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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-4784-14T2

U'BAY LUMUMBA,

Appellant,

v.

NEW JERSEY DEPARTMENT  
OF CORRECTIONS,

Respondent.

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Submitted February 1, 2017 – Decided April 5, 2017

Before Judges Fuentes and Gooden Brown.

On appeal from the New Jersey Department of  
Corrections.

U'Bay Lumumba, appellant pro se.

Christopher S. Porrino, Attorney General,  
attorney for respondent (Lisa A. Puglisi,  
Assistant Attorney General, of counsel; Kevin  
J. Dronson, Deputy Attorney General, on the  
brief).

PER CURIAM

Appellant U'Bay Lumumba, a New Jersey State Prison (NJSP) inmate, appeals from the January 20, 2015 final agency decision of the Department of Corrections (DOC). DOC denied appellant's

request for free photocopying of his legal materials pursuant to N.J.A.C. 10A:6-2.6 based on its determination that appellant did not qualify as indigent as defined in N.J.A.C. 10A:1-2.2. As a result, DOC made loans to appellant's inmate trust account (inmate account) to cover his expenses. Having considered the record on appeal and the applicable legal principles, we affirm DOC's determination that appellant does not qualify as indigent and must therefore repay DOC for loans made to his inmate account.

We discern the following facts from the record. Appellant is serving an aggregate life sentence with a thirty-five year period of parole ineligibility for murder, aggravated assault, robbery, and weapons offenses. During his incarceration, appellant was found guilty of fifty-two infractions, eighteen of which were adjudicated since 2011. These infractions included disruptive conduct, attempts to offer staff members bribes, misuse of electronic equipment, possession of unauthorized security equipment and drug related charges. Appellant's extensive history of disciplinary infractions resulted in his placement in administrative segregation from 2011 to 2015.<sup>1</sup>

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<sup>1</sup> In his reply brief, appellant references our decision reversing and remanding for a rehearing a June 18, 2014 DOC decision finding appellant guilty of sixteen disciplinary infractions. Lumumba v. N.J. Dept. of Corr., No. A-5183-13 (App. Div. January 4, 2016)(slip op. at 1). Appellant asserts that following the rehearing, he was

On June 16, 2014, appellant submitted an Inmate Inquiry Form regarding his "outstanding legal copy loan." Appellant asserted that because of his administrative segregation classification, he could not earn wages and DOC should therefore provide him with free photocopying services for his legal materials pursuant to N.J.A.C. 10A:6-2.6. In response to appellant's inquiry, a NJSP staff member advised appellant that, pursuant to N.J.A.C. 10A:1-2.2, DOC grants indigent status only to inmates who are unable to earn wages "due to prolonged illness or any other uncontrollable circumstance, and who [have] been verified as having no outside source from which to obtain funds."

On June 27, 2014, appellant filed an Inmate Grievance reiterating his original assertion and adding that he did not have any outside source of income. On July 9, 2014, appellant received a second staff response denying him indigent status. On July 24, 2014, appellant filed an administrative appeal, requesting that the "legal copy loan" he incurred since November 2011 "be

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"adjudicated not guilty on eight [of the disciplinary charges]." Statements in a brief, however, do not provide an evidential record upon which we may properly rely in rendering a decision. See, e.g., Rudbart v. Bd. of Review, 339 N.J. Super. 118, 122-23 (App. Div. 2001) (noting that "[c]ounsel's insertion in his appellate brief of facts outside the record below is inappropriate."). Nonetheless, since the decision under appeal predated the rehearing, consideration of the latter cannot possibly factor into the former.

rescinded" to reflect his indigent status as articulated in his grievance.

On July 25, 2014, a NJSP Administrator denied appellant's appeal on the ground that his placement in administrative segregation was not an uncontrollable circumstance because he "committed an offense" which resulted in his placement. The Administrator concluded that, as a result, appellant "may not be considered indigent." On August 8, 2014, appellant appealed the denial to the DOC Commissioner, requesting that the Commissioner "instruct the NJSP Administration . . . to comply with the governing regulation[,]" and find appellant indigent and thereby exempt from paying for copies of legal materials. Appellant's appeal to the Commissioner was denied on January 20, 2015 on the ground that appellant did not qualify as an indigent inmate under N.J.A.C. 10A:1-2.2 as his inability to work resulted from his placement in administrative segregation "due to inappropriate behavior," rather than an uncontrollable circumstance. This appeal followed.

Our role in reviewing an administrative agency decision is limited. Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010); In re Taylor, 158 N.J. 644, 656 (1999). Such decisions carry with them a "presumption of reasonableness[,]" Lisowski v. Borough of Avalon, 442 N.J. Super. 304, 330 (App. Div.

2015), certif. denied, \_\_ N.J. \_\_ (2016) (citation omitted), and will be disturbed only if it is "arbitrary, capricious, or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980). "The burden of demonstrating that the agency action was arbitrary, capricious or unreasonable rests on the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div.), certif. denied, 188 N.J. 219 (2006).

To determine whether an agency action is arbitrary, capricious, or unreasonable, we consider:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Carter, 191 N.J. 474, 482 (2007) (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)).]

We are not "relegated to a mere rubber-stamp of agency action," but rather "are constrained to engage in a 'careful and principled consideration of the agency record and findings.'" Williams v.

Dep't of Corr., 330 N.J. Super. 197, 204 (App. Div. 2000) (citations omitted).

We defer to the agency's interpretation of regulations that are "within its implementing and enforcing responsibility[.]" Utley v. Bd. of Review, 194 N.J. 534, 551 (2008) (quoting In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 102 (App. Div. 1997)). However, we are "in no way bound by the agency's . . . determination of a strictly legal issue." Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973). Thus, we may intervene when an agency's decision rests upon a misinterpretation of a regulation. Mazza, supra, 143 N.J. at 25.

On appeal, appellant contends that he qualifies as indigent as defined in N.J.A.C. 10A:1-2.2 and DOC's adverse decision was arbitrary, capricious, and unreasonable. Specifically, appellant argues that DOC violated N.J.S.A. 30:4-92, N.J.A.C. 10A:5-3.16, and the NJSP Inmate Handbook (Inmate Handbook) by improperly denying him work opportunities because of his placement in administrative segregation, a circumstance he could not control. We disagree.

N.J.A.C. 10A:1-2.2 defines an indigent inmate as one "who has no funds in his or her [inmate] 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." While N.J.A.C. 10A:6-2.5(a) requires DOC to "provide photocopies of legal material<sup>2</sup> . . . to inmates at the rate of \$.10 per page,"<sup>3</sup> under N.J.A.C. 10A:6-2.6(a), DOC is required to provide these materials "at no charge" to an indigent inmate as defined in N.J.A.C. 10A:1-2.2.

DOC determined that appellant does not qualify as indigent pursuant to N.J.A.C. 10A:1-2.2 because his placement in administrative segregation was not an uncontrollable circumstance and could have been avoided if appellant complied with DOC rules. However, appellant counters that it was DOC's noncompliance with N.J.S.A. 30:4-92, N.J.A.C. 10A:5-3.16, and the Inmate Handbook that deprived him of work opportunities while in administrative segregation, a circumstance he could not control.

Administrative segregation, as defined in N.J.A.C. 10A:1-2.2, is the "removal of an inmate from the general population of a correctional facility to a close custody unit because of one or more disciplinary infractions." N.J.S.A. 30:4-92 provides:

[I]nmates of all correctional . . .  
institutions . . . shall be employed in

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<sup>2</sup> N.J.A.C. 10A:1-2.2 defines legal material as "papers or documents that are required to be filed with the court and served upon opposing parties."

<sup>3</sup> N.J.A.C. 10A:6-2.7(h) authorizes DOC to deduct payment for photocopying legal materials directly from a non-indigent inmate's account.

productive occupations consistent with their health, strength, and mental capacity and shall receive . . . compensation . . . in the form of cash . . . or remission of time from sentence or both.<sup>4</sup>

However, inmates are not guaranteed work assignments and it is within DOC's discretion to determine whether to grant an inmate in administrative segregation the opportunity to work and earn wages. See Lorusso v. Pinchak, 305 N.J. Super. 117, 118-19 (App. Div. 1997) (explaining that an inmate "has no liberty interest in a particular, or any, job assignment, nor in the wages or credits that can be earned by performing a prison work assignment.").

N.J.A.C. 10A:5-3.16 provides that "[w]ork opportunities may be made available to inmates assigned to an Administrative Close Supervision Unit to the extent possible in accordance with security considerations, limited resources, availability of physical facilities, and budgetary constraints."<sup>5</sup> Thus, contrary to appellant's assertion, DOC has not violated the law by limiting work opportunities to certain categories of inmates, but rather utilized its discretion in determining when these opportunities would be made available and to whom. Indeed, appellant admits

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<sup>4</sup> N.J.S.A. 30:4-92 was amended effective August 1, 2016. However, the amendments do not affect the arguments in this appeal.

<sup>5</sup> The section of the inmate handbook relied on by appellant to support his argument merely recites the type of work detail available to administrative segregation inmates.



that, in the past, while in administrative segregation, DOC granted him work opportunities. DOC's subsequent decision to deny appellant work opportunities while in administrative segregation based on "security considerations, limited resources, availability of physical facilities, and budgetary constraints[]" does not constitute an abuse of discretion. Ibid.

We are mindful that the Department has "broad discretionary powers" to promulgate regulations governing correctional facilities. Jenkins v. Fauver, 108 N.J. 239, 252 (1987). We have noted that "[p]risons are dangerous places, and the courts must afford appropriate deference and flexibility to administrators trying to manage this volatile environment." Russo v. N.J. Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999). As explained by the Administrator, appellant's inability to work was due to his administrative segregation, a circumstance within his control since his segregation was a direct result of his failure to comply with DOC rules and regulations. However, administrative segregation is a temporary placement, which will not limit appellant's future ability to earn wages upon return to the general population.<sup>6</sup>


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<sup>6</sup> Indeed, while not a part of the official record, appellant submitted with his reply brief a September 17, 2015 Special Administrative Segregation Review Committee Decision and a May 11,

Although we find no merit to appellant's contention, we are obliged to stress that prisoner appeals should be carefully monitored to ensure that disciplinary sanctions do not undermine an inmate's due process right to seek appellate review. Access to appellate review should not be impeded by the very sanction the inmate seeks to appeal. See McDonald v. Pinchak, 139 N.J. 188, 192-196 (1995); Meija v. N.J. Dep't of Corrs., 446 N.J. Super. 369, 372 (App. Div. 2016).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION

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2016 Management Control Unit Review Committee Decision indicating that appellant was removed from administrative segregation in 2015 and returned to the general population in 2016.