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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

TARA ROSENBURGH, by and through her  
parent and legal guardian, Elvia Rosenburgh,  
  
Plaintiff,

No.

COMPLAINT FOR DAMAGES

v.

STATE OF WASHINGTON, DEPARTMENT  
OF SOCIAL & HEALTH SERVICES,  
  
Defendant.

**I. INTRODUCTION**

1. Developmentally-disabled adults receiving state-funded, in-home services are often unable to protect themselves from abuse and neglect, and dependent on their caregivers and case managers for their personal safety.

2. As a result of this profound vulnerability, the Department of Social and Health Services (“**DSHS**”) has an affirmative, non-delegable duty to protect developmentally-disabled adults receiving state-funded, in-home care from abuse, neglect and other foreseeable harms at the hands of their state-paid, in-home caregivers.



1           3.       This lawsuit arises out of DSHS' failure to protect Plaintiff Tara Rosenburgh  
2 ("Tara") from readily foreseeable harm at the hands of her state-paid, in-home caregiver,  
3 Jonathan Marschall – a man who lacked the qualifications, education, training, experience,  
4 character, competence and suitability to care for Tara, and claimed to be her "boyfriend."

5           4.       Nonetheless, DSHS hired Marschall, left Tara in his care, and paid him thousands  
6 of taxpayer dollars to provide daily personal care and support for Tara.

7           5.       The entire time, Marschall subjected Tara to abuse, neglect, sexual exploitation,  
8 financial exploitation, malnutrition and food deprivation, all of which would have been avoided  
9 if DSHS had conducted even the most rudimentary assessment of his qualifications and/or  
10 conducted meaningful oversight of the "care" he was providing at taxpayer expense.

11           6.       DSHS failed to recognize the clear risks inherent in hiring Marschall as Tara's  
12 state-paid, in-home caregiver. DSHS failed to conduct a meaningful assessment of Marschall's  
13 qualifications, education, training, experience, character, competence and suitability to serve in  
14 that capacity.

15           7.       DSHS failed to follow its own policies and procedures.

16           8.       DSHS failed to take meaningful, affirmative action to safeguard Tara's health,  
17 safety, well-being and dignity, despite numerous, clear warnings she was not safe in Marschall's  
18 care.

19           9.       DSHS failed to take any meaningful, affirmative action to protect Tara from  
20 readily foreseeable abuse, neglect and other harms.

21           10.      As a result of DSHS' negligence, Tara suffered horrific abuse, neglect and  
22 exploitation at the hands of her state-paid, in-home caregiver, and sustained profound and  
23 permanent damages.

## 24                                       **II. PARTIES, JURISDICTION & VENUE**

25           11.      Plaintiff Tara Rosenburgh is a profoundly disabled, 37 year-old woman. At all  
26 times material to this action, Tara was a resident of King County, Washington.

1 12. Elvia Rosenburgh is Tara's biological mother, as well as the court-appointed  
2 Guardian of Tara's Person and Estate. Pursuant to RCW 11.92.060(1), Elvia obtained court  
3 approval to initiate and prosecute this lawsuit.

4 13. Defendant DSHS is an agency of the State of Washington which was, at all times  
5 material to this action, charged with the responsibility to, *inter alia*, protect Tara from  
6 foreseeable harm, provide competent case management and oversight, recognize, respond to, and  
7 adequately investigate allegations of abuse and/or neglect of vulnerable adults, comply with  
8 internal policies, administrative code provisions and legal standards, and otherwise ensure the  
9 protection and safety of vulnerable adults who are unable to protect themselves and dependent on  
10 DSHS for their personal safety.

11 14. On December 5, 2014, a statutory tort claim was filed on Tara's behalf.

12 15. All acts and omissions forming the basis of this Complaint occurred in King  
13 County, Washington. Pursuant to RCW 4.12 *et seq.*, jurisdiction is vested with this Court.

14 16. Venue is proper in King County Superior Court because all pertinent acts and  
15 omissions occurred in King County, Washington.

### 16 III. FACTUAL SUMMARY

17 17. Tara suffers from an intellectual and/or cognitive disability, and has been  
18 diagnosed with epilepsy.

19 18. As a result of her disability, Tara requires extensive supervision and assistance  
20 with numerous activities of daily living. Tara is not able to make personal, medical or financial  
21 decisions.

22 19. At all times material to this action, Tara was (and remains) totally unable to  
23 protect herself from abuse, neglect, and exploitation.

24 20. At all times material to this action, Tara was (and remains) completely dependent  
25 on her caregiver and DSHS case managers for her personal safety.

1           21.     At all times material to this action, Tara was (and remains) a client of DSHS’  
2     Developmental Disabilities Administration (formerly known as the Division of Developmental  
3     Disabilities).

4           22.     At all times material to this action, Tara was (and remains) “a vulnerable adult,”  
5     as defined in RCW 74.34 *et seq.*

6           23.     Jonathan Marschall, a man claiming to be Tara’s boyfriend, sought DSHS’  
7     authorization to serve as Tara’s state-paid, in-home caregiver.

8           24.     Marschall was unfit to serve as Tara’s state-paid, in-home caregiver.

9           25.     Marschall lacked the education, training and experience to serve as Tara’s state-  
10     paid, in-home caregiver.

11          26.     Marschall lacked the character, competence and suitability to serve as Tara’s  
12     state-paid, in-home caregiver.

13          27.     Nevertheless, DSHS authorized and contracted with Marschall to serve as Tara’s  
14     “individual provider.”

15          28.     DSHS authorized and contracted with Marschall to serve as Tara’s state-paid, in-  
16     home caregiver in without conducting a meaningful assessment of his character, competence and  
17     suitability.

18          29.     DSHS paid Marschall thousands of taxpayer dollars to serve as Tara’s in-home  
19     caregiver.

20          30.     DSHS did not conduct any meaningful oversight or monitoring of the “care”  
21     Marschall provided for Tara.

22          31.     During his tenure as Tara’s state-paid, in-home caregiver, Marschall abused,  
23     neglected and exploited Tara in numerous ways, and repeatedly exposed her to risk of serious  
24     harm, including but not limited to the following:

25           a.     Marschall provided little, if any care, for Tara;  
26

- 1           b. Marschall did not provide Tara with the extensive personal care and support  
2           required by Tara's DSHS-authored Individual Service Plans;
- 3           c. Marschall failed to comply with DSHS-mandated training requirements;
- 4           d. Marschall sexually abused Tara;
- 5           e. Marschall prostituted Tara on numerous occasions;
- 6                 i. Marschall forced Tara to engage in sexual intercourse with strangers for  
7                 money, which Marschall kept;
- 8                 ii. When Tara expressed to Marschall that she did not want to engage in  
9                 sexual intercourse with strangers, Marschall would physically assault Tara  
10                and force her to do so;
- 11               iii. Marschall physically assaulted Tara when she did not make "enough"  
12                money having sexual intercourse with strangers;
- 13               iv. Marschall emotionally manipulated and threatened Tara to have sexual  
14                intercourse with, and perform sex acts for, strangers for money;
- 15               v. Among other vile acts, the men who paid Marschall to have sex with Tara  
16                urinated and defecated on her;
- 17               vi. Marschall deprived Tara of food and adequate nutrition, in an attempt to  
18                force her to lose weight and be more appealing to potential "clients";
- 19           f. Marschall took numerous sexually explicit photographs of Tara, and broadcast  
20           those photos to third-persons and strangers;
- 21           g. Marschall attempted to coerce Tara into working as an exotic dancer;
- 22           h. Marschall abused Tara emotionally, physically and verbally;
- 23           i. Marschall fraudulently obtained payday loans using Tara's name and identity, and  
24           used the funds for his own personal benefit;
- 25           j. Marschall fraudulently obtained a credit card using Tara's name and identity, and  
26           used the credit for his own personal benefit;

1 k. Marschall fraudulently opened a bank account using Tara's name and identity,  
2 and used the account for his own personal benefit;

3 l. On at least one occasion, Marschall abandoned Tara in an unfamiliar place, far  
4 from her home;

5 m. Marschall isolated Tara from her family, peers and the community at large;

6 32. On April 12, 2012, Marschall was charged with promoting prostitution and  
7 possession of child pornography in King County Superior Court.

8 33. When confronted about the child pornography and related communications by the  
9 King County Sheriff's Office, Marschall admitted that it "was wrong, the young stuff."

10 34. On March 22, 2013, Marschall was charged with promoting prostitution and  
11 cyberstalking in Kitsap County Superior Court. The State subsequently amended the  
12 Information to include a charge of extortion.

13 35. On August 30, 2013, Marschall pled guilty in Kitsap County Superior Court to  
14 promoting prostitution, cyberstalking and attempted extortion.

15 36. On December 23, 2013, Marschall pled guilty in King County Superior Court to  
16 assault, identify theft and two counts of forgery regarding his abuse, neglect and exploitation of  
17 Tara.

#### 18 IV. FIRST CAUSE OF ACTION: NEGLIGENCE

19 37. DSHS, including its agents and employees, had an affirmative, non-delegable  
20 duty to protect Tara from foreseeable harm at the hands of her caregiver.

21 38. DSHS, including its agents and employees, had an affirmative, non-delegable  
22 duty to: (1) act reasonably in establishing Tara's service plans, authorizing and contracting with  
23 Tara's caregiver, and monitoring her care; (2) ensure Marschall was, in fact, providing the  
24 extensive personal care and support required by Tara's DSHS-authored Individual Service Plans  
25 in consideration for the taxpayer money DSHS was paying for Tara's care; (3) provide  
26 competent case management and oversight; (4) recognize, respond to, and adequately investigate

1 possible abuse, neglect, exploitation or abandonment; (5) comply with internal policies,  
2 administrative code provisions and other legal standards; and, (6) otherwise ensure the protection  
3 and safety of Tara, who was totally unable to protect herself.

4 39. DSHS, including its agents and employees, breached its duty to protect Tara from  
5 foreseeable harm at the hands of her caregiver.

6 40. DSHS, including its agents and employees, breached its duty to: (1) act  
7 reasonably in establishing Tara's service plans, authorizing and contracting with Tara's  
8 caregiver, and monitoring her care; (2) ensure Marschall was, in fact, providing the extensive  
9 personal care and support required by Tara's DSHS-authored Individual Service Plans; (3)  
10 provide competent case management and oversight; (4) recognize, respond to and adequately  
11 investigate possible abuse, neglect, exploitation or abandonment; (5) comply with internal  
12 policies, administrative code provisions and other legal standards; and, (6) otherwise ensure  
13 Tara's protection and safety.

14 41. Therefore, on several occasions, DSHS, including its agents and employees, was  
15 negligent.

16 42. As a direct and proximate result of DSHS' negligence, Tara sustained profound  
17 and permanent damages in amounts to be proven at trial.

#### 18 V. PRAYER FOR RELIEF

19 WHEREFORE, Plaintiff Tara Rosenburgh prays for judgment as follows:

- 20 A. For all general and special damages sustained as a result of DSHS' negligence;  
21 B. Prejudgment interest;  
22 C. Any other damages available under law; and  
23 D. Further relief as the Court deems just and equitable.  
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1 Dated this 2<sup>nd</sup> day of February, 2015.

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3 HAGENS BERMAN SOBOL SHAPIRO LLP  
4 Attorneys for Plaintiff Tara Rosenburgh

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