

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 12/16/2010  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

SHANNON COTTLE-NASH, ) No. 1 CA-UB 09-0078  
)  
Appellant, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) Rule 28, Arizona Rules of  
SECURITY, an Agency, ) Civil Appellate Procedure)  
)  
Appellee. )  
\_\_\_\_\_ )

Appeal from the Appeals Board of the Department of  
Economic Security of the State of Arizona

A.D.E.S. Appeals Board No. P-1078572-001-BR

**AFFIRMED**

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Shannon Cottle-Nash Tucson  
Appellant *In Propria Persona*

Terry Goddard, Arizona Attorney General Phoenix  
By Michael F. Valenzuela, Assistant Attorney General  
Attorneys for Appellee

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**B R O W N**, Judge

¶1 Shannon Cottle-Nash ("Appellant") challenges a decision of the Arizona Department of Economic Security ("ADES") requiring her to reimburse ADES for an overpayment of child care benefits. For the following reasons, we affirm.

## BACKGROUND

¶12 From 1998 through February 2003, Appellant received child care assistance benefits from ADES. She was eligible for such assistance because, due to her employment, she was "unavailable to provide care to the child for whom assistance was requested." See Ariz. Admin. Code ("A.A.C.") R6-5-4911(F)(1). On March 18, 2003, Appellant sought medical care at Mountain Park Health Center ("MPHC") for a migraine headache. Based on her consultation with a nurse practitioner, Appellant decided to quit her job for six months to treat her migraines.

¶13 On April 1, 2003, Appellant applied for child care assistance from ADES on the basis of her medical condition. She also provided a "verification of unable/unavailable" form ("verification"), signed by a nurse practitioner, to establish that her medical condition rendered her unable to work. Pending approval of her application, ADES continued to provide her with child care assistance. However, on April 9, ADES notified Appellant that her child care benefits would terminate effective in ten days if she did not provide an amended verification, which "needs to be completed by a licensed physician as stated on the [form]."

¶14 After receiving the notice, Appellant attempted to obtain proper verification from a licensed physician at MPHC. However, she was unable to do so because her regular doctor was

on vacation and later left the employment of MPHC. Appellant informed ADES of the situation and ADES agreed to extend the verification deadline to April 27. ADES confirmed this by sending a second notice to Appellant, reminding her that her case would be closed on April 27, 2003, if she did not provide a "statement from a physician/psychologist, or certified behavioral health specialist indicating the impairment and the days/hours per week and duration child care will be necessary."

¶15 More than a week after her verification was due, Appellant provided ADES with a letter from MPHC's operations director, Charmaine Trujillo, a registered nurse (the "Trujillo letter"). The Trujillo letter stated that although Appellant was treated at MPHC by a nurse practitioner, MPHC's policy required "all Nurse Practitioners [to be] supported by a physician and all [Appellant's] documentation was reviewed by Dr. Rodriguez." ADES, however, refused to accept the Trujillo letter as a valid verification.

¶16 Around the same time period, Appellant requested a "Fair Hearing" at the ADES Office of Appeals to contest ADES's refusal to accept her verification. ADES informed her that it would continue to provide her with child care assistance throughout the pendency of the Fair Hearing; however, if the decision of the Office of Appeals was in favor of ADES, Appellant would be responsible for repayment of those funds.

Prior to the Fair Hearing, Appellant claims a case worker informed her that ADES "[would] document that [her] doctor [was] no longer a part of [MPHC] and [ADES] cannot get his actual signature" on the verification. As a result of her conversation with the case worker, she withdrew her appeal at the Office of Appeals. But, Appellant did not receive any documentation confirming that the issue was resolved, and the Board granted her request to withdraw her appeal.

¶17 By letter dated December 12, 2003, ADES reiterated that a proper verification was still required for the benefits paid from April 28, 2003 through June 30, 2003. The letter informed Appellant that failure to provide the required documentation would result in her being charged with overpayment totaling \$2,973. This account receivable apparently remained in limbo until 2008, when Appellant re-established contact with ADES. She spoke with an ADES employee who informed her that "if [she could] get the information and it's signed by a licensed physician, [ADES] can re-look at it and possibly re-evaluate the overpayment." As a result, Appellant provided ADES with another letter, this one signed by Doctor Singh (the "Singh letter"), which stated Appellant was seen at MPHC by a nurse practitioner in March 2003. ADES refused to honor this as a proper verification because, although signed by a licensed physician,

it contained no information on Appellant's medical condition or treatment plan.

¶18 In 2008, after an ADES deputy issued a determination of overpayment against Appellant in the amount of \$3,005.07,<sup>1</sup> she filed a timely notice of appeal. Following a hearing, an administrative law judge ("ALJ") at the Appeal Tribunal affirmed, finding that Appellant failed to provide ADES with a proper verification. The ALJ found that Appellant was given "more than sufficient opportunity" to correct her noncompliant verification but failed to do so. Appellant appealed, arguing the ALJ failed to introduce into evidence the Singh letter.

¶19 The Appeals Board affirmed the decision of the Appeal Tribunal and found that failure to admit the Singh letter was not error because it was not relevant.<sup>2</sup> Specifically, the

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<sup>1</sup> Although Appellant was originally informed via letter on December 12, 2003, that she owed \$2,973, the letter stated that the final amount was subject to adjustment "once information is received."

<sup>2</sup> The Appeals Board seems to have misunderstood which letter Appellant was referring to, as shown by the following:

In the petition, the [Appellant] contends that the [Appeal Tribunal] erred in failing to include a document in the hearing record. [Appellant's] testimony is credible that the document was signed by a physician and stated that the nurse practitioner who signed the verification form for [Appellant] in 2003 was working under the supervision of a physician.

Appeals Board stated, "There is no provision, in the statutes or rules, which allows [ADES] to accept a statement from a nurse practitioner, even if accompanied by proof that the nurse practitioner was working under the supervision of a physician." Moreover, the Board found that the "subsequent letter from a physician did not include statements as to [Appellant's] inability to care for her children, her diagnosis, or her anticipated recovery date." Appellant filed a request for further review. The Appeals Board affirmed, finding that "because the [Appellant] did not have a medical verification form signed by one of the persons specified by the statute, [she] was not entitled to the Child Care benefits she received, and the benefits constituted an overpayment." Appellant then timely requested judicial review. See Ariz. Rev. Stat. ("A.R.S.") § 41-1993 (Supp. 2009).

#### **DISCUSSION**

¶10 Appellant asserts that she is no longer liable for the ADES overpayment because she has now obtained a valid

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The Trujillo letter is the only letter that addresses the supervision of nurse practitioners at MPHHC, but was signed by a registered nurse, not a physician. Moreover, the Trujillo letter was filed and entered in the record by the Appeals Board; thus, it cannot constitute the missing document. Rather, Appellant was most probably referring to the Singh letter. Regardless, the Appeals Board's analysis remains valid as neither letter addressed Appellant's inability to care for her children, her diagnosis, or her anticipated recovery date.

verification signed by a licensed physician and therefore has met all ADES requirements. We disagree.

¶11 Our review of a decision of the Appeals Board is "limited to the record before the department unless the court orders otherwise." A.R.S. § 41-1993; see also *West v. Baker*, 109 Ariz. 415, 418-19, 510 P.2d 731, 734-35 (1973) (finding that an appellate court "is confined in the determination of a case to what is shown by the record only and cannot consider . . . extraneous matters"). Here, the verification provided by Appellant as an attachment to her appellate brief, filed in April 2010, is not part of the official record before us and therefore we decline to consider it.

¶12 Although our decision not to consider Appellant's new document may appear harsh, Appellant was given ample opportunities to provide a proper verification to ADES. She was informed in writing of the specific requirements in April 2003 and again in December 2003. An ADES employee also told Appellant in August of 2008 that if she provided ADES with a proper verification, ADES would "[look] at it and possibly re-evaluate the overpayment." Despite numerous opportunities to rectify this error, Appellant failed to provide ADES with the appropriate verification. She maintained she was unable to obtain the proper signature because her doctor no longer worked for MPHC and his whereabouts were unknown, but nothing prevented

her from obtaining the requisite documentation from another doctor. Moreover, Appellant was aware of ADES procedure; she provided proper verification forms to ADES in 2001 and 2002 for other medical conditions.

¶13 To the extent Appellant may be contesting the Appeals Board decision based on the record before us, we now consider whether the Board's decision is supported by the evidence. We view the evidence in the light most favorable to upholding the decision and will affirm the decision unless it is arbitrary, capricious, or an abuse of discretion. *Castaneda v. Ariz. Dep't of Econ. Sec.*, 168 Ariz. 491, 494, 815 P.2d 418, 421 (App. 1991). An agency abuses its discretion when it misapplies the law or fails to consider the relevant facts. *Rios Moreno v. Ariz. Dep't of Econ. Sec.*, 178 Ariz. 365, 367, 873 P.2d 703, 705 (App. 1994). We afford great weight to the Board's interpretation of a statute or its own regulations, but we determine de novo whether the interpretation was proper. *Golden Eagle Distribs., Inc. v. Ariz. Dep't of Econ. Sec.*, 180 Ariz. 565, 567, 885 P.2d 1130, 1132 (App. 1994).

¶14 Under the A.A.C., child care assistance is available to parents who are "unable to care for their own children due to a physical, mental, or emotional disability." A.A.C. R6-5-4912(A)(6)(a). ADES requires that individuals suffering from such a disability verify their needs through a "written



verification from a licensed physician, certified psychologist, or certified behavioral health specialist indicating the diagnosis, inability to care for the child, days and hours that child care is needed, and the anticipated recovery date." A.A.C. R6-5-4912(C)(6).

¶15 On review, the Appeals Board concluded that Appellant "did not have a medical verification form signed by one of the persons specified by the statute, . . . was not entitled to the Child Care benefits she received, and the benefits constituted an overpayment." Although Appellant's original verification described her diagnosis, child care needs, and recovery date, it did not conform with the requirements of R6-5-4912 (C)(6) because it was not signed by a physician. The Trujillo letter failed to rectify this problem because it also did not contain a physician's signature. Even assuming that the Appeals Board erred in failing to admit the Singh letter, this letter was also inadequate. The Singh letter merely explained: "This letter is to verify that on March 18, 2003[,] [Appellant] was seen at [MPHC] by [a nurse practitioner.] This information was obtained through the patient[']s medical record at [MPHC], Baseline Site." Although this letter contained Dr. Singh's signature, the letter did nothing more than confirm that Appellant had been seen by a nurse practitioner. The letter was silent as to any diagnosis, child care needs, or a recovery date. The documents

provided by Appellant were plainly insufficient under R6-5-4912(C)(6). Accordingly, we find no abuse of discretion.

¶16 We note, however, that even though ADES maintains Appellant is liable for \$3,005.07 in assistance received from April through June 2003, the record indicates this figure may have been erroneously calculated.<sup>3</sup> An ADES memorandum allocated the figure as follows: \$1,040.16 for April, \$985.93 for May, and \$978.98 for June. But overpayment identification worksheets completed by ADES appear to us to indicate that the majority of the April overpayment accumulated before April 28. Therefore, in the interest of fairness, we direct ADES to verify that the overpayment calculation does not include amounts accrued prior to April 28, 2003.

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<sup>3</sup> Exhibit 4 (summary of overpayment) and Exhibit 5 (letter giving warning of potential overpayment) were both admitted as evidence at the Appeal Tribunal hearing. These exhibits indicate that ADES was seeking repayment from Appellant for child care assistance funds she received from April 28, 2003, to June 30, 2003.

**CONCLUSION**

¶17 For the foregoing reasons, we affirm the decision of the Appeals Board and we direct ADES to verify the proper amount of overpayment it is seeking from Appellant.

/s/

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MICHAEL J. BROWN, Judge

CONCURRING:

/s/

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DIANE M. JOHNSEN, Presiding Judge

/s/

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JOHN C. GEMMILL, Judge