

No. 18A847

IN THE  
SUPREME COURT OF THE UNITED STATES

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JOSEPH H. HOLMES, PETITIONER,  
v.  
ALABAMA DEPARTMENT OF HUMAN RESOURCES, RESPONDENT.

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MOTION TO HAVE THE CLERK OF THE SUPREME COURT FILE THE PETITION FOR  
*WRIT OF CERTIORARI* TO THE ALABAMA SUPREME COURT AND MOTION OF  
PETITIONER TO PROCEED *IN FORMA PAUPERIS* OUTSIDE OF THE TIME OF  
REQUIRED SUBMISSION OF MAY 6, 2019

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On behalf of Petitioner, Mr. Joseph H. Holmes, undersigned counsel submits this motion and supporting documentation to respectfully request the Clerk of the United States Supreme Court to File Petitioner's Petition for Writ of Certiorari to the State of Alabama and Motion to Proceed *In Forma Pauperis* filed therewith outside the time of the required submission date of May 6, 2019.

In support of this motion, undersigned counsel states the following:

1. Undersigned counsel is a solo practitioner and veteran of the United States Navy and United States Army, having retired in 2015 after 26 years of military service.
2. Upon retirement, undersigned counsel began devoting approximately 30 percent of his practice to providing *pro bono* and reduced-fee legal services to military servicemembers, veterans, and disabled veterans in civilian and criminal legal proceedings throughout the country.
3. Undersigned counsel has represented veterans and veterans' organizations in state and federal courts (including this Court as *pro bono* author of the *amicus curiae* brief for Veterans of Foreign Wars and Operation Firing for Effect in the case of *Howell v. Howell*, 137 S. Ct. 1400 (2017)).

4. Due to the legal issues involved in this case, and the significant financial and personal impact they have not only for Petitioner, Mr. Joseph W. Holmes, but for all disabled veterans who find themselves in similar circumstances nationwide, undersigned counsel engaged Petitioner to appeal the decision of the Alabama Court of Appeals.

5. At present, undersigned counsel is representing Mr. Holmes before this Court on a *pro bono* basis because Mr. Holmes's federal veterans' disability payments have been seized by the state of Alabama and he has little or no disposable resources to pay attorneys' fees and costs for the printing and filing of a petition for a writ of certiorari in this Court.

6. Mr. Holmes is a disabled veteran of the Vietnam War who served in the United States Navy from September 1973 to September 1976.

7. In 2017, the Veterans Administration (VA) determined Mr. Holmes was 100 percent disabled due to service-connected injuries.

8. The VA determined Mr. Holmes has been disabled since December 2010.

9. Mr. Holmes suffers from illnesses attributed to exposure to agent orange, and has suffered residual effects, including post-traumatic stress syndrome (PTSD) and other mental and emotional injuries, including alcoholism. (Attachment A, Affidavit of Attorney Ritchie Tipton, Esq., ¶ 3)

10. As a result of his multiple illnesses and diagnoses, Mr. Holmes is often admitted to the VA hospital to deal with these multiple mental, emotional and physical ailments surrounding his disability, or is otherwise incapacitated or *ex communicado* for extended periods of time. (Attachment A, Affidavit of Attorney Ritchie Tipton, Esq., ¶ 4; Attachment B, Email correspondence)

11. On December 7, 2018, the Alabama Supreme Court denied review of an opinion of the Alabama Court of Appeals, issued October 5, 2018, in which the Court of Appeals held that the

State of Alabama could legitimately seize the federal veterans' disability benefits that were paid to Mr. Holmes as a result of his service-connected disabilities.

12. On February 22, 2019, due, in part, to the consistent difficulties in reaching Mr. Holmes for purposes of communicating with him concerning his case, an application for an extension of time to file the petition for a writ of certiorari was granted by Justice Thomas to and including May 6, 2019. (Attachment B, Email correspondence; Attachment C, Electronic filing notification and email correspondence to counsel for respondent with attachments)

13. As the day for filing of the petition on May 6, 2019 approached, undersigned counsel and Petitioner's local counsel, Attorney Ritchie Tipton, Esq., attempted to contact Mr. Holmes on several occasion to arrange for the payment of the printing and filing costs for the petition for writ of certiorari. (Attachment A, Affidavit of Attorney Ritchie Tipton, Esq., ¶ 5; Attachment B, Email correspondence)

14. As it became evident that printing of the petition using a standard printing company was not economically or logistically feasible given the costs and time remaining, respectively, undersigned counsel prepared a motion for Mr. Holmes to proceed *in forma pauperis* so that his rights to petition for review would remain preserved pending our attempts to further communicate with him as our represented client.

15. Once again, undersigned counsel and Attorney Tipton unsuccessfully attempted to reach Mr. Holmes to have him fill out and sign the required affidavit for his motion to proceed *in forma pauperis*. (Attachment A, Affidavit of Attorney Ritchie Tipton, Esq., ¶¶ 5, 6; Attachment B, Email correspondence)

16. Undersigned counsel, who, on May 6, 2019, was in Central European Time zone (6 hours ahead of Eastern Standard Time) then prepared the necessary pleadings, the motion, the petition

and the certificate of service, and electronically filed same on the petition due date of May 6, 2019, and served same on counsel of record for Respondent via electronic mail. (Attachment C, Electronic filing notification and email correspondence to counsel for respondent with attachments)

17. Undersigned counsel and Attorney Tipton last communicated about the inability to reach Mr. Holmes for him to complete and sign his affidavit in support of his motion to proceed *in forma pauperis* on Friday, May 3, at which time Mr. Holmes was nowhere to be found, and we discussed the alternatives in the event we were unable to have his affidavit submitted in time. (Attachment A, Affidavit of Attorney Ritchie Tipton, Esq., ¶ 6; Attachment B, Email correspondence)

18. On Monday, May 6, 2019, Mr. Tipton, who is also a solo practitioner with only transient and as needed legal support staff, fell ill and was required to visit the emergency room. (Attachment A, Affidavit of Attorney Ritchie Tipton, Esq., ¶¶ 1, 7)

19. Undersigned counsel, also away from his home office and in Europe and also without support staff on full time duties, was unable to make alternate arrangements for the mailing of the hard copies to the Court and opposing counsel of Petitioner's Motion to Proceed *In Forma Pauperis* and the Petition for Writ of Certiorari, the latter of which was due on Monday, May 6, 2019.

20. As a result of both counsel being physically away from their regular office and without support staff available, and Attorney Tipton's illness, the physical, hard-copy of the motion to proceed *in forma pauperis*, the petition for a writ of certiorari to the Alabama Supreme Court and the certificate of service all of which were timely, electronically filed on May 6, 2019, were unable to be mailed out until May 7, 2019.

21. As a result of the frequent and recurring inability to and difficulties in both communicating with and reaching Petitioner, Mr. Holmes, undersigned counsel and local counsel Attorney Ritchie Tipton, Esq. were unable by the May 6, 2019 due date to secure Petitioner's affidavit in support of the motion to proceed *in forma pauperis* for presentation of his petition for a writ of certiorari to the Alabama Supreme Court to preserve his rights to appeal and the Court rejected the filing. (Attachment A, Affidavit of Attorney Ritchie Tipton, Esq., ¶¶ 6 – 8; Attachment B, Email correspondence; Attachment C, Electronic filing notification and email correspondence to counsel for respondent with attachments)

22. As previously noted, as a result of undersigned counsel's being out of the country without access to available support staff, and as a result of Attorney Tipton's illness and resulting visit to the emergency room on the due date of May 6, 2019, and the fact he has no full time support staff, the motion to proceed *in forma pauperis* and the petition for a writ of certiorari to the Alabama Supreme Court was not physically mailed out until the following day, May 7, 2019, and the Court rejected the filing. (Attachment A, Affidavit of Attorney Ritchie Tipton, Esq., ¶¶ 6 – 8; Attachment B, Email correspondence; Attachment C, Electronic filing notification and email correspondence to counsel for respondent with attachments)

23. Undersigned counsel did send the electronically filed motion, petition and certificate of service to counsel for Respondent via electronic mail on May 6, 2019. (Attachment C, Electronic filing notification and email correspondence to counsel for respondent with attachments)

24. Mr. Tipton did mail the said motion, petition and certificate out on the date of May 7, 2019, as soon as he returned from his illness, for which he was required to visit the emergency room and was therefore out of his office on May 6, 2019. (Attachment A, Affidavit of Attorney Ritchie Tipton, Esq., ¶¶ 6 – 8)

25. Based on the coming together of the above events, undersigned counsel and local counsel Mr. Tipton have continued as counsel for Mr. Holmes, to do everything possible to assert Mr. Holmes's rights, and to petition this court for a writ of certiorari to the State of Alabama, so that the Court may review the important legal issues raised before and underlying the Alabama Court of Appeals' October 5, 2018 Opinion.

26. The Affidavit supporting Mr. Holmes's application to proceed *in forma pauperis* has now been secured and is being sent to the Court along with the previously rejected Motion to Proceed *In Forma Pauperis*, the Petition for a Writ of Certiorari to the State of Alabama, and this Motion and supporting documentation.

WHEREFORE, undersigned counsel respectfully requests the Clerk of this Court by way of this Motion and supporting documentation to file the Petition for Writ of Certiorari to the Alabama Supreme Court, Motion to Proceed *In Forma Pauperis*, and Certificate of Service, all of which, with the exception of Mr. Holmes's Affidavit, which has now been secured and which is being filed herewith, were electronically submitted on May 6, 2019, but which were not physically mailed until May 7, 2019, and which were therefore submitted out of time.

Respectfully submitted,



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Carson J. Tucker  
Attorney for Petitioner  
117 N. First St., Suite 111  
Ann Arbor, MI 48104  
(734) 887-9261  
[cjtucker@lexfori.org](mailto:cjtucker@lexfori.org)

Dated: May 22, 2019

# **ATTACHMENT A**

Affidavit of Ritchie Tipton,  
Esq., Counsel for Petitioner

No. 18A847

IN THE  
SUPREME COURT OF THE UNITED STATES

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JOSEPH H. HOLMES, PETITIONER,  
v.  
ALABAMA DEPARTMENT OF HUMAN RESOURCES, RESPONDENT.

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AFFIDAVIT OF ATTORNEY RITCHIE TIPTON, ESQ.

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I, Ritchie Tipton, being first duly sworn, state that I have direct and personal knowledge of the facts stated herein, and if called as a witness, I would testify competently as follows:

1. I am the attorney of record in the State of Alabama for Petitioner, Joseph H. Holmes. I am a solo practitioner with no staff support and a shared office space.

2. Since at least November of 2017, I have represented Mr. Holmes in the proceedings arising in the State of Alabama, which proceedings underlie Mr. Holmes's submitted, but rejected, Motion to Proceed *In Forma Pauperis* and accompanying Petition for a Writ of Certiorari to the State of Alabama in the above-captioned case.

3. In my experience and time representing Mr. Holmes, who is a disabled veteran, I have learned and witnessed that as a result of his military service and connected therewith, he suffers post-traumatic stress syndrome (PTSD) and other mental and emotional injuries, including alcoholism.

4. In my experience and time representing Mr. Holmes, who is a disabled veteran, I have learned and witnessed that as a result of these service-connected multiple illnesses and diagnoses, Mr. Holmes is often admitted to the Veterans Administration hospital to deal with the



mental, emotional and physical ailments surrounding his disability, or is otherwise incapacitated or *ex communicado* for extended periods of time.

5. Due to Mr. Holmes's condition and the resulting effects, an extension was secured to file his petition for a writ of certiorari in this Court. As the day for filing a petition for a writ of certiorari approached on May 6, 2019, in conjunction with Attorney Carson J. Tucker, I attempted, without success, to contact Mr. Holmes on several occasions to arrange for the payment of the printing and filing costs for the petition for writ of certiorari. These efforts are documented in various email correspondence and referenced and related telephonic communications by and between Attorney Carson J. Tucker and I, and said documentation along with this affidavit is attached as **Attachment B** to Mr. Tucker's Motion to have the Clerk of this Court file Mr. Holmes's Motion to Proceed in Forma Pauperis and the accompanying Petition for Writ of Certiorari to the Supreme Court of the State of Alabama Out of Time.

6. Mr. Tucker and I last communicated about the inability and the recurring difficulties to reach Mr. Holmes for him to complete and sign his affidavit in support of his *in forma pauperis* submission on Friday, May 3, 2019, at which time Mr. Holmes was nowhere to be found, and we discussed the alternatives in the event we were unable to have his affidavit submitted in time, and said documentation, along with my affidavit, is attached as **Attachment B** to Mr. Tucker's Motion to have the Clerk of this Court file Mr. Holmes's Motion to Proceed in Forma Pauperis and the accompanying Petition for Writ of Certiorari to the Supreme Court of the State of Alabama Out of Time.

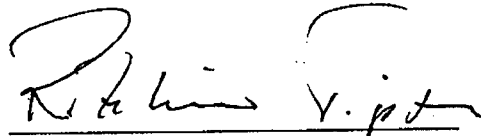
7. On May 6, 2019, the day that the Petition for Writ of Certiorari was due and the day that the Motion in forma pauperis for submission was to be submitted therewith, I fell ill and was required to be admitted to the emergency department at DCH Healthcare Authority in

Tuscaloosa, Alabama I am attaching as Exhibit A-1 and A-2 documentation proving I was admitted to the emergency room on this day at 3:15 PM and was discharged at 8:16 PM, too late to get Mr. Holmes's motion and petition mailed to the Court. I was in a great deal of pain earlier on May 6, 2019 before I went to the hospital and not able to perform any sort of duties.

8. On the following day, May 7, 2019, I mailed Mr. Holmes's Motion to Proceed In Forma Pauperis and the accompanying Petition for Writ of Certiorari to this Court and sent a copy of same to attorneys of record in these proceedings for the State of Alabama.

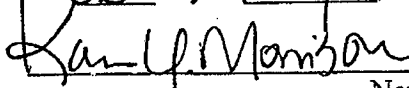
FURTHER AFFIANT SAYETH NOT.

*I declare that the above statements are true and correct to the best of my information, knowledge and belief.*

  
Ritchie Tipton, Esq.

Dated: 5-20-19

Subscribed and sworn to before me  
this 20<sup>th</sup> day of May, 2019.

  
\_\_\_\_\_, Notary Public  
Tuscaloosa County, State of Alabama  
My Commission Expires: 8/6/22

# IN THE SUPREME COURT OF ALABAMA



December 7, 2018

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Ex parte Joseph H. Holmes. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Joseph H. Holmes v. Alabama Department of Human Resources) (Montgomery Circuit Court: CV-17-901808; Civil Appeals : 2170798).

## **CERTIFICATE OF JUDGMENT**

WHEREAS, the petition for writ of certiorari in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on December 7, 2018:

**Writ Denied. No Opinion.** Wise, J. - Stuart, C.J., and Bolin, Shaw, and Sellers, JJ.,  
concur.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 7th day of December, 2018.

A handwritten signature in cursive script, reading "Julia J. Weller".

Clerk, Supreme Court of Alabama

REL: October 5, 2018

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

## ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Joseph H. Holmes

v.

Alabama Department of Human Resources

Appeal from Montgomery Circuit Court  
(CV-17-901808)

THOMAS, Judge.

In August 2017, Joseph H. Holmes sought an administrative review from the Alabama Department of Human Resources ("DHR") seeking to challenge DHR's intent to levy United States Veterans' Administration ("VA") disability benefits that had

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been deposited into Holmes's credit-union account to pay Holmes's child-support obligation. According to the information contained in the administrative record, which contains only filings by Holmes and his counsel and replies by DHR, Holmes is a disabled veteran who received a lump-sum payment of VA disability benefits in March 2017. Holmes contended that, pursuant to 38 U.S.C. § 5301(a)(1), his disability benefits were not subject to levy either before or after his receipt of those benefits. DHR concluded its administrative review, sending notice to Holmes of its decision that "VA benefits are not exempt from lien/levy process" and declining to release the levy of the benefits.

Holmes timely requested an administrative hearing from DHR. However, DHR denied Holmes's request, citing Ala. Admin Code (DHR), Rule 660-1-5-.05(f), which allows the request for an administrative hearing to be denied "[w]hen protective or child support services are provided as required by law or by court order." In compliance with Ala. Code 1975, § 41-22-20, a part of the Alabama Administrative Procedure Act, codified at Ala. Code 1975, § 41-22-1 et seq., Holmes then filed a

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timely notice of appeal with DHR and a petition for judicial review in the Montgomery Circuit Court ("the circuit court").<sup>1</sup>

In his petition for judicial review, Holmes set out the following facts. He explained that he had served in the United States Navy between September 1973 and 1976; that, in March 20, 2017, the VA determined that Holmes had been 100% disabled since December 3, 2010, as the result of a service-connected condition; and that, on March 23, 2017, the VA deposited a lump-sum VA disability benefit into Holmes's credit-union account. According to Holmes, DHR served a notice of levy of those benefits on him on July 27, 2017. Holmes also stated that he had sought a stay of the seizure of his benefits but that DHR had seized \$46,035 in VA disability benefits from his account on October 25, 2017.

The parties filed briefs before the circuit court, laying out their respective positions. In his initial brief before the circuit court, Holmes argued that § 5301(a)(1) exempts his VA disability benefits from "attachment, levy, or seizure by or under any legal or equitable process whatever, either

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<sup>1</sup>Holmes later amended his petition to include claims under 42 U.S.C. § 1983. However, in his brief to the circuit court, he withdrew his § 1983 claims, and, thus, the circuit court did not address them.

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before or after receipt by the beneficiary." He admitted that federal law provides that certain benefits may be subject to income withholding, garnishment, or other legal process brought by a state agency seeking to enforce payment of a child-support obligation. See 42 U.S.C. § 659(a). However, he contended that only those VA disability benefits received in lieu of retirement or retention benefits may be subject to attachment or levy for payment of child support. See 42 U.S.C. § 659(h)(1)(A)(ii)(V). Thus, he argued, because his disability benefits were not received in lieu of retirement or retention pay, DHR could not lawfully seize his VA disability benefits.

In response, DHR, relying first on § 659(a), argued that Holmes's VA disability benefits were, in fact, subject to levy or attachment under federal law. DHR further relied on Rose v. Rose, 481 U.S. 619 (1987), in which the United States Supreme Court determined that a state court could hold a child-support obligor in contempt for refusing to pay child support out of his VA disability benefits, and Nelms v. Nelms, 99 So. 3d 1228, 1232-33 (Ala. Civ. App. 2012), in which this court concluded that a trial court could consider VA

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disability benefits in determining the amount of alimony to award. Based on those cases, DHR concluded, DHR was entitled to levy Holmes's VA disability benefits. DHR also noted that it had, in compliance with 42 U.S.C. § 666, properly sought to enforce Holmes's child-support obligation under Ala. Code 1975, § 30-3-192, which requires DHR to seek out information from financial institutions regarding the account balances of noncustodial parents with past-due child-support obligations, and Ala. Code 1975, § 30-3-197 and -198, which permit DHR to impose liens against the personal or real property owned by noncustodial parents with child-support arrearages.<sup>2</sup>

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<sup>2</sup>The full text of § 30-3-197(a) (6) reads:

"In cases in which there is a support arrearage, [certain agencies, including DHR, are permitted] to secure assets to satisfy the arrearage by intercepting or seizing periodic or lump-sum payments from a state or local agency, including unemployment compensation, worker's compensation, and other benefits; by attaching judgments, settlements, and lottery winnings and other lump-sum payments; attaching and seizing assets of the obligor held in financial institutions; attaching public and private retirement funds; and imposing liens in accordance with [Ala. Code 1975,] Section 30-3-198 and, in appropriate cases, to force sale of property and distribution of proceeds."



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Holmes filed a reply brief in the circuit court, in which he argued that DHR had ignored relevant provisions of § 659. Holmes contended that his VA disability benefits were not subject to legal process under § 659 because his benefits were not "based upon remuneration for employment." He explained that § 659(h)(1)(A)(ii)(V) provided:

"(h) moneys subject to process (1) Subject to paragraph (2), moneys payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section -- (A) consist of -- (ii) periodic benefits (including a periodic benefit as defined in section 428(h)(3) of this title) or other payments -- (V) by the Secretary of Veterans Affairs as compensation for a service connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation."

(Emphasis in original.) Based on this argument, Holmes again argued that his VA disability benefits could not be levied by DHR.

On April 16, 2018, the circuit court entered a one-line order affirming DHR's decision to seize Holmes's VA disability benefits. Holmes filed a timely notice of appeal. In his appellate brief, Holmes argues that DHR's decision to seize his VA disability benefits violated statutory or

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constitutional provisions, including § 5301(a)(1), was clearly erroneous, and was arbitrary and capricious. He also complains that DHR violated his rights under the due-process clause of the 14th Amendment to the United States Constitution. We disagree.

The circuit court's review of a decision of a state agency is governed by § 41-22-20(k), which provides:

"Except where judicial review is by trial de novo, the agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute. The court may affirm the agency action or remand the case to the agency for taking additional testimony and evidence or for further proceedings. The court may reverse or modify the decision or grant other appropriate relief from the agency action, equitable or legal, including declaratory relief, if the court finds that the agency action is due to be set aside or modified under standards set forth in appeal or review statutes applicable to that agency or if substantial rights of the petitioner have been prejudiced because the agency action is any one or more of the following:

"(1) In violation of constitutional or statutory provisions;

"(2) In excess of the statutory authority of the agency;

"(3) In violation of any pertinent agency rule;

"(4) Made upon unlawful procedure;

"(5) Affected by other error of law;

"(6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

"(7) Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion."

Our standard of review of the agency's decision is the same as the standard employed by the circuit court. Alabama State Pers. Bd. v. Clements, 161 So. 3d 221, 227 (Ala. Civ. App. 2014) (quoting Alabama State Pers. Bd. v. Dueitt, 50 So. 3d 480, 482 (Ala. Civ. App. 2010)) ("The standard of appellate review to be applied by the circuit courts and by this court in reviewing the decisions of administrative agencies is the same.").

On appeal, Holmes again relies on § 5301(a)(1) and § 659(h)(1)(A)(ii)(V) to contend that his VA disability benefits, because they were not "based upon remuneration for employment," are exempt from all legal process. Although Holmes is correct that his VA disability benefits, because he did not waive a portion of his retired or retainer pay to receive them, do not fall within the exception from direct

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levy while those benefits are in the possession of the VA, see § 659(h)(1)(A)(ii)(V), this fact does not prevent DHR from seizing Holmes's benefits from his credit-union account. This is so because § 659(a) creates a "limited waiver of sovereign immunity" of the United States, Rose, 481 U.S. at 635, and, therefore, the requirement in § 659(a) that the benefits to be seized be "based upon remuneration for employment" does not prevent the states from enforcing child-support orders by ordering that payment be made from VA disability benefits.

The appellant in Rose, Charlie Rose, was a totally disabled United States military veteran living in the State of Tennessee. Rose, 481 U.S. at 622. When Charlie divorced his wife, the Tennessee court calculated his child-support obligation based upon his income, which was composed entirely of VA disability benefits. Id. Charlie did not pay child support as ordered, and the Tennessee court held him in contempt for his failure to comply with the child-support order. Id. at 623. Charlie appealed the contempt judgment, arguing that Tennessee could not order that he pay child support out of his VA disability benefits, relying in large part on the idea that federal law governing VA benefits,

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which, at that time included the precursor to § 5301(a)(1), namely, 38 U.S.C. § 3101, and the provisions of the Child Support Enforcement Act, codified at 42 U.S.C. § 651 et seq., preempted Tennessee's authority over his VA benefits. Id. at 625.

The United States Supreme Court explained that former § 3101 (which exists currently in similar form in § 5301(a)(1)) "provide[d] that '[p]ayments of benefits ... under any law administered by the Veterans' Administration ... made to, or on account of, a beneficiary ... shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.'" Rose, 481 U.S. at 630. However, the Rose Court concluded that requiring Charlie, through a contempt proceeding, to pay his child-support obligation out of his VA disability benefits did not run afoul of that anti-assignment provision. Id. at 635. The Court explained that the anti-assignment provision had two purposes: "to 'avoid the possibility of the Veterans' Administration ... being placed in the position of a collection agency' and to 'prevent the deprivation and depletion of the means of subsistence of

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veterans dependent upon these benefits as the main source of their income.'" Id. at 630 (quoting S. Rep. No. 94-1243, pp. 147-48 (1976)). Because the VA was neither made a party to the contempt proceedings nor required to pay Charlie's VA benefits directly to Charlie's ex-wife, the Rose Court noted, the first purpose was not frustrated by the state court's assertion of its contempt or enforcement powers over Charlie. Id. at 635.

Regarding the second purpose -- protecting the "'means of subsistence'" for disabled veterans -- the Rose Court came to the same conclusion: "the exercise of state-court jurisdiction over [Charlie's] disability benefits [did not] deprive [Charlie] of his means of subsistence contrary to Congress' intent, for these benefits are not provided to support [Charlie] alone." Rose, 481 U.S. at 630. The Rose Court noted that

"[v]eterans' disability benefits compensate for impaired earning capacity, H.R. Rep. No. 96-1155, p. 4 (1980), U.S. Code Cong. & Admin. News 1980, p. 3307, and are intended to 'provide reasonable and adequate compensation for disabled veterans and their families.' S. Rep. No. 98-604, p. 24 (1984) (emphasis added), U.S. Code Cong. & Admin. News 1984, pp. 4479, 4488."

Id. The fact that VA disability "benefits are intended to support not only the veteran, but the veteran's family," said the Rose Court, required the Court to "[r]ecogniz[e] an exception to the application of § 3101(a)'s prohibition against attachment, levy, or seizure in this context [to] further, [and] not undermine, the federal purpose in providing these benefits." Id. at 634. Thus, the Rose Court concluded that the anti-assignment provision "does not extend to protect a veteran's disability benefits from seizure where the veteran invokes that provision to avoid an otherwise valid order of child support." Id.

Regarding Charlie's argument that the requirement in § 659(a) that benefits be "based upon remuneration for employment" prevented the Tennessee court from "diverting [his VA disability benefits] for child support," the United States Supreme Court explained in Rose that

"§ 659(a) does not refer to any legal process. The provision was intended to create a limited waiver of sovereign immunity so that state courts could issue valid orders directed against agencies of the United States Government attaching funds in the possession of those agencies:

"'The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment ...

issued by [a state court] ... and ...  
directed to, and the purpose of which is to  
compel, a governmental entity, which holds  
moneys which are otherwise payable to an  
individual, to make a payment from such  
moneys to another party in order to satisfy  
a legal obligation of such individual to  
provide child support.....' § 662(e)  
(emphasis added).

"See also 5 CFR § 581.102(f) (1986); S. Rep. No. 93-1356, pp. 53-54 (1974). Waivers of sovereign immunity are strictly construed, and we find no indication in the statute that a state-court order of contempt issued against an individual is precluded where the individual's income happens to be composed of veterans' disability benefits. In this context, the Veterans' Administration is not made a party to the action, and the state court issues no order directing the Administrator to pay benefits to anyone other than the veteran. Thus, while it may be true that these funds are exempt from garnishment or attachment while in the hands of the Administrator, we are not persuaded that once these funds are delivered to the veteran a state court cannot require that veteran to use them to satisfy an order of child support."

Rose, 481 U.S. at 635.

Like Charlie's VA disability benefits in Rose, the VA disability benefits in the present case have been delivered to Holmes. The purpose of those benefits is to support Holmes and his family, i.e., his dependent children. DHR has not attempted to direct the VA to make any payment of Holmes's benefits to it or to any other person. Thus, according to



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Rose, neither the anti-assignment provision now found in § 5301(a)(1) nor the requirements of § 659(a) are relevant to determining whether the state can seize, or prevent DHR from seizing, Holmes's VA disability benefits from his credit-union account.<sup>3</sup>

Holmes also contends that this court's decision in J.W.J. v. Alabama Department of Human Resources ex rel. B.C., 218 So. 3d 355 (Ala. Civ. App. 2016), supports a conclusion that his VA disability benefits are not subject to being seized for the payment of child support. In J.W.J., we determined that an order requiring a father to pay his child-support arrearage from his Supplemental Security Income ("SSI") benefits under threat of contempt violated federal law. We construed 42

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<sup>3</sup>Furthermore, the existence of 42 U.S.C. §§ 654 and 666 and Ala. Code 1975, § 30-3-190 et seq., undercuts Holmes's argument that DHR has no authority to levy against his credit-union account. States are required to establish and provide services relating to the enforcement of child-support obligations, including locating parents, accessing financial information relating to noncustodial parents with outstanding child-support obligations, and establishing liens on real and personal property of parents with overdue support obligations. To require the state to go to great lengths to secure the payment of child-support obligations certainly supports the conclusion that benefits intended to serve as income to support a veteran's family can be attached to serve that purpose.

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U.S.C. § 407(a), which prevents the transfer, assignment, levy, attachment, or garnishment of Social Security benefits. We also considered the effect of § 659(a) on § 407, determining that, because § 659(a) permitted withholding of federal benefits for payment of child-support or alimony obligations when "the entitlement to [those benefits] is based upon remuneration for employment," § 659(a) did not permit the use of SSI, which was not based upon remuneration for employment, to meet child-support obligations. We also relied on Department of Public Aid ex rel. Lozada v. Rivera, 324 Ill. App. 3d 476, 479, 755 N.E.2d 548, 550, 258 Ill.Dec. 165, 167 (2001), which had held "that section 407(a) forbids ordering child support that burdens any SSI benefits, even those that the beneficiary has already received."

What Holmes fails to recognize is the distinction between his VA disability benefits and SSI benefits. SSI is a means-tested public-assistance program that has as one of its purposes to provide a subsistence allowance to those meeting certain eligibility requirements. See J.W.J., 218 So. 3d at 356-57. Unlike Holmes's VA disability benefits, SSI benefits are not intended to be used as a means of support for the

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families of its recipients. See Rose 481 U.S. at 630; Becker County Human Servs., Re Becker Cty. Foster Care v. Peppel, 493 N.W.2d 573, 576 (Minn. Ct. App. 1992) ("SSI benefits are designed to provide for the minimum needs of the individual recipient, and should not be considered income for any other purpose."); and Tennessee Dep't of Human Servs. ex rel. Young v. Young, 802 S.W.2d 594, 599 (Tenn. 1990) ("SSI payments are for the benefit of the recipient alone."). Thus, the holding of J.W.J. is inapplicable in the context of VA disability benefits.

Insofar as Holmes challenges DHR's denial of his request for an administrative hearing as violating of his due-process rights, we must disagree. First, we note that Holmes's brief relies on only general principles of law regarding due process; he does not develop an argument tailored to the specific denial of an administrative hearing in the present case. White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008) ("Rule 28(a)(10)[, Ala. R. App. P.,] requires that arguments in briefs contain discussions of facts and relevant legal authorities that support the party's position."). He simply argues that DHR's "policy" that VA

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disability benefits are not exempt from lien or levy influenced its decision not to provide him an administrative hearing, and, he states, "[i]t is axiomatic that denial of [an administrative] hearing is a fundamental violation of minimal due process under the 14th amendment." Thus, we may affirm the judgment of the circuit court on this issue without further considering Holmes's due-process argument.

Were we to consider Holmes's due-process argument further, we would still affirm the judgment of the circuit court. DHR denied Holmes's request for a hearing based on its determination that it had been providing "child support services as required by law." See Rule 660-1-5-.05(f). Because the facts are not in dispute, the only question presented by Holmes's request for a hearing was a legal one: whether federal law prevented the seizure of his VA disability benefits. A hearing would have been of no benefit to any party, and DHR was permitted to deny the request for a hearing because it had seized Holmes's VA disability benefits in compliance with both state and federal law. In addition, Holmes was permitted to seek further review of the seizure of his VA disability benefits through his petition for judicial

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review and his appeal to this court, which afforded him additional due process. Thus, even were we to consider the merits of Holmes's due-process argument, we would reject his claim that he was denied due process.

Holmes's arguments regarding § 5301(a)(1) and § 659 do not compel reversal. DHR's seizure of his VA disability benefits does not violate federal law, and, therefore, DHR's decision in Holmes's case was not in violation of law, clearly erroneous, or arbitrary and capricious. In addition, Holmes's due-process argument was not sufficiently developed for our consideration. Having considered and rejected each of Holmes's arguments, we affirm the judgment of the circuit court affirming DHR's decision to levy Holmes's VA disability benefits to satisfy his child-support obligation.

AFFIRMED.

Thompson, P.J., and Pittman, Moore, and Donaldson, JJ.,  
concur.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**

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