STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Docket No. 19-ALJ-18-0047-AP

Case No. 2019-001835

Alonzo Jeter, III, ... APPELLANT,

SOUTH CAROLINA DEPARTMENT OF
SOCIAL SERVICES . . . . . RESPONDENT.

INITIAL BRIEF OF APPELLANT

Alonzo C. Jeter, III

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

APPELLANT / Prose

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STATEMENT OF THE CASE

Appellant pled guilty to the crime of possession of less than a gram of methamphetamine or cocaine base, 1st offense, on October 12, 2004. This crime was in violation of S.C. Code Ann. § 44-53-375(A).

Appellant had not ever before in his lifetime applied or received Supplemental Nutrition Assistance Program (SNAP) Food Stamp benefits, nor was he receiving them at the time of the conviction.

In 2011, Appellant applied for and received (SNAP) Food Stamp benefits from the period of December of 2011 until sometime in 2013. On or about December 9, 2013, Appellant contacted the Cherokee County Department of Social Services because a zero balance remained on his SNAP EBT card and was notified that he was denied and determined to be ineligible to receive SNAP benefits.

Appellant then went to the Cherokee County office of DSS seeking to rectify the matter and was told that he was being denied SNAP benefits because he had a drug conviction on his record that occurred after August 22, 1996. Appellant requested to speak with someone about the matter and the caseworker arranged a telephone call in which Appellant spoke with higher authority in the DSS' Columbia office while using the Cherokee County Department of Social Services' office phone located in its lobby. Appellant was told by higher authority that there was nothing that could be done because he did have a drug conviction on his

record that occurred after August 22, 1996.

On or about December 15, 2013, Appellant received two letters from the DSS. The first letter, dated December 11, 2013, was titled OVERPAYMENT DEMAND LETTER (ROA pg. 5) and the second letter dated December 12, 2013, was titled DENIAL (ROA pg. 6). The Overpayment Demand Letter stated, "This overpayment has been classified as client error. The reason for the overpayment is [Appellant] plead guilty to a felony drug conviction in 10/2004." (ROA. pg. 5). The Denial Letter stated, "Your application for SNAP benefits... has been denied because you were convicted of a controlled substance abuse violation that occurred after August 22, 1996." (ROA pg. 6).

In 2018, Appellant became aware that the denial did not apply to him because he did not have a felony drug offense, but rather his drug offense was a misdemeanor offense. Subsequent to this discovery, Appellant wrote letters to Greenville County DSS, Cherokee County DSS and when no response was received from these offices Appellant wrote to the South Carolina Department of Social Services' Office of Individual and Provider Rights. (ROA pgs. 1, 3, 7).

The Office of Individual and Provider Rights replied by letter wherein it acknowledged it received Appellant's letter requesting a hearing on August 13, 2018. (ROA pg. 9). The letter also stated that Appellant's appeal for a Fair Hearing must have been requested within 90 days of the notice of adverse action, and records reflect that the Overpayment Demand letter was sent to Appellant on or about December 11, 2013. Based on this the Office

of Individual and Provider Rights deemed Appellant's request to have the debt cancelled as untimely and dismissed the case. S.C. Code Ann. Regs. 114-130(H) (Supp. 2012) was also cited within the letter which states, "A party whose case has been dismissed may request reinstatement of the case if he/she can show good cause. Such request must be made within ten (10) days of the dismissal." An Order To Dismiss from the Office of Administrative Hearings was included as attachment with the letter. (ROA pg. 10).

Appellant then filed a motion to reinstate case to the Office of Administrative Hearings, pursuant to S.C. Code Ann. Regs. 114-130(H), wherein he requested reinstatement of his case and opportunity to dispute and have the debt cancelled. (ROA pg 14).

The Office of Administrative Hearings submitted its letter of final decision, dated November 5, 2018, wherein it acknowledged receipt of Appellant's motion for reinstatement of case and stated, "Unfortunately, we are unable to hear your case because it is outside the timeframe allowed for appeal requests." (ROA pg. 22)

Appellant then filed a Notice of Appeal to the South Carolina Administrative Law Court (ALC) seeking to appeal the final decision of the Department. (ROA pg. 24).

After reviewing briefs presented by both sides, the Honorable S. Phillip Lenski, Administrative Law Court Judge, issued his decision on September 20, 2019. The ALC affirmed the Department's determinations in its Final Order. (ROA pg. 123) Appellant's motion for Rehearing was also denied by the ALC. (ROA pg. 133)

This appeal follows.

STANDARD OF REVIEW

See S.C. Dep't of Corr. v Mitchell, 377 S.C. 256, 258, 659 SE2d 233, 234 (Ct. App. 2008) ("section 1-23-610 of the South Carolina Code sets forth the standard of review when the court of appeals is sitting in review of a decision by the [Administrative Law Court (ALC)] on an appeal from an administrative agency."); S.C. Code Ann. §1-23-610(B) ("[This] court may not substitute its Judgment for the Judgment of the [ALC] as to the weight of the evidence on questions of fact."); id. (providing when reviewing an ALC decision, "[T]he court of appeals may reverse or modify the decision the substantive rights of the Appellant have been prejudiced because the finding, conclusion or decision is: (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").

ARGUMENTS

I The ALC did err in affirming the decision of the Department which deemed Appellant's request for a fair hearing as untimely.

The federal food stamp program, also known as SNAP (Supplemental Nutrition Assistance Program) is a program of the United States Department of Agriculture. Strable v Commissioner of Social Sec. Admin., 2010 wl 5139008. State agencies, not the federal government, administer the food stamp program. Jackson v Jackson, 857 F.2d 951, 953 (4th Cir. 1988). The Department of Social Services is the designated state agency responsible for administration of the U.S. Department of Agriculture's SNAP program. S.C. Code Regs. Ann. § 114-1300; Strable.

Respondent maintains, however, that it is not allowed to allow Appellant a hearing and opportunity to dispute the Department's claims. Respondent basis its determination upon the South Carolina Regulation Codes, S.C. Code Ann. Regs. 114-180(C)(1)(a) which states:

> "Request for hearing must be filed with the caseworker or OAH... within ninety (90) days of notice of the adverse action for Food Stamps."

(ROA pgs. 9, 10, 22, 36)

Respondent also declines to simply cancel or waive the $3,400 debt which the Department has placed against Appellant for the past SNAP benefits he had received. (ROA pgs. 1-7).

The OAH has the authority to dismiss a request for hearing when the request for hearing is not timely filed. S.C. Code Ann.

Regs. 114-130(H)(1)(a). When Appellant was informed by the Department in December, 2013 that he was denied and determined to be ineligible to receive SNAP benefits and would also be placed in debt for past benefits he'd received, Appellant went to the Cherokee County Office of the Department. There Appellant's case worker stated that Appellant was being denied SNAP benefits because he had a drug conviction on his record that occurred after August 22, 1996. Appellant seeking to grieve the matter, requested to speak with someone about the matters. Appellant's case worker at that time arranged a telephone call wherewith Appellant spoke with higher authority of the Cherokee County Department of DSS, by use of the Cherokee County DSS' office telephone in its lobby. Appellant was told that there was not a way to rectify the matter because he did have a drug conviction on his record that occurred after August 22, 1996.[1]

The Code of Federal Regulations 7 C.F.R. 273.15 requires and sets the standards for the state's fair hearing procedures. The Department totally failed the Appellant in his fair hearing rights as it was clear to the Department and higher authority that Appellant desired to present his case to a higher authority as he expressed his grievance. Although Appellant's request was oral it did not lessen his rights. See S.C. Code Ann. Regs. 114-130(B)(1); 7 C.F.R. § 273.15(i)(1); 7 C.F.R. § 273.15(h).

> "A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired." 7 C.F.R. 273.15(h).

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[1] The ROA contains no documentation of this visit to the Cherokee County DSS office. Appellant submitted a designation of matter to be included in the record on appeal to the ALC. This was Granted by the ALC, however, Respondent did not provide this documentation because DSS does not keep records for SNAP Benefits more than 3 years after inactivation. 7 USCA § 2020 (ROA pgs. 101, 111)

Before, during, and after the telephone call in which the Cherokee County DSS arranged to higher authority, the Appellant should have been advised that he maintained the right to a fair hearing. Appellant should have been advised that the phone call to higher authority was not actually the fair hearing and the process and procedures necessary to start the hearing process should have been invoked at that time while Appellant was in the Cherokee County DSS office as he was clearly grieved at the results of both conversations and determinations.

> "Upon request, the state agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare a hearing. Upon request, the state agency shall also help a household with its hearing request. If a household makes an oral request for a hearing, the state agency shall complete the procedures necessary to start the hearing process. Households shall be advised of any legal services available that can provide representation at the hearing." 7 C.F.R. 273.15 (i). See also 7 C.F.R. 273.15 (i)(2)

See also 7 C.F.R. 273.15 (f) which states as follows:

> "At any time the household expresses to the state agency that it disagrees with a state agency action, it shall be reminded of the right to request a fair hearing. If there is an individual or organization available that provides free legal representation, the household shall also be informed of the availability of that service."

Cherokee County DSS' actions of placing phone call to higher authority in its lobby whereby Appellant spoke to higher authority and was never informed he maintained fair hearing rights where in fact confusing and coercive actions.

The Code of Federal Regulations prohibits such actions as it is clear that this is in violation of Appellants' rights to DUE Process guaranteed by the United States Constitution, and the spirit of the fair hearing rights.

See 7 C.F.R. 273.15(j)(2) and also 7 C.F.R. 273.15(h) which states as follows:

> "The state agency is prohibited from coercion or actions which would influence the household or its representative to withdraw the household's fair hearing request. The state agency must provide a written notice to the household within 10 days of the household's request confirming the withdrawal request and providing the household with an opportunity to request a hearing. The written notice must advise the household it has 10 days from the date it receives the notice to advise the state agency of its desire to request or reinstate the hearing."

Appellant also emphasizes that he was also experiencing a mental breakdown during this time, which further shows the Cherokee Department's DSS' disregard and failure to begin the proper procedures necessary to start the hearing process as Appellant exhibited clear expressions, stress, and grievance which should have prompted the Department to do so.[2] The anxiety and stress resulting from this matter also subsequently and ultimately resulted in Appellant being admitted to a Psychiatric Hospital. (See ROA pgs 81-88; Cf. ROA pgs. 5, 6 dates)

Appellant did request his desire for a fair hearing timely and it was failure of the Department to grant Appellant's request. However, arguendo, for the sake of argument, Appellant provides the "good cause" as required by S.C. Code Ann. Regs. 114-130(H)(2) which would allow Appellant's case to be reinstated when "good cause" is shown.

S.C. Code Ann. Regs. 114-130(H) was purposefully put in place specifically for unprecedented and unique cases and situations such as the case at bar wherein irregularities exists.

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[2] See Appellant's Exhibit-A- which contains records of Appellant's admission to emergency room, hospital, and Psychiatric Hospital. (ROA pgs 81-88).

As Appellant provided "good cause", S.C. Code Ann. Regs. 114-130(H), provides an avenue to open the doors of equity in the Department's discretion. It is both ethical and equitable that the Department would consider and accept Appellants "good cause" which is meritorious, novel and complex.

The ALC did err in affirming the decision of the Department declaring Appellant's request for a fair hearing as untimely and this determination should be reversed by this Court, as Appellant also shows the Department clearly made a mistake in interpreting its own eligibility rules and guidelines and in-turn erred in deeming Appellant as ineligible to receive SNAP benefits. (Discussed further Infra).

Moore v Moore, 376 S.C. 467, 657 SE2d 743 (2008) – "Procedural" [d]ue process requires (1) Adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses."

South Carolina Dept. of Social Services v Beeks, 325 S.C. 243, 481 SE2d 703 (1997) - Due process is a flexible concept, and the requirements of due process in a particular case are dependant upon the importance of the interest involved and the circumstances under which the deprivation may occur.

This Court should reverse the decision of the ALC as substantive rights of the Appellant have been prejudiced because the finding, conclusion or decision is clearly error. S.C. Code Ann. § 1-23-610(B).

II The ALC did err in affirming the decision of the Department which deemed Appellant ineligible to receive SNAP food stamp benefits.

President Clinton, through Congress, enacted the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") in 1996 (PL 104-193 (HR 3734) August 22, 1996 (110 stat 2105)). This was part of the "tough on drugs" initiative of the 1990's and the drug felony provision was intended as a punitive measure, in an effort to combat the "war on drugs".

As part of the "PRWORA", 21 USCA § 862a(a) was enacted to bar persons convicted of drug offenses from being able to receive SNAP food stamp benefits for the rest of their lifetime. This is also the same statute in which the Department relied upon to deem Appellant ineligible to receive SNAP benefits and it states as follows:

> (a)
> In general
> An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has an element the possession, use, or distribution of a controlled substance (as defined in section 802(B) of this title) shall not be eligible for...
>
> (2) Benefits under the food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977.

21 USCA § 862a(a).

The Department stated in its conversations and notices to Appellant that Appellant had a controlled substance violation conviction on his record that occurred after August 22, 1996. (ROA pgs. 5, 6). This determination was based upon 21 USCA § 862a(d)(2) which determined

21 USCA § 862a(a) to be inapplicable to convictions occurring on or before August 22, 1996 as it states:

> Subsection (a) shall not apply to a conviction if the conviction is for conduct occurring on or before August 22, 1996.

21 USCA § 862a(d)(2).

There was also enacted a statute which allowed states to "opt out" of this lifetime ban on convicted drug offender. There was enacted 21 USCA § 862a(d)(1)(a) which provides:

> A state may by specific reference in a law enacted after August 22, 1996, exempt any or all individuals domiciled in the state from the application of subsection (a).

21 USCA § 862a(d)(1)(a).

Although South Carolina did not decide to "opt out" by specifically referencing this in a law, South Carolina legislature saw that there was no need at the time to make a specific reference as the reference was implied and existed within the statute when it considered and deemed the specific controlled substance violation, S.C. Code Ann. §44-53-375(A), in which Appellant was convicted of, a misdemeanor and not a felony conviction.

CRIME CLASSIFIED AS FELONY AT TIME OF CONVICTION

Appellant pled guilty on October 12, 2004, to the crime of possession of Crack 1st Offense, in violation of S.C. Code Ann. §44-53-375(A). At the time of Appellant's conviction in October 2004, this crime in which Appellant pled guilty was classified as a felony offense. (See Sentencing Sheet, ROA pg. 103).

Criminal Docket Report (CDR) codes were developed and are used to provide an administrative shortcut. However, they were never intended to replace statutory law. See State v Bennett, 375 SC 165, 650 SE2d 490 (2007); Carter v South Carolina Dept. of Corrections, 2015 WL 6742102; Robinson v Mauney, 2008 WL 5158223.

The CDR Code for the crime which Appellant pled guilty in October 2004, was CDR code 100. The Criminal Docket Report reflects that the crime was classified as a Class F Felony. See Sentencing sheet bearing CDR Code 100 (ROA pg. 103) and Criminal Docket Report associated with the CDR Code 100 (ROA pg. 105).

Respondent argues that because this crime was classified as a felony, Appellant was ineligible to receive SNAP food stamp benefits when he applied in 2011 when he applied for and did receive benefits.

Appellant disagrees with this determination of Respondent and will show this Court why such argument fails.

LACK OF SAVINGS CLAUSE IN ACT

Appellant was not receiving SNAP food stamp benefits nor had he ever in his life applied for SNAP food stamp benefits at the time he pled guilty to the crime of possession of crack 1st offense in 2004.

Subsequent to Appellant's October 2004 plea, the crime to which Appellant pled guilty to was reclassified by the South Carolina General Assembly and deemed a misdemeanor crime. This reclassification of this crime and

statute S.C. Code Ann. §44-53-375(A) came by way of 2005 Act No. 127, §5 and became effective on June 7, 2005.

The Respondent and ALC both does acknowledge that since "[Appellant's] conviction, the crime defined by 44-53-375(A) of the S.C. Code of Laws became a misdemeanor." (ROA pg 109, 125, 106).

See S.C. Code Ann. §44-53-375(A) (2005 Supp.) which states:

> "A person possessing less than one gram of methamphetamine or cocaine base as defined in Section 44-53-110, is guilty of a misdemeanor."

The South Carolina General Assembly chose to reclassify and designate the crime as a misdemeanor and this crime was placed in this appropriate misdemeanor catagery by the Code Commissioner.

Washington v South Carolina, 2008 WL 2844853 (D.S.C.) - Pursuant to S.C. Code Ann. §2-13-66 (2005), the Code Commissioner is "to place crimes and offenses in the appropriate category as established by the General Assembly." "The Code Commissioner is specifically prohibited from changing the designation by the General Assembly of any crime or offense from felony to misdemeanor or from misdemeanor to felony and is likewise prohibited from changing the number of years of any sentence set by the General Assembly".

S.C. Code Ann. §16-1-20 - Code commissioner has no discretion in classifying an offense as misdemeanor or Class A, B, or C felony; Kurtz v State - Classification of offenses is merely a ministerial duty. 630 SE2d 472

Although South Carolina did not decide to "opt out" of the lifetime ban placed on drug offenders whom had been convicted of crimes classified as felony drug crimes, the South Carolina General Assembly did reveal its intent in those regards as it reclassified the crime making it a misdemeanor conviction.

When the statute, S.C. Code Ann. §44-53-375(A) was amended by way of 2005 Act No. 127, §5, the South Carolina General Assembly did not include a Savings Clause within this Act.

This is extremely significant and clearly reveals legislative intent regarding the matter and case at bar. By viewing the overall amendments made to South Carolina's Drug Laws, it is revealed that the South Carolina Legislature intended to exercise equity and to display its awareness that not all whom are convicted of drug offenses would be treated harshly and made to suffer devistating collateral consequences. In interest of the evolving standards of decency, the South Carolina Legislature declined to include a Savings Clause in the 2005 Act. See i.e., Boston College Law Review, 58 BCLR 1659, November 2017 - Changing Welfare as we know it, Again: Reforming the Welfare Reform Act to provide all drug felons access to food stamps; See also United States v Nesbeth, CIA No. 1-15-CR-00018-FB, 188 F. Supp. 3d 179 (2016), 2016 WL 3022073 - There is a broad range of collateral consequences that serve no useful function other than to further punish criminal defendants after they have completed their court-imposed sentences.

The South Carolina Legislature's choice not to include a savings clause within the 2005 Act is certainly revealing and clearly illuminates legislative intent in this regard.

This Court must consider the purpose in a Saving Clause. A Savings Clause is "[a] statutory provision exempting from coverage something that would otherwise be included. A saving clause is generally used in a repealing act to preserve rights and claims that would otherwise be lost." Blackslaw Dictionary 10th Edition.

See 22 C.J.S. Criminal Law §29 (1989) (general rule is that repeal of a criminal statute without a savings clause ends prosecution and punishment).

Dorsey v U.S., 567 U.S. 260, 132 Sct 2321 (2012) - "Repeal," as used in the general saving statute, which provides that a new criminal statute that repeals an older criminal statute shall not change the penalties incurred under that older statute unless the repealing act shall so expressly provide, applies when a new statute simply diminishes the penalties that the older statute set forth.

Dorsey, SUPRA - The general saving statute, which provides that a new criminal statute that repeals an older criminal statute shall not change the penalties incurred under that older statute unless the repealing act shall so expressly provide, permits Congress to apply a new act's more lenient penalties to pre-act offenders without expressly saying so in the new act.

Allen v Grand Central Aircraft Co., 347 US 535, 74 Sct 745 (1954) - The precise object of the general savings statute is to prevent the expiration of a temporary statute from cutting off appropriate measures to enforce the expired statute in relation to violations of it, or of regulations issued under it, occurring before its expiration.

In Contrast, see 2010 Act. No. 273, §38, whereby S.C. Code Ann. §44-53-375(A) was amended and wherein the Act did include a savings clause. The Savings Clause states as follows:

> Savings Clause
> Section 65. The repeal or amendment by the previsions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

The 2005 Act contains no savings clause and therefore Appellant was released from the penalty of the lifetime ban of SNAP feed stamp benefits and liabilities.

Argersinger v Hamlin, 407 US 25, 92 Sct 2006 (1972) - How state criminal offenses should be classified is largely a state matter. See also, Lynn McClenden, 2013 WL 2732899 - Congress gave flexibility to the State legislature to define what constitutes a drug felony for SNAP purposes.

The Department and ALC's determination in this regard must be reversed as the lack of a savings clause within the 2005 Act did infact allow Appellant eligible to receive SNAP feed stamp benefits when he applied for and did receive in 2011.

III The ALC did err in affirming the decision of the Department which placed debt upon Appellant for past amount of SNAP benefits received.

The Department's claim for overpayment must be deemed an invalid claim and terminated pursuant to 7 C.F.R. 273.18 (e)(a); 7 C.F.R. 273.18 (b)(2); 7 C.F.R. 273.18 (b)(3). There in-fact was no overpayment to Appellant because he did not receive a SNAP feed stamp benefit amount greater than to which he was entitled nor was he ineligible. Pursuant to S.C. Code Ann. Regs. 114-1010 (B)(3) - An overpayment occurs when an assistance payment is made in an amount greater than that to which the recipient is entitled, or when an assistance payment is made to an ineligible recipient.

There was no overpayment as it is clear that the agency erred in deeming Appellant as ineligible to receive SNAP benefits.

Arguendo, even if this was an error, it would be an agency error. See S.C. Code Ann. Regs. 114-1010(B)(3)(e) which states, "The agency waives collection of overpayments from a recipient when the overpayment was caused wholly or partially by agency error."

S.C. Code Ann. Regs. 114-1010(B)(3)(6) describes what constitutes Client error. "Client error is "where the client withheld information because of misunderstanding or incapacity." See also S.C. Code Ann. Regs. 114-1010(B)(3)(f), "The agency waives collection of overpayments resulting from client error, where fraud does not exist, and the overpayment does not result in the recipient's becoming ineligible for financial assistance.

ADMINISTRATIVE CONSENT AGREEMENT

Appellant has never agreed that he owed or that he would reimburse any amount which the Department deemed that was owed. Appellant never signed nor was he ever offered to sign an Administrative Consent Agreement (ACA). Appellant filed with the ALC a Designation of Matter to be Included in the Record on Appeal and this was Granted. However, Respondent did not provide an ACA signed by Appellant for the Record. Respondent admits that Appellant never signed an ACA. (ROA pgs. 61, 110). The Respondent also cites no authority which would

declare that the Department did not have to present Appellant an ACA, which is a document that serves as a contract of agreement and understanding.

Respondent submitted a Motion To Amend Record On Appeal to the ALC on September 3, 2019, which was Granted. Within its Supplemental Records, Respondent included Directive Memo D97-53 of the Department, dated May 19, 1997.

Respondent seems to argue that this Directive Memo D97-53 excuses Respondent's error in failing to present Appellant with an ACA. Appellant disagrees and will show the Court why Respondent's argument in this regard fails.

Appellant shows the Court that this Directive Memo D97-53 is simply what it claims to be; a memo. This Memo is subordinate to rules, regulations and legislation. This memo cites no legislation or statutes which would deem the ACA unnecessary and the Respondent also fails to cite any authority. Respondent also fails to submit for the Record a waiver which would permit the state not follow federal regulations in regards of this matter and the SNAP Food Stamp Program (FSP), in accordance with S.C. Code Ann. Regs. 114-1300.

See also S.C. Code Regs. Ann. 114-1395 - "When the requirements of the State and federal regulations are not in agreement, the requirements of the federal regulations shall prevail.

The Department's failure to present an ACA to Appellant also deprived Appellant of an Administrative Disqualification

Hearing (ADH), as provided for in S.C. Code Ann. Regs. 114-180(D).

See S.C. Code Ann. Regs. 114-180(D)(2)(a) - A hearing can be requested by either the client or a claims worker or other authorized departmental representative when the client refuses to discuss the issue or declines to sign an Administrative Consent Agreement (ACA), wherein the client accepts the Department's determination of disqualification and agrees to reimburse the over issuance of benefits, if any.

See also S.C. Code Ann. Regs. 114-180(D)(1) - The Purpose of these hearings is to determine whether the client willfully intended to deceive the department and to impose a disqualification if such intent is found.

This failure demonstrates the Departments inconsistancies. Also, if the Department would have performed the proper procedure by presenting Appellant the ACA, this would have given Appellant as well as the Departmet further opportunity for certainty regarding Appellant's wish for fair hearing and any other appeals.

Appellant and the Departmet would have also been presented with opportunity to request an (ADH) hearing.

As Appellant does in fact cite proper and sufficient authority regarding this matter and Respondent fails to cite any authority or or basis, the ALC's decision regarding this issue and matter must be reversed as it is clearly in error. S.C Code Ann. §1-23-610(B); ROA pgs. 78, 79, 110). S.C. Code Ann. Regs. 114-180(D)(1), (2)(a).

IV The ALC did err and abuse its discretion in denying Appellant equitable opportunity to file a Reply brief, thereby violating Appellant's rights of Due Process.

ALC Rule 37(A) provides, "the appellant may file a Reply Brief within ten (10) days after the respondent's brief is filed."

In the case at bar, Respondent filed its brief on September 3, 2019[3] and Appellant received copy of Respondent's brief via the Tyger River Correctional Institution mail room on September 11, 2019. (ROA p. 115).

Appellant filed a Motion to Dismiss / Motion for Summary Judgment on August 1, 2019. (ROA pg. 96) This motion was based on the Respondent's failure to timely file and serve its brief and Respondent's failure to comply with the ALC's Order dated July 1, 2019, wherein Respondent was ordered to provide for the record the matter which was designated by Appellant.

While Appellant's Motion to Dismiss / Motion for Summary Judgment was still pending, Respondent filed a Motion To Amend Record On Appeal and Motion To File Brief Late. (ROA pg. 100). Appellant received copy of this Motion along with the attached Brief of Respondent and supplemental records which Respondent sought to be amended to the Record On Appeal, on September 11, 2019. (ROA pgs 100-115).

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3 The ALC deems the Brief of Respondent filed according to the date which exists on the post mark stamp affixed upon the envelope which contained the Brief of Respondent due to conflicting dates and statement in Proof of Service. (ROA pgs. 101, 113-115; ALC Rule 4B)

Appellant then filed a Return To Motions To Amend Record On Appeal And To File Brief Late on September 16, 2019. (ROA pg. 116). Appellant specifically stated within his Return that he opposed the Respondent's Motion To Amend Record On Appeal and Motion To File Brief Late. Appellant also provided specific and meritorious reasons why he opposed, stating specifically inter alia, Respondents failure to comply with ALC Rules in failing to timely file its brief and motions.

The ALC ultimately issued a Final Order on September 20, 2019, whereby the Department's motions to amend the record on appeal and to file brief late were granted and the Department's decision was affirmed. (ROA pg. 123). Appellant received copy of Final Order on September 23, 2019, via the Tyger River Correctional Institution mail room. (ROA pg. 131).

As Appellant's Motion to Dismiss / Motion for Summary Judgment was still pending at this time, it was ultimately ruled on by way of a blanket denial which was included in a footnote within the Final Order as it stated, "Numerous motions were filed in this matter. All motions not specifically addressed in this Order are deemed denied." (ROA pg. 125).

Appellant subsequently filed a Motion for Rehearing on September 25, 2019, seeking rehearing and reconsideration of the ALC's Final Order. (ROA pg. 127). Appellant specifically stated within his Motion for Rehearing that pursuant to Rule 34, SCALC, subsection (B) - Appellant's Motion to Dismiss which was filed on August 1, 2019, should have stayed the time limit for filing his Reply Brief until the Motion to Dismiss

was decided by the court.

The ALC issued it's Order Denying Appellants' Motion For Rehearing on October 16, 2019. (ROA pg. 132). Within this Order, the ALC makes the following unreasonable determination:

> "Additionally, the Appellant argues that pursuant to ALC Rule 34, his Motion to Dismiss / Motion for Summary Judgment should have stayed the time limit for the Appellants brief. However, in this case, the Appellant filed his Appellants Brief with the court on June 20, 2019, and filed a Motion to Dismiss / Motion for Summary Judgment with the court on August 2, 2019. Therefore, this argument is without merit." (ROA pg. 132)

This determination and reasoning of the ALC was in fact in violation of constitutional or statutory provisions, made upon unlawful procedure, affected by other error of law, clearly erroneous in views of the reliable, probative, and substantial evidence on the record, and arbitrary or capricious and characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appellant clearly stated that he did not receive equitable opportunity to file a Reply brief. The ALC only considered the Appellants opportunity to file his initial brief. The ALC errs, violates Appellants Due Process rights, and abuses its discretion as stay, which is mandated by ALC Rule 34, regarding Appellants Motion to Dismiss / Motion for Summary Judgment which was filed on August 2, 2019 is not considered and

equitable time to file Appellant's Reply brief is not given. Rule 34(B) of SCALC specifically states as follows in relevant portion:

> "Effect of Motions upon Time Limits...
> A motion to dismiss an appeal... shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided. The time limits shall resume from the date of an order deciding the motion." (Rule 34(B), SCALC).

Furthermore, in the Note to 2016 Amendments, this is clarified even further as the note states as follows:

> "The Rule has been amended by adding subsection (B) which provides that motions (other than motions to dismiss or motions to be relieved as counsel) do not stay the time limits imposed by these Rules for filing the record on appeal and briefs. For those motions which do stay the time limits, the time frames for perfecting the appeal resume from the date of the order deciding the motion. The subsection is based upon SCACR 240(b)."

Simply put, Appellant's Motion to Dismiss / Motion for Summary Judgment should have been decided upon by the court and the Appellant given time thereafter this decision upon the motion for opportunity to file a Reply brief.

As the ALC issued a Final Order wherein within the Order Appellant's motions to Dismiss were ruled

or by blanked denial, Final Order signed and dated September 20, 2019, which Appellant did not receive a copy of until September 23, 2019. . .

It is clear that the ALC erred and it is a clear abuse of discretion. Ellis v Davidson, 358 SC 509, 595 SE2d 817 (2004) - For purposes of abuse of discretion standard of appellant review, an abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support.

Rule 501, SCACR, Code of Judicial Conduct, Canon 3, provides as follows:[4]

> "A Judge must perform Judicial duties impartially and fairly. A Judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the Judiciary into disrepute."

Bias of the ALJ was clearly displayed as there was no Judicial notice taken of Appellants motions to Dismiss in either instance, nor Appellants Return to Respondt's Motion to Amend the Record on Appeal and Motion to File Brief Late. These filings were all based on meritorious grounds. As Rule 501, SCACR, makes plain, SUPRA, disrepute comes as Appellant is held to strict ALC Rules but Respondent is not.

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[4] Administrative law Judges are not officers of the unified Judicial system. By statute, they are, however, subject to the requirements of this code. SC Code Ann. §1-23-560.

CONCLUSION

Based on the foregoing reasons the ALC's decision must be reversed, as the ALC did err and abuse its discretion. The Appellant respectfully requests the determinations of the Department and ALC be reversed.

Respectfully submitted,

Alonzo C Jeter, III
APPELLANT/Pro se

Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

Enoree, South Carolina

December 3, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Docket No. 19-ALJ-18-0047-AP

Case No. 2019-001835

Alonzo Jeter, III, ... APPELLANT,

v

SOUTH CAROLINA DEPARTMENT OF
SOCIAL SERVICES, ... RESPONDENT.

CERTIFICATE OF COMPLIANCE

I, Alonzo C. Jeter, Pro se, hereby certify the Initial Brief of Appellant is filed in compliance with Rule 211(b), SCACR.

S/
Alonzo C. Jeter, III
APPELLANT/Pro se

This 3rd day of December, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Docket No. 19-ALJ-18-0047-AP

RECEIVED
DEC 09 2019
SC Court of Appeals

Case No. 2019-001835

Alonzo Jeter, III, ... APPELLANT,

V

SOUTH CAROLINA DEPARTMENT OF
SOCIAL SERVICES, ... RESPONDENT.

CERTIFICATE OF SERVICE

I, Alonzo C. Jeter, III, hereby certify that I have served the Initial Brief of Appellant, Certificate of Compliance, Designation Of Matter To Be Included In The Record On Appeal, Record On Appeal, Certification of Counsel Regarding Record On Appeal, Motion For Leave To File Less Than The Required Amount of Copies, upon Respondent by depositing the same in the United States Mail, postage prepaid, by and through the interagency mail room at Tyger River Correctional Institution on this 4th day of December, 2019, addressed as follows: Chad A. Mitchell, Esq., SCDSS Office of General Counsel, PO Box 1520, 1535 Confederate Avenue, Columbia, SC 29202.

S/

Alonzo C. Jeter, III
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

SWORN and Subscribed before me
this 4 day of Dec., 2019

Notary Public for South Carolina
My Commission Expires: Dec. 16, 2024

December 4, 2019

Alonzo C. Jeter, III
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

The Honorable Jenny Kitchings
Clerk, SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Alonzo Jeter, III, v SCDOSS
Appellate Case No. 2019-001835

Dear Honorable Clerk:

Enclosed, please find for filing the Initial Brief of APPELLANT, CERTIFICATE OF COMPLIENCE, DESIGNATION OF MATTER, RECORD ON APPEAL, CERTIFICATION OF COUNSEL REGARDING RECORD ON APPEAL, MOTION FOR LEAVE TO FILE LESS THAN THE REQUIRED AMOUNT OF COPIES, and CERTIFICATE OF SERVICE for the same.

Please also find enclosed one (1) additional copy of these said documents along with self addressed stamped envelopes. Please return to me file-stamped copies of these said documents by way of the provided SASE.

Thank you for your assistance in this matter.

Sincerely,

Alonzo C Jeter, III
APPELLANT / Pro se

cc: Chad A. Mitchell, Esquire
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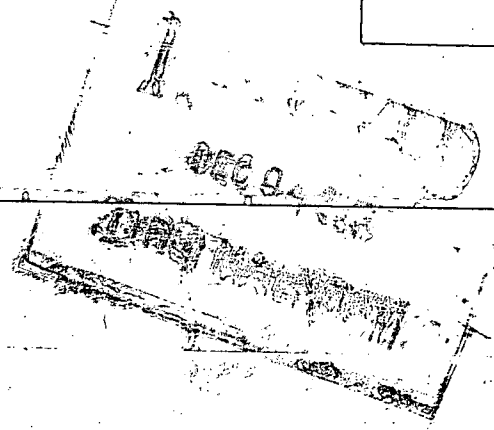

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LEGAL MAIL

Alonzo Jeter