THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

RECEIVED
AUG 19 2015
SC Court of Appeals

Appellate Case No.: 2015-001561

Jeffrey D. Allen, on behalf of Jane Doe.....Appellant,

v.

South Carolina Budget and Control Board,
Employee Insurance Program.....Respondent.

APPELLANT'S INITIAL BRIEF

August 17, 2015

John A. Massalon, Esquire
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATE STATUTES

STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Court ("ALC") err in concluding that the agency's position was substantially justified, resulting in denial of Appellant's motion for attorneys' fees?

2. If the answer to Issue No. 1 is "yes," the court should award reasonable fees and costs in the amount of $61,802.97.

STATEMENT OF THE CASE

Appellant originally appealed the State Health Plan's denial of a claim for diabetes education to the Administrative Law Court and sought class relief. The Administrative Law Court upheld the agency's position that the diabetes education insurance mandate enacted by the General Assembly in 2000, S.C. Code Ann. 38-71-46 (Supp. 2009) did not apply to the State Health Plan. The question was one a statutory interpretation. Appellant appealed the ALC denial, and the Supreme Court agreed to certify the appeal for review. On March 4, 2015, the South Carolina Supreme Court reversed the finding the ALC and held that the South Carolina diabetes mandate statute did in fact apply to the State Health Plan as a matter of law. Thereafter, Appellant filed a timely Motion for Attorneys' Fees before the ALC pursuant to the state action attorneys' fee authorization statute, S.C. Code 15-77-300. On June 17, 2015, the ALC denied the Motion for Attorneys' Fees. This appeal follows.[1]

[1] Appellant has traversed a procedural labyrinth in this matter that is worth noting. Appellant first sought explanation of the denial of the insurance claim from Blue Cross Blue Shield, the State Health Plan's third party claims administrator, and inquired why the diabetes mandate statute at issue did not provide coverage on or about February 25, 2009. Appellant received no response. Therefore, on November 25, 2009 (which was just prior to the two year mark from the Appellant's child's diagnosis of diabetes), Appellant filed a putative class action complaint in the court of common pleas seeking declaratory judgment, reformation of the State Health Plan, disgorgement, injunctive relief, and attorneys' fees against Blue Cross Blue Shield and the State Health Plan. The Defendants in the state court case moved to dismiss on failure to exhaust administrative remedies, and said motion was denied on March 4, 2010.

STANDARD OF REVIEW

The decision to award or deny attorney's fees under the state action statute is subject to the abuse of discretion standard of review in considering the applicable factors set forth in the statute. Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008) (citing McMillan v. S.C. Dept. of Agric., 364 S.C. 60, 76, 611 S.E.2d 323, 331 (Ct. App. 2005)). An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001). In this case, the decision to deny the motion hinges the ALC's interpretation of "substantial justification" as contained in the state action statute. The interpretation of a statute is a question of law, which this Court reviews *de novo*. Catawba Indian Tribe v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

Three weeks later, Blue Cross Blue Shield denied the claim and sent it to the Blue Cross Appeals Review Committee. The Blue Cross Blue Shield Appeals Committee on April 2, 2010 denied the claim and stated, without explanation, that the diabetes mandate statute does not apply to the State Health Plan. Appellant then appealed that "administrative decision" by sending a copy of his pleadings in the state court case attached to the notice of appeal and incorporating said pleadings therein. On May 6, 2010, Appellant served written discovery on the defendants in the state court case. In response, the defendants filed a Motion for Protective Order and a Motion for Summary Judgment. Appellant filed a Motion to Compel and Motion to Stay the Motion for Summary Judgment, and a hearing was scheduled for August 26, 2010. On August 24, 2010, the State Health Plan Committee wrote that it was denying the claim and again stated the statute does not apply. The state court hearing was held on August 26, wherein the defendants again argued the case should be dismissed because Appellant was required to exhaust administrative remedies. The circuit court granted the defendants motion for summary judgment and dismissed the case "with prejudice" for failure to exhaust administrative remedies, not mentioning the class action and other non-insurance claim remedies sought. The circuit court made no ruling on the merits of the applicability of the diabetes mandate to the State Health Plan. Appellant filed an appeal to the SC Court of Appeals from the circuit court dismissal on January 7, 2011, at which time the appeal to the ALC on the merits of the statute's applicability remained pending. The SC Court of Appeals affirmed the dismissal with prejudice based on failure to exhaust on July 18, 2012. It was not until August 13, 2012 that the ALC ruled on the appeal from the "administrative appeal" and erroneously upheld the agency's decision. No court – not circuit court, the Court of Appeals, the ALC, nor the Supreme Court permitted any kind of class-wide relief, despite efforts to raise those claims in both the judicial and administrative branches at every turn.

FACTUAL BACKGROUND

The facts leading up to this controversy are fully set forth in the Court's opinion of Allen v. Public Employee Benefit Association of South Carolina, 2015 LEXIS 107 (S.C. 2015). In 2009, Appellant sought an explanation from the State Health Plan of the denial of a claim made for his minor child for diabetes education related to a physician-ordered insulin pump training session which took place in 2008. When no substantive response was forthcoming, Allen submitted a demand as to why the diabetes education insurance mandate, S.C. Code Ann. § 38-71-46, requiring "*every* health maintenance organization, individual and group health insurance policy, or contract issues or renewed in this State" did not require payment of the subject claim and all similar claims. (Allen v. S.C. PEBA, S.C. Supreme Court App. Case No. 2012-213186, Record on Appeal Vol. III, R.p. 525-30). Eventually on August 24, 2010, the agency opined for the first time:

> Lastly, the Committee noted the repeated assertions regarding S.C. Code 38-71-46 and Claimant's attorney's assertion that no one has explained why it does not apply to the State Health Plan. While the Committee noted the alternative methods for obtaining diabetes education noted above, the Committee also observed the Department of Insurance and the General Assembly *historically have acknowledged* the Department [of Insurance] has no jurisdiction over EIP. EIP is not a health insurance issuer under the Code. In the areas on which the General Assembly has wanted to include EIP in the Accident and Health Insurance provisions of Title 38, Chapter 31, it has specifically said so. Therefore, because 38-71-46 does not refer to EIP or the State Health Plan, it does not apply to the State Health Plan.

(Allen v. S.C. PEBA, S.C. Supreme Court App. Case No. 2012-213186, Record on Appeal Vol. I, R.p. 212-13). That explanation contained a single footnote which referenced S.C. Code Ann. §1-11-780 -- a statute addressing mental health coverage – presumably as the legal justification for the proposition that the South Carolina Department of Insurance has no jurisdiction over the State Health Plan– an insurance

program which admittedly insures over 400,000 South Carolinians. The only support for this underlying legal conclusion appeared on the Medical Affairs Review Coordinator's Response in long-hand dated March 15, 2010 and signed by Ashby M. Jordan, MD, V.P. Medical Affairs wherein she writes "the statute referenced in the appeal document does not apply to the State Health Plan." (Allen v. S.C. PEBA, S.C. Supreme Court App. Case No. 2012-213186, Record on Appeal Vol. II, R.p. 395).

Allen appealed that determination to the ALC. Without hearing or trial, the ALC affirmed the State Health Plan's decision on nearly identical statutory interpretation reasoning as that set forth by the agency. (ALC Order dated August 13, 2012). Allen appealed the ALC decision, and sought transfer to the Supreme Court. The Supreme Court agreed to hear the appeal, and reversed the ALC holding that the diabetes mandate statute applied to the State Health Plan. Thereafter, Appellant filed a motion for attorneys' fees before the ALC. The motion was denied by Order dated June 17, 2015.

In this appeal, Appellant relies on the findings of the Supreme Court that the statute was unambiguous and that the plain language of the statute subjected the State Health Plan to the insurance mandate. The Supreme Court rejected the statutory interpretation advocated by the State Health Plan, and rejected the State Health Plan's efforts to use legislation enacted subsequent to the enactment of the diabetes mandate to inform legislative intent. In denying the Motion for Attorneys' Fees, the ALC concludes that the statute was ambiguous (a finding contrary to the Supreme Court's prior determination) and recounts the previously relied upon arguments of the underlying order affirming the State Health Plan's position that the statute did not apply to it as grounds to find that the State Health Plan's position was "substantially justified," thus, denying the motion for attorneys' fees.

ARGUMENT

A. THE ALC ABUSED ITS DISCRETION IN FINDING THAT THE STATE HEALTH PLAN'S ACTIONS WERE SUBSTANTIALLY JUSTIFIED

Section 15-77-300 permits an award of reasonable attorneys' fees in cases involving state action if the court finds that the agency acted without substantial justification in pressing its claim, and if there are no special circumstances that would make an attorney's fee award unjust. Id. It states, in relevant part:

> (A) In any civil *action brought* by the State, any political subdivision of the State or *any party who is contesting state action, unless the prevailing party is the State* or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency *if*:
>
> (1) the court *finds that the agency acted without substantial justification* in pressing its claim against the party; and
>
> (2) the court finds that *there are no special circumstances* that would make the award of attorney's fees unjust.

(emphasis added). The ALC agreed that the Appellant was the prevailing party in an action contesting state action. The ALC based the denial of the motion on the conclusion that the State's claims were not without substantial justification. Appellant submits this conclusion was an abuse of discretion in the light of the law of this case, and findings by the Supreme Court in the underlying opinion.

When a state agency's claims have no "reasonable basis in law or fact," they are without substantial justification. Heath v. County of Aiken, 302 S.C. 178, 394 S.E.2d 709 (1990). In Heath, the Supreme Court found that the County of Aiken had violated a state statute prohibiting county governing bodies from developing certain personnel policies under the direction of elected officials. Id. In evaluating the claim that the statute had not been followed by the County, the Supreme Court found that the statute at issue was

"unambiguous," and further determined that the County's actions had violated the statute. On the basis --that the statute was clear and that the county's actions had violated that statute, the Court held that attorneys' fees were due under the state action statute.

In McDowell v. S.C. Dep't of Soc. Servs., 304 S.C. 539, 543, 405 S.E.2d 830 (1991), a case involving food stamp benefits, DSS relied on an erroneous legal analysis in pursuing its position that McDowell's jointly titled assets disqualified her from benefits. The Supreme Court eventually rejected DSS's legal analysis and held that the DSS's position was incorrect as a matter of law. In addressing the request for attorneys' fees, the Court commented that the facts regarding McDowell's joint ownership of the car were undisputed, and that DSS maintained the wrong legal conclusion, and therefore its position was not "substantially justified." In the case of Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008) (awarding $445,226.30 in attorneys' fees based on hourly lodestar analysis against the State and State Retirement System), the Court found that the Retirement System's breach of an unambiguous contract was the equivalent to the breach of an unambiguous statute, and allowed attorneys' fees under the state action statute. Id. at 449, 658 S.E.2d 320.

While the fact of a defeat of the state agency does not create a presumption that its position was not substantially justified, the court must look to the substance and outcome of the matter litigated in making its determination under the statute. Layman, 658 S.E.2d at 445. In this case, the South Carolina General Assembly enacted a diabetes insurance coverage mandate in 1999. S.C. Code Ann. § 38-71-46. It mandated broad insurance coverage for claims related to diabetes treatment, diabetes mediations, diabetes supplies, and diabetes management education services. Nonetheless, the State Health Plan, as administered by the state agency Public Employees Benefit Authority, excluded from its

plan coverage for educational /medical social services, which admittedly excluded diabetes management education claims. Allen v. S.C. PEBA, S.C. Supreme Court App. Case No. 2012-213186, Record on Appeal Vol. I, R.p. 171; ALJ Order at p. 4-5).

In 2008, the State Health Plan refused to pay Appellant's claim for diabetes management education services provided at MUSC related to training family and caretakers how to use a prescribed (and covered) insulin pump for Appellant's two-year old dependent daughter. This claim and appeals followed. The State Health Plan took the position it was not required to comply with the diabetes insurance mandate statute as a matter of law. There were no disputed facts regarding Appellant's claim. The issue decided by the South Carolina Supreme Court was an issue statutory interpretation. The Supreme Court wholly rejected the State Health Plan's legal analysis, and adopted the Appellant's analysis, on most points.

> [w]e find that the General Assembly sought to alleviate and prevent diabetes's potentially devastating effects on those South Carolinians suffering from the disease by mandating coverage for the equipment, supplies, medication, and education for the treatment of diabetes. Thus, given the prevalence of diabetes in South Carolina, coupled with the General Assembly's purpose behind [the diabetes mandate statute], we find it *inconceivable* that the General Assembly intended to exclude South Carolinians insured by the State Health Plan from receiving benefits. . .

(emphasis added). Allen v. S.C. Pub. Emple. Benefit Auth., 2015 S.C. LEXIS 107, at *8 (Mar. 4, 2015). The Court also agreed with Appellant that the plain language of the statute, in the context of grammatical construction, supported the conclusion that benefits need not be provided by a "health care issuer," as that term was defined, in order to qualify as health insurance coverage under the statute. Id. at *7-8. In dicta, assuming for argument purposes only that the statute was ambiguous, the Court rejected the State Health Plan's position that the court should consider the General Assembly's subsequent

alleged "method" for identifying whether a general insurance statute applies to the State Health Plan by choosing whether or not to reference the State Health Plan specifically in the insurance mandate in question. Id. at *10-11. The Court stated because the other references to the State Health Plan in the general insurance statute were enacted years after the diabetes mandate (enacted in 1999), "they should be viewed in the light of when they were enacted, [and] do not support the ALC's conclusions that the General Assembly did not intend for [the diabetes mandate statute] to apply to the State Health Plan." The Court further rejected an argument that the placement of certain definitions in Title 1 and Title 38 should inform the question, and rejected the effort to apply Employee Retirement Income Security Act of 1974 (ERISA) case law to distinguish self-insured plans for state insurance mandates. Id. at *12.

The Court held simply, "as a matter of law, that section 38-71-43 applies to the State Health Plan." Id.

In finding that the State Health Plan acted with substantial justification, the ALC gave very light shrift to the Supreme Court's interpretation of the diabetes mandate state. Instead, the ALC found that the statute was ambiguous, a finding directly contrary to that of the Supreme Court, and thus the law of the case. (ALC Order July 17, 2015 at 5)[2]. The ALC also relied on what it described as "complicated grammatical structure, the longstanding agency practice denying similar claims without contest, the unique nature of the State Health Plan, and the legislative treatment of the State Health Plan in the citations provided by Respondent." Order at 5. First, neither the Supreme Court's Order (nor the Appellant's position) on reading the grammatical structure was particularly

[2] Curiously, despite holding that the diabetes mandate statute was ambiguous for purposes of denying Appellant's Motion for Attorneys' fees, the ALC previously held that the same diabetes mandate statute was "not ambiguous" in its inapplicability to the State Health Plan (ALC Order dated Aug. 13, 2012).

complicated. The Court concluded, instead that the State Health Plan's reading of the statute (which was adopted by the ALC) was "tortured and illogical," and commented on how when the legislature uses the phrase "every," it is generally intended to mean exactly that. There is neither factual nor legal support for the conclusion that the grammatical structure of the mandate rendered it ambiguous. Second, Appellant is unaware of any evidence in the record, other than maybe lawyer argument, that the State Health Plan had a "longstanding agency practice denying similar claims without contest." In fact, the State Health Plan refused in all proceedings related to this case to provide Appellant any information about other claimants and other denials. However, it can be presumed that since the State Health Plan contended the diabetes mandate statute did not apply to it at all, that it in fact denied all claims made by its members since 2000. The State Health Plan cannot be found to have acted with substantial justification simply because no one had ever complained about it before.

While the question of whether the statute applied to the State Health Plan might be considered novel because no one had previously gone to the effort to formally challenge the State Health Plan's legal opinion. "The fact that novel issues were raised does not mean [the state agency] was substantially justified, ..." Cornelius v. Oconee County, 369 S.C. 531, 633 S.E.2d 92 (2006) (affirming award of attorneys' fees under state action statute). Lastly, the Supreme Court flatly rejected the State Health Plan's attempt to backstrap future legislation regarding insurance mandates' applicability to the State Health Plan, and therefore the ALC's reliance on that position is too without legal basis.

If one were to follow the logic of the ALC, no prevailing party in a state action case would ever qualify for an award of attorneys' fees when on appeal from the ALC,

the ALC is found to have erred as a matter of law. This is the classic case where attorneys' fees should be awarded to the prevailing party under the state action statute. The state's legal position on an unambiguous statute was unjustified. The language of the statute was plain that it applies to the State Health Plan. There were no factual disputes at play, and the Supreme Court rejected all of the legal positions propounded by the agency. In this case, because the State Health Plan acted directly contrary to a statutory mandate which by its plain terms applied to "*every* health maintenance organization, individual and group health insurance policy, or contract issues or renewed in this State . .. " See S.C. Code Ann. § 38-71-46(A) (emphasis added), the State Health Plan should be found to have lacked justification for denying the benefit to its members.

Under the state action statute and cases interpreting it, a state agency that enforces a preexisting statutory mandate, which is only later determined to be unconstitutional, is entitled to presumption that its actions were substantially justified. See Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue, 358 S.C. 647, 595 S.E.2d 890 (Ct. App. 2004) (agency must follow the law as written until the statute is judicially addressed). In this case, the State Health Plan did the opposite. It refused to apply the diabetes coverage statutory mandate which has been the force of law since 2000; it specifically excluded from its insurance plan coverage for diabetes education, despite that mandate. Its refusal was without any legal justification. It is certainly not entitled to any presumption in its favor.

While the ALC did not reach the question as to whether there were *special circumstances* which would make an award of attorneys' fee in this case unjust, there are none. To the contrary, it would be unjust to deny this request. The State Health Plan has been denying its insureds, all South Carolina state and local employees, an insurance

benefit they were entitled to by law since 2000. The State Health Plan was not required to even identify the number of claims, which should have been paid, but were in fact refused over the last fifteen (15) years. The State Health Plan was not required to reimburse (other than to the Appellant) all previously illegally denied benefits. The State Health Plan insisted on pursuing a legal strategy, which had no reasonable legal basis. The result of this litigation has enured to the benefit of all South Carolina employees/ retirees insured under the State Health Plan. See Heath, 394 .S.E.2d at 711 (". . . it would obviously be unfair for Sheriff Heath to bear the costs of litigation which benefitted all the citizens of Aiken County."). Lastly, the State Health Plan, like all other State agencies, is funded by taxpayer dollars, and the possibility of having to pay the attorneys' fees of a prevailing party within the parameters of the state action attorneys' fees statute is also intended to discourage the unreasonable use of taxpayer money to maintain unsupportable legal positions.

The Order should be reversed.

B. THIS COURT SHOULD EXERCISE ITS DISCRETION AND AWARD REASONABLE ATTORNEYS' FEES AND COSTS TO THE APPELLANT

Appellant submitted full and complete briefing and evidence regarding its motion for attorneys' fees before the ALC, and those submissions and response of the Respondent is part of this Record. (Mot. for Attys Fees with Exhibits, Opp. To Motion for Attys Fees, Reply).

The state action statute requires that the attorneys' fees awarded be "reasonable." Id. When determining reasonableness, courts, both state and federal case law consistently utilizes a lodestar analysis. See Layman v. State (utilizing lodestar analysis under state action statute). Factors to be applied in determining a reasonable rate include:

(1) the nature, extent, and difficulty of the case; (2) the time devoted; (3) the professional standing of counsel; (4) the beneficial results obtained; and (5) the customary legal fees for similar services. Id. at 458, 595 S.E.2d 890. See also Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997).

A. Nature, Extent and Difficulty of Case:

Appellant initiated this action first commencing the internal State Health Plan appeals process in 2009. This task was a rather difficult task in that required navigation through several levels of appeals with the State Health Plans' Third Party Claims Administrator, Blue Cross and Blue Shield of South Carolina, the ALJ, and Supreme Court of South Carolina and took over five (5) years. Despite having received the first inquiry about the applicability of the diabetes mandate statute in August 2009, The State Health Plan did not issue any substantive explanation of its legal opinion until August 24, 2010 (which happened to be a couple days prior to an important procedural hearing in the circuit court action). Appellant immediately instituted this Appeal to the ALJ of the State Health Plan's August 24, 2010 decision. The matter was briefed in the ALC. However, the ALC scheduled no hearing, and issued its decision adopting the State Health Plan's position generally on August 13, 2012. Appellant then sought review of the ALJ decision directly in the South Carolina Supreme Court through SCRAP, Rule 204(b) for cases which involved "an issue of significant public interest or a legal principle of major importance." The Supreme Court agreed to hear the appeal directly from the ALC, and finally on March 4, 2015, the Supreme Court agreed with Appellant that the statute applied to the State Health Plan. The Court indicated that issue was a novel issue of law. This case was a difficult case to undertake; Appellant met resistance at many levels of the judicial

process, but was ultimately able to succeed on the law after many years of litigation. This factor supports the award of an attorneys' fee in this case.

B. The Time Involved:

Appellants have submitted Affidavits of counsel, along with detailed time and expense records. See Affidavits of John A Massalon, Christy Ford Allen, and Terry E Richardson. It is undisputed that this ALC case was ongoing while Appellant attempted to institute and maintain a circuit court case seeking a class action. According to the Affidavits submitted, the time kept did not differentiate between the circuit court case and this administrative case. In order to address this complexity, Appellants have reduced the total time and expenses sought by 50%. (See Summary of Fees and Costs, infra.)

C. The Professional Standing of Counsel.

Appellant has submitted along with the Affidavits, evidence of their experience and professional standing. This factor also supports an award of fees in this matter.

D. The beneficial results obtained.

Despite having lost at each stage of the administrative process, including appeal to the ALJ, the South Carolina Supreme Court agreed with Appellant that the diabetes mandate statute applies to the State Health Plan. This Order provides the grounds for which all persons insured by the State Health Plan, an insurance plan provided to the largest employer in the State of South Carolina, will receive insurance coverage for future diabetes education claims. These claims may include training of minor dependents on how to administer insulin, instruction on how to count carbohydrates when calculating appropriate insulin dosage, and instruction on nutritional analysis to include effects of fast, protein, and different types of carbohydrates on one's blood

sugar levels. These are beneficial results, and results which will benefit a very large number of South Carolinians.

E. Customary Legal Fees for Similar Services

Counsel for Appellant has submitted four (4) Affidavits of counsel with personal knowledge of each lawyer and this area of legal practice which evidences that the hourly rates set forth below are customary in addition, to the Affidavits submitted in support of this Motion regarding the amount of time, nature of work performed, and customary hourly rates. The Supreme Court of South Carolina and US District Court of South Carolina have recently approved of hourly rates in the range on the hourly rates proposed by the counsel involved herein. See Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008) (allowing $600 hourly rate for A. Cameron Lewis, as a premium hourly rate for difficult cases, and $350.00 per hour rate for Keither M. Babcock); see also Sauders v. S.C. Pub. Serv. Auth., 2011 U.S. Dist. Lexis 33994 (U.S. Dist. S.C. 3/30/2011) (unpublished) ($600.00 per hour for J. Edward Bell).[3]

Appellant submits the following summary of the information provided in the corresponding Affidavits:

TOTAL ATTORNEYS' FEES:

Total Hours	Net 50%	Hourly Rate	Totals

[3] This case is very different than the recently decided case on R.P. v SC DHHS, 06-ALJ-08-0605 (currently pending on appeal) where the ALC denied fee petition on finding of substantial justification. That case had involved at least 2 multi day evidentiary hearings, and other appeals. Appellant in this case was never provided the opportunity to argue at a hearing or make any kind of presentation, in the initial "internal agency review" or before the ALC. This case is not one involving disputed facts. Furthermore, unlike the R.P. case, the South Carolina Supreme Court specifically adopted the vast majority of the Appellant's arguments on the issue of statutory interpretation, and rejected each argument made by the state agency. The facts of that case distinguish it from this case, and this case should be decided on its own merits.

Terry E. Richardson	33.50	16.75	600.00	10,050.00
John A. Massalon	30.70	15.35	350.00	5,372.50
Christy Ford Allen	245.50	122.75	300.00	36,825.00
Matthew Hamrick	20.00	10.0	300.00	3,000.00
Krystal Parrish	23.6	11.8	75.00	885.00
Charline Barrasso	8.0	4.0	75.00	300.00
Faith Frink	11.3	5.65	75.00	423.75
Katie Macomson	3.4	1.7	75.00	127.50
TOTAL FEES				**$57,438.75**

TOTAL EXPENSES:

Wills Massalon & Allen, LLC :	Total	Net 50%
Copies	3572.69	1786.345
Postage	278.07	139.04
Service of Process	275.47	137.735
Phone Conference	35.91	17.955
Legal Research	893.70	446.85
Filing Fees	482.00	241.00
Travel/Mileage	308.21	154.105
Expert Fees	2246.25	-0- (expert fee related to circuit court case)
Total WMA Expenses		$2,895.03

RPWB, LLC	Total	Net 50%
Copies	517.15	258.57
Fax	8.00	4.00
Postage	35.26	17.63
Scanned Images	29.92	14.96
Legal Research	38.63	19.32
Filing Fees	275.00	137.5
Transcripts	1805.31	902.65
Mileage	229.12	114.56

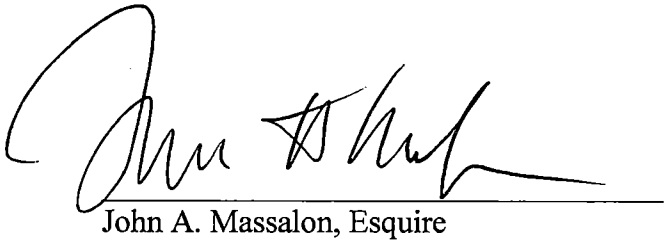
	$1,469.19
TOTAL EXPENSES:	**$4,364.22**

GRAND TOTAL ATTORNEYS FEES AND COSTS: $61,802.97

CONCLUSION

The court should reverse the ALC's denial of the motion for attorneys' fees, and Order that the Respondent pay Appellant a total of $61,803.97 in attorneys' fees and costs.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 10-ALJ-30-0710-AP

Jeffrey D. Allen, individually, as guardian for Jane Doe, a minor, and as representative of other similarly situated State of South Carolina employees or retirees,
.....Appellant,

v.

South Carolina Budget and Control Board,
Employee Insurance Program .....Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's Initial Brief on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on August 17, 2015 addressed to its attorneys of record, Theodore D. Willard, Jr., Montgomery Willard, LLC, P.O. Box 11886, Columbia, SC, 29211 and Stephen Raymond Van Camp, Esquire, 202 Arbor Lake Drive, Columbia, SC 29223.

I certify that I have served Appellant's Initial Brief on the Administrative Law Court by depositing a copy of it in the United States Mail, postage prepaid, on August 17, 2015, addressed to The Honorable Shirley C. Robinson, Administrative Law Judge, South Carolina Administrative Law Court, Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, SC 29201.

August 17, 2015

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August 17, 2015

Direct Dial: (843) 793-6039

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Jeffrey D. Allen v. SCBCB
Appellate Case No.: 2015-001561
Our File No. 595-1

Dear Ms. Kitchings:

In regard to the above-referenced matter, please find enclosed the original and one (1) copy of the following:

1. Appellant's Initial Brief;
2. Proof of Service of Appellant's Initial Brief;
3. Appellant's Designation of Matters to be Included in the Record on Appeal;
4. Proof of Service of Appellant's Designation of Matters to be Included in the Record on Appeal; and
5. Certificate of Counsel.

Please file the originals, file-stamp the copies, and return the file-stamped copies to me in the self-addressed, stamped envelope provided. By copy of this correspondence, I am serving the same upon all counsel of record. If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

WILLS MASSALON & ALLEN LLC

John A. Massalon
jmassalon@wmalawfirm.net

JAM/cb
Enclosures
cc: The Honorable Shirley C. Robinson
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