STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles J. Gibbs, #228119, Appellant, v. South Carolina Department of Corrections, Respondent.	)	Docket No. 23-ALJ-04-0719-AP **ORDER DISMISSING APPEAL**

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Charles J. Gibbs (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or the Department). In the present appeal, Appellant asserts that the Department did not paying him a prevailing wage under sections 24-3-40 and -430 of the South Carolina Code (2007 and Supp. 2023) and he is seeking be paid the difference between what he was paid and the prevailing wage for his work for Nephron in the prison industries program. Appellant also challenges on appeal the deductions which the Department made from his pay. For the reasons discussed herein, the Court dismisses the appeal for lack of appellate jurisdiction based upon Appellant's failure to exhaust his administrative remedies.

PROCEDURAL HISTORY

On May 4, 2023, Appellant filed a Step 1 Grievance contending that he was not paid a prevailing wage.[1] On May 8, 2023, the Department elevated the matter to a Step 2 Grievance without responding on the merits. The Responsible Official denied the Step 2 Grievance on November 14, 2023, explaining that Appellant's grievance was untimely under SCDC Policy ADM-15.13, section 12.1, which governs problems with inmate pay.

This appeal followed on December 6, 2023. It was assigned to the undersigned on December 15, 2023. The Department sought, on February 23, 2024, an extension of time in which to file the Record on Appeal. While the extension was denied, the filing of the motion itself

[1] Appellant did not raise the issue of allegedly improper deductions from his to the Department in his grievance below.

resulted in a change to the timeline for service of the Record on Appeal. As of the date of this Order, the record is not yet due. Appellant filed his initial brief on February 27, 2024, prior to the date on which the Record on Appeal was due. Appellant's brief designates two issues on appeal:

> The South Carolina Department of Corrections violated two (2) South Carolina Statutes. (1) S.C. Statute 24-3-430 line (D): No inmate participating in the Private Industry Program may earn less than the prevailing wage for work of a similar nature in the private sector. (2) S.C. Statute 24-3-40: Directs the South Carolina Department of Corrections to deduct the percentages from the gross wages of the prisoner.

FACTUAL BACKGROUND

Appellant is incarcerated in the custody of the Department. According to Appellant, the relevant facts before the Court are as follows:

> While working for Nephron at Lee Correctional Institution through the Prison Industries Program beginning February 2022 and ending November 2022, the South Carolina Department of Corrections was paying Appellant seven dollars and twenty-five cents ($7.25) per hour for Appellant's labor. Six (6) months after the job ended, Appellant found out that Nephron was paying the South Carolina Department of Corrections ten dollars ($10.00) per hour for Appellant's labor. When Appellant signed the Prison Industries Employment Inmate Agreement, according to this agreement, Appellant was only making seven dollars and twenty-five cents ($7.25) per hour for Appellant's labor. The South Carolina Department of Corrections never disclosed that Appellant was actually getting ten dollars ($10. 00) per hour from Nephron for Appellant's labor. The South Carolina Department of Corrections failed to pay Appellant the prevailing wage for similar work done in the Private sector. The South Carolina Department of Corrections removed money (two dollars and seventy-five cents ($2.75)) remitted by the Private Industry Sponsor (Nephron) and then disburses the percentages listed in S.C. Statute 24-3-40 based on the lower rate (seven dollars and twenty-five cents ($7.25)). The South Carolina Department of Corrections is in violation of the plain language of the Statute which directs the South Carolina Department of Corrections to disburse money based on the gross wages, which was the ten dollars ($10.00) Nephron was paying the South Carolina Department of Corrections for Appellant's labor.

JURISDICTION

The Court's jurisdiction to hear inmate appeals 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). *See also* S.C. Code Ann. § 1-23-600(D) (Supp. 2023); *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 170, 886 S.E.2d 671, 674 (2023)("[T]he ALC has subject matter jurisdiction over inmate grievance appeals

that have been properly filed."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) ("[T]he [ALC] has jurisdiction over all inmate grievance appeals that have been properly filed . . . .").

In *Al-Shabazz*, the Court held that the ALC's jurisdiction in inmate appeals is generally limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. 338 S.C. at 369, 527 S.E.2d at 750. However, the South Carolina Supreme Court subsequently clarified that the ALC has the authority to review the Department's failure to pay the prevailing wage. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 423-25, 602 S.E.2d 56, 57-58 (2004) (stating the ALC was authorized to review the Department's failure to pay the prevailing wage); *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 419, 602 S.E.2d 51, 55 (stating inmates could seek remedy for unfair pay by filing an inmate grievance.).

Moreover, as discussed in detail below, the Court's jurisdiction is further limited by the requirements of S.C. Code Ann. § 1-23-380.

DISCUSSION

The Department denied Appellant's grievance as untimely pursuant to SCDC Policy ADM -15.13. Policy ADM 15.13 is globally entitled "Inmate Pay." It requires each warden to designate at least one Inmate Payroll Office for a correctional facility. SCDC Policy ADM 15.13 section 5. The office is responsible for entering inmate pay data into the Inmate Pay System. *Id.*

Policy 15.13 also establishes a system and procedure to handle problems with inmate pay. This policy is located in Policy ADM 15.13 section 12. This section is entitled "Problems With Pay." SCDC Policy ADM 15.13 section 12 reads:

> 12. Problems with Inmate Pay:
>
> 12.1 Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. The inmate should maintain a record of the ARTSM reference number. The inmate pay designee will review the case and determine whether any additional pay is owed. Payroll corrections will be limited to the following:
>
> - If the inmate fails to notify the Agency in writing and within 15 days, no back pay will be given.

- The pay rate will be adjusted to the proper rate amount for future payrolls in accordance with these procedures.

- The inmate may receive additional pay owed for the previous two (2) pay periods only.

Id. at section 12.1. As this language indicates, the policy is phrased in mandatory terms. Inmates "must" (1) report "any" problems in their pay; (2) to their institution's inmate pay designee; (3) using the Automated Request to Staff Member (ARTSM);[2] and (4) within 15 days of the payroll date error. *Id.*

"The *inmate pay designee* will then review the case and determine whether *any additional pay is owed.*" *Id.* (emphasis added). If, after review, additional pay is owed, the "inmate pay designee will make the appropriate entry to deposit the additional pay into the inmate's pay account." *Id.* at section 12.2. Pay rate corrections may also be made. *Id.* The inmate pay designee is the person designated by the policy to "respond to inmate pay problems as prescribed in [section 12]." *Id.*

Nothing in Appellant's submissions to the Department suggests an attempt to utilize the problems with pay system established by Policy ADM 15.13 section 12.1.[3] None of Appellant's submissions to the Department reference ADM 15.13 or any of its provisions. Inmate pay complaints are commenced using the ARTSM, the automated kiosk, but Appellant initiated his wage complaint using the standard internal grievance system. Decisions on pay complaints,

[2] Inmates access the ARTSM system using a computer kiosk housed in the correctional facility.

[3] The Court recognizes that, in some cases, an inmate's grievance itself could be at attempt to invoke SCDC Policy ADM 15.13 section 12.1. In those cases, an inmate whose complaint was otherwise untimely might still have a claim to backpay for the fifteen-day period immediately preceding the filing of the grievance. Here, however, the Court cannot construe Appellant's filing as an attempt to invoke provisions of the inmate pay policy. As discussed above, Appellant initiated the claim using the standard internal grievance procedure rather than the automated kiosk. Notably, the Court does not construe ADM 15.13 and the inmate grievance system as mutually exclusive alternatives. Department rules and policies are ordinarily construed in the same manner as statutes. *See, e.g., Vector Marketing Corp. v. New Hampshire Dept. of Revenue Admin.*, 942 A.2d 1261, 1263 (N.H. 2008) ("We use the same principles of construction in interpreting administrative rules as we use with statutes"); *Lewis v. Jacksonville Bldg. & Loan Ass'n*, 540 S.W.2d 307, 310 (Tex. 1976); *State ex rel. Staples v. Young*, 418 N.W.2d 333, 336 (Wis. Ct.App.1987). The Court is therefore required to harmonize ADM 15.13 with the internal grievance system if possible. *Hodges v. Rainey*, 341 S.C. 79, 88–89, 533 S.E.2d 578, 583 (2000). ADM 15.13 can be construed so that both are effective. ADM 15.13(12.1) requires that inmates who question their rate of pay must report the issue through the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. If, after doing so, the Department does not take proper corrective action as outlined in ADM 15.13, then the inmate may resort to the grievance system to address the Department's violation of ADM 15.13. Both policies may be given effect in this manner. Were the Court to conclude otherwise, ADM 15.13 would simply cease to exist for cases involving the Prevailing Wage Act.

including whether additional pay is owed, are made by the inmate pay designee. Decisions on inmate grievances are made by different personnel.

Appellant does not appear to dispute that he failed to follow Policy ADM 15.13, Section 12.1.[4] Further, Appellant does not discuss section 15.13 in his brief. Instead, Appellant argues that under *Torrence v. S.C. Department of Corrections*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021) reh'g denied (Aug. 4, 2021), cert. denied (Aug. 3, 2022), and *Ackerman v. South Carolina Department of Corrections*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016) inmate pay was a policy that could be challenged at any time.

The Court does not dispute that, in *Torrence*, our Court of Appeals held that the prisoner in question timely filed a formal grievance under Department Policy GA-01.12, section 13.9. *Torrence*, 433 S.C. at 645, 861 S.E.2d at 43. However, the decision in *Torrence* is not controlling for two reasons. First, *Torrence* does not discuss or mention ADM 15.13. That policy and its effect on prevailing wage claims was not raised to or ruled upon in *Torrence*. *Torrence* is not therefore controlling with respect to the application of ADM 15.13.

Second, while the *Torrence* decision was not issued until June of 2021, it involved an inmate grievance filed 14 years earlier, in 2007. At that time, section 13.1 of SCDC Policy GA-01.12 provided that Step 1 grievances be filed within fifteen days of the alleged incident that led to the grievance. *Torrence*, 433 S.C. at 638 n. 6, 861 S.E.2d at 39 n. 6. An exception to this 15-day deadline for policies and procedures was set forth in section 13.9 of GA-01.12. However, before Appellant entered the prison industries program, the Department revised SCDC Policy GA-01.12.

The revised policy provides, as did the prior policy, that inmates must make an effort to informally resolve a grievance, but the revision imposes a deadline of eight (8) working days in which to utilize informal grievance resolution. If informal resolution is not achieved, then an inmate must complete Form 10-5 (a/k/a Inmate Grievance Form / Step 1) within eight working days of the Department's formal response to the informal grievance. An exception for policies and procedures remained in the revised policy, but this exception which was so crucial in *Torrence*

[4] Indeed, Appellant admits in his Notice of Appeal that he failed to utilize ADM 15.13, but argues that his failure should be excused because the Department did not disclose the actual prevailing wage to him. This argument appears only in Appellant's Notice of Appeal. Because Appellant did not raise this argument in his brief, the Court's order does not address it. SCALC Rule 60(B)(1) ("[o]rdinarily, no point will be considered that is not set forth in the statement of issues on appeal").

was changed to the following: *"[e]xceptions to the eight (8) day working time limit* requirement will be made for grievances concerning policies/procedures." SCDC Policy GA-01.12(13.10) (emphasis added). This language is notably phrased in the singular "*the* eight (8) working day time *limit*," but there are two eight-day time limits to which this language could apply. No higher court in South Carolina has addressed the effect of this policy revision, placing the continued applicability of *Torrence* to claims which post-date the revision in doubt.

The Court now turns to the effect of Appellant's undisputed noncompliance with ADM 15.13.[5] The Court concludes that Appellant's noncompliance divests the Court of jurisdiction to entertain the appeal. ADM 15.13 provides an administrative remedy for disputes regarding an inmate's rate of pay.[6] Appellant did not avail himself of this avenue for relief in a timely manner.

The failure to timely avail oneself of an administrative remedy constitutes a failure to exhaust administrative remedies. As the United States Supreme Court explained in the *Woodford v. Ngo*:

> Because exhaustion requirements are designed to deal with parties who do not want to exhaust, administrative law creates an incentive for these parties to do what they would otherwise prefer not to do, namely, to give the agency a fair and full opportunity to adjudicate their claims. Administrative law does this by requiring proper exhaustion of administrative remedies, which "means using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits)." *Pozo,* 286 F.3d, at 1024 (emphasis in original). This Court has described the doctrine as follows: "[A]s a general rule ... courts should not topple over administrative decisions unless the administrative body not only has erred, *but has erred against objection made at the time appropriate under its practice.*" *United States v. L.A. Tucker Truck Lines, Inc.,* 344 U.S. 33, 37, 73 S.Ct. 67, 97 L.Ed. 54 (1952) (emphasis added in *Woodford*). See also *Sims v. Apfel,* 530 U.S. 103, 108, 120 S.Ct. 2080, 147 L.Ed.2d 80 (2000); *id.,* at 112, 120 S.Ct. 2080 (O'Connor, J., concurring in part and concurring in judgment) ("On this underlying

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[5] Appellant does not appear to dispute that ADM 15.13 applies to his pay complaints, and, in any, event, the Court concludes that ADM 15.13 does in fact apply to both Appellant's claim regarding prevailing wages and deductions from Appellant's pay. Provisions found in ADM 15 refer to the prison industries program. Additionally, ADM 15.13 expressly addresses issues relating to Appellant's "pay rate." A complaint that an inmate did not receive a prevailing wage is of course a complaint that an incorrect pay rate was used to calculate the inmate's pay. Alleged Deductions from one's pay also fall under the general heading of "problems with pay."

[6] SCDC Policy ADM 15.13 section 12.1 expressly provides that no back pay will be given if the inmate's notification is untimely. In contrast, section 12.1 does not specify what penalty will be imposed upon an inmate's request to adjust his pay rate to the correct amount for future pay periods if the inmate's request is untimely. The Court concludes, however, that section 12.1's requirement that inmates must report problems in their pay to their institution's inmate pay designee within 15 days of the payroll date error applies equally to all payroll complaints. An inmate whose complaint is untimely is therefore entitled to no relief. Of course, any bar would apply solely to the pay period about which an inmate has complained. Complaints associated with future pay periods, including requests to adjust the pay rate for future pay, would not be affected by the untimeliness of a complaint about a prior pay period.

applicable deadlines as part and parcel of exhaustion of administrative remedies. It is undisputed that Appellant did not timely avail himself of possible redress under ADM 15.13. The Court therefore concludes that Appellant failed to exhaust his administrative remedies.

The South Carolina Court of Appeals held that subject matter jurisdiction is distinct from the doctrine of exhaustion of administrative remedies. *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 100, 674 S.E.2d 524, 538-20 (Ct. App. 2009). As the Court of Appeals explained, "subject matter jurisdiction is the power of a court to hear and determine a class of cases." *Id.*, 382 S.C at 100, 674 S.E.2d at 528 (quoting *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93-94, 668 S.E.2d 795, 796 (2008)). In contrast, the failure to exhaust administrative remedies goes to whether a suit is premature. *Id.*, 382 S.C. at 100, 674 S.E.2d at 529. The *Capital City* court described the doctrine of exhaustion of administrative remedies as a rule of policy and convenience rather than a rule of jurisdiction. *Id.*

Exhaustion of administrative remedies in Circuit Court is of course not generally jurisdictional. This case, however, is pending before the Administrative Law Court, which alters the analysis. Our Supreme Court has emphasized that in administrative matters, statutory provisions control. In *Bone v. U.S Food Serv.*, the South Carolina Supreme Court stated:

> [t]oday we reiterate that appeals in administrative agency matters are handled differently than appeals in other cases. The South Carolina General Assembly enacted the APA's mechanisms for review to provide uniform procedures after the exhaustion of administrative remedies; the APA's provisions are controlling in these agency matters and supersede any conflicting provisions.

399 S.C. 566, 585, 733 S.E.2d 200, 210 (2012) (*adhered to on reh'g*, 404 S.C. 67, 744 S.E.2d 552 (2013)).

This principle affects the application of exhaustion of administrative remedies in administrative matters. As the United States Court of Appeals for the District of Columbia has explained in addressing exhaustion of administrative remedies under federal administrative law:

> the word "exhaustion" now describes two distinct legal concepts. The first is a judicially created doctrine requiring parties who seek to challenge agency action to exhaust available administrative remedies before bringing their case to court. We will call this doctrine "non-jurisdictional exhaustion." . . .
>
> The second form of exhaustion arises when Congress requires resort to the administrative process as a predicate to judicial review. This "jurisdictional exhaustion" is rooted, not in prudential principles, but in Congress' power to control

> principle of administrative law, the Court is unanimous"); *id.*, at 114–115, 120 S.Ct. 2080 (BREYER, J., dissenting); *Unemployment Compensation Comm'n of Alaska v. Aragon,* 329 U.S. 143, 155, 67 S.Ct. 245, 91 L.Ed. 136 (1946); *Hormel v. Helvering,* 312 U.S. 552, 556–557, 61 S.Ct. 719, 85 L.Ed. 1037 (1941); 2 K. Davis & R. Pierce, Administrative Law Treatise § 15:8, pp. 341–344 (3d ed.1994). Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.

Woodford v. Ngo, 548 U.S. 81, 90–92, 126 S. Ct. 2378, 2385–86 (2006).

The facts of *Woodford* are similar to the facts of this case. *Woodford* involved a California inmate. Although the time frames differ slightly, the inmate grievance process in California is similar to that contained in SCDC Policy GA. 01.12(13.2). To initiate an inmate grievance in California, an inmate must fill out a simple form. *Id.* at 85-86. Then, as explained on the form itself, the prisoner "must first informally seek relief through discussion with the appropriate staff member." *Id.* The staff member fills in part C of the form under the heading "Staff Response" and then returns the form to the inmate. *Id.* If the prisoner is dissatisfied with the result of the informal review, the inmate may pursue a formal review process which involves a written complaint on a specified form. *Id.* The inmate then must submit the form, together with a few other documents, to the appeals coordinator within fifteen working days of the action taken. *Id.* If the prisoner receives an adverse determination at this first level the inmate may proceed to the second level of review conducted by the warden by completing section F of the form and submitting the form within fifteen working days of the prior decision. *Id.* In *Woodford*, the United States Supreme Court held that an inmate failed to exhaust administrative remedies because the inmate filed his formal grievance well after the applicable fifteen working day deadline. *Id.* at 102.

Woodford was decided under the federal Prison Litigation Reform Act, but the South Carolina Supreme Court took a similar position in *Brown v. James*, a case involving a school board's authority to terminate a teacher under the Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-24-420 (2004). *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010). The court in *Brown* stated that "[i]n order to fully exhaust [the teacher's] administrative remedies, [the teacher] was required to request a hearing before the Board *within the time frame* prescribed by the Employment and Dismissal Act." *Id.* 389 S.C. at 51, 697 S.E.2d at 609 (emphasis added). While the court in *Brown* concluded that the teacher's circuit court action was not barred by exhaustion of administrative remedies, *Brown* is notable for its stance on compliance with

> the jurisdiction of the federal courts. Whether a statute requires exhaustion is purely a question of statutory interpretation.

Avocados Plus Inc. v. Veneman, 370 F.3d 1243, 1247–48 (D.C. Cir. 2004) (internal citations omitted). Our Court of Appeals has noted that the common law doctrine of exhaustion of administrative remedies is commonly and mistakenly conflated with the jurisdiction of an appellate court to entertain an administrative appeal. *Adamson v. Richland Cnty. Sch. Dist. One*, 332 S.C. 121, 125, 503 S.E.2d 752, 754 (Ct. App. 1998) ("[t]he requirement of exhaustion of administrative remedies vis-a-vis a court's authority to hear a case involving an agency, where a plaintiff has not asked the agency for relief, is often confused"). It has drawn a clear distinction between the two exhaustion requirements. In *Vaught v. Waites*, for example, the Court of Appeals discussed the common law doctrine of exhaustion of remedies, but, in doing so, also stated that "[w]e express no opinion whether failure to exhaust administrative remedies is jurisdictional under the Administrative Procedures Act." 300 S.C. 201, 205 at n. 2, 387 S.E.2d 91, 93 at n. 2 (Ct.App. 1989) (*overruled on other grounds by Paradis v. Charleston County Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021)).

The ALC is a creature of statute and must depend entirely upon constitutional and statutory provisions for its authority and jurisdiction. *See generally* S.C. Code Ann. §§ 1-23-500, *et seq.* (Supp. 2023). "The General Assembly has the authority to limit the subject matter jurisdiction of a court it has created; therefore, it can prescribe the parameters of the ALC's powers." *Amisub of S.C., Inc. v. S.C. Dep't of Health & Env't Control*, 403 S.C. 576, 585, 743 S.E.2d 786, 791 (2013). It follows that where the Legislature has prescribed requirements which must be satisfied before the ALC may address a matter, those requirements are jurisdictional.

Whether exhaustion of remedies is jurisdictional in the ALC therefore depends upon whether exhaustion of remedies is statutorily mandated. *See S.C. Dep't of Health & Env't Control v. Blocker*, No. 15-ALJ-07-0554-CC, 2016 WL 5867852 at 6 (S.C. Admin L. Ct. Oct. 3, 2016) (stating discretion whether to apply doctrine of exhaustion of remedies disappears when the administrative remedies are prescribed by statute). *See generally Responsible Econ. Dev. v. S.C. Dep't of Health & Env't Control,* 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007) ("[R]egulatory bodies...have only the authority granted them by the legislature.").

This matter is an appeal from a decision by the Department. The Court has authority to preside over all appeals from final decisions of contested cases from the Department of

Corrections. S.C. Code Ann. § 1-23-600(D) (Supp. 2023). Review of such decisions must be conducted in the same manner as prescribed by Section 1-23-380 for judicial review of final agency decisions. S.C. Code Ann. § 1-23-600(E) (Supp. 2023). Section 1-23-380 in turn provides in pertinent part that: "*[a] party who has exhausted all administrative remedies available within the agency* and who is aggrieved by a final decision in a contested case *is entitled to judicial review pursuant to this article and Article 1.*" S.C. Code Ann. § 1-23-380 (Supp. 2023) (emphasis added). This statute expressly refers to exhaustion of all administrative remedies as a condition precedent to judicial review. The statute is titled "Judicial review *upon* exhaustion of administrative remedies." *Id.* (emphasis added). By acknowledging that judicial review is available *upon* exhaustion of administrative remedies, the section's title confirms the exhaustion of administrative remedies is a statutory condition precedent to judicial review. *See Lindsay v. S. Farm Bureau Cas. Ins. Co.*, 258 S.C. 272, 277, 188 S.E.2d 374, 376 (1972) ("It is 'proper to consider the title or caption of an act in aid of construction to show the intent of the legislature'").

The South Carolina Supreme Court construes section 1-23-380 in this fashion. Discussing section 1-23-380, our Supreme Court has stated that "the statute also provides that the appealing party *must* exhaust their administrative remedies *before* resorting to judicial review." *Nucor Steel v. S.C. Pub. Serv. Comm'n*, 312 S.C. 79, 83–84, 439 S.E.2d 270, 272 (1994) (emphasis added). Or, as Justice Hearn explained:

> Exhausting one's administrative remedies is a threshold requirement to obtaining review in the courts. Thus, prior to appealing to the circuit court or the court of appeals, the appellant must have already exhausted his administrative remedies and obtained a final decision from the agency. This is the effect of sections 1–23–380 and 1–23–610.

Bone, 399 S.C. at 585, 733 S.E.2d at 210 (emphasis added) (Hearn J., dissenting); *see also Wright v. S.C. Dep't of Soc. Servs.*, No. 2008-UP-316, 2008 WL 9843964, at *1 (S.C. Ct. App. June 25, 2008) ("[a]fter an aggrieved party 'has exhausted all administrative remedies available' within the Department, he may seek judicial review of the decision").

The Court therefore concludes that section 1-23-380 imposes a mandatory statutory requirement that all administrative remedies be exhausted before judicial review is available.[7]

[7] The Court is aware of that section 1-23-380 provides that a "preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." However, this part of section 1-23-380 applies, by its terms, only to intermediate or interlocutory appeals.

Accordingly, exhaustion of administrative remedies is jurisdictional in appeals at the Administrative Law Court.

Because Appellant failed to exhaust his administrative remedies, and this failure deprives the Court of jurisdiction, dismissal is appropriate.[8] The Court recognizes that, if Appellant is correct,[9] the outcome of this order may be considered harsh. Unfortunately, the Court simply lacks the authority to address Appellant's claims.

ORDER

IT IS THEREFORE ORDERED that this appeal is hereby **DISMISSED.**

AND IT IS SO ORDERED.

The Honorable Robert L. Reibold
Administrative Law Judge

March 13, 2024
Columbia, South Carolina

[8] Some courts view the failure to exhaust administrative remedies in administrative cases as depriving an appellate court of subject matter jurisdiction. *See e.g., Silverton Mountain Guides LLC v. U.S. Forest Serv.*, No. 3:22-CV-00048-JMK, 2023 WL 6148122, at *8 (D. Alaska Sept. 20, 2023); *Abrons Fam. Prac. & Urgent Care, PA v. N. Carolina Dep't of Health & Hum. Servs.*, 810 S.E.2d 224, 228 (N.C. 2018). Issues relating to subject matter jurisdiction may be raised at any time and should be taken notice of by the court on its own motion. *Ness v. Eckerd Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002). However, even if the failure to exhaust administrative remedies is viewed as merely depriving the Court of appellate jurisdiction, the jurisdictional issue is still one which should be raised by the Court on its own motion. *See e.g., Gateway Assocs. Ltd. P'ship v. Techna Corp.*, 966 F.2d 1452(Table)(1992 WL 112287) (6th Cir. 1992) ("[i]t is therefore ORDERED that the plaintiff's appeal and the defendant's cross-appeal are dismissed *sua sponte* for lack of appellate jurisdiction."); *Dieffenbach v. Att'y Gen. of Vermont*, 604 F.2d 187, 199 (2d Cir. 1979) ("[w]e see no apparent reason for treating lack of appellate jurisdiction in any different manner [than subject matter jurisdiction], and the court may, on its own motion, dismiss the appeal"); *Hamze v. Hall*, 211 So.3d 47, 47 (Fla. Dist. Ct. App. 2016) (the "cause is sua sponte dismissed for lack of appellate jurisdiction."); *Com. ex rel. Ransom Twp. v. Mascheska,* 239 A.2d 386, 387 (Pa. 1968) ("[a]lthough this case was argued on its merits and neither party has objected to an assumption of jurisdiction by this Court, our lack of direct appellate jurisdiction can, and should, be raised sua sponte").

[9] The Court makes no determination one way or another regarding the propriety of the actions of the Department below. This order does not reach the merits of the case.

CERTIFICATE OF SERVICE

I, Van Whitehead, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Van Whitehead

Van Whitehead
Judicial Law Clerk

March 13, 2024
Columbia, South Carolina