



- The following findings are added to Initial Finding of Fact 2:
 

[VULNERABLE ADULT 1]’s disabilities included cerebral palsy and profound retardation. In addition to [VULNERABLE ADULT 1], the residents of the Appellant’s adult family home in October 1997 were [VULNERABLE ADULT 2], who is blind, deaf, and unable to speak; [VULNERABLE ADULT 3], who is autistic; [VULNERABLE ADULT 4], who is also autistic; and [VULNERABLE ADULT 5], also autistic, who was 17 at the time and for whom the Appellant was dependency guardian.
- The following findings are added to Initial Finding of Fact 3:
 

Both [VULNERABLE ADULT 2] and [VULNERABLE ADULT 3] have lived with Appellant since 1982. The Appellant was motivated to obtain an adult family home license originally in order to continue to care for her foster children after they became legal adults at 18 years of age.
- The third sentence of Initial Finding of Fact 6 is amended to delete the term “her [RELATIVE 1].”
- The second sentence of Initial Finding of Fact 7 is restated to read as follows:
 

As a friend of the family, [NAME 1] had known the residents in the [APPELLANT’S NAME] home for some time, some for many years, and was familiar with their disabilities and generally with how to manage their behaviors and to perform care tasks when the Appellant was present. [NAME 1] had never served as the sole caregiver for the residents in the [APPELLANT’S NAME] home, and she had not been trained to perform that function.
- The last sentence of Initial Finding of Fact 9 is corrected to read as follows:
 

The [RELATIVE 2] who had previously died of a heart attack was *the [RELATIVE 3] of [NAME 1]’s oldest [RELATIVE 4].*
- The following findings are added to Initial Finding of Fact 11:
 

The Appellant knew that [NAME 1]’s own [RELATIVES] were familiar with the residents in her adult family home. [NAME 1] did not mention to the Appellant that [NAME 1] had agreed to babysit four other [RELATIVES] that day, so the Appellant was not aware before she left that [RELATIVES] other than [NAME 1]’s might be in her home.
- In Initial Finding of Fact 13 *et seq.*, the spelling of the DSHS licenser’s last name is corrected to “Vrona.” *Transcript of proceedings, p. 131 (February 26, 1998).*
- The following findings are added to Initial Finding of Fact 14:

Two of the residents were still at school.

- The second sentence of Initial Finding of Fact 36 is amended to clarify that Mr. Vrona observed more than one resident use the downstairs bathroom. *Transcript of proceedings, p. 58 (February 27, 1998).*
- The following findings are added to Initial Finding of Fact 40:

[NAME 1] was unable to reach her [RELATIVE 5] to come get four of the [RELATIVES], so she telephoned her [RELATIVE 1], who picked up the four [RELATIVES] whom [NAME 1] was baby-sitting on October 2.
- The following findings are added to Initial Finding of Fact 43:

Mr. Vrona was in his vehicle at the [APPELLANT'S NAME] home and observed the two residents return to the home from the school bus.
- The second sentence of Initial Finding of Fact 46 is amended to read as follows:

The licensor informed [NAME 1] that her own [RELATIVES] needed to be removed from the [APPELLANT'S NAME] home also, so [NAME 1] again telephoned her [RELATIVE 1], and her [RELATIVE1] came and took with her [NAME 1]'s three [RELATIVES].

## CONCLUSIONS OF LAW

1. The petition for review was timely filed and is otherwise proper.<sup>1</sup> Jurisdiction exists to review the Initial Decision and to enter the final agency order.<sup>2</sup>
2. Administrative Law Judges and Review Judges, in deciding cases for the Department of Social and Health Services, must apply as the first source of law the rules adopted by the Department in the Washington Administrative Code, and may not declare any rule invalid.<sup>3</sup>
3. Initial Conclusion of Law 1 is not adopted. Jurisdiction for this proceeding arises under WAC 388-76-710 and RCW 43.20A.205(3).

### *Scope of Authority Regarding Actions on Adult Family Home Licenses*

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<sup>1</sup> WAC 388-08-464(3) and (4)

<sup>2</sup> WAC 388-08-464(2)

<sup>3</sup> WAC 388-08-425(2)(a),(c)

4. RCW 43.20A.205(3) grants a DSHS license holder the right to an adjudicative proceeding when the licensee is aggrieved by a Department revocation, suspension or modification.<sup>4</sup> The citation to RCW 43.20A.215 in Initial Conclusion of Law 1 appears to be a typographical error and is not adopted. The rules governing adult family homes provide that chapter 34.05 RCW (the Washington Administrative Procedure Act) applies to adult family home license actions, except that orders of the Department imposing license suspension or stop placement are effective immediately upon notice and remain in effect pending a final administrative decision on the merits.<sup>5</sup>

5. Administrative Law Judges deciding cases for the Department of Social and Health Services are to hear and decide the issues anew (de novo).<sup>6</sup>

6. The Initial Decision incorrectly relies on RCW 74.15.130(3) as a limitation on the authority of the Administrative Law Judge and Review Judge in examining the Department's actions against adult family home licensees. Chapter 74.15 does not apply to licensing actions against adult family homes. Confusion may have arisen in this a case because some residents whose safety and care are at issue were clients of the Department's Division of Developmental Disabilities. Clients eligible for services through that division may be placed in adult family homes. However, chapter 74.15 regulates homes for the developmentally disabled, a kind of facility separate and distinct from an adult family home,<sup>7</sup> and limitations contained in chapter 74.15 RCW do not apply in this proceeding. As a basis for jurisdiction, the citation to RCW 74.15.130 in Initial Conclusion of Law 1 is not adopted.

7. The defense of equitable estoppel will not be applied in this proceeding. The administrative hearing forum, like the agency which initiated this action, has only the authority delegated to it or necessarily implied in its delegation from the legislature. Equitable estoppel, which is an equitable remedy available in courts of general jurisdiction, is not available to

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<sup>4</sup> See also RCW 34.05.422(1)(c)

<sup>5</sup> WAC 388-76-710(1). Cf. RCW 43.20A.205(4)(b)

<sup>6</sup> WAC 388-08-425(1)(a)

<sup>7</sup> RCW 70.128.030(6)

Administrative Law Judges in license revocation cases before the Department of Social and Health Services. Even if it were, estoppel should not be a basis for invalidating an adult family home license revocation action, in light of the paramount function of vulnerable resident protection served by the Department's oversight of these licensed homes.

#### *Scope of Authority on Review*

8. In licensing and rate-making proceedings, the reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties. In reviewing findings of fact by a presiding officer, the reviewing officer must give due regard to the presiding officer's opportunity to observe the witnesses.<sup>8</sup>

#### *Changes to Findings of Fact*

9. Changes to the Initial Findings of Fact have been made to conform the findings to the evidentiary record and to supply additional findings relevant to the decision in this case.<sup>9</sup>

#### *Revocation and Summary Suspension*

10. The undersigned agrees with the ALJ that the Department has proven sufficient violations of the minimum licensing standards to support revocation of the Appellant's adult family home license.

11. The summary suspension action taken by the Department presents a closer question and a harder issue. The general statutory and regulatory scheme is that the

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<sup>8</sup> WAC 388-08-466(1). See also RCW 34.05.464(4)

<sup>9</sup> Initial Findings of Fact 6 and 9 have been changed to accurately reflect the nature of [APPELLANT'S NAME]'s relationship with [NAME 1]. The characterization of [NAME 1] as [APPELLANT'S NAME]'s "[RELATIVE 1]" (Finding of Fact 3) is unsupported by evidence in the record, as is the characterization of [APPELLANT'S NAME]'s late [RELATIVE 2] [NAME 2] as [NAME 1]'s [RELATIVE 5] (Finding of Fact 9). [NAME 1] had a biological [RELATIVE] with [APPELLANT'S NAME]'s late [RELATIVE 2], and [APPELLANT'S NAME] testified that [NAME 1] was "like a [RELATIVE 6]" to her, but the testimony of [APPELLANT'S NAME] and [NAME 1] makes clear that there was no marital relationship between [APPELLANT'S NAME]'s late [RELATIVE 2] and [NAME 1].

Department will allow an adult family home provider to correct deficiencies unless the residents are threatened, or in “imminent danger.” The Department’s rules do not incorporate this term or further define it. The undersigned concludes, however, that the situation presented to the Department’s licensor on October 2, 1997, falls within the permissible interpretation of either term, “imminent danger,” as defined at RCW 70.128.010(7), or “serious risk to residents” under WAC 388-76-705. Leaving aside for the moment the deficiencies related to the physical premises, the five adult family home residents here were under the care of a single person who knew them and the premises, but who did not meet the minimum qualifications for caregivers, had not been trained to be a sole caregiver for these severely impaired residents, and who was distracted by the presence of seven visiting [RELATIVES]. Most importantly, the substitute caregiver that afternoon did not know where the Appellant was, why she was gone, or how to reach her. The Appellant was the one person who had the knowledge needed to properly handle the individual personal care of the residents and any emergency that might have arisen. When adult family home residents have the high level of need for care and supervision that these did, situations that might not pose an emergency for others could suddenly pose an emergency for them. The substitute caregiver did not have access to the residents’ medical records, physician contacts or emergency or evacuation plans. However understandable or excusable these circumstances may be in hindsight, they posed a serious risk and imminent danger to the residents at the time.

12. The Appellant’s arguments from the interplay of the Washington Administrative Code and the governing statutes are not well founded. The Department’s regulations governing adult family homes do not directly address the issue of when the Department may summarily suspend an adult family home license. Rather, they authorize suspension in a more general way, when “violations pose a serious risk of harm, are recurring or have been uncorrected.”<sup>10</sup> Summary, or immediate, suspension of an adult family home license is addressed only in statute. Therefore WAC 388-08-425(2) does not prohibit the importation into the Department’s decision of

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<sup>10</sup> WAC 388-76-705(2)(a)

the statutory standards for summary suspension in RCW 70.128.100 and 70.128.010(7). The Department's rules do not pre-empt the field when summary suspension is considered.

13. The undersigned has considered the Initial Decision, the petition for review, and the whole record or the parts cited by the parties. Any arguments in the petition for review that are not specifically addressed have been duly considered but are found to have no merit or to not substantially affect a party's rights. The conclusions of law in the initial decision are adopted except as modified above. RCW 34.05.464(8). The procedures and time limits for seeking reconsideration or judicial review of this decision are in the attached statement.

#### DECISION AND ORDER

1. The Initial Findings of Fact are changed as indicated in this decision.
2. Initial Conclusion of Law 1 is not adopted.
3. The Initial Decision is otherwise affirmed.

Served on the date of mailing.

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ELLEN G. ANDERSON  
Review Judge

Attached: Reconsideration/Judicial Review Information

Copies have been sent to: [APPELLANT'S NAME], Appellant  
Howard Graham, Representative  
Janice Schurman, DSHS Residential Care Services, via U.S. Mail  
Janyce Thomson, DSHS Aging and Adult Services, via U.S. Mail  
Lucretia A. Fishburn, AAG