

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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JUL 23 2026

SC Court of Appeals

Nishka Burns,

Appellant,

v.

South Carolina Department of Employment
and Tri-County Adult Day Services Inc

Respondents.

Docket No: 26-ALJ-22-0160-AP

**Respondent's Motion to Dismiss for Lack
of Appellate Jurisdiction**

Respondent South Carolina Department of Employment and Workforce (the Department) move this Court to dismiss Appellant Nishka Burns's appeal for lack of appellate jurisdiction because Appellant failed to file her notice of appeal with this Court and serve all parties within thirty days of mailing the final agency decision as required by S.C. Code Ann. § 41-35-750 and Rule 33, SCALCR. Thus, this Court should grant this motion and dismiss Appellant's appeal for lack of appellate jurisdiction. Further, the Department requests that the Court hold all deadlines in abeyance pending the Court's decision on this motion.

I. Procedural History

In this appeal, Appellant challenges the decision of the Department's Appellate Panel (the Panel) holding Appellant disqualified from unemployment insurance benefits for sixteen weeks, from December 21, 2025, to April 11, 2026 with a corresponding monetary reduction, upon finding she was discharged for cause connected with the

employment. *See Exhibit A, Panel Decision.* Additionally, the Appellant was found ineligible for benefits from January 18, 2026, to January 24, 2026, after it was determined that she failed to comply with the work search requirement. *Id.* The Panel mailed the final agency decision to Appellant on April 7, 2026. *Id.* The decision notified Appellant of the statutory requirements and, specifically, the thirty-day deadline for appeal to this Court:

To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision (**see the mailing date above**).

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

Exhibit A.

Appellant served, by mail on April 13, 2026, an incomplete Petition for Judicial Review, that was received by the Department on April 21, 2026. *See Exhibit B, Petition for Judicial Review received by Department.* The petition received by the Department did

not include a copy of the Proof of Service upon the parties. *Id.* On April 21, 2026, the Court issued a Memorandum advising Appellant that her request for appeal was incomplete and noting the Court required a proof of service. *See Exhibit C, Memorandum.* Presumably, Appellant failed to file the additional documents with the Court because on May 7, 2026, the Court issued a Notice Case Returned Unprocessed. *See Exhibit D, Notice Case Returned Unprocessed.*

On May 19, 2026 this Court then issued a Notice of Assignment. *See Exhibit E, Notice of Assignment.* Having not received any additional documents for the Petition from Appellant, the Department requested the a Court's file for the Appellant's case on May 21, 2026. *See Exhibit F, Affidavit of Kristi Chesley; Exhibit G, Email with the Court and Notice of Appeal and Proof of Service filed May 15, 2026.*

II. This Court lacks appellate jurisdiction because Appellant failed to file timely and serve a complete notice of appeal.

This Court lacks appellate jurisdiction to consider Appellant's appeal because the appellant failed to timely file and serve a complete notice of appeal. A party seeking judicial review of the Panel's decision must file the notice of appeal with this Court and serve the Department within thirty days from the date the Panel mailed its decision. *See* § 41-35-750 ("Within thirty days from the date of mailing the [D]epartment's decision, a party to the proceeding whose benefit rights . . . may be affected by the [D]epartment's decision may initiate an action in [this Court] against the [D]epartment for the review of its decision"); Rule 33(A), SCALCR ("In appeals from decisions of the Department of Employment and Workforce (DEW), the notice **must** be filed and served within thirty

(30) days of the date of mailing of the decision of the Department of Employment and Workforce Appellate Panel”)(emphasis added). Further, the Notice “shall contain” a “proof of service of the notice of appeal on all parties.” Rule 33(B)(5), SCALCR. “Service shall be made upon counsel if the party is represented, or if there is no counsel, upon the party. **Service shall be made by delivery, by mail to last known address, or as otherwise approved by the Court through administrative order.** Service is also deemed complete upon mailing.” Rule 5, SCACLR. (emphasis added).

“The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction.” *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). Consequently, the timely filing and service of the notice of appeal are jurisdictional requirements under section 41-35-750, and the Court has no authority to extend the time in which the notice of intent to appeal must be filed. *See Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985); *Allison*, 394 S.C. at 189, 714 S.E.2d at 550 (noting “an appellate body may not extend the time to appeal”); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”).

The Panel mailed its decision to Appellant on April 7, 2026, and as a result, Appellant’s statutory deadline for filing her notice of appeal with this Court and serving it upon the parties was thirty days later on May 7, 2026. *Exhibit A*. Appellant’s incomplete

notice of appeal was mailed on April 13, 2026. *Exhibit B*. However, Appellant did not file documentation necessary to perfect her appeal – a copy of the proof of service – until May 15, 2026. *Exhibit G*. Additionally, she never served these additional documents upon the Department. *Exhibit F*. Further, along with being beyond the statutory deadline, Appellant’s own proof of service indicates she did not properly effectuate service upon TriCounty Adult Day Services, Inc. (Tricounty) *Exhibit G*. The proof of service indicates service to Tricounty by “Email to TriCounty on 04/12/26, 02/24/26, 01/20/2026¹.” This Court’s rules do not permit Appellant to serve by email to a party absent an administrative order. *See* Rule 5, SCACLR.

Pursuant to this Court’s rules, the notice of appeal is required to be served upon all parties and must contain a proof of service of the appeal on all parties. Rule 33(A), SCALCR (“The notice of appeal from the final decision of an agency shall be filed with the Court and a copy served on each party[.]”); Rule 33(B)(5). The Court’s memorandum requiring this documentation from Appellant included a disclaimer in bold that “nothing in this Memorandum extends or tolls any statutory deadline for filing the request for hearing/appeal with the Court.” *Exhibit C*. Because Appellant failed to file and serve upon the parties a complete notice of appeal within the statutory timeline, it could not have conferred appellate jurisdiction on this Court. As such, this Court lacks appellate jurisdiction, and the Department respectfully submits this Court should dismiss this appeal

¹ It is notable that Appellant asserts service upon Tricounty on 01/20/2026 and 02/24/2026 when the final decision of from the Panel was not issued until April 7, 2026 and could not, therefore, have been appealed to this Court in January or February.

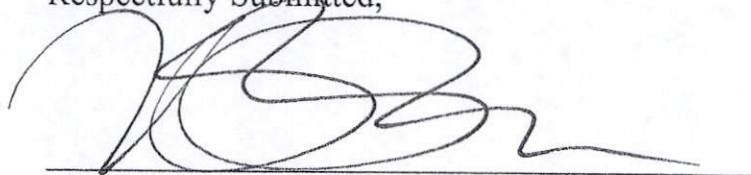
pursuant to Rule 38, SCALCR. *See generally Elam v. Dep't of Trans.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”).

III. Conclusion

Although the Department recognizes Appellant is proceeding pro se, a pro se litigant is responsible “for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003). *See Goodson v. American Bankers Ins. Co. of Florida*, 295 S.C. 400, 403, 369 S.E.2d 687, 689 (Ct. App. 1988) (“Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.”) Indeed, Appellant’s pro se status does not excuse her failure to comply with rudimentary procedures, such as timely filing and serving the notice of appeal within statutory prescribed deadlines. Because Appellant did not timely file and serve a complete notice of appeal, she failed to comply with S.C. Code Ann. § 41-35-750 and Rule 33, SCALCR and this Court lacks appellate jurisdiction over this appeal. The Department respectfully requests this Court dismiss Appellant’s appeal with prejudice pursuant to Rule 38, SCALCR and hold all deadlines in abeyance pending resolution of this motion

[signature on following page]

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'V. McMellan', written over a horizontal line.

Valerie McMellan (SC Bar #101080)

SC Department of Employment and
Workforce

Post Office Box 8597

Columbia, SC 29202

803.704.0395 (phone)

Legal@dew.sc.gov

**Attorney for Respondent SC Department of
Employment and Workforce**

June 8, 2026

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Nishka Burns,
Appellant,

) Docket Number: 26-ALJ-22-0160-AP
)

vs.

PROOF OF SERVICE

South Carolina Department of
Employment and Workforce and Tri-
County Adult Day Services Inc.,
Respondent (s).

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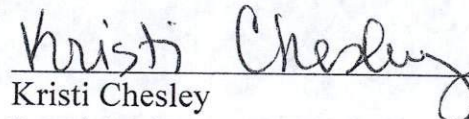
SC Court of Appeals

I hereby certify that I have served DEW's Notice of Appearance and Motion to Dismiss for Lack of Appellate Jurisdiction in the above-captioned matter by depositing it in the United States Mail, postage prepaid, on June 8, 2026, to the below named parties at their addresses of record:

Nishka Burns
256 Dewey Thomas Rd
Cheraw SC 29520

Tri-County Adult Day Services Inc.
169 Calvary Lane
Cheraw SC 29520

June 8, 2026



Kristi Chesley
Legal Assistant to Valerie McMellan
SC Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
803.737.0395 (phone)
803.737.0124 (fax)
legal@dew.sc.gov

P.O. Box 8597
Columbia, SC 29202
dew.sc.gov



Henry McMaster
Governor

William H. Floyd, III
Executive Director

P.O. Box 8597
Columbia, South Carolina 29202
(803) 737-0395
FAX (803) 737-0124
June 8, 2026

The Honorable Ralph King Anderson, III
SC Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Nishka Burns v. SCDEW and Tri-County Adult Day Services Inc.
Docket #: 26-ALJ-22-0160-AP

Dear Judge Anderson:

Enclosed are the Respondent's Notice of Appearance and Motion to Dismiss for Lack of Appellate Jurisdiction in the above referenced matter. Also enclosed is Proof of Service to the other parties.

With kind regards, I am

Sincerely Yours,

Kristi Chesley
Administrative Legal Assistant for
Valerie McMellan
Attorney for South Carolina Department of
Employment and Workforce

Deeray Thins Rd
SC 29520



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Columbia SC 29201

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SC Court of Appeals

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255 Dewey Thruway Rd
Cheraw SC 29520



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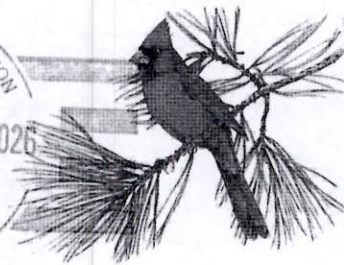
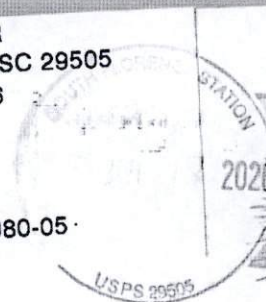


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Tri County Adult Day Service
169 Calvary Rd
Cheraw SC 29520

N. Burns
256 Dewey Thomas
Cheraw SC 29520



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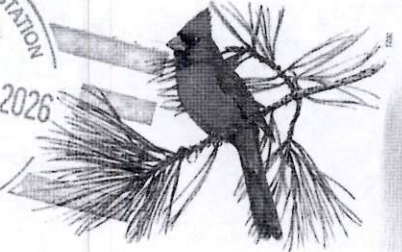
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South Carolina Dept of Welfare
~~Cheraw SC 29520~~ SC DEW
Po Box 8599 Po Box 8597
Columbia, SC 29208

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07/22/26

FROM:

N. Burns
256 Dewey Thomas
Cheraw SC 29520

CERTIFIED MAIL



7022 3330 0001 5656 0571

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RETURN RECEIPT
REQUESTED

RETURN RECEIPT
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JUL 23 2026

SC Court of Appeals

TO:

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Po Box 11629
Columbia SC 29211

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10 1/2" x 16"

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