

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Supreme Court Docket No. 33287

Civil Action No. 05-C-1066 (Cabell County)

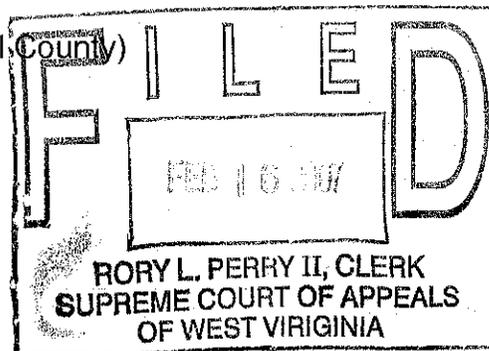
DEBBIE PLUMLEY,

Appellee,

v.

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
OFFICE OF HEALTH FACILITY LICENSURE AND CERTIFICATION,

Appellant.



APPELLANT'S BRIEF IN SUPPORT OF APPEAL

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TABLE OF CONTENTS

Table of Authorities.....	i
I. Kind of Proceeding and Nature of Ruling in Lower Tribunal	1
II. Statement of the Case	2
III. Standard of Review.....	5
IV. Assignment of Error, Manner Decided and Points and Authorities.....	5
V. Argument.....	7
A. The Circuit Court erred in its interpretation of 64CSR§50 as well as in its decision that minors were not a dependent population.....	7
B. The Circuit Court erred when it concluded that the West Virginia's Central Abuse Registry and the Sex Offenders Registry were the same entity.....	9
C. The Circuit Court erred when it ruled that the Secretary's Final Administrative Order violated Ms. Plumley's constitutional rights, was an abuse of discretion, and in excess of the agency's authority.....	13
D. The Circuit Court erred when it ruled that a convicted felon can continue providing health care services.	16
VI. Conclusions.....	17
VII. Prayer for Relief.....	18

TABLE OF AUTHORITIES

<u>Conley v. Workers' Compensation Div.</u> , 199 W. Va. 196, 483 S.E.2d 542 (1997).....	15
<u>Freeman v. Fayette County Board of Ed.</u> , 215 W. Va. 272, 599 S.E.2d 695 (2004).....	15
<u>Haislop, et al. v. Edgell, et al.</u> , 215 W. Va. 88, 593 S.E.2d 839 (2003).....	12
<u>Hensler v. Cross, et. al.</u> , 210 W. Va. 530, 558 S.E.2d 330 (2001).....	12
<u>Lambert v. W.Va. Workers' Compensation Div.</u> , 211 W. Va. 436, 566 S.E.2d 573 (2002).....	15
<u>Modi v. W.Va. Bd. of Medicine</u> , 195 W. Va. 230, 465 S.E.2d 230 (1995).....	14
<u>Ruby v. Insurance Comm'n</u> , 197 W. Va. 27, 475 S.E. 2d 27 (1996).....	14
<u>State v. Schermerhorn</u> , 211 W. Va. 376, 566 S.E. 2d 263 (2002).....	15
<u>Stewart v. W.Va. Bd. of Examiners for Registered Professional Nurses</u> , 197 W. Va. 386, 475 S.E.2d 478 (1996).....	15
<u>Trimble v. W. Va. Bd. of Directors</u> , 209 W. Va. 420, 549 S.E.2d 294 (2004).....	14
<u>Walker v. W.Va. Ethics Comm'n</u> , 201 W. Va. 108, 492 S.E.2d 167 (1997).....	14
<u>Williams v. W.Va. Bd. of Registered Professional Nurses</u> , 215 W. Va. 237, 599 S.E.2d 660 (2004).....	15
West Virginia Code of State Rules §64.13.11.3.b.....	16
West Virginia Code of State Rules §64.13.11.3.c.....	16
West Virginia Code of State Rules §64.14.5.1.g.....	16

West Virginia Code of State Rules §64.50.4.4.....7
West Virginia Code § 15-2-1(a).....10
West Virginia Code § 15-2C-2(a).....10
West Virginia Code § 15-2C-2(b).....10
West Virginia Code § 15-2C-2(b)(2).....11
West Virginia Code § 15-12-2-(a).....12
West Virginia Code § 15-12-2-(5).....12
West Virginia Code § 15-12-4-(2)(E).....12
West Virginia Code § 29A-5-4.....13
West Virginia Code § 29-A-5-4(g)(1-6).....13

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

DEBBIE PLUMLEY,

Petitioner/Appellee,

v.

DOCKET NO.: 33287

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES/
OFFICE OF HEALTH FACILITY
LICENSURE AND CERTIFICATION,

Respondent/Appellant.

Appeal from: Civil Action No.: 05-C-1066
(Circuit Court of Cabell County)

BRIEF IN SUPPORT OF RESPONDENT'S PETITION FOR APPEAL

I. Kind of Proceeding and Nature of Ruling in Lower Tribunal

The Appellant, West Virginia Department of Health and Resources/Office of Health Facility Licensure and Certification ("OHFLAC") appeals the Order of the Circuit Court of Cabell County entered on June 7, 2006, which reversed the Final Administrative Order ("FAO") of Martha Yeager Walker, Secretary of the West Virginia Department of Health and Human Resources ("WVDHHR"), denying the registration of Debbie Plumley, Appellee, as a legally unlicensed service provider under West Virginia Code §16-5E-1, *et seq.*, and 64CSR50.4.4, because of Ms. Plumley's felony conviction of incest with a minor.

Ms. Walker's FAO was based on the recommendation of an administrative law judge ("ALJ") who presided over a full evidentiary hearing on May 10, 2005.

Ms. Plumley appealed the Secretary's FAO to the Circuit Court of Cabell County on December 21, 2005, and Judge David M. Pancake heard argument on May 1, 2006.

On June 7, 2006, Judge Pancake entered an Order reversing the Secretary's decision, from which OHFLAC has filed this Appeal.

II. Statement of the Case

OHFLAC is the state agency within the WVDHHR charged with the responsibility of overseeing all health care facilities within the State of West Virginia. In addition, OHFLAC's scope of authority includes enforcement of state licensure regulations and, where mandated, federal certification requirements. The types of facilities that OHFLAC regulates include general hospitals, nursing homes, assisted living facilities, residential care communities, behavioral health facilities, and legally unlicensed service providers (registered service providers). OHFLAC also has additional responsibilities regarding home health agencies, dialysis units and hospice providers.

Debbie Plumley's facility would be classified as a legally unlicensed health care facility, if she met the registration criteria, because she is providing care and services to three (3) or fewer residents.

OHFLAC first became aware that Debbie Plumley was providing health care services to residents when OHFLAC received an inquiry from St. Mary's Hospital Social Services Department on January 18, 2005, about the status of Ms. Plumley's home. Because OHFLAC had no record of Ms. Plumley's health care facility, surveyors/investigators were sent on January 24, 2005, to determine

whether she was, in fact, operating a health care facility at 1314 James River Turnpike, Milton, West Virginia 25541.

OHFLAC surveyors discovered that Ms. Plumley had four (4) residents which meant that under West Virginia law, she was operating an assisted living residence which required a license. When Ms. Plumley discharged one (1) of those residents and had three (3) or fewer residents, state law required her to register as a legally unlicensed service provider as mandated by W. Va. Code §16-5E-3, and 64CSR§50.3.1.a. Part of the registration process required a criminal background check including fingerprints.

Further investigation indicated that from 1992 through 1999, Ms. Plumley had previously worked in an assisted living facility operated by Sallie Clark. During that time, Ms. Clark's facility was subject to annual inspections and complaint investigations by OHFLAC surveyors. Therefore, Ms. Plumley knew or should have known of the existence and role of OHFLAC and its relationship to health care providers.

In 1997, Ms. Plumley admitted her first resident, but never contacted OHFLAC nor registered with that agency. In 1999, Ms. Plumley added two (2) more residents and later the same year, Ms. Plumley admitted a fourth (4th) resident. Again, Ms. Plumley neither registered with OHFLAC nor applied for a license as required by law. In fact, Ms. Plumley operated illegally for eight (8) years from 1997 until January, 2005.

When the OHFLAC surveyors inspected Ms. Plumley's health care facility in January 24, 2005, the inspectors noted a number of deficiencies which had to

be addressed before she could continue to care for residents. One (1) such deficiency was that she exceeded the number of residents allowed under West Virginia law. Furthermore, Ms. Plumley and her staff had to submit to criminal background checks under West Virginia State Police guidelines and procedures. The results of Ms. Plumley's criminal background check indicated a number of felony charges and convictions, the most serious of which was a conviction for incest with a minor in 1987 for which she served five (5) years of a ten (10) year sentence in Huttonsville Correctional Center and Huntington Work Release.

The background check also showed that on December 15, 1986, Ms. Plumley had been convicted of eight (8) counts of making and issuing worthless checks. She was also convicted on November 6, 1992, of forged/uttered checks for which she was assessed a fine and received a one (1) to five (5) year suspended sentence. On June 14, 1993, after her release on the incest conviction, she was convicted again of uttering and sentenced to Pruntytown Correctional Facility for one (1) to five (5) years. (See, OHFLAC Admin. Hearing Exhibit No.1.)

Gloria Pauley, Program Manager of OHFLAC's Assisted Living Program, notified Ms. Plumley that she had thirty (30) days to close her facility and discharge her residents because she was ineligible to operate a legally unlicensed home because of the incest conviction. A follow-up investigation indicated that Ms. Plumley had failed to close her facility. On April 12, 2005, John M. Wilkinson, OHFLAC Director, issued an Administrative Order requiring Ms. Plumley to close her facility. (See, OHFLAC Admin. Hearing Exhibit No. 3.)

Ms. Plumley requested an Administrative Hearing which was held on May 10, 2005. During the course of that hearing, Ms. Plumley was represented by legal counsel. Based on the recommendations of the ALJ, Secretary Walker issued a FAO upholding the ALJ's Recommendations on November 3, 2005. On December 21, 2005, Ms. Plumley appealed that decision to the Circuit Court of Cabell County.

On May 1, 2006, the Honorable David M. Pancake heard oral argument on Ms. Plumley's Petition for Appeal in the Circuit Court of Cabell County. On June 7, 2006, Judge Pancake entered an Order reversing Secretary Walker's decision. It is from that Order that this Appeal is taken.

III. Standard of Review

The majority of this Appeal is based upon W. Va. Code §29A-5-4(g)(1) "violation of (Ms. Plumley's) constitutional rights", (2) "in excess of the statutory authority or jurisdiction of the agency", (5) "clearly wrong in view of the reliable, probative and substantial evidence on the whole record", and (6) "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion".

IV. Assignment of Error, Manner Decided and Points and Authorities

A. The Circuit Court erred in its interpretation of 64CSR§50.4.4

1. The Circuit Court erred when it ruled that a minor child was not a member of a dependent population.

64CSR§50.4.4.

B. The Circuit Court erred in concluding that the Central Abuse Registry and the Sex Offenders Registry were the same entity.

W.Va. Code §15-2C-2(a)

W.Va. Code §15-2C-2(b)

W.Va. Code §15-2C-2(b)(2)

W.Va. Code § 15-12-2(a)

W.Va. Code § 15-12-2(5)

W.Va. Code § 15-12-4(2)(E)

Haislop, et al. v Edgell, et al., 215 W.Va. 88, 593 S.E.2d 839 (2003)

Hensler v. Cross, et al., 210 W.Va. 530, 558 S.E.2d 330 (2001)

C. The Circuit Court erred when it ruled that the Secretary's Final Administrative Order violated Ms. Plumley's constitutional rights, was an abuse of discretion, and in excess of the agency's authority.

1. The Circuit erred when it based its ruling, in part, on facts not in evidence.

W. Va. Code § 29A-5-4

W. Va. Code § 29A-5-4(g)(1-6)

Conley v. Workers Compensation Div., 199 W.Va. 196, 483 S.E.2d 542 (1997)

Freeman v. Fayette County Bd. of Ed., 215 W.Va. 272, 599 S.E.2d 695 (2004)

Lambert v. W.Va. Workers' Compensation Div., 211 W.Va. 436, 566 S.E.2d 573 (2002)

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Stewart v. W.Va. Bd. of Examiners for Registered Professional Nurses, 197 W.Va. 386, 475 S.E. 2d 478 (1996)

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D. The Circuit Court erred when it ruled that a convicted felon can continue providing health care services.

64CSR§5.1.g

64CSR§13.11.3.b

64CSR§13.11.3.c

V. Argument

A. **The Circuit Court erred in its interpretation of 64CSR§50 as well as in its decision that minors were not a dependent population.**

The Circuit Court of Cabell County stated that the issue in Ms. Plumley's appeal from Secretary Walker's decision was a narrow one and revolved around the interpretation of 64CSR§50.4.4 which states the following:

In an unlicensed home administered by a service provider, the service provider and household members, exclusive of residents, and all care givers shall have a personal history which is free of: evidence of abuse, neglect, fraud or substantial and repeated violations of applicable laws and rules in the operation of any health or social care facility or service organization or in the care of dependent persons; and conviction of crimes relevant for the provision of care to a dependent population as

evidenced by a background check of the West Virginia State Police Central Abuse Registry.

A related issue is whether a minor child is considered a member of a dependent population as envisioned by this rule.

Ms. Plumley operated a health care facility illegally for more than eight (8) years because of her failure to comply with the Code Section and rules that require a legally unlicensed service provider to register with OHFLAC. In fact, Ms. Plumley's operation was discovered completely by chance. Once it was determined that she was operating such a facility, Ms. Plumley was required to register with OHFLAC which included a criminal background check via fingerprints. When the results of that background check were returned to OHFLAC, Gloria Pauley, RN, the Program Manager denied Ms. Plumley's registration because of the latter's felony conviction for incest and her resulting incarceration. In addition, other felonies sufficient to deny her registration were present on her background check, but because of the nature and severity of the incest, that was the reason cited to refuse registration. The incest involved Ms. Plumley's minor daughter. Furthermore the statute has no time limit for such a provider's history.

According to Ms. Plumley's testimony at the Administrative Hearing, at the time of the incest incident, she was in her early thirties and the mother of three (3) small children. She further stated that she had been drinking, and allowed a man to put her daughter in bed with them. Despite the fact Ms. Plumley turned herself in, and supposedly this was a first offense, she was sentenced to ten (10)

years, was incarcerated for five (5) years and was discharged in 1992. (See, Admin. Hearing Transcript pp 37-39.)

The Court further erred when it went on to state that a minor was not what was envisioned by the inclusion of "dependent population" in the applicable state regulation. Although the State of West Virginia does not define dependent population, nor could a specific definition be located in a review of case law and statutes from across the country, Webster's II New Collegiate Dictionary (1995) defines dependent as "relying on the aid of another for support". There is a very strong argument that no one is more dependent on another for aid and support than a child is dependent on his or her mother. Not only is a parent responsible for providing financial support for her children, she is also responsible for providing intangibles, such as moral guidance. More importantly, a parent is responsible for ensuring that no harm comes to his or her child.

When the incident that gave rise to the charges of incest occurred, Ms. Plumley was a legally competent adult, thirty-seven (37) years old, whose daughter resided with her. She made a choice to have that daughter, who was a minor at the time, participate in sexual activity with a third party male. Under the standard for legally unlicensed providers, that choice precludes her from operating this type of health care facility because of her history of abuse and conviction of a sex crime involving a dependent population.

B. The Circuit Court erred when it concluded that the West Virginia's Central Abuse Registry and the Sex Offenders Registry were the same entity.

The Central Abuse Registry, initially enacted in 1996, is set forth in the West Virginia Code at §15-2C-1, et seq. Central Abuse Registry is defined as a “registry created by this article which shall contain the names of individuals who have been convicted of a felony or a misdemeanor offense, constituting abuse, neglect or misappropriation of the property of a child or an incapacitated adult or an adult receiving behavioral health services”. W. Va. Code §15-2C-1(a).

The Criminal Identification Bureau of the West Virginia State Police was charged with the establishment of such a registry. W. Va. Code §15-2C-2(a). This registry was to contain the individual’s full name, sufficient information to identify the individual, including date of birth, social security number and finger prints if available, the nature of the criminal offense meeting the requirements of this code section, the location of WVDHHR’s investigation if applicable, and any statement by the individual disputing the claims. W. Va. Code §15-2C-2(b).

Although the conviction of a felony or misdemeanor sexual offense is one of the categories of crime to be included on the Central Abuse Registry, there are twelve other categories of offenses which are also included. W. Va. Code §15-2C-3.

The Circuit Court further erred when it stated that the Central Abuse Registry was included under public health. (See, Circuit Court Hearing Tr. p. 18.) Instead, the Central Abuse Registry is included in the Public Safety section of the code which denotes oversight by the West Virginia State Police not WVDHHR.

Currently, the West Virginia State Police performs a fingerprint check on health care providers to determine whether they have or should be included on

the Central Abuse Registry because of conviction of a crime constituting abuse, neglect or misappropriation of property involving a child, incapacitated adult or an adult receiving behavioral health services. Furthermore, the Code section, specifically W. Va. Code §15-2C-2(b)(2) allows for fingerprint information to be included. After discussions with legal counsel for the state police, it is her position that a fingerprint check provides a more thorough review of anyone's criminal history than does a central repository which relies on individual counties to provide information regarding convictions.

In the case at bar, despite the Circuit Court's comments to the contrary, it was perfectly acceptable to submit Ms. Plumley's fingerprints as part of a review of the Central Abuse Registry. In fact, OHFLAC was only following the procedure which the State Police have set forth.

The "Sex Offender Registration Act", initially enacted in 1999, is separate from the Central Abuse Registry. W. Va. Code §15-12-1, et seq. This registry lists sex offenders only, rather than the thirteen categories of crimes set forth in the Central Abuse Registry. Although the information on the Sex Offenders Registry would be included in the Central Abuse Registry, the reverse is not true, i.e., that the Central Abuse criminal information is included on the Sex Offenders Registry. Therefore, these two entities are not one in the same despite what the Circuit Court ruled.

Mrs. Plumley stated, and the Circuit Court concurred, that Ms. Plumley was not currently on the West Virginia Sex Offenders Registry. However, from careful reading of the statute plus consultation with legal counsel for the West

Virginia State Police, it appears that this has been an oversight. Specifically, incest is one of the enumerated crimes, the conviction of which results in placement on the Sex Offenders Registry. W. Va. Code §15-12-2(5). Furthermore, because the offense involved a minor, placement on the registry is permanent. W. Va. Code §15-12-4(2)(E). The initial provisions of this law state that it applies both retroactively and prospectively. W. Va. Code §15-12-2(a).

The retroactivity of this law was challenged in Hensler v. Cross, et al., 210 W. Va. 530, 558 S.E. 2d 330 (2001). Specifically, the appellant in this case challenged the section of the Sex Offenders Registration Act allowing it to apply retroactively as well as the newly added requirement of permanent placement if the victim were a minor.

In its decision, this court held that there was no *ex post facto* violation because the Sex Offenders Act did not make conduct criminal which was previously legal or increase the punishment for an existing crime. Instead, registration was a collateral consequence of the conviction for a sex offense against a child rather than a penalty or enhancement of the sentence. Furthermore, the supreme court of appeals found that the purpose of the statute was regulatory and not punitive.

The court reached a similar conclusion in Haislop, et al v. Edgell, et al, 215 W.Va. 88, 593 S.E. 2d 839 (2003). There the court determined that the Sex Offenders Registration Act was civil and nonpunitive in nature and that the changes did not amount to additional punishment that would have violated the ex

post facto clause. The changes addressed in this case were requiring lifetime registration for certain offenses including sexual offenses dealing with a minor.

Ms. Plumley's argument that her conviction and incarceration for this offense were so long ago that they are no longer relevant, is without merit. It is an undisputed fact that the offense involved a minor and incest is a qualifying offense under the Sex Offenders Registration Act. The only reason that Ms. Plumley was not on the Sex Offenders Registry, to date, is that she has yet to be placed. Under the law, and after the discussion with the West Virginia State Police, Ms. Plumley's name is still eligible for inclusion on the Sex Offenders Registry and it will be added.

C. The Circuit Court erred when it ruled that the Secretary's Final Administrative Order violated Ms. Plumley's constitutional rights, was an abuse of discretion, and in excess of the agency's authority.

1. The Circuit Court erred when it based its ruling, in part, on facts not in evidence.

W. Va. Code § 29A-5-4 specifies that the only reasons that the circuit court can use to reverse, vacate or modify the agency's decision are as follows:

(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences and conclusions, decision or order are:

(1) In violation of constitutional or statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedures; or

(4) Affected by other error of law; or

(5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See also: Modi v. W.Va. Board of Medicine, 195 W.Va. 230, 465 S.E.2d 230 (1995); Ruby v. Insurance Comm'n, 197 W.Va. 27, 475 S.E.2d 27(1996).

The case law clearly sets forth the Circuit Court's standard of review for decisions made by an administrative agency. One of the more recent cases addressing this issue is Walker v. W.Va. Ethics Comm'n, 201 W.Va. 108, 492 S.E.2d 167 (1997). The substantive issue in this case was whether a state employee had falsified travel expense forms.

In its opinion, the West Virginia Supreme Court of Appeals restated that evidentiary findings made at an administrative hearing should not be reversed unless clearly wrong. The Court also stated that a reviewing court must evaluate the records of an agency's proceedings to determine whether there is evidence on the record as a whole to support the agency's decision. The evaluation is conducted pursuant to the administrative body's findings of fact, regardless of whether the Court would have reached the same conclusion on the same set of facts. Furthermore, the task of the Circuit Court is to determine whether the (agency) decision was based on a consideration of the relevant factors and whether there was a clear error of judgment. In addition, an appellate court may not reverse a lower tribunal's conclusion under the clearly erroneous standard if the conclusion is plausible when viewing the evidence in its entirety. See also: Trimble v. W. Va. Board of Directors, 209 W.Va. 420, 549 S.E.2d 294 (2001);

Stewart v. W.Va. Board of Examiners for Registered Professional Nurses, 197 W.Va. 386, 475 S.E.2d 478 (1996); State v. Schermerhorn, 211 W.Va. 376, 566 S.E.2d 263 (2002); Williams v. W.Va. Board of Registered Professional Nurses, 215 W.Va. 237, 599 S.E.2d 660 (2004).

Stated another way, a clearly wrong standard of review is a deferential one which presumes the administrative tribunal's actions are valid as long as the decision is supported by substantial evidence. Conley v. Workers' Compensation Div., 199 W.Va. 196, 483 S.E.2d 542 (1997); Lambert v. Workers' Compensation Div., 211 W.Va. 436, 566 S.E.2d 573 (2002). It is established law that a reviewing court's evaluation of the record of the agency's proceeding is conducted pursuant to the administrative body's findings of fact, regardless of whether the court would have reached a different conclusion on the same set of facts. Ruby v. Insurance Comm'n, *supra*. Furthermore, credibility determinations by the Hearing Examiner are to be accorded deference. Freeman v. Fayette County Bd. of Ed., 215 W.Va. 272, 599 S.E.2d 695 (2004).

In its ruling, the Circuit Court reversed the Secretary's Order because said Order was in excess of its own authority and an unwarranted exercise of discretion. However, the facts cited to support this ruling are not supported by the record. (**See**, Circuit Court Hearing Tr. p. 26.)

First of all, the judge ruled that Ms. Plumley "didn't commit incest" (**See**, Circuit Court Hearing Tr. pp 21 & 25.) There is nothing either at the Circuit Court level or at the administrative hearing that supports such a sweeping generalization. On the contrary, there was sufficient evidence at Ms. Plumley's

criminal trial to support her conviction for incest with a minor and a five (5) to ten (10) year prison sentence. Ms. Plumley did not appeal this conviction.

The Circuit Court also adopted the argument that providing health care services was "the only way Ms. Plumley was able to learn a livelihood". (See, Circuit Court Hearing Tr. p. 25.) Again, at neither hearing was there any information placed on the record regarding Ms. Plumley's skills, abilities, and other training to earn a living.

The Circuit Court also said that this criminal act occurred during a "period of life in turmoil". (See, Circuit Court Hearing Tr. p. 25.) A careful review of the record states, that at the time of the act, Ms. Plumley was a single parent of three (3) small children, had previously been on welfare, but was currently employed. (See Administrative Hearing Tr. p. 37.) Again, there was nothing in the transcript or record anywhere to support the conclusion that Ms Plumley's life was in turmoil, nor is that a defense to the incest charge or any other felony.

In conclusion, the Circuit Court erroneously based its ruling, in part, on uncorroborated facts not in the record. Instead, the court relied on Ms. Plumley's arguments and self-serving testimony to support its ruling.

D. The Circuit Court erred when it ruled that a convicted felon can continue providing health care services.

Failing to reverse the Circuit Court establishes a dangerous precedent by allowing convicted felons to be health care providers. In addition to the rule applying to legally unlicensed service providers, both the assisted living rule at 64CSR§14.5.1.g. and the nursing home rule at 64CSR§13.11.3.b. and 13.11.c. contain similar prohibitions. Specifically, the West Virginia Legislature passed

these rules to prohibit the hiring or retention of anyone convicted of abuse and/or neglect of a child or incapacitated adult. In addition, nursing homes are prohibited from hiring anyone who has been indicted for, or convicted of, any felony punishable by incarceration for more than a year. The purpose of these prohibitions is to protect West Virginia's most vulnerable residents of these facilities. Based on her record, it is clear that Ms. Plumley could not be employed by either type of facility.

The purpose of the small, legally unlicensed facility is to provide a more home-like environment for residents. The Code only allows OHFLAC to enter the home when a complaint is filed so there is less oversight in the operations. Also, because the services are provided in the home, the operator is much more involved in the residents' everyday lives. OHFLAC believes that it is even more important to the health, safety and welfare of these residents that the provider not have a criminal history.

VI. Conclusions

Once OHFLAC learned that Ms. Plumley was providing health care services without being properly registered, OHFLAC had no other choice but to require Ms. Plumley to complete the registration process as required by law. It is possible that Ms. Plumley, fully aware of her criminal history, chose not to register for eight (8) years to avoid the background check. However, once the results of the criminal background check were sent to OHFLAC, based on the law, OHFLAC had no other choice but to deny her registration and require her facility to close.

Ms. Plumley exercised her Due Process rights and requested an administrative hearing after which the administrative law judge recommended to WVDHHR Secretary, Martha Yeager Walker, that Ms. Plumley's registration be denied. Secretary Walker agreed with the administrative law judge's recommendations and ordered Ms. Plumley to close.

Ms. Plumley appealed the FAO to the Circuit Court of Cabell County which erroneously reversed the Secretary's decision.

OHFLAC now appeals the Circuit Court Order and believes the record from that hearing shows a number of significant and serious errors of law as set forth in the preceding paragraphs.

VII. Prayer for Relief

The Appellant respectfully prays that this Honorable Court reverse and set aside the Order issued on June 7, 2006, by the Circuit Court of Cabell County. Appellant further respectfully prays that this Honorable Court affirm the Final Administrative Order that Martha Yeager Walker, DHHR secretary, issued on November 3, 2005, upholding the ALJ's recommendation that Ms. Plumley be permanently denied registration as a legally unlicensed service provider because of her criminal history, specifically, incest with a minor.

Respectfully submitted,

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES/
OFFICE OF HEALTH FACILITY
LICENSURE AND CERTIFICATION,

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COUNSEL FOR APPELLANT

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

DEBBIE PLUMLEY,

Petitioner/Appellee,

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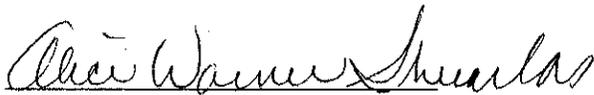
Appeal from: Civil Action No.: 05-C-1066
(Circuit Court of Cabell County)

CERTIFICATE OF SERVICE

I, Alice Warner Shumlas, Esquire, Counsel for the West Virginia
Department of Health and Human Resources/Office of Health Facility Licensure
and Certification, do hereby certify that true and correct copies of the foregoing
Brief in Support of Petition for Appeal were duly served on the following
individuals as indicated below on this 16th day of February, addressed as follows:

L. Victor Navy, Esquire
P.O. Box 606
Barboursville, West Virginia 25404

VIA CERTIFIED MAIL
No. 7006 0810 0000 2592 1757


Alice Warner Shumlas, Esquire