

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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

NISHKA BURNS,

Appellant,

v.

South Carolina Department of Employment and Workforce,

and Tri-County Adult Day Services Inc.,

Respondents.

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JUL 23 2026  
SC Court of Appeals

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**APPELLANT'S RESPONSE TO MOTION TO DISMISS FOR LACK OF APPELLATE JURISDICTION**

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**I. INTRODUCTION**

Appellant, NISHKA BURNS, respectfully submits this Response to Respondent South Carolina Department of Employment and Workforce's Motion to Dismiss for Lack of Appellate Jurisdiction.

Respondent incorrectly asserts that this Court lacks jurisdiction due to alleged untimely filing and defective service. These assertions are not supported by the record.

The appeal was timely mailed on *April 13, 2026*, within the statutory deadline. Any delay in receipt, docketing, or administrative processing is not attributable to Appellant and cannot defeat jurisdiction. Additionally, all parties received actual notice of the appeal through multiple methods, including email, mailing, fax submissions, and electronic communications reflected in the record.

For these reasons, Respondent's Motion to Dismiss should be denied.

## II. FACTUAL BACKGROUND

1. The Appellate Panel decision was mailed on *April 7, 2026*, initiating the 30-day appeal period under S.C. Code Ann. § 41-35-750.
2. Appellant prepared and mailed the Notice of Appeal and supporting documents via United States Postal Service on *April 13, 2026*, within the statutory deadline.
3. Mailing was completed with express/certified mailing procedures and supporting postage documentation.
4. The Administrative Law Court subsequently indicated receipt of the filing on or about *April 20–21, 2026*, and issued a memorandum identifying missing components, including proof of service.
5. Appellant promptly complied with all requested corrections and submitted additional documentation as directed.
6. Throughout this process, Appellant served all parties through multiple methods, including:
  - Email service to Tri-County Adult Day Services Inc.
  - Communications to SCDEW via email and portal submissions
  - Mailing of appeal documents to SCDEW
  - Faxed submissions where applicable
  - Repeated service attempts on multiple dates throughout several appeals (01/20/26, 02/24/26, 04/12/26, 04/13/26, 04/28/26)
7. SCDEW and other parties had actual notice of the appeal and underlying dispute throughout the appeal process, as evidenced by their participation and filings in response.

### **III. ARGUMENT**

#### **A. THE APPEAL WAS TIMELY FILED UNDER THE 30-DAY STATUTORY DEADLINE**

Under S.C. Code Ann. § 41-35-750, a party must initiate judicial review within 30 days of mailing of the final agency decision.

Here, the final decision was mailed April 7, 2026. Appellant mailed the Notice of Appeal on April 13, 2026, well within the statutory period.

Appellant took affirmative action to initiate the appeal within the required timeframe. Any delay in receipt or docketing by the Court is an administrative function outside of Appellant's control and cannot be used to defeat jurisdiction.

Jurisdiction should not be denied based on administrative processing.

#### **B. APPELLANT SUBSTANTIALLY COMPLIED WITH SERVICE REQUIREMENTS AND ALL PARTIES RECEIVED ACTUAL NOTICE**

Even assuming arguendo that the initial filing lacked a formal proof of service, South Carolina courts recognize that procedural defects in service may be excused where:

- All parties received actual notice
- No party suffered prejudice
- The purpose of the rule (notice) has been satisfied

Here, all parties had actual notice of the appeal:

- SCDEW received multiple uploads for communications, mailed documents, and filings
- Tri-County Adult Day Services was served by email on multiple occasions
- The Administrative Law Court itself issued notices and communications to all parties, including SCDEW and the employer
- SCDEW actively responded and included Appellant's filings in its motion exhibits

Therefore, the purpose of Rule 33—notice to parties—was fully satisfied.

Any defect in formatting or proof of service was purely technical and did not deprive any party of notice or opportunity to respond.

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### **C. ANY DEFICIENCY WAS CURABLE AND WAS CORRECTED UPON NOTICE FROM THE COURT**

On April 21, 2026, the Court issued a memorandum identifying missing components and requested supplementation.

Appellant promptly complied and submitted the required additional materials, including proof of service documentation.

A defect identified and corrected within the Court's curing period cannot be used retroactively to eliminate jurisdiction.

The appeal was perfected through compliance with the Court's directive.

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### **D. APPELLANT ACTED IN GOOD FAITH AND RELIED ON PRIOR ADMINISTRATIVE PRACTICE AND COURT COMMUNICATIONS**

Appellant has participated in prior SCDEW-related proceedings where service was handled through email and agency communication channels without a formal proof of service requirement being strictly enforced.

Additionally:

- SCDEW has communicated via email with Appellant and opposing parties throughout the various appeals
- The Administrative Law Court itself issued emailed notices and communications to all parties, including SCDEW and the employer
- Appellant reasonably relied on established communication practices and instructions provided during the filing process

Appellant acted in good faith at all times and promptly attempted to cure any procedural issues once identified.

## **E. DISMISSAL IS NOT WARRANTED WHERE THERE IS NO PREJUDICE AND JURISDICTIONAL PURPOSES HAVE BEEN SATISFIED**

Dismissal is a severe remedy reserved for clear jurisdictional failure.

Here:

- The appeal was timely initiated
- All parties had actual notice
- No prejudice has been shown by Respondent
- Any procedural issue was cured or is curable

The interests of justice and administrative fairness require that this matter be decided on the merits rather than dismissed on technical grounds.

## **IV. CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that this Court:

1. **DENY Respondent's Motion to Dismiss for Lack of Appellate Jurisdiction**
2. Find that the appeal was timely filed and properly initiated
3. Find that service was substantially complied with and/or cured
4. Allow the appeal to proceed on the merits

Respectfully submitted,

Date: 06/22/2026

NISHKA BURNS

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Appellant's Response to Motion to Dismiss for Lack of Appellate Jurisdiction** was served upon all parties by the following methods on this date:

- South Carolina Department of Employment and Workforce (SCDEW)  
Post Office Box 8597  
Columbia, SC 29202  
(By email/portal submission / By mail 06/23/2026)
- Tri-County Adult Day Services Inc.  
169 Calvary Road  
Cheraw, SC 29520  
(By email / mail 06/23/2026)
- South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, South Carolina 29201-3755  
(By mail 06/23/2026)

Date: 06/23/2026