

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Alonzo Hawes, #344461,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

Docket No. 23-ALJ-04-0462-AP

**ORDER GRANTING MOTION
TO DISMISS**

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SC Court of Appeals

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 Alonzo Hawes (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or the Department). In the present appeal, Appellant asserts that the Department is not paying him a prevailing wage under section 24-3-430 of the South Carolina Code (Supp. 2023) and he is seeking to be paid the prevailing wages for his work from March 2010 through December 2015 and May 2018 through May 2019.

The Step 1 Grievance was submitted on July 19, 2023 and was elevated to a Step 2 Grievance without a response on the merits. The Responsible Official then denied the Step 2 Grievance on October 24, 2023, explaining that Appellant's grievance was untimely under SCDC Policy ADM-15.13, section 12.1, which governs problems with inmate pay. Appellant received that decision on October 26, 2023.

On November 1, 2023, Appellant filed a Notice of Appeal. In the Notice of Appeal, Appellant alleged he is entitled to back pay of prevailing wages for prior work in the prison industries program. This matter was assigned to Judge Milton Kimpson on November 20, 2023.

The Department filed a Motion to File Out of Time and Motion to Extend Time to File Record on February 1, 2024 which was subsequently granted in part. Appellant filed his original brief on February 5, 2024, before the Department had completed the Record on Appeal.

The Department filed a Motion to Dismiss the appeal on May 6, 2024 on the basis that Appellant failed to exhaust administrative remedies thereby depriving the Court of jurisdiction. Appellant filed a response opposing the motion on May 9, 2024. On May 14, 2024, this appeal was reassigned to the undersigned.



DISCUSSION

The Department seeks dismissal of this appeal on the basis that Appellant failed to exhaust the administrative remedies set forth in Section 12.1 of the Department's Policy ADM15.13 – Inmate Pay. Policy 15.13 establishes a system and procedure to handle problems with inmate pay. This policy is located in Policy ADM 15.13 section 12. It 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.*

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);¹ 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

¹ Inmates access the ARTSM system using a computer kiosk housed in the correctional facility.

is the person designated by the policy to “respond to inmate pay problems as prescribed in [section 12].” *Id.*

The Department argues that this policy encompasses complaints about an inmate's rate of pay in PIP, and accordingly, applies to Appellant's claim for prevailing wages in this case. The Department notes that the "Policy Statement" for SCDC Policy ADM-15.13 states that inmates are not eligible for pay "at any time during their incarceration period" unless they gain employment in the Community Work Program, PIP, or Prison Industries Service Program.² According to the Department, the policy's specific reference to PIP, the program to which the prevailing wage statute applies, indicates that pay policies were intended to address PIP wages. The Department also notes that subsection 7.1 of SCDC Policy ADM-15.13 directly references section 24-3-40.³

While the application of this policy to claims for prevailing wages does not appear to have been previously addressed, the Court is nevertheless required to defer to the Department's construction of its own policy unless there is a compelling reason to reject it. *See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014); *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011); *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006); *Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002); *Glover by Cauthen v. Suitt Constr. Co.*, 318 S.C. 465, 469, 458 S.E.2d 535, 537 (1995); *Faile v. S.C. Emp. Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 222 (1976) (explaining an agency's interpretation will not be overruled "without cogent reasons"); *Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 48, 190 S.E. 249, 253 (1937) (an agency's interpretation "will not be overruled without cogent reasons").

The Court does not find this construction to be arbitrary, capricious, or manifestly contrary to statute. The policy clearly refers to employment under PIP, under which inmates are required to be paid a prevailing wage. If the Court were to construe this policy as *inapplicable* to wages paid under PIP, inmates employed under this program would be deprived of a means of redress for pay related issues.

Moreover, the policy, by its own terms, applies to instances in which an inmate claims an entitlement to a higher rate of pay. The policy specifically addresses remedies for issues with the

² This policy statement first appears in the January 20, 1998 version of SCDC Policy ADM-15.13.

³ While the statutory requirement to pay an inmate a prevailing wage for work in PIP is found at section 24-3-430(D), section 24-3-20(B)(1) of the South Carolina Code (Supp. 2022) discusses prevailing wage requirements more generally.

"pay rate." It provides that if an inmate does not timely notify the Department of an issue regarding pay, "[t]he pay rate will be adjusted to the proper amount for future payrolls." SCDC Policy ADM-15.13(12.1). The "pay rate" is of course a reference to the appropriate hourly wage.

Finally, the Department has a legitimate interest in handling matters involving inmate pay in a timely manner. Pay records may be lost with the passage of time. Allowing claims for inmate pay to be raised long after the pay period in which the incorrect pay rate was used would require the Department to pay larger, lump sum awards and will hamper the Department's annual ability to budget for expected expenses. Additionally, records and information necessary to compute a correct prevailing wage may be lost over time. Finally, the Department's ability to recoup back wages from the entity which contracted with the Department for inmate labor under PIP may be compromised with the passage of time, leaving the Department financially responsible for a loss which may have been born by another.⁴

⁴ The Court is of course aware of and bound by precedent holding that, while an inmate has no private civil cause of action against the Department for payment of prevailing wages, an inmate may nevertheless seek relief from the Department under its internal grievance process. *E.g., Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (citing *Adkins v. S.C. Dep't of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004)). The Court, however, has difficulty reconciling these cases with the plain language of the applicable statutes. Statutes governing prison employment are located in Chapter 3 of Title 24 of the South Carolina Code (2007 & Supp. 2022). Certain sections of this chapter discuss prison employment generally and others discuss prison employment specifically under PIP, the program in which Appellant participated. The general statutes in this chapter authorize the director of the Department to permit prisoners of sufficient trust and attitude to work outside the physical confines of the prison provided that the director "determines that the rates of pay and other conditions of employment will not be less than those paid and provided for work of similar nature in the locality in which the work is to be performed." § 24-3-20(B)(2). Nothing in the section, however, makes the Department responsible for the payment of wages to such a prisoner. Instead, the relevant general statutes are clear that the *payor* of a prisoner's wages under the program is the party with whom the Department contracts, and not the Department. The law specifically states that "*the employer of a prisoner* authorized to work at paid employment in the community under [s]ections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this Chapter *shall pay the prisoner's wages directly to the Department of Corrections.*" S.C. Code Ann. § 24-3-40(A) (Supp. 2022) (emphasis added). The italicized language establishes that the Department is not the *payor* of inmate wages but rather the *recipient* of the wages paid by another. The specific statutes governing PIP are similar, and in some ways, even more clear. Section 24-3-315 governs determinations which must be made prior to participating in PIP. These determinations include a determination that "the rates of pay and other conditions of employment are not less than those paid and provided for work of similar nature in the locality in which the work is performed." *Id.* Again, the director is responsible for determining that inmate will receive the prevailing wage, but this language says nothing about who bears the burden of payment of the wages. Section 24-3-430 is the most directly applicable statute to the instant claim. It provides that "[t]he director may enter into contracts necessary to implement this program" and "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." § 24-3-430(B), (D). This statute also contains two provisions which address the question of who is responsible for the payment of inmate wages—the Department or the entity with which the Department contracts. Section 24-3-430(H), like section 24-3-40(A), requires that the contracting entity must pay an inmate's earning "directly to the Department of Corrections." Section 24-3-430(F) specifically provides that "[n]o inmate compensated for participation in the program is considered an employee of the State." It is therefore clear that inmates in PIP are employees of the contracting entity rather than the Department and that these entities are the entities responsible for payment of the inmate's wages. See *Williams*, 372 S.C. at 260, 641 S.E.2d at 888 (Pleicones, J., dissenting).

Having concluded that Policy ADM-15.3(12.1) and its predecessors apply to claims when an inmate has not been paid the prevailing wage for the inmate's position, the Court now turns to the question of what affect the policy has on Appellant's claims in this case. The Department contends that Appellant failed to avail himself of the administrative remedy provided by Policy ADM 15.13 because Appellant failed to notify the inmate pay designee of concerns regarding his wages within 15 days of the pay period in issue. Appellant last worked in the prison industries program in 2019 and did not make a request pursuant to Policy ADM 15.13 until August 31, 2023. According to the Department, this failure to exhaust an available administrative remedy is jurisdictional, requiring the Court to dismiss the appeal.

Appellate does not dispute that he did not comply with Policy ADM 15.13 within fifteen days of his last pay period. Appellant does, however, make several arguments. First, he argues that, under *Torrence v. S.C. Dep't of Corr.*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), the fifteen-day time limit does not apply because his claim involves a policy or procedure rather than a specific incident. Second, Appellate argues that the Department cannot rely on Policy ADM 15.13 because the Department failed to inform him of the correct wage, as Appellant asserts it was required to do pursuant to S.C. Code Section 24-3-430(c). Appellant emphasizes that he did attempt to notify inmate financial of his pay concerns in 2023 as soon as he learned that he might not have received the appropriate rate of pay. Appellant finally argues that the Department's new policy, effective September 1, 2023, permits a two-year period of time in which to file a claim for prevailing wages.

After considering Appellant's arguments, the Court cannot conclude that Appellant was excused from compliance with ADM 15.13. Appellant asserts that under *Torrence*, his appeal was not untimely because his grievance concerns a policy / procedure and not an incident. Appellant's argument improperly conflates the 15-day time limit for filing a wage complaint under ADM 15.13 with the 15-day time limit for filing an inmate grievance discussed in *Torrence*. In that case, the court of appeals concluded that section 13.9 of the inmate grievance policy then in place provided an exception to the 15-day time-limit for filing a grievance concerning policies and procedures. However, *Torrence* did not address ADM 15.13 in any manner. Additionally, the exception set forth in section 13.9 of the Policy GA 01.12 discussed in *Torrence* applies, by its terms, only to "grievances" submitted under the inmate grievance policy. ADM 15.13 is not part of the Department's inmate grievance policy.

Next, Appellant argues that under section 24-3-430(C) the Department was required to inform him of the “conditions of employment,” which he alleges includes the requirement that he be paid a prevailing wage. He further alleges that the Department did not inform him of the right to prevailing wage and it was only when inmates from another institution were transferred to his prison that Appellant became aware of a right to prevailing wage. Appellant has not explained how the legal requirement contained in the prevailing wages act would constitute a “condition of employment” and the Court concludes that it does not. Additionally, and in any event, the South Carolina Supreme Court held in *Ahrens v. State*, 392 S.C. 340, 355, 709 S.E.2d 54, 62 (2011): “citizens are presumed to know the law and are charged with exercising ‘reasonable care to protect their interests.’” *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct.App.2008) (quoting *Smother's v. U.S. Fidelity & Guar. Co.*, 322 S.C. 207, 210–11, 470 S.E.2d 858, 860 (Ct.App.1996)). Appellant is therefore charged with notice that the Department had an obligation to pay certain inmates a prevailing wage and cannot claim prejudice because the Department did not specifically inform him of the statutory requirement.

Appellant finally cites the recent inmate grievance policy under policy GA 01.12 section 13.2, which, he argues, creates a two-year statute of limitations for prevailing wage claims. As Appellant’s argument goes, because he asserted his claim within two years of the time at which he learned he may not have been properly paid and because the recent policy allows such claims for up to two years, his request is timely. The relevant provision of recently revised section 13.2 reads as follows:

Unless a separate SCDC policy requires filing a grievance within a shorter period of time, any and all grievances that involve a continuous matter (prison industries pay) must be filed within two (2) years of when the issue arose, or the grievant should have known about it. If the issue is older than two (2) years but has continued to be an issue that is grievable, only the two (2) year portion immediately prior to filing of the grievance will be considered.

This policy has an effective date of September 1, 2023. It did not apply in March 2010 through December 2015 and May 2018 through May 2019 when Appellant contends he worked in the prison industry program. There is nothing in the revised policy to indicate that it was intended to apply retroactively, and, generally, procedural changes shortening or lengthening a filing period do not operate retroactively. *See* § 5:34. Effect of change or amendment; retroactivity, 1A

American Law of Torts § 5:34v (It is usually held that the statute of limitations in force at the time of suit governs—even though it either shortens—provided that a reasonable time is allowed for enforcement—or lengthens the earlier period of limitations).

Appellant's citation to *Curtiss v. SCDC*, Docket No: 22-ALJ-0060-AP of the Administrative Law Court for the proposition that “the Department can't claim prejudice from the inmates delay when for 30 years S.C.D.C. lied to inmates that they were not entitled to prevailing wage” is also unavailing. The Court is not bound by that decision, and, as explained in more detail below, the Department is not required to show prejudice because the requirement to exhaust administrative remedies in the Administrative Law Court is jurisdictional.

Having concluded that ADM 15.13 applies to prevailing wage claims and that Appellant's arguments against its application are flawed, the Court now turns to the effect of Appellant's undisputed noncompliance with ADM 15.13. 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.⁵ 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.

⁵ 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.

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 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 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 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). Like the federal agency discussed in *Avocados Plus*, 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.

Other South Carolina courts have reached this conclusion. 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)). Our Supreme Court has ruled that:

[t]here are two types of exhaustion of remedies: judicially imposed and statutorily mandated. The general rule is that while there are several exceptions that may be applied to the judicially-imposed exhaustion requirement; those that apply to a statutory requirement are few. *When the exhaustion of remedies is statutorily mandated . . . legislative intent prevails.*

Ward v. State, 343 S.C. 14, 18-19, 538 S.E.2d 245, 247 (2000) (emphasis added).

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 appears to construe 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.⁶ 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.⁷ The Court recognizes that, if Appellant is correct,⁸ the outcome of this order may be considered harsh. Unfortunately, the Court simply lacks the authority to address Appellant’s claims.

⁶ 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.

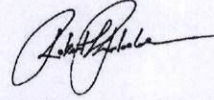
⁷ Some courts view the failure to exhaust administrative remedies in administrative cases as depriving an appellate court of subject matter jurisdiction. *See e.g., Silvertown Mountain Guides LLC v. U.S. Forest Serv.*, No. 3:22-CV-00048-JMK, 2023 WL 6148122, at *8 (D. Alaska Sept. 20, 2023); *Abrons 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”).

⁸ 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.

ORDER

IT IS THEREFORE ORDERED that the Department's motion to dismiss is **GRANTED** and this matter is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

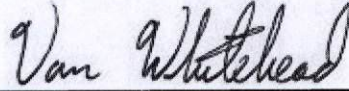


The Honorable Robert L. Reibold
Administrative Law Judge

August 20, 2024
Columbia, South Carolina

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).

A handwritten signature in cursive script that reads "Van Whitehead". The signature is written in black ink and is positioned above a solid horizontal line.

Van Whitehead
Judicial Law Clerk

August 20, 2024
Columbia, South Carolina