

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 19-ALJ-04-0240-AP
Appellate Case No. 2019-001627

Nathaniel Johnson, #211574.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISS APPELLANT'S APPEAL WHERE APPELLANT'S CLAIMS DID NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST?

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of Nathaniel Johnson (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). On February 28, 2019, Appellant filed a Step 1 grievance regarding medical co-payment fees. On March 13, 2019, SCDC denied the Step 1 grievance. Thereafter, on March 14, 2019, Appellant filed a Step 2 grievance appealing the disposition of his Step 1 grievance. On April 15, 2019, SCDC denied the Step 2 grievance, and Appellant appealed to the Administrative Law Court. On September 16, 2019, Administrative Law Judge Shirley C. Robinson dismissed Appellant’s appeal. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner 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.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL WHERE APPELLANT'S CLAIMS DID NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST.

The ALC's jurisdiction to hear inmate appeals of final decisions by the South Carolina Department of Corrections is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the supreme court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, the South Carolina Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); Slezak v.

S.C. Dep't of Corr., 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC “may summarily dismiss those appeals that do not implicate an inmate’s *state created* liberty or property interest”) (emphasis added).

SCDC interprets Slezak as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. Additionally, the South Carolina Court of Appeals has interpreted Slezak to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge of the ALC “should” dismiss the appeal. Skipper v. S.C. Dep't of Corr., 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

Here, Appellant challenges the constitutionality of SCDC’s policy which authorizes SCDC to charge inmates a co-payment fee for any routine or emergency medical care and consultation services initiated by the inmate. See Appellant Brief. The ALC does not have the authority to rule on the constitutionality of agency policy. See Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue, 342 S.C. at 39, 535 S.E.2d at 645 (2000) (explaining a party should seek a declaratory judgement in circuit court rather than going before an ALJ if the issue is the constitutionality of a statute.) See also Hendricks v. S.C. Dep't of Corr., 385 S.C. 625, 628, 686 S.E.2d 191, 193 n. 3(2009) (The ALC was correct to abstain from determining the constitutionality of SCDC Policy GA-01.03.).

Appellant also requests reimbursement of medical co-payment fees because he is entitled to free healthcare under S.C. Provision 37.16 authorized under Part 1(b) of the 2005-06 Appropriation Act. However, the act states, in pertinent part, “[t]he Department of

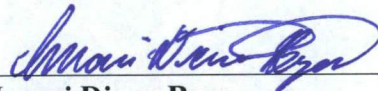
Corrections shall be authorized to charge inmates a nominal fee for any medical treatment or consultation provided at the request of or initiated by the inmate.” As the above cases show, this appeal does not implicate a state created liberty or property interest. Appellant’s issues are not related to his sentence, sentence related credits, nor are they related to a punishment from a disciplinary hearing. Moreover, Appellant’s appeal does not demonstrate treatment that is atypical from normal prison life. See Sandin v. Conner, 515 U.S. 472, 515 S.Ct. 2293 (1995). Therefore, because no state-created liberty or property interest is implicated in this case, Judge Robinson’s September 16, 2019 dismissal of this appeal was proper. R. pp. 1-3.

CONCLUSION

The Administrative Law Court’s decision below is supported by substantial evidence and is neither effected by legal error nor clearly erroneous in view of the whole record. Thus it should be upheld.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
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March 24, 2020

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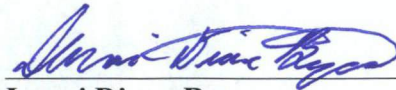
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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March 24, 2020