THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

Case No. 2013-002415

Brook Waddle,
Appellant,

v.

South Carolina Department of Health and Human Services,
Respondent.

REPLY BRIEF OF APPELLANT

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STATE STATUES AND REGULATIONS

Introduction. In *Altria Grp., Inc. v. Good,* the United States Supreme Court recognized that:

> Article VI, cl. 2, of the Constitution provides that the laws of the United States "shall be the supreme Law of the Land; ... any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." Consistent with that command, we have long recognized that state laws that conflict with federal law are "without effect."

129 S. Ct. 538, 543 (2008), quoting *Maryland v. Louisiana,* 451 U.S. 725, 746 (1981).

Supremacy Clause. It is undisputed that the DHHS hearing officer dismissed Appellant's fair hearing appeal based solely upon state regulation R. 126-154 and South Carolina Code § 44-6-90, which authorizes DHHS to "promulgate regulations to carry out its duties." R. 2, 11. Order dated April 4, 2013. The hearing officer's Order fails to even mention any federal statute or regulation and it is clear that the hearing officer did not base her decision on any provision of the Medicaid Act or regulations promulgated by the federal Medicaid Agency, C.M.S. (Center for Medicare and Medicaid Services). It is also obvious that the state regulation the hearing officer relied upon is in direct in conflict with federal law. Nothing in South Carolina Code § 44-6-90 can empower DHHS to ignore the requirements of the Medicaid Act while it accepts federal funding for the program. Respondent continues to argue on page 7 of its Brief that this state

regulation grants hearing officers powers that are expressly forbidden by the regulations promulgated by CMS. The state regulation which provides that "A Hearing Officer has the authority, among other things to: ...dismiss any appeal for failure to comply with the requirements under this Subarticle" directly conflicts with 42 C.F.R. 431.223.

While it is true that Medicaid is an optional program, once the State of South Carolina elected to participate in and accepted federal funding, it became obligated to "comply with all federal Medicaid laws and regulations." *Doe v. Kidd I*, 501 F.3d 348, 351 (4th Cir. 2007), citing *Wilder v. Va. Hosp. Ass'n,* 496 U.S. 498, 502 (1990). As the state agency responsible for administering the Medicaid program in South Carolina, the South Carolina Department of Health and Human Services ("DHHS") is prohibited by federal law from delegating the authority to exercise administrative discretion in the administration or supervision of the Medicaid program. 42 C.F.R. 431.10(e)(1). DHHS is responsible for errors of its contracted agent, Apria, under this regulation.

Any state law or regulation which conflicts with the requirements of the Medicaid Act violates the Supremacy Clause and is unenforceable. In *Wos v. E.M.A.,* the United States Supreme Court ruled that a North Carolina statute allowing the State Medicaid Agency to recover from tort judgments for repayment

of the State's Medicaid lien was preempted by federal law. 133 S. Ct. 1391, 1398 (2013). The Supreme Court unambiguously ruled in that case that:

> Under the Supremacy Clause, "[w]here state and federal law 'directly conflict,' state law must give way." PLIVA, Inc. v. Mensing, 564 U.S. ——, ——, 131 S.Ct. 2567 2577, 180 L.Ed.2d 580 (2011). The Medicaid anti-lien provision prohibits a State from making a claim to any part of a Medicaid beneficiary's tort recovery not "designated as payments for medical care." Ahlborn,supra, at 284, 126 S.Ct. 1752. North Carolina's statute, therefore, is pre-empted if, and insofar as, it would operate that way.

Id. In *Antrican v. Odom*, the Court of Appeals for the Fourth Circuit ruled that the State's "novel position" that the Medicaid Act was not "supreme" law was "at odds with existing, binding precedent." 290 F.3d 178, 188 (4th Cir. 2002). In that case, the Fourth Circuit relied upon the opinion of the United States Supreme Court in *Harris v. McRae*, where the Supreme Court instructed the States that: "[a]lthough participation in the Medicaid program is entirely optional, once a State elects to participate, it must comply with the requirements of Title XIX [the Medicaid Act]." 448 U.S. 297, 301, 100 S.Ct. 2671, 65 L.Ed.2d 784 (1980). In *Antrican*, the Fourth Circuit ruled that "for those States that opt to participate in the program, the requirements of the Medicaid Act are mandatory." Id.

Respondent stated on pages 2 and 3 of its Brief that Waddle's request for an oximeter cable was denied, not due to any fault of Waddle, but because it's agent,

Apria, "did not provide any supporting clinical information with the request." On page 5, Respondent admits yet another error made by its agent, when it acknowledges that Apria, after failing to provide necessary information, "incorrectly coded the request for the oximeter cable..." Instead of apologizing to Waddle and fixing its error, first DHHS sent Waddle - a person who cannot speak, walk, feed herself or even take a sip of water without assistance - around in circles, refusing to provide either the equipment or the evidentiary hearing the Constitution of the United States and the Medicaid Act guarantees. Contrary to Respondent's argument that the only relief that may be provided is to remand the issue of payment for the cable, Waddle respectfully requests that this Court take the necessary action to force DHHS to end the agency's systemic unconstitutional practice of violating the due process rights of Waddle.

Waddle's case was dismissed by the DHHS hearing officer when she attempted to exercise her rights to due process, just as the lower court had done in *Flemming v. South Carolina Electric and Gas Company,* 239 F.2d 277 (4th Cir., 1956). Sarah Mae Flemming was "a Negro woman" who brought a lawsuit against the South Carolina Electric and Gas Company when a SCEG bus driver ordered her to go to the back of the bus in accordance with the segregation statutes of South Carolina, Code 1952, §§ 58-1491 to 58-1496. Id. at 278. The district Judge

dismissed Sarah's case *on the ground that the State statutes were valid*, just as the hearing officer dismissed Waddle's case based her interpretation of state law and regulation. (Emphasis added.) The Court of Appeals for the Fourth Circuit remanded Sarah's case, but the district court, on remand, once again dismissed Sarah's case. Id. at 278. Finally, on the second appeal to the Fourth Circuit, that court ruled that the "separate but equal" doctrine had been clearly repudiated by the decisions of the United States Supreme Court. Id. Sarah was again sent back to the district court for trial in a hostile court in 1956.

DHHS has been no more receptive to the claims Waddle has made during in the twenty-first century than the courts in South Carolina were to the civil rights of black citizens more than fifty years ago. Waddle prays for an order that will not send her back into that Executive Branch abyss, but one that will find that Waddle is the prevailing party in this action, a decision that will bind the agency and require hearing officers who hear Waddle's appeals in the future to comply with the clear and unambiguous requirements set forth in the federal fair hearing regulations. 42 U.S.C. 1396a(a)(3) and 42 C.F.R. 431.220 et. seq. require the agency to provide an evidentiary hearing, except where one of the limited exceptions contained at 42 C.F.R. 431.223 exists. (None of which exist in this case.) Those federal regulations provide very explicit criteria which must be met

during a hearing and require that the hearing officer base agency decisions exclusively on evidence produced at the hearing. While many of the provisions in the Medicaid Act are difficult to understand, the regulations upon which Waddle relies are simple to read and to follow, and DHHS has blatantly and repeatedly ignored them with impunity. As Respondent argues on page 5, Waddle finally received the oximeter cable that initiated this civil action. But, just as Sarah Mae Flemming was at risk of having her civil rights denied the next time she stepped onto a city bus, Waddle will continue to rely upon services and equipment to be provided by DHHS. The risk of injury to Waddle, however, is not that she will have to walk instead of riding the bus or face insults and hostility. Waddle cannot walk. *Waddle v. DHHS* (DHHS Order dated November 19, 2013). She cannot leave the house, except to be transported by ambulance to medical appointments. Because her medical condition is so fragile and complex, the risk to Waddle is the risk of death if she does not receive the services and equipment she needs from DHHS in a timely manner. The actions of the agency in this case, coupled with the factual history in *Waddle v. DHHS* in the November 19, 2013 order issued by Elizabeth Hutto demonstrate that these violations of federal law are subject to

repetition, yet they will continue to evade review.[1]

Evidence introduced at hearing. Waddle requests that this Court's order prohibit DHHS from issuing decisions on any grounds other than evidence "introduced at the hearing," as required by 42 C.F.R. 431.244(a). This federal regulation provides that "Hearing recommendations or decisions must be based exclusively on evidence introduced at the hearing." Waddle requests a ruling that it is impossible to comply with 42 C.F.R. 431.244(a) without providing a hearing. She asks that this Court issue a ruling enjoining DHHS from denying her right to bring witnesses, to establish all pertinent facts and circumstances orally, to present an argument without interference and to confront and cross-examine the State's witnesses, as required by 42 C.F.R. 431.242 and *Goldberg v. Kelly*. 397 U.S. 254 (1970).

Notice. Waddle also respectfully requests a ruling from this Court requiring DHHS to comply with the clear and unambiguous notice requirements contained in 42 C.F.R. 431.210.[2] R. 160. Nowhere in the "notice" sent to Waddle did

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[1] This Court may take judicial notice of that decision under Rule 201 of the South Carolina Rules of Evidence.

[2] In Appellant's brief, she refers to *L.S. v. Delia*, where the district court found notices to be insufficient. 5:11-cv-354 (NCED March 29, 2012). On appeal, the Fourth Circuit later found the notices at issue in that case to be sufficient, but that case involved programmatic changes not at issue in this case, which deals with the medical necessity for a single individual. *Pashby v.*

Respondent admit that it was not the fault of Waddle, a severely disabled person who has quadriplegia, but the fault of its own agent, Apria, that Waddle did not receive the oximeter cable. Respondent's Brief at 5. It is undisputed that the notice did not contain the "specific regulations" or change in federal or state law that required the action, a requirement clearly mandated in 42 C.F.R. 431.210(c). Without this information, it is impossible for a Medicaid participant to prepare her appeal when DHHS again terminates, denies or fails to provide services or equipment with reasonable promptness.

The issue of what must be included in a "fair hearing" notice was discussed in *K.W. v. Armstrong*, where the Idaho federal district court found the State's notices to be insufficient. Case No. 1:12-cv-00022 and 3:12-CV-58 (Idaho D.C. March 24, 2014). In an earlier decision, the district court found that the notices "must contain . . . [t]he reasons for the intended action" and "detail the reasons for a proposed termination" ..."sufficiently enough for a recipient to challenge both the application of the law to their factual circumstances and the 'factual premises' of the state's action." Id., citing *Goldberg v. Kelly*, 397 U.S. 254, 267-268 (1970). The court held that the explanation in the notice itself "must be more than a 'general explanation' or 'conclusory statement,' and must provide at least 'a brief

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Delia, 709 F.3d 307 (4th Cir. 2013).

statement of [the decision's] factual underpinnings.'" Id., citing *Barnes v. Healy,* 980 F.2d 572, 579 (9th Cir. 1992). As in that case, DHHS failed to provide "an explanation for any change." Id. Where the notice "gives participants nothing more than the general explanation that several factors may have affected" their benefits, that "lack of specificity runs afoul of due process because *Goldberg* requires a notice tailored to the individual." 397 U.S. at 267-68 ("[Due process] require that a recipient have timely and adequate notice detailing the reasons for a proposed termination . . . " (emphasis added)). The notice has to "give a participant the opportunity to understand 'the factual premise" of his or her 'particular case.'" Id.

In *K.W.*, the Idaho district court discussed *Ortiz v. Eichler*, where the Third Circuit decided "the extent of a pre-hearing notice required to be given under the due process clause" by Delaware when "denying or terminating Aid to Families with Dependent Children (AFDC), Food Stamps and Medicaid benefits." 794 F.2d 889, 890 (3rd Cir. 1986). There, the Third Circuit held that notices must "at a minimum, provide a detailed individualized explanation of the reason(s) for the action being taken which includes, in terms comprehensible to the claimant, an explanation of why the action is being taken and, if the action is being taken because of the claimant's failure to perform an act required by a regulation, an

explanation of what the claimant was required by the regulation to do and why his or her actions failed to meet this standard..." Nothing in the notice sent to Waddle informs her of the reasons, now admitted, by DHHS, nor does the notice inform her of the regulation and statute now relied upon to justify the failure to provide the device and to dismiss her appeal.

Respondent errs in its arguments on page 5 that there is "no actual controversy." The existence of a controversy is evident from the fact that Waddle filed an appeal in 2007 and that she has yet to obtain judicial review of the agency's decision to deny services ordered by her physician eight years ago in that case. *Waddle v. DHHS* (DHHS November 19, 2015). The issues Waddle raised are subject to repetition, yet they have evaded review and they are likely to recur, if DHHS can force Medicaid participants into protracted litigation costing more than the equipment and services they deny - and costing taxpayers and the court system for years of appeals.

Dismissal of appeals. Respondent's arguments beginning on page 5 blatantly ignore the requirement at 42 C.F.R. 431.223 prohibiting DHHS from dismissing an appeal without providing a hearing except where the participant requests dismissal or "fails to appear at a scheduled hearing without good cause." In State of *South Carolina v. Katzenbach*, the United States Supreme Court struck

down impediments that the State of South Carolina had "designed to prevent Negroes from voting." 383 U.S. 301, 310 (1966). Like the "grandfather clauses, property qualifications, 'good character' tests, and the requirement that registrants 'understand' or 'interpret' certain matter" in *Katzenbach,* the State of South Carolina now imposes insurmountable requirements before "fair hearings" are granted by DHHS to impoverished disabled Medicaid participants. It is notable that this is not the first time DHHS dismissed Waddle's appeals without providing an evidentiary hearing. *Waddle v. DHHS*, November 19, 2013.[3] Once again, nearly forty years after *Katzenbach*, the State of South Carolina needs to have the Judicial Branch to instruct the Executive Branch agencies that federal law preempts any state law or regulation that conflicts with federal law or the United States Constitution.

Respondent's arguments on page 7, that Reg. 126-154 controls over the clear and unambiguous requirements of the mandates requiring DHHS to provide a fair hearing and to render a decision "exclusively" on evidence presented at an

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[3] DHHS dismissed Waddle's fair hearing appeal without providing an evidentiary hearing, requiring her to file an appeal with the Administrative Law Court on her 2007 appeal. On remand, the DHHS hearing officer upheld the decision of the agency, requiring a second appeal to the Administrative Law Court. *Waddle v. DHHS*, November 19, 2013. Waddle filed her third appeal with the Administrative Law Court more than a year ago when DHHS refused to comply with the order of its hearing officer, but that Executive Branch agency has not issued an order appealable to the Judicial Branch.

evidentiary hearing cannot prevail. In *Katzenbach*, the State argued that it gave negro voters the "opportunity" to vote once they jumped through hoops that violated the federal Voting Rights Act. Like the victims of illegal practices that kept black citizens from voting, DHHS has prevented Medicaid participants from exercising their right to due process and failed to grant evidentiary hearings in a timely manner meeting the requirements of 42 C.F.R. 431.242 under the pretext that the participant was given the "opportunity" for a hearing and failed to perfect it.

Respondent's reliance upon *Rosen v. Goetz* is misplaced. 410 F.3d 919, 928 (6th Cir. 2005). Unlike Waddle's case, that Tennessee case involved a change in law, not a factual dispute that required consideration of medical necessity for an individual Medicaid participant. In any event, the reductions at issue in *Rosen* were subsequently overturned in *Crabtree v. Goetz.* Case No. 3:08-0930 (M.D. Tenn. 2008). On page 9, Respondent argues that Waddle declined or failed to take advantage of her due process rights, but this appeal is pending precisely because Respondent attempted to exercise those rights, but DHHS denied her federally mandated right, guaranteed by the Constitution of the United States of America, to an evidentiary hearing. On page 9, Respondent also cites *Brown v. S.C. Dept. of Health and Human Services* in support of its arguments, but in that case, this

Court ruled that DHHS erred by dismissing his appeal without providing a fair hearing on the merits of his case and remanded Brown's case for an evidentiary hearing required by CMS regulations. 393 S.C. 11709 S.E.2d 701 (S.C.Ct.App. 2011). On remand, DHHS agreed not to contest Brown's right to receive the services at issue in that case. 13 ALJ 08-0159 (March 7, 2014). (Although Appellant alleged that the services were still not provided. This Court may take judicial notice of its own docket.)

Issues Respondent's Brief failed to address. Respondent has failed to address in its brief Waddle's claims that DHHS has violated her rights under the Americans with Disabilities Act (ADA). Appellant's Brief at 9, 20 and 21. Waddle has met her own *prima facie* burden, by proving that she is a disabled person, the State has determined that she may be served in the Community and that she chooses to receive services there. Appellant's Brief at 20. But, Respondent makes no attempt whatsoever discuss in it's brief its own burden of proving that providing the oximeter cable and complying with the clear and unambiguous federal "fair hearing" regulations would fundamentally alter the State's system. *Olmstead v. L.C.*, 527 U.S. 581 (1999) and *Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2013). Respondent did not even mention the controlling case on this issue, *Stogsdill v. DHHS*, where this Court ruled that DHHS had violated the Americans

with Disabilities Act. Appellate Case No. 2013-000762, Opinion No. 5271 (S.C.Ct. App. September 10, 2014). That case was issued approximately three months after Waddle filed her Initial Brief in this Court.

Respondent also failed to address the issues raised by Appellant regarding the hearing officer's refusal to order an independent medical assessment and her failure to base her decision on medical evidence from a qualified medical source. Appellant's Brief at 16.

Evidence in record. Respondent's argument on page 10 that "there is substantial evidence in the record to support the hearing officer's Order" is simply not supported by the record or the law. First, federal law is clear that there can be no evidence upon which the hearing officer may legally rely where no hearing has been provided. This is because 42 C.F.R. 431.244(a) requires DHHS to base its decision "exclusively" on evidence introduced at the hearing. The argument that "Waddle failed to present a proper record" also fails, because Waddle repeatedly has asked the Executive Branch to follow the law and to provide her with the evidentiary hearing required by 42 C.F.R. 431.242 where both sides may properly "present a proper record." DHHS cannot deny Doe's Constitutional right to a hearing, then complain that Waddle failed to develop a record.

Ripeness and mootness. Likewise, Respondent's argument on page 11 that the issues Waddle "raised on appeal" were not "raised or ruled upon by the hearing officer" cannot be blamed on Waddle. On the contrary, Waddle raised issues in her appeal to DHHS and it was the fault of the hearing officer that she chose to ignore Waddle's claims made in the appeal, ignore the federal law and refuse to rule upon the issues Waddle raised. A motion for reconsideration is not required in fair hearing appeals or the Administrative Law Court. Rule 40 of the South Carolina Rules of the Administrative Law Court specifically provides that "A motion for rehearing is not a prerequisite to filing a notice of appeal from the decision of the administrative law judge." As discussed in Waddle's initial brief, 42 C.F.R. 431.244(f) requires the State to issue a final administrative hearing within 90 days. *Shakhnes v. Berlin*, 689 F.3d 244, 254 (2d 2012).[4] Appellant's

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[4] In *Shakhnes*, cited on page 8 of Appellant's Brief, the Second Circuit discussed the legislative history of 42 C.F.R. 431.244(f) as follows:

> We begin with 45 C.F.R. § 205.10, the predecessor to 42 C.F.R. § 431.244. Section 205.10 was entitled "Fair hearings." See Fair Hearings, 35 Fed.Reg. 8448 (May 29, 1970). Subsection (11) of § 205.10 provided that "[p]rompt, definitive and final administrative action will be taken within 60 days from the date of the request for a fair hearing, except where the claimant requests a delay in the hearing." Id. at 8449. The time frame for "[p]rompt, definitive, and final administrative action" was later extended to 90 days. See Methods for Determination of Eligibility, 38 Fed.Reg. 22,005, 22,008 (Aug. 15, 1973). The relevant agency explained the need for the change as follows: "In view of the difficult position facing States with substantially increased hearing caseloads, the 60–day period is considered insufficient for the orderly processing of cases." Id. at 22,006 (emphasis added). The agency concluded that "[n]inety days for processing hearings " was "a more realistic time frame." Id. (emphasis added). And the agency described the

Brief at 8. It would be impossible to comply with this federal requirement, and to issue a final decision within 90 days, if the appellant were required to file a motion to alter or amend or reconsider.

Respondent is correct that the oximeter cable has now been provided, but it is not correct in its assertion that Waddle's case is moot. R.Brief at 4 and 5. DHHS has argued to state and federal courts that the only remedy Medicaid participants have is in the "fair hearing" process, and that they may not litigate violations of the Medicaid Act in federal court. *Doe v. Kidd I, supra.* This is a classic case where there is a reasonable expectation that the same complaining party will be subjected to the same action again and would be unable to resolve the issue (by DHHS waiting months or years, then providing the equipment or services) because of the duration of the action, as was the case of pregnancy in *Roe v. Wade.* 410 U.S. 113 (1973). The second exception to the mootness doctrine is that a case will not be dismissed where a plaintiff's claim has been mooted by a defendant's voluntary cessation of allegedly improper behavior. *Doe v. Kidd I, supra.* This

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change as an "[e]xtension from 60 to 90 days for hearing decisions." Id. (emphasis omitted).

The 90 day requirement is also discussed in *Doe v. Kidd I and II, supra* and 419 Fed.Appx. 411, 414 (2011).

"voluntary cessation" exception provides that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Friends of the Earth, Inc. v. Laidlaw Environmental Services,* 528 U.S. 167, 189 (2000). Except for this exception, courts would be "compelled to leave the defendant free to return to his old ways." Id. Voluntary conduct moots a case only in the rare instance where "subsequent events made it 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.' " *Joes v. City of Lakeland,* 224 F.3d 518, 529 (6th Cir.2000) *(en banc)* (quoting *Friends of the Earth, Inc., supra,* 528 U.S. at 189). Whenever there is a risk that the defendant will "return to his old ways," where the plaintiff continues to have a stake in the outcome, the case is not moot. *Doe v. Kidd I, supra.* Indeed, the party asserting mootness has the "heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again." *Friends of the Earth, Inc., supra,* 528 U.S. at 189. Respondent has failed to meet that burden in this case. The question is not whether Brook is at risk of DDSN refusing to provide an oximeter cable again - the next time, it may be incontinence supplies or another device or service. But what is sure is that Waddle will continue to be at risk of services and equipment being denied by an agency that appears to have seemingly unending funds to pay for litigation. The Executive

Branch has demonstrated a will to win at all costs, with total disregard for the consequences to Waddle and there is no indication of intention to cease its wrongful conduct of ignoring federal law.

Conclusion. Waddle requests that this Court find that DHHS has acted without substantial justification by:

(1) Failing to issue notices that comply with the clear and unambiguous notice requirements of 42 C.F.R. 210 and the due process requirements of *Goldberg v. Kelly* and Waddle respectfully renews her request that the Court issue an order declaring Respondent's notice in this case to be defective and unconstitutional and requiring DHHS to comply with that regulation and the due process standards established in *Goldberg. Supra.* Appellant's Brief at 16, 19 and 20.

(2) Failing to provide fair hearings required by the regulations contained in 42 C.F.R. 431.242 and *Goldberg* and Appellant requests an order enjoining the State from continuing to violate fair hearing regulations and the due process rights of Waddle. Appellant's Brief at 16.

(3) Dismissing "fair hearing" appeals when the appellant has not requested dismissal nor failed to appear at a hearing and failing to base hearing

decisions exclusively on evidence presented at the fair hearing. Appellant's Brief at 11-12 and 16.

(4) Basing hearing decisions on state regulations and statutes that are preempted by federal law.

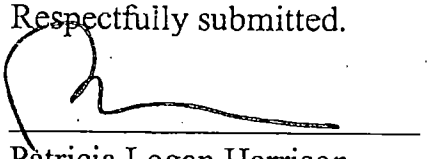
(5) Failing to base medical necessity decisions on the opinions of qualified medical sources and refusing to order an independent medical assessment when requested by Appellant. Appellant's Brief at 18.

(6) Violating the Americans with Disabilities Act by failing to provide necessary equipment needed to allow Waddle to live in the least restrictive setting. Appellant's Brief at 23.

Waddle requests an order finding that the state statute and regulations upon which Respondent relied are preempted by the Medicaid Act and the regulations discussed in Appellant's Briefs and requiring DHHS to comply with those federal laws. Appellant believes that providing the lower tribunals any discretion on remand would serve no useful purpose and would only waste more scarce resources of Waddle and the judicial system, as this case would weave once again for years through the Executive Branch, as is evident from the appeal Waddle filed in 2007, still pending in the Judicial Branch. Opting not to take this opportunity to

declare the federal law and to establish consequences for violating federal laws and regulations will only feed the fire and send a terrible message to other Medicaid participants that state agencies can violate that law with impunity, disregarding the financial and medical costs to the most vulnerable citizens of our State. Appellant requests that the Court also award such other relief as is fair and just under the circumstances. Waddle further requests that the Court issue an order finding that Waddle is the prevailing party, that DHHS has acted without substantial justification and ordering DHHS to pay legal fees and costs.

Respectfully submitted.



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CERTIFICATE OF SERVICE

John N. Harrison certifies that he has served the single-sided *Brief of Appellant* and *Reply Brief of Appellant* in the above captioned case by hand delivery to the following on June 12, 2015:

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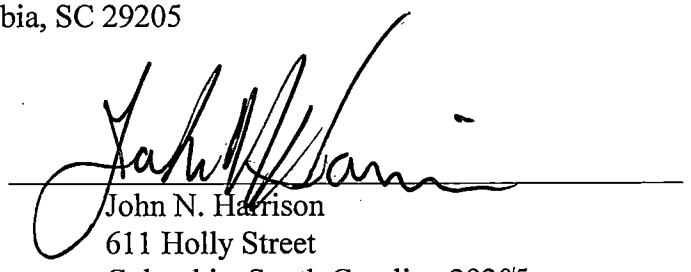

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June 12, 2015

The Honorable Jenny Abbott Kitchings
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RE: **Brook Waddle v. SC Department of Health and Human Services**
Appellate Case No. 2013-002415
SCCA Notices dated June 5, 2015

Dear Ms. Kitchings:

Enclosed are 15 single-sided copies of the following (one unbound):

1. *Brief of Appellant*
2. *Reply Brief of Appellant*

We apologize for the inconvenience of the printer's error in printing the brief and for the confusion in refiling the Record on Appeal. Also enclosed is a *Certificate of Service*. Please clock and return the copies of this letter and the *Certificate of Service.*

Sincerely,

Patricia Logan Harrison

Enclosures

c: Damon C. Wlodarczyk, Esq.