

*Samantha A. v. Dep't of Soc. & Health Servs.*

No. 84325-2

MADSEN, C.J. (concurring in dissent)—I concur in the dissent. However, I disagree that our decision in *Jenkins v. Department of Social & Health Services*, 160 Wn.2d 287, 157 P.3d 388 (2007), is distinguishable. In that case, the department reduced a recipient's qualified level of care hours by the percentage of time devoted by live-in caregivers to household tasks if a caregiver resides with a recipient on the assumption that the caregiver benefited from those tasks as well. I see little difference between this case and *Jenkins* in that the department here reduces the recipient's care hours through a formula designed to capture the hours of care that a parent provides as part of parental responsibility based on age. As in *Jenkins*, this formula also rests on an assumption that the parent is meeting the child's needs. Nevertheless, because I agree with the dissent's analysis and believe it is inconsistent with *Jenkins*, I would overrule *Jenkins* as incorrect and harmful.

AUTHOR:

Chief Justice Barbara A. Madsen

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WE CONCUR:

Justice Mary E. Fairhurst

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