

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

**RECEIVED**

OCT 04 2018

**SC Court of Appeals**

Appellant Case No. 2018-001502  
Case No. 10-ALJ-08-0387-AP

Pee Dee Health Care, P.A., ..... Respondent,

v.

South Carolina Department of Health and  
Human Services, ..... Appellant.

**RESPONSE TO RETURN TO MOTION TO DISMISS**

Respondent submits the following Response to the Return to the Motion to Dismiss filed by Appellant South Carolina Department of Health and Human Services ("DHHS").

The South Carolina Supreme Court's ruling in *Spalt v. S.C. Dep't of Motor Vehicles*, 423 S.C. 576, 585, 816 S.E.2d 579, 584 (2018) controls:

If there was any doubt remaining after *Charlotte-Mecklenburg*, we now clarify that when a party seeks review of an order of the ALC—pursuant to section 1-23-380 or section 1-23-610—the court of appeals will not entertain an appeal from an order that leaves "some further act which must be done."

*Id.*

The remand of the Administrative Law Court (ALC) plainly requires that “some further acts” must be done by DHHS. Judge Lenski rejected DHHS’s application of Medicare caps to limit the amount of reasonable and related costs used in calculating the Medicaid rate to which Appellant is entitled under the federal Benefits Improvement and Protection Act of 2000 (BIPA). Judge Lenski correctly explains, the Medicare cap methodology, which DHSS continues to use after the enactment of BIPA<sup>1</sup>, “ignores the fact that the plain language of the statute never mentions any limits or caps-it only mentions 100 percent of reasonable costs. This Court agrees with Judge Currie-the plain language of the statute clearly forecloses the use of a rate cap that would reduce reimbursement below the RHC’s reasonable costs.” Order p. 18.

Judge Lenski concludes “because the Department has not been using a PPS calculation method consistent with any options listed in Section 1396a(bb)(2), it is not possible to determine what a correct calculation would be and whether the Department’s APM would be equal or higher than that number.” *Id.* Judge Lenski remanded this case to the Department for a ruling by the Division of Appeals and Hearings with the following instructions:

The exclusive issue before the Department is whether to apply option one or option two for the calculation of reasonable costs and the enunciation of test compliant therewith. The Department shall then calculate the reimbursement due to the Appellant for the period at issue.

Order p. 20-21

The remand ordered by the ALC is not only to determine the type of calculation, but also to enunciate the test compliant therewith. Appellant concedes that the “the enunciation of [a] test,” per the ALC order, might move the issue on remand beyond that a mere calculation. Appellant Reply at 7. Thus, the order is not an appealable final judgement, and an appeal is

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<sup>1</sup> Respondent PDHC does not concede that DHHS computed the pre-BIPA rate correctly as suggested in Appellant’s Memorandum at p. 3.

improper at this time. Respondent requests the appeal of Appellant SC Department of Health and Human Services be dismissed.

Respectfully submitted,

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October 4, 2018

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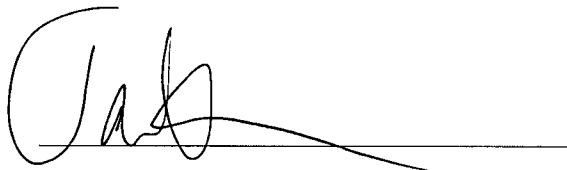
South Carolina Department of Health and  
Human Services, .....

Appellant.

**CERTIFICATE OF SERVICE**

The undersigned certified that the above motion(s) was served on the undersigned by  
deposition the same in the United State Mail, first class postage:

Kenneth P. Woodington  
Davidson & Lindemann, P.A.  
P.O. Box 8568  
Columbia, South Carolina 29202-8568



October 4, 2018.

October 4, 2018

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
1220 Sumter Street  
Columbia, SC 29201

**Re: Pee Dee Health Care, P.A. v. South Carolina Department of Health  
and Human Services.  
Appellant Case No. 20818-001502**

Dear Ms. Abbott Kitchings:

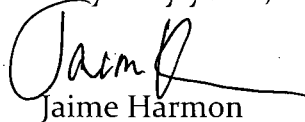
Enclosed for filing, please find the original and seven (7) copies of the Response to Return to Motion to Dismiss in the above-referenced matter. Please file the original and return a clocked-in copy to our courier.

By copy of this letter and as evidenced on the attached Certificate of Service, I am serving counsel of record with the same.

If you have any questions, please do not hesitate to contact this office.

With best regards, I am

Very truly yours,



Jaime Harmon  
Assistant to James M. Griffin

/jh  
Enclosures

cc: Kenneth P. Woodington (Via U.S. Mail)  
Dan Westbrook (Via U.S. Mail)