

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2019-001835

Alonzo Jeter, III

Appellant,

v.

South Carolina Department of Social
Services,

Respondent.

INITIAL BRIEF OF RESPONDENT

Chad A. Mitchell, Esq.
P.O. Box 1520
Columbia, SC 29202-1520
Telephone: (803) 898-7617
Email: chad.mitchell@dss.sc.gov
Attorney for Respondent

Alonzo C. Jeter, III
U-7-101/#282902
Tyger River Correctional Institution
200 Prison Road
Erioree, SC 29335
Appellant, *pro se*

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STATEMENT OF THE ISSUES ON APPEAL

- I. The ALC did not err in affirming the decision of the Department which deemed Appellant's request for a fair hearing as untimely.

- II. The ALC did not err in affirming the decision of the Department which deemed Appellant ineligible to receive SNAP food stamp benefits.

- III. The ALC did not err in affirming the decision of the Department which placed debt upon Appellant for past amount of SNAP benefits received.

- IV. The ALC did not err nor abuse its discretion in denying Appellant equitable opportunity to file a Reply brief, thereby violating Appellant's rights of Due Process.

STATEMENT OF THE CASE

This matter was before the South Carolina Administrative Law Court (ALC or court) pursuant to the notice of appeal filed by Alonzo Jeter, III (Appellant) with the court on March 1, 2019. The appellant appealed the final decision of the Office of Administrative Hearings of the Department of Social Services (Respondent or Department) dismissing his request for a hearing to appeal an overpayment of Supplemental Nutrition Assistance Program (SNAP) benefits, as untimely.

On May 8, 2019, the Department filed a Motion to Dismiss due to the Appellant's untimely request for a hearing. On May 9, 2019 the Department filed the Record on Appeal (ROA). On May 9, 2019, the Appellant filed a Motion to Dismiss pursuant to ALC Rule 38, requesting judgment in favor of the Appellant and for the court to resolve his appeal adversely to the Department for the Department's failure to comply with the ALC Rules of

Procedure. On May 22, 2019, this court issued an Order denying the motions to dismiss and directing the parties to file briefs. Subsequently, on May 22, 2019, the Appellant filed another motion to dismiss pursuant to ALC Rule 38 for failure to comply with the Rules. On June 6, 2019, the Appellant filed a motion for designation of matters to be included in the ROA and to supplement the record with his mental health records. On June 20, 2019, the Appellant filed his brief. On June 25, 2019, the Department filed a reply to the Appellant's motions, requesting the court deny the Appellant's motions.

On July 1, 2019, the court issued an Order granting the Appellant's motion for designation of matters to be included in the ROA and denying the Appellant's motion to supplement the record with his mental health records. On August 2, 2019, the Appellant filed a motion to dismiss or motion for summary judgment. On September 3, 2019, the Department filed motions to amend the ROA, to file brief late, and the Respondent's brief. In its motion to amend the ROA, the Department requested that a Department Directive dated May 19, 1997 and the contents of the Department's Disqualification/Ineligibility Folder for the Appellant be included in the ROA. On September 16, 2019, the Appellant filed a response to the Department's motions requesting the court deny the Department's motions and dismiss the appeal with an adverse ruling against the Department and in the Appellant's favor.

ARGUMENTS

I. The ALC did not err in affirming the decision of the Department which deemed Appellant's request for a fair hearing as untimely.

The Department sent the Appellant an Overpayment Demand Letter (X) dated December 11, 2013, informing him that he had received an overpayment of SNAP benefits in the amount of \$3,400 for the period November 2011 through March 2013. The reason the Department asserted it had overpaid the Appellant was because the Appellant had pled guilty to a felony drug conviction in October 2004 (X) and therefore was not eligible to receive SNAP benefits. The letter informed the Appellant that the Department may reduce his overpayment if it determined that the Appellant is unable to repay the amount. (X) The Appellant did not appeal the Department's determination or request a hearing until August 13, 2018, over four years after receiving the Overpayment Demand Letter. (X) S.C. Code Ann. Regs. 114-180(C)(1)(a) mandates that "(r)equst(s) for hearing must be filed with the caseworker or OAH (Office of Administrative Hearings) ... within ninety (90) days of notice of the adverse action for Food Stamps." Pursuant to this the Department dismissed the Appellant's request for a hearing on September 5, 2018 in an Order to Dismiss. The Appellant then filed a Motion to Reinstate Case on September 19, 2018. The Department denied this motion on November 5, 2018.

II. The ALC did not err in affirming the decision of the Department which deemed Appellant ineligible to receive SNAP food stamp benefits.

The Appellant argues that the Department erred in determining that he was ineligible to receive SNAP benefits and therefore should be entitled to a hearing on the overpayment of

SNAP benefits due to his ineligibility. The Department argues that it did not err in determining that the Appellant was ineligible to receive SNAP benefits and therefore is authorized to demand reimbursement for the overpayment. The reason the Department asserted it had overpaid the Appellant was because the Appellant had pled guilty to a felony drug conviction in October 12, 2004 (X) and therefore was not eligible to receive SNAP benefits.

In accordance with 21 U.S.C § 862(a)(2) individuals who were convicted of a drug related felony after August 22, 1996 are ineligible to receive SNAP benefits. On October 12, 2004, the Appellant pled guilty to Possession of Crack-First in violation of S.C. Code § 44-53-375(A) (See sentencing sheet), **which at the time of the Appellant's conviction was a felony.** (Subsequently, effective June 7, 2005, the crime defined by S.C. Code §44-53-375(A) became a misdemeanor.) (SCDSS ineligibility folder contains the Sentencing Sheet, Cherokee County Judicial Index, CDR Codes from 2004 and CDR codes after the law change in 2005) In 2011, the Appellant applied for and started to receive SNAP benefits from November 2011 through March 2013. In 2013, the Department became aware of the Appellant's ineligibility to receive SNAP benefits due to his felony drug conviction. The Department terminated his benefits, and on December 11, 2013, made a demand for repayment. The Appellant failed to request a fair hearing within 90 days of receiving the overpayment demand letter. Substantial evidence supports the Department's decision in this matter. Furthermore, the Appellant's arguments do not provide a basis upon which the court may reverse the Department's determination in that he was ineligible to receive SNAP benefits.

III. The ALC did not err in affirming the decision of the Department which placed debt upon Appellant for past amount of SNAP benefits received

The Department is authorized to demand reimbursement for the overpayment. 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. DSS decided that it would attempt to collect error claims established after the enactment of PRWORA in August 22, 1996. In The SCDSS Directive Memo dated May 19, 1997, the agency's position is that "All agency error claims established after August 23, 1996 must be collected."

IV. The ALC did not err nor abuse its discretion in denying Appellant equitable opportunity to file a Reply brief, thereby violating Appellant's rights of Due Process.

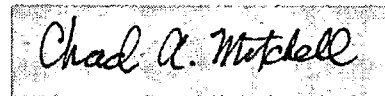
The ALC issued its final order on September 20, 2019. The Appellant filed a reply brief and a motion for rehearing on September 25, 2019. The ALC had the opportunity to consider the Appellant's Reply Brief and ruled on his motion for rehearing. Thus, the Appellant's rights of Due Process were not violated.

CONCLUSION

All crimes have consequences. As for this Appellant, his drug felony to which he pled guilty in 2004 had the consequence of making him ineligible for SNAP benefits. Whether the Appellant knew that or not, does not change his eligibility. He applied for SNAP benefits in 2011 and initially received benefits. When the Respondent discovered that the Appellant was ineligible, they demanded repayment of the benefits. Under the law, the Respondent is allowed to do this. The Appellant, did not appeal that decision when he first became aware of it and should not be allowed to 4 years after the fact. The Respondent respectfully asks that this appeal be dismissed.

March 20, 2020

Respectfully submitted,



E-sign @1:08 p.m. on 3/20/2020

Chad A. Mitchell

P.O. Box 1520
Columbia, SC 29202-1520
Telephone: (803) 898-7365
Email: chad.mitchell@dss.sc.gov
Attorney for Respondent

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South Carolina Department of Social Services,
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SC Court of Appeals

CERTIFICATE OF SERVICE

I certify that I have served the Respondent's Initial Brief, Respondent's Designation of Matter, Letter Requesting Late Filing due to COVID-19, and Certificate of Service on Alonzo Jeter, III and the Clerk for the Court of Appeals by depositing a copy of it in the United States Mail, postage prepaid, on March 24, 2020. In addition, I have sent an electronic version of the above via email to the Clerk of the Court of Appeals.

Alonzo C. Jeter, III
U-7-101/#282902
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

Chad A. Mitchell

E-sign @3:00 p.m. on 3/23/2020

Chad A. Mitchell
P.O. Box 1520
Columbia, SC 29202-1520
Telephone: (803) 898-7617
Email: chad.mitchell@dss.sc.gov
Attorney for Respondent

DSS SOUTH CAROLINA
DEPARTMENT of SOCIAL SERVICES



HENRY McMASTER, GOVERNOR
MICHAEL LEACH, STATE DIRECTOR
CHAD MITCHELL, ASSISTANT GENERAL COUNSEL

March 20, 2020

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Alonzo Jeter, III, Appellant, v. SCDSS, Respondent; 2019-001835

Dear Ms. Kitchings:

Please see the enclosed Respondent's Initial Brief, Designation of Matter, and Certificate of Service for filing.

I have copied all other parties on this letter to advise them of my communication with the Court.

Sincerely,

Chad A. Mitchell

E-sign @1:08 p.m. on 3/20/2020
Chad A. Mitchell

Cc: Alonzo Jeter, III
U-7-101/#282902
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

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DEPARTMENT OF SOCIAL SERVICES

SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES
OFFICE OF GENERAL COUNSEL, ROOM 621
P.O. BOX 1520, COLUMBIA, SC 29202-1520

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SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

