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FEB 23 2016

SC Court of Appeals

WRIT OF CERTIORARI

To South Carolina Supreme Court

From South Carolina Court Of Appeals

Case No. 2015-002088

Laurens Pediatric Clinic,

Appellant

v.

South Carolina Department Of Health And Human Services,

Respondent

WRIT OF CERTIORARI

WRIT OF CERTIORARI
to South Carolina Supreme Court

REF: LAURENS PEDIATRIC CLINIC, Appellant

v.

SC DEPARTMENT OF HEALTH AND HUMAN SERVICES, Respondent

S.C. Court Of Appeals- Appellate Case No. 2015-002088

1) Certification that petition for Rehearing/Reinstatement was denied

This case is about overpayment for Medicaid services rendered, seen in the Court Of Hearings and Appeals October 31, 2012, with judgement rendered by Chief Officer Mr. Robert French on January 25, 2015, in favor of SCDHHS. Appellant appealed pro se to SC Administrative Law Court, Judge Deborah Brooks Durden ruled in favor of SCDHHS on September 2, 2015.

The case was accepted for appeal by SC Court Of Appeals on October 14, 2015. On November 5, 2015, the case was dismissed for failing to serve a timely notice of appeal to the SC Administrative Law Court.

A Petition for rehearing / reinstatement of the case was denied by the SC Court Of Appeals on January 22, 2016. See enclosed copies.

2) Questions for review:

-Would a technical error, compromise my rights to seek justice, and sustain the following violations of law and/or Social Security Act rule 1893?

a)- Did Judge Durden while referring to charges of overpayment by SCDHHS failed to note that Medicaid violated Social Security Act 1893(5)(C)ii(II) and(D) as the letter with charges of overpayment did not offer a settlement option, nor was Appellant notified of the right to apply for hardship, in violation of rule 1893 (f)(1)(B)(i)(I) which says I should have been also offer an option for hardship as the amount of the overpayments exceeds ten percent?

b)- Did Chief Officer Mr. Robert French exceeded the 90 days limit to render judgement, with a ruling rendered two years, two months and twenty five days after the hearing held October 31, 2012, yet not sanctioned by Judge Deborah Brooks Durden?

c)- Did Judge Durden failed to recognize violation of Social Security Act 1893(f)(2)(a), when SCDHHS submitted a bill one day after the ruling from Chief Officer Robert French and was received by appellant one day before receiving the ruling, which is against

limitation of recoupment rules, and my civil rights to appeal?

e)- Did Judge Durden failed to sanction SCDHHS auditor Ms Cheryl Casey and Counsel Mr. Bruce Carter, who violated SC Code Of Law Title 16, Chapter 9 Section 16910 (A)(1); (A)(2) during the hearing held October 31, 2012?

f)- Did SC Administrative Law Court allowed a technical error from SCDHHS to proceed without dismissing the case against Respondent, when they did not forward timely their response to Appellant?

3) Argument

This case began with an audit held in November 2011 by SCDHHS at my office. 40 records were requested but after 8 hours only 29 could be fully scanned due to the abundance of documentation. I received a detailed claim report on February 2011, along with a letter that included many office visits demoted to a lower CPT code despite adequate documentation and false accusations of procedures billed without documentation. An informal hearing was held in March 2011, at SCDHHS. I presented copies of the original record for each instance audited. I was told that due to time restrains I could not discuss one by one the cases and that my notations with internal review, as well as copies of office notes would be reviewed by the auditor. A letter followed on May 16, 2012, asking to pay \$11,149.99 (27% of that paid), which included again multiple errors of judgement from the auditor despite the over 1,000 pages of documentation. Accepting the judgement in its totality is forcing me to reimbursed services well rendered, documented, and billed. I was only offered the option of appeal. I appealed pro se to the Office Of Hearings and Appeals. I had written on my request for appeal that I had done an internal audit and the total error in coding was \$1,601.19 (4% of that paid). An independent auditor, mediator or settlement, were never offered to me, and a hearing was held on October 31, 2012. It was during this hearing that the auditor Ms Cheryl Casey and Counsel for SCDHHS Mr. Bruce Carter gave false testimony and gave fabricated evidence. They said a form HcPro was used as scoring sheet for the audit. I objected to this form, as I had never seen it, not even at the informal hearing. They testified it was used for the audit and in the first case discussed by SCDHHS against me, an unnamed, undated (for date of encounter) form was attached to the office note, (it also lack date of completion and signature of person completing it). So was the case with 6 other cases which add to the totality of their evidence. When the Officer Robert French asked counsel if the form was used as basis for the audit, he answered yes. Officer French proceeded to request copies, which they agreed to also sent me. Three weeks later, I received the originals for review and commentary from Mr. French, never received copies from SCDHHS. The forms now had name and date of service even for the same patient encounters presented in the hearing unnamed, undated. I noted the forms had no signature of person filling them nor date of completion. I pointed out to

Officer Mr. French, that the forms did not reflect instances in which the auditor had made changes from February 2012 detailed claim report, to that of May 2012. The case went idle. Fifteen months later, the hearing Officer French requested all records from SCDHHS, and 1,400 pages were sent by e-mail, and he wanted me to review them. He was violating his own court rules for introduction of evidence (which had to be presented at the time of the hearing in 8 1/2 x 11 paper with copy to Officer and other party, to which I complied but SCDHHS only presented seven office visits without a copy to me. Yet Officer French allowed the copies to be made during a break in the hearing held October 31, 2012. To this new request to accept e-mailed records I objected, and my objection was accepted. (See on Appendix the Appendix 1 of the Appellant's Brief to SC Administrative Law Court). In 2013, I qualified for the Affordable Care Act Enhanced Payment to match what Medicare providers earn. I had not received any such payment for the entire year 2014. After multiple e-mails and complaints to SCDHHS, on January 14, 2015, having repeatedly been told the payment could not be issued for computer issues, I advised Jon Tapley (SCDHHS), that they will be audited by IG (Inspector General). That afternoon SCDHHS agreed to pay me from January 2014 to September 2014, telling me the amount was a little over \$40,000 and that it will be paid by January 23, 2015. On January 21, 2015 I received an e-mail that the amount will be delayed until January 30, 2015. On January 25, 2015 (a Sunday), Officer Robert French renders a ruling on the case, which is mailed certified on January 26, 2015. On January 27, 2015 SCDHHS mailed me, by regular mail a bill for the amount of the judgment \$11,149.99, which I received on Thursday January 29, 2015. At that time I had not received the ruling yet, and I called objecting about this bill as it was wrong to send it when the ruling was in process, and I felt it illegal as I had the right to receive the judgment first. (violation Social Security Act 1893 (f)(2)(a)). On January 30, 2015, I received the judgement in favor of SCDHHS for the amount above mentioned. (See on enclosed Appendix the Appendix 2 of the Appellant's Brief to SC Administrative Law Court).

I appealed to SC Administrative Law Court. I called the attention of the court when the time to render a rebuttal was on the limit, as I had not received the Respondent's Brief yet; but the court accepted a bogus excuse from Counsel for SCDHHS, who claimed left it at the mail room to be delivered. SCDHHS had not mailed me their response after 30 days, thus forcing me to ask for a Motion Of Stay in order to receive the response and submit a rebuttal. Judge Deborah Durden followed with a final ruling in favor of SCDHHS, failing to see violations of rule 1893 from Social Security Act, lack of judgment of the auditor (demoting to lower CPT code despite documentation, enforcing screening codes in cases that were very sick and correctly coded, claiming lack of justification of procedures despite records presented in evidence with clear documentation, completed itemized internal audit), and disregarding false testimony and fabricated evidence introduced by SCDHHS during the hearing of October 31, 2012. Judge Durden of SC Administrative Law Court also ignored that Officer French repetitiously claimed I had not presented medical citations to sustain the medical decision, which is a complete

absurdity, since by Pediatric residency training of which I graduated in 1986, and American Board Of Pediatrics certification since 1988, I am more than qualified to render such medical decision. I am Fellow Of the American Academy Of Pediatrics, licensed in three states (South Carolina, North Carolina, Georgia, and Puerto Rico), and have a clean record at the National Medical Data. I was appealing to SC Court Of Appeals when inadvertently I failed to timely serve notice to SC Administrative Law Court and the case was dismissed on November 5, 2015. On January 22, 2016, a petition for rehearing/ reinstatement was denied by SC Court Of Appeals.

4)Conclusion:

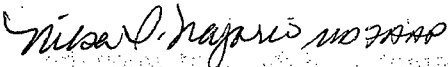
South Carolina Title 18, 1985 Act No 100 Section 3 states that in the event of conflict between any provision of the SC Rules Of Civil procedure and any statutory provisions as to practice and procedure not repealed in this act, the provision of the rules should control. However, neither the promulgation of the rules nor this act may be construed to affect the substantive legal right of any party to any civil litigation in the courts of this State but shall affect only matters of practice and procedure.

The appellant is going pro se and hopes a technicality will not hinder the chances to seek justice. I ask of the court leniency to continue the case on its merits.

I was unable to find comparable cases of this court to cite. Many cases were dismissed on technicalities, and of those reviewed, none dealt with reversal of dismissal based on technicality, on cases represented pro se.

Thus, I respectfully ask this honorable court to allow the case to proceed in appeal, revoking the order from SC Court Of Appeals dated January 22, 2016.

Sincerely,



Nilsa I. Nazario, M.D. F.A.A.P.

PO Box 1367, Laurens, SC 29360

Tel. (cellular) 864-483-0234

February 18, 2016

PS. Enclosed is fee of \$100.00, and 6 copies of this Writ Of Certiorari, as well as Appendix with two copies

cc. Evan Gessner, Counsel SCDHHS,
Clerk Of Court for SC Court Of Appeals

The South Carolina Court of Appeals

Laurens Pediatric Clinic, Appellant,


v.

South Carolina Department of Health and Human
Services, Respondent.

Appellate Case No. 2015-002088

ORDER

Appellant has filed a petition to rehear the dismissal of its appeal. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing.¹ Accordingly, the petition is denied.



Thomas E. Huff J.
U. Ke J.

¹ See Rule 203(b)(6), SCACR (stating an appellant must serve the notice of appeal from a decision of the ALC on all parties and the ALC within thirty days of receipt of the decision); Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal* under Rules 203 and 227 may be extended" (emphasis added)); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (explaining service of the notice of appeal is a jurisdictional requirement, and the appellate courts have no authority to extend the time in which the notice must be served).

Stephan P. McDonald J.

Columbia, South Carolina

cc: Laurens Pediatric Clinic (Nilsa I. Nazario)
Evan Markus Gessner, Esquire
Jana E. Shealy

FILED
1 22 16

November 10, 2015

SC Court Of Appeals
Clerk Of Court
P.O. Box 11629
Columbia, S.C. 29211

Laurens Pediatric Clinic -Appellant
v.
SCDHHS -Respondent

Trial Court Case No. 2015ALJ080109AP

Petition for Rehearing

To the Clerk Of Court:

I hereby request to reinstate appeal of this case. I received on November 9, 2015 the Court Order of dismissal filed 11/05/2015 (see enclosed copy).

I had served all parties Notice Of Appeal but inadvertently missed the mail on time for SC Administrative Law Court. This is the reason for dismissal, however, I request reconsideration from the court as this will eliminate my chances to appeal the ruling of Honorable Judge Deborah Brooks Durden issued September 2, 2015.

I apologize for any inconvenience to the court, I work as a solo practitioner in rural South Carolina, and I will do my best to comply with the court rules.

Sincerely,

Nilsa I. Nazario, M.D., F.A.A.P.
P.O. Box 1367
Laurens, S.C. 29360-1367

PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SOUTH CAROLINA
Administrative Law Court

Trial Court Case No. 2015ALJ080109AP

Laurens Pediatric Clinic

Appellant

v.

South Carolina Department Of Health And Human Services

Respondent

This is to certify that I sent copy of the Petition For Rehearing, along with copy of Court Dismissal Of Case Order, and copy of this proof of service to the Respondent and S.C. Administrative Law Court, by US postal service priority mail, signature confirmation on November 10, 2015.

November 10, 2015

Nilsa I. Nazario, M.D., F.A.A.P.
P.O. Box 1367
Laurens, S.C. 29360-1367

cc. Mr. Evan Gessner
Counsel SCDHHS
1801 Main St. Suite 1100
Columbia, S.C. 29201-8206

SC Administrative Law Court
Clerk Of Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, S.C. 29201

The South Carolina Court of Appeals

Laurens Pediatric Clinic, Appellant,

v.

South Carolina Department of Health and Human
Services, Respondent.

Appellate Case No. 2015-002088

The Honorable Deborah Brooks Durden
Trial Court Case No. 2015ALJ080109AP

ORDER

Appellant has failed to timely serve the notice of appeal on the Administrative Law Court, as required by Rule 203 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claus Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Nilsa I. Nazario
Evan Markus Gessner, Esquire
Jana E. Shealy

FILED

CS 11-05-2015

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To South Carolina Supreme Court

From South Carolina Court Of Appeals

Case No. 2015-002088

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SC Court of Appeals

Laurens Pediatric Clinic,

Appellant

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South Carolina Department Of Health And Human Services,

Respondent

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WRIT OF CERTIORARI

I hereby certify that the petition for writ of certiorari dated February 18, 2016 was mailed by US Postal service to SCDHHS Counsel Mr. Evan Gessner, and SC Court Of Appeals Clerk Of Court on February 20, 2016.

February 20, 2016



Nilsa I. Nazario, MD, FAAP

Mr. Evan Gessner-SCDHHS Counsel
1801 Main St. Suite 1100
Columbia, SC 29201-8206

SC Court Of Appeals Clerk Of Court
PO Box 11629
Columbia, SC 29211