

22166

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

OCT 28 2015

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Case No. 2015-001548

William Henry Chapman, ... Appellant,

v.

South Carolina Department of Social Services, ... Respondent.

RECORD ON APPEAL

Dwight C. Moore, SC Bar No. 63008
Moore Law Firm, L.L.C.
26 North Main Street
Post Office Box 1229
Sumter, South Carolina 29151-1229
Telephone (803) 778-6520
Fax (803) 775-6365
Email: moorelawfirm@ftc-i.net
Attorney for Appellant

William C. Smith, Assistant General Counsel
South Carolina Department of Social Services
Office of General Counsel
Post Office Box 1520
Columbia, South Carolina 29202
Telephone (803) 898.7617
Fax (803) 898-7245
Email: William.Smith@dss.sc.gov
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Case No. 2015-001548

William Henry Chapman, ... Appellant,

v.

South Carolina Department of Social Services, ... Respondent.

RECORD ON APPEAL

Dwight C. Moore, SC Bar No. 63008
Moore Law Firm, L.L.C.
26 North Main Street
Post Office Box 1229
Sumter, South Carolina 29151-1229
Telephone (803) 778-6520
Fax (803) 775-6365
Email: moorelawfirm@ftc-i.net
Attorney for Appellant

William C. Smith, Assistant General Counsel
South Carolina Department of Social Services
Office of General Counsel
Post Office Box 1520
Columbia, South Carolina 29202
Telephone (803) 898.7617
Fax (803) 898-7245
Email: William.Smith@dss.sc.gov
Attorney for Respondent

INDEX

Final Order and Decision of ALC Judge Carolyn C. Matthews dated June 16, 2015	1
Human Resources Director Samuel L. Wilkins' Decision Letter on Reconsideration dated October 16, 2014	7
Final Decision of the State Human Resources Director dated September 4, 2014	11
Request for Reconsideration of the Final Decision of the State Human Resources Director filed September 18, 2014	14
DSS Statement in Opposition to Appellant's Request For Reconsideration dated October 3, 2015	43
Notice of Appeal to the South Carolina Administrative Law Court filed November 20, 2014	49
Brief of Appellant in the South Carolina Administrative Law Court filed January 21, 2015	59
Brief of Respondent in the South Carolina Administrative Law Court dated February 25, 2015	99
Reply Brief of Appellant in the Administrative Law Court dated March 9, 2015	106
Record on Appeal before the Administrative Law Court	113
South Carolina Department of Social Services Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal, Effective Date 01/22/2010	203
Grievance Procedure Model Policy (Revised and Effective 4/8/2013)	207
Clarendon County Interim Director Robin H. Layton's Letter dated June 3, 2014 (Exhibit #1)	212
Dwight C. Moore's Letter dated June 12, 2014 (Exhibit #2)	213
Fax Report, Moore Law Firm L.L.C. Fax Cover Sheet, Crystal C. Stokes' Letter and DSS Form 1449 all dated June 20, 2014 (Exhibit #3)	214
DSS Human Resource Management Director Funneaser "Neisie" Jacobs' Letter dated June 25, 2014	218

Funneaser “Neisie” Jacobs’ Letter dated July 7, 2014 (Exhibit #4)	220
DSS Acting State Director Amber Gillum’s Letter and DSS Form 1449-2, both dated July 25, 2014 (Exhibit #5)	221
Dwight C. Moore’s Letter dated August 4, 2014 (Exhibit #6)	223
Carrie Coats’ Letter dated August 5, 2014, on letterhead of the SC Budget And Control Board Human Resources Division Alternative Dispute Resolution Program (Exhibit #7)	224
Two-page Fax from Carrie Coats dated August 11, 2014, including the State Employee Grievance Procedure State Appeal Form (Exhibit #8)	226
State Employee Grievance Procedure State Appeal Form GC101-Revised 10/01/96, dated 8/11/2014	228
Confirmation of State Appeal Form dated 8/11/2014	229

vs.

South Carolina Department of Social
Services,
Respondent.

Docket No. 14-ALJ-30-0538-AP

FINAL ORDER AND DECISION

The Honorable Carolyn C. Matthews
June 16, 2015

For the Appellant:
For the Respondent:

Dwight C. Moore, Esquire
William C. Smith, Esquire

JUN 18 20

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC”) for a final order and decision following a contested case hearing pursuant to S.C. Code Ann. § 1-23-380 (1976, as amended). The South Carolina Department of Social Services (“Department” or “DSS”) terminated the employment of William Henry Chapman (“Appellant”) on June 3, 2014 for substandard job performance. Appellant maintains that he exhausted all agency procedures before appealing to this Court on November 20, 2014. An Order Governing Procedure was issued by this Court on December 4, 2014. Appellant filed his Brief on January 21, 2015; Respondent filed its Brief on February 25, 2015 and Appellant filed a Reply Brief on March 9, 2015. After carefully weighing all the evidence, this Court must affirm the decision of the State Human Resources Director.

FINDINGS OF FACT

Having taken into consideration the record on appeal, the briefs of the parties, and the burden of persuasion by the parties, the court makes the following Findings of Fact by the existence of substantial evidence:

1. On June 3, 2014, Appellant was terminated from employment with the Clarendon County Division of the South Carolina Department of Social Services (“DSS”) for substandard job performance. He was notified of this termination via a hand-delivered letter signed by Robin H. Layton, Interim Director of Clarendon County.
2. On June 12, 2014, Appellant’s attorney, Dwight C. Moore, wrote to Ms. Layton a letter containing the following language: “Please be advised that I am representing my Client, [REDACTED]”

FILED

JUN 16 2015

regard to the above-referenced matter. Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014. Please advise as to date and time as to any proceedings.” This letter was not included in the record produced by Budget and Control Board, but it was included as an exhibit to Appellant’s Brief. It was not referenced in the Department’s Brief. However, Appellant looks to this letter as being his official notice of grievance or appeal.

3. Between June 12 and June 20, 2014, Appellant was somehow informed or learned that he needed to submit DSS Form 1449 as part of his grievance paperwork. This was sent to Glenise Elmore, Employee Relations Director of Respondent’s Office of Human Resources via facsimile to the office of Appellant’s counsel. As with the June 12 letter, this form and its cover letter were not included in the record, though they were included by the Appellant as an exhibit to his Brief. They were not referenced by the Department in its Brief, though the Department acknowledges receiving Appellant’s DSS Form 1449 on June 20, 2014.

4. A letter dated July 7, 2014 and received by Appellant’s counsel on July 9, 2014 from Funneaser “Neisie” Jacobs, Director of Human Resources Management Division of DSS, outlined the grievance process for the Department and included Appellant’s Grievance and Appeal information. This letter was addressed to Leigh Bolick, Director of Child Care Services for DSS, and outlined what she should expect as the grievance reviewer for this matter. This letter was not contained in the record, but was attached as an exhibit to Appellant’s Brief. It was not referenced by the Department in its Brief.

5. On July 25, 2014, Amber Gillum, as Acting State Director, sent a letter via certified mail directly to Appellant that included the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form), which upheld his termination. This letter informed Appellant that he had the ability to appeal the decision, and it was carbon copied to Robin Layton, County Director, Clarendon County DSS; William Smith, Esq., Office of General Counsel; and Dwight C. Moore, Esq., Moore Law Firm, LLC. Appellant’s counsel received the letter on July 29, 2014, and replied on August 4, 2014 to the address provided in order to notify the Department that the decision would be appealed, and to request that all correspondence be directed to him. He carbon copied Amber Gillum and Robin Layton. This letter was not included in the record, but it was addressed by Respondent in its Brief, in which the Department acknowledges it as initiating an appeal.¹

¹ “By letter postmarked August 4, 2014, Appellant initiated an appeal to the State Human Resources Director.”

6. On September 4, 2014, the State Human Resources Director, Samuel L. Wilkins, issued his Final Decision denying Appellant's appeal because of Appellant's failure to file his original grievance within fourteen (14) calendar days as required. Consequently, because the timeline was not followed, Appellant argues that he cannot be determined to have exhausted his administrative remedies and, therefore, the merits of the case cannot be reached and reviewed. Appellant filed a request for reconsideration of this decision by letter dated September 18, 2014, and was denied by Mr. Wilkins via letter dated October 16, 2014, which received by Appellant's counsel on October 22, 2014. The instant appeal was filed with this Court on November 20, 2014. The case was assigned on December 3, 2014, and the record was filed by South Carolina Budget and Control Board on December 19, 2014.

7. Appellant's first argument centers on the fact that the letter from his counsel on June 12, 2014 should be viewed as a notice of appeal for purposes of satisfying the requirement of S.C. Code Ann. § 8-17-330 (1976, as amended). He contends that this letter included the same information required on the DSS Form 1449 that the Department requires. The code section states only that the procedure "must be initiated internally by such employee within fourteen calendar days of the effective date of the action." Appellant admits that the SC DSS Human Resources Policy and Procedure Manual section 603, which would bind him as a DSS employee, states that "[t]he grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action." Appellant analogizes this to the main issue of Paschal v. Price, 380 S.C. 419, 670 S.E.2d 374 (Ct. App. 2008), in which the Court of Appeals held that failure to include a coversheet with a filing when that coversheet was not required by statute did not deprive the ALC of jurisdiction. The Court cites to Skinner v. Westinghouse Elec. Corp., 668 S.E.2d 795, 797 (S.C.2008) for the proposition that "[o]ur jurisprudence confirms that jurisdictional appealability issues are governed by statute, and not by the rules of civil procedure." By this reasoning, the letter from Appellant's counsel would have been satisfactory to initiate the appeal within DSS, and Appellant could not now be viewed as having exhausted his administrative remedies.

8. Alternatively, Appellant argues that even if he had failed to exhaust his administrative remedies, the Respondent, by its own actions, constructively waived the time line under consideration and it is, therefore, estopped from barring the Appellant from a hearing on the

merits of the case. As he otherwise explains it, “[s]ince the HR Director’s Final Decision was based upon the onset of the grievance process; i.e., the actual filing and his determination that no grievance appeal had been filed, all events occurring thereafter would be irrelevant. Under the present state of the record, we have dual proceedings – both of which have been pursued to the conclusion of their respective phases.”

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the court concludes the following as a matter of law:

1. Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2007). As such, the Administrative Law Judge sits in an appellate capacity under the Administrative Procedures Act rather than as an independent finder of fact. The abilities of an Administrative Law Judge in such a role are dictated by S.C. Code Ann. § 1-23-380(5) (2014):

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

2. “Substantial evidence” has been defined both as “evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its

action”² and requiring “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”³ The fact that the record, when considered as a whole, presents “[t]he possibility of drawing two inconsistent conclusions from the evidence will not mean the agency’s conclusion was unsupported by substantial evidence.” Waters v. South Carolina Land Resources Conservation Comm’n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); *see also* Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

3. If substantial evidence exists for a certain agency decision, that decision may not be disturbed unless there is an abuse of discretion evidenced by a showing that the action of the agency was arbitrary or unlawful. S.C. Code Ann. § 1-23-600(A) (Supp. 2014). “A decision is arbitrary if it is without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.” Deese v. South Carolina State Bd. Of Dentistry, 286 S.C. 182, 184-5, 332, S.E.2d 539, 541 (Ct.App. 1985).

4. The agency employee grievance plans as contained in S.C. Code Ann. § 8-17-330 (2014), provide timelines for every step of the grievance process. This section also contains language that mandates each agency to “establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources.” There has been no allegation that the Appellant was not provided with the approved DSS Human Resources Policy and the DSS Form 1449. Therefore, the Appellant knew or should have known the appropriate form and timeline to grieve his termination.

5. The Court finds Appellant’s argument persuasive, in that the same information contained in the DSS Form 1449 was included in the notice of appeal from Appellant’s counsel. A simple letter such as this may serve as a notice of appeal in other courts but, when such specific agency guidelines are in place, they must be adhered to until the agency or legislature mandates otherwise. The Agency’s final determination that Appellant’s grievance was not timely filed affirms this position.

6. It is unfortunate that Appellant has effectively dealt with two (2) grievance procedures simultaneously due to confusion and delay within DSS. For this reason, Appellant understandably

² Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981).

³ Midlands Utility, Inc. v. S.C. Dep’t of Health and Environmental Control, 298 S.C. 66, 69, 378 S.E.2d 256, 258 (1989).

asks for consideration of the balance of equity in this matter. This Court, though, may not reach this argument, as it is bound by the Administrative Procedures Act and sits in an appellate capacity. Because it must defer to the determination of the agency, it is limited to the record and the determinative issue of whether Appellant's initial grievance was timely filed. I find that it was not.

ORDER

Based upon the Findings of Fact and Conclusions of Law stated above, it is
ORDERED that the Department's decision stands and this matter is concluded.
IT IS SO ORDERED.

June 16, 2015
Columbia, South Carolina



CAROLYN C. MATTHEWS
Administrative Law Judge

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

October 16, 2014

CERTIFIED MAIL

Mr. Dwight C. Moore
Moore Law Firm, L.L.C
Post Office Box 1229
Sumter, South Carolina 29151

Re: William Henry Chapman v. South Carolina Department of Social Services (DSS)

Dear Mr. Moore:

I have received your request for reconsideration of my September 4, 2014 decision regarding the above-referenced appeal and Mr. William C. Smith's, DSS Assistant General Counsel, response dated October 3, 2014.

Section 19-718.05 (E) of the State Human Resources Regulations states: "[i]f the State Human Resources Director determines that the appeal is untimely or fails to comply with the requirements of the Act, he will notify the covered employee or his representative that the appeal is denied and no further action will be taken concerning the appeal. As a result of the State Human Resources Director's decision, the covered employee may request reconsideration within 30 calendar days from notification of the decision."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "[e]ach agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources."

Section 8-17-350 of the S.C. Code of Laws of 1976, as amended, states in part: "[w]hen an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator-arbitrator."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action. . . ."

Mr. Dwight C. Moore
October 16, 2014
Page Two

Further, section 19-718.04(B) of the State Human Resources Regulations states “[a] covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action.”

Section 603 of Respondent’s Procedure for Grievance and Appeal states in part that, “[a]ll grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action.” In addition, Section 606 of Respondent’s Procedure for Grievance and Appeal states similarly that, “[t]he grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action.” [Emphasis in original.]

You contend the following in your Request for Reconsideration:

1. Mr. Chapman has exhausted his administrative remedies under the County and Municipal Employees Grievance Procedure Act as it applies to his termination and that he is in full compliance with the S.C. Code Ann. § 8-17-110, et seq. (1986) as amended.
2. Mr. Chapman’s grievance was initiated by your letter dated June 12, 2014, to Ms. Robin H. Layton, Interim Director of the Clarendon County Division of the South Carolina Department of Social Services which stated the following: “Pursuant to §600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014. Please advise as to the date and time as to any proceedings.” After the June 12, 2014 letter was forwarded to the State Office of DSS there was communication between the State Office and your office which resulted in the letter dated June 20, 2014, and DSS Form 1449 being faxed from your paralegal to the DSS Employee Relations Director. The cover letter which accompanied this form stated the following: “Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter.” You further contend that DSS clearly acknowledged Mr. Chapman’s grievance letter for what he intended it to be and for what it was in actuality—the initiation of the grievance process.
3. The State Employee Grievance Procedure Act does not state that a grievance must be initiated only by filing DSS Grievance Form 1449. Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states that “[t]he procedure must be initiated internally by such employee within fourteen calendar days of the effective date of the action.” The failure to earlier submit the DSS Grievance Form 1449 is not fatal to Mr. Chapman’s grievance because his grievance was initiated in writing, Respondent accepted his letter, requested that he submit the DSS Form 1449, which he did, and Respondent continued the process. Therefore, your contention is that Respondent may not now complain Mr. Chapman did not file a grievance with Respondent pursuant to time frames established by the Act.
4. Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states that “[t]he internal time periods of the agency grievance procedure may be waived upon mutual written agreement of both parties.” Assuming the Act required the DSS Form 1449 to be the sole manner of initiating the grievance, you contend that DSS waived the right to belatedly raise the issue of timeliness when it acted in furtherance of the grievance

Mr. Dwight C. Moore
October 16, 2014
Page Three

process at every step subsequent to receiving the DSS Form 1449 in support of the grievance letter.

DSS contends the following:

1. Mr. Chapman was an employee of the State of South Carolina, not an employee of a county or an incorporated municipality covered under the County and Municipal Employees Grievance Procedure Act. Accordingly, Appellant's cited authority has no application or precedential value for purposes of the present matter and must be discarded.
2. The June 12, 2014 letter to Ms. Layton in which Appellant's counsel stated that Mr. Chapman wished to grieve his termination was of no effect as he would have fully understood based on his own citation of DSS policy. Specifically, the DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance and Appeal, Section 606, Procedure to File a Grievance, in Step One provide that "the grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action." Mr. Chapman was aware of this requirement as he was provided with a copy of the DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance and Appeal and DSS Form 1449 in a June 3, 2014 letter written to him by DSS. DSS contends Appellant's counsel would have had access to the necessary form and instructional policy well in advance of his June 12, 2014 letter to Ms. Layton.
3. DSS developed, and published for its employees, policies and procedures related to the initiation of internal grievances by those employees. The requirement that grievances be initiated using DSS Form 1449 within fourteen calendar days of the effective date of the action is mandatory, not precatory or discretionary and Mr. Chapman did not have available to him multiple options for filing his internal grievance. Additionally, if there is to be a waiver of the agency's internal time frames related to the filing of the DSS Form 1449, that waiver must, per policy, be based upon a mutual written agreement by the parties, not the employee's perception as to how his actions should be interpreted.
4. Notwithstanding that a lapse in counsel within the agency resulted in moving forward with an internal grievance finding in this matter, Mr. Chapman has no basis upon which to assert that further proceedings must be permitted.

To address your initial contention that Mr. Chapman has exhausted his administrative remedies under the County and Municipal Employees Grievance Procedure Act as it applies to his termination and that he is in full compliance with the S.C. Code Ann. § 8-17-110, et seq. (1986) as amended, Mr. Chapman was a State Employee and was, therefore, not subject to the County and Municipal Employees Grievance Procedure Act. Mr. Chapman was, however, subject to the provisions of the State Employee Grievance Procedure Act, S.C. Code Ann. § 8-17-310. The sections of the S.C. Code of Laws you cited beyond this initial assertion, however, correctly refer to the State Employee Grievance Procedure Act (Act).

Mr. Dwight C. Moore
October 16, 2014
Page Four

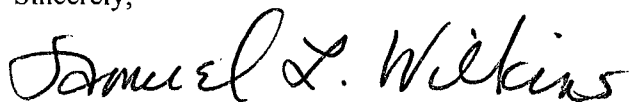
You contend in your Request for Reconsideration that your letter to Ms. Layton dated June 12, 2013, should have been considered the initiation of Mr. Chapman's grievance because the Act does not require a specific form to initiate a grievance. While you are correct that the Act does not require a specific form to initiate a grievance, § 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "[e]ach agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources." In accordance with this provision, DSS established an agency grievance procedure which required the submission of DSS Form 1449 in order to initiate the grievance. Mr. Chapman was notified of this requirement when he was provided with a copy of the DSS Form 1449 as well as a copy of the DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance and Appeal, prior to the end of the fourteen calendar day time frame in which to initiate his grievance. In addition, § 8-17-350 requires the State Human Resources Director to ascertain that there has been full compliance with the agency's grievance policy when an appeal has been filed.

You further contend that, even if DSS Form 1449 was required to initiate Mr. Chapman's grievance, DSS's actions concerning the processing of Mr. Chapman's grievance were tantamount to an agreement to waive the fourteen calendar time frame to initiate the grievance. You argue that this time frame was waived in accordance with section 8-17-330 of the S.C. Code of Laws of 1976, as amended, which states that "[t]he internal time periods of the agency grievance procedure may be waived upon mutual written agreement of both parties." The internal grievance process does not begin, however, until an employee has initiated a grievance. The fourteen calendar day time frame is established within the Act as a mandatory time frame for filing a grievance with the agency and is not an internal time frame which can be waived by either party. Since Mr. Chapman's grievance was not initiated timely, DSS had no jurisdiction to process the grievance, and any action taken by the agency in regards to Mr. Chapman's grievance are irrelevant to the State Human Resources Director's determination of whether his grievance was timely filed.

As I stated in my September 4, 2014 decision, the Act requires that all administrative remedies be exhausted prior to appealing an action to the State Human Resources Director. Mr. Chapman's failure to file a grievance in accordance with DSS policy within the required time frame precluded him from properly completing DSS's employee grievance procedure. Therefore, Appellant failed to exhaust all his administrative remedies. "Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts." Hyde v. South Carolina Dept. Of Mental Health, 314 S.C. 207, 442 S.C.2d 582 (1994); See also, Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).

While the information contained in your Request for Reconsideration has been reviewed, I uphold my final decision of September 4, 2014, regarding Mr. Chapman's appeal.

Sincerely,



Samuel L. Wilkins
Director

c: Mr. William C. Smith

APPEAL BEFORE THE STATE HUMAN RESOURCES DIRECTOR

William Henry Chapman v. South Carolina Department of Social Services (DSS)

FINAL DECISION

This matter came before me in the appeal of William Henry Chapman ["Appellant"] under the State Employee Grievance Procedure Act (Act) to determine whether or not the action is "grievable to the committee or a mediator-arbitrator." Appellant appealed the decision by DSS ["Respondent"]. Both Appellant and Respondent were given the opportunity to present information concerning the appeal. As such, both Appellant and Respondent submitted various documents included in the record on appeal and, subsequently, a review of the record on appeal has been conducted. According to the record, Appellant is appealing his termination.

ISSUE

Based on the record presented, the following issue is presented to me on appeal:
Whether Appellant failed to exhaust administrative remedies with Respondent in accordance with the requirements of the Act.

STATEMENT OF EVENTS

Based on the record presented to me by both Appellant and Respondent, the following information is presented:

1. On June 3, 2014, Appellant was notified his employment was terminated due to substandard performance;
2. by letter dated June 3, 2014, Ms. Kristen L. Johnson, M.A. HRM, Respondent's Employee Relations Specialist, advised Appellant that "[e]mployees must initiate a grievance within 14 calendar days of the effective day of the grievable action." [Emphasis in original.] In addition, Ms. Johnson provided Appellant with DSS Form 1449, Employee Grievance and Appeal Form and a copy of Respondent's Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal;
3. On June 20, 2014, Respondent received Appellant's DSS Form 1449, Employee Grievance and Appeal Form, concerning his termination via facsimile;
4. by certified letter dated July 25, 2014, and received by Appellant on July 28, 2014, Ms. Amber Gillum, Respondent's Acting State Director, advised Appellant that she was upholding his termination. Ms. Gillum's letter further advised Appellant that if he wished to appeal this decision, the appeal had to be in writing and submitted within ten (10) calendar days of receipt of Ms. Gillum's decision or fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurred later; and
5. by letter postmarked August 4, 2014, Appellant initiated an appeal to the State Human Resources Director.

RELEVANT LAW

Section 8-17-350 of the S.C. Code of Laws of 1976, as amended, states in part: "When an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator-arbitrator."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action. . . ."

Section 19-718.04(B) of the State Human Resources Regulations states "[a] covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action."

Section 603 of Respondent's Procedure for Grievance and Appeal states in part that, "[a]ll grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action."

ANALYSIS

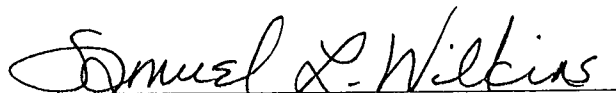
According to the record, Appellant was notified via hand-delivered letter on June 3, 2014, that his employment was terminated effective June 3, 2014. Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources Management Office on June 20, 2014. The date Appellant's grievance was submitted, June 20, 2014, is seventeen (17) calendar days from the effective date of the action, June 3, 2014. Section 8-17-330 of the S. C. Code of Laws of 1976, as amended, states in part that, "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action...." This timeframe is also noted in Respondent's Procedure for Grievance and Appeal which Ms. Johnson provided to Appellant. Appellant's grievance was submitted beyond this fourteen calendar day timeframe.

The Act requires that all administrative remedies be exhausted prior to appealing an action to the State Human Resources Director. Appellant's failure to file a grievance within the required time frame precluded him from completing Respondent's employee grievance procedure. Therefore, Appellant failed to exhaust all his administrative remedies. "Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts." Hyde v. South Carolina Dept. Of Mental Health, 314 S.C. 207, 442 S.C.2d 582 (1994); See also; Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).

DECISION

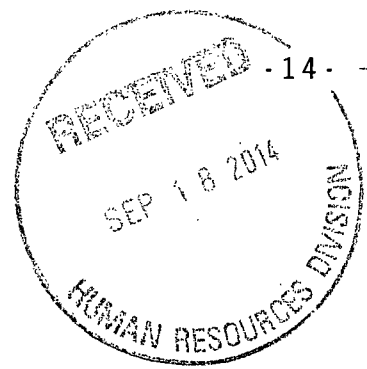
Because Appellant failed to file a grievance with Respondent within 14 calendar days of the effective date of his termination, the State Human Resources Director has determined that the appeal must be denied. Since Appellant did not file a grievance with Respondent pursuant to time frames established by the Act, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed.

-This concludes the processing of the appeal.

A handwritten signature in cursive script, reading "Samuel L. Wilkins", written over a horizontal line.

Samuel L. Wilkins
State Human Resources Director

Columbia, South Carolina
September 4, 2014



APPEAL BEFORE
THE STATE HUMAN RESOURCES DIRECTOR

William Henry Chapman, Employee,)
)
Appellant,)
vs.)
)
South Carolina Department of)
Social Services, Employer,)
)
Respondent.)
_____)

**REQUEST FOR RECONSIDERATION
OF THE FINAL DECISION OF THE
STATE HUMAN RESOURCES DIRECTOR**

William Henry Chapman respectfully requests that the State Human Resources Director reconsider and reverse his Final Decision in the above-style appeal dated September 4, 2014, and received by Appellant on September 8, 2014, upon the grounds hereinafter recited.

STATEMENT OF THE CASE

Appellant was terminated from employment with the Clarendon County Division of the South Carolina Department of Social Services on June 3, 2014. The termination letter was hand-delivered over the signature of Robin H. Layton, Interim Director of Clarendon County, and the last paragraph stated: "You may contact the Office of Human Resource Management at (803) 898-7315 regarding your possible grievance rights." (Exhibit #1: Letter dated June 3, 2014)

Appellant retained counsel and by letter dated June 12, 2014, Appellant's attorney advised Ms. Layton that he represented the Appellant and stated: "Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014. Please advise as to date and time as to any proceedings." (Exhibit #2: Letter dated June 12, 2014)

Appellant's DSS Form 1449 was transmitted under cover of a letter dated June 20, 2014, sent by United States Mail, Facsimile and E-mail addressed to Ms. B. Glenise Elmore, Employee

Relations Director of Respondent's Office of Human Resources, by Crystal Stokes, Paralegal to Appellant's counsel, with the following message:

Dear Ms. Elmore:

Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter. Please let me know if there is anything further required from us at this time. ...

The DSS Form 1449 was signed by Appellant and dated June 20, 2014. (Exhibit #3: Letter, DSS Form 1449, Fax Cover Sheet, and Fax Report all dated June 20, 2014)

By letter dated July 7, 2014, and received by Appellant's Counsel on July 9, 2014, the Director of Human Resources Management Division E-mailed and mailed a letter to Ms. Leigh Bolick, Director of Child Care Services, enclosing the Grievance and Appeal forms for Mr. Chapman and giving the instructions and procedure for handling Appellant's grievance. The letter reflected "cc" to Appellant, Moore Law Firm, LLC, Ms. Robin Layton, County Director, Clarendon County DSS, and Mr. William Smith, Esq., DSS Office of General Counsel. (Exhibit #4: Letter dated July 7, 2014)

Ms. Amber Gillum, Acting State Director, addressed a letter dated July 25, 2014, "sent via certified mail" to Mr. William Chapman, transmitting the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form). Ms. Gillum informed the Appellant that he may appeal to the State Employee Grievance Committee through the Director of Human Resources at the Office of Human Resources and provided the street address. She also advise him as follows:

"This appeal must be in writing and made within ten (10) calendar days of receipt of this decision or within fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurs later." The letter contained "cc" notation to Robin Layton, County Director, Clarendon County DSS, William Smith, Esq., Office of General Counsel, and Dwight C. Moore,

Esq., Moore Law Firm, LLC. Appellant's Counsel received the letter on July 29, 2014. (Exhibit #5: Letter and DSS Form 1449-2, both dated July 25, 2014)

Appellant wrote a letter on Moore Law Firm, L.L.C., letterhead dated August 4, 2014, to the State Employee Grievance Committee, Director of Human Resources, at the address furnished by Ms. Gillum. The pertinent part of the letter stated: "Please be advised that pursuant to this letter, I wish to appeal the decision handed down by Ms. Gillum on or about July 25, 2014. Please refer all correspondence to the address indicated above." A "cc" notation indicated that copies of the letter were sent to Amber Gillum, SCDSS Acting State Director and Robin Layton, Clarendon County DSS County Director. (Exhibit #6: Letter dated August 4, 2014)

Carrie Coats, Alternative Dispute Resolution Program, wrote a letter on SC Budget And Control Board, Human Resources Division, letterhead dated August 5, 2014, addressed to Appellant's Counsel, stating that "the enclosed form" was to be completed and returned to their office at 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223, within five (5) days of receipt. Counsel received the letter on August 6, 2014. (Exhibit #7: Letter dated August 4, 2014)

On August 11, 2014, Ms. Carrie Coats sent the following message to Appellant's Counsel by fax.

Mr. Moore,

Please find attached the State Appeal Form. My apologies for the oversight in not including this last week. Please call 803-896-5300 if you have any additional questions.

Form GC101, State Employee Grievance Procedure State Appeal Form was included in the fax transmission. (Exhibit #8: Two-page Fax dated August 11, 2014, and Form GC101-Revised 10-01-96)

The Final Decision of Mr. Samuel L. Wilkins, State Human Resources Director, dated September 4, 2014, was received by Appellant's Counsel on September 8, 2014. The conclusion of the Human Resources Director was as follows:

Because Appellant failed to file a grievance with Respondent within 14 calendar days of the effective date of his termination, the State Human Resources Director has determined that the appeal must be denied. Since Appellant did not file a grievance with Respondent pursuant to time frames established by the Act, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed.

This concludes the processing of the appeal.

(Exhibit #9: Final Decision State Human Resources Director dated September 4, 2014,)

ISSUE ON APPEAL

Whether Appellant failed to exhaust administrative remedies with Respondent in accordance with the requirements of the Act.

ARGUMENT

Appellant respectfully asserts that he has exhausted his administrative remedies under the County and Municipal Employees Grievance Procedure Act as it applies to his termination and that he is in full compliance with S.C. Code Ann. § 8-17-110, et seq. (1986) as amended.

In his Analysis, the State Human Resources Director (hereafter "HR Director") reasoned as follows.

According to the record, Appellant was notified via hand-delivered letter on June 3, 2014, that his employment was terminated effective June 2, 2014. Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources Management Office on June 20, 2014. The date Appellant's grievance was submitted, June 20, 2014, is seventeen (17) calendar days from the effective date of the action, June 3, 2014. Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part that, "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action...." ... Appellant's grievance was submitted beyond this fourteen calendar day timeframe.

The record reflects that Appellant initiated his grievance internally by Counsel's letter to the Clarendon County Interim Director dated June 12, 2014, - five (5) days prior to the expiration of the seventeen day cut-off. His letter clearly stated his desire to grieve, referenced the action

that was the subject of his grievance, and asked to be notified of the date and time of the proceedings. (Exhibit #2) After his grievance letter was forwarded to the State Office of the South Carolina Department of Social Services (hereafter "SC DSS"), there was communication between the State Office and Counsel's office which resulted in the letter dated June 20, 2014, and DSS Form 1449 faxed from Counsel's paralegal to the Employee Relation Director. The cover letter contains the following illuminating statement: "Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter." (Emphasis added) Clearly, the Respondent acknowledged Appellant's grievance letter for what he intended it to be and for what it was in actuality - the initiation of the grievance process. Although the HR Director cites receipt of DSS Form 1449 as the initiation of the grievance, and bases his decision upon the fact that the form was received on June 20, 2014, the Act does not state that the grievance must be initiated only by filing DSS Form 1449. Section 8-17-330 states only that [t]he procedure must be initiated internally by such employee within fourteen calendar days of the effective date of the action ... The SC DSS Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal, effective 01/22/2010, Section 606, Procedure to File a Grievance, in Step One provides that "[t]he grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action." (Exhibit 9: South Carolina Department of Social Services Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal, effective 01/22/2010)

Appellant contends that the failure to earlier submit the DSS Form 1449 is not fatal to his grievance because his grievance was initiated in writing, that the Respondent accepted his letter, requested that he submit the DSS Form 1449, which he did, and Respondent continued the

process. Therefore, Respondent may not now complain that Appellant did not file a grievance with Respondent pursuant to time frames established by the Act.

In further support of Appellants argument that the time frames and manner of initiating grievances relied upon by the HR Director his interpretation of Respondent's policy, Appellant cites the provision in § 8-17-330 which states as follows: "The internal time periods of the agency grievance procedure may be waived upon the mutual written agreement of both parties." Assuming, *arguendo*, had the Act required the DSS Form 1449 to be the sole manner of initiating the grievance, the Respondent waived the right to belatedly raise the issue of timeliness when it acted in furtherance of the grievance process at every step subsequent to receiving the DSS Form 1449 in support of the grievance letter.

Finally, the issue of timeliness was addressed by the South Carolina Court of Appeals in the case of Trowell v. South Carolina Department of Public Safety, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009). The issue in Trowell was service; the Director notified Trowell, via letter, that his appeal was untimely because Trowell had failed to file it within ten calendar days of receipt of the Department's February 2nd fax. The Director noted that the Act is not specific as to how the final agency decision must be delivered and determined that it could be accomplished through hand delivery, by fax or mail and denied the appeal because it was not filed within the ten-day period following the service on February 2nd. The Court of Appeals concluded: "We find the agency's interpretation of its service rules was overly harsh in this situation." Trowell, 384 S.C. at 237, 681 S.E.2d at 896.

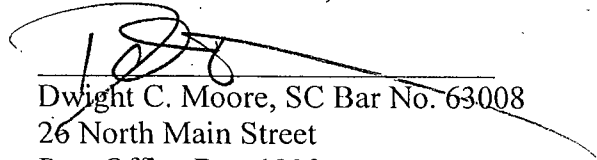
Likewise, Appellant urges the Court to reconsider its interpretation of the timeliness of the receipt of Appellant's letter grieving his termination and the intervening time of the submission of his SC DSS Form 1449.

CONCLUSION

For the foregoing reason, Appellant urges the HR Director to reconsider and reverse his decision and allow the grievance to continue to its conclusion through the grievance process.

Respectfully submitted,

MOORE LAW FIRM, L.L.C.



Dwight C. Moore, SC Bar No. 63008

26 North Main Street

Post Office Box 1229

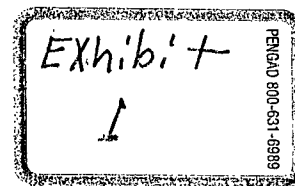
Sumter, South Carolina 29151-1229

Telephone (803) 778-6520

Fax (803) 775-6365

Attorney for Appellant

September 18, 2014



Date: June 3, 2014

HAND DELIVERED

Henry Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman:

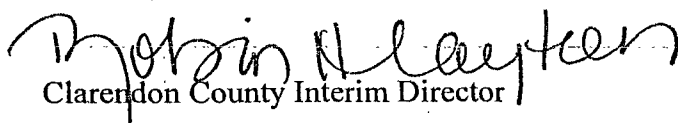
On April 15, 2014, you were issued an Employee Warning Notice of Substandard Performance. This notice listed some areas in which your job performance was deemed deficient. The notice further stated that you were being given forty-five (45) to fifty (50) days to improve your performance and the failure to satisfactorily do so would "... in a rating of 'Below Performance Requirements' and removal from the position." As stated in Chapter 5, Section 508(D) of the Human Resources Policies and Procedures Manual, *"[i]f the employee is rated 'unsuccessful' on any essential job duty or objective which significantly impacts performance as noted in the warning notice by the end of the warning period, the employee shall be removed from the position immediately (i.e., termination, reassignment, or demotion)."*

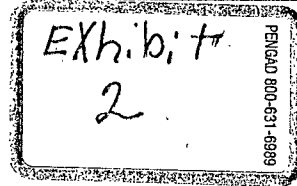
This letter is to inform you that you failed to satisfactorily improve your job performance during the specified time frame. Therefore, effective immediately, your employment with the Clarendon County Department of Social Services is terminated due to substandard job performance.

You will be required to return all agency equipment and property, including your ID card, to management before leaving the office today.

You may contact the Office of Human Resource Management at (803) 898-7315 regarding your possible grievance rights.

Sincerely,


Clarendon County Interim Director



Dwight C. Moore
Attorney at Law
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229
Office: (803) 778-6520
Fax: (803) 775-6365

E-Mail: moorelawfirm@ftc-i.net

June 12, 2014

Ms. Robin H. Layton
Clarendon County Interim Director
Clarendon County DSS
3 South Church Street
Manning, South Carolina 29102

Re: Henry Chapman
June 3, 2014 termination

Dear Ms. Layton:

Please be advised that I am representing Mr. Chapman in regard to the above-referenced matter.

Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014.

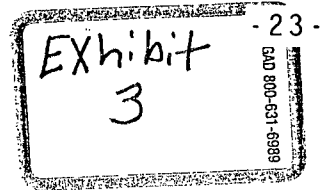
Please advise as to date and time as to any proceedings. With kind regards, I am

Sincerely yours,

Dwight C. Moore

DCM/ccs

Fax Send Report



Date/Time : JUN-20-2014 03:56PM FRI
Fax Number : 8037756365
Fax Name : MOORE LAW FIRM, LLC
Model Name : SCX-5835_5935 Series
Machine Serial Number : Z2P3BJFCC0007FF

No.	Name/Number	Start Time	Time	Mode	Page	Result
085	8038987176	06-20 03:54PM	00'54	ECM	003/003	OK

MOORE LAW FIRM, L.L.C.
26 NORTH MAIN STREET
P.O. BOX 1229
SUMTER, SOUTH CAROLINA 29151
TELEPHONE NUMBER (803) 778-6520
FAX NUMBER: (803) 775-6365

FAX COVERSHEET

DATE: June 20, 2014
CASE NAME/NUMBER: *William Henry Chapman*

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Ms. B. Glenise Elmore
COMPANY: SC Department of Social Services
FAX: 803-898-7176
FROM: Crystal Stokes

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 3

COMMENTS: Please see attached

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (803) 778-6520 AS
SOON AS POSSIBLE AND ASK FOR CRYSTAL.**

CONFIDENTIALITY NOTICE: This information contained in this facsimile message may be attorney privileged and confidential and is intended only for use of the entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this transmission in error, please immediately notify us by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank you.

MOORE LAW FIRM, L.L.C.
26 NORTH MAIN STREET
P.O. BOX 1229
SUMTER, SOUTH CAROLINA 29151
TELEPHONE NUMBER (803) 778-6520
FAX NUMBER: (803) 775-6365

FAX COVERSHEET

DATE: June 20, 2014
CASE NAME/NUMBER: *William Henry Chapman*

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Ms. B. Glenise Elmore
COMPANY: SC Department of Social Services
FAX: 803-898-7176
FROM: Crystal Stokes

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 3

COMMENTS: Please see attached

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (803) 778-6520 AS
SOON AS POSSIBLE AND ASK FOR CRYSTAL.**

CONFIDENTIALITY NOTICE: This information contained in this facsimile message may be attorney privileged and confidential and is intended only for use of the entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this transmission in error, please immediately notify us by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank you.

Dwight C. Moore

Attorney at Law

26 North Main Street

P.O. Box 1229

Sumter, SC 29151-1229

Office: (803) 778-6520

Fax: (803) 775-6365

E-Mail: moorelawfirm@ftc-i.net

June 20, 2014

VIA U.S. MAIL, FACSIMILE, AND E-MAIL

Ms. B. Glenise Elmore
Employee Relations Director
Office of Human Resources
S.C. Department of Social Services
1535 Confederate Ave/Room 302
Columbia, South Carolina 29202

Re: William Henry Chapman Grievance

Dear Ms. Elmore:

Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter. Please let me know if there is anything further required from us at this time. With kind regards, I am

Sincerely yours,

Crystal C. Stokes,
Paralegal to Dwight C. Moore

DCM/ccs
Enclosure

South Carolina Department of Social Services GRIEVANCE FORM

INSTRUCTIONS - TO BE COMPLETED BY GRIEVANT

Continue items on additional sheet of paper, when necessary. Enter continued comments to corresponding item number. Identify each additional sheet with employee's name: last, first and middle initial.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Original: Human Resources Director Copy: Grievant Copy: Submitted by Human Resources Division to Appointing Authority

Employee's Name: Last, First, Middle Initial Chapman, William H.		Job Title: Human Service Specialist I	Contact Information: Work Telephone:
County/Division: Clarendon County		Hire Date: August 2, 1992	Home Telephone: 803-460-0267
Job Status: (Check one) ☒ FTE ☐ Temporary ☐ Temporary Grant	Home or Mailing Address: 214 Lantern Lane Manning, SC 29102		

1. Effective date of grievable action: June 3, 2014

2. Give a full explanation of the grievance/grievance action.
 wrongful termination

3. Describe in detail the relief sought:
 rehire or eligible for early retirement/severance pay

4. Please indicate below your mediation option by signing your name next to your selection:

I am interested in participating in the mediation process to resolve this matter. William H. Chapman
 I am not interested in participating in the mediation process to resolve this matter.

5. Print Employee's Name: William H. Chapman	Employee's Signature: <u>William H. Chapman</u>	Date Signed: June 20, 2014
6. Human Resources Director's Signature:	Date Received in HRM:	Date Signed:

Grievance of William Chapman
Management Position Statement
ATTACHMENT A

PERFORMANCE ENHANCEMENT PLAN

- 28 -

Employee Name: William "Henry" Chapman
Title: FAIC INTERVIEWER
County/Department: CLARENDON COUNTY DSS
Date: January 31, 2014

Performance in need of improvement:

1. COMPLIANCE WITH SCHEDULED WORK HOURS.
2. COMPLIANCE WITH 60 MINUTE LUNCH.
3. NUMBER OF ACD CALLS PER DAY.
4. TIME IN ASSIST.
5. IMPROVED DOCUMENTATION.

(List the goals/activities the employee will initiate to improve performance. Include skill development and changes needed to meet work performance expectations.)

1. AGENT WILL COMPLY WITH SCHEDULED WORK HOURS (DAILY LOG IN REPORTS).
2. AGENT WILL COMPLY WITH SCHEDULED 60 MINUTE LUNCH BREAK. (AUX OUT/AUX IN TIMES)
3. AGENT WILL INCREASE ACD CALLS TO 10-12 PER DAY BY SETTING GOALS. (DAILY SCCHIP LOG)
4. AGENT WILL DECREASE ASSIST TIME – DO NOT DISCONNECT CALL UNTIL ALL ASPECTS OF INTERVIEW ARE COMPLETED. (CMS AGENT AUX REPORTS)
5. AGENT WILL IMPROVE DOCUMENTATION BY USING PRESCRIBED INTERVIEW GUIDE AND OTHER RESOURCES DIRECTLY RELATED TO INTERVIEW DOCUMENTATION.

Employee Signature: _____ Date: _____

Targeted Date for Improvement: FEB. 28, 2014

Expected Results-list measurements, where possible

1. AGENT WILL BE IN 100% WORK SCHEDULE COMPLIANCE IMMEDIATELY/VERIFIED BY DAILY LOG- IN REPORT.
2. AGENT WILL BE IN 100% LUNCH HOUR COMPLIANCE IMMEDIATELY/VERIFIED BY CMS REPORT.
3. 10-12 COMPLETED CALLS/DAY / VERIFIED BY SCCHIP DAILY LOGS.
4. DECREASED TIME IN ASSIST BY 50%/ VERIFIED BY CMS REPORT.
5. 50% DECREASE IN RETURNED CASES FOR MONTH OF FEBRUARY.

Dates to Review progress by employee and supervisor:

FEB. 14, 2014/ FEB. 28, 2014

Progress at review dates:

2/14/14:

1. Goal met – in compliance with scheduled work hours.
2. Goal met – in compliance with scheduled 60 minute lunch break.
3. Goal has not been met.
4. Goal has been met- time in assist has decreased more than 50%.
5. Goal has been met – agent had no cases returned for documentation.

Goals which have been successfully met: (see supporting documentation)

2/28/14:

1. Goal continues to be met – in compliance with scheduled work hours. (Daily log in/out printouts.
2. Goal continues to be met – in compliance with scheduled 60 minute lunch break(CMS Agent AUX report)
3. Goal has not been met . (Daily SCCHIP log)
4. Goal has been met – time in assist has decreased by more than 50%. (CMS Agent AUX report)
5. Goal has been met – no cases returned for documentation in February (Supervisor emails)

Goals which were not met/recommended actions: (see supporting documentation)

3. Agent will increase ACD calls to 10-12 per day by setting goals.

Prior to review date of 2/14/14, agent failed to meet goal on 7 of 8 working days (office closed 2 days due to ice storm and opened at 10:00 a.m. on 1 day)

Between 2/14/14 and 2/28/14, agent failed to meet goal on 2 of 9 working days. (Daily SCCHIP logs).

Recommended action: Oral warning of substandard job performance.

Next Review Date, if needed:

3/28/14

Employee Signature: _____

Date: _____

Supervisor Signature: _____

Date: _____

Grievance of William Chapman
Management Position Statement
ATTACHMENT B

PERFORMANCE ENHANCEMENT PLAN

- 31 -

Employee Name: William "Henry" Chaoman

Title: FAIC INTERVIEWER

County/Department: CLARENDON COUNTY DSS

Date: January 31, 2014

Performance in need of improvement:

1. COMPLIANCE WITH SCHEDULED WORK HOURS.
2. COMPLIANCE WITH 60 MINUTE LUNCH.
3. NUMBER OF ACD CALLS PER DAY.
4. TIME IN ASSIST.
5. IMPROVED DOCUMENTATION.

(List the goals/activities the employee will initiate to improve performance. Include skill development and changes needed to meet work performance expectations.)

1. AGENT WILL COMPLY WITH SCHEDULED WORK HOURS (DAILY LOG IN REPORTS).
2. AGENT WILL COMPLY WITH SCHEDULED 60 MINUTE LUNCH BREAK. (AUX OUT/AUX IN TIMES)
3. AGENT WILL INCREASE ACD CALLS TO 10-12 PER DAY BY SETTING GOALS. (DAILY SCCHIP LOG)
4. AGENT WILL DECREASE ASSIST TIME – DO NOT DISCONNECT CALL UNTIL ALL ASPECTS OF INTERVIEW ARE COMPLETED. (CMS AGENT AUX REPORTS)
5. AGENT WILL IMPROVE DOCUMENTATION BY USING PRESCRIBED INTERVIEW GUIDE AND OTHER RESOURCES DIRECTLY RELATED TO INTERVIEW DOCUMENTATION.

Employee Signature: *William H. Chaoman* Date: *January 31, 2014*

Targeted Date for Improvement: FEB. 28, 2014

Expected Results-list measurements, where possible

1. AGENT WILL BE IN 100% WORK SCHEDULE COMPLIANCE IMMEDIATELY/VERIFIED BY DAILY LOG- IN REPORT.
2. AGENT WILL BE IN 100% LUNCH HOUR COMPLIANCE IMMEDIATELY/VERIFIED BY CMS REPORT.
3. 10-12 COMPLETED CALLS/DAY / VERIFIED BY SCCHIP DAILY LOGS.
4. DECREASED TIME IN ASSIST BY 50%/ VERIFIED BY CMS REPORT.
5. 50% DECREASE IN RETURNED CASES FOR MONTH OF FEBRUARY.

Dates to Review progress by employee and supervisor:

FEB. 14, 2014/ FEB. 28, 2014

Progress at review dates:

2/14/14:

1. Goal met – in compliance with scheduled work hours.
2. Goal met – in compliance with scheduled 60 minute lunch break.
3. Goal has not been met.
4. Goal has been met- time in assist has decreased more than 50%.
5. Goal has been met – agent had no cases returned for documentation.

Goals which have been successfully met: (see supporting documentation)

2/28/14:

1. Goal continues to be met – in compliance with scheduled work hours. (Daily log in/out printouts.
2. Goal continues to be met – in compliance with scheduled 60 minute lunch break(CMS Agent AUX report)
3. Goal has not been met . (Daily SCCHIP log)
4. Goal has been met – time in assist has decreased by more than 50%. (CMS Agent AUX report)
5. Goal has been met – no cases returned for documentation in February (Supervisor emails)

Goals which were not met/recommended actions: (see supporting documentation)

3. Agent will increase ACD calls to 10-12 per day by setting goals.

Prior to review date of 2/14/14, agent failed to meet goal on 7 of 8 working days (office closed 2 days due to ice storm and opened at 10:00 a.m. on 1 day)

Between 2/14/14 and 2/28/14, agent failed to meet goal on 2 of 9 working days. (Daily SCCHIP logs).

Recommended action: Oral warning of substandard job performance.

Next Review Date, if needed:

3/28/14

Employee Signature: William Henry Rogers

Date: March 10, 2014

Supervisor Signature: Dawn M. Still

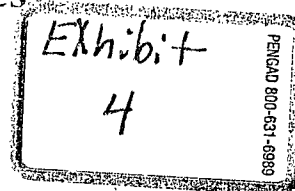
Date: 3/10/14

DSS

Serving Children and Families

AMBER GILLUM
INTERIM STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR



July 7, 2014

E-mailed & Mailed

Ms. Leigh Bolick, Director of Child Care Service
Department of Social Services

Dear Ms. Bolick:

The grievance process for the Department of Social Services consists of three (3) primary step procedures as reflected in the DSS Human Resources Policy and Procedure Manual Chapter 6 (606). Enclosed are the Grievance and Appeal forms for **Mr. William Chapman**.

The grievant or his/her representative and management may submit documentation to you during this process. Documents are to be submitted to you by both parties for your review no later than **July 9th, 2014**. As the grievance reviewer, you should conduct a fact finding process that is further outlined in Chapter 6 and provide a written recommendation for the State Director's consideration and final decision. Your recommendation, along with the grievance file and/or documents from each party, is due to the Human Resources Management Division no later than **July 16th, 2014**.

If you have any questions or need additional information, please contact Ms. Kristen Johnson, Employee Relations Specialist, at 803-898-7147.

Sincerely,

Funneaser "Neisie" Jacobs, Director
Human Resources Management Division

cc: Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

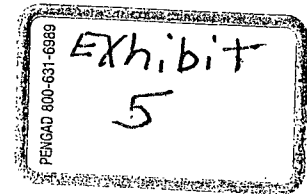
Moore Law Firm, LLC
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229

Ms. Robin Layton, County Director
Clarendon County DSS

Mr. William Smith, Esq.
DSS Office of General Counsel



Serving Children and Families



AMBER GILLUM
ACTING STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

July 25, 2014

SENT VIA CERTIFIED MAIL

Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman:

In reference to the grievance you filed, enclosed is the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form).

If you do not agree with this decision, you may appeal to the State Employee Grievance Committee through the Director of Human Resources at the Office of Human Resources, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223. This appeal must be in writing and made within ten (10) calendar days of receipt of this decision or within fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurs later.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Amber Gillum'.

Amber Gillum
Acting State Director

AG: kj

cc: Robin Layton, County Director
Clarendon County DSS

William Smith, Esq.
Office of General Counsel

Dwight C. Moore, Esq.
Moore Law Firm, LLC
P.O. Box 1229
Sumter, SC 29151

South Carolina Department of Social Services
GRIEVANCE DECISION FORM

INSTRUCTIONS

Original: Grievant

Copy: Supervisor

Copy: Appointing Authority

Copy: Human Resources Director

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Employee's Name: Last, First, Middle Initial
 Chapman, William

Job Title:
 Human Services Specialist I

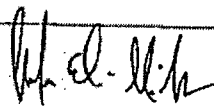
County/Division:
 Clarendon/Economic Services

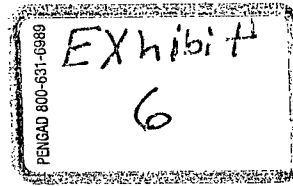
Decision:

I uphold the Agency's decision to terminate Mr. Chapman. I have fully reviewed all submitted information prior to rendering this decision.

Date of Decision:
 7/25/14

Signature of State Director:





Dwight C. Moore

Attorney at Law

26 North Main Street

P.O. Box 1229

Sumter, SC 29151-1229

Office: (803) 778-6520

Fax: (803) 775-6365

E-Mail: moorelawfirm@ftc-i.net

August 4, 2014

State Employee Grievance Committee
Director of Human Resources
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

Re: Termination of William Henry Chapman
Moore File No. 4136.4

To Whom It May Concern:

Please be advised that pursuant to this letter, I wish to appeal the decision handed down by Ms. Gillum on or about July 25, 2014.

Please refer all correspondence to the address indicated above. With kind regards, I am

Sincerely yours,

Dwight C. Moore

DCM/ccs

cc: Amber Gillum, SCDSS Acting State Director
Robin Layton, Clarendon County DSS County Director

NIKKI R. BAILEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

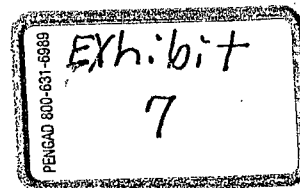
803-896-5300
FAX 803-896-5050

August 5, 2014

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR



Mr. Dwight C. Moore
Moore Law Firm, L.L.C.
Post Office Box 1229
Sumter, South Carolina 29151-1229

Re: William Henry Chapman v. South Carolina Department of Social Services

Dear Mr. Moore:

Concerning Mr. Chapman's appeal to the State Human Resources Director, please complete the enclosed form and return to our office within five (5) days of receipt. A rapid return of this form will ensure that Mr. Chapman's appeal is processed as quickly as possible.

Send the completed form to the Human Resources Division, Alternative Dispute Resolution Program, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223.

Sincerely,

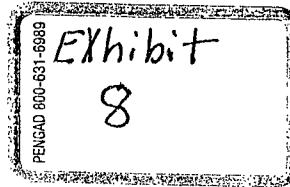
A handwritten signature in cursive script, reading "Carrie Coats".

Carrie Coats
Alternative Dispute Resolution Program

Enclosure

AUG - 6 2014

FAX


 BICB
 SC Budget and Control Board

SOUTH CAROLINA BUDGET AND CONTROL BOARD
 HUMAN RESOURCES DIVISION

8301 Parklane Road, Suite A220
 Columbia, South Carolina 29223

Fax: (803) 896-5050
 Phone: (803) 896-5300

TO: Mr. Dwight C. MooreDATE: 8/11/14FAX: 803-775-6365NO. OF PAGES: 2

(including cover sheet)

PHONE: 803-778-6520E-MAIL: moorelawfirm@fta-i.netFROM: Carrie CoatsDEPARTMENT: ADRPHONE: 803-896-5300

E-MAIL: _____

COMMENTS:

Mr. Moore,

Please find attached the State Appeal Form.

My apologies for the oversight in not including this last week.

Please call 803-896-5300 if you have any additional questions.

Carrie Coats

CONFIDENTIALITY NOTICE: This facsimile contains information from the SC Budget and Control Board's Human Resources Division which may be confidential or privileged. It is intended solely for the use of the individual or entity to whom it is addressed. If you are not the named addressee, you should not disseminate, distribute, or copy this facsimile. Please notify the sender immediately if you have received this facsimile by mistake and destroy all copies of the communication. Please note that any views or opinions presented in this facsimile are solely those of the author and do not necessarily represent those of the SC Budget and Control Board.

STATE EMPLOYEE GRIEVANCE PROCEDURE
STATE APPEAL FORM

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE
EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE
EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND
RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES.

EMPLOYEE'S NAME: _____

JOB CLASSIFICATION: _____

AGENCY: _____

HOME ADDRESS: _____
Street
City
State
Zip Code

TELEPHONE: _____
Home Office

1. Has the employee completed twelve (12) months of satisfactory service with the state? _____
2. What disciplinary action taken against the employee is being appealed? _____
3. Has the employee received a final decision from the agency? _____
4. What date did the employee receive the final decision? _____
5. If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure? _____

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position (continue on additional pages if necessary):

Please specify the relief that the employee is seeking by this appeal (continue on additional pages if necessary):

Signature: _____ Date: _____
Employee or Representative

Return to: State Human Resources Director
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

APPEAL BEFORE THE STATE HUMAN RESOURCES DIRECTOR

William Henry Chapman v. South Carolina Department of Social Services (DSS)

FINAL DECISION

This matter came before me in the appeal of William Henry Chapman ["Appellant"] under the State Employee Grievance Procedure Act (Act) to determine whether or not the action is "grievable to the committee or a mediator-arbitrator." Appellant appealed the decision by DSS ["Respondent"]. Both Appellant and Respondent were given the opportunity to present information concerning the appeal. As such, both Appellant and Respondent submitted various documents included in the record on appeal and, subsequently, a review of the record on appeal has been conducted. According to the record, Appellant is appealing his termination.

ISSUE

Based on the record presented, the following issue is presented to me on appeal:
Whether Appellant failed to exhaust administrative remedies with Respondent in accordance with the requirements of the Act.

STATEMENT OF EVENTS

Based on the record presented to me by both Appellant and Respondent, the following information is presented:

1. ✓ On June 3, 2014, Appellant was notified his employment was terminated due to substandard performance;
2. ✓ by letter dated June 3, 2014, Ms. Kristen L. Johnson, M.A. HRM, Respondent's Employee Relations Specialist, advised Appellant that "[e]mployees must initiate a grievance within 14 calendar days of the effective day of the grievable action." [Emphasis in original.] In addition, Ms. Johnson provided Appellant with DSS Form 1449, Employee Grievance and Appeal Form and a copy of Respondent's Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal;
3. ✓ On June 20, 2014, Respondent received Appellant's DSS Form 1449, Employee Grievance and Appeal Form, concerning his termination via facsimile;
4. by certified letter dated July 25, 2014, and received by Appellant on July 28, 2014, Ms. Amber Gillum, Respondent's Acting State Director, advised Appellant that she was upholding his termination. Ms. Gillum's letter further advised Appellant that if he wished to appeal this decision, the appeal had to be in writing and submitted within ten (10) calendar days of receipt of Ms. Gillum's decision or fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurred later; and
5. ✓ by letter postmarked August 4, 2014, Appellant initiated an appeal to the State Human Resources Director.

RELEVANT LAW

Section 8-17-350 of the S.C. Code of Laws of 1976, as amended, states in part: "When an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator-arbitrator."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action. . . ."

Section 19-718.04(B) of the State Human Resources Regulations states "[a] covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action."

Section 603 of Respondent's Procedure for Grievance and Appeal states in part that, "[a]ll grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action."

ANALYSIS

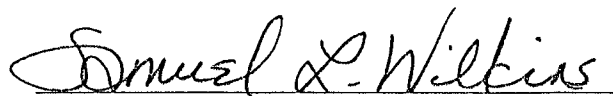
According to the record, Appellant was notified via hand-delivered letter on June 3, 2014, that his employment was terminated effective June 3, 2014. Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources Management Office on June 20, 2014. The date Appellant's grievance was submitted, June 20, 2014, is seventeen (17) calendar days from the effective date of the action, June 3, 2014. Section 8-17-330 of the S. C. Code of Laws of 1976, as amended, states in part that, "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action...." This timeframe is also noted in Respondent's Procedure for Grievance and Appeal which Ms. Johnson provided to Appellant. Appellant's grievance was submitted beyond this fourteen calendar day timeframe.

The Act requires that all administrative remedies be exhausted prior to appealing an action to the State Human Resources Director. Appellant's failure to file a grievance within the required time frame precluded him from completing Respondent's employee grievance procedure. Therefore, Appellant failed to exhaust all his administrative remedies. "Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts." Hyde v. South Carolina Dept. Of Mental Health, 314 S.C. 207, 442 S.C.2d 582 (1994); See also, Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).

DECISION

Because Appellant failed to file a grievance with Respondent within 14 calendar days of the effective date of his termination, the State Human Resources Director has determined that the appeal must be denied. Since Appellant did not file a grievance with Respondent pursuant to time frames established by the Act, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed.

This concludes the processing of the appeal.

A handwritten signature in cursive script, reading "Samuel L. Wilkins", written in black ink.

Samuel L. Wilkins
State Human Resources Director

Columbia, South Carolina
September 4, 2014

DSS

Serving Children and Families

AMBER E. GILLUM
ACTING STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

October 3, 2014

VIA ELECTRONIC MAIL ONLY

hkeever@ohr.sc.gov

Heather Kever
South Carolina Budget and Control Board
Human Resources Division
Alternative Dispute Resolution Program
8301 Parklane Road, Suite A220
Columbia, SC 29223

Re: Appellant's Request for Reconsideration
William Henry Chapman v. South Carolina Department of Social Services (DSS)

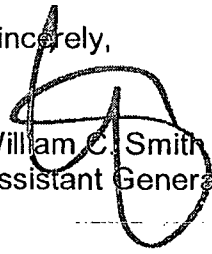
Dear Ms. Kever:

Pursuant to the instructions in your letter of September 19, 2014, following please find the position statement submitted on behalf of the South Carolina Department of Social Services (DSS) in opposition to the Appellant's Request for Reconsideration, currently pending before the State Human Resources Director.

Appellant's counsel has been provided a copy of this correspondence via electronic mail to moorelawfirm@ftc-i.net, the email address specified on his firm's stationery.

Please advise me should you have questions or need additional information.

Sincerely,


William C. Smith
Assistant General Counsel

DSS STATEMENT IN OPPOSITION TO APPELLANT'S REQUEST FOR RECONSIDERATION

The South Carolina Department of Social Services (DSS) would respectfully submit the following information to the State Human Resources Director in support of its request that Appellant William Henry Chapman's Request for Reconsideration of the Final Decision of the State Human Resources Director be denied:

-Appellant's counsel's has asserted that his client's full compliance with the County and Municipal Employees Grievance Procedure Act (SC Code Ann. § 8-17-110 *et seq.*) establishes that he has exhausted his administrative remedies. However, the Appellant was, until the time of the termination of his employment by DSS, an employee of the State of South Carolina, not an employee of a county or an incorporated municipality covered under the County and Municipal Employees Grievance Procedure Act. Accordingly, Appellant's cited authority has no application or precedential value for purposes of the present matter and must be discarded.

-Appellant's counsel further asserts that his client "initiated his grievance internally by Counsel's "letter to the Clarendon County Interim Director dated June 12, 2014, - five (5) days before of the expiration of the seventeen day cut-off." (See Request for Reconsideration, p. 4) The assertion is patently without merit for the following reasons:

First, there is no "seventeen day cut-off" period as counsel appears to insinuate in the above statement. Counsel himself acknowledges in his submission that a DSS internal grievance must be filed "within fourteen (14) calendar days of the effective date of the employment action."

Second, counsel offers in his "Statement of the Case" that, on June 12, 2014 he advised the Interim Director of the Clarendon County Department of Social Services that "[p]ursuant to § 600 of the South Carolina Department of Social Services grievance procedure" the Appellant wished to grieve "the termination handed down on June 3, 2014." (See Request for Reconsideration, p. 1) However, the advisement to the Interim Director was of no effect as counsel would have fully understood based upon his own citation of DSS policy. Counsel specifically references, in the body of his argument, the SCDSS Human Resources Policy and Procedure Manual policy provision setting forth the mandatory process to be followed in order to effect the initiation of an internal grievance as follows:

The SC DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance for Grievance and Appeal, effective 1/22/2010, Section 606, Procedure to File a Grievance, in Step One provides that "the grievance of an adverse employment action **must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action.**"

(See Request for Reconsideration, p. 5) (Emphasis supplied)

Third, although by his own admission, counsel proposes that he "initiated" an internal grievance in this matter on June 12, 2014 by notifying the Interim Director of his client's "wish" to grieve the agency employment action of June 3, 2014, counsel nonetheless affirms in his submission that he was fully cognizant of the requirement of DSS policy that the filing of an internal grievance must be initiated through the filing of the DSS Form 1449 with the DSS Human Resources Management Director within fourteen calendar days of the effective date of the employment action. Given that Appellant had already been provided a DSS Form 1449 and, as well, a copy of Chapter 6 of the DSS Human Resources Policy and Procedure Manual in a June 3, 2014 letter written to him by DSS, in response to his request for the same, counsel would have had access to the necessary form and instructional policy well in advance of his June 12th notification to the Interim Director..

Finally, it is also noteworthy that counsel purported to attach, as Exhibit 9 to the Request for Reconsideration and presumptively as being supportive of his position, the entire Chapter 6 of the SCDSS Human Resources Policy and Procedure Manual which outlines the DSS "Procedure for Grievance and Appeal." (See Request for Reconsideration, p. 5) In fact, however, Appellant's Exhibit 9 appears to be a marked copy of the Final Decision rendered in this matter by the State Human Resources Director.

-Appellant's counsel relies on the language of S.C. Code Ann. § 8-17-330 as supporting his proposition that the completion of a DSS Form 1449 to initiate the internal grievance process is optional and not required; the insinuation being that a statement that one wishes to grieve should suffice to initiate the process irrespective of the form in which the statement is made or the person to whom the statement may be communicated. (See Request for Reconsideration, p. 5) Counsel further offers the same statutory provision for its language stating that the internal time periods of an agency grievance procedure may be waived "upon the mutual written agreement of both parties;" which Appellant sees as having somehow transpired in the present matter. (See Request for Reconsideration, p. 6)

The language of S.C. Ann. § 8-17-330 states, in pertinent part, as follows:

Each agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources. A copy of the approved **agency grievance procedure must be made available to covered employees of the agency...** The procedure must provide that all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action... (Emphasis supplied)

Section 603 (Time Periods) of the DSS Human Resources Policy and Procedure Manual was developed in response to the requirements of section 8-17-330, and clearly addresses the time frame for internal grievances as follows:

All grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action... The internal time periods of the agency grievance procedure ... may not be waived except upon the mutual written agreement of the parties...
(Emphasis supplied)

Further, as counsel himself noted, section 606 of the Manual states as follows:

The grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action. (Emphasis supplied)

The upshot of the above is that, pursuant to a statutory mandate, DSS developed, and published for its employees, policies and procedures related to the initiation of internal grievances by those employees. The provisions of Chapter 6 of the Manual set forth the requirements that **must** be met before a covered employee's grievance of an adverse agency employment action may be properly initiated. The language of the policy provision is mandatory, not precatory or discretionary, and, simply stated, Appellant did not have available to him multiple options for filing his internal grievance. The agency policy is clear: an employee initiates an internal grievance by submitting a completed DSS Form 1449 to the DSS Human Resources Management Director within fourteen calendar days of the effective date of the adverse employment. Agency policy does not permit grievances to be filed by an aggrieved employee with whomever the employee deems appropriate or through a mechanism of the employee's choosing. Additionally, if there is to be a waiver of the agency's internal time frames related to the filing of the DSS Form 1449, that waiver must, per policy, be based upon a "mutual written agreement of the parties" not the employee's perception as to how his actions should be interpreted.

- Appellant's counsel cites *Trowell v. South Carolina Department of Public Safety* as supportive of his client's failure to properly file notice of his internal grievance. Trowell, however, is not even remotely related to the facts currently at issue and is certainly not dispositive of any issue in the present matter.

Trowell, a South Carolina State Trooper, filed an internal grievance against his employer, the South Carolina Department of Public Safety ("DPS"). Notice of DPS's decision regarding Trowell's Step II Grievance was initially sent to his attorney via **facsimile** on February 2, 2005, and the cover sheet contained a notation explaining the original letter would be sent subsequently by certified mail. The certified letter advising of the Step II decision was received and signed for on February 7th.

Eight days later, on February 15th, Trowell's attorney faxed his client's State Appeal Form to the State Human Resource Director ("Director") indicating his desire to appeal the DPS internal grievance decision. The DPS internal policy related to appealing the outcome of an internal grievance proceeding provided that an employee could appeal the final decision of the agency, and that the appeal had to "be in writing and submitted

to the State Human Resources Director within ten (10) calendar days of receipt of the Final Agency Decision...." (Emphasis supplied)

The State Human Resources Director determined that Trowell's appeal was not timely filed; reasoning that the fax notification started the ten day time frame during which the appeal had to be filed. The Court of Appeals, however, disagreed reversing the Director's decision and holding that because facsimile messages are not ordinarily used to effect notice of a final decision by a department, agency, or court, notice of the Department's internal decision was not effected until the certified letter was received.

At footnote 5 of the decision, the Court of Appeals noted that under the South Carolina Rules of Civil Procedure, Rule 5(b) (1), service is effected **by delivering a copy of a decision to an individual** or by mailing the same to a last known address or, under the Administrative Procedures Act, by **providing the final decision or order personally** or by mail.

The fundamental problem noted by the Court of Appeals in the Trowell case related to determining when Trowell, through his attorney, had received notice of DPS's final decision for purposes of calculating the time frame for filing his appeal. The case has no precedential value for the present matter inasmuch as there is no dispute whatsoever that notice of the agency's final action was delivered to the Appellant **by hand** on June 3, 2014 and that he was also provided, **at his own request**, by DSS letter of that same date, a copy of the DSS Form 1449 which was required to initiate his grievance, as well as a copy of Chapter 6 of the DSS Human Resources Policy and Procedure Manual relating to the requirements for filing a grievance.

The position of DSS is that the Appellant's Motion for Reconsideration must be denied. Appellant was timely provided notice of the final agency decision in this matter and, as well, was provided both the necessary form to initiate the grievance and the supporting policy to guide that process. Appellant's counsel has made a great deal of the requirements of both state statute and, as well, DSS Human Resources policy, however those requirements fully support the agency's actions in this matter and do nothing to explain Appellant's complete failure to comply with their clear mandates. Instead, counsel argues that, in some fashion, notwithstanding the absence of any mutual agreement in writing to permit the same, Appellant's failure to meet the mandated filing deadline should be excused because DSS implicitly agreed to a waiver of the time frame by issuing an internal agency finding. The argument stretches the bounds of logic and finds no support anywhere in the record related to this matter.

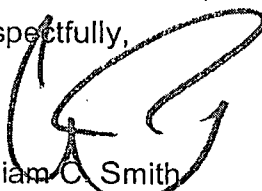
That the agency rendered an internal grievance finding in this case was premised upon the fact that at the time the underlying agency disciplinary action was taken all legal advisement and representation responsibilities for the Appellant's case were assigned to another agency attorney who was also in physical possession of the Appellant's file. When Appellant's counsel faxed his notice of appearance to the DSS Human Resources Management Division (HRM), the then assigned agency attorney properly advised HRM of a conflict of interest in the matter based upon her relationship to Appellant's counsel.¹ Only after counsel for the Appellant had filed notice of his

appearance was the handling of the present matter assigned to present counsel and the file materials were subsequently provided.

Incident to S.C. Code Ann. § 8-17-350; when an appeal is filed from an agency grievance determination, the State Human Resources Director is required to assemble all records, reports, and documentation of the earlier agency proceedings related to the grievance in order to determine whether there has been compliance with the agency's own established grievance policies, procedures, and regulations and whether the action is properly grievable. Following the statutory requirement, a determination was properly made in this case that the Appellant's case is not grievable due to his failure to follow DSS internal grievance procedures.

Notwithstanding the fact that a lapse in counsel within the agency resulted in moving forward with an internal grievance finding in this matter, Appellant has no basis upon which to assert that further proceedings must be permitted. Much in the same way that appellate courts routinely vacate the proceedings of lower and tribunals, the decision of the State Human Resources Director in this case must be to vacate the internal proceeding which resulted in the issuance of the internal grievance finding based upon the fact that the matter was *ab initio* not grievable due to the absence of timely filing.

Respectfully,



William C. Smith
Assistant General Counsel

¹ The previous agency attorney is the sister of Appellant's counsel.

THE STATE OF SOUTH CAROLINA
In The South Carolina Administrative Law Court

APPEAL FROM THE FINAL DECISION
Of The
STATE HUMAN RESOURCES DIRECTOR

William Henry Chapman, ... Appellant,

v.

South Carolina Department of Social Services (DSS), ... Respondent.

NOTICE OF APPEAL

Pursuant to Rule 33, South Carolina Administrative Law Court Rules of Procedure, William Henry Chapman appeals the Final Decision of the State Human Resources Director dated September 4, 2014, and the State Human Resources Director's Letter on Reconsideration dated October 16, 2014, and received by Appellant October 22, 2014, in which he upheld his Final Decision.

STATEMENT OF GROUNDS FOR APPEAL

As grounds for his appeal, Appellant asserts that the Final decision of the State Human Resources Director (hereinafter referred to as "State HR Director") was arbitrary, capricious, characterized by an abuse of discretion such that the substantial rights of the Appellant were prejudiced in denying him a hearing on the merits of the case.

FILED

OCT 20 2014

SOUTH CAROLINA ADMINISTRATIVE LAW COURT

First, despite the fact that Appellant timely gave notice to the appropriate person of his desire to grieve his termination, the State HR Director determined that the Appellant failed to exhaust his administrative remedies and denied the Appellant the right to have his case reviewed upon the merits.

Second, after accepting Appellant's initiation of his grievance under Step One of the Procedure, the Respondent continued the grievance course of action in accordance with the prescribed procedure without comment or objection and gave its voluntary, affirmative cooperation to Appellant as the case moved along the grievance process. The Final Decision of the State HR Director took note of these events in his Statement of Events, but failed to address the Respondent's post-initiation actions elsewhere in the Final Decision.

Respondent followed its own policies and procedures, and the Appellant relied upon Respondent to assure him a fair and reliable process untainted by actions that are biased, arbitrary and capricious. Unfortunately, and to his detriment, Appellant has been denied a hearing of his grievance on the merits.

GROUND FOR APPEAL

Appellant reserves the right to amend, supplement or modify the preceding Statement and following Grounds for Appeal as permitted by Rule 33B.

Appellant was terminated from employment with the Clarendon County Division of the South Carolina Department of Social Services (DSS) on June 3, 2014. The termination letter was hand-delivered over the signature of Robin H. Layton, Interim Director of Clarendon County, and the last paragraph stated: "You may contact the Office of Human Resource Management at (803) 898-7315 regarding your possible grievance rights."

Appellant retained counsel and by letter dated June 12, 2014, Appellant's attorney informed Ms. Layton that he represented the Appellant and stated: "Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014. Please advise as to date and time as to any proceedings."

Appellant's DSS Form 1449 was transmitted under cover of a letter dated June 20, 2014, sent by United States Mail, Facsimile and E-mail addressed to Ms. B. Glenise Elmore, Employee Relations Director of Respondent's Office of Human Resources, by Crystal Stokes, Paralegal to Appellant's counsel, with the following message:

Dear Ms. Elmore:

Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter. Please let me know if there is anything further required from us at this time. ...

The DSS Form 1449 was signed by Appellant and dated June 20, 2014. By letter dated July 7, 2014, and received by Appellant's Counsel on July 9, 2014, the Director of Human Resources Management Division E-mailed and mailed a letter to Ms. Leigh Bolick, Director of Child Care Services, enclosing the Grievance and Appeal forms for Mr. Chapman and giving the instructions and procedure for handling Appellant's grievance. The letter reflected "cc" to Appellant, Moore Law Firm, LLC, Ms. Robin Layton, County Director, Clarendon County DSS, and Mr. William Smith, Esq., DSS Office of General Counsel.

Ms. Amber Gillum, Acting State Director, addressed a letter dated July 25, 2014, "sent via certified mail" to Mr. William Chapman, transmitting the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form). Ms. Gillum informed the Appellant that he may appeal to the State Employee Grievance Committee through the Director of Human Resources at

the Office of Human Resources and provided the street address. She also advised him as follows: "This appeal must be in writing and made within ten (10) calendar days of receipt of this decision or within fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurs later." The letter contained "cc" notation to Robin Layton, County Director, Clarendon County DSS, William Smith, Esq., Office of General Counsel, and Dwight C. Moore, Esq., Moore Law Firm, LLC. Appellant's counsel received the letter on July 29, 2014.

Appellant wrote a letter on Moore Law Firm, L.L.C., letterhead dated August 4, 2014, to the State Employee Grievance Committee, Director of Human Resources, at the address furnished by Ms. Gillum. The pertinent part of the letter stated: "Please be advised that pursuant to this letter, I wish to appeal the decision handed down by Ms. Gillum on or about July 25, 2014. Please refer all correspondence to the address indicated above." A "cc" notation indicated that copies of the letter were sent to Amber Gillum, SCDSS Acting State Director and Robin Layton, Clarendon County DSS County Director.

Carrie Coats, Alternative Dispute Resolution Program, wrote a letter on SC Budget And Control Board, Human Resources Division, letterhead dated August 5, 2014, addressed to Appellant's Counsel, stating that "the enclosed form" was to be completed and returned to their office at 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223, within five (5) days of receipt. Counsel received the letter on August 6, 2014. On August 11, 2014, Ms. Carrie Coats sent the following message to Appellant's Counsel by fax. "

Mr. Moore,

Please find attached the State Appeal Form. My apologies for the oversight in not including this last week. Please call 803-896-5300 if you have any additional questions.

Form GC101, State Employee Grievance Procedure State Appeal Form was included in the fax transmission.

The Final Decision of Mr. Samuel L. Wilkins, State Human Resources Director, dated September 4, 2014, was received by Appellant's Counsel on September 8, 2014. The conclusion of the Human Resources Director was as follows:

Because Appellant failed to file a grievance with Respondent within 14 calendar days of the effective date of his termination, the State Human Resources Director has determined that the appeal must be denied. Since Appellant did not file a grievance with Respondent pursuant to time frames established by the Act, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed.

This concludes the processing of the appeal.

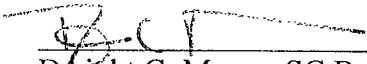
On September 18, 2014, Appellant filed and served his Request for Reconsideration of the Final Decision of the State HR Director. On October 3, 2014, Counsel for DSS filed and served the Agency's Statement in Opposition to Appellant's Request for Reconsideration. By letter dated October 16, 2014, the State HR Director advised Counsel for the Appellant and for DSS that he was upholding his Final Decision.

ISSUES ON APPEAL

- I. Whether or not Appellant failed to exhaust administrative remedies with Respondent in accordance with the requirements of the Act
- II. Even if Appellant had failed to exhaust his administrative remedies the Respondent, by its own actions, constructively waived the time line under consideration and is, therefore, estopped from barring the Appellant from a hearing on the merits of the case

William Henry Chapman
214 Lantern Lane
Manning, SC 29102
Telephone: (803) 460-0267
Appellant

MOORE LAW FIRM, L.L.C.


Dwight C. Moore, SC Bar No. 63008
26 North Main Street
Post Office Box 1229
Sumter, South Carolina 29151-1229
Telephone (803) 778-6520
Fax (803) 775-6365
Email: moorelawfirm@ftc-i.net
Attorney for Appellant

November 19, 2014

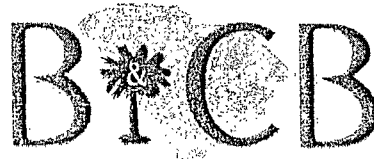
Other Counsel of Record:

William C. Smith
Assistant General Counsel
South Carolina Department of Social Services
Office of General Counsel
Post Office Box 1520
Columbia, South Carolina 29202
Telephone (803) 898.7617
Fax (803) 898-7245
Email: William.Smith@dss.sc.gov
Attorney for Respondent

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

- 55 -

October 16, 2014

CERTIFIED MAIL

Mr. Dwight C. Moore
Moore Law Firm, L.L.C
Post Office Box 1229
Sumter, South Carolina 29151

Re: William Henry Chapman v. South Carolina Department of Social Services (DSS)

Dear Mr. Moore:

I have received your request for reconsideration of my September 4, 2014 decision regarding the above-referenced appeal and Mr. William C. Smith's, DSS Assistant General Counsel, response dated October 3, 2014.

Section 19-718.05 (E) of the State Human Resources Regulations states: "[i]f the State Human Resources Director determines that the appeal is untimely or fails to comply with the requirements of the Act, he will notify the covered employee or his representative that the appeal is denied and no further action will be taken concerning the appeal. As a result of the State Human Resources Director's decision, the covered employee may request reconsideration within 30 calendar days from notification of the decision."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "[e]ach agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources."

Section 8-17-350 of the S.C. Code of Laws of 1976, as amended, states in part: "[w]hen an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator-arbitrator."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action. . . ."

Mr. Dwight C. Moore
October 16, 2014
Page Two

Further, section 19-718.04(B) of the State Human Resources Regulations states “[a] covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action.”

Section 603 of Respondent’s Procedure for Grievance and Appeal states in part that, “[a]ll grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action.” In addition, Section 606 of Respondent’s Procedure for Grievance and Appeal states similarly that, “[t]he grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action.” [Emphasis in original.]

You contend the following in your Request for Reconsideration:

1. Mr. Chapman has exhausted his administrative remedies under the County and Municipal Employees Grievance Procedure Act as it applies to his termination and that he is in full compliance with the S.C. Code Ann. § 8-17-110, et seq. (1986) as amended.
2. Mr. Chapman’s grievance was initiated by your letter dated June 12, 2014, to Ms. Robin H. Layton, Interim Director of the Clarendon County Division of the South Carolina Department of Social Services which stated the following: “Pursuant to §600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014. Please advise as to the date and time as to any proceedings.” After the June 12, 2014 letter was forwarded to the State Office of DSS there was communication between the State Office and your office which resulted in the letter dated June 20, 2014, and DSS Form 1449 being faxed from your paralegal to the DSS Employee Relations Director. The cover letter which accompanied this form stated the following: “Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter.” You further contend that DSS clearly acknowledged Mr. Chapman’s grievance letter for what he intended it to be and for what it was in actuality—the initiation of the grievance process.
3. The State Employee Grievance Procedure Act does not state that a grievance must be initiated only by filing DSS Grievance Form 1449. Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states that “[t]he procedure must be initiated internally by such employee within fourteen calendar days of the effective date of the action.” The failure to earlier submit the DSS Grievance Form 1449 is not fatal to Mr. Chapman’s grievance because his grievance was initiated in writing, Respondent accepted his letter, requested that he submit the DSS Form 1449, which he did, and Respondent continued the process. Therefore, your contention is that Respondent may not now complain Mr. Chapman did not file a grievance with Respondent pursuant to time frames established by the Act.
4. Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states that “[t]he internal time periods of the agency grievance procedure may be waived upon mutual written agreement of both parties.” Assuming the Act required the DSS Form 1449 to be the sole manner of initiating the grievance, you contend that DSS waived the right to belatedly raise the issue of timeliness when it acted in furtherance of the grievance

Mr. Dwight C. Moore
October 16, 2014
Page Three

process at every step subsequent to receiving the DSS Form 1449 in support of the grievance letter.

DSS contends the following:

1. Mr. Chapman was an employee of the State of South Carolina, not an employee of a county or an incorporated municipality covered under the County and Municipal Employees Grievance Procedure Act. Accordingly, Appellant's cited authority has no application or precedential value for purposes of the present matter and must be discarded.
2. The June 12, 2014 letter to Ms. Layton in which Appellant's counsel stated that Mr. Chapman wished to grieve his termination was of no effect as he would have fully understood based on his own citation of DSS policy. Specifically, the DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance and Appeal, Section 606, Procedure to File a Grievance, in Step One provide that "the grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action." Mr. Chapman was aware of this requirement as he was provided with a copy of the DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance and Appeal and DSS Form 1449 in a June 3, 2014 letter written to him by DSS. DSS contends Appellant's counsel would have had access to the necessary form and instructional policy well in advance of his June 12, 2014 letter to Ms. Layton.
3. DSS developed, and published for its employees, policies and procedures related to the initiation of internal grievances by those employees. The requirement that grievances be initiated using DSS Form 1449 within fourteen calendar days of the effective date of the action is mandatory, not precatory or discretionary and Mr. Chapman did not have available to him multiple options for filing his internal grievance. Additionally, if there is to be a waiver of the agency's internal time frames related to the filing of the DSS Form 1449, that waiver must, per policy, be based upon a mutual written agreement by the parties, not the employee's perception as to how his actions should be interpreted.
4. Notwithstanding that a lapse in counsel within the agency resulted in moving forward with an internal grievance finding in this matter, Mr. Chapman has no basis upon which to assert that further proceedings must be permitted.

To address your initial contention that Mr. Chapman has exhausted his administrative remedies under the County and Municipal Employees Grievance Procedure Act as it applies to his termination and that he is in full compliance with the S.C. Code Ann. § 8-17-110, et seq. (1986) as amended, Mr. Chapman was a State Employee and was, therefore, not subject to the County and Municipal Employees Grievance Procedure Act. Mr. Chapman was, however, subject to the provisions of the State Employee Grievance Procedure Act, S.C. Code Ann. § 8-17-310. The sections of the S.C. Code of Laws you cited beyond this initial assertion, however, correctly refer to the State Employee Grievance Procedure Act (Act).

Mr. Dwight C. Moore
October 16, 2014
Page Four

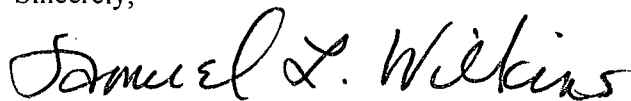
You contend in your Request for Reconsideration that your letter to Ms. Layton dated June 12, 2013, should have been considered the initiation of Mr. Chapman's grievance because the Act does not require a specific form to initiate a grievance. While you are correct that the Act does not require a specific form to initiate a grievance, § 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "[e]ach agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources." In accordance with this provision, DSS established an agency grievance procedure which required the submission of DSS Form 1449 in order to initiate the grievance. Mr. Chapman was notified of this requirement when he was provided with a copy of the DSS Form 1449 as well as a copy of the DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance and Appeal, prior to the end of the fourteen calendar day time frame in which to initiate his grievance. In addition, § 8-17-350 requires the State Human Resources Director to ascertain that there has been full compliance with the agency's grievance policy when an appeal has been filed.

You further contend that, even if DSS Form 1449 was required to initiate Mr. Chapman's grievance, DSS's actions concerning the processing of Mr. Chapman's grievance were tantamount to an agreement to waive the fourteen calendar time frame to initiate the grievance. You argue that this time frame was waived in accordance with section 8-17-330 of the S.C. Code of Laws of 1976, as amended, which states that "[t]he internal time periods of the agency grievance procedure may be waived upon mutual written agreement of both parties." The internal grievance process does not begin, however, until an employee has initiated a grievance. The fourteen calendar day time frame is established within the Act as a mandatory time frame for filing a grievance with the agency and is not an internal time frame which can be waived by either party. Since Mr. Chapman's grievance was not initiated timely, DSS had no jurisdiction to process the grievance, and any action taken by the agency in regards to Mr. Chapman's grievance are irrelevant to the State Human Resources Director's determination of whether his grievance was timely filed.

As I stated in my September 4, 2014 decision, the Act requires that all administrative remedies be exhausted prior to appealing an action to the State Human Resources Director. Mr. Chapman's failure to file a grievance in accordance with DSS policy within the required time frame precluded him from properly completing DSS's employee grievance procedure. Therefore, Appellant failed to exhaust all his administrative remedies. "Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts." Hyde v. South Carolina Dept. Of Mental Health, 314 S.C. 207, 442 S.C.2d 582 (1994); See also, Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).

While the information contained in your Request for Reconsideration has been reviewed, I uphold my final decision of September 4, 2014, regarding Mr. Chapman's appeal.

Sincerely,



Samuel L. Wilkins
Director

c: Mr. William C. Smith

THE STATE OF SOUTH CAROLINA
In The South Carolina Administrative Law Court

APPEAL FROM THE FINAL DECISION
Of The
STATE HUMAN RESOURCES DIRECTOR

William Henry Chapman, ... Appellant,

v.

South Carolina Department of Social Services (DSS), ... Respondent.

BRIEF OF APPELLANT

Dwight C. Moore, SC Bar No. 63008
Moore Law Firm, L.L.C.
26 North Main Street
Post Office Box 1229
Sumter, South Carolina 29151-1229
Telephone (803)-778-6520
Fax (803) 775-6365
Email: moorelawfirm@ftc-i.net
Attorney for Appellant

FILED

JAN 21 2016

TABLE OF CONTENTS

Table Of Authorities	ii
Statement of Issues On Appeal	1
Statement of The Case	1
Argument	
I. <u>Whether or not the Appellant failed to exhaust administrative remedies with the Respondent in accordance with the requirements of the Act</u>	4
II. <u>Even if Appellant had failed to exhaust his administrative remedies the Respondent, by its own actions, constructively waived the time line under consideration and it is, therefore, estopped from barring the Appellant from a hearing on the merits of the case</u>	9
Conclusion	12
Exhibits 1-9 attached at end of brief	

TABLE OF AUTHORITIES

CASES

<u>Ables v. Gladden</u> , 378 S.C. 558, 570, 664 S.E.2d 442,448 (2008)	11
<u>Ford v. Buffalo Eagle Colliery Co.</u> , 122 F.2d 555, 563, headnote 1, (1941)	12
<u>Hyde v. South Carolina Department of Mental Health</u> , 314 S.C. 207, 208, 442 S.E.2d 582, 583, (1994) <u>Reh’g Denied</u> May 4, 1994	8
<u>Law v. South Carolina Department of Corrections</u> 368 S.C. 424, 440, 629 S.E.2d 642, 651, (2006) <u>Reh’g Denied</u> May 24, 2006),	8
<u>Paschal v. Price</u> , 390 S.C. 419, 770 S.E.2d 374 (2008, withdrawn, Substitute and Refiled Nov. 24, 2008, Reh’g Denied Dec. 19, 2008, Cert. Granted March 17, 2010	7,8
<u>Trowell v. South Carolina Department of Public Safety</u> , 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009)	8

STATUTES

S.C. Code Ann. § 8-17-310 (1986))	4,9
S.C. Code Ann. § 8-17-330 (1986))	5, 6,7
S.C. Code Ann. § 1-23-380 (2005))	7
S.C. Code Ann. § 42-1-60 (1976)	7

TABLE OF AUTHORITIES

CASES

<u>Ables v. Gladden</u> , 378 S.C. 558, 570, 664 S.E.2d 442,448 (2008)	11
<u>Ford v. Buffalo Eagle Colliery Co.</u> , 122 F.2d 555, 563, headnote 1, (1941)	12
<u>Hyde v. South Carolina Department of Mental Health</u> , 314 S.C. 207, 208, 442 S.E.2d 582, 583, (1994) <u>Reh’g. Denied</u> May 4, 1994	8
<u>Law v. South Carolina Department of Corrections</u> 368 S.C. 424, 440, 629 S.E.2d 642, 651, (2006) <u>Reh’g Denied</u> May 24, 2006),	8
<u>Paschal v. Price</u> , 390 S.C. 419, 770 S.E.2d 374 (2008, withdrawn, Substitute and Refiled Nov. 24, 2008, Reh’g Denied Dec. 19, 2008, Cert. Granted March 17, 2010	7,8
<u>Trowell v. South Carolina Department of Public Safety</u> , 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009)	8

STATUTES

S.C. Code Ann. § 8-17-310 (1986))	4,9
S.C. Code Ann. § 8-17-330 (1986))	5, 6,7
S.C. Code Ann. § 1-23-380 (2005))	7
S.C. Code Ann. § 42-1-60 (1976)	7

STATEMENT OF THE ISSUES ON APPEAL

- I. Whether or not the Appellant failed to exhaust administrative remedies with the Respondent in accordance with the requirements of the Act
- II. Even if Appellant had failed to exhaust his administrative remedies the Respondent, by its own actions, constructively waived the time line under consideration and it is, therefore, estopped from barring the Appellant from a hearing on the merits of the case

STATEMENT OF THE CASE

Appellant was terminated from employment with the Clarendon County Division of the South Carolina Department of Social Services (DSS) on June 3, 2014. The termination letter was hand-delivered over the signature of Robin H. Layton, Interim Director of Clarendon County, and the last paragraph stated: "You may contact the Office of Human Resource Management at (803) 898-7315 regarding your possible grievance rights." (*Exhibit #1: Letter dated June 3, 2014*)

Appellant retained counsel and by letter dated June 12, 2014, Appellant's attorney advised Ms. Layton that he represented the Appellant and stated: "Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014. Please advise as to date and time as to any proceedings." (*Exhibit #2: Letter dated June 12, 2014*)

Appellant's DSS Form 1449 was transmitted under cover of a letter dated June 20, 2014, sent by United States Postal Service (USPS), facsimile and e-mail addressed to Ms. B. Glenise Elmore, Employee Relations Director of Respondent's Office of Human Resources, by Crystal Stokes, Paralegal to Appellant's counsel, with the following message:

Dear Ms. Elmore:

Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter. Please let me know if there is anything further required from us at this time. ...

The DSS Form 1449 was signed by Appellant and dated June 20, 2014. (*Exhibit #3: Letter, DSS Form 1449, Fax Cover Sheet, and Fax Report all dated June 20, 2014*)

By letter dated July 7, 2014, and received by Appellant's Counsel on July 9, 2014, the Director of Human Resources Management Division E-mailed and sent by USPS a letter to Ms. Leigh Bolick, Director of Child Care Services, enclosing the Grievance and Appeal forms for Mr. Chapman and giving the instructions and procedure for handling Appellant's grievance. The letter reflected "cc" to Appellant, Moore Law Firm, LLC, Ms. Robin Layton, County Director, Clarendon County DSS, and Mr. William Smith, Esq., DSS Office of General Counsel. (*Exhibit #4: Letter dated July 7, 2014*)

Ms. Amber Gillum, Acting State Director, addressed a letter dated July 25, 2014, "sent via certified mail" to Mr. William Chapman, transmitting the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form). Ms. Gillum informed the Appellant that he may appeal to the State Employee Grievance Committee through the Director of Human Resources at the Office of Human Resources and provided the street address. She also advised him as follows: "This appeal must be in writing and made within ten (10) calendar days of receipt of this decision or within fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurs later." The letter contained a "cc" notation to Robin Layton, County Director, Clarendon County DSS, William Smith, Esq., Office of General Counsel, and Dwight C. Moore, Esq., Moore Law Firm, LLC. Appellant's

counsel received the letter on July 29, 2014. (*Exhibit #5: Letter and DSS Form 1449-2, both dated July 25, 2014*)

Appellant's counsel wrote a letter on Moore Law Firm, L.L.C., letterhead dated August 4, 2014, to the State Employee Grievance Committee, Director of Human Resources, at the address furnished by Ms. Gillum. The pertinent part of the letter stated: "Please be advised that pursuant to this letter, I wish to appeal the decision handed down by Ms. Gillum on or about July 25, 2014. Please refer all correspondence to the address indicated above." A "cc" notation indicated that copies of the letter were sent to Amber Gillum, SCDSS Acting State Director and Robin Layton, Clarendon County DSS County Director. (*Exhibit #6: Letter dated August 5, 2014*)

Carrie Coats, Alternative Dispute Resolution Program, wrote a letter on SC Budget And Control Board, Human Resources Division, letterhead dated August 5, 2014, addressed to Appellant's Counsel, stating that "the enclosed form" was to be completed and returned to their office at 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223, within five (5) days of receipt. Counsel received the letter on August 6, 2014. (*Exhibit #7: Letter dated August 4, 2014*)

On August 11, 2014, Ms. Carrie Coats sent the following message to Appellant's Counsel by fax. "

Mr. Moore,

Please find attached the State Appeal Form. My apologies for the oversight in not including this last week. Please call 803-896-5300 if you have any additional questions.

Form GC101, State Employee Grievance Procedure State Appeal Form was included in the fax transmission. (*Exhibit #8: Two-page Fax dated August 11, 2014, and Form GC101-Revised 10-01-96*)

The Final Decision of Mr. Samuel L. Wilkins, State Human Resources Director, dated September 4, 2014, was received by Appellant's Counsel on September 8, 2014. The conclusion of the Human Resources Director was as follows:

Because Appellant failed to file a grievance with Respondent within 14 calendar days of the effective date of his termination, the State Human Resources Director has determined that the appeal must be denied. Since Appellant did not file a grievance with Respondent pursuant to time frames established by the Act, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed.

This concludes the processing of the appeal.

(Exhibit #9: Final Decision State Human Resources Director dated September 4, 2014)

On September 18, 2014, Appellant filed and served his Request for Reconsideration of the Final Decision of the State Human Resources Director. On October 3, 2014, Counsel for DSS filed and served the Agency's Statement in Opposition to Appellant's Request for Reconsideration. By letter dated October 16, 2014, and received by Appellant on October 22, 2014, the State Human Resources Director advised Counsel for the Appellant and for DSS that he was upholding his Final Decision of September 4, 2014.

William Henry Chapman filed Notice of Appeal on November 20, 2014. This Court's Notice of Assignment of Administrative Law Judge was filed on December 3, 2014. The Record on Appeal was transmitted to the Court under cover of a letter dated December 19, 2014, and the letter along with a diskette were received by Appellant's counsel on December 22, 2014.

ARGUMENT

I. Whether or not the Appellant failed to exhaust administrative remedies with the Respondent in accordance with the requirements of the Act.

Appellant respectfully asserts that he has exhausted his administrative remedies under S.C. Code Ann. § 8-17-310, et seq., (1986) as amended, the State Employee Grievance

Procedure Act (hereinafter referred to as the "Act") as it applies to his termination and that he is in full compliance with the Act.

In his Analysis, the State Human Resources Director (hereinafter referred to as "HR Director") reasoned as follows.

According to the record, Appellant was notified via hand-delivered letter on June 3, 2014, that his employment was terminated effective June 2, 2014. Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources Management Office on June 20, 2014. The date Appellant's grievance was submitted, June 20, 2014, is seventeen (17) calendar days from the effective date of the action, June 3, 2014. Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part that, "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action...." ... Appellant's grievance was submitted beyond this fourteen calendar day timeframe.

The foregoing Analysis omits any mention of the critical events which occurred between the June 3, 2014, notification to Appellant that his employment had been terminated and the June 20, 2014, submission of the faxed DSS Form 1449. The record reflects that Appellant initiated his grievance internally by Counsel's letter to the Clarendon County Interim Director dated June 12, 2014 - five (5) days prior to the expiration of the seventeen day cut-off. His letter stated unambiguously (1) the effective date of the grievable action: "...June 3, 2014," (2) his desire to grieve the action, (3) described the action that was the subject of his grievance: "termination," and asked to be notified of the date and time of any proceedings. (Exhibit #2) An examination of DSS Form 1449 reveals that the substantive information requested by and provided on the form was provided initially in Appellant's June 12, 2014, letter initiating his grievance; to wit,

1. Effective date of grievable action: June 3, 2014
2. Give a full explanation of the grievance/grievance action: wrongful termination

(Attachment to Exhibit 3)

After his grievance letter was forwarded to the State Office of the South Carolina Department of Social Services (herein after "SC DSS"), there was communication between the State Office and Counsel's office which resulted in the letter dated June 20, 2014, and DSS Form 1449 being faxed from Counsel's paralegal to the Employee Relations Director.

The cover letter contains the following illuminating statement: "Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter." (Emphasis added) Clearly, the Respondent acknowledged Appellant's grievance letter for what he intended it to be and for what it was in actuality - the initiation of the grievance process. Although the HR Director cites receipt of DSS Form 1449 as the initiation of the grievance, and bases his decision upon the fact that the form was received on June 20, 2014, the Act does not state that the grievances shall be initiated only by filing DSS Form 1449. Section 8-17-330 states only that [t]he procedure must be initiated internally by such employee within fourteen calendar days of the effective date of the action ... The SC DSS Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal, effective 01/22/2010, Section 606, Procedure to File a Grievance, in Step One provides that "[t]he grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action." (Exhibit 9: South Carolina Department of Social Services Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal, effective 01/22/2010). However the Grievance Procedure Model Policy (**Revised and Effective 4/8/2013**), under Procedure, Step One, states as follows:

A covered employee who wishes to file a grievance must initiate the grievance with the agency's Human Resources Office. The grievance must be in writing and must be received (or, if mailed, postmarked) within 14 calendar days of the effective date of the action or 14 calendar days from when the employee is notified of the action, which is later. The employee should include a written summary of the facts of the grievance and the relief sought.

Appellant contends that the failure to earlier submit DSS Form 1449 is not fatal to his grievance because his grievance was initiated in writing, his initial grievance letter provided the same information requested on the form, the Respondent accepted his letter, requested that he submit the DSS Form 1449, which he did, and Respondent continued the process. Therefore, Respondent waived the right to disclaim the sufficiency of his letter as initiation of the grievance process, is estopped from denying Appellant the right to a hearing on the merits of his grievance under the pretext that Appellant did not file a grievance with Respondent pursuant to time frames established by the Act.

Although the HR Director cites receipt of DSS Form 1449 as the initiation of the grievance, and bases his decision upon the fact that the form was received on June 20, 2014, the Act does not state that the grievance must be initiated only by filing DSS Form 1449. **Section 8-17-330 states only that [t]he procedure must be initiated internally by such employee within fourteen calendar days of the effective date of the action ...** The SC DSS Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal, effective 01/22/2010, Section 606, Procedure to File a Grievance, in Step One provides that “[t]he grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action.” (Exhibit 9: South Carolina Department of Social Services Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal, effective 01/22/2010)

In the case of Paschal v. Price, 390 S.C. 419, 770 S.E.2d 374, a workers compensation appeal filed without the mandatory cover sheet, the South Carolina Court of Appeals found that the company’s failure to provide a civil cover sheet when it appealed to the circuit court did not deprive the circuit court of jurisdiction. The Paschal Court noted:

Section 1-23-380 of the South Carolina Code (2005) sets forth the filing requirements for appeals of administrative decisions under the South Carolina Administrative Procedures Act prior to July 1, 2006. Nowhere in that section or in section 42-1-60, which addresses procedures for appealing a workers compensation award, is there any mention that a cover sheet is necessary when filing an appeal. In keeping with the supreme court’s recent decision in Skinner v. Westinghouse Electric Corp., we decline to hold that a cover sheet, which is not required by statute, is essential to invoke appellate jurisdiction Paschall 390 S.C. at 440, 770 S.E.2d 386.

...
In addition, the notice of appeal received by the Clerk on March 3, 2006, satisfied the applicable requirements of the South Carolina Administrative Procedures Act, the South Carolina Workers’ Compensation Act, and the South Carolina Appellate Court Rules. Both this Court and the supreme court

have held clerical errors in the notice of appeal do not destroy an appeal. See State v. Scott, 351 S.C. 584, 587, 571 S.E.2d 700, 701 (2002) acknowledging that service of the notice of appeal is a jurisdictional requirement, but that “non-prejudicial clerical errors in the notice are not detrimental to the appeal. Paschal, 380 S.C. at 441, 770 S.E.2d at 386.

...

We recognize that courts of this State have refused to elevate form over substance and accordingly affirm the circuit court’s denial of Paschal’s motion to dismiss. Paschal, 380 S.C. at 442, 770 S.E.2d at 387.

In his Opinion dated October 16, 2014, denying Appellant’s Request for Reconsideration, the HR Director cites Hyde v. South Carolina Department of Mental Health, 314 S.C. 207, 208, 442 S.E.2d 582, 583, (1994) Reh’g. Denied May 4, 1994, and Law v. South Carolina Department of Corrections 368 S.C. 424, 440, 629 S.E.2d 642, 651, (2006) Reh’g Denied May 24, 2006), in which the South Carolina Supreme Court held that “[w]here an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts.” (Opinion 10/16/14, p.4)

Both Hyde and Law are clearly distinguishable from Appellant Chapman’s case. Hyde commenced his action under the Whistleblower Statute in the circuit court. Our Supreme Court held that the employee was required to exhaust administrative remedies available under the State Employees Grievance Procedure Act prior to bringing the whistleblower action. 314 S.C. 207, 442 S.E.2d 582. In Law, the Supreme Court found that the Appellants had a grievable action under the State Employee Grievance Procedure Act which they voluntarily did not appeal. Law, 368 S.C. at 440, 629 S.E.2d at 651. Unlike the employees in Hyde and Law, Appellant Chapman did initiate a grievance under the Act seeking to determine a question of fact – and that is whether or not he was wrongfully terminated.

The ruling of the HR Director forecloses on Appellant’s right to have his grievance accorded determination as provided by the Act. Appellant respectfully asks this Court to consider the finding by the South Carolina Court of Appeals in the case of Trowell v. South Carolina Department of Public Safety, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009). “We find the agency’s interpretation of its service rules was overly harsh in this situation.”

Trowell, 384 S.C. at 237, 681 S.E.2d at 896. The issue in Trowell was service; the Director notified Trowell, via letter, that his appeal was untimely because Trowell had failed to file it within ten calendar days of receipt of the Department's February 2nd fax. The HR Director noted that the Act is not specific as to how the final agency decision must be delivered and determined that it could be accomplished through hand delivery, by fax or mail and denied the appeal because it was not filed within the ten-day period following the service on February 2nd. The Court of Appeals concluded, as complained of in our case, that the HR Director's overly narrow interpretation of the rules under the Act was too harsh.

Appellant contends that in our Appellant's case, such an overly narrow and harsh interpretation of the rule is not supported by the intent of the enabling legislation. S.C. Code Ann. § 8-17-310 (1986) states as follows: "It is for the protection of the interests of both the employee and the agency via a fair administrative review, that this act, which may be cited as the "State Employee Grievance Procedure Act of 1982," is enacted." 1982 Act. No. 402, § 1. The effect of 1996 Act. No. 284, § 2, effective October 1, 1996, in pertinent part, amends § 8-17-310 to read in the following manner: "It is for the protection and in the interests of both the employee and agency via a neutral method of dispute resolution and fair administrative review that this act ... is enacted." (Emphasis supplied)

Under the applicable case law and enabling statute, the Appellant is entitled to a fair administrative review of his grievance and a determination of fact at a hearing on the merits of his case.

- II. Even if Appellant had failed to exhaust his administrative remedies the Respondent, by its own actions, constructively waived the time line under consideration and it is, therefore, estopped from barring the Appellant from a hearing on the merits of the case

On June 12, 2014, Appellants initiated his internal grievance by letter to the Respondent. Respondent requested and received the DSS Form 1449 on June 20, 2014. On July 7, 2014, Respondent's Director of Human Resources emailed and sent by USPS a letter to Leigh Bolick, Director of Child Care Services enclosing the Grievance and appeal forms for Appellant and gave instructions and the procedure for handling Appellant's grievance. Copies of the letter were sent to Appellant, his counsel, Ms. Robin Layton, County Director, Clarendon County DSS, and Mr. William Smith, DSS Office of General Counsel. Ms. Bolick was directed to submit her recommendation, along with the grievance file and/or documents from each party, to the Human Resources Management Division by July 16, 2014. Ms. Amber Gillum, Acting State Director, sent a certified letter to Appellant with "cc" notation to Robin Layton, County Director, Clarendon County DSS, William Smith, Esq. Office of General Counsel and appellant's counsel stating that the Decision of the State Director, (DSS Form 1449-2, Grievance Division Form) was enclosed. Ms. Gillum upheld the Agency's decision to terminate the Appellant. The letter further advised Appellant as follows:

If you do not agree with this decision, you may appeal to the State Employee Grievance Committee through the Director of Human Resources at the Office of Human Resources, 8301 Parkland Road, Suite A220, Columbia, South Carolina 29223. This appeal must be in writing and made within ten (10) calendar days of receipt of this decision or within fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurs later.

(Exhibit #4, Letter dated July 7, 2014.)

By letter dated August 4, 2014, Appellant's counsel submitted his letter appealing the decision of Ms. Gillum handed down on or about July 25, 2014. *Exhibit #6, Letter dated August 4, 2014.* By letter dated August 5, 2014, Ms. Carrie Coats, of the ADR Program said she was sending the appeal forms to Appellant's counsel. *(Exhibit 7, Letter dated August 5,*

2014). The forms were not in the letter and by fax dated August 11, 2014, Ms. Coats transmitted the omitted forms. (*Exhibit 8, fax dated August 11, 2014.*)

As shown above, Appellant's appeal had completed the process through the regular procedure by the time the HR Director issued his Final Decision dated September 4, 2014, determining that the Appellant had failed to exhaust his administrative remedies and he was not entitled to a review of his case on the merits. (*Exhibit 9, Final Decision of State Human Resources Director*)

Interestingly enough, copies of all Respondent's correspondence was sent to the appropriate persons within the agency, including William C. Smith, counsel of record, at least as early as July 7, 2014. In his statement in opposition to Appellant's Request for Reconsideration of the State Human Resources Director, Mr. Smith states "Notwithstanding the fact that a lapse in counsel within the agency resulted in moving forward with an internal grievance finding in this matter, Appellant has no basis upon which to assert that further proceedings must be permitted.

The Record on Appeal contains Attachments which, presumably, were considered by the State DSS Director in arriving at her decision dated July 25, 2014. Since The HR Director's Final Decision was based upon the onset of the grievance process; i.e., the actual filing and his determination that no grievance appeal had been filed, all events occurring thereafter would be irrelevant. Under the present state of the record, we have dual proceedings – both of which have been pursued to conclusion of their respective phases.

Appellant respectfully asserts that he should be permitted to pursue further proceedings on the basis of laches, which may be established if there is an unreasonable and unexplained delay in asserting a legal claim.

In order to prove the affirmative defense of laches, the burden is on the respondent to establish (1) delay, (2) unreasonable delay, and (3) prejudice. "The inquiry into the applicability of laches is highly fact specific and each case must be judged on its own merits.

Ables v. Gladden, 378 S.C. 558, 570, 664 S.E.2d 442,448 (2008).

Appellant has proven delay in the appropriate processing of Appellant's grievance appeal. Appellant has proven unreasonable delay which resulted in two separate steps of the grievance appeal process being conducted simultaneously by different entities. Appellant has

proven that he has suffered prejudice at the hands of DSS in that he has had to respond to both the Decision of the State Director and the Final Decision of the HR Director based upon the record which showed, by the actions of DSS, that his grievance appeal had been accepted, that it was being acted upon, and was misled into believing so until receipt of the Final Decision of the HR Director dated September 4, 2014, ending Appellants appeal on the grounds that Appellant had not timely filed his grievance appeal – AFTER the July 25, 2014, letter transmitting her July 25, 2014, decision on DSS Form 1449-2, Grievance Decision Form, which was omitted from the letter and faxed to Appellant's counsel on August 11, 2014.

Throughout this process DSS has been the controlling party; the policies and regulations were promulgated by DSS, the records were in the possession of DSS, the delays were caused by DSS, and the delay occasioned by inter-agency issues with Counsel all rests with DSS.

He who comes into equity must come with clean hands They (courts of equity) apply the maxim requiring clean hands only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter of litigation. * *

* They apply the maxim, not by way of punishment for extraneous transgressions but upon considerations that make for the advancement of right and justice. They are not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion.

Ford v. Buffalo Eagle Colliery Co., 122 F.2d 555, 563, headnote 1, (1941)

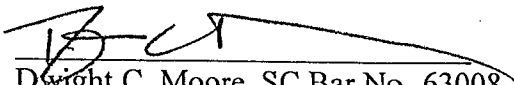
The Appellant should not be denied the right to pursue to a fair and just conclusion the procedure provided by the Act for a disposition of his grievance upon the merits.

CONCLUSION

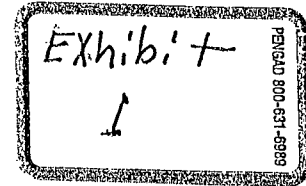
For the foregoing reasons, Appellant urges this Court to find that Appellant timely initiated his internal grievance process, vacate the Final Decision of the HR Director, and permit Appellant's Grievance process to continue as provided by the Act.

Respectfully submitted,

MOORE LAW FIRM, L.L.C.


Dwight C. Moore, SC Bar No. 63008
26 North Main Street
Post Office Box 1229
Sumter, South Carolina 29151-1229
Telephone (803) 778-6520
Fax (803) 775-6365
Attorney for Appellant

January 21, 2015



Date: June 3, 2014

HAND DELIVERED

Henry Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman:

On April 15, 2014, you were issued an Employee Warning Notice of Substandard Performance. This notice listed some areas in which your job performance was deemed deficient. The notice further stated that you were being given forty-five (45) to fifty (50) days to improve your performance and the failure to satisfactorily do so would "... in a rating of 'Below Performance Requirements' and removal from the position." As stated in Chapter 5, Section 508(D) of the Human Resources Policies and Procedures Manual, *"[if] the employee is rated "unsuccessful" on any essential job duty or objective which significantly impacts performance as noted in the warning notice by the end of the warning period, the employee shall be removed from the position immediately (i.e., termination, reassignment, or demotion)."*

This letter is to inform you that you failed to satisfactorily improve your job performance during the specified time frame. Therefore, effective immediately, your employment with the Clarendon County Department of Social Services is terminated due to substandard job performance.

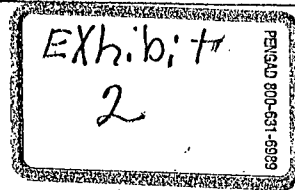
You will be required to return all agency equipment and property, including your ID card, to management before leaving the office today.

You may contact the Office of Human Resource Management at (803) 898-7315 regarding your possible grievance rights.

Sincerely,


Clarendon County Interim Director

Moore Law Firm, L.L.C.



Dwight C. Moore

Attorney at Law

26 North Main Street

P.O. Box 1229

Sumter, SC 29151-1229

Office: (803) 778-6520

Fax: (803) 775-6365

E-Mail: moorelawfirm@lfc-i.net

June 12, 2014

Ms. Robin H. Layton
Clarendon County Interim Director
Clarendon County DSS
3 South Church Street
Manning, South Carolina 29102

Re: Henry Chapman
June 3, 2014 termination

Dear Ms. Layton:

Please be advised that I am representing Mr. Chapman in regard to the above-referenced matter.

Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014.

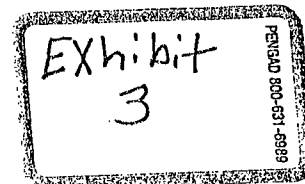
Please advise as to date and time as to any proceedings. With kind regards, I am

Sincerely yours,

Dwight C. Moore

DCM/ccs

Fax Send Report



Date/Time : JUN-20-2014 03:56PM FRI
 Fax Number : 8037756365
 Fax Name : MOORE LAW FIRM, LLC
 Model Name : SCX-5835_5935 Series
 Machine Serial Number : Z2P3BJFCC0007FF

No.	Name/Number	Start Time	Time	Mode	Page	Result
85	8038987176	06-20 03:54PM	00' 54	ECM	003/003	OK

MOORE LAW FIRM, L.L.C.

26 NORTH MAIN STREET
 P.O. BOX 1229
 SUMTER, SOUTH CAROLINA 29151
 TELEPHONE NUMBER (803) 778-6520
 FAX NUMBER: (803) 775-6365

FAX COVERSHEET

DATE: June 20, 2014
 CASE NAME/NUMBER: William Henry Chapman

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Ms. B. Glenise Elmore
 COMPANY: SC Department of Social Services
 FAX: 803-898-7176
 FROM: Crystal Stokes

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 3

COMMENTS: Please see attached

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (803) 778-6520 AS SOON AS POSSIBLE AND ASK FOR CRYSTAL.

CONFIDENTIALITY NOTICE: This information contained in this facsimile message may be attorney privileged and confidential and is intended only for use of the entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this transmission in error, please immediately notify us by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank you.

MOORE LAW FIRM, L.L.C.

26 NORTH MAIN STREET

P.O. BOX 1229

SUMTER, SOUTH CAROLINA 29151

TELEPHONE NUMBER (803) 778-6520

FAX NUMBER: (803) 775-6365

FAX COVERSHEET

DATE: June 20, 2014

CASE NAME/NUMBER: *William Henry Chapman*

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Ms. B. Glenise Elmore

COMPANY: SC Department of Social Services

FAX: 803-898-7176

FROM: Crystal Stokes

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 3

COMMENTS: Please see attached

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (803) 778-6520 AS
SOON AS POSSIBLE AND ASK FOR CRYSTAL.**

CONFIDENTIALITY NOTICE: This information contained in this facsimile message may be attorney privileged and confidential and is intended only for use of the entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this transmission in error, please immediately notify us by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank you.

**South Carolina Department of Social Services
GRIEVANCE FORM**

INSTRUCTIONS - TO BE COMPLETED BY GRIEVANT

Continue items on additional sheet of paper, when necessary. Enter continued comments to corresponding item number. Identify each additional sheet with employee's name: last, first and middle initial.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Original: Human Resources Director Copy: Grievant Copy: Submitted by Human Resources Division to Appointing Authority

Employee's Name: Last, First, Middle Initial Chapman, William H.		Job Title: Human Service Specialist I	Contact Information:
County/Division: Clarendon County		Hire Date: August 2, 1992	Work Telephone:
Job Status: (Check one) ☒ FTE ☐ Temporary ☐ Temporary Grant		Home or Mailing Address: 214 Lantern Lane Manning, SC 29102	
		Home Telephone: 803-460-0267	

1. Effective date of grievable action: June 3, 2014
2. Give a full explanation of the grievance/grievance action.
wrongful termination

3. Describe in detail the relief sought:
rehire or eligible for early retirement/severance pay

4. Please indicate below your mediation option by signing your name next to your selection:

I am interested in participating in the mediation process to resolve this matter.

I am not interested in participating in the mediation process to resolve this matter.

5. Print Employee's Name: William H. Chapman	Employee's Signature: <i>William H. Chapman</i>	Date Signed: June 20, 2014
6. Human Resources Director's Signature:	Date Received in HRM:	Date Signed:

Moore Law Firm, L.L.C.

Dwight C. Moore

Attorney at Law

26 North Main Street

P.O. Box 1229

Sumter, SC 29151-1229

Office: (803) 778-6520

Fax: (803) 775-6365

E-Mail: moorelawfirm@ffc-i.net

June 20, 2014

VIA U.S. MAIL, FACSIMILE, AND E-MAIL

Ms. B. Glenise Elmore
Employee Relations Director
Office of Human Resources
S.C. Department of Social Services
1535 Confederate Ave/Room 302
Columbia, South Carolina 29202

Re: William Henry Chapman Grievance

Dear Ms. Elmore:

Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter. Please let me know if there is anything further required from us at this time. With kind regards, I am

Sincerely yours,

Crystal C. Stokes,
Paralegal to Dwight C. Moore

DCM/ccs
Enclosure

South Carolina Department of Social Services GRIEVANCE FORM

INSTRUCTIONS - TO BE COMPLETED BY GRIEVANT

Continue items on additional sheet of paper, when necessary. Enter continued comments to corresponding item number. Identify each additional sheet with employee's name: last, first and middle initial.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Original: Human Resources Director Copy: Grievant Copy: Submitted by Human Resources Division to Appointing Authority

Employee's Name: Last, First, Middle Initial Chapman, William H.		Job Title: Human Service Specialist 1	Contact Information: Work Telephone:
County/Division: Clarendon County		Hire Date: August 2, 1992	Home Telephone: 803-460-0267
Job Status: (Check one) ☒ FTE ☐ Temporary ☐ Temporary Grant	Home or Mailing Address: 214 Lantern Lane Manning, SC 29102		

1. Effective date of grievable action: June 3, 2014

2. Give a full explanation of the grievance/grievance action.

wrongful termination

3. Describe in detail the relief sought:

rehire or eligible for early retirement/severance pay

4. Please indicate below your mediation option by signing your name next to your selection:

I am interested in participating in the mediation process to resolve this matter. _____

I am not interested in participating in the mediation process to resolve this matter. _____

5. Print Employee's Name: William H. Chapman	Employee's Signature: 	Date Signed: June 20, 2014
6. Human Resources Director's Signature: 	Date Received in HRM: 	Date Signed:

Grievance of William Chapman
Management Position Statement
ATTACHMENT A

PERFORMANCE ENHANCEMENT PLAN

Employee Name:

William "Henry" Chapman

Title:

FAIC INTERVIEWER

County/Department:

CLARENDON COUNTY DSS

Date:

January 31, 2014

Performance in need of improvement:

- | | |
|--|----------------------------|
| 1. COMPLIANCE WITH SCHEDULED WORK HOURS. | 5. IMPROVED DOCUMENTATION. |
| 2. COMPLIANCE WITH 60 MINUTE LUNCH. | |
| 3. NUMBER OF ACD CALLS PER DAY. | |
| 4. TIME IN ASSIST. | |

(List the goals/activities the employee will initiate to improve performance. Include skill development and changes needed to meet work performance expectations.)

1. AGENT WILL COMPLY WITH SCHEDULED WORK HOURS (DAILY LOG IN REPORTS).
2. AGENT WILL COMPLY WITH SCHEDULED 60 MINUTE LUNCH BREAK. (AUX OUT/AUX IN TIMES)
3. AGENT WILL INCREASE ACD CALLS TO 10-12 PER DAY BY SETTING GOALS. (DAILY SCCHIP LOG)
4. AGENT WILL DECREASE ASSIST TIME – DO NOT DISCONNECT CALL UNTIL ALL ASPECTS OF INTERVIEW ARE COMPLETED. (CMS AGENT AUX REPORTS)
5. AGENT WILL IMPROVE DOCUMENTATION BY USING PRESCRIBED INTERVIEW GUIDE AND OTHER RESOURCES DIRECTLY RELATED TO INTERVIEW DOCUMENTATION.

Employee Signature: _____

Date: _____

Targeted Date for Improvement:

FEB. 28, 2014

Expected Results-list measurements, where possible

1. AGENT WILL BE IN 100% WORK SCHEDULE COMPLIANCE IMMEDIATELY/VERIFIED BY DAILY LOG- IN REPORT.
2. AGENT WILL BE IN 100% LUNCH HOUR COMPLIANCE IMMEDIATELY/VERIFIED BY CMS REPORT.
3. 10-12 COMPLETED CALLS/DAY / VERIFIED BY SCCHIP DAILY LOGS.
4. DECREASED TIME IN ASSIST BY 50%/ VERIFIED BY CMS REPORT.
5. 50% DECREASE IN RETURNED CASES FOR MONTH OF FEBRUARY.

Dates to Review progress by employee and supervisor:

FEB. 14, 2014/ FEB. 28, 2014

Progress at review dates:

2/14/14:

1. Goal met – in compliance with scheduled work hours.
2. Goal met – in compliance with scheduled 60 minute lunch break.
3. Goal has not been met.
4. Goal has been met- time in assist has decreased more than 50%.
5. Goal has been met – agent had no cases returned for documentation.

Goals which have been successfully met: (see supporting documentation)

2/28/14:

1. Goal continues to be met – in compliance with scheduled work hours. (Daily log in/out printouts.
2. Goal continues to be met – in compliance with scheduled 60 minute lunch break(CMS Agent AUX report)
3. Goal has not been met . (Daily SCCHIP log)
4. Goal has been met – time in assist has decreased by more than 50%. (CMS Agent AUX report)
5. Goal has been met – no cases returned for documentation in February (Supervisor emails)

Goals which were not met/recommended actions: (see supporting documentation)

3. Agent will increase ACD calls to 10-12 per day by setting goals.
Prior to review date of 2/14/14, agent failed to meet goal on 7 of 8 working days (office closed 2 days due to ice storm and opened at 10:00 a.m. on 1 day)
Between 2/14/14 and 2/28/14, agent failed to meet goal on 2 of 9 working days. (Daily SCCHIP logs).
Recommended action: Oral warning of substandard job performance.

Next Review Date, if needed:

3/28/14

Employee Signature: _____

Date: _____

Supervisor Signature: _____

Date: _____

Grievance of William Chapman
Management Position Statement
ATTACHMENT B

PERFORMANCE ENHANCEMENT PLAN

Employee Name:

William "Henry" Chapman

Title:

FAIC INTERVIEWER

County/Department:

CLARENDON COUNTY DSS

Date:

January 31, 2014

Performance in need of improvement:

1. COMPLIANCE WITH SCHEDULED WORK HOURS.
2. COMPLIANCE WITH 60 MINUTE LUNCH.
3. NUMBER OF ACD CALLS PER DAY.
4. TIME IN ASSIST.
5. IMPROVED DOCUMENTATION.

(List the goals/activities the employee will initiate to improve performance. Include skill development and changes needed to meet work performance expectations.)

1. AGENT WILL COMPLY WITH SCHEDULED WORK HOURS (DAILY LOG IN REPORTS).
2. AGENT WILL COMPLY WITH SCHEDULED 60 MINUTE LUNCH BREAK. (AUX OUT/AUX IN TIMES)
3. AGENT WILL INCREASE ACD CALLS TO 10-12 PER DAY BY SETTING GOALS. (DAILY SCCHIP LOG)
4. AGENT WILL DECREASE ASSIST TIME - DO NOT DISCONNECT CALL UNTIL ALL ASPECTS OF INTERVIEW ARE COMPLETED. (CMS AGENT AUX REPORTS)
5. AGENT WILL IMPROVE DOCUMENTATION BY USING PRESCRIBED INTERVIEW GUIDE AND OTHER RESOURCES DIRECTLY RELATED TO INTERVIEW DOCUMENTATION.

Employee Signature: *William H. Chapman*

Date: *January 31, 2014*

Targeted Date for Improvement:

FEB. 28, 2014

Expected Results-list measurements, where possible

1. AGENT WILL BE IN 100% WORK SCHEDULE COMPLIANCE IMMEDIATELY/VERIFIED BY DAILY LOG- IN REPORT.
2. AGENT WILL BE IN 100% LUNCH HOUR COMPLIANCE IMMEDIATELY/VERIFIED BY CMS REPORT.
3. 10-12 COMPLETED CALLS/DAY / VERIFIED BY SCCHIP DAILY LOGS.
4. DECREASED TIME IN ASSIST BY 50%/ VERIFIED BY CMS REPORT.
5. 50% DECREASE IN RETURNED CASES FOR MONTH OF FEBRUARY.

Dates-to-Review progress by employee and supervisor:

FEB. 14, 2014/ FEB. 28, 2014

Progress at review dates:

2/14/14:

1. Goal met - in compliance with scheduled work hours.
2. Goal met - in compliance with scheduled 60 minute lunch break.
3. Goal has not been met.
4. Goal has been met- time in assist has decreased more than 50%.
5. Goal has been met - agent had no cases returned for documentation.

Goals which have been successfully met: (see supporting documentation)

2/28/14:

1. Goal continues to be met – in compliance with scheduled work hours. (Daily log in/out printouts.
2. Goal continues to be met – in compliance with scheduled 60 minute lunch break(CMS Agent AUX report)
3. Goal has not been met . (Daily SCCHIP log)
4. Goal has been met – time in assist has decreased by more than 50%. (CMS Agent AUX report)
5. Goal has been met – no cases returned for documentation in February (Supervisor emails)

Goals which were not met/recommended actions: (see supporting documentation)

3. Agent will increase ACD calls to 10-12 per day by setting goals.

Prior to review date of 2/14/14, agent failed to meet goal on 7 of 8 working days (office closed 2 days due to ice storm and opened at 10:00 a.m. on 1 day)

Between 2/14/14 and 2/28/14, agent failed to meet goal on 2 of 9 working days. (Daily SCCHIP logs).

Recommended action: Oral warning of substandard job performance.

Next Review Date, if needed:

3/28/14

Employee Signature:

William Henry Rogers

Date:

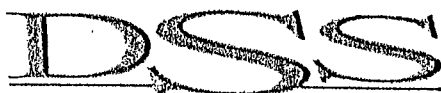
March 10, 2014

Supervisor Signature:

Dawn M. Still

Date:

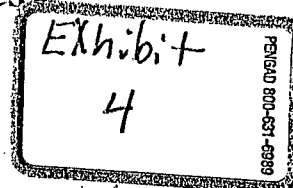
3/10/14



Serving Children and Families

AMBER GILLUM
INTERIM STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR



July 7, 2014

E-mailed & Mailed

Ms. Leigh Bolick, Director of Child Care Service
Department of Social Services

Dear Ms. Bolick:

The grievance process for the Department of Social Services consists of three (3) primary step procedures as reflected in the DSS Human Resources Policy and Procedure Manual Chapter 6 (606). Enclosed are the Grievance and Appeal forms for Mr. William Chapman.

The grievant or his/her representative and management may submit documentation to you during this process. Documents are to be submitted to you by both parties for your review no later than **July 9th, 2014**. As the grievance reviewer, you should conduct a fact finding process that is further outlined in Chapter 6 and provide a written recommendation for the State Director's consideration and final decision. Your recommendation, along with the grievance file and/or documents from each party, is due to the Human Resources Management Division no later than **July 16th, 2014**.

If you have any questions or need additional information, please contact Ms. Kristen Johnson, Employee Relations Specialist, at 803-898-7147.

Sincerely,


Funneaser "Neisie" Jacobs, Director
Human Resources Management Division

cc: Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

Moore Law Firm, LLC
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229

Ms. Robin Layton, County Director
Clarendon County DSS

Mr. William Smith, Esq.
DSS Office of General Counsel



Serving Children and Families

AMBER GILLUM
ACTING STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

July 25, 2014

SENT VIA CERTIFIED MAIL

Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman:

In reference to the grievance you filed, enclosed is the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form).

If you do not agree with this decision, you may appeal to the State Employee Grievance Committee through the Director of Human Resources at the Office of Human Resources, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223. This appeal must be in writing and made within ten (10) calendar days of receipt of this decision or within fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurs later.

Sincerely,

A handwritten signature in dark ink, appearing to read "Amber Gillum".

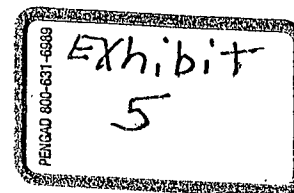
Amber Gillum
Acting State Director

AG: kj

cc: Robin Layton, County Director
Clarendon County DSS

William Smith, Esq.
Office of General Counsel

Dwight C. Moore, Esq.
Moore Law Firm, LLC
P.O. Box 1229
Sumter, SC 29151



OFFICE OF THE DIRECTOR OF SOCIAL SERVICES
GRIEVANCE DECISION FORM

INSTRUCTIONS

Original: Grievant

Copy: Supervisor

Copy: Appointing Authority

Copy: Human Resources Director

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART, NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Employee's Name: Last, First, Middle Initial Chapman, William	Job Title: Human Services Specialist I	County/Division: Clarendon/Economic Services
---	--	--

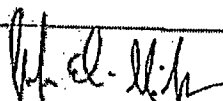
Decision:

I uphold the Agency's decision to terminate Mr. Chapman. I have fully reviewed all submitted information prior to rendering this decision.

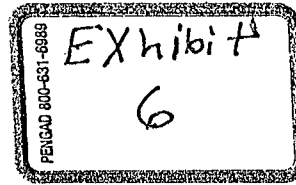
Date of Decision:

7/25/14

Signature of State Director:



Moore Law Firm, L.L.C.



Dwight C. Moore
Attorney at Law
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229
Office: (803) 778-6520
Fax: (803) 775-6365
E-Mail: moorelawfirm@ffc-i.net

August 4, 2014

State Employee Grievance Committee
Director of Human Resources
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

Re: Termination of William Henry Chapman
Moore File No. 4136.4

To Whom It May Concern:

Please be advised that pursuant to this letter, I wish to appeal the decision handed down by Ms. Gillum on or about July 25, 2014.

Please refer all correspondence to the address indicated above. With kind regards, I am

Sincerely yours,

Dwight C. Moore

DCM/ccs

cc: Amber Gillum, SCDSS Acting State Director
Robin Layton, Clarendon County DSS County Director

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

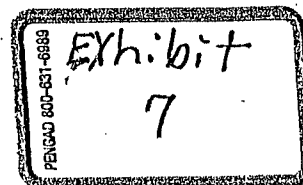
803-896-5300
FAX 803-896-5050

August 5, 2014

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR



Mr. Dwight C. Moore
Moore Law Firm, L.L.C.
Post Office Box 1229
Sumter, South Carolina 29151-1229

Re: William Henry Chapman v. South Carolina Department of Social Services

Dear Mr. Moore:

Concerning Mr. Chapman's appeal to the State Human Resources Director, please complete the enclosed form and return to our office within five (5) days of receipt. A rapid return of this form will ensure that Mr. Chapman's appeal is processed as quickly as possible.

Send the completed form to the Human Resources Division, Alternative Dispute Resolution Program, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223.

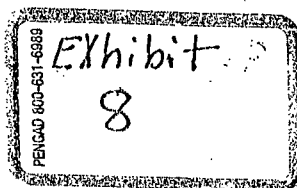
Sincerely,

Carrie Coats
Alternative Dispute Resolution Program

Enclosure

AUG - 7 2014

FAX



BTCB
SC Budget and Control Board

SOUTH CAROLINA BUDGET AND CONTROL BOARD
HUMAN RESOURCES DIVISION

8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

Fax: (803) 896-5050
Phone: (803) 896-5300

TO: Mr. Dwight C. Moore

DATE: 8/11/14

FAX: 803-775-6365

NO. OF PAGES: 2

(including cover sheet)

PHONE: 803-778-6520

E-MAIL: moorelawfirm@fja-inc.com

FROM: Carrie Coats

DEPARTMENT: ADR

PHONE: 803-896-5300

E-MAIL: _____

COMMENTS:

Mr. Moore,

Please find attached the State Appeal Form.

My apologies for the oversight in not including this last week.

Please call 803-896-5300 if you have any additional questions.

Carrie Coats

CONFIDENTIALITY NOTICE: This facsimile contains information from the SC Budget and Control Board's Human Resources Division which may be confidential or privileged. It is intended solely for the use of the individual or entity to whom it is addressed. If you are not the named addressee, you should not disseminate, distribute, or copy this facsimile. Please notify the sender immediately if you have received this facsimile by mistake and destroy all copies of the communication. Please note that any views or opinions presented in this facsimile are solely those of the author and do not necessarily represent those of the SC Budget and Control Board.

STATE EMPLOYEE GRIEVANCE PROCEDURE
STATE APPEAL FORM

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES.

EMPLOYEE'S NAME: _____

JOB CLASSIFICATION: _____

AGENCY: _____

HOME ADDRESS: _____
 Street City State Zip Code

TELEPHONE: _____
Home _____ Office _____

1. Has the employee completed twelve (12) months of satisfactory service with the state? _____
2. What disciplinary action taken against the employee is being appealed? _____
3. Has the employee received a final decision from the agency? _____
4. What date did the employee receive the final decision? _____
5. If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure? _____

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position (continue on additional pages if necessary):

Please specify the relief that the employee is seeking by this appeal (continue on additional pages if necessary):

Signature: _____ Date: _____
Employee or Representative

Return to: State Human Resources Director
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

APPEAL BEFORE THE STATE HUMAN RESOURCES DIRECTOR

William Henry Chapman v. South Carolina Department of Social Services (DSS)

FINAL DECISION

This matter came before me in the appeal of William Henry Chapman ["Appellant"] under the State Employee Grievance Procedure Act (Act) to determine whether or not the action is "grievable to the committee or a mediator-arbitrator." Appellant appealed the decision by DSS ["Respondent"]. Both Appellant and Respondent were given the opportunity to present information concerning the appeal. As such, both Appellant and Respondent submitted various documents included in the record on appeal and, subsequently, a review of the record on appeal has been conducted. According to the record, Appellant is appealing his termination.

ISSUE

Based on the record presented, the following issue is presented to me on appeal:
Whether Appellant failed to exhaust administrative remedies with Respondent in accordance with the requirements of the Act.

STATEMENT OF EVENTS

Based on the record presented to me by both Appellant and Respondent, the following information is presented:

1. On June 3, 2014, Appellant was notified his employment was terminated due to substandard performance;
2. by letter dated June 3, 2014, Ms. Kristen L. Johnson, M.A. HRM, Respondent's Employee Relations Specialist, advised Appellant that "[e]mployees must initiate a grievance within 14 calendar days of the effective day of the grievable action." [Emphasis in original.] In addition, Ms. Johnson provided Appellant with DSS Form 1449, Employee Grievance and Appeal Form and a copy of Respondent's Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal;
3. On June 20, 2014, Respondent received Appellant's DSS Form 1449, Employee Grievance and Appeal Form, concerning his termination via facsimile;
4. by certified letter dated July 25, 2014, and received by Appellant on July 28, 2014, Ms. Amber Gillum, Respondent's Acting State Director, advised Appellant that she was upholding his termination. Ms. Gillum's letter further advised Appellant that if he wished to appeal this decision, the appeal had to be in writing and submitted within ten (10) calendar days of receipt of Ms. Gillum's decision or fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurred later; and
5. by letter postmarked August 4, 2014, Appellant initiated an appeal to the State Human Resources Director.

RELEVANT LAW

Section 8-17-350 of the S.C. Code of Laws of 1976, as amended, states in part: "When an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator-arbitrator."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action. . . ."

Section 19-718.04(B) of the State Human Resources Regulations states "[a] covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action."

Section 603 of Respondent's Procedure for Grievance and Appeal states in part that, "[a]ll grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action."

ANALYSIS

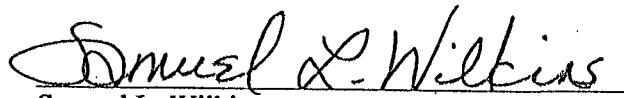
According to the record, Appellant was notified via hand-delivered letter on June 3, 2014, that his employment was terminated effective June 3, 2014. Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources Management Office on June 20, 2014. The date Appellant's grievance was submitted, June 20, 2014, is seventeen (17) calendar days from the effective date of the action, June 3, 2014. Section 8-17-330 of the S. C. Code of Laws of 1976, as amended, states in part that, "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action...." This timeframe is also noted in Respondent's Procedure for Grievance and Appeal which Ms. Johnson provided to Appellant. Appellant's grievance was submitted beyond this fourteen calendar day timeframe.

The Act requires that all administrative remedies be exhausted prior to appealing an action to the State Human Resources Director. Appellant's failure to file a grievance within the required time frame precluded him from completing Respondent's employee grievance procedure. Therefore, Appellant failed to exhaust all his administrative remedies. "Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts." Hyde v. South Carolina Dept. Of Mental Health, 314 S.C. 207, 442 S.C.2d 582 (1994); See also, Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).

DECISION

Because Appellant failed to file a grievance with Respondent within 14 calendar days of the effective date of his termination, the State Human Resources Director has determined that the appeal must be denied. Since Appellant did not file a grievance with Respondent pursuant to time frames established by the Act, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed.

This concludes the processing of the appeal.


Samuel L. Wilkins
State Human Resources Director

Columbia, South Carolina
September 4, 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APPEAL FROM THE FINAL DECISION
OF THE STATE HUMAN RESOURCES DIRECTOR

Docket No.: 14-AU-30-0538-AP

William Henry Chapman, Appellant

vs.

South Carolina Department of Social Services (DSS), Respondent

BRIEF OF RESPONDENT

William C. Smith
Office of General Counsel
South Carolina Department of Social Services
1535 Confederate Avenue Extension
Columbia, SC 29202-1520
Attorney for Respondent
Telephone: 803-898-7617
Email: william.smith@dss.sc.gov
Attorney for Respondent

Dwight C. Moore
Moore Law Firm, LLC
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229
Telephone: 803-778-6250
Email: moorelawfirm@ftc-l.net
Attorney for Appellant

STATEMENT OF THE ISSUE ON APPEAL

Whether Appellant failed to exhaust his administrative remedies with Respondent in accordance with the requirements of the State Employee Grievance Procedure Act (Act)?

STATEMENT OF THE CASE

On June 3, 2014, Appellant was notified by the Respondent that his employment was terminated due to his substandard job performance.

By letter dated June 3, 2014, Ms. Kristen L. Johnson, M.A. HRM, Respondent's Employee Relations Specialist, advised Appellant that "[e]mployees must initiate a **grievance within 14 calendar days of the effective day of the grievable action.**"

[Emphasis in original.] In addition, Ms. Johnson provided Appellant with DSS Form 1449, Employee Grievance and Appeal Form, and a copy of Respondent's Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal.

On June 20, 2014, Respondent received Appellant's DSS Form 1449, Employee Grievance and Appeal Form, concerning his termination via facsimile.

By certified letter dated July 25, 2014, and received by Appellant on July 28, 2014, Ms. Amber Gillum, Respondent's Acting State Director, advised Appellant that she was upholding his termination. Ms. Gillum's letter further advised Appellant that if he wished to appeal this decision, the appeal had to be in writing and submitted within ten

(10) calendar days of receipt of Ms. Gillum's decision or fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurred later.

By letter postmarked August 4, 2014, Appellant initiated an appeal to the State Human Resources Director.

By letter dated September 4, 2014, the State Human Resources Director rendered his Final Decision denying Appellant's appeal because Appellant failed to file a grievance with Respondent within 14 calendar days of the effective date of his termination, and because Appellant did not file his grievance with Respondent pursuant to time frames established by the Act, he failed to exhaust his administrative remedies, and the merits of the case could not be reviewed.

By letter dated September 18, 2014 Appellant filed with the State Human Resources Director a Request for Reconsideration of the final decision of the State Human Resources Director. By letter dated October 16, 2014, the State Human Resources Director denied Appellant's Request for Reconsideration and upheld his final decision of September 4, 2014.

Appellant timely filed a Notice of Appeal in this Court by letter dated November 19, 2014. The State Human Resources Director filed the Record on Appeal by letter dated December 19, 2014.

Appellant submitted his brief by letter dated January 21, 2015 which was served upon the Respondent by regular mail. This brief is filed in response thereto.

ARGUMENT

The State Employee Grievance Procedure Act requires that all administrative remedies be exhausted prior to appealing an action to the State Human Resources Director. Appellant's failure to file his grievance in accordance with DSS policy within the required time frame precluded his proper completion of DSS's employee grievance procedure. Therefore, Appellant failed to exhaust all his administrative remedies available within DSS and he is precluded from seeking judicial review in this Court.

In order for Appellant to seek this Court's review of his termination from employment by DSS, he was required by the Administrative Procedures Act to first exhaust his available administrative remedies within the agency. S.C. Code Ann. § 1-23-380 (Supp. 2011). He has not done so and jurisdiction to hear the current matter is not properly before the Court.

In accordance with the provisions of the State Employee Grievance Procedure Act at S.C. Code Ann. § 8-17-330, each State agency "shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources." That section requires, further, that "[a] copy of the approved agency grievance procedure must be made available to covered employees of the agency." In accordance with this provision, DSS established an agency grievance procedure which required the submission of DSS Form 1449 in order to initiate a grievance. Appellant was notified of that requirement when he was provided with a copy of the DSS Form 1449 as well as a copy of the DSS Human Resources Policy and

Procedure Manual, Chapter 6, Grievance and Appeal, prior to the end of the fourteen (14) calendar day time frame in which to initiate his grievance.

According to the record, Appellant was notified by Respondent via hand-delivered letter on June 3, 2014, that his employment was terminated effective June 3, 2014. Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources Management Office on June 20, 2014.

The date Appellant's grievance was submitted, June 20, 2014, which was seventeen (17) calendar days from the effective date of the termination action on June 3, 2014. S.C. Code Ann. § 8-17-330, states in pertinent part that, "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action...." This timeframe was also noted in Respondent's Procedure for Grievance and Appeal which its Human Resources Management Office provided to Appellant. Appellant's grievance was submitted three (3) days beyond the statutorily mandated fourteen calendar day timeframe.

S.C. Code Ann. § 8-17-3-350 requires the State Human Resources Director to ascertain that there has been full compliance with an agency's grievance policy when an appeal has been filed. Here, the State Human Resources Director determined that Appellant had not complied with the DSS grievance policy because he had failed to file his grievance in accordance with the required time frame.

Because Appellant's failure to timely file his grievance with DSS precluded him from properly completing DSS's employee grievance procedure, he failed to exhaust his

available administrative remedies and his filing was not properly before the State Human Resources Director, just as the instant filing is not properly before this Court. Our Supreme Court has noted, "[w]here an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts." *Hyde v. South Carolina Dept. Of Mental Health*, 314 S.C. 207, 442 S.C.2d 582 (1994); See also, *Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 629 S.E.2d 642 (2006).

In his brief, Appellant further argues that even if the DSS Form 1449 was required to initiate his grievance, DSS's actions in processing the grievance were tantamount to an agreement to waive the fourteen (14) calendar day time frame to initiate the grievance. Accordingly, Appellant argues that DSS "constructively waived" the time frame in accordance with section S.C. Code Ann. 8-17-330 which states that "[t]he internal time periods of the agency grievance procedure may be waived upon mutual written agreement of both parties." Appellant's argument, however, is flawed inasmuch as there was no written agreement between DSS and Appellant to waive any time frame of any sort and the internal grievance process does not begin to run until an employee has actually initiated a grievance. Further, the fourteen (14) calendar day time frame is established within the Act itself as a mandatory time frame for filing a grievance with the agency and is not an internal time frame which could have been waived by DSS.

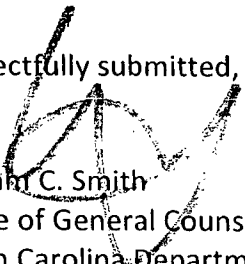
Thus, because Appellant's grievance was not initiated timely, DSS had no jurisdiction to process his grievance, and any action taken by the agency in regards to

Appellant's grievance was irrelevant to the State Human Resources Director's determination of whether Appellant's grievance was timely filed.

CONCLUSION

Appellant failed to exhaust his administrative remedies inasmuch as he did not timely file his internal grievance with DSS and, as a matter of law, he is precluded from seeking judicial review IN THIS COURT. Further, Appellant's attempt to "cobble" together a theory of constructive waiver of the timely filing requirement is without any support whatsoever in that the statutorily specified time frame for the filing of an internal grievance is not subject to waiver by DSS. Respondent requests that this appeal be dismissed.

Respectfully submitted,



William C. Smith
Office of General Counsel
South Carolina Department of Social Services
1535 Confederate Avenue Extension
Columbia, SC 29202-1520
S.C. Bar Number 05223

Telephone: 803-898-7617
Fax: 803-898-7245
Email: william.smith@dss.sc.gov

Attorney for Respondent

February 25, 2015

THE STATE OF SOUTH CAROLINA
In The South Carolina Administrative Law Court

APPEAL FROM THE FINAL DECISION
Of The
STATE HUMAN RESOURCES DIRECTOR

Docket Number: 14-ALJ-30-0538-AP

William Henry Chapman, ... Appellant,

v.

South Carolina Department of Social Services (DSS), ... Respondent.

REPLY BRIEF OF APPELLANT

Dwight C. Moore, SC Bar No. 63008
Moore Law Firm, L.L.C.
26 North Main Street
Post Office Box 1229
Sumter, South Carolina 29151-1229
Telephone (803) 778-6520
Fax (803) 775-6365
Email: moorelawfirm@ftc-i.net
Attorney for Appellant

TABLE OF CONTENTS

Statement of Issues On Appeal	1
Statement of The Case	1
Argument	
I. <u>Whether or not the Appellant failed to exhaust administrative remedies with the Respondent in accordance with the requirements of the Act</u>	1
II. <u>Even if Appellant had failed to exhaust his administrative remedies the Respondent, by its own actions, constructively waived the time line under consideration and it is, therefore, estopped from barring the Appellant from a hearing on the merits of the case</u>	4
Conclusion	5

STATEMENT OF THE ISSUES ON APPEAL

- I. Whether or not the Appellant failed to exhaust administrative remedies with the Respondent in accordance with the requirements of the Act
- II. Even if Appellant had failed to exhaust his administrative remedies the Respondent, by its own actions, constructively waived the time line under consideration and it is, therefore, estopped from barring the Appellant from a hearing on the merits of the case

STATEMENT OF THE CASE

For purposes of his Reply to the Brief of the Respondents, Appellant herein adopts the Statement of the Case in his initial Brief and incorporates the Statement of the Case herein by reference as fully as if set forth verbatim.

ARGUMENT

- I. Whether or not the Appellant failed to exhaust administrative remedies with the Respondent in accordance with the requirements of the Act

Respondent's argument on this issue focuses on the Final Decision of the State Human Resources Director ("HR Director") which, without mention in his analysis or acknowledgement of Appellant's correspondence to Respondent on June 12, 2014, determined that "[b]ecause Appellant failed to file a grievance with Respondent within 14 days of the effective date of his termination, the State Human Resources Director had determined that the appeal must be denied." (Final Decision, Decision, p. 2)

The Analysis in the Final Decision notes the June 3, 2014, date of termination and next makes the following statements: "Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources

Management Office on June 20, 2014. The date Appellant's grievance was submitted, June 20, 2014, is seventeen (17) calendar days from the effective date of the action, June 3, 2014." (Final Decision, Analysis, p. 2)

Likewise, in its Brief the Respondent leaps from the effective date of termination on June 3, 2014, to June 20, 2014; the date Appellant's cover letter and DSS Form 1449 were faxed to the Respondent. (Brief of Respondent, Argument, p. 4)

Appellant is unable to find in the Final Decision of the HR Director and the Brief of the Respondent any mention of the fact that Appellant communicated his desire to grieve his termination by letter to Respondent dated June 12, 2014, and the action which led up to the faxed DSS Form 1449 on June 20, 2014. The issue of the Appellant's June 12, 2014, letter and the communication preceding the June 20, 2014, fax was raised in Appellant's Request for Reconsideration of the Final Decision of the State Human Resources Director (Statement of the Case, p. 1, Argument, p. 4, and the initial Brief of the Appellant (Statement of the Case, p. 1, Argument, p. 10, in the following language:

Appellant was terminated from employment with the Clarendon County Division of the South Carolina Department of Social Services (DSS) on June 3, 2014. The termination letter was hand-delivered over the signature of Robin H. Layton, Interim Director of Clarendon County, and the last paragraph stated: "You may contact the Office of Human Resource Management at (803) 898-7315 regarding your possible grievance rights." (*Exhibit #1: Letter dated June 3, 2014*)

Appellant retained counsel and by letter dated June 12, 2014, Appellant's attorney advised Ms. Layton that he represented the Appellant and stated: "Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014. Please advise as to date and time as to any proceedings." (*Exhibit #2: Letter dated June 12, 2014*) (Emphasis supplied)

Appellant's DSS Form 1449 was transmitted under cover of a letter dated June 20, 2014, sent by United States Postal Service (USPS), facsimile and e-mail addressed to Ms. B. Glenise Elmore, Employee Relations Director of

Respondent's Office of Human Resources, by Crystal Stokes, Paralegal to Appellant's counsel, with the following message:

Dear Ms. Elmore:

Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter. Please let me know if there is anything further required from us at this time. ...(Emphasis supplied)

The DSS Form 1449 was signed by Appellant and dated June 20, 2014. *(Exhibit #3: Letter, DSS Form 1449, Fax Cover Sheet, and Fax Report all dated June 20, 2014)*

Appellant is unable to find any reference to the June 12, 2014, letter and the June 20, 2014, cover letter for the faxed DSS Form 1449 in either the Statement of Events or the Analysis of the Final Decision. Similarly, the Statement of the Case and the Arguments in the Brief of the Respondent are silent as to the June 12, 2014, letter and the June 20, 2014, cover letter for the faxed DSS Form 1449.

Appellant contends that a consideration of these two matters is crucial to a fair, just and equitable determination as to whether or not the Appellant has exhausted his administrative remedies under the Act. Therefore, the Appellant argues that the prerequisite issue for determination by this Court is as follows:

Does Appellant's letter dated June 12, 2014, supported by the cover letter dated June 20, 2014, for the faxed DSS Form 1449, substantially meet the requirements for initiating a grievance in accordance with the State Employee Grievance Procedure Act?

To this point in these proceedings, the record is devoid of any showing that this facet of the case has received any consideration whatsoever. The facts reflect that Appellant initiated his grievance internally by Counsel's letter to the Clarendon County Interim Director dated June 12, 2014. His letter stated unambiguously (1) the effective date of the grievable action: "...June 3, 2014," (2) his desire to grieve the action, (3) described the action that was the subject of his grievance: "termination," and asked to be notified of the

date and time of any proceedings. (Appellant's Brief Exhibit #2) An examination of DSS Form 1449 reveals that the substantive information requested by and provided on the form was provided initially in Appellant's June 12, 2014, letter initiating his grievance; to wit,

1. Effective date of grievable action: June 3, 2014
2. Give a full explanation of the grievance/grievance action: wrongful termination

(Attachment to Appellant's Brief Exhibit 3)

Since there is no indication in the record that these events were considered by the State HR Director in arriving at his determination, Appellant maintains that venue is proper in this court for a decision as to whether or not the Appellant is entitled to proceed with his grievance under the Act.

Appellant asserts that a consideration of all the pertinent facts in this action will show that his grievance was timely initiated.

- II. Even if Appellant had failed to exhaust his administrative remedies the Respondent, by its own actions, constructively waived the time line under consideration and it is, therefore, estopped from barring the Appellant from a hearing on the merits of the case

Respondent accepted Appellant's filing and continued with the grievance process. While the instant matter was pending before the HR Director, Ms. Amber Gillum, Acting State Director, upheld the Agency's decision to terminate the Appellant. On August 4, 2014, Appellant appealed from Ms. Gillum's decision. In the interim, the HR Director issued his Final Decision dated September 4, 2014.

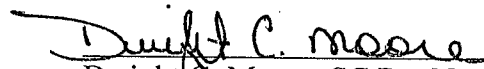
Appellant argues that, due to the failure to receive a full and fair consideration of the relevant facts at this juncture in these proceedings, he is being wrongfully denied the opportunity to avail himself of the provisions of the Act whereby he is permitted to have his grievance heard on the merits.

CONCLUSION

For the foregoing reasons, Appellant urges this Court to find that Appellant timely initiated his internal grievance process, vacate the Final Decision of the HR Director, and permit Appellant's Grievance process to continue as provided by the Act.

Respectfully submitted,

MOORE LAW FIRM, L.L.C.



Dwight C. Moore, SC Bar No. 63008

26 North Main Street

Post Office Box 1229

Sumter, South Carolina 29151-1229

Telephone (803) 778-6520

Fax (803) 775-6365

Attorney for Appellant

March 9, 2015

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

The Honorable Carolyn C. Matthews, Administrative Law Judge

Case No. 2014-ALJ-30-0538-AP

William Henry Chapman,

Appellant,

vs.

South Carolina Department of Social Services,

Respondent.

RECORD ON APPEAL
VOLUME 1 of 1

Mr. Dwight C. Moore
Moore Law Firm, L.L.C.
Post Office Box 1229
Sumter, South Carolina 29151
moorelawfirm@ftc-i.net

Mr. William C. Smith
Assistant General Counsel
S.C. Department of Social Services
Post Office Box 1520
Columbia, South Carolina 29202
william.smith@dss.sc.gov

INDEX TO RECORD ON APPEAL

Letter of Samuel Wilkins, dated October 16, 2014	0003
Letter of William C. Smith, dated October 3, 2014	0007
Letter of Dwight C. Moore, dated September 18, 2014	0013
Final Decision, dated September 4, 2014	0046
State Employee Grievance Procedure State Appeal Form, dated August 11, 2014.....	0049
Letter of William C. Smith, dated August 25, 2014.....	0052
Certificate of Service, dated December 19, 2014.....	0089

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

The Honorable Carolyn C. Matthews, Administrative Law Judge

Case No. 2014-ALJ-30-0538-AP

William Henry Chapman,

Appellant,

vs.

South Carolina Department of Social Services,

Respondent.

RECORD ON APPEAL
VOLUME 1 of 1

Mr. Dwight C. Moore
Moore Law Firm, L.L.C.
Post Office Box 1229
Sumter, South Carolina 29151
moorelawfirm@ftc-i.net

Mr. William C. Smith
Assistant General Counsel
S.C. Department of Social Services
Post Office Box 1520
Columbia, South Carolina 29202
william.smith@dss.sc.gov

INDEX TO RECORD ON APPEAL

Letter of Samuel Wilkins, dated October 16, 2014	0003
Letter of William C. Smith, dated October 3, 2014	0007
Letter of Dwight C. Moore, dated September 18, 2014	0013
Final Decision, dated September 4, 2014	0046
State Employee Grievance Procedure State Appeal Form, dated August 11, 2014.....	0049
Letter of William C. Smith, dated August 25, 2014.....	0052
Certificate of Service, dated December 19, 2014.....	0089

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

October 16, 2014

CERTIFIED MAIL

Mr. Dwight C. Moore
Moore Law Firm, L.L.C
Post Office Box 1229
Sumter, South Carolina 29151

Re: William Henry Chapman v. South Carolina Department of Social Services (DSS)

Dear Mr. Moore:

I have received your request for reconsideration of my September 4, 2014 decision regarding the above-referenced appeal and Mr. William C. Smith's, DSS Assistant General Counsel, response dated October 3, 2014.

Section 19-718.05 (E) of the State Human Resources Regulations states: "[i]f the State Human Resources Director determines that the appeal is untimely or fails to comply with the requirements of the Act, he will notify the covered employee or his representative that the appeal is denied and no further action will be taken concerning the appeal. As a result of the State Human Resources Director's decision, the covered employee may request reconsideration within 30 calendar days from notification of the decision."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "[e]ach agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources."

Section 8-17-350 of the S.C. Code of Laws of 1976, as amended, states in part: "[w]hen an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator-arbitrator."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action. . . ."

Mr. Dwight C. Moore
October 16, 2014
Page Two

Further, section 19-718.04(B) of the State Human Resources Regulations states "[a] covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action."

Section 603 of Respondent's Procedure for Grievance and Appeal states in part that, "[a]ll grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action." In addition, Section 606 of Respondent's Procedure for Grievance and Appeal states similarly that, "[t]he grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action." [Emphasis in original.]

You contend the following in your Request for Reconsideration:

1. Mr. Chapman has exhausted his administrative remedies under the County and Municipal Employees Grievance Procedure Act as it applies to his termination and that he is in full compliance with the S.C. Code Ann. § 8-17-110, et seq. (1986) as amended.
2. Mr. Chapman's grievance was initiated by your letter dated June 12, 2014, to Ms. Robin H. Layton, Interim Director of the Clarendon County Division of the South Carolina Department of Social Services which stated the following: "Pursuant to §600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014. Please advise as to the date and time as to any proceedings." After the June 12, 2014 letter was forwarded to the State Office of DSS there was communication between the State Office and your office which resulted in the letter dated June 20, 2014, and DSS Form 1449 being faxed from your paralegal to the DSS Employee Relations Director. The cover letter which accompanied this form stated the following: "Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter." You further contend that DSS clearly acknowledged Mr. Chapman's grievance letter for what he intended it to be and for what it was in actuality—the initiation of the grievance process.
3. The State Employee Grievance Procedure Act does not state that a grievance must be initiated only by filing DSS Grievance Form 1449. Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states that "[t]he procedure must be initiated internally by such employee within fourteen calendar days of the effective date of the action." The failure to earlier submit the DSS Grievance Form 1449 is not fatal to Mr. Chapman's grievance because his grievance was initiated in writing, Respondent accepted his letter, requested that he submit the DSS Form 1449, which he did, and Respondent continued the process. Therefore, your contention is that Respondent may not now complain Mr. Chapman did not file a grievance with Respondent pursuant to time frames established by the Act.
4. Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states that "[t]he internal time periods of the agency grievance procedure may be waived upon mutual written agreement of both parties." Assuming the Act required the DSS Form 1449 to be the sole manner of initiating the grievance, you contend that DSS waived the right to belatedly raise the issue of timeliness when it acted in furtherance of the grievance

Mr. Dwight C. Moore
October 16, 2014
Page Three

process at every step subsequent to receiving the DSS Form 1449 in support of the grievance letter.

DSS contends the following:

1. Mr. Chapman was an employee of the State of South Carolina, not an employee of a county or an incorporated municipality covered under the County and Municipal Employees Grievance Procedure Act. Accordingly, Appellant's cited authority has no application or precedential value for purposes of the present matter and must be discarded.
2. The June 12, 2014 letter to Ms. Layton in which Appellant's counsel stated that Mr. Chapman wished to grieve his termination was of no effect as he would have fully understood based on his own citation of DSS policy. Specifically, the DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance and Appeal, Section 606, Procedure to File a Grievance, in Step One provide that "the grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action." Mr. Chapman was aware of this requirement as he was provided with a copy of the DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance and Appeal and DSS Form 1449 in a June 3, 2014 letter written to him by DSS. DSS contends Appellant's counsel would have had access to the necessary form and instructional policy well in advance of his June 12, 2014 letter to Ms. Layton.
3. DSS developed, and published for its employees, policies and procedures related to the initiation of internal grievances by those employees. The requirement that grievances be initiated using DSS Form 1449 within fourteen calendar days of the effective date of the action is mandatory, not precatory or discretionary and Mr. Chapman did not have available to him multiple options for filing his internal grievance. Additionally, if there is to be a waiver of the agency's internal time frames related to the filing of the DSS Form 1449, that waiver must, per policy, be based upon a mutual written agreement by the parties, not the employee's perception as to how his actions should be interpreted.
4. Notwithstanding that a lapse in counsel within the agency resulted in moving forward with an internal grievance finding in this matter, Mr. Chapman has no basis upon which to assert that further proceedings must be permitted.

To address your initial contention that Mr. Chapman has exhausted his administrative remedies under the County and Municipal Employees Grievance Procedure Act as it applies to his termination and that he is in full compliance with the S.C. Code Ann. § 8-17-110, et seq. (1986) as amended, Mr. Chapman was a State Employee and was, therefore, not subject to the County and Municipal Employees Grievance Procedure Act. Mr. Chapman was, however, subject to the provisions of the State Employee Grievance Procedure Act, S.C. Code Ann. § 8-17-310. The sections of the S.C. Code of Laws you cited beyond this initial assertion, however, correctly refer to the State Employee Grievance Procedure Act (Act).

Mr. Dwight C. Moore
October 16, 2014
Page Four

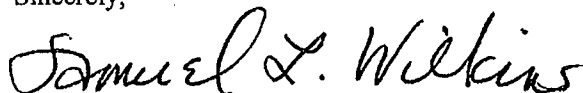
You contend in your Request for Reconsideration that your letter to Ms. Layton dated June 12, 2013, should have been considered the initiation of Mr. Chapman's grievance because the Act does not require a specific form to initiate a grievance. While you are correct that the Act does not require a specific form to initiate a grievance, § 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "[e]ach agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources." In accordance with this provision, DSS established an agency grievance procedure which required the submission of DSS Form 1449 in order to initiate the grievance. Mr. Chapman was notified of this requirement when he was provided with a copy of the DSS Form 1449 as well as a copy of the DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance and Appeal, prior to the end of the fourteen calendar day time frame in which to initiate his grievance. In addition, § 8-17-350 requires the State Human Resources Director to ascertain that there has been full compliance with the agency's grievance policy when an appeal has been filed.

You further contend that, even if DSS Form 1449 was required to initiate Mr. Chapman's grievance, DSS's actions concerning the processing of Mr. Chapman's grievance were tantamount to an agreement to waive the fourteen calendar time frame to initiate the grievance. You argue that this time frame was waived in accordance with section 8-17-330 of the S.C. Code of Laws of 1976, as amended, which states that "[t]he internal time periods of the agency grievance procedure may be waived upon mutual written agreement of both parties." The internal grievance process does not begin, however, until an employee has initiated a grievance. The fourteen calendar day time frame is established within the Act as a mandatory time frame for filing a grievance with the agency and is not an internal time frame which can be waived by either party. Since Mr. Chapman's grievance was not initiated timely, DSS had no jurisdiction to process the grievance, and any action taken by the agency in regards to Mr. Chapman's grievance are irrelevant to the State Human Resources Director's determination of whether his grievance was timely filed.

As I stated in my September 4, 2014 decision, the Act requires that all administrative remedies be exhausted prior to appealing an action to the State Human Resources Director. Mr. Chapman's failure to file a grievance in accordance with DSS policy within the required time frame precluded him from properly completing DSS's employee grievance procedure. Therefore, Appellant failed to exhaust all his administrative remedies. "Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts." Hyde v. South Carolina Dept. Of Mental Health, 314 S.C. 207, 442 S.C.2d 582 (1994); See also, Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).

While the information contained in your Request for Reconsideration has been reviewed, I uphold my final decision of September 4, 2014, regarding Mr. Chapman's appeal.

Sincerely,



Samuel L. Wilkins
Director

c: Mr. William C. Smith

0006



Serving Children and Families

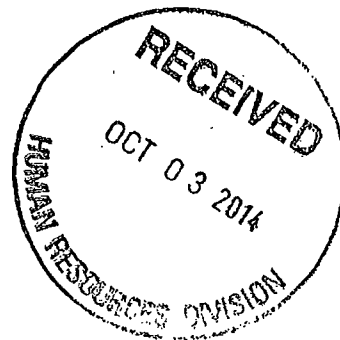
AMBER E. GILLUM
ACTING STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

October 3, 2014

VIA ELECTRONIC MAIL ONLY

hkeever@ohr.sc.gov



Heather Kever
South Carolina Budget and Control Board
Human Resources Division
Alternative Dispute Resolution Program
8301 Parklane Road, Suite A220
Columbia, SC 29223

Re: Appellant's Request for Reconsideration
William Henry Chapman v. South Carolina Department of Social Services (DSS)

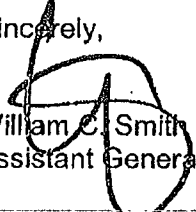
Dear Ms. Kever:

Pursuant to the instructions in your letter of September 19, 2014, following please find the position statement submitted on behalf of the South Carolina Department of Social Services (DSS) in opposition to the Appellant's Request for Reconsideration, currently pending before the State Human Resources Director.

Appellant's counsel has been provided a copy of this correspondence via electronic mail to moorelawfirm@ftc-i.net, the email address specified on his firm's stationery.

Please advise me should you have questions or need additional information.

Sincerely,


William C. Smith
Assistant General Counsel

**DSS STATEMENT IN OPPOSITION TO APPELLANT'S
REQUEST FOR RECONSIDERATION**

The South Carolina Department of Social Services (DSS) would respectfully submit the following information to the State Human Resources Director in support of its request that Appellant William Henry Chapman's Request for Reconsideration of the Final Decision of the State Human Resources Director be denied:

-Appellant's counsel's has asserted that his client's full compliance with the County and Municipal Employees Grievance Procedure Act (SC Code Ann. § 8-17-110 *et seq.*) establishes that he has exhausted his administrative remedies. However, the Appellant was, until the time of the termination of his employment by DSS, an employee of the State of South Carolina, not an employee of a county or an incorporated municipality covered under the County and Municipal Employees Grievance Procedure Act. Accordingly, Appellant's cited authority has no application or precedential value for purposes of the present matter and must be discarded.

-Appellant's counsel further asserts that his client "initiated his grievance internally by Counsel's "letter to the Clarendon County Interim Director dated June 12, 2014, - five (5) days before of the expiration of the seventeen day cut-off." (See Request for Reconsideration, p. 4) The assertion is patently without merit for the following reasons:

First, there is no "seventeen day cut-off" period as counsel appears to insinuate in the above statement. Counsel himself acknowledges in his submission that a DSS internal grievance must be filed "within fourteen (14) calendar days of the effective date of the employment action."

Second, counsel offers in his "Statement of the Case" that, on June 12, 2014 he advised the Interim Director of the Clarendon County Department of Social Services that "[p]ursuant to § 600 of the South Carolina Department of Social Services grievance procedure" the Appellant wished to grieve "the termination handed down on June 3, 2014." (See Request for Reconsideration, p. 1) However, the advisement to the Interim Director was of no effect as counsel would have fully understood based upon his own citation of DSS policy. Counsel specifically references, in the body of his argument, the SCDSS Human Resources Policy and Procedure Manual policy provision setting forth the mandatory process to be followed in order to effect the initiation of an internal grievance as follows:

The SC DSS Human Resources Policy and Procedure Manual, Chapter 6, Grievance for Grievance and Appeal, effective 1/22/2010, Section 606, Procedure to File a Grievance, in Step One provides that "the grievance of an adverse employment action **must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action.**"

(See Request for Reconsideration, p. 5) (Emphasis supplied)

Third, although by his own admission, counsel proposes that he "initiated" an internal grievance in this matter on June 12, 2014 by notifying the Interim Director of his client's "wish" to grieve the agency employment action of June 3, 2014, counsel nonetheless affirms in his submission that he was fully cognizant of the requirement of DSS policy that the filing of an internal grievance must be initiated through the filing of the DSS Form 1449 with the DSS Human Resources Management Director within fourteen calendar days of the effective date of the employment action. Given that Appellant had already been provided a DSS Form 1449 and, as well, a copy of Chapter 6 of the DSS Human Resources Policy and Procedure Manual in a June 3, 2014 letter written to him by DSS, in response to his request for the same, counsel would have had access to the necessary form and instructional policy well in advance of his June 12th notification to the Interim Director..

Finally, it is also noteworthy that counsel purported to attach, as Exhibit 9 to the Request for Reconsideration and presumptively as being supportive of his position, the entire Chapter 6 of the SCDSS Human Resources Policy and Procedure Manual which outlines the DSS "Procedure for Grievance and Appeal." (See Request for Reconsideration, p. 5) In fact, however, Appellant's Exhibit 9 appears to be a marked copy of the Final Decision rendered in this matter by the State Human Resources Director.

-Appellant's counsel relies on the language of S.C. Code Ann. § 8-17-330 as supporting his proposition that the completion of a DSS Form 1449 to initiate the internal grievance process is optional and not required; the insinuation being that a statement that one wishes to grieve should suffice to initiate the process irrespective of the form in which the statement is made or the person to whom the statement may be communicated. (See Request for Reconsideration, p. 5) Counsel further offers the same statutory provision for its language stating that the internal time periods of an agency grievance procedure may be waived "upon the mutual written agreement of both parties;" which Appellant sees as having somehow transpired in the present matter. (See Request for Reconsideration, p. 6)

The language of S.C. Ann. § 8-17-330 states, in pertinent part, as follows:

Each agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources. A copy of the approved agency grievance procedure must be made available to covered employees of the agency... The procedure must provide that all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action... (Emphasis supplied)

Section 603 (Time Periods) of the DSS Human Resources Policy and Procedure Manual was developed in response to the requirements of section 8-17-330, and clearly addresses the time frame for internal grievances as follows:

All grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action... The internal time periods of the agency grievance procedure ... may not be waived except upon the mutual written agreement of the parties...
(Emphasis supplied)

Further, as counsel himself noted, section 606 of the Manual states as follows:

The grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action. (Emphasis supplied)

The upshot of the above is that, pursuant to a statutory mandate, DSS developed, and published for its employees, policies and procedures related to the initiation of internal grievances by those employees. The provisions of Chapter 6 of the Manual set forth the requirements that must be met before a covered employee's grievance of an adverse agency employment action may be properly initiated. The language of the policy provision is mandatory, not precatory or discretionary, and, simply stated, Appellant did not have available to him multiple options for filing his internal grievance. The agency policy is clear: an employee initiates an internal grievance by submitting a completed DSS Form 1449 to the DSS Human Resources Management Director within fourteen calendar days of the effective date of the adverse employment. Agency policy does not permit grievances to be filed by an aggrieved employee with whomever the employee deems appropriate or through a mechanism of the employee's choosing. Additionally, if there is to be a waiver of the agency's internal time frames related to the filing of the DSS Form 1449, that waiver must, per policy, be based upon a "mutual written agreement of the parties" not the employee's perception as to how his actions should be interpreted.

- Appellant's counsel cites *Trowell v. South Carolina Department of Public Safety* as supportive of his client's failure to properly file notice of his internal grievance. Trowell, however, is not even remotely related to the facts currently at issue and is certainly not dispositive of any issue in the present matter.

Trowell, a South Carolina State Trooper, filed an internal grievance against his employer, the South Carolina Department of Public Safety ("DPS"). Notice of DPS's decision regarding Trowell's Step II Grievance was initially sent to his attorney via **facsimile** on February 2, 2005, and the cover sheet contained a notation explaining the original letter would be sent subsequently by certified mail. The certified letter advising of the Step II decision was received and signed for on February 7th.

Eight days later, on February 15th, Trowell's attorney faxed his client's State Appeal Form to the State Human Resource Director ("Director") indicating his desire to appeal the DPS internal grievance decision. The DPS internal policy related to appealing the outcome of an internal grievance proceeding provided that an employee could appeal the final decision of the agency, and that the appeal had to "be in writing and submitted

to the State Human Resources Director within ten (10) calendar days of receipt of the Final Agency Decision...." (Emphasis supplied)

The State Human Resources Director determined that Trowell's appeal was not timely filed; reasoning that the fax notification started the ten day time frame during which the appeal had to be filed. The Court of Appeals, however, disagreed reversing the Director's decision and holding that because facsimile messages are not ordinarily used to effect notice of a final decision by a department, agency, or court, notice of the Department's internal decision was not effected until the certified letter was received.

At footnote 5 of the decision, the Court of Appeals noted that under the South Carolina Rules of Civil Procedure, Rule 5(b) (1), service is effected **by delivering a copy of a decision to an individual** or by mailing the same to a last known address or, under the Administrative Procedures Act, by **providing the final decision or order personally** or by mail.

The fundamental problem noted by the Court of Appeals in the Trowell case related to determining when Trowell, through his attorney, had received notice of DPS's final decision for purposes of calculating the time frame for filing his appeal. The case has no precedential value for the present matter inasmuch as there is no dispute whatsoever that notice of the agency's final action was delivered to the Appellant **by hand** on June 3, 2014 and that he was also provided, **at his own request**, by DSS letter of that same date, a copy of the DSS Form 1449 which was required to initiate his grievance, as well as a copy of Chapter 6 of the DSS Human Resources Policy and Procedure Manual relating to the requirements for filing a grievance.

The position of DSS is that the Appellant's Motion for Reconsideration must be denied. Appellant was timely provided notice of the final agency decision in this matter and, as well, was provided both the necessary form to initiate the grievance and the supporting policy to guide that process. Appellant's counsel has made a great deal of the requirements of both state statute and, as well, DSS Human Resources policy, however those requirements fully support the agency's actions in this matter and do nothing to explain Appellant's complete failure to comply with their clear mandates. Instead, counsel argues that, in some fashion, notwithstanding the absence of any mutual agreement in writing to permit the same, Appellant's failure to meet the mandated filing deadline should be excused because DSS implicitly agreed to a waiver of the time frame by issuing an internal agency finding. The argument stretches the bounds of logic and finds no support anywhere in the record related to this matter.

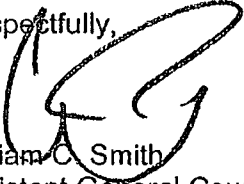
That the agency rendered an internal grievance finding in this case was premised upon the fact that at the time the underlying agency disciplinary action was taken all legal, advisement and representation responsibilities for the Appellant's case were assigned to another agency attorney who was also in physical possession of the Appellant's file. When Appellant's counsel faxed his notice of appearance to the DSS Human Resources Management Division (HRM), the then assigned agency attorney properly advised HRM of a conflict of interest in the matter based upon her relationship to Appellant's counsel.¹ Only after counsel for the Appellant had filed notice of his

appearance was the handling of the present matter assigned to present counsel and the file materials were subsequently provided.

Incident to S.C. Code Ann. § 8-17-350; when an appeal is filed from an agency grievance determination, the State Human Resources Director is required to assemble all records, reports, and documentation of the earlier agency proceedings related to the grievance in order to determine whether there has been compliance with the agency's own established grievance policies, procedures, and regulations and whether the action is properly grievable. Following the statutory requirement, a determination was properly made in this case that the Appellant's case is not grievable due to his failure to follow DSS internal grievance procedures.

Notwithstanding the fact that a lapse in counsel within the agency resulted in moving forward with an internal grievance finding in this matter, Appellant has no basis upon which to assert that further proceedings must be permitted. Much in the same way that appellate courts routinely vacate the proceedings of lower and tribunals, the decision of the State Human Resources Director in this case must be to vacate the internal proceeding which resulted in the issuance of the internal grievance finding based upon the fact that the matter was *ab initio* not grievable due to the absence of timely filing.

Respectfully,



William C. Smith
Assistant General Counsel

¹ The previous agency attorney is the sister of Appellant's counsel.

Moore Law Firm, L.L.C.

Dwight C. Moore

Attorney at Law

26 North Main Street

P.O. Box 1229

Sumter, SC 29151-1229

Office: (803) 778-6520

Fax: (803) 775-6365

E-Mail: moorelawfirm@ffc-i.net

September 18, 2014



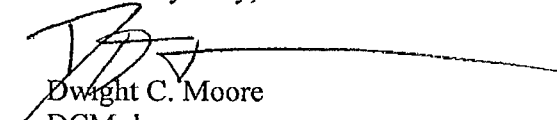
Mr. Samuel L. Wilkins, Director
Human Resources Director
SC Budget And Control Board
Human Resources Division
8301 Parklane Road, Suite A220
Columbia, SC 29223

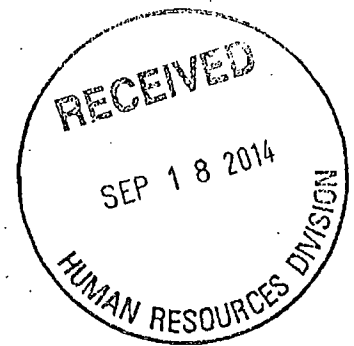
Re: William Henry Chapman v. South Carolina Department of Social Services
Moore File Number: 4136.4

Dear Mr. Wilkins:

Enclosed is Appellant's Request for Reconsideration of Decision in the above-referenced case. Please have the copy file-stamped and returned to this office. Thank you for your consideration and cooperation in this matter.

Yours very truly,


Dwight C. Moore
DCM:dmm
Enclosures



APPEAL BEFORE
THE STATE HUMAN RESOURCES DIRECTOR

William Henry Chapman, Employee,)
)
Appellant,)
vs.)
)
South Carolina Department of)
Social Services, Employer,)
)
Respondent.)
_____)

REQUEST FOR RECONSIDERATION
OF THE FINAL DECISION OF THE
STATE HUMAN RESOURCES DIRECTOR

William Henry Chapman respectfully requests that the State Human Resources Director reconsider and reverse his Final Decision in the above-style appeal dated September 4, 2014, and received by Appellant on September 8, 2014, upon the grounds hereinafter recited.

STATEMENT OF THE CASE

Appellant was terminated from employment with the Clarendon County Division of the South Carolina Department of Social Services on June 3, 2014. The termination letter was hand-delivered over the signature of Robin H. Layton, Interim Director of Clarendon County, and the last paragraph stated: "You may contact the Office of Human Resource Management at (803) 898-7315 regarding your possible grievance rights." (Exhibit #1: Letter dated June 3, 2014)

Appellant retained counsel and by letter dated June 12, 2014, Appellant's attorney advised Ms. Layton that he represented the Appellant and stated: "Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014. Please advise as to date and time as to any proceedings." (Exhibit #2: Letter dated June 12, 2014)

Appellant's DSS Form 1449 was transmitted under cover of a letter dated June 20, 2014, sent by United States Mail, Facsimile and E-mail addressed to Ms. B. Glenise Elmore, Employee

Relations Director of Respondent's Office of Human Resources, by Crystal Stokes, Paralegal to Appellant's counsel, with the following message:

Dear Ms. Elmore:

Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter. Please let me know if there is anything further required from us at this time. ...

The DSS Form 1449 was signed by Appellant and dated June 20, 2014. (Exhibit #3: Letter, DSS Form 1449, Fax Cover Sheet, and Fax Report all dated June 20, 2014)

By letter dated July 7, 2014, and received by Appellant's Counsel on July 9, 2014, the Director of Human Resources Management Division E-mailed and mailed a letter to Ms. Leigh Bolick, Director of Child Care Services, enclosing the Grievance and Appeal forms for Mr. Chapman and giving the instructions and procedure for handling Appellant's grievance. The letter reflected "cc" to Appellant, Moore Law Firm, LLC, Ms. Robin Layton, County Director, Clarendon County DSS, and Mr. William Smith, Esq., DSS Office of General Counsel. (Exhibit #4: Letter dated July 7, 2014)

Ms. Amber Gillum, Acting State Director, addressed a letter dated July 25, 2014, "sent via certified mail" to Mr. William Chapman, transmitting the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form). Ms. Gillum informed the Appellant that he may appeal to the State Employee Grievance Committee through the Director of Human Resources at the Office of Human Resources and provided the street address. She also advise him as follows: "This appeal must be in writing and made within ten (10) calendar days of receipt of this decision or within fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurs later." The letter contained "cc" notation to Robin Layton, County Director, Clarendon County DSS, William Smith, Esq., Office of General Counsel, and Dwight C. Moore,

Esq., Moore Law Firm, LLC. Appellant's Counsel received the letter on July 29, 2014. (Exhibit #5: Letter and DSS Form 1449-2, both dated July 25, 2014)

Appellant wrote a letter on Moore Law Firm, L.L.C., letterhead dated August 4, 2014, to the State Employee Grievance Committee, Director of Human Resources, at the address furnished by Ms. Gillum. The pertinent part of the letter stated: "Please be advised that pursuant to this letter, I wish to appeal the decision handed down by Ms. Gillum on or about July 25, 2014. Please refer all correspondence to the address indicated above." A "cc" notation indicated that copies of the letter were sent to Amber Gillum, SCDSS Acting State Director and Robin Layton, Clarendon County DSS County Director. (Exhibit #6: Letter dated August 4, 2014)

Carrie Coats, Alternative Dispute Resolution Program, wrote a letter on SC Budget And Control Board, Human Resources Division, letterhead dated August 5, 2014, addressed to Appellant's Counsel, stating that "the enclosed form" was to be completed and returned to their office at 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223, within five (5) days of receipt. Counsel received the letter on August 6, 2014. (Exhibit #7: Letter dated August 4, 2014)

On August 11, 2014, Ms. Carrie Coats sent the following message to Appellant's Counsel by fax.

Mr. Moore,

Please find attached the State Appeal Form. My apologies for the oversight in not including this last week. Please call 803-896-5300 if you have any additional questions.

Form GC101, State Employee Grievance Procedure State Appeal Form was included in the fax transmission. (Exhibit #8: Two-page Fax dated August 11, 2014, and Form GC101-Revised 10-01-96)

The Final Decision of Mr. Samuel L. Wilkins, State Human Resources Director, dated September 4, 2014, was received by Appellant's Counsel on September 8, 2014. The conclusion of the Human Resources Director was as follows:

Because Appellant failed to file a grievance with Respondent within 14 calendar days of the effective date of his termination, the State Human Resources Director has determined that the appeal must be denied. Since Appellant did not file a grievance with Respondent pursuant to time frames established by the Act, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed.

This concludes the processing of the appeal.

(Exhibit #9: Final Decision State Human Resources Director dated September 4, 2014,)

ISSUE ON APPEAL

Whether Appellant failed to exhaust administrative remedies with Respondent in accordance with the requirements of the Act.

ARGUMENT

Appellant respectfully asserts that he has exhausted his administrative remedies under the County and Municipal Employees Grievance Procedure Act as it applies to his termination and that he is in full compliance with S.C. Code Ann. § 8-17-110, et seq. (1986) as amended.

In his Analysis, the State Human Resources Director (hereafter "HR Director") reasoned as follows.

According to the record, Appellant was notified via hand-delivered letter on June 3, 2014, that his employment was terminated effective June 2, 2014. Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources Management Office on June 20, 2014. The date Appellant's grievance was submitted, June 20, 2014, is seventeen (17) calendar days from the effective date of the action, June 3, 2014. Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part that, "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action..." ... Appellant's grievance was submitted beyond this fourteen calendar day timeframe.

The record reflects that Appellant initiated his grievance internally by Counsel's letter to the Clarendon County Interim Director dated June 12, 2014, - five (5) days prior to the expiration of the seventeen day cut-off. His letter clearly stated his desire to grieve, referenced the action

that was the subject of his grievance, and asked to be notified of the date and time of the proceedings. (Exhibit #2) After his grievance letter was forwarded to the State Office of the South Carolina Department of Social Services (hereafter "SC DSS"), there was communication between the State Office and Counsel's office which resulted in the letter dated June 20, 2014, and DSS Form 1449 faxed from Counsel's paralegal to the Employee Relation Director. The cover letter contains the following illuminating statement: "Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter." (Emphasis added) Clearly, the Respondent acknowledged Appellant's grievance letter for what he intended it to be and for what it was in actuality - the initiation of the grievance process. Although the HR Director cites receipt of DSS Form 1449 as the initiation of the grievance, and bases his decision upon the fact that the form was received on June 20, 2014, the Act does not state that the grievance must be initiated only by filing DSS Form 1449. Section 8-17-330 states only that [t]he procedure must be initiated internally by such employee within fourteen calendar days of the effective date of the action ... The SC DSS Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal, effective 01/22/2010, Section 606, Procedure to File a Grievance, in Step One provides that "[t]he grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action." (Exhibit 9: South Carolina Department of Social Services Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal, effective 01/22/2010)

Appellant contends that the failure to earlier submit the DSS Form 1449 is not fatal to his grievance because his grievance was initiated in writing, that the Respondent accepted his letter, requested that he submit the DSS Form 1449, which he did, and Respondent continued the

process. Therefore, Respondent may not now complain that Appellant did not file a grievance with Respondent pursuant to time frames established by the Act.

In further support of Appellants argument that the time frames and manner of initiating grievances relied upon by the HR Director his interpretation of Respondent's policy, Appellant cites the provision in § 8-17-330 which states as follows: "The internal time periods of the agency grievance procedure may be waived upon the mutual written agreement of both parties." Assuming, *arguendo*, had the Act required the DSS Form 1449 to be the sole manner of initiating the grievance, the Respondent waived the right to belatedly raise the issue of timeliness when it acted in furtherance of the grievance process at every step subsequent to receiving the DSS Form 1449 in support of the grievance letter.

Finally, the issue of timeliness was addressed by the South Carolina Court of Appeals in the case of Trowell v. South Carolina Department of Public Safety, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009). The issue in Trowell was service; the Director notified Trowell, via letter, that his appeal was untimely because Trowell had failed to file it within ten calendar days of receipt of the Department's February 2nd fax. The Director noted that the Act is not specific as to how the final agency decision must be delivered and determined that it could be accomplished through hand delivery, by fax or mail and denied the appeal because it was not filed within the ten-day period following the service on February 2nd. The Court of Appeals concluded: "We find the agency's interpretation of its service rules was overly harsh in this situation." Trowell, 384 S.C. at 237, 681 S.E.2d at 896.

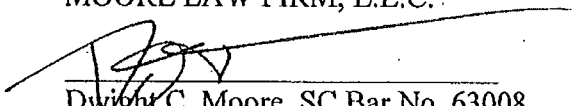
Likewise, Appellant urges the Court to reconsider its interpretation of the timeliness of the receipt of Appellant's letter grieving his termination and the intervening time of the submission of his SC DSS Form 1449.

CONCLUSION

For the foregoing reason, Appellant urges the HR Director to reconsider and reverse his decision and allow the grievance to continue to its conclusion through the grievance process.

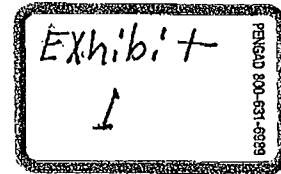
Respectfully submitted,

MOORE LAW FIRM, L.L.C.



Dwight C. Moore, SC Bar No. 63008
26 North Main Street
Post Office Box 1229
Sumter, South Carolina 29151-1229
Telephone (803) 778-6520
Fax (803) 775-6365
Attorney for Appellant

September 18, 2014



Date: June 3, 2014

HAND DELIVERED

Henry Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman:

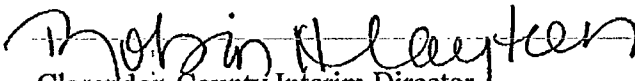
On April 15, 2014, you were issued an Employee Warning Notice of Substandard Performance. This notice listed some areas in which your job performance was deemed deficient. The notice further stated that you were being given forty-five (45) to fifty (50) days to improve your performance and the failure to satisfactorily do so would "... in a rating of 'Below Performance Requirements' and removal from the position." As stated in Chapter 5, Section 508(D) of the Human Resources Policies and Procedures Manual, *"[if] the employee is rated 'unsuccessful' on any essential job duty or objective which significantly impacts performance as noted in the warning notice by the end of the warning period, the employee shall be removed from the position immediately (i.e., termination, reassignment, or demotion)."*

This letter is to inform you that you failed to satisfactorily improve your job performance during the specified time frame. Therefore, effective immediately, your employment with the Clarendon County Department of Social Services is terminated due to substandard job performance.

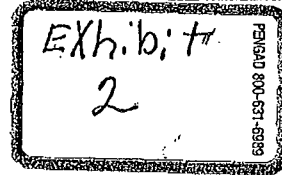
You will be required to return all agency equipment and property, including your ID card, to management before leaving the office today.

You may contact the Office of Human Resource Management at (803) 898-7315 regarding your possible grievance rights.

Sincerely,


Clarendon County Interim Director

Moore Law Firm, L.L.C.



Dwight C. Moore

Attorney at Law

26 North Main Street

P.O. Box 1229

Sumter, SC 29151-1229

Office: (803) 778-6520

Fax: (803) 775-6365

E-Mail: moorelawfirm@fcc-i.net

June 12, 2014

Ms. Robin H. Layton
Clarendon County Interim Director
Clarendon County DSS
3 South Church Street
Manning, South Carolina 29102

Re: Henry Chapman
June 3, 2014 termination

Dear Ms. Layton:

Please be advised that I am representing Mr. Chapman in regard to the above-referenced matter.

Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014.

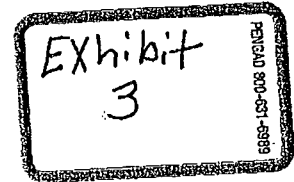
Please advise as to date and time as to any proceedings. With kind regards, I am

Sincerely yours,

Dwight C. Moore

DCM/ccs

Fax Send Report



Date/Time : JUN-20-2014 03:56PM FRI
Fax Number : 8037756365
Fax Name : MOORE LAW FIRM, LLC
Model Name : SCX-5835_5935 Series
Machine Serial Number : Z2P3BJFCC0007FF

No.	Name/Number	Start Time	Time	Mode	Page	Result
085	8038987176	06-20 03:54PM	00'54	ECM	003/003	OK

MOORE LAW FIRM, L.L.C.
26 NORTH MAIN STREET
P.O. BOX 1229
SUMTER, SOUTH CAROLINA 29151
TELEPHONE NUMBER (803) 778-6520
FAX NUMBER: (803) 775-6365

FAX COVERSHEET

DATE: June 20, 2014

CASE NAME/NUMBER: William Henry Chapman

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Ms. B. Glenise Elmore

COMPANY: SC Department of Social Services

FAX: 803-898-7176

FROM: Crystal Stokes

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 3

COMMENTS: Please see attached

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (803) 778-6520 AS
SOON AS POSSIBLE AND ASK FOR CRYSTAL.

CONFIDENTIALITY NOTICE: This information contained in this facsimile message may be attorney privileged and confidential and is intended only for use of the entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this transmission in error, please immediately notify us by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank you.

MOORE LAW FIRM, L.L.C.

26 NORTH MAIN STREET

P.O. BOX 1229

SUMTER, SOUTH CAROLINA 29151

TELEPHONE NUMBER (803) 778-6520

FAX NUMBER: (803) 775-6365

FAX COVERSHEET

DATE: June 20, 2014

CASE NAME/NUMBER: *William Henry Chapman*

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Ms. B. Glenise Elmore

COMPANY: SC Department of Social Services

FAX: 803-898-7176

FROM: Crystal Stokes

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 3

COMMENTS: Please see attached

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (803) 778-6520 AS
SOON AS POSSIBLE AND ASK FOR CRYSTAL.**

CONFIDENTIALITY NOTICE: This information contained in this facsimile message may be attorney privileged and confidential and is intended only for use of the entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this transmission in error, please immediately notify us by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank you.

Moore Law Firm, L.L.C.

Dwight C. Moore
Attorney at Law
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229
Office: (803) 778-6520
Fax: (803) 775-6365
E-Mail: moorelawfirm@ffc-i.net

June 20, 2014

VIA U.S. MAIL, FACSIMILE, AND E-MAIL

Ms. B. Glenise Elmore
Employee Relations Director
Office of Human Resources
S.C. Department of Social Services
1535 Confederate Ave/Room 302
Columbia, South Carolina 29202

Re: William Henry Chapman Grievance

Dear Ms. Elmore:

Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter. Please let me know if there is anything further required from us at this time. With kind regards, I am

Sincerely yours,

Crystal C. Stokes,
Paralegal to Dwight C. Moore

DCM/ccs
Enclosure

**South Carolina Department of Social Services
GRIEVANCE FORM**

INSTRUCTIONS - TO BE COMPLETED BY GRIEVANT

Continue items on additional sheet of paper, when necessary. Enter continued comments to corresponding item number. Identify each additional sheet with employee's name: last, first and middle initial.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Original: Human Resources Director Copy: Grievant Copy: Submitted by Human Resources Division to Appointing Authority

Employee's Name: Last, First, Middle Initial Chapman, William H.		Job Title: Human Service Specialist I	Contact Information:
County/Division: Clarendon County		Hire Date: August 2, 1992	Work Telephone:
Job Status: (Check one) ☒ FTE ☐ Temporary ☐ Temporary Grant		Home or Mailing Address: 214 Lantern Lane Manning, SC 29102	
Home Telephone: 803-460-0267			

1. Effective date of grievable action: June 3, 2014

2. Give a full explanation of the grievance/grievance action.
wrongful termination

3. Describe in detail the relief sought:
rehire or eligible for early retirement/severance pay

4. Please indicate below your mediation option by signing your name next to your selection:

I am interested in participating in the mediation process to resolve this matter. William H. Chapman
I am not interested in participating in the mediation process to resolve this matter.

5. Print Employee's Name: William H. Chapman	Employee's Signature: <u>William H. Chapman</u>	Date Signed: June 20, 2014
6. Human Resources Director's Signature:	Date Received in HRM:	Date Signed:

South Carolina Department of Social Services GRIEVANCE FORM

INSTRUCTIONS – TO BE COMPLETED BY GRIEVANT

Continue items on additional sheet of paper, when necessary. Enter continued comments to corresponding item number. Identify each additional sheet with employee's name: last, first and middle initial.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Original: Human Resources Director Copy: Grievant Copy: Submitted by Human Resources Division to Appointing Authority

Employee's Name: Last, First, Middle Initial Chapman, William H.		Job Title: Human Service Specialist 1	Contact Information:
County/Division: Clarendon County		Hire Date: August 2, 1992	Work Telephone:
Job Status: (Check one) ☒ FTE ☐ Temporary ☐ Temporary Grant	Home or Mailing Address: 214 Lantern Lane Manning, SC 29102		
1. Effective date of grievable action: June 3, 2014 2. Give a full explanation of the grievance/grievance action. wrongful termination			
3. Describe in detail the relief sought: rehire or eligible for early retirement/severance pay			
4. Please Indicate below your mediation option by signing your name next to your selection: I am interested in participating in the mediation process to resolve this matter. _____ I am not interested in participating in the mediation process to resolve this matter. _____			
5. Print Employee's Name: William H. Chapman		Employee's Signature:	Date Signed: June 20, 2014
6. Human Resources Director's Signature:		Date Received in HRM:	Date Signed:

Grievance of William Chapman
Management Position Statement
ATTACHMENT A

PERFORMANCE ENHANCEMENT PLAN

Employee Name: William "Henry" Chapman

Title: FAIC INTERVIEWER

County/Department: CLARENDON COUNTY DSS

Date: January 31, 2014

Performance in need of improvement:

1. COMPLIANCE WITH SCHEDULED WORK HOURS.
2. COMPLIANCE WITH 60 MINUTE LUNCH.
3. NUMBER OF ACD CALLS PER DAY.
4. TIME IN ASSIST.
5. IMPROVED DOCUMENTATION.

(List the goals/activities the employee will initiate to improve performance. Include skill development and changes needed to meet work performance expectations.)

1. AGENT WILL COMPLY WITH SCHEDULED WORK HOURS (DAILY LOG IN REPORTS).
2. AGENT WILL COMPLY WITH SCHEDULED 60 MINUTE LUNCH BREAK. (AUX OUT/AUX IN TIMES)
3. AGENT WILL INCREASE ACD CALLS TO 10-12 PER DAY BY SETTING GOALS. (DAILY SCCHIP LOG)
4. AGENT WILL DECREASE ASSIST TIME - DO NOT DISCONNECT CALL UNTIL ALL ASPECTS OF INTERVIEW ARE COMPLETED. (CMS AGENT AUX REPORTS)
5. AGENT WILL IMPROVE DOCUMENTATION BY USING PRESCRIBED INTERVIEW GUIDE AND OTHER RESOURCES DIRECTLY RELATED TO INTERVIEW DOCUMENTATION.

Employee Signature: _____ Date: _____

Targeted Date for Improvement: FEB. 28, 2014

Expected Results-list measurements, where possible

1. AGENT WILL BE IN 100% WORK SCHEDULE COMPLIANCE IMMEDIATELY/VERIFIED BY DAILY LOG- IN REPORT.
2. AGENT WILL BE IN 100% LUNCH HOUR COMPLIANCE IMMEDIATELY/VERIFIED BY CMS REPORT.
3. 10-12 COMPLETED CALLS/DAY / VERIFIED BY SCCHIP DAILY LOGS.
4. DECREASED TIME IN ASSIST BY 50%/ VERIFIED BY CMS REPORT.
5. 50% DECREASE IN RETURNED CASES FOR MONTH OF FEBRUARY.

Dates to Review progress by employee and supervisor:

FEB. 14, 2014/ FEB. 28, 2014

Progress at review dates:

2/14/14:

1. Goal met - in compliance with scheduled work hours.
2. Goal met - in compliance with scheduled 60 minute lunch break.
3. Goal has not been met.
4. Goal has been met- time in assist has decreased more than 50%.
5. Goal has been met - agent had no cases returned for documentation.

Goals which have been successfully met: (see supporting documentation)

2/28/14:

1. Goal continues to be met – in compliance with scheduled work hours. (Daily log in/out printouts.
2. Goal continues to be met – in compliance with scheduled 60 minute lunch break(CMS Agent AUX report)
3. Goal has not been met . (Daily SCCHIP log)
4. Goal has been met – time in assist has decreased by more than 50%. (CMS Agent AUX report)
5. Goal has been met – no cases returned for documentation in February (Supervisor emails)

Goals which were not met/recommended actions: (see supporting documentation)

3. Agent will increase ACD calls to 10-12 per day by setting goals.

Prior to review date of 2/14/14, agent failed to meet goal on 7 of 8 working days (office closed 2 days due to ice storm and opened at 10:00 a.m. on 1 day)

Between 2/14/14 and 2/28/14, agent failed to meet goal on 2 of 9 working days. (Daily SCCHIP logs).

Recommended action: Oral warning of substandard job performance.

Next Review Date, if needed:

3/28/14

Employee Signature: _____

Date: _____

Supervisor Signature: _____

Date: _____

Grievance of William Chapman
Management Position Statement
ATTACHMENT B

PERFORMANCE ENHANCEMENT PLAN

Employee Name: William "Henry" Chapman

Title: FAIC INTERVIEWER

County/Department: CLARENDON COUNTY DSS

Date: January 31, 2014

Performance in need of improvement:

1. COMPLIANCE WITH SCHEDULED WORK HOURS.
2. COMPLIANCE WITH 60 MINUTE LUNCH.
3. NUMBER OF ACD CALLS PER DAY.
4. TIME IN ASSIST.
5. IMPROVED DOCUMENTATION.

(List the goals/activities the employee will initiate to improve performance. Include skill development and changes needed to meet work performance expectations.)

1. AGENT WILL COMPLY WITH SCHEDULED WORK HOURS (DAILY LOG IN REPORTS).
2. AGENT WILL COMPLY WITH SCHEDULED 60 MINUTE LUNCH BREAK. (AUX OUT/AUX IN TIMES)
3. AGENT WILL INCREASE ACD CALLS TO 10-12 PER DAY BY SETTING GOALS. (DAILY SCCHIP LOG)
4. AGENT WILL DECREASE ASSIST TIME - DO NOT DISCONNECT CALL UNTIL ALL ASPECTS OF INTERVIEW ARE COMPLETED. (CMS AGENT AUX REPORTS)
5. AGENT WILL IMPROVE DOCUMENTATION BY USING PRESCRIBED INTERVIEW GUIDE AND OTHER RESOURCES DIRECTLY RELATED TO INTERVIEW DOCUMENTATION.

Employee Signature: *William H. Chapman* Date: *January 31, 2014*

Targeted Date for Improvement: FEB. 28, 2014

Expected Results-list measurements, where possible

1. AGENT WILL BE IN 100% WORK SCHEDULE COMPLIANCE IMMEDIATELY/VERIFIED BY DAILY LOG- IN REPORT.
2. AGENT WILL BE IN 100% LUNCH HOUR COMPLIANCE IMMEDIATELY/VERIFIED BY CMS REPORT.
3. 10-12 COMPLETED CALLS/DAY / VERIFIED BY SCCHIP DAILY LOGS.
4. DECREASED TIME IN ASSIST BY 50%/ VERIFIED BY CMS REPORT.
5. 50% DECREASE IN RETURNED CASES FOR MONTH OF FEBRUARY.

Dates to Review progress by employee and supervisor:

FEB. 14, 2014/ FEB. 28, 2014

Progress at review dates:

2/14/14:

1. Goal met - in compliance with scheduled work hours.
2. Goal met - in compliance with scheduled 60 minute lunch break.
3. Goal has not been met.
4. Goal has been met- time in assist has decreased more than 50%.
5. Goal has been met - agent had no cases returned for documentation.

Goals which have been successfully met: (see supporting documentation)

2/28/14:

1. Goal continues to be met – in compliance with scheduled work hours. (Daily log in/out printouts.
2. Goal continues to be met – In compliance with scheduled 60 minute lunch break(CMS Agent AUX report)
3. Goal has not been met . (Daily SCCHIP log)
4. Goal has been met – time in assist has decreased by more than 50%. (CMS Agent AUX report)
5. Goal has been met – no cases returned for documentation in February (Supervisor emails)

Goals which were not met/recommended actions: (see supporting documentation)

3. Agent will increase ACD calls to 10-12 per day by setting goals.

Prior to review date of 2/14/14, agent failed to meet goal on 7 of 8 working days (office closed 2 days due to ice storm and opened at 10:00 a.m. on 1 day)

Between 2/14/14 and 2/28/14, agent failed to meet goal on 2 of 9 working days. (Daily SCCHIP logs).

Recommended action: Oral warning of substandard job performance.

Next Review Date, if needed:

3/28/14

Employee Signature:

William Henry Rogers

Date:

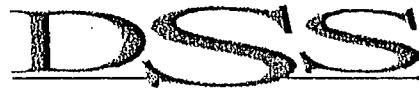
March 10, 2014

Supervisor Signature:

Dawn M. Still

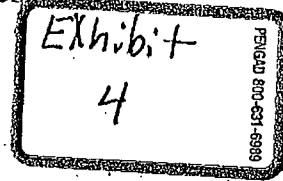
Date:

3/10/14



Serving Children and Families

AMBER GILLUM
INTERIM STATE DIRECTOR



NIKKI R. HALEY
GOVERNOR

July 7, 2014

E-mailed & Mailed

Ms. Leigh Bolick, Director of Child Care Service
Department of Social Services

JUL - 9 2014

Dear Ms. Bolick:

The grievance process for the Department of Social Services consists of three (3) primary step procedures as reflected in the DSS Human Resources Policy and Procedure Manual Chapter 6 (606). Enclosed are the Grievance and Appeal forms for Mr. William Chapman.

The grievant or his/her representative and management may submit documentation to you during this process. Documents are to be submitted to you by both parties for your review no later than **July 9th, 2014**. As the grievance reviewer, you should conduct a fact finding process that is further outlined in Chapter 6 and provide a written recommendation for the State Director's consideration and final decision. Your recommendation, along with the grievance file and/or documents from each party, is due to the Human Resources Management Division no later than **July 16th, 2014**.

If you have any questions or need additional information, please contact Ms. Kristen Johnson, Employee Relations Specialist, at 803-898-7147.

Sincerely,

A handwritten signature in black ink, appearing to read "Funneaser Jacobs".

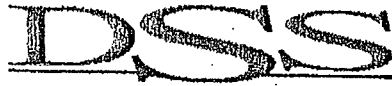
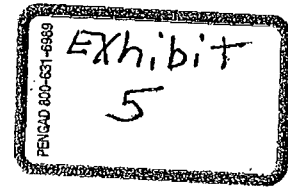
Funneaser "Neisie" Jacobs, Director
Human Resources Management Division

cc: Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

Moore Law Firm, LLC
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229

Ms. Robin Layton, County Director
Clarendon County DSS

Mr. William Smith, Esq.
DSS Office of General Counsel



Serving Children and Families

AMBER GILLUM
ACTING STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

July 25, 2014

SENT VIA CERTIFIED MAIL

Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman:

In reference to the grievance you filed, enclosed is the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form).

If you do not agree with this decision, you may appeal to the State Employee Grievance Committee through the Director of Human Resources at the Office of Human Resources, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223. This appeal must be in writing and made within ten (10) calendar days of receipt of this decision or within fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurs later.

Sincerely,

A handwritten signature in dark ink, appearing to read "Amber Gillum".

Amber Gillum
Acting State Director

AG: kj

cc: Robin Layton, County Director
Clarendon County DSS

William Smith, Esq.
Office of General Counsel

Dwight C. Moore, Esq.
Moore Law Firm, LLC
P.O. Box 1229
Sumter, SC 29151

South Carolina Department of Social Services
GRIEVANCE DECISION FORM

INSTRUCTIONS

Original: Grievant

Copy: Supervisor

Copy: Appointing Authority

Copy: Human Resources Director

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART, NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT, NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Employee's Name: Last, First, Middle Initial

Chapman, William

Job Title:

Human Services Specialist I

County/Division:

Clarendon/Economic Services

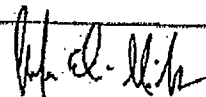
Decision:

I uphold the Agency's decision to terminate Mr. Chapman. I have fully reviewed all submitted information prior to rendering this decision.

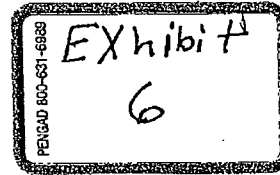
Date of Decision:

7/25/14

Signature of State Director:



Moore Law Firm, L.L.C.



Dwight C. Moore
Attorney at Law
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229
Office: (803) 778-6520
Fax: (803) 775-6365
E-Mail: moorelawfirm@ffc-i.net

August 4, 2014

State Employee Grievance Committee
Director of Human Resources
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

Re: Termination of William Henry Chapman
Moore File No. 4136.4

To Whom It May Concern:

Please be advised that pursuant to this letter, I wish to appeal the decision handed down by Ms. Gillum on or about July 25, 2014.

Please refer all correspondence to the address indicated above. With kind regards, I am

Sincerely yours,

Dwight C. Moore

DCM/ccs

cc: Amber Gillum, SCDSS Acting State Director
Robin Layton, Clarendon County DSS County Director

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Willhous
DIRECTOR

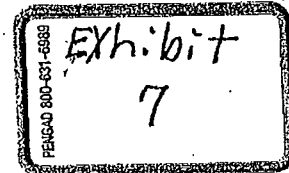
803-896-5300
FAX 803-896-5050

August 5, 2014

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR



Mr. Dwight C. Moore
Moore Law Firm, L.L.C.
Post Office Box 1229
Sumter, South Carolina 29151-1229

Re: William Henry Chapman v. South Carolina Department of Social Services

Dear Mr. Moore:

Concerning Mr. Chapman's appeal to the State Human Resources Director, please complete the enclosed form and return to our office within five (5) days of receipt. A rapid return of this form will ensure that Mr. Chapman's appeal is processed as quickly as possible.

Send the completed form to the Human Resources Division, Alternative Dispute Resolution Program, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223.

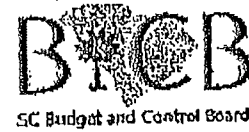
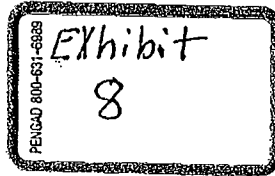
Sincerely,

Carrie Coats
Alternative Dispute Resolution Program

Enclosure

AUG - 6 2014

FAX



SOUTH CAROLINA BUDGET AND CONTROL BOARD HUMAN RESOURCES DIVISION

8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

Fax: (803) 896-5050
Phone: (803) 896-5300

TO: Mr. Dwight C. Moore

DATE: 8/11/14

FAX: 803-775-6365

NO. OF PAGES: 2

(including cover sheet)

PHONE: 803-778-6520

E-MAIL: moorelawfirm@fja-l.net

FROM: Carrie Coats

DEPARTMENT: ADR

PHONE: 803-896-5300

E-MAIL: _____

COMMENTS:

Mr. Moore,

Please find attached the State Appeal Form.

My apologies for the oversight in not including this last week.

Please call 803-896-5300 if you have any additional questions.

Carrie Coats

CONFIDENTIALITY NOTICE: This facsimile contains information from the SC Budget and Control Board's Human Resources Division which may be confidential or privileged. It is intended solely for the use of the individual or entity to whom it is addressed. If you are not the named addressee, you should not disseminate, distribute, or copy this facsimile. Please notify the sender immediately if you have received this facsimile by mistake and destroy all copies of the communication. Please note that any views or opinions presented in this facsimile are solely those of the author and do not necessarily represent those of the SC Budget and Control Board.

**STATE EMPLOYEE GRIEVANCE PROCEDURE
STATE APPEAL FORM**

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES.

EMPLOYEE'S NAME: _____

JOB CLASSIFICATION: _____

AGENCY: _____

HOME ADDRESS: _____
Street City State Zip Code

TELEPHONE: _____
Home Office

1. Has the employee completed twelve (12) months of satisfactory service with the state ? _____
2. What disciplinary action taken against the employee is being appealed? _____
3. Has the employee received a final decision from the agency? _____
4. What date did the employee receive the final decision? _____
5. If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure? _____

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position (continue on additional pages if necessary):

Please specify the relief that the employee is seeking by this appeal (continue on additional pages if necessary):

Signature: _____ Date: _____
Employee or Representative

Return to: State Human Resources Director
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

APPEAL BEFORE THE STATE HUMAN RESOURCES DIRECTOR

William Henry Chapman v. South Carolina Department of Social Services (DSS)

FINAL DECISION

This matter came before me in the appeal of William Henry Chapman ["Appellant"] under the State Employee Grievance Procedure Act (Act) to determine whether or not the action is "grievable to the committee or a mediator-arbitrator." Appellant appealed the decision by DSS ["Respondent"]. Both Appellant and Respondent were given the opportunity to present information concerning the appeal. As such, both Appellant and Respondent submitted various documents included in the record on appeal and, subsequently, a review of the record on appeal has been conducted. According to the record, Appellant is appealing his termination.

ISSUE

Based on the record presented, the following issue is presented to me on appeal:
Whether Appellant failed to exhaust administrative remedies with Respondent in accordance with the requirements of the Act.

STATEMENT OF EVENTS

Based on the record presented to me by both Appellant and Respondent, the following information is presented:

1. ✓ On June 3, 2014, Appellant was notified his employment was terminated due to substandard performance;
2. ✓ by letter dated June 3, 2014, Ms. Kristen L. Johnson, M.A. HRM, Respondent's Employee Relations Specialist, advised Appellant that "[e]mployees must initiate a grievance within 14 calendar days of the effective day of the grievable action." [Emphasis in original.] In addition, Ms. Johnson provided Appellant with DSS Form 1449, Employee Grievance and Appeal Form and a copy of Respondent's Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal;
3. ✓ On June 20, 2014, Respondent received Appellant's DSS Form 1449, Employee Grievance and Appeal Form, concerning his termination via facsimile;
4. by certified letter dated July 25, 2014, and received by Appellant on July 28, 2014, Ms. Amber Gillum, Respondent's Acting State Director, advised Appellant that she was upholding his termination. Ms. Gillum's letter further advised Appellant that if he wished to appeal this decision, the appeal had to be in writing and submitted within ten (10) calendar days of receipt of Ms. Gillum's decision or fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurred later; and
5. ✓ by letter postmarked August 4, 2014, Appellant initiated an appeal to the State Human Resources Director.

RELEVANT LAW

Section 8-17-350 of the S.C. Code of Laws of 1976, as amended, states in part: "When an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator-arbitrator."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action. . . ."

Section 19-718.04(B) of the State Human Resources Regulations states "[a] covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action."

Section 603 of Respondent's Procedure for Grievance and Appeal states in part that, "[a]ll grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action."

ANALYSIS

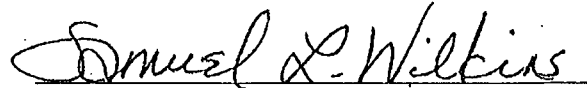
According to the record, Appellant was notified via hand-delivered letter on June 3, 2014, that his employment was terminated effective June 3, 2014. Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources Management Office on June 20, 2014. The date Appellant's grievance was submitted, June 20, 2014, is seventeen (17) calendar days from the effective date of the action, June 3, 2014. Section 8-17-330 of the S. C. Code of Laws of 1976, as amended, states in part that, "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action...." This timeframe is also noted in Respondent's Procedure for Grievance and Appeal which Ms. Johnson provided to Appellant. Appellant's grievance was submitted beyond this fourteen calendar day timeframe.

The Act requires that all administrative remedies be exhausted prior to appealing an action to the State Human Resources Director. Appellant's failure to file a grievance within the required time frame precluded him from completing Respondent's employee grievance procedure. Therefore, Appellant failed to exhaust all his administrative remedies. "Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts." Hyde v. South Carolina Dept. Of Mental Health, 314 S.C. 207, 442 S.C.2d 582 (1994); See also, Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).

DECISION

Because Appellant failed to file a grievance with Respondent within 14 calendar days of the effective date of his termination, the State Human Resources Director has determined that the appeal must be denied. Since Appellant did not file a grievance with Respondent pursuant to time frames established by the Act, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed.

This concludes the processing of the appeal.


Samuel L. Wilkins
State Human Resources Director

Columbia, South Carolina
September 4, 2014

Moore Law Firm, L.L.C.

September 18, 2014

Ms. Amber Gillum
Acting State Director, SC DSS
South Carolina Department of Social Services
Post Office Box 1520
Columbia, SC 29202-1520

William Smith, Esquire
Office of General Counsel
South Carolina Department of Social Services
Post Office Box 1520
Columbia, SC 29202-1520

Ms. Robin Layton, County Director
Clarendon County DSS
3 South Church Street
Manning, SC 29102

Funneaser "Neisie" Jacobs, Director
Human Resources Management
South Carolina Department of Social Services
Post Office Box 1520
Columbia, SC 29202-1520

Ms. Leigh Bolick, Director of Child Care Services
South Carolina Department of Social Services
Post Office Box 1520
Columbia, SC 29202-1520

Re: William Henry Chapman v. South Carolina Department of Social Services
Moore File Number: 4136.4

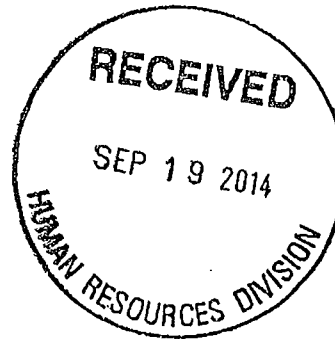
Ladies and Gentlemen:

Served upon you under cover of this letter is a copy of the Appellant's Request for Reconsideration of the Final Decision of the State Human Resources Director submitted today to Mr. Samuel L. Wilkins, Human Resources Director.

Yours very truly,

Dwight C. Moore

Dwight C. Moore
DCM:dmm
Enclosure



Dwight C. Moore
Attorney at Law
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229
Office: (803) 778-6520
Fax: (803) 775-6365
E-Mail: moorelawfirm@flc-i.net

Ms. Amber Gillum
September 18, 2014
Page 2

c: Mr. Samuel L. Wilkins, Director
Human Resources Division
SC Budget And Control Board
8301 Parklane Road, Suite A220
Columbia, SC 29223

APPEAL BEFORE THE STATE HUMAN RESOURCES DIRECTOR

William Henry Chapman v. South Carolina Department of Social Services (DSS)

FINAL DECISION

This matter came before me in the appeal of William Henry Chapman ["Appellant"] under the State Employee Grievance Procedure Act (Act) to determine whether or not the action is "grievable to the committee or a mediator-arbitrator." Appellant appealed the decision by DSS ["Respondent"]. Both Appellant and Respondent were given the opportunity to present information concerning the appeal. As such, both Appellant and Respondent submitted various documents included in the record on appeal and, subsequently, a review of the record on appeal has been conducted. According to the record, Appellant is appealing his termination.

ISSUE

Based on the record presented, the following issue is presented to me on appeal:
Whether Appellant failed to exhaust administrative remedies with Respondent in accordance with the requirements of the Act.

STATEMENT OF EVENTS

Based on the record presented to me by both Appellant and Respondent, the following information is presented:

1. on June 3, 2014, Appellant was notified his employment was terminated due to substandard performance;
2. by letter dated June 3, 2014, Ms. Kristen L. Johnson, M.A. HRM, Respondent's Employee Relations Specialist, advised Appellant that "[e]mployees must initiate a grievance within 14 calendar days of the effective day of the grievable action." [Emphasis in original.] In addition, Ms. Johnson provided Appellant with DSS Form 1449, Employee Grievance and Appeal Form and a copy of Respondent's Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal;
3. on June 20, 2014, Respondent received Appellant's DSS Form 1449, Employee Grievance and Appeal Form, concerning his termination via facsimile;
4. by certified letter dated July 25, 2014, and received by Appellant on July 28, 2014, Ms. Amber Gillum, Respondent's Acting State Director, advised Appellant that she was upholding his termination. Ms. Gillum's letter further advised Appellant that if he wished to appeal this decision, the appeal had to be in writing and submitted within ten (10) calendar days of receipt of Ms. Gillum's decision or fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurred later; and
5. by letter postmarked August 4, 2014, Appellant initiated an appeal to the State Human Resources Director.

RELEVANT LAW

Section 8-17-350 of the S.C. Code of Laws of 1976, as amended, states in part: "When an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator-arbitrator."

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action..."

Section 19-718.04(B) of the State Human Resources Regulations states "[a] covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action."

Section 603 of Respondent's Procedure for Grievance and Appeal states in part that, "[a]ll grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action."

ANALYSIS

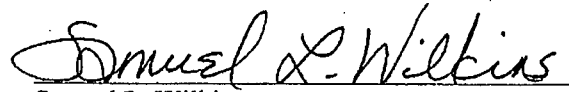
According to the record, Appellant was notified via hand-delivered letter on June 3, 2014, that his employment was terminated effective June 3, 2014. Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources Management Office on June 20, 2014. The date Appellant's grievance was submitted, June 20, 2014, is seventeen (17) calendar days from the effective date of the action, June 3, 2014. Section 8-17-330 of the S. C. Code of Laws of 1976, as amended, states in part that, "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action..." This timeframe is also noted in Respondent's Procedure for Grievance and Appeal which Ms. Johnson provided to Appellant. Appellant's grievance was submitted beyond this fourteen calendar day timeframe.

The Act requires that all administrative remedies be exhausted prior to appealing an action to the State Human Resources Director. Appellant's failure to file a grievance within the required time frame precluded him from completing Respondent's employee grievance procedure. Therefore, Appellant failed to exhaust all his administrative remedies. "Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts." Hyde v. South Carolina Dept. Of Mental Health, 314 S.C. 207, 442 S.C.2d 582 (1994); See also, Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).

DECISION

Because Appellant failed to file a grievance with Respondent within 14 calendar days of the effective date of his termination, the State Human Resources Director has determined that the appeal must be denied. Since Appellant did not file a grievance with Respondent pursuant to time frames established by the Act, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed.

This concludes the processing of the appeal.

A handwritten signature in cursive script, reading "Samuel L. Wilkins". The signature is written in dark ink and is positioned above the printed name and title.

Samuel L. Wilkins
State Human Resources Director

Columbia, South Carolina
September 4, 2014

Coats, Carrie

From: grievance@ohr.sc.gov
Sent: Monday, August 11, 2014 4:10 PM
To: Grievance
Subject: State Appeal Form

STATE EMPLOYEE GRIEVANCE PROCEDURE STATE APPEAL FORM

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES.

EMPLOYEE'S NAME: Henry Chapman

JOB CLASSIFICATION: Human Service Specialist I

AGENCY: Department of Social Services

HOME ADDRESS: 214 Lantern Lane, Manning, South Carolina 29102

TELEPHONE: Home: (803) - 460-0267 Office: (803) - 778-6520

1. Has the employee completed twelve (12) months of satisfactory service with the state? Yes
2. What disciplinary action taken against the employee is being appealed? Terminated
3. Has the employee received a final decision from the agency? Yes
4. What date did the employee receive the final decision? July 28, 2014
5. If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure? n/a

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position (continue on additional pages if necessary):

Agent's decision is unfair based upon allegations used to base termination, employee had worked for the agency for 22 years and had not had any performance issues before, agency policy allowing for reassignment and/or demotion, which if none was followed.

Please specify the relief that the employee is seeking by this appeal:

Mr. Chapman would like to be re-instated

Date: Aug 11, 2014

Human Resources Division
8301 Parklane Road, Suite A220
Columbia, SC 29223

Based on Form GC101-Revised 10/01/96

Moore Law Firm, L.L.C.



Dwight C. Moore
Attorney at Law
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229
Office: (803) 778-6520
Fax: (803) 775-6365
E-Mail: moorelawfirm@ftc-i.net

August 4, 2014

State Employee Grievance Committee
Director of Human Resources
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

Re: Termination of William Henry Chapman
Moore File No. 4136.4

To Whom It May Concern:

Please be advised that pursuant to this letter, I wish to appeal the decision handed down by Ms. Gillum on or about July 25, 2014.

Please refer all correspondence to the address indicated above. With kind regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to be "DCM", followed by a horizontal line.

Dwight C. Moore

DCM/ccs

cc: Amber Gillum, SCDSS Acting State Director
Robin Layton, Clarendon County DSS County Director

DSS

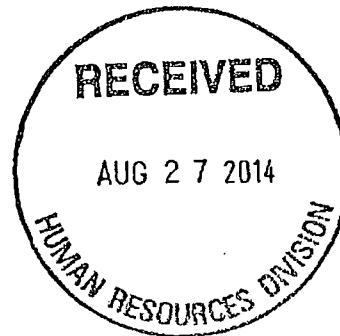
Serving Children and Families

AMBER E. GILLUM
ACTING STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

August 25, 2014

Carrie Coats
South Carolina Budget and Control Board
Human Resources Division
Alternative Dispute Resolution Program
8301 Parklane Road, Suite A220
Columbia, SC 29223



Re: Appeal of Henry Chapman (Human Services Specialist I)

Dear Ms. Coats:

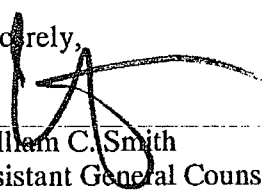
Pursuant to your request of August 12, 2014, attached please find the following items submitted on behalf of the South Carolina Department of Social Services (DSS) for consideration in the above referenced appeal:

- 1- DSS Position Statement previously submitted to the DSS internal grievance reviewer;
- 2- DSS Policy Provisions applicable to the agency action;
- 3- DSS Internal Grievance Findings and Determinations; and
- 4- Appellant Employment Records and Grievance Forms.

The DSS position in this matter is as set forth in the management position statement provided to the DSS internal grievance reviewer, Leigh Bolick, in the attached email of July 7, 2014. DSS Human Resources Policy 508 fully supports the agency's action in this matter. That policy is included as Attachment E to the DSS Position Statement previously submitted to the DSS internal grievance reviewer.

Please advise me should you have questions or need additional information.

Sincerely,



William C. Smith
Assistant General Counsel

Attachments: a/s

cc: Holly Layton (Via Email)

Smith, William

From: Smith, William
Sent: Monday, July 07, 2014 3:04 PM
To: Bolick, Leigh
Cc: Layton, Robin; Elmore, Glenise; 'cstokes@dwightmoorelaw.com'
Subject: FW: Management Position Statement- Grievance of William Chapman (CORRECTED SALUTATION)
Attachments: William Chapman Management Position Statement Attachments.pdf

My apologies, Leigh, but I just noticed that my earlier email addressed you as "Mr. Bolick." The email below is corrected and should be used for purposes of this grievance matter.

Bill

William C. Smith
Assistant General Counsel
South Carolina Department of Social Services
Office of General Counsel
P.O. Box 1520
Columbia, South Carolina 29202

Phone: 803.898.7617
FAX: 803.898.7245

***Privacy Notice:** This message may contain information that is protected from disclosure by federal and/or state law, or is otherwise privileged or confidential. This communication is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient or the employee or agent responsible for delivering this message to the recipient, you are hereby notified that any dissemination, distribution, or copying of this message is strictly prohibited and violations of applicable federal and/or state law may subject you to civil and/or criminal penalties. If you have received this message in error, please notify the sender immediately by telephone and delete this message.*

From: Smith, William
Sent: Monday, July 07, 2014 2:41 PM
To: Bolick, Leigh
Cc: Layton, Robin; Elmore, Glenise
Subject: Management Position Statement- Grievance of William Chapman

Ms. Bolick:

Pursuant to the instructions of the June 25, 2014 letter of the DSS Director of Human Resource Management, the following sets forth the position of Clarendon County Department of Social Services (CCDSS) management with respect to the Grievance and Appeal of William Chapman regarding the termination of his employment with the Department of Social Services. The various attachments "A" through "E" referenced below in this email are included in a single master file attached hereto which is designated as "William Chapman Management Position Statement Attachments.pdf." The redactions in Attachment D have been made in accordance with statutory requirements for the protection of the individually identifiable information of persons receiving DSS services. [See S.C. Code sections 30-2-310, 30-4-40 (a) (2) and (4), and 43-5-40]

Mr. Chapman's attorney, Dwight C. Moore, has been provided a printed copy of this email message, along with printed copies of the attachments to this email message, via regular mail, today's date, forwarded to the following address:

Dwight C. Moore, Esquire
Moore Law Firm, LLC
P.O. Box 1229
Sumter, SC 29151

Background

The request for disciplinary action against William Chapman was forwarded to the Office of General Counsel for legal review. Management sought termination of the employment of Mr. Chapman, a Human Services Specialist I in the Clarendon County Department of Social Services, based upon his continuing substandard job performance.

The DSS Substandard Performance Process

The DSS Substandard Performance Process for Covered Employees, set out in the DSS Human Resources Policy Manual at Policy 508, identifies a mandatory process to be followed where an employee's job performance has become deficient in one or more essential job duties or objectives. Incident to the identification of an employee's deficient performance, the employee's supervisor is required, in an initial effort to correct the defective performance, to counsel the employee involved on possible means of improving performance. However, where supervisory counseling does not prove successful, DSS policy requires that a written Employee Warning Notice for Substandard Performance (DSS Form 432-B) be issued to the employee and that a work improvement plan be developed jointly by the supervisor and the affected employee in an effort to improve work performance. A copy of the warning notice containing the work improvement plan must be provided to the employee.

In accordance with the requirements of the DSS Human Resources Policy Manual, Policy 508, the substandard performance warning notice issued to the employee must specify the job functions set forth in the affected employee's planning document in which performance is deemed to be "unsuccessful," along with an explanation of the deficiencies. The notice must also specify the time frame during which a work improvement plan will be in effect, must make provision for periodic meetings between supervisor and affected employee to discuss the employee's progress, or lack thereof, in meeting the goals of the work improvement plan, and must identify the consequences of the employee's failing to improve performance in the identified job functions.

During the time period in which the work improvement plan is in effect, the supervisor's notes from the periodic meetings with the employee, identifying improvements and/or deficiencies, must be provided to the employee. If the employee's performance continues to be defective in any job function noted in the Employee Warning Notice at the end of the work improvement plan period, the employee must be removed from the assigned position immediately and either terminated from employment with the agency, reassigned to another position within the agency, or demoted to another position within the agency.

Factual Summary of Employee Job Performance Deficiencies

Mr. Chapman's position as an Economic Services worker with CCDSS required, among other duties, that he conduct interviews with clients to assist them with processing SNAP and FI applications; collecting and verifying the information he received from the clients in order to determine their initial and continued eligibility for services. In order to make an accurate determination of client eligibility, Mr. Chapman's position required him to request all necessary information to support a determination of eligibility. This essential aspect of Mr. Chapman's job duties accounted for approximately 70% of his total job function.

Prior to the initiation of the Substandard Performance Process and the termination of his employment, Mr. Chapman's job performance had been noted to be defective in numerous aspects beginning in January 2014. On January 31, 2014, Mr. Chapman was placed on a Performance Enhancement Plan (PEP) to assist him in the improvement of his job performance. (See Attachment A hereto) The PEP described several job performance areas in need of improvement

and listed the specific activities which warranted change to assist Mr. Chapman in improving his performance in order to reach the performance goals set out in the PEP. The PEP also listed target dates for review of Mr. Chapman's performance. Based on Mr. Chapman's substantial inability to meet all required goals of the PEP, he was issued an Oral Warning of Substandard Performance on March 10, 2014. (See **Attachment B hereto**) At the time of the issuance of that oral warning, the PEP was continued until March 28, 2014 so as to allow Mr. Chapman additional opportunity to improve his performance. The oral warning advised Mr. Chapman, however, that should he not meet all required goals for his position by the end of the extended PEP time frame a written warning of substandard performance would be issued.

Notice of Substandard Performance

Having failed to meet the requirements of the previously implemented PEP, Mr. Chapman was issued an Employee Warning Notice for Substandard Performance (DSS Form 432-B) on April 15, 2014, which he signed. (See **Attachment C hereto**) The notice identified the following performance deficiency in an essential job duty:

- Not meeting the standard regarding "worker will request all necessary information to determine eligibility."

Work Improvement Plan

As part of the Employee Warning Notice for Substandard Performance, a work improvement plan was collaboratively devised with Mr. Chapman to assist him in reaching an acceptable level of job performance in the essential duty. The time frame provided in the Notice of Substandard Performance for Mr. Chapman's improvement of his performance was "45 to 50 days," consistent with the requirements of DSS policy. The work improvement plan provided that Mr. Chapman would meet with his supervisor weekly during the pendency of the plan. At the plan's inception, Mr. Chapman was provided a listing of actions needed to improve his deficient job performance.

Supervisory Meetings

During the tenure of the work improvement plan, Mr. Chapman's supervisor, Dawn Still, met with him on five separate occasions (April 23; May 1, 8, 15, and 23) to discuss his progress under the plan. In the course of those meetings, Ms. Still documented continuing deficiencies in Mr. Chapman's performance of the job duty that had been initially identified as deficient in the Notice of Substandard Performance. (See **Attachment D hereto**) Ms. Still provided to Mr. Chapman documentation of the errors and discussed with him how they could be corrected. A copy of the weekly meeting documentation was provided to Mr. Chapman which both he and Ms. Still signed.

Performance at the End of Work Improvement Plan Period

At the end of the work performance improvement period, Mr. Chapman's performance remained deficient in the essential job duty identified in the Employee Warning Notice for Substandard Performance of April 15, 2014. Because Mr. Chapman's continuing deficient performance significantly and negatively impacted his ability to successfully perform the requirements of his DSS position, DSS policy required that he be removed from his job position immediately. (See **DSS Human Resource Policy 508 D- Attachment E hereto**)

Disciplinary Options

The options available to CCDSS management for the required removal of Mr. Chapman from his position included reassigning him to another position, demoting him to another position, or terminating his employment with the agency. Management indicated its wish to terminate Mr. Chapman's employment with the agency.

Appropriateness of Termination

In accordance with the provisions of DSS Human Resources Policy and Procedure Manual Policy 508 (Substandard Performance Process for Covered Employees), the documentation provided by CCDSS management established Mr. Chapman's continuing substandard performance of an essential job duty as identified in the Employee Warning Notice for Substandard Performance of April 15, 2014. Additional documentation provided by management also established clearly that prior to the initiation of the Substandard Performance Process, Mr. Chapman's defective job performance on substantially similar job duties had already been well established and that, incident to a prior Performance Enhancement Plan (PEP), he was provided extensive opportunity to address his job deficiency. Regrettably, however, Mr. Chapman did not take initiative to correct the ongoing deficiency which formed the basis for the current disciplinary action and that absence of initiative resulted in continuing uncorrected substandard performance. Accordingly, the decision to terminate Mr. Chapman's employment with DSS, based upon his continuing substandard performance was fully supported.

Position of DSS Management

It is the position of CCDSS management that the termination of Mr. Chapman's employment with the agency due to his continuing substandard job performance was fully supported factually, was conducted in accordance with the requirements of DSS Human Resources policy, and an appropriate sanction pursuant to the provisions of DSS Human Resources Policy and Procedure Manual Policy 508 (Substandard Performance Process for Covered Employees).

Please let me know if you should have questions regarding CCDSS management's position in this matter.

Sincerely,

Bill Smith

William C. Smith
Assistant General Counsel
South Carolina Department of Social Services
Office of General Counsel
P.O. Box 1520
Columbia, South Carolina 29202

Phone: 803.898.7617
FAX: 803.898.7245

Privacy Notice: *This message may contain information that is protected from disclosure by federal and/or state law, or is otherwise privileged or confidential. This communication is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient or the employee or agent responsible for delivering this message to the recipient, you are hereby notified that any dissemination, distribution, or copying of this message is strictly prohibited and violations of applicable federal and/or state law may subject you to civil and/or criminal penalties. If you have received this message in error, please notify the sender immediately by telephone and delete this message.*

Grievance of William Chapman
Management Position Statement
ATTACHMENT A

PERFORMANCE ENHANCEMENT PLAN

Employee Name: William "Henry" Chapman

Title: FAIC INTERVIEWER

County/Department: CLARENDON COUNTY DSS

Date: January 31, 2014

Performance in need of improvement:

- | | |
|--|----------------------------|
| 1. COMPLIANCE WITH SCHEDULED WORK HOURS.
2. COMPLIANCE WITH 60 MINUTE LUNCH.
3. NUMBER OF ACD CALLS PER DAY.
4. TIME IN ASSIST. | 5. IMPROVED DOCUMENTATION. |
|--|----------------------------|

(List the goals/activities the employee will initiate to improve performance. Include skill development and changes needed to meet work performance expectations.)

- | |
|--|
| <ul style="list-style-type: none">1. AGENT WILL COMPLY WITH SCHEDULED WORK HOURS (DAILY LOG IN REPORTS).2. AGENT WILL COMPLY WITH SCHEDULED 60-MINUTE LUNCH BREAK. (AUX OUT/AUX IN TIMES)3. AGENT WILL INCREASE ACD CALLS TO 10-12 PER DAY BY SETTING GOALS. (DAILY SCCHIP LOG)4. AGENT WILL DECREASE ASSIST TIME – DO NOT DISCONNECT CALL UNTIL ALL ASPECTS OF INTERVIEW ARE COMPLETED. (CMS AGENT AUX REPORTS)5. AGENT WILL IMPROVE DOCUMENTATION BY USING PRESCRIBED INTERVIEW GUIDE AND OTHER RESOURCES DIRECTLY RELATED TO INTERVIEW DOCUMENTATION. |
|--|

Employee Signature: _____ Date: _____

Targeted Date for Improvement: FEB. 28, 2014

Expected Results-list measurements, where possible

- | |
|---|
| <ul style="list-style-type: none">1. AGENT WILL BE IN 100% WORK SCHEDULE COMPLIANCE IMMEDIATELY/VERIFIED BY DAILY LOG- IN REPORT.2. AGENT WILL BE IN 100% LUNCH HOUR COMPLIANCE IMMEDIATELY/VERIFIED BY CMS REPORT.3. 10-12 COMPLETED CALLS/DAY / VERIFIED BY SCCHIP DAILY LOGS.4. DECREASED TIME IN ASSIST BY 50%/ VERIFIED BY CMS REPORT.5. 50% DECREASE IN RETURNED CASES FOR MONTH OF FEBRUARY. |
|---|

Dates to Review progress by employee and supervisor:

FEB. 14, 2014/ FEB. 28, 2014

Progress at review dates:

2/14/14:

- | |
|--|
| <ul style="list-style-type: none">1. Goal met – in compliance with scheduled work hours.2. Goal met – in compliance with scheduled 60 minute lunch break.3. Goal has not been met.4. Goal has been met- time in assist has decreased more than 50%.5. Goal has been met – agent had no cases returned for documentation. |
|--|

Goals which have been successfully met: (see supporting documentation)

2/28/14:

1. Goal continues to be met – in compliance with scheduled work hours. (Daily log in/out printouts.
2. Goal continues to be met – in compliance with scheduled 60 minute lunch break(CMS Agent AUX report)
3. Goal has not been met . (Daily SCCHIP log)
4. Goal has been met – time in assist has decreased by more than 50%. (CMS Agent AUX report)
5. Goal has been met – no cases returned for documentation in February (Supervisor emails)

Goals which were not met/recommended actions: (see supporting documentation)

3. Agent will increase ACD calls to 10-12 per day by setting goals.

Prior to review date of 2/14/14, agent failed to meet goal on 7 of 8 working days (office closed 2 days due to ice storm and opened at 10:00 a.m. on 1 day)

Between 2/14/14 and 2/28/14, agent failed to meet goal on 2 of 9 working days. (Daily SCCHIP logs).

Recommended action: Oral warning of substandard job performance.

Next Review Date, if needed:

3/28/14

Employee Signature: _____

Date: _____

Supervisor Signature: _____

Date: _____

Grievance of William Chapman
Management Position Statement
ATTACHMENT B

3/10/14

William Henry Chapman – ORAL WARNING OF SUBSTANDARD JOB PERFORMANCE

A Performance Enhancement Plan was signed by Mr. Chapman on 1/31/14 in which he agreed to improve his performance in five areas of work performance by 2/28/14 with a review date of 2/14/14. On 2/14/14, his performance was reviewed by his supervisor, Dawn Still. At that time, he was in compliance with four of the five areas of performance. He did not meet compliance with goal 3 – Agent will increase ACD calls to 10-12 per day by setting goals. At that time, he had failed to meet the goal on 7 of 8 working days. As of 2/28/14, he has still not met the goal. Although there has been improvement, he failed to meet the goal on 2 of 9 working days between 2/18/14 and 2/28/14. On the dates when he did meet the goal, he met the minimum of 10 calls.

Based on this, it is recommended that the PEP remain in place with another review date of 3/28/14. All goals will remain in effect. Mr. Chapman is expected to meet 100% of all goals. If goals are not met at the review date of 3/28/14, a written warning of substandard job performance will be issued.

Grievance of William Chapman
Management Position Statement
ATTACHMENT C

South Carolina Department of Social Services
**EMPLOYEE WARNING NOTICE
OF SUBSTANDARD PERFORMANCE**

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Name of Employee: William Henry Chapman

Position Title: Human Services Specialist I

Location: (County Division) _____

Clarendon

NOTE:

A "Warning Notice of Substandard Performance" must be issued at least 30 calendar days and no more than 120 calendar days prior to an employee receiving an overall "unsuccessful" rating.

Meetings will be scheduled and documented to discuss progress during the "notice period" on a weekly, biweekly, or monthly basis. Documentation of meetings become a permanent part of the Official Personnel Folder.

Failure to meet the written success criteria during the "notice period" will result in a rating of "Below Performance Requirements" and removal from the position.

Job Performance Expectations: (State what is expected of the employee as it relates to their job.)

Job Duty 1 - Conduct interviews with clients to assist with processing SNAP/ETI applications by collecting and verifying information to determine initial and continued eligibility. Household circumstances will be explored to the extent necessary to make a determination of eligibility. Success Criteria- Worker will conduct interviews in a professional manner providing needed feedback and explanations to the clients. Worker will request all necessary information to determine eligibility and interviews will be completed in compliance with agency policy, procedures and guidelines. Worker will spend a minimum of 5(five) hours daily interviewing.

This job duty is 70% of the employee's total job function.

Job Duties currently "below" standard: (Specify the areas in which the employee's performance is below standard.)

Employee is not currently meeting the standard regarding "worker will request all necessary information to determine eligibility". A Performance Enhancement Plan was initiated with employee on 1/31/14 in which "Improved Documentation" is one of the performance goals listed for improvement. The PEP was reviewed on 2/14, 2/28 and 3/10. On 3/14 and 3/19 employee's supervisor received emails from processing county advocates noting documentation errors in cases interviewed by employee. This is a continuation of a pattern of 5 documentation errors of 6 cases reviewed shown in supervisor case reviews conducted between 2/3/14 and 3/20/14 which are verified in the Case Review System.

Improvement Plan/Timeframe: (Inform the employee that it is necessary to bring performance of their job up to standard. State what is necessary to do this. Also state the time frame of warning period; from 30 up to 120 calendar days.)

Employee must improve documentation by complying with FAIC training guide which was given to employee and agency policy, procedure and guidelines. Employee is expected to decrease returned cases by 50%. Employee is expected to decrease supervisory case review documentation errors by 50%.

Timeline for improvement is 45 to 50 days.

<u>4/15/14</u> Date Signed	<u><i>Dawn M. Steel</i></u> Signature of Supervisor
<u>4.15.14</u> Date Signed	<u><i>Robin H. Clayton</i></u> Signature of Appointing Authority

To Be Completed by Employee

Comments: (Enter appropriate comments or leave blank if no comments are made, then enter date and sign below.)

<u>04-15-14</u> Date	<u><i>William H. Chapman</i></u> Signature of Employee
-------------------------	---

Refusal to Sign: Witnessed by:

Grievance of William Chapman
Management Position Statement
ATTACHMENT D

Weekly meeting – William "Henry" Chapman – 4/23/14

Supervisor Dawn Still met with employee Henry Chapman to discuss his progress regarding his 432B Warning for Substandard Job Performance issued on 4/15/14. It is clear that he is trying to improve his documentation. There is noticeable improvement in his case documentation. Five cases were reviewed in the case review system. Two errors were noted (40% error rate):

[REDACTED] #960315 – employee requested medical expenses but case was sent to a processor rather than being sent to pending caseload in Residence County. Also, the client had sent in a statement from an individual stating that he pays the individual \$50, and the worker did not follow up on this. This was a non-correctable error as the processor sent the case on to the pending caseload.

[REDACTED] #1390178 – case was pended for expenses and college award letter, and employee set an alert. Alerts should not be set when case is pended for information required for eligibility. This is a minor error.

There were 2 errors found by processing counties:

[REDACTED] #989844 – Worker failed to pend for verification of child support

[REDACTED] #1721790 – Worker documented in folder notes that he was pending for verification of residence for did not send notice and sent case on to be processed.

On 4/21/14, we had a county visit from regional performance coach Donna Greene. She met with employee and shared her concerns about the length of his interviews. She showed him a list of phrases that he can use to cut and paste for documentation purposes which she feels could increase the speed of his interviews and allow him to complete more interviews daily. Mr. Chapman tried this method, but stated that he believed it was slower than typing the phrases.

Supervisor will continue to review cases and meet with employee weekly.

William H. Chapman
Dawn M. Still

Weekly meeting -- William "Henry" Chapman -- 5/1/14

Supervisor Dawn Still met with employee Henry Chapman to discuss his progress regarding his 4328 Warning for Substandard Job Performance Issued on 4/15/14.

Seven cases were reviewed in the case review system. Six had errors, for an 86% error rate.

[REDACTED] #2024043- Worker didn't document how many hours HH member was worker so unable to determine whether he was ABAWD; wage match hits were not documented or verified per policy on recertifications.

[REDACTED] #2203118 -- Did not document who pays her child support. Also children have different last names and there is no documentation about other absent parents and possible child support from them.

[REDACTED] #1328179 -- Did not document anything about possibility of child support; Rent receipt was not signed and verification was not requested.

[REDACTED] #2202773 -- Did not complete date information requested on INRD. Minor error.

[REDACTED] #1430309 -- No documentation regarding wage match hit in last two quarters per policy on recertifications; no documentation about possible child support or absent parent; no alert for expenses set.

[REDACTED] #2121728- Documented that she shares meals with other HH members but didn't add them to BG; did not document anything about possibility of child support; did not request verification of rent.

There were no cases returned from processing counties this week.

Supervisor will continue to review cases and meet with employee weekly.

William Henry Chapman
Dawn M. Still

Weekly meeting – William “Henry” Chapman – 5/8/14

Supervisor Dawn Still met with employee Henry Chapman to discuss his progress regarding his 432B Warning for Substandard Job Performance issued on 4/15/14.

Eleven cases were reviewed in the case review system. Nine had errors, for an 82% error rate. Three of the cases this week were reviewed by supervisor Tanya Reese Jones due to supervisor Still being on annual leave one day.

[REDACTED] #1699677 – IEVS not in folder. Based on information documented and in SCOSA folder, appears case should have been expedited.

[REDACTED] #1567199 – Documentation concerning wage match is confusing. The employer name on wage match does not match the employer name found on The Work Number, and neither matches the employer name given by the client. Worker checked that client did not have a bank account, then documented that she did, and requested a copy of her bank statement (FI Application). Also checked that she was a minor parent, and she is 25.

[REDACTED] #2190007 – Call dropped but there is no documentation.

[REDACTED] #1723218 – Didn't document if US citizen, any disqualifications, rec'd in another state, how ID or residency were verified. Didn't document how much SSI client receives or how it was verified. Didn't document that child's father was in the home. Since this was a recert, some of the expense verification was on file, but didn't let processor know where it was located.

[REDACTED] #1630412 – Separate HH but didn't document name of separate HH. Client said she last worked for ABC but on semi-annual she said babysat for an individual. This needs to be clarified.

[REDACTED] #2122692 – CHSR has no information about one of the children. Online app has no AP information completed so 3816C must be mailed for client's signature. No IEVS in case. No documentation about possible child support. On INRD, the expedited indicator was coded Y, but the case was sent to pending. Folder notes were entered in the permanent folder rather than the application folder.

[REDACTED] #1506223 – Checked YES for self-employed but there's nothing to indicate that client is self-employed. This was probably checked in error, but processor has no way to know.

[REDACTED] #2202748 – Information requested date not entered on INRD; Benefit Inquiry Form was sent but no alert set and no copy in SCOSA; Documented in folder notes that form was sent, but no C000 was sent. Also, it was documented that client would provide VR of case closure.

[REDACTED] #2093165 – No documentation about wage match hit showing wages in most recent quarter at an employer with a different name than current employer. Also, date information requested not completed on INRD.

William Henry Chapman
Dawn M. Still

Weekly meeting – William "Henry" Chapman – 5/15/14

Supervisor Dawn Still met with employee Henry Chapman to discuss his progress regarding his 432B Warning for Substandard Job Performance issued on 4/15/14.

Eight cases were reviewed in the case review system. Four had errors, for a 50% error rate.

[REDACTED] #931544 – Employee documented that Kenya wasn't sure if her daughter (who lives in the home) had court ordered child support, and stated that her grandchildren who live in the home had contact with their father. No verification was requested about possible child support.

[REDACTED] #864043 – Client reported on her application that she received \$300 this month, but this was not followed up during the interview and client did not report any income during the interview. Rent amount was documented incorrectly.

[REDACTED] #1998949 – Documented that client's sister is in home but not in budget. Did not document that they purchase and prepare meals separately, which is required in order to exclude her.

[REDACTED] #1567199 – FI application. Checked on documentation sheet that it was a minor parent, which it wasn't. Wage match documentation was confusing – employer shown on wage match was not the same name as shown on The Work Number. Needed further documentation to clarify. Had checked on documentation that client had no bank accounts, but requested verification of bank statement.

There were no returned cases from the processing region this week.

Supervisor will continue to review cases and meet with employee weekly.

William Henry Chapman
Dawn M. Steel

Weekly meeting – William “Henry” Chapman – 5/23/14

Supervisor Dawn Still met with employee Henry Chapman to discuss his progress regarding his 432B Warning for Substandard Job Performance issued on 4/15/14.

Nine cases were reviewed in the case review system. Five had errors, for a 56% error rate.

[REDACTED] #1161575 – Client is unable to work and was sent a 1247, but case was not pended and no C000 was sent.

[REDACTED] #581264 – Wage match hit and New Hire hit were not documented/no C002s sent.

[REDACTED] #2176852 – Wages in 4th quarter 2013 – no documentation.

[REDACTED] #1726188 – Documentation of employer & wage match don't match. Need clarification.

[REDACTED] #2207400 – Checked that there was no unearned income, but then documented that spouse receives Social Security. Did not request VR of electric bill.

There were no returned cases from the processing region this week.

Supervisor will continue to review cases and meet with employee weekly.

William H. Chapman
Dawn M. Still
5/23/14

Grievance of William Chapman
Management Position Statement
ATTACHMENT E



Serving Children and Families

AMBER GILLUM
ACTING STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

July 25, 2014

SENT VIA CERTIFIED MAIL

Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman:

In reference to the grievance you filed, enclosed is the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form).

If you do not agree with this decision, you may appeal to the State Employee Grievance Committee through the Director of Human Resources at the Office of Human Resources, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223. This appeal must be in writing and made within ten (10) calendar days of receipt of this decision or within fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurs later.

Sincerely,

A handwritten signature in dark ink, appearing to read "Amber Gillum", is written over a horizontal line.

Amber Gillum
Acting State Director

AG: kj

cc: Robin Layton, County Director
Clarendon County DSS

William Smith, Esq.
Office of General Counsel

Dwight C. Moore, Esq.
Moore Law Firm, LLC
P.O. Box 1229
Sumter, SC 29151

South Carolina Department of Social Services
GRIEVANCE DECISION FORM

INSTRUCTIONS

Original: Grievant

Copy: Supervisor

Copy: Appointing Authority

Copy: Human Resources Director

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT, NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Employee's Name: Last, First, Middle Initial

Chapman, William

Job Title:

Human Services Specialist I

County/Division:

Clarendon/Economic Services

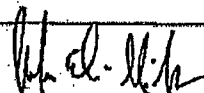
Decision:

I uphold the Agency's decision to terminate Mr. Chapman. I have fully reviewed all submitted information prior to rendering this decision.

Date of Decision:

7/25/14

Signature of State Director:



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ Agent ☐ Addressee <i>X William Chapman</i> B. Received by (Printed Name) <i>William Chapman</i> C. Date of Delivery <i>Jul 28</i> D. Is delivery address different from Item 1? ☐ Yes If YES, enter delivery address below ☐ No	
1. Article Addressed to: <i>William Chapman</i> <i>214 Lantern Lane</i> <i>Manning, SC 29102</i>		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Transfer from service label)		7002 2030 0001 4518 7231	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☐ Agent ☐ Addressee <i>X Mary Pease</i> B. Received by (Printed Name) <i>Mary Pease</i> C. Date of Delivery <i>7-29-11</i> D. Is delivery address different from Item 1? ☐ Yes If YES, enter delivery address below ☐ No	
1. Article Addressed to: <i>Dwight C. Moore, Esq.</i> <i>Moore Law Firm, LLC</i> <i>P.O. Box 1229</i> <i>Sumter, SC 29151</i>		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Transfer from service label)		7002 2030 0001 4518 7248	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	

DSS

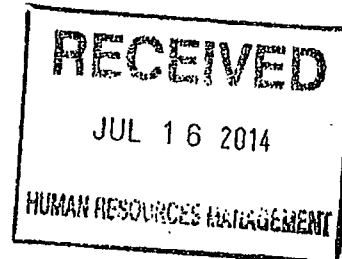
Serving Children and Families

AMBER E. GILLUM
ACTING STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

July 16, 2014

Ms. Neisie Jacobs, Director
Human Resources Management/Constituent Services
South Carolina Department of Social Services
1535 Confederate Avenue, Suite 301
Columbia, South Carolina 29201



Dear Ms. Jacobs:

I have been assigned to be the grievance reviewer in the appeal of Mr. William "Henry" Chapman. I have carefully reviewed all of the information provided to me by DSS and by Mr. Chapman. I find that DSS had ample evidence to terminate Mr. Chapman, based on the following:

- Mr. Chapman was employed as a Human Services Specialist I in Colleton County as a Supplemental Nutrition Assistance Program (SNAP)/Family Independence (FI) worker.
- Mr. Chapman was determined by his supervisor, Ms. Dawn Still, to be under-performing in his job on January 31, 2014. Ms. Still developed a Performance Enhancement Plan with Mr. Chapman, listing the areas in need of improvement, as well as the goals and expected results. This plan was reviewed on a regular basis, but, while Mr. Chapman made an effort to come into compliance, he was unable to do so.
- Mr. Chapman was given an oral warning on March 10, 2014. Ms. Still recommended that the Performance Enhancement Plan remain in place, with Ms. Still regularly reviewing his progress.
- Mr. Chapman received a written warning regarding his substandard performance on April 15, 2014.
- Subsequent reviews revealed that Mr. Chapman continued to have problems performing his job in an acceptable manner; his case records continued to reveal a high number of errors.
- After his failure to sufficiently improve, Mr. Chapman's employment was terminated on June 2, 2014.
- The agency followed proper procedures in working with Mr. Chapman to improve the quality of his eligibility determinations; when his performance continued to suffer, he was appropriately terminated.

Please let me know if I can provide any further information in this matter.

Sincerely,

Leigh W. Bolick, Director
Early Care and Education

Employment Summary Of

William Chapman

Appointments

<u>Position</u>	<u>Type of Appointment</u>	<u>DOA</u>	<u>Salary</u>
Human Services Specialist I	Hired	08-03-92	\$15,921
Human Services Specialist I	Dismissal	06-02-14	\$27,891

Employee Performance Management System (EPMS)

10-17-13 – Successful = Mr. Chapman performs his job duties in satisfactory manner. He is meeting the goal of 5 hours daily ACD time. He conducts thorough interviews and his documentation should reflect everything that he is asking during the interview. Remote listening reveals that Mr. Chapman is very personable during interviews and relates well to clients; however, his interviews have more “downtime” or periods of silence than other workers. He needs to work on improving computer skills to decrease these periods of silence.

~~10-17-12 – Successful By Default~~

Previous Disciplinary Actions

04/15/14: Employee Warning Notice of Conduct

04/03/09: Employee Warning of Substandard Job Performance

**South Carolina Department of Social Services
GRIEVANCE FORM**

INSTRUCTIONS - TO BE COMPLETED BY GRIEVANT

Continue items on additional sheet of paper, when necessary. Enter continued comments to corresponding item number. Identify each additional sheet with employee's name: last, first and middle initial.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

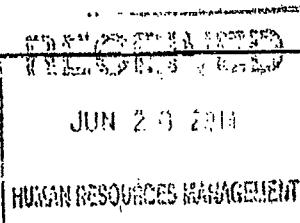
Original: Human Resources Director Copy: Grievant Copy: Submitted by Human Resources Division to Appointing Authority

Employee's Name: Last, First, Middle Initial Chapman, William H.	Job Title: Human Service Specialist 1	Contact Information: Work Telephone:
County/Division: Clarendon County	Hire Date: August 2, 1992	Home Telephone: 803-460-0267
Job Status: (Check one) ☒ FTE ☐ Temporary ☐ Temporary Grant	Home or Mailing Address: 214 Lantern Lane Manning, SC 29102	

1. Effective date of grievable action: June 3, 2014

2. Give a full explanation of the grievance/grievance action.
wrongful termination

3. Describe in detail the relief sought:
rehire or eligible for early retirement/severance pay



4. Please indicate below your mediation option by signing your name next to your selection:

I am interested in participating in the mediation process to resolve this matter. William H. Chapman

I am not interested in participating in the mediation process to resolve this matter. _____

5. Print Employee's Name: William H. Chapman	Employee's Signature: <u>William H. Chapman</u>	Date Signed: June 20, 2014
6. Human Resources Director's Signature: <u>[Signature]</u>	Date Received in HRM: <u>6-20-14</u>	Date Signed: <u>6-23-14</u>



Serving Children and Families

LILLIAN B. KOLLER, J.D.
STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

MAILED

June 3, 2014

Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

Per your request, enclosed you will find a DSS Form 1449, Employee Grievance and Appeal Form and a copy of the Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal. **Employees must initiate a grievance within 14 calendar days of the effective day of the grievable action.**

Should you have any questions regarding the above, please feel free to contact Glenise Elmore, Employee Relations Director, at (803) 898-3699.

Respectfully,

A handwritten signature in cursive script, reading "Kristen L. Johnson".

Kristen L. Johnson, M.A. HRM
Employee Relations Specialist
Office of Human Resources

Enclosures

Date: June 3, 2014

HAND DELIVERED

Henry Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman:

On April 15, 2014, you were issued an Employee Warning Notice of Substandard Performance. This notice listed some areas in which your job performance was deemed deficient. The notice further stated that you were being given forty-five (45) to fifty (50) days to improve your performance and the failure to satisfactorily do so would "... in a rating of 'Below Performance Requirements' and removal from the position." As stated in Chapter 5, Section 508(D) of the Human Resources Policies and Procedures Manual, "[i]f the employee is rated 'unsuccessful' on any essential job duty or objective which significantly impacts performance as noted in the warning notice by the end of the warning period, the employee shall be removed from the position immediately (i.e., termination, reassignment, or demotion)."

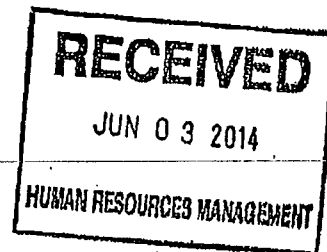
This letter is to inform you that you failed to satisfactorily improve your job performance during the specified time frame. Therefore, effective immediately, your employment with the Clarendon County Department of Social Services is terminated due to substandard job performance.

You will be required to return all agency equipment and property, including your ID card, to management before leaving the office today.

You may contact the Office of Human Resource Management at (803) 898-7315 regarding your possible grievance rights.

Sincerely,


Clarendon County Interim Director





Human Resources Policy and Procedure Manual
6. Procedure for Grievance and Appeal Home

South Carolina Department of Social Services

Human Resources Policy and Procedure Manual

CHAPTER 6, Procedure for Grievance and Appeal

Effective Date: 01/22/2010

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES

600 Introduction

The State Employee Grievance Procedure Act (hereinafter referred to as the "Act") provides that each agency and department of State government shall establish for covered employees an employee grievance procedure, which shall be reduced to writing and be approved by the State Human Resources Director. A copy of the approved grievance procedure must be made available to covered employees of the agency. The provisions of the State Administrative Procedures Act apply in proceedings before the State Employee Grievance Committee. At other levels, including during our entire internal agency grievance procedure, the State Administrative Procedures Act does not apply, but the covered employee has the right to a representative, including counsel. If the covered employee chooses to exercise the right to counsel, the employee does so at his/her own expense. Employees choosing to file a grievance or appeal must not be disciplined or otherwise prejudiced in employment for exercising rights or testifying under the provisions of this policy.

Covered employees with complaints or grievances may contact the Human Resources Management Division to obtain information regarding procedures one can follow to try to resolve the matter informally or to file a formal grievance. The agency's Human Resources Management Director has overall responsibility for ensuring the procedure for the grievance and appeal policy is followed.

A Covered Employees is a full-time or part-time employee occupying a part of or all of a full-time equivalent (FTE) position who has completed the probationary period and has a "successful" or higher overall rating on the employee's performance evaluation and who has grievance rights. If an employee does not receive an evaluation before the official performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include the State Director, Deputy State Directors, Regional Directors, County Directors, probationary, temporary, temporary grant, or time limited and employees

exempted from the grievance procedure under the law.

601 Actions That May or May Not Be Grievances

Grievances include terminations, suspensions, involuntary reassignments and demotions.

Involuntary reassignment means the movement of an employee's principal place of employment in excess of thirty miles from the prior work station at the initiative of the agency. The reassignment of an employee by an agency in excess of thirty miles from the prior work station to the nearest facility with an available position having the same state salary range for which the employee is qualified is not considered involuntary reassignment.

Reclassifications are considered a grievance only if an agency, or an appeal if the State Human Resources Director, determines that there is a material issue of fact that the action is a punitive reclassification. However, reclassifications, reassignments, and transfers within the same salary ranges are not adverse employment actions, and are not considered grievances or appeals. Promotions are not adverse employment actions which may be considered grievances or appeals except in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. When an agency promotes an employee one organizational level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be grieved or appealed.

A salary decrease based on performance as a result of an EPMS evaluation is an adverse employment action that may be considered as a grievance or an appeal. A reduction in force is also an adverse employment action considered as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.

602 Employment Actions That Do Not Constitute a Basis for a Grievance

A covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions. The covered employee can rescind such voluntary actions only if the DSS State Director or DSS State Director's designee agrees.

A covered employee whose position is reclassified to a class with a lower salary range shall not have the right to file a grievance or an appeal concerning the reclassification to the State Human Resources Director unless a determination is made that a material issue of fact exists concerning a punitive reclassification.

A covered employee who is promoted and subsequently demoted prior to serving six months of satisfactory service in the state class with the higher salary range shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a state class with a lower salary range than the state class in which the employee was serving prior to promotion.

A covered employee who is promoted and subsequently receives a reduction in pay prior to completing six months of satisfactory service in the state class with the higher salary range shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to promotion.

A covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities which justified the salary increase taken away prior to completing six months of service with the additional job duties or responsibilities, shall not have the right to file a grievance

603 Time Periods

All grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action. The agency shall render a final decision on a grievance within forty-five (45) calendar days of the original filing of the grievance by the covered employee. Failure by the agency to make a final decision on the grievance within forty-five (45) calendar days after filing of the grievance is considered an adverse decision, and the covered employee may appeal thereafter to the State Human Resources Director. The internal time periods of the agency grievance procedure and those of the forty-five (45) calendar day period for action by the agency may not be waived except upon the mutual written agreement of the parties. The time periods for appeal to the State Human Resources Director may not be waived.

A covered employee who wishes to appeal the final decision of the agency Director shall file an appeal with the State Human Resources Director within ten (10) calendar days of receipt of the final decision from the agency head or his designee or within fifty-five (55) calendar days after the employee files the grievance with the agency, whichever occurs later. The covered employee or the employee's representative shall file the request in writing with the State Human Resources Director. Failure to file an appeal with the State Human Resources Director within ten (10) calendar days of receipt of the agency's final decision or fifty-five (55) calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal.

"Calendar Days:" The term "calendar days" means the sequential days of a year. The time must be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday, or legal holiday, then that day must be excluded from the computation.

604 Leave

Time away from normal job duties during the grievance or appeal process will be charged to the employee as time worked if the employee is involved in official grievance or appeal business such as, but not limited to, scheduled meetings with the agency's Human Resources Management Division; the agency's management; or the state-level Office of Human Resources. Any time used to handle official grievance or appeal business during scheduled work hours must be approved by the employee's supervisor or other managers upwards in the chain of command, and is subject to verification by the Human Resources Management Director.

605 Mediation

Mediation is available in the Human Resources Management Division at any point during the grievance process at which the grievant or the appointing authority wishes

to consider this service as an option to resolve the disputed matter. The DSS Form 1449 Grievance and Appeal Form will provide the initial mediation opportunity; however, if one or both parties decide initially not to participate in mediation, this decision would not prevent mediation efforts later in the process. The party interested in mediation should thereafter submit a written request to the Human Resources Director before the State Director's final decision. Mediation is outlined as follows:

If appropriate, the agency's Human Resources Management Director will schedule a mediation conference to mediate the matter. It is recognized that there may be situations in which a mediation conference is not necessary and the parties can mutually agree through their representatives or via telephone conferences to resolve the matter. The Human Resources Management Director will provide a mediator as appropriate. The mediator will serve as an impartial third party who will encourage and facilitate a resolution to the dispute without advising what the result should be.

The mediation conference(s) will be confidential and limited to the parties and their representatives. Other persons may attend with the permission of the mediator and the other party.

The mediator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation conference in any adversary proceeding or judicial forum.

If the dispute is resolved, the mediator will assist the parties in preparing a written agreement to reflect the terms of the resolution for both parties to sign.

If the matter is not settled within a reasonable timeframe, normally within five (5) calendar days, of the initial mediation conference, the mediator will inform the Human Resources Management Director or other designated official that settlement has not occurred. This notification does not preclude the parties from continuing their efforts to resolve the grievance through mediation.

The mediator may share terms of the settlement agreement with the agency's designated officials who need to finalize and assist in implementing the agreement and with other agency employees on a need-to-know basis.

606 Procedures to File a Grievance

The grievance process for the Department of Social Services consists of three (3) primary step procedures as reflected in the following portion of this policy.

Step One

The grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action. If the Human Resources Management Director determines that the alleged adverse action is not covered by the Act, the grievant will be notified in writing by certified mail to the most recently provided home address within seven (7) calendar days from receipt of the grievance. The grievant will be informed in the notice that he/she may appeal to the State Human Resources Director at the Office of Human Resources.

If it is determined that the matter is grievable, within five (5) calendar days from the agency's receipt of the grievance, the grievant and the appointing authority are notified in writing that the grievance has been accepted and forwarded to a Deputy

State Director, Executive Manager, State Director, or designee for necessary action. The Deputy State Director, Executive Manager or State Director assigned to the grievance will be referred to as the "Reviewer" hereinafter in the policy.

Mediation is offered along with the grievance notification. If selected by both parties, the agency's Human Resources Management Director will schedule a mediation conference within three (3) calendar days of receipt of the mediation request. The mediator, provided by the Human Resources Management Director, will assist both parties in facilitating a resolution. The mediation should be completed within five (5) calendar days of the initial mediation conference (see section 605 - Mediation).

Step Two

If the grievance is not settled in mediation or the parties do not participate in mediation, Step Two is initiated when the Human Resources Management Director forwards the grievance to the Reviewer or Designee. The grievant's notification is sent by certified mail to the most recently provided home address. The Human Resources Management Director or designee will forward the grievance request to the Deputy State Director. If there is a conflict of interest with the Deputy State Director regarding the grievance, the Human Resources Management Director will assign the request to another Deputy State Director, Executive Manager, or directly to the State Director.

The Reviewer may assign the grievance to another appropriate staff member to review the matter, gather information, and/or make a decision. The Reviewer's designee may not be an employee in either the Human Resources Management Division, the Office of General Counsel, or the division or area where the employee works. In addition, neither the reviewer nor his designee can be a person who was involved in the disciplinary action. This fact finding process may include, but is not limited to:

1. Copy of relevant documents from the employee's personnel file.
2. A chronological summary of employee's work history.
3. Copy of relevant policies and regulations pertaining to the grievance.
4. Written statements and/or interviews from employees or others involved.
5. A grievance position statement from the grievant that may include, but is not limited to, documents, witness statements for the grievant, relevant policies, and any other information the grievant desires the Reviewer or Designee to consider.
6. A grievance position statement from the appointing authority that may include, but is not limited to, documents, witness statements for the grievant, relevant policies, and any other information management desires the Reviewer or Designee to consider.
7. Any information and documents, including, but not limited to witness statements, records, position statements, that are provided by the grievant or management for the Reviewer or his designee's review must be exchanged at the same time with the other party.
8. All information must be provided to the Reviewer or Designee within the time frame established by the Reviewer or Designee.

If necessary, a non-adversarial fact-finding conference with the grievant and his representative and appointing authority may be scheduled by the Reviewer or Designee at the sole discretion of the Reviewer. The following guidelines will apply during any such conference:

- *Each individual may provide a limited presentation or position statement.
- *Testimony may not be made under oath and will not be recorded.
- *Cross-examination is not allowed by either party.

*The grievant may be represented by counsel at the grievant's own expense.

*The State Administrative Procedures Act does not apply to this conference.

*The Reviewer may have a representative attend the conference to assist as needed.

*Witness testimony is not allowed at this conference, although witness statements can be submitted by the parties at the conference.

The Reviewer or Designee will make a recommendation within twenty (20) calendar days following receipt of the grievance request. The recommendation will be presented to the State Director in writing, and a copy will be provided to the Human Resources Management Director. In addition, copies of all submitted documents from each party will be submitted to the Human Resources Management Director for the official grievance record.

Step Three

The State Director or Designee will review the recommended decision made in Step Two, and issue a final decision within fifteen (15) calendar days following receipt of the Reviewer/Designee recommendation. The final decision should be issued on the DSS Form 1449-2 Grievance and Appeal Form 2. The grievant and management will be notified in writing of the final agency decision. The grievant notification will be sent via certified mail to the most recent home address provided.

607 Notification of State Human Resources Appeal Procedures

A covered employee may appeal the decision of the State Director or Designee to the State Human Resources Director after all administrative remedies to secure relief have been exhausted. Such appeal must be in writing and submitted to the State Human Resources Director at the Office of Human Resources, South Carolina Budget and Control Board, within ten (10) calendar days following receipt of the decision of the agency or within fifty-five (55) calendar days after the employee files the grievance, whichever occurs later.

In the event the agency has not rendered a final decision within forty-five (45) calendar days of filing the grievance, the employee may appeal directly to the State Human Resources Director. Failure by the employee to comply with the time periods of the grievance procedure constitutes a failure to exhaust administrative remedies and waives the employee's rights to further continue the grievance.

508 Substandard Performance Process for Covered Employees

The Department has clear and specific procedures to be followed when a covered employee's performance is identified as substandard. These procedures were developed to give an employee adequate notice of the substandard performance and an opportunity to improve the performance prior to the formal evaluation. A covered employee is defined as a full-time or part-time employee occupying a part or all of a full-time equivalent (FTE) position who has completed the probationary period and who has grievance rights.

An employee's performance will be considered as substandard at such time the employee is not satisfactorily performing one or more essential job duties or objectives. The supervisor should proceed to take corrective action.

The supervisor should identify and attempt to correct an employee's substandard performance initially by counseling. The next step to attempt correction of an employee's performance is to issue a written Employee Warning Notice for substandard performance using DSS Form 432-B. This notice must adhere to the following guidelines:

A. The Employee Warning Notice for substandard performance must be in writing and issued to the employee at least thirty (30) calendar days and no more than one hundred-twenty (120) calendar days prior to an employee receiving an overall "unsuccessful" rating. The notice period cannot be less than thirty (30) calendar days.

B. The rater and employee should participate in drafting a work improvement plan. This plan should include a list of ways to improve the deficiencies and any performance related recommendations. In instances where the rater and employee cannot agree upon the content of the plan, the rater's decision shall be final.

C. The employee's employment will continue if a "successful" rating is reached by the end of the established warning period.

D. If the employee is rated "unsuccessful" on any essential job duty or objective which significantly impacts performance as noted in the warning notice by the end of the warning period, the employee shall be removed from the position immediately (i.e., termination, reassignment, or demotion).

E. A covered employee who is placed under an "Employee Warning Notice" for substandard job performance within thirty (30) calendar days of the

employee's annual review date shall have the review date advanced one (1) calendar day for each day the "Warning Notice" is in effect. This warning notice may not be less than thirty (30) or no more than one hundred-twenty (120) calendar days. The warning notice may be issued at any time during the review period. Ordinarily, the warning period may not extend beyond the employee's review date. However, if the warning notice is issued less than thirty (30) days from the employee's review date, the performance review date shall be advanced up to ninety (90) calendar days.

F. Once the supervisor has established a time period for the employee to improve on his/her substandard performance, the employee must be rated within the specified time or the employee will receive a "successful" rating by default.

G. An employee whose performance requires two substandard warning notices within a 365 calendar day period and whose performance drops for the third time within a 365 calendar day period shall be removed from his/her position upon the third occurrence of substandard performance by issuing the "unsuccessful" appraisal. A warning notice is not required on the third occurrence.

H. An employee who has attained covered status may not be issued an overall "unsuccessful" appraisal at any time during the annual review period without following the "Substandard Performance Process" as presented in this policy.

(Emphasis supplied)

Last accessed July 7, 2014 online at:

<http://unite/HumanResourcesPolicyandProcedureManual/5%20Employee%20Performance%20Management%20System%20EPMS/Home.aspx>



South Carolina Department of Social Services

Human Resources Policy and Procedure Manual

CHAPTER 6, Procedure for Grievance and Appeal

Effective Date: 01/22/2010

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES

600 Introduction

The State Employee Grievance Procedure Act (hereinafter referred to as the "Act") provides that each agency and department of State government shall establish for covered employees an employee grievance procedure, which shall be reduced to writing and be approved by the State Human Resources Director. A copy of the approved grievance procedure must be made available to covered employees of the agency. The provisions of the State Administrative Procedures Act apply in proceedings before the State Employee Grievance Committee. At other levels, including during our entire internal agency grievance procedure, the State Administrative Procedures Act does not apply, but the covered employee has the right to a representative, including counsel. If the covered employee chooses to exercise the right to counsel, the employee does so at his/her own expense. Employees choosing to file a grievance or appeal must not be disciplined or otherwise prejudiced in employment for exercising rights or testifying under the provisions of this policy.

Covered employees with complaints or grievances may contact the Human Resources Management Division to obtain information regarding procedures one can follow to try to resolve the matter informally or to file a formal grievance. The agency's Human Resources Management Director has overall responsibility for ensuring the procedure for the grievance and appeal policy is followed.

A Covered Employees is a full-time or part-time employee occupying a part of or all of a full-time equivalent (FTE) position who has completed the probationary period and has a "successful" or higher overall rating on the employee's performance evaluation and who has grievance rights. If an employee does not receive an evaluation before the official performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include the State Director, Deputy State Directors, Regional Directors, County Directors, probationary, temporary, temporary grant, or time limited and employees exempted from the grievance procedure under the law.

601 Actions That May or May Not Be Grievances

Grievances include terminations, suspensions, involuntary reassignments and demotions.

Involuntary reassignment means the movement of an employee's principal place of employment in excess of thirty miles from the prior work station at the initiative of the agency. The reassignment of an employee by an agency in excess of thirty miles from the prior work station to the nearest facility with an available position having the same state salary range for which the employee is qualified is not considered involuntary reassignment.

Reclassifications are considered a grievance only if an agency, or an appeal if the State Human Resources Director, determines that there is a material issue of fact that the action is a punitive reclassification. However, reclassifications, reassignments, and transfers within the same salary ranges are not adverse employment actions, and are not considered grievances or appeals. Promotions are not adverse employment actions which may be considered grievances or appeals except in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. When an agency promotes an employee one organizational level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be grieved or appealed.

A salary decrease based on performance as a result of an EPMS evaluation is an adverse employment action that may be considered as a grievance or an appeal. A reduction in force is also an adverse employment action considered as a

grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.

602 Employment Actions That Do Not Constitute a Basis for a Grievance

A covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions. The covered employee can rescind such voluntary actions only if the DSS State Director or DSS State Director's designee agrees.

A covered employee whose position is reclassified to a class with a lower salary range shall not have the right to file a grievance or an appeal concerning the reclassification to the State Human Resources Director unless a determination is made that a material issue of fact exists concerning a punitive reclassification.

A covered employee who is promoted and subsequently demoted prior to serving six months of satisfactory service in the state class with the higher salary range shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a state class with a lower salary range than the state class in which the employee was serving prior to promotion.

A covered employee who is promoted and subsequently receives a reduction in pay prior to completing six months of satisfactory service in the state class with the higher salary range shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to promotion.

A covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities which justified the salary increase taken away prior to completing six months of service with the additional job duties or responsibilities, shall not have the right to file a grievance.

603 Time Periods

All grievances of agency actions affecting a covered employee must be initiated internally (using the DSS Grievance Form 1449) by the employee within fourteen (14) calendar days of the effective date of the action. The agency shall render a final decision on a grievance within forty-five (45) calendar days of the original filing of the grievance by the covered employee. Failure by the agency to make a final decision on the grievance within forty-five (45) calendar days after filing of the grievance is considered an adverse decision, and the covered employee may appeal thereafter to the State Human Resources Director. The internal time periods of the agency grievance procedure and those of the forty-five (45) calendar day period for action by the agency may not be waived except upon the mutual written agreement of the parties. The time periods for appeal to the State Human Resources Director may not be waived.

A covered employee who wishes to appeal the final decision of the agency Director shall file an appeal with the State Human Resources Director within ten (10) calendar days of receipt of the final decision from the agency head or his designee or within fifty-five (55) calendar days after the employee files the grievance with the agency, whichever occurs later. The covered employee or the employee's representative shall file the request in writing with the State Human Resources Director. Failure to file an appeal with the State Human Resources Director within ten (10) calendar days of receipt of the agency's final decision or fifty-five (55) calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal.

"Calendar Days:" The term "calendar days" means the sequential days of a year. The time must be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday, or legal holiday, then that day must be excluded from the computation.

604 Leave

Time away from normal job duties during the grievance or appeal process will be charged to the employee as time worked if the employee is involved in official grievance or appeal business such as, but not limited to, scheduled meetings with the agency's Human Resources Management Division; the agency's management; or the state-level Office of Human Resources. Any time used to handle official grievance or appeal business during scheduled work hours must be approved by the employee's supervisor or other managers upwards in the chain of command, and is subject to verification by the Human Resources Management Director.

605 Mediation

Mediation is available in the Human Resources Management Division at any point during the grievance process at which the grievant or the appointing authority wishes to consider this service as an option to resolve the disputed matter. The DSS Form 1449 Grievance and Appeal Form will provide the initial mediation opportunity; however, if one or both parties decide initially not to participate in mediation, this decision would not prevent mediation efforts later in the process. The party interested in mediation should thereafter submit a written request to the Human Resources Director before the State Director's final decision. Mediation is outlined as follows:

If appropriate, the agency's Human Resources Management Director will schedule a mediation conference to mediate the matter. It is recognized that there may be situations in which a mediation conference is not necessary and the parties can mutually agree through their representatives or via telephone conferences to resolve the matter. The Human

Resources Management Director will provide a mediator as appropriate. The mediator will serve as an impartial third party who will encourage and facilitate a resolution to the dispute without advising what the result should be.

The mediation conference(s) will be confidential and limited to the parties and their representatives. Other persons may attend with the permission of the mediator and the other party.

The mediator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation conference in any adversary proceeding or judicial forum.

If the dispute is resolved, the mediator will assist the parties in preparing a written agreement to reflect the terms of the resolution for both parties to sign.

If the matter is not settled within a reasonable timeframe, normally within five (5) calendar days, of the initial mediation conference, the mediator will inform the Human Resources Management Director or other designated official that settlement has not occurred. This notification does not preclude the parties from continuing their efforts to resolve the grievance through mediation.

The mediator may share terms of the settlement agreement with the agency's designated officials who need to finalize and assist in implementing the agreement and with other agency employees on a need-to-know basis.

606 Procedures to File a Grievance

The grievance process for the Department of Social Services consists of three (3) primary step procedures as reflected in the following portion of this policy.

Step One

The grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action. If the Human Resources Management Director determines that the alleged adverse action is not covered by the Act, the grievant will be notified in writing by certified mail to the most recently provided home address within seven (7) calendar days from receipt of the grievance. The grievant will be informed in the notice that he/she may appeal to the State Human Resources Director at the Office of Human Resources.

If it is determined that the matter is grievable, within five (5) calendar days from the agency's receipt of the grievance, the grievant and the appointing authority are notified in writing that the grievance has been accepted and forwarded to a Deputy State Director, Executive Manager, State Director, or designee for necessary action. The Deputy State Director, Executive Manager or State Director assigned to the grievance will be referred to as the "Reviewer" hereinafter in the policy.

Mediation is offered along with the grievance notification. If selected by both parties, the agency's Human Resources Management Director will schedule a mediation conference within three (3) calendar days of receipt of the mediation request. The mediator, provided by the Human Resources Management Director, will assist both parties in facilitating a resolution. The mediation should be completed within five (5) calendar days of the initial mediation conference (see section 605 - Mediation).

Step Two

If the grievance is not settled in mediation or the parties do not participate in mediation, Step Two is initiated when the Human Resources Management Director forwards the grievance to the Reviewer or Designee. The grievant's notification is sent by certified mail to the most recently provided home address. The Human Resources Management Director or designee will forward the grievance request to the Deputy State Director. If there is a conflict of interest with the Deputy State Director regarding the grievance, the Human Resources Management Director will assign the request to another Deputy State Director, Executive Manager, or directly to the State Director.

The Reviewer may assign the grievance to another appropriate staff member to review the matter, gather information, and/or make a decision. The Reviewer's designee may not be an employee in either the Human Resources Management Division, the Office of General Counsel, or the division or area where the employee works. In addition, neither the reviewer nor his designee can be a person who was involved in the disciplinary action. This fact finding process may include, but is not limited to:

1. Copy of relevant documents from the employee's personnel file.
2. A chronological summary of employee's work history.
3. Copy of relevant policies and regulations pertaining to the grievance.
4. Written statements and/or interviews from employees or others involved.
5. A grievance position statement from the grievant that may include, but is not limited to, documents, witness statements for the grievant, relevant policies, and any other information the grievant desires the Reviewer or Designee to consider.
6. A grievance position statement from the appointing authority that may include, but is not limited to, documents, witness statements for the grievant, relevant policies, and any other information management desires the Reviewer or Designee to consider.

7. Any information and documents, including, but not limited to witness statements, records, position statements, that are provided by the grievant or management for the Reviewer or his designee's review must be exchanged at the same time with the other party.

8. All information must be provided to the Reviewer or Designee within the time frame established by the Reviewer or Designee.

If necessary, a non-adversarial fact-finding conference with the grievant and his representative and appointing authority may be scheduled by the Reviewer or Designee at the sole discretion of the Reviewer. The following guidelines will apply during any such conference:

- *Each individual may provide a limited presentation or position statement.
- *Testimony may not be made under oath and will not be recorded.
- *Cross-examination is not allowed by either party.
- *The grievant may be represented by counsel at the grievant's own expense.
- *The State Administrative Procedures Act does not apply to this conference.
- *The Reviewer may have a representative attend the conference to assist as needed.
- *Witness testimony is not allowed at this conference, although witness statements can be submitted by the parties at the conference.

The Reviewer or Designee will make a recommendation within twenty (20) calendar days following receipt of the grievance request. The recommendation will be presented to the State Director in writing, and a copy will be provided to the Human Resources Management Director. In addition, copies of all submitted documents from each party will be submitted to the Human Resources Management Director for the official grievance record.

Step Three

The State Director or Designee will review the recommended decision made in Step Two, and issue a final decision within fifteen (15) calendar days following receipt of the Reviewer/Designee recommendation. The final decision should be issued on the DSS Form 1449-2 Grievance and Appeal Form 2. The grievant and management will be notified in writing of the final agency decision. The grievant notification will be sent via certified mail to the most recent home address provided.

607 Notification of State Human Resources Appeal Procedures

A covered employee may appeal the decision of the State Director or Designee to the State Human Resources Director after all administrative remedies to secure relief have been exhausted. Such appeal must be in writing and submitted to the State Human Resources Director at the Office of Human Resources, South Carolina Budget and Control Board, within ten (10) calendar days following receipt of the decision of the agency or within fifty-five (55) calendar days after the employee files the grievance, whichever occurs later.

In the event the agency has not rendered a final decision within forty-five (45) calendar days of filing the grievance, the employee may appeal directly to the State Human Resources Director. Failure by the employee to comply with the time periods of the grievance procedure constitutes a failure to exhaust administrative remedies and waives the employee's rights to further continue the grievance.

GRIEVANCE PROCEDURE MODEL POLICY

(Revised and Effective 4/8/2013)

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

Introduction

The State Employee Grievance Procedure Act (Act) provides that each agency and department of State government shall establish an employee grievance procedure for covered employees which shall be reduced to writing and be approved by the State Human Resources Director. In addition, the approved grievance procedure must be made available to covered employees of the agency. Covered employee is defined as a full-time or part-time employee occupying a part or all of an FTE position who has completed the probationary period and has a "meets" or higher overall rating on the employee's performance evaluation and who has grievance rights. Instructional personnel are covered upon the completion of one academic year except for faculty at State technical colleges upon the completion of not more than two full academic years' duration. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This policy does not apply to non-covered employees (e.g., probationary employees, temporary employees, temporary grant employees, time-limited project employees, research grant employees and employees exempt from the State Employee Grievance Procedure Act).

Employees choosing to file a grievance or appeal must not be disciplined or otherwise prejudiced for exercising their rights or for testifying under the provisions of this policy.

Grievances and Appeals

As provided for in the Act, and defined in § 8-17-320 of the S.C. Code of Laws, a covered employee may file a grievance or an appeal concerning **only** the following employment actions:

- Terminations;
- Suspensions;
- Involuntary Reassignments in excess of thirty (30) miles from the prior work station;
- Demotions;
- Punitive Reclassifications but only when the agency, in case of a grievance, or the State Human Resources Director, in the case of an appeal, determines that there is

a material issue of fact that the action was solely done to penalize the covered employee. Reclassifications, reassignments, and transfers within the same state salary range are not considered to be grievable or appealable.

- Promotions in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. When an agency promotes an employee one organizational level above the promoted employee's former level, however, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered grievable or appealable;
- Salary Decrease based on performance as the result of an Employee Performance Management System (EPMS) evaluation; and
- Reduction in Force is considered as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.

Prior to Filing a Formal Grievance

Prior to filing a formal grievance, the covered employee may first attempt to resolve the matter informally with his immediate supervisor. This matter may be presented verbally or in writing. However, this is merely an informal attempt to resolve the matter and cannot be substituted for the requirements of Step One in the following procedure.

Procedure

Step One

A covered employee who wishes to file a grievance must initiate the grievance with the agency's Human Resources Office. The grievance must be in writing and must be received (or, if mailed, postmarked) within 14 calendar days of the effective date of the action or 14 calendar days from when the employee is notified of the action, whichever is later. The employee should include a written summary of the facts of the grievance and the relief sought.

The agency's Human Resources Director or other designated official shall initially review the grievance to determine whether the matter involves a grievance as defined by the Act. The agency's Human Resources Director or other designated official may conduct appropriate investigations and fact findings as he may consider necessary to make this determination. If it is determined that the matter is not grievable, the covered employee shall be so advised in writing by the Agency Director or a designee, normally within five (5) calendar days of receipt of the grievance. Such determination shall be a final decision within the agency which may be appealed to the State Human Resources Director.

Any initial determination by the agency's Human Resources Director or other designated official that the matter may be grieved shall only entitle the covered employee to have the matter

considered in accordance with this grievance procedure and shall in no way be construed to be an adjudication of the merits of the grievance.

If it is determined that the matter is grievable, the agency's Human Resources Director or other designated official will promptly schedule a conference to occur between the covered employee's next level supervisor and the covered employee, normally within five (5) calendar days of receipt of the grievance. At the conference with the covered employee's next level supervisor, the covered employee will have an opportunity to present his position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his next level supervisor's decision in writing within five (5) calendar days of the conference.

Step Two

To continue the grievance, the covered employee must notify the Agency Director or a designee in writing. The request to continue the grievance must be received (or, if mailed, postmarked) within five (5) calendar days after receiving the Step One decision. The Agency Director or a designee must promptly schedule and conduct a conference with the covered employee, normally within five (5) calendar days. The covered employee will be provided an opportunity at this time to present his position regarding the grievance. The Agency Director or a designee may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The Agency Director or a designee must advise the covered employee of the decision in writing within five (5) calendar days of the conference. This decision will be final within the agency.

Failure by the agency to issue a final decision within 45 calendar days from date the grievance is initially filed with the agency is considered an adverse decision.

General Information

Failure by the covered employee to comply with the internal time periods in the agency grievance procedure constitutes a failure to exhaust administrative remedies and waives the covered employee's right to further continue the grievance. The internal time periods of the agency grievance procedure and the 45 calendar day period for action by the agency may not be waived except by mutual written agreement of both parties.

The Act provides that a covered employee has the right during the grievance and appeal process to a representative, which may include legal counsel. If the covered employee chooses to exercise the right of legal counsel, it shall be at his expense.

Appeals to the State Human Resources Director

The Act also provides for an appeal of a grievance beyond the agency to the State Human Resources Director after **all** administrative remedies to secure relief within the agency have been exhausted. A covered employee has not exhausted administrative remedies to secure relief within the agency until the agency's internal grievance process is completed **or** the 45 calendar days provided for the agency to issue a decision has elapsed, whichever occurs sooner.

Any covered employee may appeal the decision of the Agency Director or a designee. Such appeal must be in writing and submitted to the State Human Resources Director within ten (10) calendar days of receipt of the agency's final decision or 55 calendar days from the initial date the grievance was filed within the agency, whichever occurs later. As to the 55 calendar days, the Act provides that a covered employee may appeal directly to the State Human Resources Director in the event the agency does not complete its entire internal grievance procedure within 45 calendar days from the time the grievance is initially filed within the agency. Failure by the agency to issue a final decision within this 45 calendar day period is considered an adverse decision and allows the covered employee to proceed with an appeal to the State Human Resources Director after 45 calendar days, but no later than 55 calendar days from the initial date the grievance was filed within the agency.

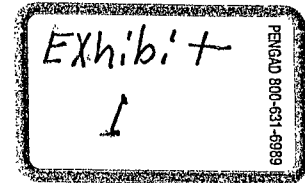
Failure by the covered employee to file an appeal within the time periods referenced in this section shall constitute a waiver of the right to appeal.

The time periods related to filing an appeal with the State Human Resources Director may not be waived.

Toolbox Option

As provided for in the State Human Resources Regulations, the following actions do not constitute a basis for a grievance or an appeal:

- a covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions and the covered employee can rescind such voluntary actions only if the agency head or the agency head's designee agrees;
- a covered employee who is promoted and subsequently demoted prior to serving six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a class with a lower salary range than the class in which the employee was serving prior to promotion;
- a covered employee who is promoted and subsequently receives a reduction in pay prior to completing six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to promotion;
- a covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities which justified the salary increase taken away prior to completing six months of service with the additional job duties or responsibilities, shall not have the right to file a grievance or an appeal concerning a salary reduction equivalent to the amount of the additional job duties or responsibilities increase.



Date: June 3, 2014

HAND DELIVERED

Henry Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman:

On April 15, 2014, you were issued an Employee Warning Notice of Substandard Performance. This notice listed some areas in which your job performance was deemed deficient. The notice further stated that you were being given forty-five (45) to fifty (50) days to improve your performance and the failure to satisfactorily do so would "... in a rating of 'Below Performance Requirements' and removal from the position." As stated in Chapter 5, Section 508(D) of the Human Resources Policies and Procedures Manual, *"[if] the employee is rated "unsuccessful" on any essential job duty or objective which significantly impacts performance as noted in the warning notice by the end of the warning period, the employee shall be removed from the position immediately (i.e., termination, reassignment, or demotion)."*

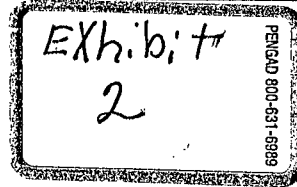
This letter is to inform you that you failed to satisfactorily improve your job performance during the specified time frame. Therefore, effective immediately, your employment with the Clarendon County Department of Social Services is terminated due to substandard job performance.

You will be required to return all agency equipment and property, including your ID card, to management before leaving the office today.

You may contact the Office of Human Resource Management at (803) 898-7315 regarding your possible grievance rights.

Sincerely,


Clarendon County Interim Director



Dwight C. Moore
Attorney at Law
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229
Office: (803) 778-6520
Fax: (803) 775-6365

E-Mail: moorelawfirm@ffc-i.net

June 12, 2014

Ms. Robin H. Layton
Clarendon County Interim Director
Clarendon County DSS
3 South Church Street
Manning, South Carolina 29102

Re: Henry Chapman
June 3, 2014 termination

Dear Ms. Layton:

Please be advised that I am representing Mr. Chapman in regard to the above-referenced matter.

Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014.

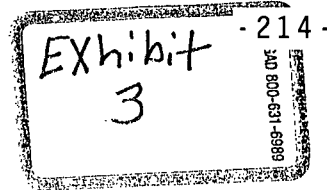
Please advise as to date and time as to any proceedings. With kind regards, I am

Sincerely yours,

Dwight C. Moore

DCM/ccs

Fax Send Report



ate/Time : JUN-20-2014 03:56PM FRI
ax Number : 8037756365
ax Name : MOORE LAW FIRM, LLC
odel Name : SCX-5835_5935 Series
achine Serial Number : Z2P3BJFCC0007FF

To. Name/Number	Start Time	Time	Mode	Page	Result
085 8038987176	06-20 03:54PM	00' 54	ECM	003/003	OK

MOORE LAW FIRM, L.L.C.
26 NORTH MAIN STREET
P.O. BOX 1229
SUMTER, SOUTH CAROLINA 29151
TELEPHONE NUMBER (803) 778-6520
FAX NUMBER: (803) 775-6365

FAX COVERSHEET

DATE: June 20, 2014
CASE NAME/NUMBER: *William Henry Chapman*

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Ms. B. Glenise Elmore
COMPANY: SC Department of Social Services
FAX: 803-898-7176
FROM: Crystal Stokes

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 3

COMMENTS: Please see attached

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (803) 778-6520 AS SOON AS POSSIBLE AND ASK FOR CRYSTAL.

CONFIDENTIALITY NOTICE: This information contained in this facsimile message may be attorney privileged and confidential and is intended only for use of the entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this transmission in error, please immediately notify us by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank you.

MOORE LAW FIRM, L.L.C.
26 NORTH MAIN STREET
P.O. BOX 1229
SUMTER, SOUTH CAROLINA 29151
TELEPHONE NUMBER (803) 778-6520
FAX NUMBER: (803) 775-6365

FAX COVERSHEET

DATE: June 20, 2014

CASE NAME/NUMBER: *William Henry Chapman*

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Ms. B. Glenise Elmore

COMPANY: SC Department of Social Services

FAX: 803-898-7176

FROM: Crystal Stokes

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 3

COMMENTS: Please see attached

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (803) 778-6520 AS
SOON AS POSSIBLE AND ASK FOR CRYSTAL.**

CONFIDENTIALITY NOTICE: This information contained in this facsimile message may be attorney privileged and confidential and is intended only for use of the entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this transmission in error, please immediately notify us by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank you.

Dwight C. Moore

Attorney at Law

26 North Main Street

P.O. Box 1229

Sumter, SC 29151-1229

Office: (803) 778-6520

Fax: (803) 775-6365

E-Mail: moorelawfirm@ffc-i.net

June 20, 2014

VIA U.S. MAIL, FACSIMILE, AND E-MAIL

Ms. B. Glenise Elmore
Employee Relations Director
Office of Human Resources
S.C. Department of Social Services
1535 Confederate Ave/Room 302
Columbia, South Carolina 29202

Re: William Henry Chapman Grievance

Dear Ms. Elmore:

Please find enclosed the DSS Form 1449 which you requested in the above-referenced matter. Please let me know if there is anything further required from us at this time. With kind regards, I am

Sincerely yours,

Crystal C. Stokes,
Paralegal to Dwight C. Moore

DCM/ccs
Enclosure

GRIEVANCE FORM

INSTRUCTIONS - TO BE COMPLETED BY GRIEVANT

Continue items on additional sheet of paper, when necessary. Enter continued comments to corresponding item number. Identify each additional sheet with employee's name: last, first and middle initial.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Original: Human Resources Director Copy: Grievant Copy: Submitted by Human Resources Division to Appointing Authority

Employee's Name: Last, First, Middle Initial Chapman, William H.		Job Title: Human Service Specialist 1	Contact Information:
County/Division: Clarendon County		Hire Date: August 2, 1992	Work Telephone:
Job Status: (Check one) ☒ FTE ☐ Temporary ☐ Temporary Grant		Home Telephone: 803-460-0267	
Home or Mailing Address: 214 Lantern Lane Manning, SC 29102			

1. Effective date of grievable action: June 3, 2014

2. Give a full explanation of the grievance/grievance action.

wrongful termination

3. Describe in detail the relief sought:

rehire or eligible for early retirement/severance pay

4. Please indicate below your mediation option by signing your name next to your selection:

I am interested in participating in the mediation process to resolve this matter. _____

I am not interested in participating in the mediation process to resolve this matter. _____

5. Print Employee's Name: William H. Chapman	Employee's Signature:	Date Signed: June 20, 2014
6. Human Resources Director's Signature:		Date Received in HRM:
		Date Signed:



Serving Children and Families

AMBER GILLUM
INTERIM STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

June 25, 2014

SENT VIA POSTAL & E-MAIL

Ms. Robin Holly Layton, County Director
Clarendon County DSS

Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman and Ms. Layton:

Per policy, the grievance for Mr. Chapman will be forwarded to the Reviewer or Designee to initiate Step Two of the grievance process. Voluntary mediation has failed at this time; however, the option remains open for both parties for the duration of the Agency grievance process.

In accordance with Chapter 6 (606), Procedure to File a Grievance, Step One, the grievance has been assigned to grievance reviewer, Ms. Leigh Bolick, Director of Child Care Service. Please send documents concerning this grievance to the reviewer by **Wednesday, July 9, 2014** at the following address:

Ms. Leigh Bolick, Director of Child Care Service
Department of Social Services,
Post Office Box 1520
Columbia, South Carolina 29202-1520
Phone: (803) 898-7134
Fax: (803) 898-7335

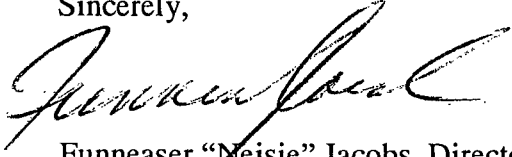
This information may be sent by mail, fax, or hand delivered. If sent by fax or mail, it is suggested that you call the above grievance reviewer and verify that the fax was received completely. If sent by mail, it is suggested that these documents be sent certified.

It is the responsibility of the parties concerned to determine the appropriate documents, statements, etc. to submit for review. Additionally, parties are required to exchange copies of all documents submitted for review.

Page 2

If you should have any questions regarding the above, please contact Ms. Kristen Johnson, Employee Relations Specialist at (803) 898-7147.

Sincerely,

A handwritten signature in cursive script, appearing to read "Funneaser Jacobs".

Funneaser "Neisie" Jacobs, Director
Human Resource Management

FNJ: j

cc: Mr. William Smith, Esq.
DSS Office of General Counsel

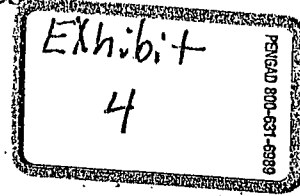
Moore Law Firm, LLC
Attn: Crystal Stokes, Paralegal
26 North Main St.
P.O. Box 1229
Sumter, SC 29151



Serving Children and Families

AMBER GILLUM
INTERIM STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR



July 7, 2014

E-mailed & Mailed

Ms. Leigh Bolick, Director of Child Care Service
Department of Social Services

JUL -9 2014

Dear Ms. Bolick:

The grievance process for the Department of Social Services consists of three (3) primary step procedures as reflected in the DSS Human Resources Policy and Procedure Manual Chapter 6 (606). Enclosed are the Grievance and Appeal forms for Mr. William Chapman.

The grievant or his/her representative and management may submit documentation to you during this process. Documents are to be submitted to you by both parties for your review no later than July 9th, 2014. As the grievance reviewer, you should conduct a fact finding process that is further outlined in Chapter 6 and provide a written recommendation for the State Director's consideration and final decision. Your recommendation, along with the grievance file and/or documents from each party, is due to the Human Resources Management Division no later than July 16th, 2014.

If you have any questions or need additional information, please contact Ms. Kristen Johnson, Employee Relations Specialist, at 803-898-7147.

Sincerely,

A handwritten signature in black ink, appearing to read "Funneaser Jacobs".

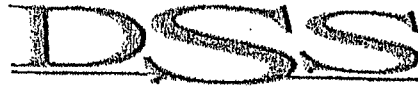
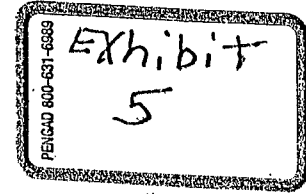
Funneaser "Neisie" Jacobs, Director
Human Resources Management Division

cc: Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

Moore Law Firm, LLC
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229

Ms. Robin Layton, County Director
Clarendon County DSS

Mr. William Smith, Esq.
DSS Office of General Counsel



Serving Children and Families

AMBER GILLUM
ACTING STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

July 25, 2014

SENT VIA CERTIFIED MAIL

Mr. William Chapman
214 Lantern Lane
Manning, SC 29102

Dear Mr. Chapman:

In reference to the grievance you filed, enclosed is the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form).

If you do not agree with this decision, you may appeal to the State Employee Grievance Committee through the Director of Human Resources at the Office of Human Resources, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223. This appeal must be in writing and made within ten (10) calendar days of receipt of this decision or within fifty-five (55) calendar days after the grievance was filed with the Agency, whichever occurs later.

Sincerely,

A handwritten signature in black ink, appearing to read "Amber Gillum".

Amber Gillum
Acting State Director

AG: kj

cc: Robin Layton, County Director
Clarendon County DSS

William Smith, Esq.
Office of General Counsel

Dwight C. Moore, Esq.
Moore Law Firm, LLC
P.O. Box 1229
Sumter, SC 29151

GRIEVANCE DECISION FORM

INSTRUCTIONS

Original: Grievant

Copy: Supervisor

Copy: Appointing Authority

Copy: Human Resources Director

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART, NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. NO PAST PRACTICES OR PROCEDURES, WHETHER WRITTEN OR ORAL, FORM ANY EXPRESS OR IMPLIED AGREEMENT TO CONTINUE SUCH PRACTICES OR PROCEDURES.

Employee's Name: Last, First, Middle Initial Chapman, William	Job Title: Human Services Specialist I	County/Division: Clarendon/Economic Services
---	--	--

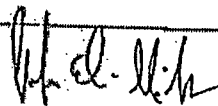
Decision:

I uphold the Agency's decision to terminate Mr. Chapman. I have fully reviewed all submitted information prior to rendering this decision.

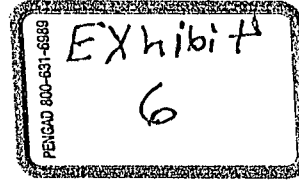
Date of Decision:

7/25/14

Signature of State Director:



Moore Law Firm, L.L.C.



Dwight C. Moore
Attorney at Law
26 North Main Street
P.O. Box 1229
Sumter, SC 29151-1229
Office: (803) 778-6520
Fax: (803) 775-6365
E-Mail: moorelawfirm@ffc-i.net

August 4, 2014

State Employee Grievance Committee
Director of Human Resources
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

Re: Termination of William Henry Chapman
Moore File No. 4136.4

To Whom It May Concern:

Please be advised that pursuant to this letter, I wish to appeal the decision handed down by Ms. Gillum on or about July 25, 2014.

Please refer all correspondence to the address indicated above. With kind regards, I am

Sincerely yours,

Dwight C. Moore

DCM/ccs

cc: Amber Gillum, SCDSS Acting State Director
Robin Layton, Clarendon County DSS County Director

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

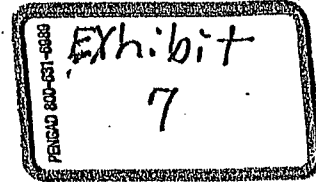
803-896-5300
FAX 803-896-5050

August 5, 2014

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR



Mr. Dwight C. Moore
Moore Law Firm, L.L.C.
Post Office Box 1229
Sumter, South Carolina 29151-1229

Re: William Henry Chapman v. South Carolina Department of Social Services

Dear Mr. Moore:

Concerning Mr. Chapman's appeal to the State Human Resources Director, please complete the enclosed form and return to our office within five (5) days of receipt. A rapid return of this form will ensure that Mr. Chapman's appeal is processed as quickly as possible.

Send the completed form to the Human Resources Division, Alternative Dispute Resolution Program, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223.

Sincerely,

Carrie Coats
Alternative Dispute Resolution Program

Enclosure

AUG - 5 2014

STATE EMPLOYEE GRIEVANCE PROCEDURE
STATE APPEAL FORM

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES.

EMPLOYEE'S NAME: _____

JOB CLASSIFICATION: _____

AGENCY: _____

HOME ADDRESS: _____
Street City State Zip Code

TELEPHONE: _____
Home Office

1. Has the employee completed twelve (12) months of satisfactory service with the state ? _____
2. What disciplinary action taken against the employee is being appealed? _____
3. Has the employee received a final decision from the agency? _____
4. What date did the employee receive the final decision? _____
5. If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure? _____

APPEAL

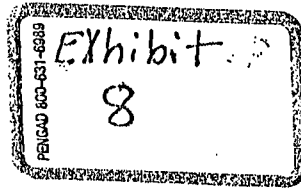
Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position (continue on additional pages if necessary):

Please specify the relief that the employee is seeking by this appeal (continue on additional pages if necessary):

Signature: _____ Date: _____
Employee or Representative

Return to: State Human Resources Director
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

FAX



SOUTH CAROLINA BUDGET AND CONTROL BOARD
HUMAN RESOURCES DIVISION

8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

Fax: (803) 896-5050
Phone: (803) 896-5300

TO: Mr. Dwight C. Moore DATE: 8/11/14
FAX: 803-775-6345 NO. OF PAGES: 2
PHONE: 803-778-6520 E-MAIL: moorelawfirm@fja-inc.com (including cover sheet)

FROM: Carrie Coats DEPARTMENT: ADR
PHONE: 803-896-5300 E-MAIL: _____

COMMENTS:

Mr. Moore,

Please find attached the State Appeal Form.

My apologies for the oversight in not including this last week.

Please call 803-896-5300 if you have any additional questions.

Carrie Coats

CONFIDENTIALITY NOTICE: This facsimile contains information from the SC Budget and Control Board's Human Resources Division which may be confidential or privileged. It is intended solely for the use of the individual or entity to whom it is addressed. If you are not the named addressee, you should not disseminate, distribute, or copy this facsimile. Please notify the sender immediately if you have received this facsimile by mistake and destroy all copies of the communication. Please note that any views or opinions presented in this facsimile are solely those of the author and do not necessarily represent those of the SC Budget and Control Board.

STATE EMPLOYEE GRIEVANCE PROCEDURE STATE APPEAL FORM

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES.

EMPLOYEE'S NAME: _____

JOB CLASSIFICATION: _____

AGENCY: _____

HOME ADDRESS: _____

Street

City

State

Zip Code

TELEPHONE: _____

Home

Office

1. Has the employee completed twelve (12) months of satisfactory service with the state? _____
2. What disciplinary action taken against the employee is being appealed? _____
3. Has the employee received a final decision from the agency? _____
4. What date did the employee receive the final decision? _____
5. If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure? _____

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position (continue on additional pages if necessary):

Please specify the relief that the employee is seeking by this appeal (continue on additional pages if necessary):

Signature: _____ Date: _____
Employee or Representative

Return to: State Human Resources Director
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

STATE EMPLOYEE GRIEVANCE PROCEDURE STATE APPEAL FORM

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES.

EMPLOYEE'S NAME: Nancy Chapman
 JOB CLASSIFICATION: Human Services Specialist I
 AGENCY: DSS
 HOME ADDRESS: 214 Lantana Ln Blowing Rock N.C. 29102
Street City State Zip Code
 TELEPHONE: 803 460-0267
Home Office

1. Has the employee completed twelve (12) months of satisfactory service with the state? yes
2. What disciplinary action taken against the employee is being appealed? termination
3. Has the employee received a final decision from the agency? yes
4. What date did the employee receive the final decision? July 28, 2014
5. If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure? _____

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position (continue on additional pages if necessary):

Agency decision is unfair based upon allegation used to base termination, employee had worked for agency for 22 yrs and had not have performance issues before, agency policy allowing for ~~along with termination~~ reassignment and well as demotion

Please specify the relief that the employee is seeking by this appeal (continue on additional pages if necessary): was full

Re-instatement

Signature: [Signature] Date: 8/11/14
Employee or Representative

Return to: State Human Resources Director
 Office of Human Resources
 8301 Parklane Road, Suite A220
 Columbia, South Carolina 29223

Form GC101-Revised 10/01/90

State Employee Grievance Procedure State Appeal Form

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE HUMAN RESOURCES DIVISION.

Employee's Name: Henry Chapman

Job Classification: Human Service Specialist I

Agency: Department of Social Services

Home Address		
Street:	214 Lantern Lane	
City:	Manning	
State:	South Carolina	
Zip Code:	29102	
E-mail Address:		
Telephone	Area Code	Number
Home:	803	460-0287
Office:		
Cell:		

- Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No
- What disciplinary action taken against the employee is being appealed? Terminated
- Has the employee received a final decision from the agency? ☒ Yes ☐ No
- What date did the employee receive the final decision? July 28, 2014
- If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position:

employee had worked for the agency for 22 years and had not had any performance issues before, agency policy allowing for reassignment and/or demotion, which if none was followed.

Please specify the relief that the employee is seeking by this appeal:

Mr. Chapman would like to be re-instated

Additional documents may be submitted by e-mail to the following address -- grievance@ohr.sc.gov -- or by mailing the documents to: Human Resources Division, 8301 Parklane Road, Suite A220, Columbia, SC 29223.

Form GC101-Revised 07/01/2005

Submit Appeal

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART, NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

Confirmation of State Appeal Form

The Office of Human Resources has received your State Employee Grievance Procedure State Appeal Form. A request will be made to the employing agency to send the documents relating to your appeal. All future correspondence sent to the Human Resources Division should be copied to the employing agency.

If you have any questions, you may call the Human Resources Division at (803) 896-5300.

Continue

RECEIVED

OCT 28 2015

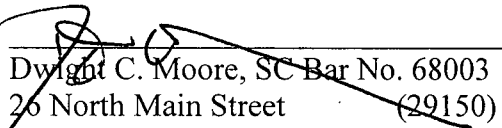
CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 27, 2015

MOORE LAW FIRM, L.L.C.


Dwight C. Moore, SC Bar No. 68003
26 North Main Street (29150)
Post Office Box 1229
Sumter, South Carolina 29151-1229
Telephone: (803) 778-6520
Fax: (803) 775-6365
Email: moorelawfirm@ftc-i.net
Attorney for Appellant