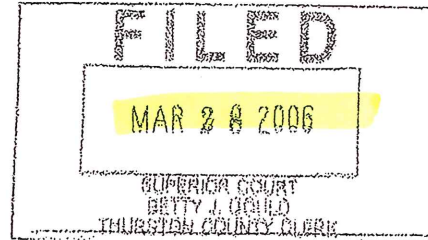


The Honorable GARY R. TABOR



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

TAMMY BUSSING,

Plaintiff,

vs.

STATE OF WASHINGTON DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,

Defendant.

No. 05-2-00985-3

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER OF REMAND

This matter came on for a hearing on December 2, 2005 before the Honorable Gary R. Tabor. The Court having reviewed the administrative records, briefing and oral arguments presented by the parties, now makes the following ruling:

1. FINDINGS OF FACT

1.1 Plaintiff Tammy Bussing receives services from the Department of Social and Health Services (DSHS), Division of Developmental Disabilities (DDD).

1.2 Based on her receipt of DDD services, she is classified as a vulnerable adult by DSHS.

1.3 On or about April 13, 2004, Ms. Bussing was allegedly engaged in a fight with

1 another vulnerable adult.

2 1.4 On or about May 21, 2004, DSHS, Adult Protective Services (APS), mailed Ms.
3 Bussing a letter informing her that "an APS investigation had determined that you physically
4 abused a vulnerable adult as defined in chapter 74.34 RCW."

5 1.5 On or about June 25, 2005, APS mailed Ms. Bussing an amended letter regarding
6 the APS investigation. The letter also informed Ms. Bussing that she had the right to request a
7 hearing to challenge the APS finding that she had assaulted a vulnerable adult. The letter further
8 stated that if an administrative law judge (ALJ) upholds the APS finding that she assaulted a
9 vulnerable adult, the finding will become "permanent" and "your name will be forwarded to the
10 DSHS Background Check Central Unit." If an employer requests the information from APS or
11 the DSHS Background Check Central Unit, DSHS may disclose the substantiated finding and
12 Ms. Bussing's identity. Also, "state law may prevent you from being employed in a position that
13 gives you unsupervised access to vulnerable adults or children."

14 1.6 Ms. Bussing, through her care giver, Judy Bacon with Rehabco, Inc., timely
15 requested a hearing to challenge the APS finding.

16 1.7 A prehearing telephone conference was scheduled for August 19, 2004. ALJ
17 Futch, with the consent of the Department's representative, Jeremy Haas, continued the hearing
18 to October 4, 2004 to provide Ms. Bussing with the opportunity to obtain legal representation.

19 1.8 By the October 4, 2004 prehearing conference, Ms. Bussing still had not retained
20 legal counsel. Therefore, Ms. Bacon appeared on her behalf.

21 1.9 At the October, 2004 prehearing conference the ALJ issued an Order of Dismissal
22 without prejudice based on the following finding: "a substantial question existed as to whether
23 Apellant possessed sufficient mental capacity to comprehend the nature of the proceedings,
24

1 meaningfully participate in the presentation of her own case, or comprehend the consequences of
2 an adverse decision.”

3 1.10 The Department filed a petition for review with the Board of Appeals.

4 1.11 The BOA granted the Department’s petition. Specifically, the BOA vacated the
5 ALJ’s decision and remanded the case to the ALJ for a “full evidentiary hearing.”

6 1.12 Ms. Bussing filed a Motion for Reconsideration. The BOA denied the Motion.

7 1.13 A petition for judicial review followed.

8 1.14 There is insufficient evidence in the administrative agency record for this Court to
9 determine whether or not Ms. Bussing has sufficient capacity to understand the nature of the
10 administrative proceedings.

11 2. CONCLUSIONS OF LAW

12 2.1 Ms. Bussing is not entitled to the appointment of a guardian ad litem (GAL) for
13 the Superior Court proceedings.

14 2.2 Ms. Bussing does not have a due process right to the appointment of a GAL to
15 represent her interests in the administrative proceedings.

16 2.3 Due process though means fundamental fairness.

17 2.4 Notions of fundamental fairness, as applied in this case, mean that an individual –
18 who is a party to the administrative proceedings – has the right to have the tribunal consider
19 issues of capacity, where the tribunal has a reasonable basis to question the individual’s capacity
20 to understand the nature of the administrative proceedings.

21 2.5 Where the tribunal – in this case, the administrative law judge (ALJ) – has a
22 reasonable basis to question a party’s capacity to understand the administrative proceedings, the
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1 ALJ must conduct an inquiry into the party's capacity before proceeding to the merits of the
2 case.

3 2.6 If the ALJ determines that the party does have sufficient capacity to understand
4 the proceedings, the ALJ may then proceed with a hearing on the merits. However, if the ALJ
5 determines that the party does not have sufficient capacity to understand the nature of the
6 administrative proceedings, the ALJ must appoint a suitable representative to represent the
7 interests of the party in the hearing on the merits (of the case).

8 2.7 The ALJ has the discretionary authority to appoint a GAL as the appropriate
9 representative for the incapacitated person; however, the ALJ may determine that someone other
10 then a GAL would be a suitable representative.

11 3. ORDER

12 3.1 This matter is remanded for an administrative hearing before the ALJ;

13 3.2 On remand, the ALJ must first conduct an inquiry into Ms. Bussing's capacity to
14 understand the nature of the administrative proceedings;

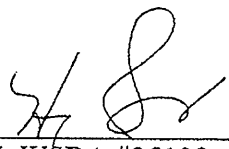
15 3.3 If the ALJ determines that Ms. Bussing has sufficient capacity to understand the
16 nature of the administrative proceedings, the ALJ shall proceed with a hearing into the merits of
17 the case; but;

18 3.4 If the ALJ determines that Ms. Bussing does not have sufficient capacity to
19 understand the nature of the administrative proceedings, the ALJ must appoint a suitable
20 representative to represent Ms. Bussing's interest in the administrative hearings process before
21 proceeding with the hearing on the merits.

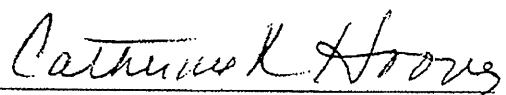
22 DATED this 28 day of March, 2006.

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GARY R. TABOR
HONORABLE GARY R. TABOR
Thurston County Superior Court Judge

By 
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Attorneys for Plaintiff

Copy Received and Notice of Presentment Waived:


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