

THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

Appellate Case No. 2026-001635

NISHKA BURNS,

Petitioner/Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE; TRI-COUNTY ADULT DAY SERVICES, INC.; and SOUTH CAROLINA ADMINISTRATIVE LAW COURT,

Respondents.

Appeal from the South Carolina Administrative Law Court Administrative Law Court
Docket No. 26-HA-000439

INITIAL BRIEF OF APPELLANT

NISHKA BURNS

Petitioner/Appellant, Pro Se

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SC Court of Appeals

I. STATEMENT OF ISSUES ON APPEAL

1. Whether the South Carolina Administrative Law Court erred by dismissing Appellant's Petition for Judicial Review before the response deadline had expired, where Appellant had prepared and mailed a response to the Motion to Dismiss before that deadline.
2. Whether dismissal was improper under the circumstances where Appellant had made good-faith efforts to comply with filing and service requirements, had responded to an earlier request for additional information, and had attempted to correct the identified procedural deficiency.
3. Whether Appellant was afforded a meaningful opportunity to respond to the Motion to Dismiss and to address the alleged deficiency before the Administrative Law Court entered its dismissal order.
4. Whether the appropriate relief is to vacate the dismissal and remand the matter to permit further proceedings consistent with the applicable rules and a fair opportunity to be heard.

II. STATEMENT OF THE CASE

This appeal concerns the dismissal of Appellant's Petition for Judicial Review by the South Carolina Administrative Law Court. The underlying administrative matter arose from an unemployment-benefits dispute involving the South Carolina Department of Employment and Workforce and Tri-County Adult Day Services, Inc. The present appeal does not ask this Court to decide the underlying merits of the unemployment-benefits dispute. It concerns the procedural dismissal of the Petition for Judicial Review.

Appellant submitted the Petition for Judicial Review and related documents to the Administrative Law Court. The documents were mailed on or about April 13, 2026, and were received or filed by the Administrative Law Court on or about April 21, 2026.

Appellant subsequently received correspondence requesting additional information or documentation concerning the filing. Appellant responded and submitted additional information and proof-of-service documentation in response to the request from the Administrative Law Court.

The South Carolina Department of Employment and Workforce filed or dated a Motion to Dismiss on or about June 8, 2026. Appellant has reported that the motion was not received until June 17, 2026, in the context of displacement and mail delays.

Appellant prepared and mailed a response to the Motion to Dismiss on or about June 23, 2026, by expedited us mail services and attempted to provide notice and proof of service to the relevant parties.

The Administrative Law Court entered an Order of Dismissal on or about June 24, 2026. Appellant has maintained that the dismissal was entered before the response deadline, which Appellant understood to be June 28, 2026, and before the mailed response arrived.

Appellant thereafter sought review of the dismissal in the South Carolina Court of Appeals. The present appeal challenges the dismissal and the circumstances surrounding the opportunity to respond and cure the asserted procedural deficiency.

The record materials relevant to these events include the Petition for Judicial Review, correspondence from the Administrative Law Court, the Motion to Dismiss, Appellant's response and proof-of-service materials, the Order of Dismissal, and relevant mailing records and docket entries.

III. STATEMENT OF RELEVANT FACTS

Appellant is representing herself and has attempted to comply with the filing and service requirements while experiencing financial hardship and home displacement.

Appellant initially submitted the Petition for Judicial Review and accompanying documents in April 2026. After receiving a request for additional information, Appellant submitted a response and additional documentation in good faith as instructed.

Appellant did not understand that the proof-of-service documentation would be needed due to the fact that no proof of service was ever required or requested for previous submissions. Appellant was not aware that submitted documents would be considered insufficient in the manner later asserted. Once the procedural concern became apparent, Appellant attempted to address it.

The Department's Motion to Dismiss was dated or filed on or about June 8, 2026, but Appellant reports receiving it on June 17, 2026. Appellant then prepared and mailed a response on June 23, 2026.

Appellant understood that the deadline to respond was June 28, 2026. The Administrative Law Court entered its dismissal order on June 24, 2026, before that understood deadline and before the response had arrived to the Administrative Law Court's office.

Appellant does not contend that self-represented status automatically excuses compliance with court rules. Rather, Appellant asks the Court to consider the chronology of the notices, the efforts to comply, the response that was mailed, and the timing of the dismissal when determining whether the matter should have been dismissed without further opportunity to address the alleged deficiency.

IV. STANDARD OF REVIEW

Under S.C. Code Ann. § 1-23-610(B), review of an order of the Administrative Law Court is confined to the record. The Court of Appeals may reverse or modify an order when a party's substantial rights have been prejudiced because the decision violates constitutional or statutory provisions, exceeds statutory authority, results from unlawful procedure, is affected by an error of law, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or is arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

The issues raised here concern procedural fairness, the application of filing and response requirements, and whether the dismissal was entered before Appellant had a meaningful opportunity to respond. To the extent the issues present questions of law, review is directed to whether the decision is affected by legal error. To the extent the dismissal rests on a discretionary procedural determination, the applicable statutory standard includes whether the decision was characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

See S.C. Code Ann. § 1-23-610(B); S.C. Code Ann. § 1-23-380(A)(5)–(6), to the extent applicable.

V. ARGUMENT

A. THE DISMISSAL WAS PREMATURE BECAUSE APPELLANT HAD NOT REACHED THE STATED RESPONSE DEADLINE

Appellant's central procedural concern is that the Administrative Law Court entered its dismissal order on or about June 24, 2026, before the response deadline Appellant understood to be June 28, 2026.

Appellant reports that the Motion to Dismiss was not received until June 17, 2026, and that a response was mailed on June 23, 2026. The response was therefore prepared and sent before the deadline Appellant understood to apply.

If the applicable deadline had not expired and Appellant had not been afforded the full period to respond, dismissal before that deadline could have deprived Appellant of the opportunity to present a timely response.

Appellant respectfully asks this Court to determine whether the Administrative Law Court entered dismissal prematurely under the governing procedural requirements. If the record establishes that the response period remained open, the dismissal should be vacated and the matter remanded for further proceedings.

B. APPELLANT MADE GOOD-FAITH EFFORTS TO COMPLY WITH FILING AND SERVICE REQUIREMENTS

The record, as described by Appellant, reflects efforts to submit the Petition for Judicial Review, respond to a request for additional information, provide proof of service, and respond to the Motion to Dismiss.

After the Administrative Law Court requested additional information or documentation, Appellant submitted a response in good faith to comply. When the Department's Motion to Dismiss was received, Appellant prepared and mailed a response on or about June 23, 2026.

Appellant recognizes that filing and service rules must be followed. However, the procedural history matters when assessing whether dismissal was warranted under the circumstances. Appellant was not ignoring the proceedings or abandoning the appeal. Appellant was attempting to comply, including by sending additional documentation and responding to the dismissal motion.

Appellant's position is not that good faith alone overrides a mandatory rule. It is that the Court should consider the documented attempts to comply, the notice received, and the timing of the dismissal in determining whether the matter should be permitted to proceed.

C. APPELLANT WAS NOT AFFORDED A MEANINGFUL OPPORTUNITY TO RESPOND TO AND CORRECT THE ALLEGED DEFICIENCY

Appellant contends that the handling issue did not provide a meaningful opportunity to understand and correct the asserted Motion to Dismiss before the case was dismissed.

Appellant submitted proof-of-service documentation in response to an earlier request for additional information. Appellant subsequently received the Department's Motion to Dismiss and attempted to respond within the time Appellant understood was allowed.

The fact that a party is self-represented does not eliminate the obligation to follow applicable rules. Nevertheless, the sequence of events is relevant to whether Appellant had a fair opportunity to address the particular procedural issue before the Administrative Law Court terminated the proceeding.

The question is not whether Appellant was entitled to disregard the rules. The question is whether, considering the actual notices, the time allowed, the attempted response, and the timing of the order, dismissal was a proper procedural outcome.

Appellant respectfully asks this Court to examine the correspondence and docket history to determine whether the identified deficiency could have been addressed without terminating the Petition for Judicial Review.

D. THE INTERESTS OF FAIRNESS AND ACCESS TO JUDICIAL REVIEW SUPPORT REMAND

Appellant has pursued administrative review for months and has attempted to comply with the requirements communicated during the proceedings. Appellant's efforts included responding to requests for additional documentation and mailing a response to the Motion to Dismiss.

The dismissal prevented the Petition for Judicial Review from proceeding. Appellant seeks review of that procedural outcome, not a determination by this Court of the underlying unemployment-benefits dispute.

Where the record supports a finding that the dismissal response deadline had not expired, that Appellant made timely efforts to respond, or that the dismissal resulted from an error of law or an improper exercise of discretion, remand would permit the procedural dispute to be addressed under the applicable rules.

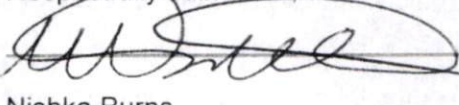
Appellant therefore requests that this Court review the actual dismissal records and determine whether the dismissal should be vacated so the Petition for Judicial Review may proceed.

VI. CONCLUSION

For the foregoing reasons, Petitioner/Appellant Nishka Burns respectfully requests that this Court:

1. Review the Administrative Law Court's dismissal order and the dismissal procedural history reflected in the record;
2. Determine whether the dismissal was premature or otherwise affected by unlawful procedure, error of law, or an abuse of discretion;
3. Vacate the Order of Dismissal if the record establishes a basis for reversal;
4. Remand the matter to the Administrative Law Court for further proceedings and a meaningful opportunity to address the identified procedural deficiency; and
5. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

 10/19/24

Nishka Burns
Petitioner/Appellant, Pro Se
Claimant ID 12042490
704-292-1746
Cheraw, SC 29520
10/19/2026

VII. TABLE OF AUTHORITIES

Statutes

S.C. Code Ann. § 1-23-380(A)(5)–(6), to the extent applicable.

S.C. Code Ann. § 1-23-610(B).

Rules

Rule 208, South Carolina Appellate Court Rules.

Rule 209, South Carolina Appellate Court Rules.

Rule 210, South Carolina Appellate Court Rules.

THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

Appellate Case No. 2026-001635

NISHKA BURNS,
Petitioner/Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE; TRI-COUNTY ADULT
DAY SERVICES, INC.; and SOUTH CAROLINA ADMINISTRATIVE LAW COURT,
Respondents.

Appeal from the South Carolina Administrative Law Court Administrative Law Court Docket No. 26-HA-000439

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Pursuant to Rule 209, South Carolina Appellate Court Rules, Petitioner/Appellant Nishka Burns designates the following portions of the proceedings before the South Carolina Administrative Law Court for inclusion in the Record on Appeal. This appeal concerns the dismissal of the Petition for Judicial Review and the procedural circumstances surrounding that dismissal.

The following documents are designated to the extent they were filed with, submitted to, or otherwise became part of the record before the Administrative Law Court:

1. The Petition for Judicial Review filed by Petitioner/Appellant, including its caption and attachments.
2. The South Carolina Department of Employment and Workforce's Motion to Dismiss, dated or filed on or about June 8, 2026, including any accompanying notice or supporting documents.
3. Petitioner/Appellant's response to the Motion to Dismiss, mailed on or about June 23, 2026, including any proof of service and mailing documentation that became part of the Administrative Law Court record.
4. The Administrative Law Court's Order of Dismissal, entered on or about June 24, 2026, including the stated grounds for dismissal.
5. Relevant docket entries and correspondence reflecting filing dates, receipt dates, responses, dismissal response deadlines, and entry of the dismissal order.
6. Any hearing transcripts or exhibits that were part of the Administrative Law Court proceedings and are relevant to the procedural issues raised in this appeal.
7. Any other pleadings, orders, notices, or documents contained in the Administrative Law Court record that are relevant to determining whether dismissal was premature and whether Petitioner/Appellant had a meaningful opportunity to respond to the dismissal.

Petitioner/Appellant requests that the designated materials, to the extent properly includable under the South Carolina Appellate Court Rules, be included in the Record on Appeal.

I certify that the matters designated above are relevant to this appeal and that this Designation contains no matter that is irrelevant to the appeal.

Respectfully submitted,


Nishka Burns// Petitioner/Appellant, Pro Se

Claimant ID 12042490—704-294-1746
Cheraw SC 29520

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

Appellant's Statement in Support of Appeal and Request for Review of Order of Dismissal

Administrative Law Court Docket No.: 26-ALJ-22-0160-AP

Nishka Burns,
Petitioner/Appellant,

v.

**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE; and TRI-COUNTY
ADULT DAY SERVICES,**
Respondents.

APPELLANT'S STATEMENT IN SUPPORT OF APPEAL AND REQUEST FOR REVIEW OF ORDER OF DISMISSAL

I. INTRODUCTION

Petitioner/Appellant respectfully seeks review of the South Carolina Administrative Law Court's Order of Dismissal entered June 24, 2026. Appellant challenges the dismissal because she made good-faith efforts to comply with filing and service requirements, attempted to respond to the Clerk's request for additional information, and mailed a response to the Department's Motion to Dismiss on June 23, 2026, before the court entered its order.

Appellant respectfully requests that the Court review the procedural history and available documentation concerning her filing and service efforts, and grant appropriate relief, including reversal or vacatur of the dismissal and remand for further proceedings.

II. PROCEDURAL HISTORY

1. On or about April 13, 2026, Appellant mailed her original filing seeking judicial review to the Administrative Law Court.
2. On April 21, 2026, the Clerk sent correspondence acknowledging receipt and requesting additional information, including proof of service and referencing Rule 33.
3. Appellant states that she did not know proof of service was required until she received the April 21 correspondence.
4. On April 28, 2026, Appellant faxed a response to the Clerk and also mailed two documents. Exhibit G contains images of the two mailed documents, but the images are not legible. Appellant cannot now identify the exact contents of the fax or locate the original copies of the mailed documents.
5. During this period, Appellant experienced displacement from her home and financial hardship and had to move from place to place. Appellant believes some paperwork may have been lost during those moves.
6. On June 8, 2026, the South Carolina Department of Employment and Workforce (SCDEW) filed a Motion to Dismiss.
7. Appellant received the Motion to Dismiss on June 17, 2026. Because of circumstances associated with displacement and financial hardship, she did not receive it on the date it was filed.

8. On June 23, 2026, Appellant mailed her response to the Motion to Dismiss using two-day Express Mail and sent copies and notices to the appropriate parties, including the Administrative Law Court. Appellant has previously stated that she retains mailing receipts and tracking information supporting these efforts.

9. On June 24, 2026, the Administrative Law Court entered its Order of Dismissal before Appellant's mailed response arrived.

10. Appellant received the dismissal notice on June 29, 2026.

11. Appellant understood that her response deadline was June 28, 2026. She respectfully asks the Court to examine the applicable deadline, the date she received the motion, and the date she mailed her response.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the Administrative Law Court properly dismissed the matter based on non-response by Appellant when Appellant's subsequent efforts to respond was not received before the early dismissal.

2. Whether the court adequately accounted for the April 28, 2026 fax and the two mailed documents described in Exhibit G when evaluating Appellant's efforts to comply with the Clerk's instructions.

3. Whether dismissal on June 24, 2026, before Appellant's June 23 response to SCDEW's Motion to Dismiss arrived, was procedurally proper in light of the applicable response deadline and the circumstances of Appellant's receipt of the motion.

4. Whether the procedural history and documented efforts to comply warrant reversal or vacatur of the dismissal and remand for further proceedings.

IV. ARGUMENT

A. Appellant made efforts to respond to the Clerk's request concerning proof of service.

Appellant mailed her original filing on or about April 13, 2026. The Clerk's April 21 correspondence acknowledged receipt and requested additional information, including proof of service and information concerning Rule 33. Appellant states that she did not understand proof of service was required until the Clerk's request brought the issue to her attention.

On April 28, 2026, Appellant faxed a response and mailed two documents. Exhibit G contains images identified by Appellant as relating to the April 28 mailing, although the images are not legible also indicated the date on various proofs of service to be a date when information was communicated, mailed, or shared. Appellant unable to locate the originals and does not ask the Court to treat the illegible images as conclusive proof of the contents or delivery of those documents. She asks that the Court consider the available record and the sequence of her efforts to respond, rather than treating the present absence of the originals as proof that no effort was made.

Appellant was displaced from her home and experienced financial hardship during this period. She had to move from place to place, and some paperwork may have been lost during those moves. She respectfully asks that these circumstances be considered together with the April 21 correspondence and Exhibit G when reviewing whether dismissal was proper.

B. The dismissal was entered before Appellant's mailed response to SCDEW's motion arrived.

SCDEW filed its Motion to Dismiss on June 8, 2026. Appellant received the motion on June 17, 2026. She mailed her response by two-day Express Mail on June 23, 2026, and the Administrative Law Court entered its dismissal order on June 24, 2026, before the response arrived. Appellant received the dismissal notice on June 29, 2026.

Appellant understood that her response deadline was June 28, 2026. She respectfully requests review of the applicable procedural rule, any deadline communicated by the court, and the relevant filing and mailing records to determine whether the court entered dismissal before the applicable response period had expired. Appellant acknowledges that the court may not have had her response in its file when it entered the order. Her contention is that the timing and circumstances should be reviewed before the dismissal is allowed to stand.

C. The circumstances warrant consideration of procedural fairness.

Appellant pursued judicial review without legal representation and attempted to respond to the Clerk's request and SCDEW's motion. During the relevant period, she experienced displacement from her residence and financial hardship, which affected her ability to receive, maintain, send, and retrieve paperwork. She nevertheless took steps to respond to the communications she received and to preserve her rights.

Appellant respectfully requests that the Court consider the complete procedural history, including the April 28 fax and mailing, the June 23 response, and the June 24 dismissal. She seeks review under the applicable law and rules and a fair opportunity for the procedural issues to be considered.

D. This appeal concerns the dismissal, not a decision on the underlying unemployment merits.

Appellant seeks review of the procedural dismissal of her petition for judicial review. She does not ask the Court to decide the underlying unemployment merits in this appeal but requests review of whether dismissal was proper and, if warranted, remand to the Administrative Law Court for further proceedings.

V. RELIEF REQUESTED

WHEREFORE, Petitioner/Appellant respectfully requests that the South Carolina Court of Appeals:

1. Review the Administrative Law Court's Order of Dismissal entered June 24, 2026;
2. Examine whether dismissal was entered before expiration of the applicable period for responding to SCDEW's Motion to Dismiss;
3. Reverse or vacate the dismissal, if warranted, and remand the matter to the Administrative Law Court for further proceedings; and
4. Grant any other relief the Court deems just and proper.

Respectfully submitted,


Nishka Burns

Petitioner/Appellant, Pro Se

Claimant ID 12042490

704-292-1746

Cheraw, SC 29520

10/19/2026

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OCT 23 2026

SC Court of Appeals

FORM 7

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
Administrative Law Court Docket No. 26-HA-000439

Appellate Case No. 2026-001635

Nishka Burns,

Petitioner/Appellant,

v.

SOUTH CAROLINA DEW;
and TRI-COUNTY ADULT DAY SERVICES,

Respondents

PROOF OF SERVICE

I certify that I have served the following documents: (1) Initial Brief of Appellant; (2) Designation of Matter to Be Included in the Record on Appeal; and (3) Appellant's Statement in Support of Appeal and Request for Review of Order of Dismissal, on the South Carolina Department of Employment and Workforce (SCDEW), Office of General Counsel, Post Office Box 8597, Columbia, SC 29202; Tri-County Adult Day Services, Inc., at 169 Calvary Road, Cheraw, SC 29520; and the South Carolina Administrative Law Court, Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, SC 29201, by United States standard mail and/or certified mail, postage prepaid, on **October 20, 2026**. A copy of the documents filed with the South Carolina Court of Appeals is being sent to the Court of Appeals, Clerk's Office, P.O. Box 11629, Columbia, SC 29211, by United States standard mail and/or certified mail. All were addressed as follows:

October 20, 2026

s/ Nishka Burns

Nishka Burns  10/19/26
256 Dewey Thomas Rd;
Cheraw SC, 29520
704-294-1746

Petitioner/Appellant, Pro Se

5
THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the South Carolina Administrative Law Court

Administrative Law Court Docket No.: 26-HA-000439

Nishka Burns

Petitioner/Appellant,

v.

**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE;
and TRI-COUNTY ADULT DAY SERVICES,**

Respondents.

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JUL 23 2026

SC Court of Appeals

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Petitioner/Appellant, **Nishka Burns**, hereby appeals to the South Carolina Court of Appeals from the Order of the South Carolina Administrative Law Court granting Respondent South Carolina Department of Employment and Workforce's Motion to Dismiss.

The Order appealed from was entered by the South Carolina Administrative Law Court on **June 24, 2026**, in Administrative Law Court Docket No. **26-HA-000439**.

This appeal arises from the Administrative Law Court's dismissal of Petitioner/Appellant's Petition for Judicial Review of the South Carolina Department of Employment and Workforce Office of Appellate Panel decision concerning unemployment benefits, the misconduct determination, and the resulting overpayment determination involving Petitioner/Appellant and Tri-County Adult Day Services.

Petitioner/Appellant seeks review of the Administrative Law Court's dismissal based upon the following procedural errors:

1. The Administrative Law Court granted SCDEW's Motion to Dismiss on June 24, 2026, before Petitioner/Appellant's time to respond had expired.
2. SCDEW filed its Motion to Dismiss on June 8, 2026. Petitioner/Appellant received the Motion to Dismiss on June 17, 2026, and was provided until June 28, 2026, to submit a response.
3. Petitioner/Appellant timely prepared and mailed a Response to the Motion to Dismiss on June 23, 2026, with service to the parties and the Administrative Law Court.
4. At the time the Administrative Law Court entered the Order granting dismissal on June 24, 2026, Petitioner/Appellant's response deadline had not expired, and Petitioner/Appellant's response had not yet been received, filed, or considered.
5. Petitioner/Appellant did not become aware that the Administrative Law Court had entered the dismissal order until June 29, 2026, after returning to retrieve mail following a period of displacement from the home.
6. Petitioner/Appellant acted diligently and in good faith throughout the proceedings and should have been afforded the opportunity for her timely response to be considered before dismissal was entered.

WHEREFORE, Petitioner/Appellant respectfully requests that the South Carolina Court of Appeals review the Administrative Law Court's Order of Dismissal and grant appropriate relief, including reversal of the dismissal and reinstatement of Petitioner/Appellant's Petition for Judicial Review.

Respectfully submitted this 14th day of July, 2026.

Respectfully,

Nishka Burns
Petitioner/Appellant
Claimant ID 12042490
704-294-1746
256 Dewey Thomas Rd;
Cheraw SC, 29520

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JUL 23 2026

SC Court of Appeals

CERTIFICATE OF SERVICE

I certify that on **June 23, 2026**, I served a true and correct copy of my Response to the Motion to Dismiss and related documents upon the parties of record by depositing the same in the United States Mail, properly addressed and with sufficient postage affixed. Service was made upon:

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

TriCounty Adult Day Services
169 Calvery Rd
Cheraw, SC 29520

South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201

The copy sent to the South Carolina Administrative Law Court was mailed by express mail with tracking/signature confirmation.

CERTIFICATE OF SERVICE

I certify that on **July 17, 2026**, I served a true and correct copy of my Response to the Motion to Dismiss and related documents upon the parties of record by depositing the same in the United States Mail, properly addressed and with sufficient postage affixed. Service was made upon:

Office of General Counsel
S.C. Dew
Post Office Box 8597
Columbia SC 29202

South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201

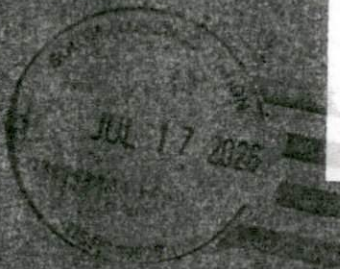
TriCounty Adult Day Services
169 Calvery Rd
Cheraw, SC 29520

South Carolina Court of Appeals
Clerk's Office
P.O. Box 11629
Columbia, SC 29211

The copy sent to the *South Carolina Court of Appeals* was mailed by express mail with tracking/signature confirmation.

Nishka Burns
Petitioner/Appellant, Pro Se

Deeray Thins Rd
SC 29520



Retail



29201

RDC 99

U.S. POSTAGE PAID
FCM LG ENV
FLORENCE, SC 29505
JUL 17, 2026

\$2.85

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TO:

SC Admin Law Court
Edgar A Brown Bldg
1205 Pendleton St Ste 224
Columbia SC 29201

JUL 23 2026
SC Courthouse

NBans
285 Dewey Thruway Rd
Cheraw SC 29520



RDC 99

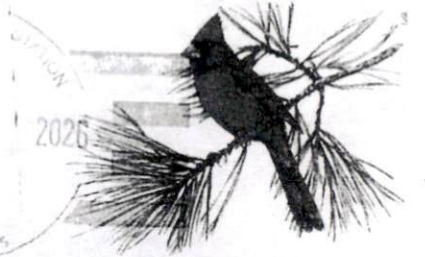


29520

FCM LETTER
FLORENCE, SC 29505
JUL 17, 2026

\$0.58

S2322T500980-05



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JUL 23 2026

SC Court of Appeals

Tri County Adult Day Service
169 Calvary Rd
Cheraw SC 29520

N Burns
256 Dewey Thomas
Charleston SC 29520



RDC 99



29202

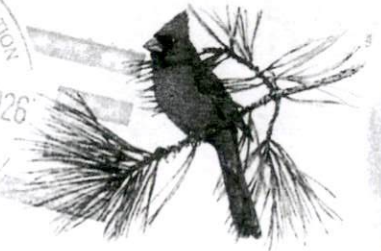
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FLORENCE, SC 29505
JUL 17, 2026

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S2322T500980-05

POSTAGE
STATION

17 2026



JUL 23 2026
SC Court of Appeals

South Carolina Dept of Warden
~~Office of the Attorney General~~ SC DEW
Po Box 8599 Po Box 8597
Columbia, SC 29208

LH
07/22/26

FROM:

N. Burns
256 Deely Thomas
Charleston SC 29520

CERTIFIED MAIL



7022 3330 0001 5656 0571

Retail



29211

U.S. POSTAGE PAID
FCM LG ENV
FLORENCE, SC 29505
JUL 17, 2026

\$13.63

S2322T500680-05

RDC 99

RETURN RECEIPT
REQUESTED

RETURN RECEIPT
DELIVERED

JUL 23 2026

SC Court of Appeals

TO:

South Carolina Court of Appeals
Clerk's Office
P.O. Box 11629
Columbia SC 29211

Utility Mailer
10 1/2" x 16"

ReadyPost



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 28, 2026

Nishka Burns
256 Dewey Thomas Road
Cheraw SC 29520

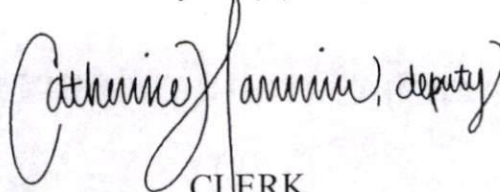
Re: Nishka Burns v. SCDEW
Appellate Case No. 2026-001635

Dear Ms. Burns:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Your proof of service states your response to the motion to dismiss was served. You must serve the notice of appeal on Respondents.
- The required filing fee has not been submitted. The correct filing fee is \$250.00.
- The notice of appeal and proof of service have not been signed as required by Rule 267(b), SCACR.

Very truly yours,


CLERK

cc: Benjamin Thomas Cook, Esquire
Tri-County Adult Day Services, Inc.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 28, 2026

Nishka Burns
256 Dewey Thomas Road
Cheraw SC 29520

Re: Nishka Burns v. SCDEW
Appellate Case No. 2026-001635

Dear Ms. Burns:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

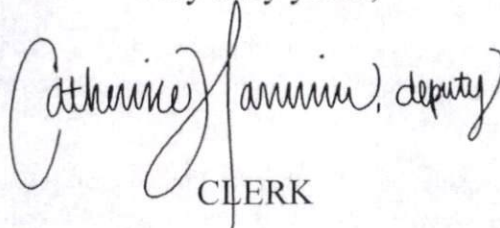
Nishka Burns, Appellant,

v.

South Carolina Department of Employment and Workforce and Tri-County Adult Day Services, Inc., Respondents.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,


CLERK

cc: Benjamin Thomas Cook, Esquire
Tri-County Adult Day Services, Inc.

STATE OF SOUTH CAROLINA

COURT OF APPEALS

Nishka Burns
Petitioner/Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE.
Respondent.

Appeal from the South Carolina Administrative Law Court

Administrative Law Court Docket No. 26-HA-000439

MOTION TO PROCEED WITHOUT PREPAYMENT OF FILING FEES
AND REQUEST FOR WAIVER OF FEES for Appellate Case No. 2026-001635

Petitioner/Appellant respectfully requests permission to proceed without prepayment of filing fees due to financial hardship and limited financial resources.

Petitioner/Appellant is currently unable to pay the required filing fees due to out of home displacement and additional financial hardship. Petitioner/Appellant is proceeding without legal representation and has made every effort to comply with the requirements of the Court while using the resources available.

Petitioner/Appellant has experienced financial hardship that has limited basic day to day needs and available resources. Despite these circumstances, Petitioner/Appellant has continued to diligently pursue this matter and has attempted to comply with all Court requirements.

Petitioner/Appellant respectfully requests that the Court consider the financial circumstances presented and grant a waiver of the filing fees so that this appeal may proceed.

WHEREFORE, Petitioner/Appellant respectfully requests that the Court grant this Motion to Proceed Without Prepayment of Filing Fees and waive the required filing fees in this matter.

Respectfully submitted,

Nishka Burns
Petitioner/Appellant
Claimant ID 12042490
704-294-1746
256 Dewey Thomas Rd;
Cheraw SC, 29520

STATE OF SOUTH CAROLINA

COURT OF APPEALS

Nishka Burns
Petitioner/Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE,
Respondent.

Appeal from the South Carolina Administrative Law Court

Administrative Law Court Docket No. 26-HA-000439

PETITIONER/APPELLANT'S RESPONSE TO ORDER OF DISMISSAL
AND REQUEST FOR REVIEW for Appellate Case No. 2026-001635

INTRODUCTION

Petitioner/Appellant respectfully submits this Response to the Order of Dismissal entered in this matter and requests review of the dismissal.

This matter concerns the dismissal of Petitioner/Appellant's appeal before the South Carolina Administrative Law Court based upon an alleged procedural deficiency concerning proof of service.

Petitioner/Appellant respectfully asserts that dismissal was improper because Petitioner/Appellant was not provided a meaningful opportunity to correct the alleged deficiency before the dismissal was entered.

Petitioner/Appellant is a self-represented party who has made every effort to comply with the requirements of the Court. Once the issue was identified, Petitioner/Appellant attempted to provide the requested information and correct the deficiency.

Petitioner/Appellant respectfully requests that the dismissal be vacated and that the matter be allowed to proceed.

PROCEDURAL HISTORY

Petitioner/Appellant filed a Petition for Judicial Review with the South Carolina Administrative Law Court.

Petitioner/Appellant mailed the required documents on April 13, 2026. The documents were received and filed by the Administrative Law Court on April 21, 2026.

On May 7, 2026, Petitioner/Appellant received notice that additional information was required. Petitioner/Appellant responded on May 14, 2026, providing the requested information.

At no time before the dismissal issue was raised was Petitioner/Appellant advised that proof of service upon all parties would be required in the manner later asserted by the Court.

A Motion to Dismiss was issued dated June 8, 2026. Due to circumstances involving delayed receipt of mail, Petitioner/Appellant did not receive the notice immediately.

Petitioner/Appellant received the dismissal-related documents and was provided a deadline to respond.

Before the response deadline expired, Petitioner/Appellant prepared a response and provided proof of service documentation.

However, the Administrative Law Court entered dismissal on June 24, 2026, before Petitioner/Appellant's response deadline had expired.

ISSUES PRESENTED

1. Whether dismissal was proper when Petitioner/Appellant was not provided a meaningful opportunity to correct an alleged procedural deficiency concerning proof of service.
 2. Whether dismissal was premature when Petitioner/Appellant's time to respond had not expired.
 3. Whether a self-represented party who acted in good faith and attempted to comply with court requirements should be allowed to proceed.
-

ARGUMENT

I. PETITIONER/APPELLANT WAS NOT PROVIDED A MEANINGFUL OPPORTUNITY TO CURE THE ALLEGED DEFICIENCY

Petitioner/Appellant respectfully asserts that dismissal was improper because the alleged proof of service deficiency was not identified until after the filing process was underway.

Petitioner/Appellant was never advised during the prior proceedings or filings that proof of service upon every party would be required in the specific manner later asserted as a basis for dismissal.

As a self-represented party, Petitioner/Appellant relied upon the information provided by the Court and made a good faith effort to comply with all requirements.

Once the issue was identified, Petitioner/Appellant attempted to correct the alleged deficiency.

Dismissal prevented Petitioner/Appellant from receiving a fair opportunity to correct a procedural issue that could have been cured.

II. THE DISMISSAL WAS PREMATURE

The dismissal was entered before Petitioner/Appellant's response period had expired.

Petitioner/Appellant was entitled to the opportunity to respond to the motion or notice regarding dismissal before the Court ruled.

Petitioner/Appellant prepared a response and provided proof of service documentation before the deadline.

Because dismissal was entered before the response period expired, Petitioner/Appellant was denied a meaningful opportunity to be heard.

III. PETITIONER/APPELLANT ACTED IN GOOD FAITH

Petitioner/Appellant has consistently attempted to comply with the requirements of the Court.

There was no intentional failure to comply with any filing requirement.

The alleged deficiency was a procedural matter, and Petitioner/Appellant promptly attempted to correct it once identified.

The interests of fairness and justice support allowing this matter to proceed rather than dismissing the appeal based upon a curable procedural issue.

EXHIBIT A.1, A.2, A.3

MOTION TO DISMISS / NOTICE REGARDING DISMISSAL

EXHIBIT B

SOUTH CAROLINA ADMINISTRATIVE LAW COURT
ORDER OF DISMISSAL

EXHIBIT C

PETITIONER/APPELLANT'S RESPONSE
AND PROOF OF SERVICE DOCUMENTATION

EXHIBIT D

PHOTO OF ENVELOPES WITH POSTAGE PAID, POSTAL DATE STAMPS, AND/OR CERTIFIED STICKER

REQUEST FOR RELIEF

WHEREFORE, Petitioner/Appellant respectfully requests that the Court:

1. Vacate the Order of Dismissal entered in this matter;
2. Find that Petitioner/Appellant was not provided a meaningful opportunity to correct the alleged procedural deficiency;
3. Find that Petitioner/Appellant acted in good faith and attempted to comply with all requirements;
4. Allow Petitioner/Appellant's appeal to proceed; and
5. Grant any other relief the Court finds just and proper.

Respectfully submitted,

Nishka Burns
Petitioner/Appellant
Claimant ID 12042490
704-294-1746
256 Dewey Thomas Rd.
Cheraw SC, 29520

5

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nishka Burns,

Appellant,

v.

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

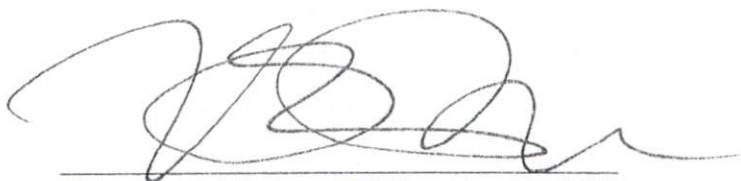
Respondents.

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

Notice of Appearance

Exhibit A.1

NOTICE IS HEREBY GIVEN that Valerie McMellan files this Notice of Appearance as attorney of record for the Respondent South Carolina Department of Employment and Workforce (the Department) in the above-captioned case, and requests copies of all communications, filings, and other relevant matters be served upon the undersigned attorney for the Department at the address provided below.



Valerie McMellan (SC Bar No. 101080)
SC Department of Employment & Workforce
Post Office Box 8597
Columbia, South Carolina 29202
803 737-0395 (P)
803-737-0124 (F)
legal@dew.sc.gov

June 8, 2026

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Exhibit A.2

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.

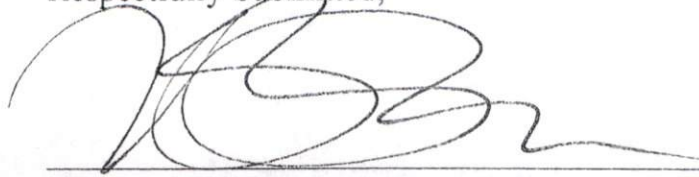
pursuant to Rule 38, SCALCR. *See generally Elam v. Dep't of Trans.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority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

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

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

PROOF OF SERVICE

Exhibit A.3

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,

A handwritten signature in cursive script that reads "Kristi Chesley".

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

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nishka Burns,

Appellant,

v.

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

Respondent.

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

ORDER OF DISMISSAL

Exhibit B

This matter is before the South Carolina Administrative Law Court (Court) pursuant to a Motion to Dismiss for Lack of Appellate Jurisdiction (Motion) filed by the South Carolina Department of Employment and Workforce (Department) on June 8, 2026. The Department argues this Court lacks jurisdiction because Nishka Burns (Appellant) failed to timely file and serve her Notice of Appeal. As of the date of this Order, Appellant has not responded to the Motion.

Upon consideration of the Department's Motion, the Department's Motion is granted.

BACKGROUND

This matter arose pursuant to an appeal filed by the Appellant challenging the decision of the Department's Appellate Panel (Panel). The Panel determined Appellant was disqualified from receiving 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 from TRI-County Adult Day Services, Inc. (Employer). 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. The Panel mailed its decision on April 7, 2026.

On April 13, 2026, Appellant filed a Notice of Appeal with this Court. However, the Notice did not contain the proof of service required by Rule 33, SCALCR. As a result, on April 21, 2026, the Administrative Law Court Clerk's Office notified Appellant that her Notice of Appeal was deficient and that her attempted filing would be returned unprocessed unless she provided the

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06/24/2026

SC Admin. Law Court

required proof of service within ten (10) days. Appellant did not respond to the memorandum within the ten (10) day period. On May 7, 2026, the Clerk's Office issued a notice to Appellant that her case was being returned unprocessed. Then on May 15, 2026, Appellant filed the Notice of Appeal with the required proof of service; however, the Department asserts it was not served with the May 15 notice of appeal. The case was assigned on May 19, 2026.

DISCUSSION

Pursuant to section 41-35-750 of the South Carolina Code (2021), a party may initiate a review in the Administrative Law Court of a decision of the Department by filing an appeal **within thirty days from the date of mailing** of the Department's decision. Review by the Administrative Law Court of a final decision by the Department is heard as prescribed in section 1-23-380 of the South Carolina Code (Supp. 2025). S.C. Code Ann. § 1-23-600(D) (Supp. 2025). That section states that "[p]roceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules **within thirty days** after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered." (emphasis added). Furthermore, "[a]ll requests for a hearing before the Administrative Law Court must be filed in accordance with the court's rules of procedure. S.C. Code Ann. § 1-23-600(B) (Supp. 2025). Of relevance to this matter, Rule 33 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) states that the notice of appeal of the Department's final decision "must be filed and served **within thirty (30) days of the date of mailing** of the decision of the [Department's Appellate Panel]" and **must contain "proof of service of the notice of appeal on all parties."** Most importantly, the timely filing and service of notice of appeal is a jurisdictional requirement. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14–15, 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.").

In this case, the Department decision was mailed to Appellant on April 7, 2026. Therefore, Appellant had thirty days from April 7, 2026, the date of mailing, to file and serve notice of appeal. *See* S.C. Code. Ann. §§ 1-23-380(1) & 41-35-750; Rule 33, SCALCR. Although Appellant attempted to file this appeal on April 13, 2026, a complete notice of appeal with proof of service

was not filed with the Court until May 15, 2026, thirty-six (36) days after April 7, 2026.¹ Furthermore, while the May 15, 2026 Notice of Appeal included proof service, the Department contends that it was not served and Appellant has provided no argument to show otherwise. See Rule 34(A), SCALCR “Failure of a party to timely file a response [to a motion] may be deemed a consent by that party to the relief sought in the motion.”).

As a result of Appellant’s failure to timely file and serve her Notice of Appeal, this Court lacks jurisdiction over this appeal. See *Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775 (“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.”); *Mears v. Mears*, 287 S.C. 168, 337 S.E. 2d 206 (1985) (applying appellate court rules and finding lack of jurisdiction for failure to serve a notice of intent to appeal in a timely manner). Additionally, it is well-established that an appellate body may not extend the time to appeal. *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 714 S.E.2d 547 (2011); see also *Burnette v. S.C. State Highway Dep’t*, 252 S.C. 568, 167 S.E. 2d 571 (1969) (holding a court does not have the authority to extend the time for filing an appeal, or for serving notice of appeal, from a decision of an administrative agency).

IT IS THEREFORE ORDERED that the Department’s Motion to Dismiss is **GRANTED** and that this appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



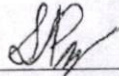
Ralph King Anderson, III
Chief Administrative Law Judge

June 24, 2026
Columbia, South Carolina

¹ Importantly, the Clerk’s memorandum to Appellant dated April 21, 2026, was clear that it did not toll the time for Appellant to file a complete notice of appeal.

CERTIFICATE OF SERVICE

I, Stephanie Armada, hereby certify that I have 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).



Stephanie Armada
Judicial Law Clerk

June 24, 2026
Columbia, South Carolina

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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

Exhibit C

NISHKA BURNS,
Appellant,

v.

South Carolina Department of Employment and Workforce,
and Tri-County Adult Day Services Inc.,
Respondents.

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

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.

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.

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

Appellant, Pro Se

256 Dewey Thomas Rd

Cheraw, SC 29520

704-294-1746

nishka_burns@hotmail.com

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

Exhibit D

Ka M. Burns
Dewey Thines Rd
SC 29520

TO:

S.C. Administrative Law Court
Attent: Office of Judge Ralph Kind Anderson
Edgar A. Brown Building
1205 Pendleton St. Suite 224
Columbia SC



9589 0710 5270 2584 0264 80

Retail



RDC 99



29201

U.S. POSTAGE PAID
FCM LG ENV
FLORENCE, SC 29501
JUN 23, 2026

\$7.74

S2324Y500707-26



To: Tri-Castle Adult Day Services Inc
Attn: Cam Scott
1169 Calvary Rd
Colum SC 29520



To: SC Dew (Attn: Kristi Chesley)
& Valerie McWellan)
Po Box 8597
Columbia SC 29202

STATE OF SOUTH CAROLINA

COURT OF APPEALS

Nishka Burns
Petitioner/Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE,
Respondent.

Appeal from the South Carolina Administrative Law Court

Administrative Law Court Docket No. 26-HA-000439

PROOF OF SERVICE

I certify that I have served a copy of the following document:

Petitioner/Appellant's Response to Order of Dismissal and Request for Review Appellate Case No. 2026-001635

upon the following parties by placing a true and correct copy of the document in the United States Mail, postage prepaid, addressed as follows:

I hereby certify that on this 6th day of August, 2026, I served a true and correct copy of the foregoing Petitioner/Appellant's Response to Order of Dismissal and Request for Review upon the following parties by placing a copy in the United States Mail, postage prepaid:

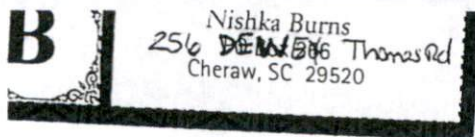
South Carolina Admin Law. Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

South Carolina Department of
Employment and Workforce
Po Box 8597
Columbia SC, 29202

Tri-County
169 Calvary Road
Cheraw, SC 29520

Nishka Burns
Petitioner/Appellant

Date: 08/06/2026



RETAIL



29201

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FCM LETTER
FLORENCE, SC 29505
AUG 06, 2026

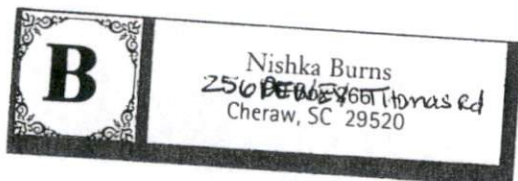
\$0.58

S2322T500980-05



FOREVER

SC Admin Law Court.
Edgar A. Braun Building
1205 Pendleton St, Suite 224
Columbia SC 29201-3755



Retail



29202

RDC 99

U.S. POSTAGE PAID
FCM LETTER
FLORENCE, SC 29505
AUG 06, 2026

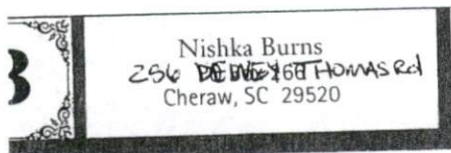
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SC Dew
Po Box 8597
Columbia SC 29202



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FLORENCE, SC 29505
AUG 06, 2026

\$0.58

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FOREVER

Tri County Adult Day Service
169 Calvary Rd
Columbia SC 29202



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 14, 2026

Nishka Burns
256 Dewey Thomas Road
Cheraw SC 29520

Re: Nishka Burns v. SCDEW
Appellate Case No. 2026-001635

Dear Ms. Burns:

Upon reviewing your motion to proceed without prepayment of filing fee and request for waiver of fees, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your filing will not be considered:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

Jasmine D. Smith, Deputy

CLERK

cc: Benjamin Thomas Cook, Esquire
Tri-County Adult Day Services, Inc.

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
AUG 24 2026
SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
Administrative Law Court Docket No. 26-HA-000439

Appellate Case No. 2026-001635

Nishka Burns,

Petitioner/Appellant,

v.

SOUTH CAROLINA DEW;
and TRI-COUNTY ADULT DAY SERVICES,

Respondents

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the South Carolina Department of *Employment and Workforce (SCDEW)* at the address of Office of General Counsel S.C. Department of Employment and Workforce, Post Office Box 8597, Columbia, SC 29202. *Tri-County Adult Day Services, Inc.*, at the address of 169 Calvery Rd. Cheraw, SC 29520. As well as the *South Carolina Administrative Law Court* at the address of Edgar A. Brown Building 1205 Pendleton St., Ste. 224, Columbia, SC 29201, by depositing a copy of it in the United States Mail, postage prepaid, on **July 17, 2026**. A copy of it was sent to the *South Carolina Court of Appeals* through the United States Mail by express mail with tracking/signature confirmation to the address of South Carolina Court of Appeals, Clerk's Office, P.O. Box 11629, Columbia, SC 29211. All were addressed as follows:

July 17, 2026

s/ Nishka Burns

Nishka Burns

256 Dewey Thomas Rd;

Cheraw SC, 29520

704-294-1746

Petitioner/Appellant, Pro Se

Nishka Burns
256 Dewey Thomas Rd
Cheraw SC 29520

RECEIVED
AUG 24 2026
SC Court of Appeals

South Carolina Court of Appeals
Clerk's Office
P.O. Box 11629
Columbia, SC 29211

Cheraw, SC 29520

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
RETURN ADDRESS TOLD BY POSTED LINE

CERTIFIED MAIL



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Retail



29211

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OCT 20, 2026

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South Carolina Court of Appeals
Clerk's Office
PO Box 11629
Columbia SC 29211

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OCT 23 2026

SC Court of Appeals