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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3116-15T2

D.C.,

Appellant,

v.

NEW JERSEY DEPARTMENT OF
HUMAN SERVICES and NEW JERSEY
DEPARTMENT OF CORRECTIONS,

Respondents.

Submitted December 19, 2017 – Decided January 8, 2018

Before Judges Fisher and Sumners.

On appeal from the New Jersey Department of
Human Services and New Jersey Department of
Corrections.

D.C., appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondents (Melissa H. Raksa,
Assistant Attorney General, of counsel;
Victoria R. Ply, Deputy Attorney General, on
the brief).

PER CURIAM

Appellant D.C. was involuntarily committed under the Sexually
Violent Predator Act, N.J.S.A. 30:4-27.24 to -27.38, and has

resided for many years in the Special Treatment Unit (STU). Both the Department of Corrections and the Department of Human Services are statutory obligated to participate in the management of the STU and the treatment of its residents; specifically, the former is charged with the operation of the facilities, N.J.S.A. 30:4-27.34(a), and the latter is required to "provide or arrange for treatment" of the STU's inmates, N.J.S.A. 30:4-27.34(b). The Legislature also directed that representatives of both agencies "participate in an interagency oversight board [(IOB)] to facilitate the coordination of the policies and procedures of the facility." N.J.S.A. 30:4-27.34(c). In fulfilling that mission, the two agencies adopted identical regulations for the governance of the STU. See N.J.A.C. 10:36A-1 to -10; N.J.A.C. 10A:35-1 to -10.

During his residency in the STU, appellant accrued over \$8000 in photocopying fees. He has filed grievances and asserted on prior occasions that he should be considered an "indigent inmate" within the meaning of N.J.A.C. 10A:1-2.2.¹ He has also asserted that these and related issues be considered by the IOB.

¹ "Indigent inmate" is defined as "an inmate who has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances, and who has been verified as having no outside source from which to obtain funds."

A preliminary question that has been raised and disputed in this appeal is whether the IOB should resolve any of the issues posed in appellant's grievances. As the IOB's scope of authority is now defined, we answer that question in the negative. As noted above, the Department of Human Services (DHS) is charged with providing or arranging for treatment of STU residents, while the Department of Corrections (DOC) is charged with the operation of the facilities. The questions posed by this appeal naturally fall within the DOC's purview, not DHS's, and not the IOB's.

The record further reveals that appellant's grievances eventually reached a DOC Administrator. The last thing that occurred at that level was the DOC Administrator's February 1, 2017 response to appellant's administrative appeal; the DOC Administrator requested "additional information" from appellant to enable her to "respond to [his] appeal." Specifically, the DOC Administrator sought "the reason [appellant] cannot earn wages at the STU[,]" an issue having bearing on the indigency regulation, N.J.A.C. 10A:1-2.2. Instead of responding, appellant filed an amended notice of appeal with this court,² arguing in a single point:

² This appeal was commenced when appellant filed a notice of appeal on March 17, 2016. Following additional administrative proceedings, which appear to have resulted in the February 1, 2017

BECAUSE THEY IGNORED APPLICABLE RULES, THE DEPARTMENTS ERRED WHEN THEY REFUSED TO SQUASH APPELLANT'S DEBTS FOR COSTS FROM LEGAL PHOTOCOPYING AND POSTAGE FOR OUTGOING LEGAL MAIL.

We do not reach this question because the DOC has yet to render a final agency decision – a circumstance arising from appellant's apparent failure to respond to the DOC's question about his inability to earn wages at the STU.

For these reasons, we conclude that the appeal was premature. Appellant was obligated to respond in some fashion to the DOC's request and await the DOC's final decision. Although we are mindful that "[j]udicial review of administrative agency action is a constitutional right," Silviera-Francisco v. Bd. of Educ. of Elizabeth, 224 N.J. 126, 136 (2016), the right to appeal arises with the issuance of a final agency decision, R. 2:2-3(a)(2). Appellant's administrative appeal has yet to be finally adjudged. To the extent he was aggrieved by the DOC Administrator's February 1, 2017 interlocutory determination that additional information was required, appellant was required to seek our leave to appeal. See R. 2:2-3(b); Silviera-Francisco, 224 N.J. at 136. And, while we possess the discretion to grant leave to appeal when instead a

disposition referred to above, appellant filed an amended notice of appeal on February 27, 2017. As we have determined, even with those subsequent additional proceedings, a final agency decision has yet to be rendered.

notice of appeal is precipitously filed, we decline to exercise that discretion here. The administration of justice in this matter is better served by our postponing judicial review of this matter until such time as a final agency decision is rendered.

The appeal is dismissed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION