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No. 87483-2  
SUPREME COURT OF THE STATE OF WASHINGTON

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RESA RAVEN,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

AMICUS CURIAE BRIEF OF  
DISABILITY RIGHTS WASHINGTON

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## **I. INTRODUCTION**

Ida, the Petitioner's ward in this case, endured great suffering before she died, some of which may have been preventable with proper care and supports. However, the Department of Social and Health Services (DSHS) has chosen to sanction the wrong person's conduct for the wrong reasons. This will not further justice or protect the rights of vulnerable adults.

The Petitioner, Resa Raven, took numerous steps to assist Ida in obtaining the care that she reasonably determined consistent with Ida's wishes and best interest. Ms. Raven pursued necessary care for Ida, but not in every specific way DSHS argues in hindsight that she should have. Ms. Raven did not "aggressively pursue" placement in a nursing home that would have been contrary to Ida's long held and consistently stated preferences. Nor did Ms. Raven seek legal assistance to sanction others' interference with Ida's care or attempt to hire an Independent Provider. It was reasonable to reject all these actions, but DSHS second-guesses Ms. Raven's decisions. This finding of neglect should be held invalid because it misinterprets RCW 74.34 to create requirements for guardians that will not benefit vulnerable adults.

## **II. STATEMENT OF INTEREST**

Disability Rights Washington (DRW) is a federally mandated and funded nonprofit organization that promotes the dignity, equality, and self-

determination for people with disabilities in Washington State. RCW 71A.10.080; 42 U.S.C. § 15001 *et. seq.*; 42 U.S.C. § 10801 *et. seq.*; 29 U.S.C. § 794e; Decl. of Stroh in Support of Motion for Leave to File Amicus Curiae Brief, ¶ 2. This brief is to further DRW's mission to protect the rights of individuals with disabilities to be free from involuntary institutionalization as well as abuse and neglect.

### III. SUPPLEMENTAL STATEMENT OF THE CASE

While their factual accounts differ in some respects, the parties agree on many relevant facts. This supplemental statement sets forth the undisputed background and chronology of this case based on the administrative record and both parties' statements of this case.

First, Ms. Raven was authorized to make decisions on Ida's behalf, including decisions about Ida's medical care because Ida no longer had the capacity to give consent. Supp. Br. of Resp. at 2; AR 109, FOF 37. The parties further agree that by the time Ms. Raven was appointed guardian, Ida had developed physical as well as mental disabilities. *Id.* at 2; Supp. Br. of Pet. at 5. Ida was inarguably in very poor physical health. *Id.* at 5. During this period, Ida needed others to reposition her, administer her medications, and assist with her hygiene. Supp. Br. of Resp. at 3.

Neither party disputes that Ida had once had the capacity to make her own choices about her care and medical treatment. AR 104-105, FOF 19-

20. Although she had been a healthcare professional, the record contains several examples of Ida choosing limited medical interventions throughout her life. AR 102, FOF 12; AR 98, FOF 3; *see also* Supp. Br. of Pet. at 4. Both parties agree that she had competently expressed her preference for care in her own home. Supp. Br. of Resp. at 2-3; Supp. Br. of Pet. at 5-6. Although Ida consented to a temporary placement in a nursing home to recover from a fibular fracture in 1996, Ida later rejected nursing home placement. AR 112, FOF 43; AR 105, FOF 21; AR 2108.

Both parties recognize ongoing challenges in securing care for Ida in the community, and the major events in the course of Ms. Raven's guardianship are generally undisputed. Until 2005, for example, Ms. Raven had been unable to find a physician and hospice provider for Ida, whose only source of payment was through Medicaid. AR 115-119, FOF 49-59. In February or March of 2006, DSHS authorized Medicaid payments for additional in-home care services, but Ida's home care agency, Catholic Community Services, was unsuccessful in recruiting sufficient staff to fill all Ida's care shifts. Supp. Br. of Pet. at 7, 8; Supp. Br. of Resp. at 5-6. Neither DSHS nor the Department of Health took action against Catholic Community Services for failing to provide Ida with sufficient staff. Ms. Raven declined to seek an Independent Provider (IP)

to supplement services from Ida's home care agency due to concerns about non-supervision. AR 121-23, FOF 60, 62.

In addition, Ida's hospice provider reported problems with a Catholic Community Services caregiver and Ida's husband interfering with her care. Supp. Br. of Resp. at 2- 4, Supp. Br. of Pet. at 8. DSHS's Adult Protective Services investigated the caregiver as well as Ida's husband, but stated nothing could be "substantiated." AR 858-59, 1587, 1589. In May 2006, Ida's hospice provider and physician terminated services due to these concerns. A few weeks later, Ms. Raven notified the guardianship court of the problems she was encountering and sought the court's direction. Supp. Br. of Resp. at 5. In early June, the court instructed her to pursue institutionalization, despite recognition that "[Ida] would resist and fight." AR 125-126, FOF 68. The court further suggested she obtain legal assistance regarding Ida's husband and caregivers. *Id.*

Ms. Raven did not take immediate actions to place Ida in a facility or pursue legal counsel. Instead, she met with Catholic Community Services who agreed that month to replace the interfering caregiver. Supp. Br. of Resp. at 6. After the hearing, Ida's husband began to give medications more consistently. AR 125, FOF 68. By August 2006, Ida's chronic pressure sores had completely resolved. Supp. Br. of Pet. at 8 (citing RP

116, 169). By October, Ms. Raven had secured a new physician, who ordered a new hospice team. AR 127-28, FOF 73-74.

Despite this progress in accessing additional community services, DSHS and Ms. Raven agree Ida's pressure sores reemerged in November 2006, though they attribute these sores to different primary causes. Supp. Br. of Resp. at 7 (unfilled caregiving shifts); Supp. Br. of Pet. at 8 (wrong mattress). Ida was evaluated by a mental health professional to determine whether Ida could be involuntarily committed in November 2006, but Ida did not meet the criteria for detainment. Supp. Br. of Pet. at 8. Ms. Raven expressed support and consent for non-psychiatric hospitalization if appropriate to treat Ida's acute physical problems. AR 130, FOF 78.

Continuing at home, Ida's condition further declined in mid-December 2006 when a winter storm cut off Ida's electricity, deflating Ida's new specialized mattress. Supp. Br. of Resp. at 8; Supp. Br. of Pet. at 9. Ida's pressure sores worsened significantly as a result. *Id.* DSHS does not dispute Ms. Raven was also stranded in her home without electricity or phone service for a week. Supp. Br. of Pet. at 9. When Ms. Raven spoke to Ida's hospice provider on December 21, the nurse reported Ida's sores, but maintained hospitalization was inappropriate. *Id.* The nurse did state she believed Ida should be placed in a nursing facility. *Id.* The following week, the hospice provider reported Ms. Raven for neglect. *Id.* When

DSHS contacted her, Ms. Raven gave consent for hospitalization. *Id.*; Supp. Br. of Resp. at 8. Ida was eventually discharged to a rehabilitation facility, where she continued to resist care. AR 1454-56, 1601, 1603.

#### IV. SUPPLEMENTAL ARGUMENT

##### A. Whether Ms. Raven's actions satisfy the statutory definition of "neglect" should be based on her duty as Ida's guardian.

In determining Ms. Raven had committed neglect, DSHS found that Ms. Raven engaged in a "pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult." Supp. Br. of Resp. at 9-10 (citing "neglect" definition in RCW 74.34.020(12)). To be valid, the burden of proof for DSHS's finding is a preponderance of evidence. *Kraft v. Dep't of Soc. & Health Services*, 145 Wash. App. 708, 716, 187 P.3d 798, 802 (2008). Appellate courts should sustain findings of fact in agency decisions if supported by substantial evidence. *Goldsmith v. State, Dept. of Soc. & Health Services*, 169 Wash. App. 573, 584, 280 P.3d 1173, 1178 (2012).

In this case, the pivotal question should be whether Ms. Raven's pattern of conduct breached her duty as Ida's guardian. The litany of alleged instances when Ida was unable to access necessary care could

amount to a pattern of insufficient services. However, Ms. Raven did not breach her duty of care by declining to override Ida's wishes or take actions she reasonably determined against Ida's best interests.

The duty of care for a guardian should be measured by the legal standards for guardian decision-making, not retroactive speculations about what would have been the best choice. If, under the appropriate decision-making standard, a guardian's choices and courses of action are reasonable, the guardian should not be faulted for undesirable outcomes or the failures of others to perform their duties.

As noted in both parties' supplemental briefs, this Court established the "substitute decision-making standard" as the proper framework to guide guardians' decisions. Supp. Br. of Pet. at 11 (citing *In re Guardianship of Ingram*, 102 Wn.2d 827, 839, 690 P2d 1363 (1984)); *see also* Supp. Br. of Resp. at 14. DSHS and Ms. Raven agree that guardians should make decisions based on "what this particular individual would do if she were competent and understood all the circumstances," with consideration of the ward's "attitudes, biases, and preferences." *Id.* Both parties also agree this case requires guardians to give substantial weight to their ward's expressed wishes. *Id.* Under *In re Ingram* and the standards for certified professional guardians (CPG) that have previously guided this Court, Ms. Raven's guardianship duty of care was to act in accordance

with Ida's competent preferences and best interests. *In re Guardianship of Lamb*, 173 Wash. 2d 173, 185, 265 P.3d 876, 883 (2011); CPG standard 405.1 (establishing professional guardians' "primary standard for decision-making" as making a "determination of the incapacitated person's competent preferences"); CPG standard 405.2 (requiring decisions based on "best interests" if competent preferences are not ascertainable, and defining "best interests" to "include consideration of the stated preferences" and deference to the individual's "residual capacity to make decisions"). If Ms. Raven's decisions were consistent with Ida's preferences and interests, DSHS's finding of neglect should be held invalid.

**B. A nursing home should not be considered a safe haven from either liability or inadequate care.**

*1. DSHS's action sanctions Ms. Raven's refusal to institutionalize Ida.*

DSHS cannot deny that Ms. Raven's refusal to place Ida in a nursing home constitutes an element of DSHS's neglect finding. DSHS's argument that Ms. Raven failed to submit a modified plan to the guardianship court demonstrates that this action is indeed premised on Ms. Raven's consistent pattern of keeping Ida at home in spite of challenges in accessing home based services. Supp. Br. of Resp. at 13, 17. DSHS and the Department of Health were the entities with authority to enforce

Catholic Community Services' obligations to implement Ida's plan of care, not the guardianship court. Based on this fact, there is no rational basis to believe the guardianship judge could have done anything to remedy the barriers to community services. Considering the record, it is more likely the judge simply would have further urged institutionalization regardless of Ida's preferences. AR 125-26, FOF 68.

Even so, it is unclear why Ms. Raven should have submitted a modified plan to the guardianship court admitting defeat in accessing sufficient community based care. After a care crisis occurred in May 2006, which Ms. Raven reported to the court, Ida's condition stabilized and Ms. Raven started to make progress in replacing and enhancing Ida's in-home services. DSHS does not dispute that over the summer and early fall of 2006, Ida's bed sores completely healed, and Ida obtained new caregivers, a new doctor, and a new hospice provider. Supp. Br. of Resp. at 6-7. Throughout most of 2006, it would have been far from obvious that the plan for maintaining Ida in her home was unachievable and Ida's hope of getting in-home care was impossible.

*2. Ms. Raven made a reasonable decision based on Ida's preferences.*

Distancing its argument from the indefensible position that Ms. Raven was obligated to override Ida's wishes, DSHS instead questions Ms. Raven's determination about Ida's choices. *See* Supp. Br. of Resp. at 9,

15-17. The record demonstrates Ms. Raven exercised her best judgment to make a difficult decision. Ms. Raven concluded in good faith that Ida's consistently stated preference was to stay home. AR 108, FOF 32; AR 112, FOF 42-43 (citing Ms. Raven's discussions with Ida's family, a review of Ida's records, and conversations with Ida).

DSHS criticizes Ms. Raven's determination based on speculation that Ida might not have chosen "to remain at home in pain and with sub-standard care," and that Ms. Raven "may" have been able to make a different determination about Ida's wishes, allowing her to "[authorize] Ida's transfer to a facility sooner" Supp. Br. of Resp. at 15-17. DSHS cites no evidence suggesting Ida would have reversed her preferences due to a change in circumstances. In fact, Ida's circumstances were not different from the years prior. Ida had not unexpectedly lost in-home services she once had. Nor were the sores that reemerged new, as Ida had suffered these since at least 2001. AR 99-100, FOF 6-7. The record does not demonstrate that Ida's preference to stay home wavered as a result of ongoing physical problems. *See* AR 107, FOF 27 (2002 referral hospice because Ida "wanted to die at home"). Despite the opportunity, DSHS made no record of Ida indicating she had changed her mind and simply needed an opportunity to notify her guardian. To the contrary, in November 2006, the evaluating mental health professional recommended

“continued in home care as long as possible, *according to [Ida’s] wishes.*”  
AR 2137 (emphasis added).

Under the *Ingram* and CPG standards, it was not neglectful for Ms. Raven to defer to Ida’s decision as a rational reflection of Ida’s personal preferences. For Ida, going into a nursing facility would have meant separating from her husband and sacrificing her privacy and autonomy for an unfamiliar environment where there still would be a risk of inadequate care and opportunities for abuse by staff, co-residents, or members of the public entering the facility. See e.g., *Donohoe v. State*, 135 Wash. App. 824, 830, 142 P.3d 654, 656 (2006) (nursing home allegedly failed to provide necessary hygiene and nutrition services, leading to resident’s decline); *May v. Triple C Convalescent Centers*, 19 Wash. App. 794, 795, 578 P.2d 541, 542 (1978) (resident died after physical fight with assigned roommate); *Shepard v. Mielke*, 75 Wash. App. 201, 203, 877 P.2d 220, 221 (1994) (resident sexually assaulted by co-resident’s visitor). In some instances, placement in a facility may actually create a risk of physical decline. *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 604 (7th Cir. 2004). Given these considerations, Ida’s individual choice was not irrational, surprising, or uncommon. Ms. Raven properly respected Ida’s right to make this decision and refused to dictate a different choice based on her own assumptions about a nursing home providing better care.

Finally, DSHS is misguided to suggest that Ms. Raven should have discussed a “temporary” facility placement with Ida to possibly obtain Ida’s consent. Br. of Resp. at 16. When informed of Ida’s sores, Ms. Raven indicated she would consent to a hospitalization as a short-term removal from home that would have been more similar to Ida’s 1996 short-term rehabilitation stay for a broken leg. However, DSHS has developed no evidence that until Ida was finally hospitalized, the facility option was ever contemplated as anything but indefinite. Ida was receiving hospice services for terminally ill individuals not expected to recover. *See* RCW 70.126.010 (defining “hospice care”). Without reason to believe Ida would ever return home from a nursing facility, it would have been deceitful to obtain Ida’s consent using the ruse of “temporary” placement.

*3. Aggressive pursuit of facility placement without the individuals’ consent contradicts Washington and federal law.*

Ms. Raven’s decision to keep Ida home in spite of the challenges was also justified by a well-reasoned interpretation of Washington and federal law. Guardians are obligated to “maintain the incapacitated person in the setting least restrictive to the incapacitated person’s freedom and appropriate to the incapacitated person’s personal care needs,” and to “assert” the individual rights of their wards. RCW 11.92.043; *See* CPG Standard 404. Ida’s rights included freedom from unnecessary

institutionalization as well as involuntary commitment without due process. *Olmstead v. L.C. ex. rel. Zimring*, 527 U.S. 581, 119 S. Ct. 2176 (1999), and *Addington v. Texas*, 441 U.S. 418, 99 S. Ct. 1804 (1979).

Federal case law protecting against unnecessary nursing home placements squarely supports Raven's determination that she should resist pressure to place Ida in a facility against Ida's wishes. See e.g. *Townsend v. Quasim*, 328 F.3d 511 (9th Cir. 2003); *M.R. v. Dreyfus*, 663 F.3d 1100, (9th Cir. 2011); *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175, 14 A.D. 1005 (10th Cir. 2003); *State of Connecticut Office of Protection and Advocacy for Persons with Disabilities v. Connecticut*, 706 F. Supp.2d 266 (D. Conn. 2010); *Pennsylvania Protection and Advocacy, Inc. v. Pennsylvania Dept. of Public Welfare*, 402 F.3d 374, 16 A.D. 1144, (3rd Cir. 2005). Involuntary placement in any facility is "a significant deprivation of liberty" warranting due process protections. *Addington*, 441 U.S. 418, at 427; *Santosky v. Kramer*, 45 U.S. 745, 755-56; 102 S. Ct. 1388 (1982); See also, *Mays v. State*, 116 Wash. App. 864, 68 P.3d 1114 (2003). States may not indefinitely commit individuals and are required to provide involuntary patients with adequate treatment. *Jackson v. Indiana*, 406 U.S. 715, 92 S. Ct. 1845 (1972); *Youngberg v. Romeo*, 457 U.S. 307, 102 S. Ct. 2452 (1982); *Ohlinger v. Watson*, 652 F.2d 775 (9th Cir. 1981); *Sharp v. Weston*, 233 F.3d 1166 (9th Cir 2000).

Reasoning that this significant liberty deprivation necessitates more than her unilateral judgment, Ms. Raven appropriately concluded she had no valid legal authority to place Ida involuntarily in a “residential treatment facility that provides nursing or other care.” *See* RCW 11.92.190. She further concluded that Washington law only allows involuntary admission under the criteria set forth in RCW 10.77, RCW 71.05, or RCW 72.23. *Id.* After Ms. Raven determined Ida would not have voluntarily gone to a nursing home and a mental health professional determined that Ida did not meet Washington’s detainment criteria despite her medical needs, Ms. Raven honored Ida’s wishes and civil rights. The Court of Appeals and DSHS fault this decision, determining that Ms. Raven should have done more to “aggressively pursue” placement. *Raven v. Dep’t. of Soc. & Health Services*, 167 Wn. App. 446, 467 (2012). Both mischaracterize Ms. Raven’s refusal to immediately place Ida in a nursing home as an act of neglect.

**C. Ms. Raven’s decisions about Ida’s community care were not a pattern of neglect.**

1. *There should be no finding of neglect without a connection between the pattern of conduct, duty of care, and lack of services.*

The statutory definition of neglect should be interpreted to require that Ms. Raven’s alleged pattern of conduct be connected to her specific duty of care and Ida’s lack of necessary services. In essence, the RCW

74.34.020 “neglect” definition should establish liability for failing to discharge one’s own responsibilities to a vulnerable adult. *See e.g., Warner v. Regent Assisted Living*, 132 Wash. App. 126, 134-35, 130 P.3d 865, 870 (2006) (neglect by assisted living facility responsible for implementing treatment plans and physician orders); *Conrad ex rel. Conrad v. Alderwood Manor*, 119 Wash. App. 275, 279, 78 P.3d 177, 180 (2003) (neglect by nursing home responsible for monitoring resident’s condition). The “duty of care” ascribed to each person or entity should be based on what that person or entity should be reasonably expected to do. If one individual’s duty of care is wrongfully attributed to another person, then perpetrators will be allowed to continue in their neglectful patterns of conduct with impunity.

For instance, a caregiver who is charged with “a duty of care” should not be liable for failing to guarantee that all of his or her co-workers satisfy their respective duties to deliver services, because that would set an unreasonable expectation without sanctioning the caregivers at fault. *See e.g., Kabbae v. Dep’t of Soc. & Health Services*, 144 Wash. App. 432, 436, 192 P.3d 903, 905 (2008) (caregiver discovered by co-workers to have left during his shift). By analogy, a guardian’s duty of care must not demand more than what a guardian can realistically achieve.

Guardians, as well as individuals designated as agents through a Power of Attorney and individuals providing paid or voluntary care, are each classified as a “person or entity with a duty of care.” The statutory definition of neglect under RCW 74.34.020 should not be so broadly interpreted as to allow DSHS to blame *any* of these persons “with a duty of care” for a failure by anyone else to provide necessary goods and services. Instead, this statutory definition should be interpreted to hold all of these persons, including guardians, responsible for discharging the specific duties of care associated with their particular role.

2. *Ms. Raven’s decisions regarding community care were reasonable.*

The parties with primary caregiving duties to Ida were Catholic Community Services, its employees, and Ida’s husband as an informal caregiver. When they failed to discharge their duties, DSHS faulted Ms. Raven for not addressing their conduct or seeking legal counsel regarding their noncompliance as suggested by the guardianship judge. Supp. Br. of Resp. at 6, 10. But Ms. Raven’s actions were consistent DSHS’s Adult Protective Services, which also took no action against Ida’s husband or Catholic Community Services employee. AR 858-59, 1587, 1589.

Furthermore, retaining a lawyer could reasonably be determined inconsistent with Ida’s best interest, given the specific facts regarding Ida’s care and limited resources. In June 2006, the same month that the

judge suggested that Ms. Raven seek legal counsel, Catholic Community Services agreed to replace Ida's caregivers. Supp. Br. of Resp. at 6; AR 133, FOF 88. Ida started to receive medication more consistently. AR 125, FOF 61. Over the next few months, Ida's condition improved to the point she had no pressure sores by August. RP 116, 169. Considering Ida's apparent stabilization and improvements in her care after the hearing, it is unlikely that obtaining legal counsel would have been more effective in furthering Ida's best interest or wishes.

Likewise, deciding not to hire an Independent Provider (IP) to compensate for Catholic Community Services' failure to fill Ida's shifts was a reasonable exercise in judgment, not an act of neglect. As Ida's guardian, Ms. Raven had authority to choose either an agency or IP to serve Ida. AR 110, FOF 37; *see also* WAC 388-71-0500 ("A client/legal representative may choose an individual provider or a home care agency.") No one is ever required to use an IP as DSHS's brief may suggest. *Cf.* Supp. Br. of Resp. at 11. RCW 74.39A.326 precludes the Department from paying a home care agency for services delivered by client's family member, but nothing *requires* a client to choose a family member caregiver in lieu of an agency as their provider. Mandating such a choice for Medicaid clients like Ida would violate federal Medicaid

requirements for recipients to have freedom of choice in deciding who they want as providers. 42 U.S.C. § 1396a(a)(23); 42 C.F.R. § 431.51.

Ms. Raven's decision to continue working exclusively with an agency was concretely grounded in Ida's specific circumstances. First, Ida was unable to direct her own services as described in WAC 388-71-05640 and had no informal caregivers to provide backup for an IP's unplanned absence. Agencies, by contrast, hire, train and supervise caregivers, and should have the ability to substitute staff for unplanned absences. *See* <http://www.aasa.dshs.wa.gov/pubinfo/services/servicetypes.htm>. Agencies and independent providers are also not subject to identical or equivalent requirements. Both WAC 388-106-0010 and WAC 246-335-015 define home care agencies as licensed entities that contract with DSHS, where IP's are not required to be licensed or supervised by any licensed program. WAC 388-71-0510; *see also Cummings v. Guardianship Services of Seattle*, 128 Wash. App. 742, 750, 110 P.3d 796, 801 (2005) (discussing requirements for home care agencies to be licensed in order to ensure compliance with minimum care standards). Home care agencies are subject to WAC 246-335 detailing a number of requirements. In particular, the licensing standards for home care agencies include requirements to "establish and implement policies and procedures" for a "written plan of operation" or to "develop and implement" a home health plan of care.

WAC 246-335-055; WAC 246-335-080. IP's have no analogous requirements to implement care plans. *See* WAC 388-71-0500-05665.

Even with these regulatory requirements for agencies, the record contains no evidence that any agency stepped in to address Catholic Community Services' failures to staff Ida's shifts or ensure caregivers followed her plan. However, without showing that hiring an IP was possible or in Ida's best interest, DSHS sanctioned Ms. Raven's decision. Rather than enforcing the home care agency's existing responsibility to "implement" Ida's plan of care, DSHS would have guardians either resign or supplement the hiring, training, and supervision activities that home care agencies should already be doing and that many guardians lack the qualifications to do. A finding of neglect based on this standard will only decrease the likelihood of vulnerable adults getting assistance they need.

3. *Liability for ensuring Medicaid funded community services will incentivize institutionalization.*

In its most recent brief, DSHS asserts, "once Raven believed that she could not transfer Ida to a nursing home, Raven had a duty to *ensure* that Ida received appropriate care." Supp. Br. of Resp. at 9 (emphasis added). Allowing DSHS to sanction Ms. Raven's failure to "ensure" necessary community services without demonstrating that her decisions or actions

were actually unreasonable establishes an unrealistically high expectation that any guardian would be rational in avoiding.

Unlike state agencies, Ms. Raven had limited authority or tools to address issues with Ida's community care. Under the Medicaid program, it is the State of Washington, not guardians, who bears responsibility for ensuring availability and quality of Medicaid services. AR 722; 42 U.S.C. § 1396a(a)(5) and (30) (requiring a state agency to administer the Medicaid program and provide access to adequately qualified providers); 42 C.F.R. § 447.204; 42 U.S.C. § 1396n(c)(2)(a) (required health and welfare assurances by state); *Antrican v. Buell*, 158 F. Supp.2d 663 (E.D.N.C. 2001) (violation by state with too few providers).

Requiring guardians to assume liability for ensuring community services they do not control will not protect rights of vulnerable adults to choose in-home services. Instead, it will incentivize guardians to choose facilities that conveniently bundle services which may be challenging to access in the community.

## V. CONCLUSION

Placing vulnerable adults in facilities should be neither required nor incentivized. DSHS's finding of neglect against Ida's guardian does both. For the foregoing reasons, the Court of Appeals opinion should be reversed and DSHS's finding should be held invalid.

Respectfully submitted this 14<sup>th</sup> day of January, 2013.

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**CERTIFICATE OF SERVICE**

I certify, under penalty of perjury pursuant to the laws of the State of Washington, that on January 14, 2013 a true and correct copy of the foregoing document was served upon counsel listed below by first class mail and email:

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DATED January 14, 2013 at Seattle, Washington.

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Greetings,

Attached please find the following:

- Motion of Disability Rights Washington for Leave to file Amicus Curiae Brief
- Declaration of Mark Stroh in Support
- Disability Rights Washington's Amicus Curiae Brief

Case: Resa Raven v. Washington State Department of Social and Health Services  
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Thank you.

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