

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

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Case No. 12-ALJ-04-0902-AP

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Joseph Barfield, # 175267,.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

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**INITIAL BRIEF OF RESPONDENT**

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July 26, 2013

South Carolina Department of Corrections

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**STATEMENT OF THE ISSUES ON APPEAL**

**DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS APPELLANT'S APPEAL BECAUSE APPELLANT HAS NOT BEEN DEPRIVED OF A STATE-CREATED LIBERTY INTEREST?**

## STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Joseph Barfield (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant filed a Step One Grievance on May 25, 2012, complaining he was not being provided proper treatment for Hepatitis C (HCV). The grievance was investigated and denied. (R.p.\_\_\_\_). Appellant filed a Step Two Grievance, which was also denied. (R.p.\_\_\_\_).

Appellant filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). (R.p.\_\_\_\_). Before SCDC filed the record, Administrative Law Judge Shirley C. Robinson summarily dismissed the appeal sua sponte because no state created liberty or property interest was implicated by the appeal.

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision in be affirmed.

## STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See also S.C. Code Ann. § 1-23-380(A)(5); Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole,

evidence from which reasonable minds could reach the same conclusion that the ALC reached. Durant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id. at 420.

### ARGUMENT AND CITATION OF AUTHORITY

#### **THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED APPELLANT'S APPEAL BECAUSE APPELLANT HAS NOT BEEN DEPRIVED OF A STATE-CREATED LIBERTY INTEREST.**

The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Slezak v. SCDC, 361 S.C. 327, 605 S.E.2d 506 (2004). The Supreme Court held that, although the ALC had jurisdiction over all properly perfected inmate appeals, the ALC may summarily decide those appeals that do not implicate an inmate's state-created liberty or property interest. Recently, the South Carolina Court of Appeals has interpreted Slezak to mean that where a state-created liberty interest is not implicated in a prisoner appeal, the ALC "should" dismiss the appeal. Skipper v. SCDC, 370 S.C. 267; 633 S.E.2d 910 (Ct. App. 2006).

In the case at hand, appellant claimed in his grievance that he was not receiving appropriate treatment for HCV. (R.p.\_\_\_\_). As the response to appellant's Step Two grievance explained, the treatment of HCV is a complicated issue, requiring consideration of many factors. This is because the medication used to treat HCV has many side effects

and can pose risks to patients that may outweigh the benefits of the medication. In evaluating the decision whether to initiate treatment, one the factors SCDC considers is an offender's history of previous drug or alcohol charges. Appellant's case was determined to be inappropriate for treatment based upon a prior disciplinary conviction. (R.p. \_\_\_).

In dismissing appellant's subsequent appeal to the ALC, Administrative Law Judge Shirley C. Robinson ruled appellant had not been deprived of a state-created liberty interest. Judge Robinson noted that pursuant to Furtick v. SCDC, 374 S.C. 334, 649 S.E.2d 506 (2004), when a grievance appeal does not implicate a state-created liberty or property interest, the ALC may dismiss the appeal at its discretion. Therefore, Judge Robinson dismissed the appeal with prejudice. (R.p. \_\_\_)

The ALC correctly dismissed appellant's appeal because appellant was not deprived of a liberty interest in this matter such that review by the ALC was merited. Typically, an appeal will merit review by the ALC, if it arises in one of two ways: (1) when an inmate is disciplined and sufficient punishment is imposed; or (2) when an inmate is challenging the calculation of his sentence. See Sullivan v. SCDC, 355 S.C. 437, 441, 586 S.E.2d 124, 126 (2003) (citing Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750). Neither is the case in the present appeal since appellant did not challenge any disciplinary conviction or the calculation of his sentence. Instead, appellant claimed SCDC should have initiated HCV treatment despite his prior disciplinary conviction.

In the underlying final agency decision, SCDC upheld the determination that appellant did not qualify for treatment for HCV after considering appropriate factors,

including previous drug and alcohol charges and mental health issues. (R.p. \_\_); see also Moore v. Bennett, 777 F. Supp. 2d 969, 980-81 (E.D.N.C. 2011) (explaining the complexity in determining the appropriate therapy for an inmate diagnosed with Hepatitis C and ruling prison authorities were not deliberately indifferent to a medical need by not providing treatment). There is no evidence in the record to show that this decision resulted in such a hardship so as to implicate a protected liberty interest. See Sandin v. Conner, 515 U.S. 472, 484 (1995) (explaining that state-created liberty interests are generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life).

No liberty interest was implicated by appellant's appeal. Therefore, the ALC correctly dismissed the appeal.<sup>1</sup>

### CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the ALC's decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF

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<sup>1</sup> Appellant's arguments challenging the constitutionality of SCDC's decision related to treating his HCV are not properly before the court because those arguments were not presented to and ruled upon by the ALC. See Zaman v. S.C. State Bd. of Medical Examiners, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) (applying issue preservation principles in the context of an appeal from the decision of an administrative agency). Moreover, because the ALC dismissed the appeal before the record was filed, there is insufficient evidence in the record to address the merits of appellant's claim on appeal at this time.

CORRECTIONS

Attorney for Respondent



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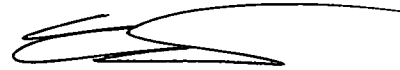
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**CERTIFICATE OF SERVICE**

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I hereby certify that I have served Appellant a copy of the Respondent's Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, on July 26, 2013, addressed to the appellant as follows:

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