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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge
ALC Docket No. 25-ALJ-18-0423-AP

Mustafa El Shabazz Bey,
v.
South Carolina Department of Social Services,

Appellant,
Respondent.

Appellate Case No. 2026-001884
BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Administrative Law Court erred as a matter of law in dismissing Appellant's appeal as untimely when the governing appeal period runs from receipt of the final agency decision, but the ALC calculated the deadline from the November 6, 2025 date printed on the decision without determining when Appellant received it.

II. Whether the Administrative Law Court erred in dismissing the appeal for failure to timely serve DSS with the Notice of Appeal when the service period likewise depended on the unresolved date Appellant received the final agency decision.

III. Whether the dismissal should be reversed or vacated where DSS failed to timely produce the Record on Appeal, was granted additional time, filed the record of a different 2024 administrative proceeding, acknowledged that error only two days before dismissal, and the correct record bearing on notice and receipt was never obtained before the jurisdictional ruling.

IV. Whether Appellant's substantial rights were prejudiced where the ALC dismissed the appeal sua sponte on jurisdictional grounds without first resolving the disputed receipt trigger on the correct administrative record.

STATEMENT OF THE CASE

This appeal concerns the Administrative Law Court's August 20, 2026 dismissal of Appellant's administrative appeal from a South Carolina Department of Social Services final decision. DSS's Office of Administrative Hearings issued a Final Administrative Order dated November 6, 2025 in Case No. 40-02845944-ADH. The Order imposed a twelve-month Supplemental Nutrition Assistance Program (SNAP) disqualification for an alleged Intentional Program Violation and also stated that Appellant would remain permanently ineligible for SNAP in South Carolina based on a drug-related felony conviction. (Order of Dismissal p. 1.)

Appellant filed a Notice of Appeal with the Administrative Law Court on December 31, 2025. The ALC later stated that the filing was initially incomplete, that the court sent Appellant a deficiency memorandum on January 6, 2026, and that Appellant supplied required documents on January 20, 2026. The appeal was assigned to Administrative Law Judge S. Phillip Lenski on January 30, 2026. (Order of Dismissal pp. 1-2 & n.3.)

The January 30 Notice of Assignment directed the agency to file the Record on Appeal within forty-five days, Appellant to file his brief within thirty days after the record was filed, and DSS to file its brief within thirty days after Appellant's brief. (Notice of Assignment p. 1.) Appellant filed his brief on February 10, 2026. (Order of Dismissal p. 1.)

DSS did not timely file the Record on Appeal. On March 27, 2026, the ALC entered an Order for Record on Appeal granting DSS an additional twenty days. DSS filed what it represented to be the Record on Appeal on April 8, 2026. (Order of Dismissal pp. 1-2.)

On July 20, 2026, DSS moved to vacate the ALC's Order for Respondent's Brief and to dismiss because Appellant allegedly had not served DSS with his February brief. Appellant opposed the motions and requested permission to perfect service. On July 28, the ALC denied

DSS's motions, directed Appellant to serve his brief within five days, and gave DSS twenty days after receipt to file its respondent's brief. (Order Denying Motion to Vacate and Motion to Dismiss pp. 1-2.)

On August 18, 2026, DSS informed the ALC by email that the Record on Appeal it had filed was incorrect and asserted that the error resulted because DSS had not been served with Appellant's Notice of Appeal. (Order of Dismissal p. 2.) Two days later, on August 20, the ALC dismissed the appeal sua sponte. (Id. pp. 2-3 & n.4.)

The ALC stated that under S.C. Code Ann. § 1-23-380(1) and the ALC appellate rule, a notice of appeal must be filed with the court and served on all parties within thirty days of receipt of the final agency decision. Yet the ALC calculated the deadline directly from the November 6 date appearing on the decision, concluding the appeal had to be filed and served by December 8, 2025. (Order of Dismissal p. 2.) The Order does not identify a date on which Appellant actually received the November 6 decision. (Id. pp. 2-3.)

The ALC further held that both untimely filing and failure to serve DSS were jurisdictional defects. It dismissed the appeal for lack of jurisdiction. (Order of Dismissal p. 3 & n.4.) Appellant thereafter sought review in this Court. The Court of Appeals has assigned Appellate Case No. 2026-001884. [Before filing, insert the exact date the Court of Appeals Notice of Appeal was served on DSS and the ALC, as required by Rule 208(b)(1)(C), SCACR.]

STANDARD OF REVIEW

This Court may reverse or modify an ALC decision when the appellant's substantial rights have been prejudiced because the decision is in violation of constitutional or statutory provisions, in excess of statutory authority, made upon unlawful procedure, affected by error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary or capricious or characterized by an abuse of discretion. S.C. Code Ann. § 1-23-610(B). Questions of law are reviewed de novo. S.C. Dep't of Revenue v. Blue Moon of Newberry, Inc., 397 S.C. 256, 260, 725 S.E.2d 480, 483 (2012); see also Blackmon v. S.C. Dep't of Health & Envtl. Control, 426 S.C. 292, 300, 826 S.E.2d 833, 837 (Ct. App. 2019).

The controlling issues here concern the legal trigger for the appeal period and whether the ALC had an adequate factual record to determine jurisdiction. To the extent factual findings are implicated, the Court reviews the whole record for substantial evidence and does not substitute its judgment for the ALC on supported factual findings. § 1-23-610(B).

ARGUMENT

I. THE ALC CALCULATED THE APPEAL DEADLINE FROM THE DATE OF THE AGENCY DECISION WITHOUT DETERMINING THE DATE OF RECEIPT.

The ALC correctly identified receipt as the relevant triggering event. Its Order states that the notice of appeal from a final agency decision must be filed and served within thirty days of receipt of that decision. (Order of Dismissal p. 2.) Current Rule 33, SCALCR, likewise provides that the notice of appeal from a final agency decision shall be filed with the ALC and served on each party and the agency within thirty days of receipt of the decision. Rule 203(b)(6), SCACR, also uses receipt as the trigger for appeals from administrative tribunals.

South Carolina precedent confirms the distinction between issuance and receipt. In *Hamm v. South Carolina Public Service Commission*, 287 S.C. 180, 181-82, 336 S.E.2d 470, 471 (1985), the Supreme Court construed the Administrative Procedures Act so that the appeal period runs from notice or receipt of the agency decision rather than merely from its date of issuance. The Supreme Court later expressly reaffirmed that construction when it amended the appellate rules following the 2006 Administrative Procedures Act revisions, explaining that the time to appeal under the Act runs from receipt of the administrative decision. In *re Amendments to Rules 203, 207, 208, 209, 210 & 211, SCACR*, Order No. 2006-08-15-01 (S.C. Aug. 15, 2006).

Cox v. County of Florence, 337 S.C. 340, 344, 523 S.E.2d 776, 778 (1999), is consistent. Cox treated written notification of the agency decision as the event triggering the judicial-review period. The significance is straightforward: an order's date and a party's receipt of that order are not necessarily the same date.

Here, however, the ALC moved directly from the fact that the DSS decision was dated November 6, 2025 to the conclusion that the thirty-day period expired December 8, 2025. (Order of Dismissal p. 2 & n.2.) The Order contains no finding identifying when Appellant actually received the decision. Nor does it cite evidence establishing receipt on November 6. The ALC therefore used the date of issuance as a substitute for the receipt date even though its own statement of the governing rule made receipt the trigger.

That error is material. A jurisdictional deadline cannot be determined without first identifying the event that starts the clock. If the governing period begins upon receipt, the tribunal must determine when receipt occurred before it can conclude that a filing was late. The ALC did not do so here.

Appellant does not ask this Court to make a new factual finding concerning the exact receipt date on the present incomplete record. The appropriate relief is reversal or vacatur and remand so the ALC can determine the receipt date on the correct administrative record and apply the thirty-day rule to that finding.

II. THE SERVICE HOLDING RESTS ON THE SAME UNRESOLVED RECEIPT DATE.

The ALC also relied on Appellant's alleged failure to serve DSS with the Notice of Appeal. The court correctly observed that timely service of a notice of appeal is ordinarily jurisdictional. See *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985). Appellant therefore does not contend that later participation by DSS automatically cures a genuinely untimely notice of appeal.

But the service analysis still requires the same threshold determination that the filing analysis requires. Rule 33, SCALCR, measures the period for both filing and service from receipt of the agency decision. The ALC stated the same rule in its dismissal order. (Order of

Dismissal p. 2.) Thus, before deciding that service was untimely, the court had to determine when the thirty-day service period began.

The Order does not make that finding. Instead, it treated December 8 as the service deadline solely because the decision was dated November 6. (Id. pp. 2-3.) That conclusion cannot stand if the controlling rule starts the period on receipt rather than issuance.

The service question also involves factual matters that should be resolved on the actual filing and service materials: the December 31 Notice of Appeal, its certificate or proof of service, the January 6 deficiency memorandum, the January 20 cure submission, and any evidence showing when DSS was served or service was attempted. Those documents should be considered against a correctly determined receipt date. Remand is therefore necessary even if service remains a jurisdictional requirement.

III. THE ABSENCE OF THE CORRECT ADMINISTRATIVE RECORD MATERIALLY AFFECTED THE JURISDICTIONAL INQUIRY.

The procedural posture magnified the receipt-date problem. DSS failed to file the Record on Appeal within the forty-five-day period identified in the January 30 Notice of Assignment. The ALC granted DSS an additional twenty days on March 27. (Order of Dismissal pp. 1-2.) DSS then filed a Record on Appeal on April 8. (Id. p. 2.)

On August 18, however, DSS informed the ALC that the record it had filed was incorrect. (Id.) The dismissal order itself therefore establishes that the ALC did not possess the correct administrative record when it ruled on August 20.

The missing record was not collateral to the jurisdictional question. The actual 2025 DSS record is the logical source for evidence showing how and when the November 6 decision was transmitted, including the decision, cover correspondence, mailing or service records, address

information, and any proof of delivery or return. These are precisely the materials needed to determine receipt.

The problem is particularly significant because the ALC did not merely note a record defect and reserve jurisdiction. It used a receipt-based rule, omitted a receipt finding, and dismissed the case before the correct record was obtained. The result was a jurisdictional determination made without the agency record most likely to establish the triggering fact.

The July 28 order further shows that the case remained actively pending shortly before dismissal. That order denied DSS's then-pending motion to dismiss, permitted Appellant to perfect service of his brief, and established a schedule for DSS's responsive brief. (Order Denying Motion to Vacate and Motion to Dismiss pp. 1-2.) The later August 20 dismissal arose only after DSS acknowledged the wrong administrative record and raised the distinct Notice-of-Appeal service issue on August 18. (Order of Dismissal p. 2 & n.4.)

Subject-matter jurisdiction may be examined at any time, and Appellant does not argue otherwise. But a court still must apply the governing jurisdictional rule to facts supported by the record. Where the controlling trigger is receipt and the record bearing on receipt was missing, remand is necessary for a legally and factually supported jurisdictional determination.

IV. AT MINIMUM, REMAND IS REQUIRED FOR A PROPER JURISDICTIONAL DETERMINATION ON THE CORRECT RECORD.

Section 1-23-610(B) authorizes this Court to remand an administrative case and to reverse or modify an ALC decision when substantial rights have been prejudiced by unlawful procedure or error of law. This case presents both concerns: the ALC applied a receipt-based rule without determining receipt and did so while the correct agency record had not been supplied.

Appellant does not presently ask this Court to decide the merits of the underlying SNAP Intentional Program Violation. Nor is it necessary for this Court to decide at this stage whether the underlying DSS hearing notice satisfied federal SNAP requirements or constitutional due process. Those matters depend upon the actual 2025 administrative record and should be addressed, if necessary, after the jurisdictional question is correctly resolved.

A focused remand would permit the ALC to obtain the correct record; determine when Appellant received the November 6, 2025 final agency decision; determine the corresponding deadline for filing and service; examine the actual proof of filing and service; and, if the appeal was perfected, proceed to the merits of the administrative appeal. That remedy avoids appellate fact-finding and preserves the proper division of functions between this Court and the ALC.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court REVERSE or VACATE the Administrative Law Court's August 20, 2026 Order of Dismissal and REMAND the matter with instructions to obtain the correct administrative record and determine jurisdiction using the proper receipt-based analysis. If jurisdiction is established, Appellant requests that the ALC proceed to review the merits of the administrative appeal. Appellant further requests such other relief as this Court deems just and proper.

Respectfully submitted,

s/ Mustafa El Shabazz Bey

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CERTIFICATE OF SERVICE

I certify that on 9/1/2026, 2026, I served a true and correct copy of the foregoing Brief of Appellant upon Respondent by [U.S. Mail / electronic mail / other authorized method] addressed as follows:

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I further certify that the Brief was filed with the Clerk of the South Carolina Court of Appeals in accordance with the South Carolina Appellate Court Rules.

s/ Mustafa El Shabazz Bey

Mustafa El Shabazz Bey, Appellant Pro Se