life support without resort to the courts, provided that all are in agreement. In articulating the source of the guardian's authority to make that decision, the *Colyer* court relied solely on the statutory language now contained in RCW 11.92.043(4)⁷ that a guardian of the person has the power to "assert... [the] rights and best interests" of the ward. 99 Wn.2d at 128.

However, in clarifying *Colyer*, the *Hamlin* court did not rely solely on some unlimited power of a guardian to assert the ward's rights and best interests in regard to all personal rights. The *Hamlin* court pointed instead

⁷ Formerly RCW 11.92.040(3).

to the guardian's power to "participate in medical decisions" *in a manner that supports* the ward's best interests. 102 Wn.2d at 815. The *Hamlin* court reasoned that, where a guardian has the power to authorize medical intervention in the ward's best interests, he also has the power to authorize "nonintervention" if that course of action is in the ward's best interests. *Id.* There was no question in that case that the guardian had authority to make medical decisions on the ward's behalf; the only question was whether removing life support was such a decision.

The Hardmans rely upon the broad language of *Colyer* to assert that all personal rights of the ward may be exercised by the guardian within the scope of his powers and duties. Following *Hamlin*, the guardian's power to act as a surrogate decision-maker on questions of medical intervention or non-intervention is contingent on his medical decision-making authority as properly conferred by due process of law, not on some broad authority over all personal rights belonging to the ward. For instance, a limited guardian of the person without medical decision-making authority would have no power to authorize the withdrawal of life support. *See* RCW 11.92.043(5) (medical consent may not be provided by a guardian "in the case of a limited guardian where such power is not expressly provided for in the order of appointment"). To state the point more broadly, a guardian's power to make a personal decision on behalf of

his ward depends upon the ward having lost, by due process of law, the right to make that specific type of decision for herself; and the guardian having been given the power to exercise it in her stead.⁸

More to the point, *Colyer* and *Hamlin* do not answer the question presented here: whether a guardian is acting within the scope of his appointment—in a number of guardianship cases at once, giving rise to *pro rata* fees for each ward—when he engages in activities such as attending community meetings, creating newsletters, or explaining the plight of the disabled community to a radio audience. The Hardmans can point to no element of guardianship powers that would include representation of the ward's community in a public relations campaign. Neither the guardianship statute nor the CPG Board Standards of Practice make any mention of a requirement that guardians belong to community organizations that support incapacitated individuals; or a requirement that guardians engage in public education regarding the ward's community. *See* Br. of DSHS at 44. The Hardmans have not cited to any other law that establishes such a requirement. *See* Resp. Br. of Hardmans at 32-33.

⁸ Even a full guardianship does not completely strip the incapacitated person of all of her personal rights. Br. of DSHS at 44-45 (incapacitated person does not lose free-association rights). The Hardmans do not appear to dispute this point. Resp. Br. of Hardmans at 13 (arguing that "prohibition on the waiver of Constitutional rights" supports their position). They cite to a section of DSHS's response on appeal that incorporates the discussion about free-association rights. *Id.* (citing to Br. of DSHS at 20); *see* Br. of DSHS at 19 (citing to Br. of DSHS at 44-45).

Simply put, there is no legal basis for including community outreach (as practiced by the Hardmans) as a compensable guardian activity, and the trial court abused its discretion when it did so in this case.

B. Public Policy Does Not Favor Extension Of Current Law To Include Community Outreach As A Guardianship Activity

The Hardmans have not specifically addressed whether current law should be extended to allow community outreach as a guardianship activity. Resp. Br. of Hardmans at 32.⁹ Even if the Hardmans intend their arguments regarding political advocacy to apply also to community outreach, they have failed to establish that guardianship authority should be extended to those activities.

To the extent that the Hardmans mean for *Colyer* and *Hamlin* to persuade this Court to judicially extend a guardian's duties to include community representation, this case is so different as to require a different result. Unlike medical decisions, which are clearly within the statutory and common-law powers traditionally and commonly exercised by guardians, the Hardmans' "community outreach" activities on behalf of their wards collectively have no legal or historical precedent as guardianship activities. End-of-life decisions are clearly a special case in the world of personal rights. *Colyer* created a common-law procedure for

⁹ The Hardmans "incorporate by reference the arguments made under Section D" of their reply. Resp. Br. of Hardmans at 32. Pages 10-16 are given the in-line heading of "Section D," though they are labeled in the Table of Contents as Section 4.

family members to withdraw life support from an incapacitated adult without being appointed guardians; no other personal right of an incapacitated adult can be exercised on the mere basis of blood ties without individual consent, statutory authority, or judicial intervention. The Hardmans' public education, community involvement, and professional development are not comparable to that special case.¹⁰

C. The Record Does Not Support a Finding That the Hardmans' Community Outreach Activities Are Necessary or Beneficial to Ms. Lamb or Ms. Robins in Particular

1. The community outreach activities at issue do not specifically benefit Ms. Lamb and Ms. Robins.

The superior court abused its discretion when it determined that there was adequate evidence to show that the Hardmans' "community outreach" activities are necessary or beneficial to Ms. Lamb and Ms. Robins. Br. of DSHS at 48-49. The Hardmans appear to assert that the record shows that their activities "related directly to specific and ongoing legislative, administrative or other actions at the state or community level

¹⁰ Even if public education regarding issues related to RHC residents were a special case akin to the withdrawal of life support, guardians are not the best mechanism by which that concern can be addressed. Federal law requires that Washington designate a "protection and advocacy" organization to "ensure protection of, and advocacy for, the rights of [developmentally disabled persons]." 45 C.F.R. § 1385.3. Disability Rights Washington (DRW) is the "nonprofit organization designated by the governor to protect and advocate for persons with disabilities" in this state. *Parsons v. Dep't of Social & Health Services*, 129 Wn. App. 293, 298, 118 P.3d 930 (2005), *rev. denied*, 157 Wn.2d 1004 (2006); Br. of DSHS at 8, n. 7. DRW is thus better placed to represent the communal voice of RHC residents than are guardians, whose appointment is meant to protect individual interests.

[affect Ms. Lamb's and Ms. Robins'] medical and health care and treatment.” Resp. Br. of Hardmans at 25. They offer no further explanation of how the record supports such a finding as to their community activities in particular.

In determining that a guardian fee allowance of “between \$50 and \$75 per month” for community outreach was necessary and beneficial in both the case of Ms. Lamb and the case of Ms. Robins, CP 61, CP 236, the Superior Court abused its discretion. The court’s orders provided no basis for that finding; it is unclear on what evidence the court relied in labelling those activities necessary and beneficial. The benefit and necessity of the Hardmans’ activities is logically contingent on a string of facts not in the record, including that the activities—such as creating a PowerPoint presentation about Fircrest residents, organizing tours of Fircrest, or attending Friends of Fircrest meetings—are necessary to prevent the closure of Fircrest; and that preventing the closure of Fircrest would be beneficial to Ms. Lamb or Ms. Robins particularly. Br. of DSHS at 48.

Even assuming *arguendo* that guardians may exercise all personal rights belonging to the ward, the Hardmans fail to identify which of those personal rights they would be vindicating when engaged in their community outreach practices. Certainly the Hardmans are not exercising any right personal to their wards when engaged in their own professional

development. Nor is it clear that Ms. Lamb's and Ms. Robins's individual free speech and free association rights are being exercised, much less in a manner that is necessary and beneficial, when the Hardmans involve themselves in community organizations or public speech.

2. *Pro rata* billing of guardianship activities to all of a guardian's wards is inappropriate.

The Hardmans' duties as guardians are to Ms. Lamb and to Ms. Robins individually. The Hardmans' practice of billing each of their wards individually for more generally applicable professional development and public relations activities is inappropriate. Br. of DSHS at 45-46. The Hardmans offer that "group activities make vindication of Sandy's and Rebecca's best interests more likely to be successful." Resp. Br. of Hardmans at 32. If true, that claim is not self-evident. It is unclear, for instance, why the creation of a newsletter for which they bill all of their wards is more effective than communication on behalf of one particular ward. In fact, quite the opposite seems likely to be true. If the purpose of the Hardmans' public relations campaign is to take on the personal rights of each of their wards to decide "what views shall be voiced" to support their "individual dignity," *see* Resp. Br. of Hardmans at 27 (arguing such as to political advocacy), then grouping those viewpoints together as "the viewpoint experienced by [the RHC resident]

community,” *id.* at 29—as if all of their wards share the same viewpoint—would seem to hinder rather than help the cause of supporting *individual* dignity. And there is no reason to think that when the Hardmans engage in professional development, such as working with communications professionals, they develop their skills more effectively by virtue of being paid to do so by all of their wards rather than just one.

In addition, the usefulness of the Hardmans’ billing practices has no bearing on its legality. The Hardmans have offered no legal authority for their practice of engaging in activities related to the disabled community generally, or to their own professional development, and billing each of their wards for the time spent doing so. By seeking to represent their wards as a group rather than individually, the Hardmans forget that their duty is to Ms. Lamb as an individual, and to Ms. Robins as an individual. Nobody has appointed the Hardmans as the guardians of the Fircrest RHC community; and while they may profess to speak on behalf of that community as activists, as a matter of law they cannot speak on behalf of their wards individually and collectively at the same time.

D. Community Outreach Fees Are Not a Valid Deduction From Cost of Care

Even if the Hardmans’ community and professional development activities are somehow deemed guardianship activities that are necessary

and beneficial in these cases, that should not end the court's inquiry. The Hardmans must also show that those activities can be deducted from their wards' participation in the cost of their care, and they have not done so. RCW 11.92.180 and Chapter 388-79 WAC do not allow the Hardmans to collect "community outreach" fees above the \$175 limit for ordinary guardianship fees, Br. of DSHS at 47-48, a fact the Hardmans fail to specifically address.

1. State rules and statutes imposing RHC resident participation in cost of care are valid.

The Hardmans continue to insist that RCW 11.92.180, chapter 388-79 WAC, and Washington's Medicaid State Plan are invalid. It is unclear whether they mean to incorporate this objection in their response to DSHS's cross-appeal.¹¹ To the extent that they do, DSHS has thoroughly addressed this issue in prior briefing. Br. of DSHS at 24-38. The Hardmans' rule challenge is not properly before the court in this non-APA proceeding, and Medicaid law allows DSHS to require clients to participate in paying for their care. Br. of DSHS at 29-33. Moreover, the *amount* of Ms. Lamb's and Ms. Robins's participation in cost of care is

¹¹ In response to DSHS's argument that RCW 11.92.180 and Chapter 388-79 WAC do not allow the Hardmans to collect "community outreach" fees, Br. of DSHS at 47-48, the Hardmans incorporate some unspecified "arguments in [their] Reply [on appeal]... concerning those issues[.]" Resp. Br. of Hardmans at 32. This sentence appears to incorporate an empty set; DSHS's specific arguments concerning the deduction of community outreach fees from client participation are not specifically addressed anywhere in the Hardmans' briefing.

not at issue in this case. The only question relevant here is whether Ms. Lamb and Ms. Robins are “[DSHS] client[s] residing in a nursing facility or in a residential or home setting and [are] required by [DSHS] to contribute a portion of their income towards the cost of residential or supportive services” under RCW 11.92.180, and thus fall under the guardian fee limitations of chapter 388-79 WAC.

The Hardmans argue that RCW 11.92.180 is invalid because RHC resident income spent on guardian fees is not “income” for the purpose of establishing the RHC resident’s financial obligation to participate in her cost of care. Resp. Br. of Hardmans at 19-23. The Hardmans’ arguments about what income can be considered part of “total income” for purposes of this calculation are confused because they simultaneously argue that (1) guardian fees must not be counted toward the client’s total income, which is true but irrelevant; and (2) guardian fees must be subtracted from the client’s total income either as “not income” or as a disregard, prior to the operation of the 42 C.F.R. § 435.725, which is untrue. Once those two arguments are unwound from each other, the Hardmans’ error is clear.

When evaluating eligibility for Medicaid services, DSHS must consider an applicant’s income. For this eligibility determination, not all

of the applicant's income is considered "countable" income. 20 C.F.R. § 416.1103(f) (listing income disregards).¹²

Once a recipient has been determined to be eligible for Medicaid benefits, DSHS must then determine how much of the recipient's total income must be paid toward the cost of care, minus any applicable deductions. 42 C.F.R. §§ 435.725, 435.733, 435.832. For purposes of this *post-eligibility* calculation, the law provides for a different, but specific, list of allowable deductions. 42 C.F.R. §§ 435.725(c), 435.733(c), and 435.832(c) (listing deductions and noting that deductions are taken from "total income" which includes "[i]ncome that was disregarded in determining eligibility"); WAC 388-513-1380(4) and (5) (listing deductions); Br. of DSHS at 31 (explaining that total income "includ[es] income excluded from the eligibility determination"); *Maryland Dept. of Health v. Medicare & Medicaid Svcs.*, 542 F.3d 424, 430 (4th Cir. 2008) (making the same point as to nursing homes, and noting that the rule applies to "all institutionalized Medicaid recipients," at 427, n.3). Once these deductions are taken from total income, the remainder is deemed to be the recipient's amount of participation for their cost of care. WAC 388-513-1380.

¹² Just as not all of the applicant's assets are considered "available" assets. See Br. of DSHS at 31.

For the purposes of both eligibility and post-eligibility calculations, the definition of “total income” remains the same. A Medicaid recipient’s total income includes both “earned income” and “unearned income.” 42 U.S.C. § 1382a; 20 C.F.R. § 416.1104. The Hardmans have previously conceded that “[Ms. Lamb]’s social security disability income and [Ms. Robins]’s railroad retirement income are considered unearned income. 42 U.S.C. § 1382a(a)(2)(B).” Guardians’ Opening Brief at 18.¹³ Neither client has any other source of income, so the income from those sources constitutes the clients’ total income.

The Hardmans argue that “guardian fee awards by the courts are not considered as income” because they are a loan that must be repaid, citing to *Ceguerra v. Secretary of Health & Human Svcs.*, 933 F.2d 735, 742 (1991). Resp. Br. of Hardmans at 20 (emphasis omitted). *Ceguerra* applies to the definition of “income” that applies when adding up a Medicaid applicant’s total income (prior to any disregards applicable to the calculation of countable income in the eligibility context). The case makes clear that “income” does not include the value conferred on an applicant when she is given a loan; because the value of the loaned goods

¹³ In their Opening Brief on appeal, the Hardmans went on to argue that Ms. Lamb’s and Ms. Robins’s unearned income was not “available income”, again mixed in with arguments that loans of guardianship services are not income at all. *Id.* at 19-20. DSHS has previously explained that the Hardmans’ arguments about eligibility income standards are not relevant to this case. Br. of DSHS at 31, n.15.

or services must be repaid, the applicant has not actually gained any net income, but rather has received something of value (goods or services) in exchange for something of equal value (an obligation to pay the resulting debt). One does not *add* the value of a loan when calculating total income. However, that point of law is irrelevant to this case. When calculating total income for the purpose of post-eligibility calculations, DSHS does not count the value of the Hardmans' guardianship services as income.^{14, 15}

The Hardmans seem to argue that, when calculating total income, DSHS must *subtract* the value of a loan from the client's other (earned and unearned) income as if the portion of the client's income used to pay off a loan was not income at all. *Ceguerra* does not support such a conclusion; and the Hardmans cannot cite to any authority for it.

Nor does DSHS subtract guardian fees from total income as an income disregard for post-eligibility cost of care purposes, because (as discussed above) the income disregards that apply in the eligibility calculation do not apply to the post-eligibility calculation. In the post-eligibility context there are no disregards; there are only deductions.

¹⁴ The Hardmans do not argue otherwise, and in any case can point to nothing in law, regulation or the record that would support that claim.

¹⁵ Nor are the Hardmans' guardian fees a loan for services in any case. Ms. Lamb and Ms. Robins make payment to the Hardmans for their guardianship services on a monthly basis. CP 61-62; CP 236-37.

As DSHS has previously made clear, guardian fees are an eligible deduction from client participation under state regulations and Washington's Medicaid State Plan. Br. of DSHS at 32-34. That deduction is generally limited to \$175 per month, subject to the exceptions listed in WAC 388-79-050. *Id.* at 28-29. Guardian fees are not income, an income disregard, or part of any other calculation applicable to the post-eligibility context when calculating a client's participation.

2. Guardians can be compensated above \$175 per month only if the services at issue are extraordinary, and community outreach activities are not extraordinary.

The Hardmans mischaracterize DSHS's position as being that "guardian fees are not a valid deduction from participation in cost of care." Resp. Br. of Hardmans at 32.¹⁶ What DSHS has actually argued on cross-appeal is that *extraordinary guardian fees for community outreach activities* are not a valid deduction from an RHC resident's participation. Br. of DSHS at 47-48.¹⁷ Clearly, fees properly charged by a guardian for guardianship activities and approved by a court are an allowable deduction from a client's participation. *Id.* at 34 ("Washington has approval to deduct guardian fees... from participation, as part of the client's personal

¹⁶ The Hardmans make this same mistake elsewhere in their reply on appeal. *E.g.* Resp. Br. of Hardmans at 19 ("DSHS thus makes a novel argument that no guardian fees can ever be deducted from participation in cost of care.").

¹⁷ DSHS also argued in its Response on appeal that guardian fees *for political and lobbying activities* are not a valid deduction from participation. Br. of DSHS at 24-36.

needs allowance.”) (citing CP 281); WAC 388-513-1380(4)(d); Ch. 388-79 WAC.

The Hardmans have nowhere addressed how any of their non-political activities can be considered “extraordinary services” in WAC 388-79-050(4)(b)(iii). In the context of guardianships, there is nothing extraordinary about the communication barriers Ms. Lamb and Ms. Robins face. Br. of DSHS at 47. To the extent that the Hardmans’ community activities are necessary and beneficial guardianship activities, they should have been included in their ordinary guardian fees of \$175 per month for usual and customary services under WAC 388-79-050(4)(b)(ii). The Hardmans have failed to show that their activities in this case give rise to extraordinary fees under WAC 388-79-050. The Superior Court abused its discretion in allowing extraordinary guardian fees for the Hardmans’ community outreach activities.

II. CONCLUSION

The Hardmans fail in large part even to respond to DSHS’s cross-appeal. They have presented no evidence that the law currently supports professional development or community representation and outreach as guardianship activities, and no good argument for the extension of the scope of guardianships to allow guardians to charge fees for such activities. They also do not provide a reading of the record that explains

how the activities characterized by the Superior Court as “community outreach” will be necessary or beneficial to Ms. Lamb or Ms. Robins in the three years until the next guardianship accounting.

Even if the record could support findings of necessity and benefit within the discretion of the trial court, the Hardmans have failed to establish that their community activities—to the extent they are guardianship activities at all, and to the extent that those activities are necessary and beneficial to their wards—are “extraordinary” services that may give rise to guardian fee deductions from the client’s cost of care in excess of the \$175 per month cap set by WAC 388-79-030.

The Superior Court abused its discretion by allowing the Hardmans to claim \$75 per month in “community outreach” fees from both Ms. Lamb and Ms. Robins. Those portions of the court’s orders awarding such fees should be vacated, and the fees denied.

RESPECTFULLY SUBMITTED this 21st day of May, 2009.

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CERTIFICATE OF SERVICE

I certify that I served a copy of this document, DSHS Reply Brief on Cross-Appeal, on all parties or their counsel of record on the date below as follows:

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

Dated this 22nd day of May 2009 at Olympia, Washington.


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