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NO. 87483-2

SUPREME COURT OF THE STATE OF WASHINGTON

RESA RAVEN,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF SOCIAL
AND HEALTH SERVICES,

Respondent.

ANSWER TO PETITION FOR REVIEW

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ORIGINAL

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I. INTRODUCTION

The Court should deny review because the Court of Appeals properly applied state statutes and this Court's precedent to the facts of this case to uphold the Department of Social and Health Services' (DSHS) finding that Ms. Raven neglected her duties as guardian. Contrary to the arguments in Raven's Petition for Review, the Court of Appeals' opinion did not hold that Ms. Raven was required to override the wishes of her ward by placing the ward in a residential care facility. Rather, the Court of Appeals upheld DSHS's finding that Ms. Raven failed to take sufficient steps to ensure proper care for her ward – whether the ward remained at home in hospice care or was placed in a residential treatment facility.

Ms. Raven fails to show that the Court of Appeals' decision satisfies any criteria for granting review. The decision does not conflict with *In re Guardianship of Ingram*,¹ or raise matters of substantial public concern. Ms. Raven's petition invites the Court to re-apply the substantial evidence test to some findings of fact and second-guess the Court of Appeals' appropriate application of laws governing investigations and findings made by DSHS under chapter 74.34 RCW, and statutes and rules for substitute decision making by professional guardians. Ms. Raven's Petition for Review ("Pet.") should be denied.

¹ 102 Wn.2d 827, 689 P.2d 1363 (1984).

II. RESTATEMENT OF THE ISSUES

1. Where this Court's decision in *In re Ingram*, as well as the professional standards of practice for guardians, requires guardians to consider a number of factors when making substitute healthcare decisions for a ward, including the requirement to observe and discuss with the ward her preferences for healthcare treatment, does the Court of Appeals' decision conflict with *Ingram* by finding that Ms. Raven failed to comply with her duties to research and investigate a number of such decision-making factors before deciding that Ida would refuse to consent to accept care in a long-term care facility?
2. Must a finding of a pattern of "neglect" of a vulnerable adult under RCW 74.34.020 include proof of causation of actual harm where the statute does not mention causation; another section of the statute dealing with liability does specifically mention causation of actual harm, and such a construction would require DSHS to ignore a pattern of neglect in its hiring decisions if it could not prove the neglect caused actual harm?
3. Will the Court of Appeals' application of the law governing the fiduciary duties of a guardian to the unique facts in Ms. Raven's case deter persons from acting as guardians in future, unrelated cases?

III. RESTATEMENT OF THE CASE

This case concerns a civil finding made by DSHS that Ms. Raven perpetrated a pattern of "neglect" of a "vulnerable adult" as those terms are defined in chapter 74.34 RCW (the "Vulnerable Adult Protection Act"). DSHS is charged with investigating allegations of abandonment, abuse, exploitation, and neglect of vulnerable adults under the Act. RCW 74.34.063-.068. DSHS uses substantiated findings to review the

qualifications of persons applying for licenses or contracts to care for or be employed in positions requiring unsupervised access to DSHS's vulnerable child, elderly, or disabled clients. RCW 74.39A.051. As set forth in more detail below, DSHS found that Ms. Raven, who was appointed as the guardian making medical and care decisions for a vulnerable adult, "Ida," neglected Ida by failing to take steps to meet her in-home care needs and failing to revisit the question of whether Ida would agree to move to a residential care facility once it became clear that Ida's in-home care was insufficient.

1. Ms. Raven's Appointment as Legal Guardian for Ida

Ms. Raven was appointed under chapter 11.88 RCW to act as legal guardian for purposes of making medical and care decisions for Ida, who was in her early to mid-80's during the guardianship. DSHS Review Decision and Final Order ("Final Order"), Findings of Fact ("FF") 1-2, 38.² Ms. Raven acted as Ida's guardian for almost three years, between March 2004 and January 2007. FF 37, 83. It was Ms. Raven's first appointment as a professional guardian. FF 39.

Ida's precarious medical condition and mental health status is extensively summarized in the Final Order (FF 3-6, 11-12, 15-16). Ida was mentally ill and medically fragile. DSHS was involved in her care

² The Final Order is included in the Administrative Record ("AR") at 1-172.

because she was a Medicaid client. She had been bedbound since 1996 and was dependent on others to supply her most basic needs, such as feeding, cleaning, and giving her medications. She suffered from painful chronic urinary tract infections and skin breakdown, as well as mini-strokes, pleurisy, pneumonia, kidney infection, enlarged heart, delirium, and angina attacks. She was mentally ill and paranoid, convinced that others were conspiring against her, and had memory deficits, often forgetting who her caregiver was and sometimes failing to recognize her own daughter. She experienced delusions and hallucinations and had been legally committed for psychiatric treatment.

Due to Ida's chronic pain and behavior issues caused by mental illness, Ida verbally and physically assaulted her home caregivers. FF 15, 63; Administrative Record ("AR") 1531. Her husband, Richard, was responsible for giving her pain medications until November 2006. FF 13; AR 728, 753, 763, 1595. Richard resisted giving Ida her pain medications, preferring that Ida remain "feisty." FF 13, 59; AR 1531. Ida's long-standing caregiver, Pam, also disagreed with the need to medicate Ida and actively interfered with Ida's receipt of pain medications. FF 59, 86; AR 1527.

Because Ida was bedbound, she was at substantial risk for skin breakdown. FF 6. Skin breakdown, also known as "pressure sores,"

develops when the bony prominences of a person's body are pressed for long periods against a surface, inhibiting blood flow. The National Pressure Ulcer Advisory Committee categorizes pressure sores into four "stages." Stage I is an area of redness that fails to resolve within 30 minutes and does not blanch when pressed. Stage II is a superficial area of breakdown, like a blister. Stage III is an area of damage that extends below the skin, into the subcutaneous tissue. Stage IV is a wound extending into the muscle and bone. Report of Proceedings ("RP") 228:18–229:5, 234:23–236:17; AR 1950-66.

To avoid pressure sores, Ida's body needed to be repositioned, and she needed to be bathed after incontinence. FF 6-7; AR 1531.³ Ida's mental illness and chronic pain from arthritis, urinary tract infections, and skin breakdown made her combative with caregivers. FF 5, 15; RP 737:5-15. During her tenure as Ida's guardian, Ms. Raven was aware of Ida's need for medications to address her pain and combativeness, as well as the interference with Ida's receipt of pain medications posed by Richard and

³ Before the Court of Appeals, Ms. Raven disputed FF 6, that Ida needed repositioning every two hours. *Raven v. Dep't of Soc. & Health Servs.*, 167 Wn. App. 446, 469; 273 P.3d 1017 (2012). But, as noted in FF 6, Ms. Raven signed Ida's care plans, which specifically called for repositioning every two hours; and in guardianship pleadings filed by Ms. Raven on May 30, 2006, Ms. Raven herself submitted a letter written to her from Ida's hospice provider stating that Ida needed repositioning every two hours. AR 1531. The Court of Appeals properly found that FF 6 was supported by substantial evidence. *Raven*, 167 Wn. App. at 469.

caregiver Pam. FF 13, 15; AR 1527, 1531, 1569, 1580-85, 1587, 1590, 1592.

2. Ida's Cycle of Chronic Health Problems and Lack of In-Home Care During Ms. Raven's Tenure as Ida's Guardian

DSHS found that throughout the guardianship, Ida regularly experienced periods of multiple skin breakdown, ranging from stage II to stage IV. FF 57 (August 2005), 59 (October 2005, December 2005, January 2006), FF 60 (January 2006), FF 75 (November 2006). Ida received medical treatment for her wounds from hospice nurses, but the wounds could not always properly heal due to lack of routine repositioning and in-home care to keep the wounds clean of urine and feces. FF 6; AR 689, 1531. By February 2006, DSHS approved exceptional funding to pay for three caregiving shifts to reposition and clean Ida each morning, afternoon, and evening. FF 9, 60-61; RP 40:13-44:14; AR 758, 764-66, 849, 1586. But at no time during the guardianship did Ida receive sufficient in-home care, because the three caregiving shifts were never filled. FF 84. Because the home-care agency retained by Ms. Raven never filled Ida's evening care shift, nearly 100 hours of care approved by DSHS went unfilled each month, and Ida's wounds were exposed to her own excrement overnight. FF 84; RP 42:1-43:3; AR 689, 1526-27, 1531.

In February 2006, Ida's case manager asked Ms. Raven to bring in additional, independent contractor caregivers to address the lack of care in the home, but Ms. Raven summarily rejected the idea because she did not want to have to oversee the work of independent contractor caregivers.⁴ FF 60. She instructed Ida's case manager that "we will just have to do the best we can with what we have." FF 60.

Ms. Raven had secured a physician and home hospice team for Ida in August 2005, but Ida's doctor and hospice terminated services on May 16, 2006, due to the interference with Ida's pain medications, causing Ida to physically assault and injure hospice workers. FF 58, 63-64.

Ms. Raven petitioned the Thurston County Superior Court for instructions in May 2006, describing the situation as "an impending crisis of care" due to lack of caregivers in Ida's home and the interference posed by Ida's husband and caregiver with Ida's pain medications. FF 67, AR 1521. The superior court recommended that Ms. Raven take further action, including retaining an attorney to assist her, if necessary. FF 68; AR 1544. Ms. Raven did not follow the court's instructions. The medication issue remained unresolved for an additional six months, during which Ms. Raven continued to be aware of and document continued

⁴ At the Court of Appeals, Ms. Raven disputed FF 59 finding that she was asked to consider supplementing Ida's in-home care with independent contractor caregivers, but the Court of Appeals properly held there was substantial evidence for the finding, in the form of the testimony of Ida's case manager. *Raven*, 167 Wn. App. at 469.

interference with Ida's pain medications posed by Ida's husband. RP 1538-39, 1544-49; AR 1593-94.

Ms. Raven secured a new doctor and home hospice team for Ida on November 4, 2006. FF 74. Within days, the new hospice team threatened to terminate services, due to the insufficient caregivers in Ida's home. FF 78. Ida had developed several new pressure sores which were medically treated by the home hospice nurses, but which remained exposed to urine and feces overnight, due to lack of caregiving staff. FF 75-78; AR 689. Ida's treating medical providers recommended that Ida be transferred to a residential care facility. FF 76; AR 689. Based on Ida's historical opposition to facility care, Ms. Raven believed that Ida would have opposed facility care, but she did not go see Ida to talk to her about the possibility of moving to a residential treatment facility. RP 776 ll. 17-23.

Many of Ida's wounds progressed to stages III and IV after severe winter storms caused power outages in FF 75, 79. By January 2007, Ms. Raven consented to have Ida hospitalized and then transferred to a nursing and rehabilitation center. FF 83. Ida's wounds began to heal with regular repositioning at the facility, but Ida passed away on April 24, 2007. FF 83.

3. The Board of Appeals' Conclusion—The Actions And Inactions By Ms. Raven Constituted Neglect Of A Vulnerable Adult

DSHS's final finding of neglect was based on RCW 74.34.020. DSHS concluded that Ms. Raven failed, as a person with the duty of care for Ida, to act to secure the goods and services Ida needed in her home, and she failed to prevent Ida from experiencing pain. Final Order, Conclusions of Law ("CL") 46, 56. In response to Ms. Raven's belief that the law prevented her from placing Ida in a care facility outside of her home, the Board concluded that Ms. Raven had a duty to provide Ida with the care she needed *in her own home*, including repositioning, "timely bathing" after incontinence, and "effective" medication administration. CL 46. These goods and services were identified in Ida's care plans and were necessary to prevent Ida's cycle of skin breakdown and infection. CL 46. Given the fact that Ida's in-home care was so deficient, the Board concluded that Ms. Raven's refusal to consider looking into the use of independent contractor caregivers in the home was unreasonable under the circumstances. CL 31, 54. The Board also found that, given Ms. Raven's inability to secure more in-home care for Ida, Ms. Raven should have been more persistent in looking into the possibility of facility care for Ida.

4. Procedural History

Ms. Raven timely requested an administrative hearing, and an administrative law judge overturned the finding of neglect. AR 342-74. Upon review, the DSHS Board of Appeals reversed and reinstated the finding of neglect. AR 1-172. Pierce County Superior Court Judge Kitty-Ann van Doorninck reversed DSHS and awarded Ms. Raven attorney fees under RCW 4.84.350. Clerk's Papers at 1-9, 93-97. The Court of Appeals reversed the superior court and affirmed the DSHS finding of neglect. *Raven v. Dep't of Soc. & Health Servs.*, 167 Wn. App. 446, 471, 273 P.3d 1017 (2012).

IV. REASONS WHY REVIEW SHOULD BE DENIED

A. The Court of Appeals' Decision Describing Substitute Decision-Making Standards for Guardians Does Not Conflict with *In re Ingram*

The Court of Appeals upheld DSHS's finding that Ms. Raven perpetrated a pattern of "neglect" under the Vulnerable Adult Protection Act, both in her delay and failure to pursue appropriate care for Ida in Ida's own home, as well as her failure to more assertively pursue care for Ida in a residential treatment facility as recommended by Ida's medical providers. *Raven*, 167 Wn. App. at 466-67. Ms. Raven argues that the decision conflicts with standards for substitute decision making set forth in *Ingram*, and will now require guardians making substitute decisions to

violate an incapacitated person's right of self-determination. Pet. at 10-14. Ms. Raven mischaracterizes the decision, which is fact-specific to Ms. Raven's case and neither creates a conflict with *Ingram* nor misstates the law governing substitute decision making.

The Court of Appeals properly recognized that Washington law generally prohibits a guardian from involuntarily detaining an incapacitated person against his or her will, and that a guardian has a duty to ascertain whether the incapacitated person would consent to care in a residential treatment facility if he or she were competent. *Raven*, 167 Wn. App. at 463. This is consistent with *Ingram*, in which the Court discussed the process for the superior court, acting as a substitute decision maker, to determine whether to withhold life-saving medical treatment needed by an incapacitated person. *In re Ingram*, 102 Wn.2d at 840. The Court recognized the goal to discern what the incapacitated person would choose, if he or she were competent. *Id.* at 839. But to do so, the Court directed the consideration of a *number* of factors. *Id.* at 840-42. The substitute decision maker "should, if possible, interview the patient and observe her physical and mental condition." *Id.* at 841. In addition, he or she should consider all other relevant factors that would influence the ward's decision, including the ward's prognosis, his or her ability to participate in treatment, his or her religious or moral views, and the wishes

of family and friends who may be able to influence the ward. *Id.* at 840. As the Court of Appeals noted, the standards of practice for professional guardians codify the *Ingram* requirement for the guardian to verify what the ward's choice for treatment would be, if competent. *Raven*, 167 Wn. App. at 463-64.

The Court of Appeals' determination that Ms. Raven failed to properly carry out her duties as Ida's substitute decision maker does not conflict with *Ingram*. As the Court of Appeals found, Ms. Raven delayed and put off decisions, even after Ida's home care agency failed to fill caregiving shifts for months at a time, leaving Ida without sufficient in-home care. *Raven*, 167 Wn. App. at 466-67. Ms. Raven based her determination that Ida would reject facility care based on Ida's historical statements, but the Court of Appeals found that Ms. Raven failed to balance this against the fact that Ida made many such statements while suffering from obvious delusions. *Id.* Nor did Ms. Raven seek to revisit the facility care decision by speaking to Ida after Ida developed stage IV pressure sores in the winter of 2006,⁵ even though Ida previously had consented to nursing home care in 1996 after fracturing her fibula. *Id.* at 467. Again, *Ingram* directs the guardian to make substitute decisions by

⁵ “[Ms. Raven]: *If I had met with her [Ida] during that period of time in December [2006] and talked to her about a nursing home, I think it highly unlikely that she would have agreed to go into a nursing home.*” RP 776 ll. 17-20 (emphasis added).

determining the choice the ward would make *if competent* – not rubber-stamp decisions made while the ward suffers delusions – and to investigate and balance a *number* of factors, not rely solely on the ward’s historical statements.

Thus, the Court of Appeals’ decision does not direct a guardian to override the competent choices her ward would make, but merely restates the guardian’s duty to investigate and weigh a number of factors in making substitute decisions. *Raven*, 167 Wn. App. at 466-67. This is exactly what is required by *Ingram* and the professional standards of conduct for guardians. The Court of Appeals’ finding that Ms. Raven should have more aggressively pursued the prospect of residential care for Ida under these factors creates no conflict with *Ingram* and provides no basis for review under RAP 13.4(b)(1).

B. The Court of Appeals’ Interpretation of “Neglect” in RCW 74.34.020 Does Not Raise an Issue Of Substantial Public Importance

The Court of Appeals held that the pattern of failure by the person with a duty of care to secure goods and services needed by a vulnerable adult is sufficient to prove a pattern of neglect under the Vulnerable Adult Protection Act, RCW 74.34.020(12)(a). *Raven*, 167 Wn. App. at 465. Ms. Raven argues that neglect must be construed as “a pattern of action or inaction that *causes* harm to the vulnerable adult.” Pet. at 15 (emphasis in

original). Ms. Raven fails to address the fact that the record shows that Ida *did* suffer actual harm. Due to lack of in-home care, Ida's open wounds were chronically exposed to urine and feces, and Ida experienced undue pain due to Richard's long-standing interference with her pain medications.⁶ But even if harm had not been established by the record here, the construction urged by Ms. Raven violates well-settled principles of statutory construction and would jeopardize vulnerable adults. The fact that Ms. Raven disagrees with the Court of Appeals' construction fails to demonstrate an issue of substantial public importance under RAP 13.4(b)(4).

The Vulnerable Adult Protection Act includes the following definition of a pattern of "neglect":

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

...

RCW 74.34.020(12)(a).

Because the Legislature did not include language requiring causation, the Court of Appeals correctly held that none is required; a

⁶ As the Court of Appeals found, Ms. Raven herself described Ida's wounds as continuously exposed to urine and feces due to lack of caregivers in the home in her May 2006 petition to the Thurston County Superior Court. *Raven*, 167 Wn. App. at 459-60. Ms. Raven also documented her awareness that Richard's interference with Ida's pain medications exacerbated Ida's pain and combativeness with caregivers. AR 1524-30, 1569.

pattern of neglect occurs when the person with a duty of care repeatedly fails to secure goods and services needed by the vulnerable adult. *Raven*, 167 Wn. App. at 465. See *In re Detention of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) (“Under *expressio unius est exclusio alterius*, a canon of statutory construction, to express one thing in a statute implies the exclusion of the other. Omissions are deemed to be exclusions.”) (citation omitted).

As the Court of Appeals noted, Ms. Raven’s argument equates the definition of “neglect” under the Vulnerable Adult Protection Act with common law “negligence.” *Raven*, 167 Wn. App. at 465. Unlike the definition of vulnerable adult “neglect,” common law negligence requires causation between an act or omission by a person with a duty of care and resulting harm suffered by the plaintiff. See *Herskovits v. Group Health Co-op. of Puget Sound*, 99 Wn.2d 609, 615-16, 664 P.2d 474 (1983). The Court of Appeals correctly held that neglect under the Vulnerable Adult Protection Act is distinct from common law negligence, and with good reason, because the two serve different purposes. “Negligence” is used to require a tortfeasor to compensate a victim who experiences actual emotional, physical, or monetary loss. See Mark McLean Myers, Comment, *A Unified Approach to State and Municipal Tort Liability in Washington*, 59 Wash. L. Rev. 533, 541 (1984). Similarly, the Vulnerable

Adult Protection Act includes a distinct cause of action allowing recovery of damages against a perpetrator of vulnerable adult neglect or abuse, but only with proof of actual harm. RCW 74.34.200.⁷

In contrast, DSHS is directed to use civil “findings” under the Vulnerable Adult Protection Act not to recover money damages, but instead, to review the qualifications of persons applying for licenses, contracts, or positions with unsupervised access to DSHS’s most vulnerable child, elderly, or disabled clients. RCW 43.43.832(4); RCW 74.39A.009, .051(8), (9).⁸ It makes sense to authorize DSHS to record a finding of “neglect” against a person who has repeatedly failed to secure goods and services needed by a vulnerable adult and use such finding when screening the person as a licensee or contractor seeking payment to care for vulnerable DSHS clients – even if DSHS does not establish a nexus between the omissions and harm to the vulnerable adult. DSHS should not have to license or contract with a person who fails to

⁷ The statute authorizes damages for “injuries, pain and suffering, and loss of property.” RCW 74.34.200(1). The Court of Appeals discussed cases in which money damages were pursued under this provision and distinguished them from the definition of a pattern of “neglect” in RCW 74.34.020(12)(a), which requires no showing of actual harm to the vulnerable adult. *Raven*, 167 Wn. App. at 465.

⁸ In contrast to Ms. Raven’s contention that a civil finding under the Vulnerable Adult Protection Act is a “professional death sentence” (Pet. at 18), the finding does not impair her license as a mental health professional or her status as a certified professional guardian. It would be necessary for the Department of Health to take independent action to affect Ms. Raven’s professional license under RCW 18.19.020 and 18.130.050(15), or for the Certified Professional Guardian Board to take independent action to affect Ms. Raven’s status as a certified professional guardian under GR 23(c)(2)(viii).

fulfill his or her duties to a vulnerable adult. This is consistent with the purposes of the Vulnerable Adult Protection Act, which was codified in recognition that some vulnerable adults lack the ability to protect themselves. RCW 74.34.005.

Construing the statute to require causation would jeopardize vulnerable adults in other ways. DSHS may extend “protective services” to vulnerable adult victims only if DSHS determines that abandonment, abuse, financial exploitation, neglect, or self-neglect “has occurred.” RCW 74.34.067(6). Under the Court of Appeals’ construction, DSHS may make a finding and extend protective services to a vulnerable adult before he or she suffers *actual* harm, but is merely *jeopardized* by a pattern of failing to receive goods or services that he or she needs. Interpreting the statute to include an *actual* harm element prevents DSHS from making a finding and extending protective services until a vulnerable adult actually experiences pain or suffering. This strained reading contradicts the protective purposes set forth in RCW 74.34.005 and is an absurd construction. *See Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002) (“The court must . . . avoid constructions that yield unlikely, absurd or strained consequences.”).

C. The Court of Appeals' Application of the Law Governing Fiduciary Duties of Guardians to the Facts in This Case Does Not Raise an Issue of Substantial Public Importance for Review

Ms. Raven agrees that the Court of Appeals properly characterized her fiduciary duty as requiring her to make “every reasonable effort to provide the care Ida needed,” but complains that the Court of Appeals’ application of the law to the facts here will deter people from acting as guardians in the future. Pet. at 19-20.

First, Ms. Raven claims that the Court of Appeals’ criticism of her decision to reject the use of independent contractor caregivers to supplement Ida’s in-home care will deter future guardians, because hiring independent caregivers requires a guardian to obtain a home care license under *Cummings v. Guardianship Servs. of Seattle*, 128 Wn. App. 742, 750-52, 110 P.3d 796 (2005), *review denied*, 157 Wn.2d 1006 (2006). Pet. at 19. But even if this is the case, any deterrence posed by the requirement for licensure in some instances is posed under *Cummings*, not the Court of Appeals’ decision here. And if a guardian determines that “obstacles beyond her control” – such as the lack of a required license – prevent the guardian from securing the care her ward needs, the guardian is free to withdraw, as the Court of Appeals recognized. *Raven*, 167 Wn. App. at 468. No guardian will be forced to remain as guardian and obtain

a home care license against his or her will under the Court of Appeals' decision here.

Next, Ms. Raven asserts that the Court of Appeals' criticism of her failure to follow the recommendations of the Thurston County Superior Court to hire an attorney to help her address Richard's interference with Ida's medications will deter future guardians. Pet. at 19. Ms. Raven fails to explain how the Court of Appeals' application of the unique facts to the law of fiduciary duty here will discourage future guardians in other, unrelated cases, or why the recommendation to employ an attorney to address long-standing interference with a ward's medication should be viewed as unreasonable as a matter of law.

Ms. Raven again asserts that the Court of Appeals' criticism of her failure to revisit the facility care decision with Ida in the winter of 2006 will deter future guardians. Pet. at 19-20. But, as discussed above, *Ingram* requires a guardian to personally interview the ward about healthcare decisions, and Ms. Raven admitted in testimony that she did not talk to Ida about facility care in the winter of 2006.⁹ All guardians must comply with substitute decision-making standards set forth in *Ingram*; this case reiterates those standards, but does not impose new ones.

⁹ RP 776 ll. 17-20 (*see supra* note 5).

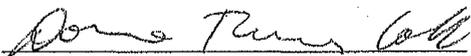
Finally, Ms. Raven complains that she received only \$175 per month to act as Ida's guardian, and such low pay is not worth the risk of liability. Pet. at 20. Again, however, as the Court of Appeals noted, a guardian is always free to withdraw. *Raven*, 167 Wn. App. at 468. If sufficient numbers of guardians are unwilling to work with DSHS clients for the amount of fees specified in DSHS regulations, then DSHS may be required to discuss this with the Legislature during budget allocations. But this presents no compelling reason for the Court to relax the legal duties of guardians when they are appointed as fiduciaries for low-income DSHS clients.

V. CONCLUSION

Because none of the criteria for accepting review in RAP 13.4(b) are satisfied, DSHS requests that the Court deny Ms. Raven's petition for review of a discretionary decision.

RESPECTFULLY SUBMITTED this 6th day of July, 2012.

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CERTIFICATE OF SERVICE

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Case Name: Raven v. DSHS

Supreme Court No. 87483-2

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