STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

BOARD OF APPEALS

In Re:	)	Docket No. 02-2018-LIC-01820
	)	
[APPELLANT'S NAME]	)	**REVIEW DECISION AND FINAL ORDER**
	)	
Appellant	)	Adult Protective Services

I. PROCEDURAL HISTORY

1. The Department of Social and Health Services (Department or DSHS) received an allegation that this Appellant had financially exploited a vulnerable adult, her [PARENT 1]. After investigation and review, the Department's Adult Protective Services (APS) determined that the allegation of financial exploitation was substantiated. The Appellant requested a hearing to contest the Department's finding. Administrative Law Judge (ALJ) Karl R. Boettner held an administrative hearing on May 17, 2018. On July 31, 2018, he issued an *Initial Order* in which he reversed the Department's substantiated finding of financial exploitation.

2. The Board of Appeals (BOA) granted the Department an extension of time in which to file its *Petition for Review of the Initial Order*, and the BOA then received that *Petition* on August 28, 2018.

3. The Appellant filed a *Response* to the Department's *Petition for Review* of the *Initial Order* on September 6, 2018.

II. RESULT OF REVIEW

The ALJ in this matter correctly concluded that the Department had failed to prove that this Appellant had financially exploited a vulnerable adult, her [PARENT 1]. Therefore, the *Initial Order*, which remanded the case to the Department, is ***affirmed.*** The Department's determination that this Appellant financially exploited a vulnerable adult is ***reversed.***

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III. FINDINGS OF FACT

The undersigned has reviewed the record of the hearing, the documents admitted as exhibits, the *Initial Order*, the *Petition for Review of the Initial Order,* and the *Response.* The following necessary Findings of Fact were relevant and supported by substantial evidence in the record.

1. [NAME 1][1] was an [AGE] year old man during the time relevant here, November 2016 to August 2017.[2] The Appellant is [NAME 1]'s [RELATIVE 1].

2. On October 15, 2016, [NAME 1] signed a notarized Durable Power of Attorney (POA).[3] In it he jointly appointed his [RELATIVE 1], who is the Appellant here, and a second [RELATIVE 1], who lives in [ANOTHER STATE], collectively as his agent. The POA granted these agents broad powers: "My Agent shall have full power and authority to act on my behalf. This power and authority shall authorize my Agent to manage and conduct all of my affairs and exercise all of my legal rights and powers, including all rights and powers that I may acquire in the future."[4]

Most pertinently, the POA stated that the agent had the power to "[o]pen, maintain or close bank accounts (including, but not limited to, checking accounts, saving accounts, and certificates of deposit)" and to "[c]onduct any business with any banking or financial institution with respect to any of my accounts, ***including, but not limited to, making deposits and withdrawals*** . . ." Additionally, the agent was empowered to "[s]ell, exchange, buy, invest, or reinvest any assets or property owned by me. Such assets or property may include income producing or non-income producing assets and property. . . ." The agent could also "[s]ell . . .

[1] In using the alleged victim's first name only, no disrespect is intended. By statute, the identity of alleged victims of abuse are to remain confidential. RCW 74.34.090; RCW 74.34.095; WAC 388-71-01250.
[2] Ex. 1 at 3.
[3] Ex. 10.
[4] Ex. 10 at 1.

any of my property (now owned or later acquired) including, but not limited to, real estate and real estate rights . . ."[5]

Paragraph 10 gave the agent the power to "***[m]ake gifts from my assets to members of my family*** *and to such other persons . . .* ***with whom I have an established pattern of giving . . .***" In the same paragraph, however, the POA stated that "[n]o Agent acting under this instrument, ***except as specifically authorized in this instrument,*** shall have the power or authority to (a) gift . . . any of my assets . . . to such Agent . . ."

Significantly as well, the POA was a ***general*** power of attorney: "This Power of Attorney shall be construed broadly as a General Power of Attorney. The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner."[6]

The POA also held a critical provision regarding the agent's liability: "My Agent ***shall not be liable for any loss that results from a judgment error that was made in good faith.*** However, my Agent ***shall be liable for willful misconduct or the failure to act in good faith*** while acting under the authority of the Power of Attorney."[7]

Finally, the POA stated that the agent "shall be entitled to reasonable compensation for any services provided" and that the agent "shall be entitled to reimbursement of all reasonable expenses incurred as a result of carrying out any provision of this Power of Attorney."[8]

3. In mid-October 2016 – about the same time he signed the POA - [NAME 1] moved in to an assisted living facility,[9] [FACILITY 1], in [CITY 1], Washington. Bank statements from that time showed that [NAME 1] got about $[AMOUNT 1] per month from a pension and Social Security. His "move in invoice" from [FACILITY 1] was for $[AMOUNT 2], which he

[5] Ex. 10 at 1 – 2 (emphasis added).
[6] Ex. 10 at 3 (emphasis added).
[7] Ex. 10 at 3 (emphasis added).
[8] From testimony it seems there were two other more specific POA's, neither one in evidence: a medical one and a financial one, the latter making Appellant the attorney in fact for [NAME 1]'s finances.
[9] Exs. 8 & 11.

apparently still owed 10 months later.[10] [FACILITY 1]'s "Past Due Statement" shows that from the beginning of [NAME 1]'s residency, the facility billed him around $[AMOUNT 3] each month, to which the facility added a $[AMOUNT 4] late fee in the middle of each month when the bill was not paid. [FACILITY 1]'s records show that over 10 months it received only two payments, one for $[AMOUNT 5] and one for $[AMOUNT 6].[11] By the time [NAME 1] moved out, he owed $[AMOUNT 7].[12]

4. On July 13, 2017, Adult Protective Services requested information from [NAME 1]'s "last known primary medical provider" in a *Physician Information Request* letter mailed to the doctor.[13] The first question on the form was this: "Does the patient have a cognitive impairment already diagnosed?" The doctor responded by filling in a circle next to "Yes," and writing that [NAME 1] had "***mild memory loss*** mostly caused by prolonged depression."[14] The request form also asked this question: "Does the patient have the ability to understand decisions made and the impact/consequences of their decision?" The doctor did not respond with yes or no, but ambiguously: "At times but depression affects this." The doctor also noted the following: "His level of depression really affects his degree of self care and mental status. He sees psychiatric providers also." Finally, the form asked this question: "Does the patient meet the criteria of a Vulnerable Adult as defined in RCW 74.34?" The doctor responded, "Yes that is why he resides at assisted living level of care."

5. On or about August 10, 2017, unexplainably about a month *after* Adult Protective Services (APS) had requested information from [NAME 1]'s doctor, an APS intake worker filled out an Intake Report.[15] It stated that APS had received a report that [NAME 1] had not paid for his resident services at a resident care facility and that he would be evicted.[16] The report

[10] Ex. 11 at 1.
[11] Ex. 11 at 3 – 4.
[12] Ex. 11 at 4.
[13] Ex. 8.
[14] *Id.* (emphasis added).
[15] Ex. 12.
[16] Ex. 12 at 1.

alleged “financial exploitation” against the Appellant and alleged she had “used some of [NAME 1]’s money to pay for her car to get fixed.” It stated that Appellant “always has an excuse for not paying [NAME 1]’s rent,” that [NAME 1] would “be getting evicted due to non payment,” and that [NAME 1] was “behind over $[AMOUNT 8] on his rent/participation at the facility . . .”[17]

6. Apparently in response to this report and allegation, APS assigned an investigator to investigate the allegation.

7. On August 18, 2017, the APS investigator interviewed [NAME 1], in person, at [FACILITY 1]. The quoted statements below are from the investigator’s case notes[18] about that interview, but are edited to read as quotations:

“[Appellant] is my [RELATIVE 1].”

“She [Appellant] takes care of my bills. I trust my [RELATIVE 1].”

When asked if he knew Appellant used his money to fix her car, [NAME 1] stated unequivocally, ***“Yes. It is okay for my [RELATIVE 1] to use my money for what ever she needs.”***

“I have no knowledge of any foul play.”

When asked if the Appellant told him when she used his money for her own benefit, other than for him, he replied, “[My [RELATIVE 1]] never tells [me] when she takes money. [I give] my [RELATIVE 1] full control.”

When asked if it was okay for his [RELATIVE 1] to use his money, he said, ***“It is okay for [my] [RELATIVE 1] to use [my] money.”***

“I don’t expect her to pay me back.”

“[I want my] [RELATIVE 1] [the Appellant] to still control [my] finances.”

“I did get a call about one of my bills not getting paid, but I can’t remember who it was.”

[17] Ex. 12 at 2.
[18] Ex. 3 at 17 – 19.

"[My] [RELATIVE 1] [the Appellant] provides the transportation, shopping, laundry and manages finances."

When the APS investigator asked him if he wanted a protection order against the Appellant, he declined. Nothing in the case notes pertaining to this interview indicate the slightest difficulty in the investigator's communicating with [NAME 1], with [NAME 1] appropriately answering the questions asked, or with his understanding of the situation. For instance, when the investigator handed [NAME 1] the Department's "Your Rights" form, [NAME 1] responded right away by showing the investigator another "Your Rights" form that he "pulled out of his wallet."[19]

8. Based on what the APS investigator stated she learned from [NAME 1], as indicated above in Finding 7, and based on the testimony at hearing from Appellant, her [RELATIVE 2], her [RELATIVE 1], and her two friends regarding Appellant's use of her [PARENT 1]'s debit card, the undersigned finds she acted in good faith in her dealings with her [PARENT 1] and his funds.[20]

9. Based on the same evidence, in Findings 7 and 8 above, the undersigned finds there was no "undue influence" in Appellant's dealings with her [PARENT 1] and his bank account.[21]

10. Toward the end of the interview, [NAME 1] gave the APS investigator permission to administer two cognitive tests: the Mini-Mental State Examination (MMSE) 30 point questionnaire to measure cognitive impairment and SPACED cognitive interviewing. [NAME 1]'s score on the MMSE was 28/30. He could recall 2/3 of unrelated objects.[22] He scored 2.5/8 on the SPACED tool.

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[19] Ex. 3 at 17.
[20] "Good faith" is "wholly a question of fact," not law. *Yuille v. DSHS,* 111 Wn. App. 527, 533, 45 P.3d 1107 (2002).
[21] The determination of undue influence is a mixed question of fact and law. *Kitsap Bank v. Denley*, 177 Wn. App. 559, 569, 312 P.3d 711 (2013); *In re Trust & Estate of Melter*, 167 Wn. App. 285, 300, 273 P.rd 991 (2012).
[22] Ex. 3 at 19.

11. On the MMSE, a score of 30 points is the maximum. A score of 20 to 24 suggests mild dementia, 12 to 20, moderate dementia, less than 12, severe dementia.[23] [NAME 1]'s score was 28. The investigator later testified that these tests did not suggest that [NAME 1] was incapable of giving knowing permission to his [RELATIVE 1] to use his bank account.[24]

12. In possibly a thousand printed out text messages exchanged between [NAME 1] and the Appellant while [NAME 1] was at [FACILITY 1], one sees first of all that he was capable of sending text messages on his phone and understanding the text messages he received, and he was fully capable of making plans or canceling plans to go to church, or the doctor, or shopping. He was also fully capable of asking on nearly every page of the printed out text messages for the Appellant to buy something for him. A list of items he asked for in just the first half of the texts include the following: alcohol prep pads, a night light, a safe, a belt, a printer, a razor, hamburgers, hard boiled eggs, pizza, bananas, photo albums, computer parts, batteries, eye drops, clothing, a bicycle lock, a combination lock, cheese, a pencil, pliers, a screwdriver, and medical supplies. The texts also corroborate what witnesses had said or exhibits had shown about [NAME 1]'s mental state: memory lapses, depression, anger, frustration. But in the aggregate the texts show [NAME 1] to be fully conscious and capable of making plans, expressing his feelings, and asking for things he needed. On April 21, 2017, he wrote to the Appellant the following: "How is my account? Is there any money in it? You are. Welcome to their usage."[25]

13. The APS investigator interviewed the Appellant on two occasions. At the first interview on September 18, 2017,[26] the investigator informed Appellant that "it was reported" that her [PARENT 1]'s bill at [FACILITY 1] had not been paid and that he had "accumulated a

[23] Alzheimer's Association at https://www.alz.org/alzheimers-dementia/diagnosis/medical_tests.
[24] Testimony of investigator at approximate recording time of 01.05.00 – 01.06.00 (Hour.Minute.Second).
[25] Ex. A.
[26] Ex. 3 at 10 – 12.

large balance owed."[27] The investigator asked the Appellant if she had "made arrangements to pay the balance" and Appellant said she tried to work with [FACILITY 1] to no avail and that she was trying to get help from the U.S. Department of Veterans Affairs.[28] The Appellant stated that her [PARENT 1]'s "income" each month was about $[AMOUNT 1] and the bill for rent and services at [FACILITY 1] was about $[AMOUNT 9] per month.[29]

The investigator asked the Appellant if she used her [PARENT 1]'s money for herself and she stated "she has for gas to run errands for her [PARENT 1] and also to fix her car because it is her only means of transportation."[30] The Appellant stated that she used some of her [PARENT 1]'s money "to buy food for herself because lately she has been going to sit with her [PARENT 1] because of suicide watch and the facility is not able to provide the 24 hour watch."[31] The investigator determined that Appellant was living in her [PARENT 1]'s home and asked Appellant "why did she not pay for the utility bills and for the cable out of her own money." The Appellant replied that her [PARENT 1] "did not expect" her "to pay anything while living in his home."[32]

The investigator asked the Appellant, "so you never paid rent while living in your [PARENT 1]s [sic] home" and the Appellant said "No."[33] The Appellant reiterated that her [PARENT 1] "never wanted" her "to pay for anything"[34] and she said that her living in her [PARENT 1]'s home was a way of receiving compensation for caring for him.[35]

14. On September 29, 2017, Appellant resigned as her [PARENT 1]'s Power of Attorney.[36]

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[27] Ex. 3 at 10.
[28] *Id.*
[29] Ex. 3 at 11.
[30] Ex. 3 at 11.
[31] Ex. 3 at 11.
[32] *Id.*
[33] Ex. 3 at 12.
[34] *Id.*
[35] *Id.*
[36] Ex. 7.

15. The investigator's second interview of Appellant was on October 13, 2017.[37] During this second interview, Appellant once again stated that she had used her [PARENT 1]'s money to pay for car repairs and did not pay him back because he had "never really expected her to pay it back."[38] When the investigator asked about a transaction on bank statements concerning eye glasses, Appellant said the expense was for her own glasses and that "her [PARENT 1] said it was okay for her to use his money to pay for her glasses."[39] Near the end of the interview, the investigator "informed" the Appellant "that subtracting all the transactions to vendors and all the cash withdrawals that were unaccounted for [shown on her [PARENT 1]'s bank statements] that her [PARENT 1] would have some money in the account to pay some of his facility bill."[40]

16. During this same interview, Appellant said that she had had her [PARENT 1]'s "bank card.[41]" She later testified that she had her [PARENT 1]'s ATM card through the POA.[42] The investigator later testified that the investigator believed [NAME 1] had given Appellant authorization to use his bank account.[43] Appellant's [RELATIVE 2], her co-agent on the POA, testified that she knew Appellant had their [PARENT 1]'s debit card, that he had given it to her "early on" in his stay at [FACILITY 1], and that he told Appellant she could use it for whatever she needed.[44]

17. When the APS investigator examined [NAME 1]'s bank statements for June 1, 2016, to September 2016, months that were just prior to his residing at [FACILITY 1], she summarized as follows: "Majority of transactions on the statement are bill paying . . ." She also noted that there were "[m]inimal transactions to fast food venders [sic], retail stores and

[37] Ex. 3 at 4 – 6.
[38] Ex. 3 at 5.
[39] Ex. 3 at 6.
[40] Ex. 3 at 6.
[41] Testimony of Appellant at approximate recording time of 00.12.15 – 00.13.09; 00.20.50 – 00.21.20.
[42] Ex. 3 at 4.
[43] Testimony of APS Investigator at approximate recording time of 01.04.45 – 01.04.55.
[44] Testimony of [RELATIVE 2] at approximate recording time of 02.56.13 – 03.00.05.

grocery stores, etc. . . . Withdrawals are minimal and do not occur every month." And she noted that the "[m]ajority of the checks written are to churches as a donation."[45] The bank statements for those months show that in June 2016 the ending balance on the checking account was a negative -$[AMOUNT 10]; in July, a negative -$[AMOUNT 11]; in August, a positive $[AMOUNT 12], and in September, $[AMOUNT 13].

The bank statements for the months after September 2016, the 11 months after [NAME 1] entered [FACILITY 1], all show positive monthly ending balances for the checking account except two months. In November 2016, his first full month at [FACILITY 1], his balance was -$[AMOUNT 14], and in May 2017, it was -$[AMOUNT 15].

In the aggregate, the bank statements for these 15 months show the largest withdrawals ranged from $[AMOUNT 16] to $[AMOUNT 17] and are for car and health insurance premiums for [NAME 1] or mortgage or loan payments related to his house. For instance, the June 2016 statement shows a $[AMOUNT 18] withdrawal for [HEALTHCARE] Premium, a $[AMOUNT 19] withdrawal for the City of [CITY 1], a $[AMOUNT 20] withdrawal to pay [COMPANY 1], and a $[AMOUNT 21] withdrawal to pay [COMPANY 2] Mortgage and $[AMOUNT 22] for [COMPANY 3] Auto Insurance for [NAME 1]'s car. The pattern is similar for all the months, for instance, January 2017, after Appellant had been given the POA.[46]

18. Based on its investigation, APS sent a letter to Appellant dated January 10, 2018, by certified and regular mail. (The Department sent a second letter dated January 30, 2018, because one of the original letters had been returned). The letter dated January 10, 2018, informed the Appellant that APS had determined that she had financially exploited [NAME 1], a vulnerable adult. Specifically, the letter explained:

> The Department of Social and Health Services' (DSHS) Adult Protective Services (APS) program recently investigated a report that you may have mistreated a vulnerable adult (Case ID# [NUMBER 1]; Investigation ID#[NUMBER 2]). Based on this investigation, APS determined that you **financially exploited** a

[45] Ex. 3 at 2 – 3.
[46] Ex. 4 at 15 – 16.

vulnerable adult. As specified in RCW 74.34.095 and RCW 74.34.068, neither the name of the victim nor the reporter may be disclosed to you in this notification letter.

Because this APS decision will limit where you can work or volunteer for the rest of your life if not appealed, you should read this letter carefully [RCW 74.39A.057(2)].

Based on the evidence, APS finds that it is more likely than not that the following events happened:

The AV (alleged victim) is a vulnerable adult who is [AGE] years old, and resides in an assisted living facility. It is alleged that between November 2016 and August 2017, you improperly used more than $[AMOUNT 23] of the AV's funds for the benefit of someone other than the AV.

These expenditures included but may not be limited to: cash withdrawals, and your living expenses, ATM cash withdrawals, and your purchases at convenience stores, gas stations, fast food vendors, and [COMPANY 4]. You took advantage of your position as the AV's Power of Attorney, and the AV was subjected to financial exploitation by your improper use of the AV's assets.

On or about August 10, 2017, it was reported that you as the POA did not pay for the AV's care in the assisted living facility. The AV was evicted due to nonpayment.[47]

19. This letter included an explanation of the Appellant's administrative hearing rights. The Department sent the letter by certified and regular mail, and Appellant signed as having received it.[48]

20. On January 18, 2018, the Appellant requested an administrative hearing.[49]

21. The Office of Administrative Hearings held an "in person" hearing on May 17, 2018, though a few witnesses appeared by telephone.

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[47] Ex. 1 at 3 (bold and italics in the original).
[48] Ex. 1 at 10.
[49] Ex. 2.

IV. CONCLUSIONS OF LAW

Jurisdiction and Authority

1. The *Petition for Review* was timely filed and is otherwise proper.[50] Jurisdiction existed to review the *Initial Order* and to enter the final agency order. [51]

2. ALJs and Review Judges must first apply the Department of Social and Health Services (DSHS) rules adopted in the Washington Administrative Code (WAC). If no DSHS rule applies, the ALJ or Review Judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington State constitutions, statutes, regulations, and court decisions.[52]

3. In an adjudicative proceeding involving a finding of financial exploitation of a vulnerable adult, the undersigned Review Judge has the same decision-making authority as the ALJ to decide and enter the *Final Order,* in the same way as if the undersigned had presided over the hearing.[53] This includes the authority to make credibility determinations and to weigh the evidence. Because the ALJ is directed to decide the issues *de novo* (as new), the undersigned has also decided the issues *de novo*. In reviewing the Findings of Fact, the undersigned has given due regard to the ALJ's opportunity to observe the witnesses, but has otherwise independently decided the case.[54] The undersigned Reviewing Officer does not have the same relationship to the presiding officer as an Appellate Court Judge has to a Trial Court Judge; and the case law addressing that judicial relationship does not apply in the administrative hearings forum.

4. The Washington Administrative Procedure Act directs Review Judges to personally consider the entire hearing record.[55] Consequently, the undersigned has considered

[50] WAC 388-02-0560 through -0585.
[51] WAC 388-02-0215, -0530(2), and -0570.
[52] WAC 388-02-0220.
[53] WAC 388-02-0217(3).
[54] WAC 388-02-0600, effective March 3, 2011.
[55] RCW 34.05.464(5).

the adequacy, appropriateness, and legal correctness of all initial Findings of Fact and Conclusions of Law, regardless of whether any party has asked that they be reviewed.

5. It may help to briefly explain the unique characteristics and specific limitations of the administrative hearing process. An administrative hearing is held under the auspices of the *executive branch of government* and neither the ALJ nor the Review Judge enjoy the broad equitable authority of a Superior Court Judge within the *judicial branch of government.* It is well settled that administrative agencies, such as the Office of Administrative Hearings (OAH) and the Board of Appeals, are creatures of statute, without inherent or common law powers, and, consequently, they may exercise only those powers expressly granted in enabling statutes or necessarily implied in them.[56]

Standard of Proof and Evidence

6. Department regulations address what standard of proof is to be used in these types of hearings, providing that, "The ALJ shall decide if a preponderance of the evidence in the hearing record supports a determination that the alleged perpetrator committed an act of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult."[57] The "preponderance of the evidence" standard is required under the regulations relevant to this proceeding. This standard means that it is more likely than not that something happened or exists.[58]

7. A Review Judge, in most cases, only considers evidence given at the original hearing.[59] Evidence includes documents, objects, and the testimony of witnesses, that parties provide in order to prove their positions at hearing.[60] Either party to a hearing may bring

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[56] *Skagit Surveyors & Eng'rs, L.L.C. v. Friends of Skagit County*, 135 Wn.2d 542, 558, 958 P.2d 962 (1998) and *Taylor v. Morris,* 88 Wn.2d 586, 588, 564 P.2d 795 (1977); s*ee also* WAC 388-02-0216 which provides, "The authority of the ALJ and the review judge is limited to those powers conferred (granted) by statute or rule. The ALJ and the review judge do not have any inherent or common law powers."
[57] WAC 388-71-01255(1).
[58] WAC 388-02-0485.
[59] WAC 388-02-0565.
[60] WAC 388-02-0390.

evidence to any prehearing meeting, prehearing conference, or hearing, or may send in evidence before these events.[61] No more evidence may be taken without *good cause* after the record is closed.[62] Therefore, a Review Judge may only accept additional evidence on review under certain circumstances.[63] These circumstances are generally limited to evidence that is newly discovered and could not have been presented at the hearing, highly reliable documents that are necessary to resolve the dispute, items to which both parties agree, or matters that affect jurisdiction to proceed.

8. "Hearsay" is a statement made outside of the hearing used to prove the truth of what is in the statement.[64] While hearsay evidence would not ordinarily be admissible in Superior Court, it can be admitted in an administrative hearing so long as "it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their own affairs."[65] The ALJ or Review Judge may only base a finding on hearsay evidence if they find that the parties had the opportunity to question or contradict it.[66] In this case, the hearsay evidence and the credible testimony elicited in the hearing were similar. Additionally, both the Department, and the Appellant, had opportunity at the hearing to question each hearing witness. Therefore, pursuant to RCW 34.05.452 and RCW 34.05.461(4), the initial ALJ, and undersigned Review Judge, were authorized to adopt or create Findings of Fact based on the hearsay testimony elicited during the hearing.

Abuse of Vulnerable Adults Statute and Regulations

9. Chapter 74.34 of the Revised Code of Washington (RCW) is titled "Abuse of Vulnerable Adults." The Department has implemented chapter 74.34 RCW by adopting WAC chapter 388-71-0100 through -01280, entitled "Home and Community Services and Programs-

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[61] WAC 388-02-0395.
[62] WAC 388-02-0510.
[63] *See Messer v. Snohomish County Board of Adjustment*, 19 Wn. App. 780, 787, 578 P.2d 50 (1978); *State ex rel. Lige & Dickson v. Pierce County*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992).
[64] WAC 388-02-0475(3).
[65] RCW 34.05.452.
[66] WAC 388-02-0475(3).

Adult Protective Services." Administrative hearings conducted under these regulations are controlled by statutes and regulations found at RCW 34.05 and WAC 388-02, respectively.[67] Chapter 74.34 RCW establishes a system for reporting instances of financial exploitation of a vulnerable adult.

10. The "vulnerable adult" statute above defines that phrase to include a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; a person found incapacitated under RCW 11.88; a person with a developmental disability as defined under RCW 71A.10.020; a person admitted to any facility; a person receiving services from a home care agency licensed under RCW 70.127; or a person receiving services from an individual provider.[68] [NAME 1] was the alleged victim in this matter. During the time period at issue, he was [AGE] years old, and was living in, and receiving services from, an assisted living facility, an adult family home. Therefore, [NAME 1] was a vulnerable adult as defined by the statute, and was entitled to the protections provided therein.

11. The Department made a finding of financial exploitation against the Appellant based on this statute:

> (7) "Financial exploitation" means ***the illegal or improper use***, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:
>
> (a) The ***use of deception, intimidation, or undue influence*** by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;
>
> (b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the ***unauthorized appropriation,*** sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

[67] WAC 388-71-01245.
[68] RCW 74.34.020(11).

> (c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that ***the vulnerable adult lacks the capacity to consent*** to the release or use of his or her property, income, resources, or trust funds.[69]

12. Therefore, to prove under this statute that Appellant financially exploited her [PARENT 1], the Department had to prove two elements by a preponderance of the evidence: one, that the use, control over, or withholding of [NAME 1]'s property by the Appellant was improper or illegal, and two, that the withholding of the funds was for a person's or entity's profit or advantage other than the vulnerable adult's profit or advantage. The Department failed to prove the first element.

Illegal or Improper Use, Control, or Withholding

13. First, there was no allegation or evidence that Appellant's use of her [PARENT 1]'s money was "illegal." Second, the term "improper" is a somewhat broad and general adjective. The Legislature's use of the term disjunctively with the term "illegal" in defining "financial exploitation," can reasonably be construed to mean the Legislature intended to include certain acts as financially exploitative even if those same acts may not be "illegal."

14. Appellant's use of her [PARENT 1]'s funds was not improper, which is the essential subject of all that follows. Nothing in the financial exploitation statute prohibits vulnerable adults from giving away their resources, particularly to their [RELATIVE 1 & 2]. The statute gives three non-exclusive examples of financial exploitation and if the Department could have proved that Appellant's use of [NAME 1]'s money was improper because it fell within one of these three examples, it could have proved financial exploitation. To do so, the Department would have to have shown either (1) that the gift was the result of "deception, intimidation, or undue influence," or (2) that [NAME 1] lacked the capacity to consent to the gift, or (3) that the "giving" was a "breach of a fiduciary duty."

Alleged Breach of Duty as Attorney-in-Fact Under a Power of Attorney

[69] RCW 74.34.020(7) (emphasis added).

15. The Department's *Petition for Review* cites and quotes the law but provides no argument as to how that law applies to the facts in this case. The Department's written "Closing Argument," however, did provide some argument. Although between the two documents the phrases "undue influence" from subsection (7)(a) of the financial exploitation statute, and "lacks the capacity" from subsection (7)(c) of that statute are used, the Department's central claim appears to rest on (7)(b) of the statute. The core of the Department's argument is that Appellant financially exploited her [PARENT 1] by breaching a fiduciary duty arising from the durable power of attorney document that made her a co-agent, also referred to as an attorney-in-fact. The three cases the Department cites in its argument, however, address the common law of agency, but none of them discuss powers of attorney.[70] Moreover, the three cases all pre-date the Legislature's recent enactment of the Uniform Power of Attorney Act (UPOA), effective January 1, 2017, and the Department does not cite to the Act or explain how the three cases are to be read in relation to that Act.

Uniform Power of Attorney Act Generally

16. The UPOA has obvious implications for the current case. First, the Act repealed[71] the provisions of the prior "power of attorney" statute, RCW 11.94, and, as if to emphasize the point, the new statutory provisions have been re-codified at RCW 11.125. Thus, any case law construing specific sections of the prior statute would likely be superseded unless the current UPOA carries the same provisions.

Second, the UPOA "applies to all powers of attorney,"[72] and a "power of attorney

[70] *Esmieu v. Schrag*, 88 Wn.2d 490, 563 P.2d 203 (1997) (while the principle of law the Department attributes to this case is likely still good law, the case does not concern a power of attorney and apart from the word fiduciary, does not state the principle attributed to it); *Tucker v. Brown*, 199 Wash. 320, 92 P.2d 221 (1939); (the Department cites this case as 1991 Wash. and as being decided in 1935, neither of which is accurate; further, the case neither involved a power of attorney or a parental relationship); *McCutcheon v. Brownfield*, 2 Wn. App. 348, 467 P.2d 868 (1970) (this case does not involve a power of attorney and involved a quit claim deed, not "funds," as the Department's argument claims; the case also does not use any variation of the word presume).
[71] ESSB 5635, Bill Analysis available at http://app.leg.wa.gov/committeeschedules/Home/Documents/18090 .
[72] RCW 11.125.030.

executed in this state before January 1, 2017, is valid if its execution complied with the law of this state as it existed at the time of execution." The power of attorney at issue here was executed in October 2016 and no one has contested its validity. Therefore, the POA here must be construed in light of the UPOA.

Third, the UPOA states that when a POA is *general* in authority, the attorney-in-fact can take all actions that could be taken by the principal.[73] This is a critical issue because it grants to the attorney-in-fact a broad range of actions, including the power to make gifts.[74] The durable POA in this case stated it "shall be construed broadly as a General Power of Attorney."

Fourth, Washington's UPOA has yet to be the subject of any appellate decisions and not all prior case law on powers of attorney is nullified. The UPOA provides as follows: "Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter."[75] The Comments to this section from the Uniform Law Commission state that "[t]he Act is supplemented by common law, including the common law of agency, ***where provisions of the Act do not displace relevant common law principles.*** The common law of agency is articulated in the Restatement of Agency and includes contemporary and evolving rules of decision developed by the courts in exercise of their power to adapt the law to new situations and changing conditions. The common law also includes the traditional and broad equitable jurisdiction of the court, which this Act in no way restricts."[76]

The UPOA and Breach of Duty

17. More specifically, several sections of the UPOA appear applicable here. Regarding the liability of an agent for an alleged breach of duty, the UPOA states that a provision in a power of attorney can relieve the agent of that liability:

[73] RCW 11.125.250, -.260.
[74] *Overview of Durable Powers of Attorney,* 26 Wash. Prac. , Elder Law and Practice §2.37 (2d ed.).
[75] RCW 11.125.210.
[76] Unif. Power of Attorney Act § 121, U.L.A. Power Atty Act § 121 (Comment) (emphasis added). As stated above, however, Review Judges do not have equitable powers.

> A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:
>
> (1) Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with gross negligence to the purposes of the power of attorney or the best interest of the principal; or
>
> (2) Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.[77]

The Comments to this section from the Uniform Law Commission state that "[t]his section permits a principal to exonerate an agent from liability for breach of fiduciary duty, but prohibits exoneration for a breach committed dishonestly, with improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal. The ***mandatory minimum standard of conduct required of an agent is equivalent to the good faith standard*** applicable to trustees."[78]

The power of attorney in this case had the following relief of liability paragraph, which is consistent both with Washington's UPOA and the Commission's comments:

> My Agent ***shall not be liable for any loss that results from a judgment error that was made in good faith.*** However, my Agent ***shall be liable for willful misconduct or the failure to act in good faith*** while acting under the authority of the Power of Attorney.[79]

The UPOA defines "good faith" as meaning "honesty in fact."[80] The Department here did not allege Appellant was dishonest in her dealings with her [PARENT 1] and his bank account, nor did it allege willful misconduct on her part. Nor did the Department allege that this relief of liability provision was "inserted as a result of an abuse of a confidential of fiduciary relationship with the principal." In fact, there was little evidence at hearing or in the record about how the general power of attorney or the other two powers of attorney that were mentioned, one for health, the other for finances, came about. But the provision in [NAME 1]'s power of attorney relieving his agent of liability for a "judgment error" directly counters the Department's argument

[77] RCW 11.125.150.
[78] Unif. Power of Attorney Act § 115, U.L.A. Power Atty Act § 115 (Comment) (emphasis added).
[79] Ex. 10 at 3 (emphasis added).
[80] RCW 11.125.020(4).

that Appellant's alleged failure to pay [NAME 1]'s bill at [FACILITY 1] was a breach of her duty under the POA, especially because even had she funneled her [PARENT 1]'s entire $[AMOUNT 1] per month income to [FACILITY 1], he would still have been short $[AMOUNT 24] per month, plus the $[AMOUNT 4] late fee each month, or approximately $[AMOUNT 25] after 10 months.

The UPOA and Common Law

18. Some common law duties and liabilities of agents are codified in the UPOA, while others are not, and other duties are modified. For instance, the UPOA states that an agent must act in good faith, act loyally for the principal's benefit, avoid creating a conflict of interest, and act with care, competence, and diligence.[81]

The most pertinent subsections to the case at hand, however, are the following:

> (1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:
>
> > (a) ***Act in accordance with the principal's reasonable expectations to the extent actually known by the agent*** and, otherwise, in the principal's best interest;
>
> ***(4) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.***
>
> ***
>
> (6) ***Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines***.[82]

The latter two quoted provisions again defeat the Department's argument that Appellant breached her fiduciary duty under the POA. Subsection (4) negates the argument there was a breach because Appellant benefited from or had a conflict of interest in having her [PARENT 1]'s debit card to buy gas, or fix her car, or fix her glasses. Such acts were "for the best interest of the principal" in that they conformed to his wishes and reasonable expectations, they enabled her to get to all the places she needed to get to so she could buy him the things he requested,

[81] RCW 11.125.140(1).
[82] RCW 11.125.140 (emphasis added).

and the acts enabled her to visit him frequently, sometimes for suicide watch, and sometimes just to visit. Buying gas and fixing her car also enabled her to pick up his laundry and launder it and return it, something she did to save money because [FACILITY 1] would have charged her [PARENT 1] to do his laundry. Consequently, Appellant "is not liable" solely because she benefitted or had a possible conflicting interest. Further, though the Department argued that the depletion of [NAME 1]'s bank account each month demonstrated financial exploitation, subsection (6) of the UPOA relieves Appellant of liability merely because "the value of the principal's property" declined.

The UPOA and Gifts

19. The UPOA has several sections pertaining to gifts. Specifically, it states that an agent under a power of attorney may "make a gift" if the power of attorney "expressly grants the agent the authority" to do so.[83] In this case, the power of attorney expressly granted the agent the authority to make gifts.

The section of the UPOA that permits gifting is also interesting because it prohibits the making of a gift that creates in the agent "an interest in the principal's property," including "by gift," ***except exempted from this prohibition are agents who are ancestors, spouses, state registered domestic partners, <u>or descendents of the principal:</u>***

> (4) Notwithstanding a grant of authority to do an act described in subsection (1) of this section [which includes the authority to make a gift], unless the power of attorney otherwise provides, **an agent that is not** an ancestor, spouse, state registered domestic partner, or **descendant of the principal**, **may not exercise authority under a power of attorney to create in the agent**, or in an individual to whom the agent owes a legal obligation of support, **an interest in the principal's property, whether by gift**, right of survivorship, beneficiary designation, disclaimer, or otherwise.[84]

In other words, the plain language of this section appears to permit a "descendent of the principal" to create "in the agent" an interest in the principal's property, by gift or otherwise. Thus, to the extent that Appellant's use of her [PARENT 1]'s debit card for her and her

[83] RCW 11.125.240(1)(b).
[84] RCW 11.125.240(4) (emphasis added).

[PARENT 1]'s needs created an interest in her as the agent of a POA, the UPOA does not prohibit a descendant of the principal of a POA from doing so.

Finally, the new statute has an entire section specifically and wholly about a POA agent's authority in regard to gifts. The most pertinent subsection states the following:

> (3) An agent may make a gift outright to, or for the benefit of, a person of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including but not limited to:
>
> (a) The value and nature of the principal's property;
>
> (b) The principal's foreseeable obligations and need for maintenance;
>
> (c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
>
> (d) Eligibility for a benefit, a program, or assistance under a statute or rule; and
>
> (e) ***The principal's personal history of making or joining in making gifts***.[85]

The Appellant testified that her [PARENT 1] gave her his debit card because he did not want to deal with his finances any longer, that he wanted her to be able to get things he needed (which was a long list based on his text messages), and that he wanted her to use his funds for her own needs. Appellant's [RELATIVE 2] testified similarly. Thus, if Appellant's use of her [PARENT 1]'s funds to buy gas, to fix her car, or to fix her glasses is deemed a "gift," then it was consistent with the principal's objectives of having Appellant have access to his funds for his purposes and to help his [RELATIVE 1] as well. Further, Appellant's co-agent in the power of attorney, her [RELATIVE 2], testified extensively about their [PARENT 1]'s history of generosity toward his [RELATIVES 1 & 2]. Thus, to the extent the principal's objectives were not known, such use was consistent with the principal's best interest in part based on his "personal history of making" such gifts. Further, the Department's argument that there was "no credible evidence to show that the alleged victim authorized her [the Appellant] to withdraw his funds" completely ignores the statements taken from [NAME 1], the vulnerable adult here, by the Department's own investigator, statements set out in Finding of Fact 7 above. Finally, the argument

[85] RCW 11.125.390(3).

completely ignores the provisions of the POA itself that allowed Appellant to make deposits and withdrawals from the principal's bank account and to make gifts to family members ***"with whom I have an established pattern of giving . . .***" This evidence was indeed "clear, convincing, and cogent."

The UPOA and Incapacity

20. Finally, the UPOA defines "incapacity," in part, as follows:

> (5) "Incapacity" means inability of an individual to manage property, business, personal, or health care affairs because the individual:
> (a) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; …[86]

Appellant's [PARENT 1] gave her control over his finances and debit card not because he was incapacitated, but because he just did not want to be responsible for it any longer and because, as Appellant testified at hearing, he thought his new living situation at [FACILITY 1] would not allow him to monitor his finances on his computer as he had been accustomed to doing. And there was little or no evidence that he was impaired "in the ability to receive and evaluate information or make or communicate decisions . . ." Ample evidence refutes the Department's claim that the vulnerable adult here lacked the capacity to consent to the Appellant's actions. This evidence included the following: the APS interview of him; his hundreds of text messages demonstrating the ability to communicate his needs, wishes, forgetfulness, and anger; and the durable POA he signed in 2016 that stated, in the future tense, that the POA "shall not be affected by my disability or lack of mental competence. . . ." And the POA carried a notary statement that the principal "executed the foregoing instrument, and acknowledged that he/she executed same as his/her free act and deed." Even leaving aside the cognitive tests of [NAME 1] that the APS administered that did not show a significant cognitive impairment, the preponderance of evidence was that it was more likely than not that [NAME 1] had the capacity to consent to his [RELATIVE 1]'s management of his finances.

[86] RCW 11.125.020(5).

Case Law on Powers of Attorney

21. Apart from the UPOA, appellate decisions more recent than the three cases the Department cites, and specifically concerning powers of attorney, are instructive. The most helpful, though unpublished, decision is *Boyd v. Pandrea*.[87] That case involved a power of attorney entered into in California, by Nevada residents, who later made Washington their home. The named parties were half-sisters and their mother in common was Ms. Clark. A nursing home in California would not accept Ms. Clark as a resident unless she first exercised a power of attorney in favor of one of her daughters. Ms. Boyd declined to act as attorney in fact, so Ms. Pandrea assumed the responsibility. They bought a power of attorney form from a California stationery store and Ms. Clark signed it, making Ms. Pandrea her attorney in fact.

Many years, houses, and states of residence later, Ms. Clark died. Ms. Boyd sued Ms. Pandrea, alleging a breach of fiduciary duty under the power of attorney and abuse of a vulnerable adult. The trial court granted summary judgment to Ms. Boyd, finding that the power of attorney precluded self-dealing so that Ms. Pandrea could not accept the gift of a house in Hawaii from her mother, given years before the mother's death. The Court of Appeals reversed the trial court, specifically disagreeing with the trial court's conclusion that it was a breach of one of Ms. Pandrea's fiduciary duties under the power of attorney to accept the gift. In distinguishing Washington POA law from California, the court stated that "Washington does not appear to have a similar provision [to California's] requiring an attorney-in-fact to keep property separate and distinct nor prevent an attorney-in-fact to accept a gift from the principal, when the principal herself is giving the gift to the agent."[88]

While the decision is not binding, it is at least persuasive authority that Washington does not require an agent to keep a principal's property– here, her [PARENT 1]'s money – separate

[87] *Boyd v. Pandrea*, No. 39910-0-III, 31267-4-III, Casemaker (COA Div. 3 2014). Unpublished opinions of our Court of Appeals, filed after March 1, 2013, may be cited for persuasive purposes, though these opinions have no precedential value and are non-binding. GR 14.1.
[88] *Boyd v. Pandrea*, No. 39910-0-III, 31267-4-III, Casemaker (COA Div. 3 2014).

and distinct from her own and does not prohibit an attorney-in-fact from accepting a gift of real or tangible property from the principal.

Similarly, when a principal's son was a joint tenant on the principal's bank account and was also the attorney-in-fact under the principal's POA, the court invalidated three "gift" checks the son wrote, one to himself, one to his sister, and one to the principal's home helper, just prior to the principal's death. The court invalidated the checks because "an attorney-in-fact has no power 'to make any gifts of property owned by the principal' ***unless the document specifically provides otherwise.***"[89] In the instant case, the POA specifically provided the agent the power to make gifts "to members of my family and to such other persons . . . with whom I have an established pattern of giving . . ."

A case involving a judicially-determined "gift" of real property and involving a power of attorney, *Endicott v. Saul*,[90] stated the common law legal principles of agency that the Department's closing argument advanced:

> As a general rule, the party seeking to set aside an inter vivos gift has the burden of showing the gift is invalid. *Lewis v. Estate of Lewis,* 45 Wash.App. 387, 388, 725 P.2d 644 (1986). But if the recipient has a confidential or fiduciary relationship with the donor, the burden shifts to the donee to prove "a gift was intended and not the product of undue influence." *Lewis,* 45 Wash.App. at 389, 725 P.2d 644; *White,* 33 Wash.App. at 368, 655 P.2d 1173. "[E]vidence to sustain the gift between such persons must show that the gift was made freely, voluntarily, and with a full understanding of the facts . . . If the judicial mind is left in doubt or uncertainty as to exactly what the status of the transaction was, the donee must be deemed to have failed in the discharge of his burden and the claim of gift must be rejected." *McCutcheon v. Brownfield,*2 Wash.App. 348, 356, 467 P.2d 868 (1970). The donee's burden of proof is clear, cogent, and convincing evidence. *Pedersen v. Bibioff* 64 Wash.App. 710, 720, 828 P.2d 1113 (1992). Whether a legal fiduciary relationship exists is a question of law, which we review de novo. *S.H.C. v. Lu,* 113 Wash.App. 511, 524, 54 P.3d 174 (2002). Whether a confidential relationship exists is a question of fact. *McCutcheon v. Brownfield,* 2 Wash.App. 348, 356-57, 467 P.2d 868 (1970).[91]

In *Endicott,* the trial court ruled that the vulnerable adult's sale of her real property to her neighbors at far below its market value was a "gift" to those neighbors. Because one of the

[89] *Estate of Lennon v. Lennon*, 108 Wn. App. 167, 183, 29 P.3d 1258 (2001).
[90] *Endicott v. Saul*, 142 Wn. App. 899, 176 P.3d 560 (2008).
[91] *Endicott,* 142 Wn. App. at 922.

neighbors was the attorney-in-fact for the vulnerable adult's POA, the court held there was a confidential relationship, which shifted the burden to the neighbors to prove the sale did not arise from "undue influence."

The facts in *Endicott* are far afield[92] from the current case. But to the extent the common law principles apply here, the undersigned concludes that though there was a fiduciary relationship in this case, there was no evidence of undue influence of Appellant on her [PARENT 1] other than familial affection and paternal largesse. While some parents give nothing to their [RELATIVES 1 & 2], other parents give freely – and doing so does not evince undue influence absent evidence that proves it. Through the text messages between [PARENT 1] and [RELATIVE 1], through her [PARENT 1]'s interview with APS, and through the testimony of her [RELATIVE 2] her [RELATIVE 1], and her friends, the Appellant met her burden to show there was no undue influence. As stated previously, this evidence was clear, convincing, and cogent and showed that the vulnerable adult here freely and voluntarily gave some of what little he had to his [RELATIVE 1], the Appellant, and he intended to do so.

Summation

22. In this matter, the Department failed to show that this Appellant improperly or illegally used [NAME 1]'s money or property for her benefit, pursuant to RCW 74.34.020(7), when she withdrew money from his bank account to pay for a wide variety of items, mostly for her [PARENT 1], but on occasion for herself: gas, car repairs, fast food, eye glasses. First, the POA arguably gave Appellant the power to use her [PARENT 1]'s bank account, and to "gift" to family members. Second, [NAME 1] told the APS investigator he had given "full control" to his [RELATIVE 1] to deal with his finances and to use his money for his and her benefit as needed. Third, Appellant's [RELATIVE 2] knew that their [PARENT 1] had given Appellant the debit card

[92] Another case involving a power of attorney and an alleged gifting of ***community property***, *Bryant v. Bryant*, 125 Wn.2d 113, 882 P.2d (1994), also states the common law of agency legal principles the Department has urged, but that case too is starkly, factually distinct on its facts from the case at hand.

and that Appellant had virtually *carte blanche* authority to use it as she saw fit; the [RELATIVE 2] had no objection to this generosity. Fourth, there was virtually no evidence from the bank statements or elsewhere that Appellant unduly, improperly, or illegally enriched herself from her [PARENT 1]'s funds. The Department's original allegation that Appellant expropriated "$[AMOUNT 23]" from her [PARENT 1] was not remotely proved.

More specifically, the Department failed to refute the evidence that [NAME 1] gifted the Appellant money from his account to take care of both his and her needs. Additionally, the Department failed to prove that [NAME 1] lacked the capacity or inclination to provide Appellant money to take care of her and his needs. Because the Department failed to demonstrate that this money was obtained through the "use of deception, intimidation, or undue influence," was obtained through a "breach of a fiduciary duty," or was obtained by the Appellant knowing that [NAME 1] lacked the capacity to consent to the gift, it has failed to show that the Appellant's withdrawal of money from [NAME 1]'s account was illegal or improper pursuant to RCW 74.34.020(7).

23. Pursuant to the APS letter dated January 10, 2018, the Department alleged that this Appellant financially exploited [NAME 1] when she withdrew his funds and used his funds sometimes for his use, sometimes for hers. As shown above, the Department has failed to show that the withdrawals from his bank account were illegal or improper, and the Department's determination that this Appellant financially exploited a vulnerable adult is reversed.

24. The undersigned has considered the *Initial Order*, the *Petition for Review of the Initial Order*, the *Response*, and the entire hearing record. The initial Findings of Fact are adopted as modified above. The initial Conclusions of Law applied the governing law that is cited correctly and are adopted and incorporated as conclusions for this decision. Any arguments in the *Petition for Review of the Initial Order* 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 procedures and time limits for seeking reconsideration or judicial review of this decision are in the attached statement.

V. DECISION AND ORDER

1. The *Initial Order* is ***affirmed.***

2. The Department's determination that this Appellant ***financially exploited*** a vulnerable adult is ***reversed.***

Mailed on the 27th day of September 2018.

MARC LAMPSON
Review Judge/Board of Appeals

Attached: Reconsideration/Judicial Review Information

Copies sent to: [APPELLANT'S NAME], Appellant
Bret Uhrich, Appellant's Representative
Talesha Sams, Department's Representative, B11-07
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Karl R. Boettner, ALJ, [CITY 2] OAH