

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Hon. Shirley C. Robinson, Administrative Law Judge
Trial Court Case No. 2012ALJ080173AP

Appellate Case No. 2014-000418

Albert C. Myers,

Appellant,

v.

South Carolina Department of Health
and Human Services,

Respondent.

RECEIVED
JUN 09 2014
SC Court of Appeals

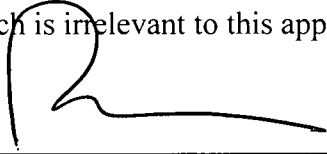
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal:

See attached list.

I certify that his designation of matter contains no matter which is irrelevant to this appeal.

June 4, 2014


Patricia Logan Harrison
611 Holly Street
Columbia, SC 29205
803-256-2017
plh.cola@att.net

1. Myers' briefs filed in Administrative Law Court after remand, on 2d appeal to ALC
2. Respondent's brief in Administrative Law Court after remand, on 2d appeal to ALC
3. Documents from the Record, including:

Vol. I

4.	French letter	1
5.	Order of Schindler, 11-MISC-302	3
6.	Transcript	14
	Opening	17
	R's Witnesses	
	Janet Brock Priest, direct	19
	Janet Brock Priest, cross	30
	Juanita Auker, direct	64
	Juanita Auker, cross	74
	Juanita Auker, redirect	91
	Juanita Auker, recross	92
	Kara Lewis, direct	94
	Kara Lewis, cross	95
	Myers' Witnesses	
	Sandra Ray, Direct	115
	Sandra Ray, cross	129
	Lennie Mullis, direct	131
	Lennie Mullis, cross	146
	Lennie Mullis, redirect	148

	Lisa Jones, direct	149
	Lisa Jones, cross	155
	Lisa Jones, redirect	158
	Carolyn Myers, direct	160
	Carolyn Myers, cross	183
	Closing Arguments	190
7.	Hearing Officer’s Exhibit 1, Order in Consolidated Case - Al is 10-ALJ-08-0504 Consolidated Case is 10-ALJ-08-0501, Nov. 9, 2011	201
8.	Cover letter of Vastine Crouch dated May 6, 2010	217
9.	Order dismissing Myers case No. 10-MISC-040- (MR/RD)	219
10.	Letter from Goode confirming receipt of Al’s and DHHS response to Interlocutory Order Dated March 30, 2010	226
11.	Hepfer letter transmitting DHHS brief dated March 30, 2010	227
12.	DHHS “Return to Reply to Interlocutory Order” of DHHS dated March 30, 2010 ...	228
13.	Supreme Court denial in Karen W. v. Sanford.	236
14.	Email of hearing officer to Kara Lewis requesting comments dated March 16, 2010 ..	238
15.	Letter from P. Harrison advising hearing officer PLH represents Al	239
16.	Appellant’s Reply to Interlocutory Order dated March 15, 2010	240
17.	Letter to hearing officer requesting hearing in Kershaw County dated March 15, 2010	249
18.	Interlocutory Order dated February 25, 2010	255
19.	Jabob Chorey ex parte memo to Crouch dated Feb. 24, 2010	257
20.	Jacob Chorey ex parte memo to Crouch dated Feb. 18, 2010	260
21.	Feb. 11, 2010 notice of appeal of Carolyn Myers sent to Crouch	260
22.	January 13, 2010 letter of Buscemi denying appeal	261

23.	Respondent’s Ex 1., Letter from Hepfer dated Dec. 14, 2011 to French	278
	Re Hickey and plan to “go forward with Myer’s reductions”	
24.	Order in Consolidated Case	279
25.	Hickey v. DHHS, ALC order dated July 19, 2011	295
26.	R. Ex. 2, Prehearing Brief to Schindler dated Dec. 29, 2011 w/ cover	307
27.	R. Ex. 5, MR/RD Waiver Jan. 1, 2010	359

Vol. III begins at 415

28.	R. Ex. 6, Personal Care Services - Manual	554
29.	R. Ex. 7, Medicaid Scope of Services for PCA, Attendant and HASCI Respite	561
30.	R. Ex. 8, Respite Care - Manual	577
31.	P. Ex. 1, PLH letter to French and Hepfer dated Dec. 9, 2011	600
32.	Order on Appellant’s Motion to Alter or Amend dated Dec. 7, 2011	602
	“These issues relate to defective notice and ex parte communications”	

Vol. IV.

33.	P. Ex. 2, PASSAR - 1396r	604
34.	DHHS Provider Manual Re Nursing Facility Services	641
35.	Doe v. DHHS, Dec. 28, 2011	655
36.	DLB v. DHHS, August 15, 2011	673
37.	Consolidated Case Order on Rule 59 dated Dec. 11, 2011	677
38.	NHELP re Crabtree v. Goetz	685
39.	Meter v. Harvey, D.C. Maine, Jan. 31, 2011	786
40.	Other States re PASARR	

Vol. V

41.	Cont. Other States re PASARR	827
-----	--	-----

42.	23 States Reduced Inflation-Adjusted I/DD Spending During 2008-2009	844
43.	P. Ex. 3, SC Definition of Specialized Services	843
44.	Myers' PASARR	848
45.	Notices of termination of services for Respite, PT, 101 hrs respite	852
46.	Chorey memo dated Feb. 18, 2010	857
47.	Service Coordinator Notes	858
48.	P. Ex. 4, Dr. Munn statement	877
49.	P Ex. 5, PT Statement	878
50.	P. Ex. 6, Affidavit of Dr. Munn	880
51.	P. Ex. 7 - medical records of Dr. Munn	884
52.	P. Ex. 8, Dec. 1, 2009 "Notice" to families	892
53.	P. Ex. 9, Peter B. v. Sanford, Nov. 24, 2010, R&R	893
54.	"Other Materials and Documents" Olmstead v L.C., 527 U.S. 581 (1999)	917
55.	ADA Anti-Retaliation	949
56.	Barker v. Riverside	950
57.	1396(a)	958
58.	CMS letter to Forkner dated November 9, 2009 re cost of waiver	1007
	6300 persons, average \$51,869, total \$278,661,600	
59.	Email from Schindler, Fule 59 motion was timely and case is stayed	1008
60.	Email from French re time for transcript	1009
61.	Notice of Hearing, Nov. 29, 2011	1010
62.	Emails to/from French re hearing	1013
63.	Email from Schindler re scheduling hearing	1022

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Barker v. Riverside County Office of Education</i> , 584 F.3d 821, 823, 825 (9 th Cir. 2009)	37, 43, 44
<i>Beal v. Doe</i> , 432 U.S. 438 (1977)	22, 23
<i>Crabtree v. Goetz</i> , 2008 WL 5330506, at *25 (M.D. Tenn. Dec. 19, 2008)	16
<i>Doe v. Kidd I</i> , 501 F.3d 348, 351. (4 th Cir. 2007)	14, 32
<i>Doe v. Kidd II</i> , 419 F. App'x 411 (4 th Cir. 2011)	31, 32
<i>Goldberg v. Kelly</i> , 397 U.S. 254 (1970)	11
<i>Kimble v. Solomon</i> , 599 F.2d 599 (4 th cir. 1979)	12
<i>Moore v. Cook</i> , Case No. 1:07-CV-631-TWT,2012 WL 1380220, at *10 (N.D. Ga. June 19, 2012)	16, 46
<i>Moore v. Cook</i> , Case No. 1:07-CV-631 (N.D. Ga. April 19, 2012)	33
<i>Moore v. Reese</i> , 637 F.3d 1220 (11 th Cir. 2011)	24
<i>Olmstead v. L.C.</i> , 527 U.S. 581, 561 (1999).	21
<i>Pashby v. Delia</i> , 709 F.3d 307 (4 th Cir. 2013)	16
<i>Peter B., v. Buscemi</i> , Case No. 6:10-767-TMC (D.C.S.C. March 7, 2013)	7
<i>Peter B. v. Sanford</i> , Case No. 6:10-cv-00767 (D.C.S.C. March 7, 2011)	16
<i>Pinneke v. Preisser</i> , 623 F.2d 546 (8 th Cir. 1980)	22, 23
<i>Pridgen v. Ward</i> , 705 S.E.2d 58 (S.C. Ct. App. 2010)	45
<i>Royal v. Cook</i> , Case No. 1:08-cv-2930-TWT (N.D. Ga. June 19, 2012)	16
<i>Rush v. Parham</i> , 440 F.Supp. 338, 389-90 (N.D.Ga. 1977)	26
<i>Voss v. Rolland</i> , 592 F.3d 242, 247 (1 st Cir.2010)	38, 45
<i>Weaver v. Reagan</i> , 886 F.2d 194 (8 th Cir. 1989)	23

Weber v. Cranston, 212 F.3d 41, 48, 49 (1st Cir. 2000) 33, 37, 44

Women v. Edwards, 63 F.3d 418, 425 (5th Cir. 1995) 23, 24

STATE CASES

Antley v. New York Life Ins. Co., 139 S.C. 23, 30, 137 S.E. 199, 201 (1927) 3

B.W. v. DHHS 8, 13

Clark v. Cantrell, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000) 3

Croft v. Old Republic Ins. Co., 365 S.C. 402, 408, 618, S.E.2d 909, 912 (2005) . 3

D.L.B. v. DHHS, Appeals Case #11-MISC-156 (MR/RD Waiver), August 15, 2011
..... 12, 15

Doe v. DHHS, 98 S.C. 62 fn 7, 727 S.E.2d 605 (S.C. 2011) 14

Friends of Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360,366,692 S.E.2d 910,
913 (2010) 2

Hickey v. DHHS, Dkt. No. 10-ALJ08-0656-AP, (SCALC July 19, 2011) ... 18, 37

Hopper v. Terry Hunt Constr., 373 S.C. 475, 479, 646 S.E.2d 162,165
(Ct.App.2007) 2

Ingram v. Kasey's Assocs., 340 S.C. 98, 105, 531 S.E.2d 287, 290-91 (2000) ... 2

I'on, L.L.C. v. town of Mt. Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 719
(2000) 2

Jane Doe v. DHHS, 398 S.C. 62,71, 727 S.E.2d 605,609 (S.C. 2011) 1, 19

K.E. v. DHHS, Case No. 10-ALJ-03-0353-AP (S.C.2010) 37

<i>Mullis v. DHHS I</i> (S.C.A.L.C. 2005)	35
<i>Mullis v. DHHS II, 10-ALJ-08-0775</i> (S.C.A.L.C. April 23, 2012)	35
<i>Osprey, Inc. V. Cabana Ltd. Partnership</i> , 340 S.C. 367, 372, 532 S.E.2d 269, 272 (2000)	3
<i>Pressley v. REA Constr. Co.</i> , 374 S.C. 283, 287-88, 648 S.E.2d 301, 303 (Ct.App.2007)	2
<i>S.C. Dep't of Motor Vehicles v. Blackwell</i> , 389 S.C. 293, 295, 698 S.E.2d 770, 771 (2010)	2
<i>Shaw v. Coleman</i> , 373 S.C. 485, 492, 645 S.E.2d 252, 256 (Ct. App. 2007)	2
<i>Sloan v. South Carolina Board of Physical Therapy Examiners</i> , 370 S.C. 452, 636 S.E.2d 598 (S.C. 2006)	3
<i>Townes Assocs v. City of Greenville</i> , 266 S.C. 81, 85, 221 S.E.2d 773, 776 (1976)	2
<i>T.R. v. SC Department of Corrections</i> , 2005 C.P. 400 2925 (Richland County Court of Common Pleas January 8, 2014	46

FEDERAL STATUES AND REGULATIONS

Americans with Disabilities Act	1, 6, 33, 36, 44
Civil Rights Act of 1964	1, 33, 36, 37, 43, 44
Constitution of the United States	11
Medicaid Act	6, 22, 23, 24, 26, 31, 32, 38
Nursing Home Reform Act	38

Pre-admission Screening and Resident Review (PASSR) regulations, Medicaid Act	9, 38, 39, 40, 45, 46
Rehabilitation Act, Section 504	1, 36, 37, 43, 44
34 C.F. R.§ 104.61	43, 44
34 C.F. R.§ 100.7(e)	43, 44
37 C.F. R.§ 100.7(e)	37
37 C.F. R.§ 104.61	37
42 C.F. R. 431.120(a)	38
42 C.F. R. 431.200 et seq	24
42 C.F. R. 431.201	6, 12
42 C.F. R. 431.205(d)	
42 C.F. R. 431.206 (c)(2), (c) (3), (c)(4)	11
42 C.F. R. 431.210	6, 9, 11, 13, 14, 15
42 C.F. R. 431.210(b)	1, 10
42 C.F. R. 431.240(b)	26, 46
42 C.F. R. 431.244(a)	14
42 C.F. R. 435.1010	41
42 C.F. R. 440.169	29
42 C.F. R. 440.169(d)(3)	30
42 C.F.R. 440.180(b)	7
42 C.F.R. 440.230(d)	24
42 C.F.R. 441.18(a)(2)	25
42 C.F.R. 441.18(a)(6)	25, 32

42 C.F.R. 483.106	38
42 C.F.R. 483.106(d)(2)	39
42 C.F.R. 483.120	40
42 C.F.R. 483.120(a)(2)	41
42 C.F.R. 483.128(a)	39
42 C.F.R. 483.128(c) and (d)	40
42 C.F.R. 483.128(I)	40
42 C.F.R. 483.128(i)(2),(4),(5) and (6)	40
42 C.F.R. 483.440(a)(1)	41
42 C.F.R. 483.440(1)(a) and (c)	41
44 FR 17932, Mar, 29, 1979	12
57 FR 56505, Nov. 30, 1992	12
29 U.S.C. § 794a(2)	37, 43
42 U.S.C. § 1396a(a)(8)	32
42 U.S.C. § 1396a(a)(10)	45
42 U.S.C. § 1396a(a)(17)	23
42 U.S.C. § 1396r(e)(7)(D)(ii)	38
42 U.S.C. § 1396r(e)(7)(G)(ii)	38
42 U.S.C. § 1396ra(3)(F)	38
42 U.S.C. § 12132	36
42 U.S.C. § 12203	36

STATE STATUES AND REGULATIONS

Constitution of the State of South Carolina 3, 11

South Carolina Administrative Procedures Act 1

§ 1-23-10(4) (2005) 14, 18

§ 1-23-380(5) (Supp.2010) 1

§ 1-23-610(B) (Supp. 2008) 2

§ 14-8-200 (Supp. 2005) 3

§§ 14-3-320 and 330 (1976 & Supp. 2005) 3

§ 40-47-40, 1976 Code of Laws 22

§ 44-6-90 18

OTHER

Jean Hoefler Toal, et al, *Appellate Practice in South Carolina* at 193 (1999) 2