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JAN 16 2015

STATE OF SOUTH CAROLINA

In the Supreme Court

**S.C. Supreme Court**

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

Case No. 2014-002513

Richard Stogsdill,

Appellant,

v.

South Carolina Department of Health and  
Human Services,

Respondent

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RETURN TO MOTION TO SUPPLEMENT RECORD ON APPEAL AND/OR TO TAKE  
JUDICIAL NOTICE OF ADJUDICATIVE FACTS

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South Carolina Department of Health  
and Human Services  
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P.O. Box 8206  
Columbia, South Carolina 29202-8206  
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Bar #3076  
Attorney for the Respondent

RETURN TO MOTION TO SUPPLEMENT RECORD ON APPEAL AND/OR TO  
TAKE JUDICIAL NOTICE OF ADJUDICATIVE FACTS

**Background**

The Petitioner in this matter, is an individual, receiving services under the South Carolina Intellectual Disabilities/Related Disabilities (ID/RD) waiver, as further explained in the Petition, Return, and Reply. Under Rules 212(b) and 240(c)(3) of the SCACR and Rule 201 of the South Carolina Rules of Evidence, the Petitioner seeks to supplement the record with: 1) two (2) South Carolina federal district court Orders; 2) two (2) pleadings in a South Carolina Administrative Law Court case; and 3) two (2) press releases issued by the South Carolina Comptroller General.

**Arguments**

For the reasons set forth below, we oppose the Motion and, under Rule 212(b) SCACR, in the event that any part of the Motion is granted, designate, below, designate corresponding supplemental materials which should be added.

- 1) The two (2) unpublished Orders in the federal cases involved the same parties and many of the same issues that were raised in this case. The Orders dismiss the case on abstention grounds because the salient issues had already been decided by the state courts. It appears that these Orders were proffered to demonstrate the “public importance of this case.” (Motion, p. 2)

Although the Court is not constrained by the enumerated factors in Rule 242(b), those factors deal more with novel issues, and errors and conflict of law than with public importance. The fact that a federal judge has deferred to the state courts' decision on issues does not make those issues only for resolution by the State Supreme Court.

Insofar as the cases are proffered to show defects in the administration of the South Carolina Medicaid Program, resulting in hardship to waiver Participants, those issues were before the Court of Appeals.

In the event that the Motion is granted with respect to the federal Orders, we respectfully request to be able to supplement the record with the Petitioner's current Service Plan and an affidavit from a knowledgeable Department of Disabilities and Special Needs (DDSN) staff showing how the Petitioner's services have been provided according to his needs during the pendency of the appeal.

- 2) The two (2) pleadings in the ALC case involve some of the same issues. It appears that the pleadings were proffered to show that waiver Participants cannot get immediate relief when they want services that the DDSN staff does not believe is justified or is in excess of the limits set forth in the waiver document. Immediate relief is thought denied because of a slow appeals process. Again,

such a compliant does not present a novel question, error or conflict of law.

In the event the Motion is granted with respect to the ALC pleadings, the Respondent respectfully requests that the Hearing Officer's Decision, the Notice of Appeals, the Petition for Remedial Writ, and any eventual Order on the Petition for Remedial Writ also be supplemented to the Record.

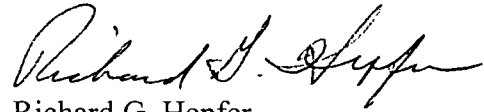
- 3) The two (2) Comptroller General press releases deal with State revenue and appropriations for the 2009/10 and the 2013/14 state fiscal years. The documents appear to be proffered in order to show some fiscal ineptitude or misfeasance within the departments in representing "budget reductions" as the basis of the limits imposed in the 2010 waiver renewal. Again, this does not seem to present a novel question, error or conflict of law. Also, we would point out the 2010 press report manifestly says that during that state fiscal year there was "\$438.7 million in across-the-board cuts to agency budgets."

In the event that this portion of the motion is granted, the Respondent respectfully requests that the 2008/09 and 2009/10 appropriations and the 2009-2010 Department of Disabilities and Special Needs Accountability Report be made a part of the Record.

For the reasons specified above, the Motion should be denied, generally, and if in any part granted, the supplementary material proposed by the Respondent should

also be included.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard G. Hepfer". The signature is fluid and cursive, with a large initial "R" and "H".

Richard G. Hepfer  
Department of Health and  
Humans Services  
P. O. Box 8206  
Columbia, SC 29202-8206  
(803) 898-2791  
Attorney for the Respondent

Columbia, SC  
January 16, 2015

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CERTIFICATE OF SERVICE

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I hereby certify that I am employed by the Respondent in the above-captioned matter and that on the 16th day of January, 2015, in Columbia, South Carolina, I served a copy of the forgoing Return to Motion to Supplement Record on Appeal and/or to Take Judicial Notice of Adjudicative Facts on the following persons by depositing the same in the United States Mail, postage paid, and addressed as follows:

Patricia L. Harrison  
611 Holly Street  
Columbia, SC 29205

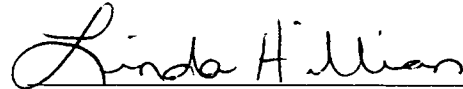
Sarah Garland St. Onge  
Protection and Advocacy for  
People with Disabilities  
3710 Lnadmark Drive, Suite 208  
Columbia, SC 29204

Anna Maria Darwin  
Protection and Advocacy for  
People with Disabilities  
545 N. Pleasantburg Drive, Suite 106  
Greenville, SC 29607

Philip J. Corson  
South Carolina Chapter of the National  
Academy of Elder Law Attorneys  
100 Stone Village Dr., Ste. 208  
Fort Mill, SC 29708

Kirby Mitchell  
South Carolina Legal Services  
701 South Main Street  
Greenville, SC 29601

Stephen Suggs  
South Carolina Appleseed Legal  
Justice Center  
PO Box 7187  
Columbia, SC 29202

A handwritten signature in cursive script that reads "Linda Hillian". The signature is written in black ink and is positioned above a horizontal line.

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Linda Hillian, Paralegal  
Office of General Counsel  
Department of Health and Human Services  
Post Office Box 8206  
Columbia, SC 29202-8206  
Voice: (803) 898-2794  
Fax (803) 255-8210

January 16, 2015

Daniel E. Shearouse, Clerk  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

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JAN 16 2015

S.C. Supreme Court

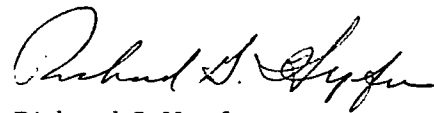
Re: Richard Stogsdill v. SCDHHS  
Case No. 2014-002513

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the Respondent's Return to Motion to Supplement Record on Appeal and/or to Take Judicial Notice of Adjudicative Facts and Certificate of Service on the Parties. I have also enclosed a copy to be date-stamped and returned to the Department.

If there are questions or anything else is required, my direct is (803) 898-2791.

Sincerely,



Richard G. Hepfer  
Deputy General Counsel

Enclosure

cc: Patricia L. Harrison  
Anna Maria Darwin  
Sarah Garland St. Onge  
Philip J. Corson  
Kirby Mitchell  
Stephen Suggs

