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**December 12,**  
**2007**

Maynard, J., concurring:

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RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

I agree with the majority opinion but write separately to address my dissenting colleagues' assertions that Ms. Plumley's past felony incest conviction is merely an "indiscretion" or "lapse of judgment" that is irrelevant to her present ability to care for aging dependent persons. My dissenting colleagues' understanding of W.Va. C.S.R. § 64-50-4.4 deviates from this Court's established rules of statutory interpretation. Specifically, this Court has held that "[s]tatute or administrative rule may not, under guise of 'interpretation,' be modified, revised, amended or rewritten." Syllabus Point.1, *Consumer Advocate Div. of Pub. Serv. Comm'n v. Public Serv. Comm'n of West Virginia*, 182 W.Va. 152, 386 S.E.2d 650 (1989). Application of the dissents' erroneous statutory analysis would undermine and distort the clear intent of the Legislature to protect disabled citizens who totally depend on their caregivers to meet their most basic and intimate needs.

Ms. Plumley's felony incest conviction is unquestionably evidence of abuse or neglect in the care of dependent persons. She is thereby precluded from operating a legally unlicensed health care home. Additionally, the victim's status as a minor adds to the atrociousness of Ms. Plumley's actions. There are few segments of society more dependent and helpless than children. Certainly, a felony incest conviction speaks to one's ability to care for other people who, by definition, cannot care for themselves. This Court would not be executing the Legislature's intent

to protect dependent people if it entrusted Ms. Plumley with their care knowing that she seriously failed to protect her minor daughter who was completely dependent upon her.

Moreover, my dissenting colleagues seem to forget that it was not Ms. Plumley, but her vulnerable child, who was victimized. The majority opinion does not preclude Ms. Plumley from pursuing all means of employment nor does it preclude her from becoming a productive and good citizen. To protect the class of people for whom she desires to serve, however, Ms. Plumley must choose an alternative career path. Therefore, I concur with the majority opinion.