

Circuit Court for Anne Arundel County
Case No. C-02-CV-19-003288

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1447

September Term, 2020

ANNE ARUNDEL COUNTY

v.

RITA SCHINDLER

Arthur,
Leahy,
Zic,

JJ.

Opinion by Zic, J.

Filed: August 26, 2022

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from the decision of the County Board of Appeals of Anne Arundel County (“Board”) upholding the denial of Rita Schindler’s application for a service-connected disability (“SCD”) retirement pension. The Board determined that Ms. Schindler did not prove that she was eligible for a SCD pension. Subsequently, Ms. Schindler sought judicial review. The Circuit Court for Anne Arundel County concluded that the record supported the Board’s finding that Ms. Schindler did not demonstrate she was entitled to a SCD pension but remanded the matter for further proceedings, reasoning that “the substantial merits of the case [would] not be determined by affirming.” Anne Arundel County (“County”) noted this appeal and Ms. Schindler filed a cross-appeal.

QUESTIONS PRESENTED

The County presents the following questions for our review, which we have slightly rephrased:

1. Did the circuit court err in remanding the case despite concluding that there was sufficient evidence to support the Board’s decision?
2. Is the Board’s decision supported by substantial evidence and without legal error?

In addition to an issue similar to the County’s first question presented, Ms. Schindler raises the following question, which we have also reworded:

1. Does the Anne Arundel County Code violate the Age Discrimination in Employment Act when an employee who has reached the age of sixty and is eligible for a normal retirement pension cannot receive a SCD retirement pension?

For the reasons that follow, we reverse the judgment of the circuit court and remand for the court to affirm the Board’s decision.

BACKGROUND

Ms. Schindler was employed by the County since July 23, 1998. On November 29, 2017, Ms. Schindler was injured in a motor vehicle accident while traveling to perform her duties as a zoning inspector. As a result of this accident, on August 2, 2018, Ms. Schindler’s physician, Dr. Edward McFarland, reported that she was permanently disabled due to her shoulder injury and would never be able to return to work.

On August 7, 2018, Ms. Schindler sought a SCD retirement pension under the Anne Arundel County Code (“County Code”). *See* County Code § 5-3-307(c). A SCD pension would afford Ms. Schindler 66 2/3% of her “final average basic pay.” County Code § 5-3-307(e)(3). Ms. Schindler then retired on February 1, 2019. At that time, she was 69 years old and had accumulated about 20 years of service. She continued to receive Worker’s Compensation payments until her retirement.

In a letter dated February 5, 2019, Andrea Rhodes, personnel officer for the County, denied Ms. Schindler’s request for a SCD pension because she was eligible for normal retirement. Pursuant to the County Code, “[a] participant who is not eligible to retire on a normal retirement pension may be retired by the Personnel Officer on a [SCD] retirement pension.” County Code § 5-3-307(c). An employee is eligible for a normal retirement pension on the earlier of “the participant’s 60th birthday or the completion of 30 years of credited service.” County Code § 5-3-302(a)(1). A normal retirement pension would afford Ms. Schindler approximately 40% of her pay. *See* County Code § 5-3-303. In pertinent part, the personnel officer’s letter stated:

As a participant in the Employees’ Retirement Plan you are eligible to apply for this type of disability benefit only if you are not eligible to retire on a normal retirement benefit. A review of your account verifies that you have met both the age and years of service requirement to be eligible for a normal retirement allowance under the County Code. Therefore, you are not eligible for a [SCD] retirement and that application is denied.

Ms. Schindler appealed the decision to the Board.¹ She argued that the County Code, by preventing her from receiving a SCD pension, violated the Age Discrimination in Employment Act (“ADEA”) and Maryland’s age discrimination laws. She sought “a ruling that the decision of the Personnel Officer is incorrect as a matter of law and/or is arbitrary and capricious” and “a ruling that she is entitled to have her application . . . processed in the normal course and, ultimately, that she be granted a [SCD] [p]ension.” Ms. Schindler requested that the Board “revers[e] the decision . . . and order[] that [her] application for a disability pension be processed without regard to her age or her eligibility for a [n]ormal [r]etirement [p]ension.”²

¹ In her brief, Ms. Schindler notes that, upon retiring, she “accept[ed] the normal retirement but appeal[ed] the denial of the SCD retirement.”

² During the subsequent hearing before the Board, Ms. Schindler’s attorney explained the remedy sought as follows: “I’m suggesting that the remedy would be is to remand it to the personnel officer with instructions to her to approve the pension for Ms. Schindler because the pension plan, as worded, discriminates on the basis of age.” Ms. Schindler’s attorney also stated in passing that “[a]ll the conditions [of eligibility for a SCD pension set forth in the County Code] are met here.” Later during the hearing, the County attorney clarified that the personnel officer “never considered whether or not [Ms. Schindler] was eligible for [SCD] retirement” given that she was eligible to retire on a normal retirement pension but stated that “even if that application is considered[,] . . . there is not the basis to approve her [SCD] retirement.” Ms. Schindler’s attorney responded that “I didn’t know that [the personnel officer] had not considered this” and

A hearing was held before the Board on June 5, 2019 at which both parties appeared. The parties presented a joint stipulation of facts detailing the following:

1. Ms. Schindler was employed by the County since July 23, 1998.
2. On November 29, 2017, she was injured in a vehicle accident while traveling to a site as part of her duties as a zoning inspector.
3. On August 2, 2018, one of Ms. Schindler’s physicians, Dr. Edward McFarland, reported that she was permanently disabled because of her shoulder injury and would never be able to work in any capacity.
4. On August 7, 2018, Ms. Schindler requested a [SCD] pension.
5. Ms. Schindler retired on February 1, 2019. She was 69 years old at the time of retirement and was a retirement plan Tier I employee.
6. On February 5, 2019, Ms. Schindler’s request for a [SCD] pension was denied by Andrea Rhodes, the Personnel Officer, because Ms. Schindler was eligible for normal retirement.
7. Ms. Schindler continued to receive Worker’s Compensation payments until her retirement.
8. Ms. Schindler’s appeal to the Board was timely.

The parties did not provide testimony before the Board but did present legal memoranda.

The Board subsequently issued a Memorandum of Opinion and accompanying order denying Ms. Schindler’s “request for the Board to (1) not apply . . . County Code[]

that “if there is some sort of fact-finding that has to go on by the personnel officer, we’re okay with that.”

[§] 5-3-307(c) as written because she asserts that it violates the ADEA, and (2) remand the case back to the Personnel Officer.” The Board explained that her request failed on two grounds. First, the Board stated that it has no remand authority and only hears matters de novo pursuant to § 603 of the Anne Arundel County Charter.³ Consequently, it “ha[s] no authority to force any governmental agency to act, Personnel Officer or otherwise.”

As the second reason, the Board explained:

[Ms. Schindler] failed to meet her burden of proof and persuasion before this Board by failing to show that she was entitled to the requested [SCD] [r]etirement. Most importantly, she presented no testimony, but rather relied on legal argument that her case should be remanded with advice to ignore certain provisions of the Code. This Board stands in the shoes of the governmental agency from which the appeal was taken and decides the matter based on the evidence and testimony presented. Had [Ms. Schindler] presented a satisfactory case in chief, this Board could have processed her application for a [SCD] [p]ension; but instead, we find that

³ Section 603 of the Anne Arundel County Charter provides:

The County Board of Appeals shall have authority to adopt and amend rules of practice and procedure governing its proceedings which shall have the force and effect of law when approved by ordinance. The rules may relate to filing fees, meetings and hearings of the Board, the manner in which its Chairman shall be selected and the term which he shall serve as Chairman and other pertinent matters deemed appropriate and necessary for the Board. All decisions by the County Board of Appeals shall be made after notice and hearing de novo upon the issues before said Board. All hearings held by the Board shall be open to the public, and the Board shall cause to be maintained complete public records of its proceedings, with a suitable index. All parties to the proceedings or their attorneys of record shall receive a copy of the decision of the Board.

the evidence submitted for consideration by this Board consisted only of a list of stipulated facts, which do not meet all provisions of the Code[] [§] 5-3-307(c). . . . [T]he Board cannot grant permissions sought if the facts available for consideration by us do not meet the bare statutory requirement.

To make the record abundantly clear, [Ms. Schindler] and County presented only the [joint stipulation of facts], with no documents or testimony.

Based on the limited record, the Board further stated that it was unable to conclude as required under the County Code that Ms. Schindler’s “disability occurred without willful negligence on her part,” “that she had exhausted sick leave[] and accident and sickness benefits to which the County makes contributions,” and that “she was making employee contributions . . . immediately prior to [her] date of disability.” The Board did not address the alleged ADEA violation but did note that the Equal Employment Opportunity Commission “has a clear path for those alleging ADEA violations.”⁴

On October 14, 2019, Ms. Schindler sought judicial review of the Board’s decision in the Circuit Court for Anne Arundel County. In her supporting memorandum, she argued that “the Board erred because the [p]ension plan uses . . . pension eligibility as a proxy for age[] and because the County forced [her] into involuntary retirement.” She requested that the circuit court reverse the Board’s decision and “require the County to

⁴ One board member wrote the following dissent: “I agree that [Ms. Schindler] failed to present adequate evidence and testimony to obtain the relief requested. However, the County should look closely at this Code Section to make certain that it does not violate the provisions of the ADEA. The concerns raised by Ms. Schindler merit careful review.”

read out of the pension ordinance the . . . [offending] language.” The County filed a memorandum in opposition to the petition for judicial review, countering that “the pension provisions are consistent with those commonly used throughout the country and are not ‘a proxy for age discrimination.’” Additionally, the County contended that Ms. Schindler waived the involuntary retirement issue by not raising it before the Board and alternatively that she cannot establish that the County forced her into involuntary retirement.

Following a hearing, the circuit court issued a memorandum opinion and order on October 21, 2020.⁵ The court concluded that “[a] reasoning mind can reach the conclusion that the stipulated facts do not meet the bare statutory requirements of § 5-3-307(c)” and thus there was sufficient evidence supporting the Board’s “finding that [Ms. Schindler] did not prove she was otherwise eligible for a SCD pension.” The court continued that “the Board was within its prerogative in refusing to address” whether the County Code violated the ADEA. The circuit court explained that although it “could easily dispose of [the] appeal by affirming,” “it is within the court’s discretion to remand the case if it concludes that the substantial merits of the case will not be determined by affirming.” It then stated that it “will not render a decision on issues which were not

⁵ The circuit court’s order and opinion were docketed on February 8, 2021.

decided by the Board” and “[i]nstead . . . will remand to the Board for further proceedings which shall include the taking of additional evidence.”⁶

Thereafter, the County noted this appeal on February 19, 2021. On that same day, Ms. Schindler filed a notice of cross-appeal.

DISCUSSION

The County argues that the circuit court erred by remanding the case when it found that the Board’s determination was based on sufficient evidence and did not identify any legal deficiencies. Under such circumstances, the County alleges, “the [c]ourt does not have the authority to insert its determination in place of the agency.” The County further argues that the Board’s decision was in fact supported by substantial evidence and without legal error and thus should be affirmed. It asserts that the Board “properly identified . . . three elements missing from the stipulations that were necessary to establish [SCD]” under the County Code and that “Ms. Schindler chose not to present evidence that she qualified for SCD retirement to the Board” and the Board “should not be required to give her another opportunity to do so.” Moreover, in response to Ms. Schindler’s cross-appeal, the County contends that if we reach the merits of this issue, we should conclude that no unlawful age discrimination exists.

Ms. Schindler argues that the circuit court properly remanded the matter to the Board, noting that “Rule 7-209 provides [the court] extremely broad authority . . . when

⁶ Regarding the issue of involuntary retirement, the circuit court noted that Ms. Schindler “did not raise her claim that the County violated the ADEA by forcing her into involuntary retirement before the Board[] and the Board did not rule upon this claim.”

reviewing an . . . agency’s action.” She claims that she “was not afforded an opportunity to develop the facts necessary to prove her eligibility for SCD pension” and alleges that the County, by failing to challenge the sufficiency of the evidence before the Board, waived reliance on such arguments. Ms. Schindler also asserts that the Board “never made findings relative to these issues,” “never asked questions pertaining to them,” and ultimately “misunderstood the case as presented to it.” Turning to her cross-appeal, Ms. Schindler argues that the issue presented is purely a matter of law and that the record is sufficient for this Court to resolve that issue by finding that the County Code is facially discriminatory on the basis of age. She requests that we hold that the provisions of County Code § 5-3-307(c), which “deprive[] [employees] of the possibility of receiving a SCD [p]ension if they are injured after they reach age sixty,” violate the ADEA and “must be read out of the law” and that we “declare that she is entitled to a SCD pension.” In the alternative, she asks this Court to affirm the circuit court’s ruling remanding the case to the Board for further proceedings “with instructions regarding the proper interpretation of the pension ordinance.”

As explained further below, we shall reverse the judgment of the circuit court and remand to the court with instructions to affirm the Board’s decision upholding the denial of Ms. Schindler’s application for SCD retirement.

I. STANDARD OF REVIEW

An appellate court “review[s] an administrative agency’s decision under the same statutory standards as the [c]ircuit [c]ourt.” *Gigeous v. E. Corr. Inst.*, 363 Md. 481, 495

(2001). We therefore “reevaluate the decision of the agency, not the decision of the lower court.” *Id.* at 495-96. When reviewing an agency’s decision, we consider “(1) the legality of the decision and (2) whether there was substantial evidence from the record as a whole to support the decision.” *Comm’r of Lab. & Indus. v. Whiting-Turner Contracting Co.*, 462 Md. 479, 490 (2019) (quoting *Baltimore Lutheran High Sch. Ass’n, Inc. v. Emp. Sec. Admin.*, 302 Md. 649, 662 (1985)). “Substantial evidence is defined as ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Whiting-Turner Contracting Co.*, 462 Md. at 490 (quoting *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978)). The Court of Appeals has explained that:

In applying the substantial evidence test, the reviewing court should not substitute its judgment for the expertise of . . . the administrative agency from which the appeal is taken. The reviewing court also must review the agency’s decision in the light most favorable to the agency, since decisions of administrative agencies are prima facie correct and carry with them the presumption of validity. Furthermore, not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.

Gigeous, 363 Md. at 497 (quoting *Baltimore Lutheran High Sch.*, 302 Md. at 662-63).

Further, we review purely legal questions de novo “with considerable ‘weight [afforded] to an agency’s experience in interpretation of a statute that it administers.’” *Whiting-Turner Contracting Co.*, 462 Md. at 490 (alteration in original) (quoting *Schwartz v. Maryland Dep’t of Nat. Res.*, 385 Md. 534, 554 (2005)). “We are under no constraint, however, ‘to affirm an agency decision premised solely upon an erroneous

conclusion of law.” *Emps.’ Ret. Sys. of City of Baltimore v. Dorsey*, 430 Md. 100, 111 (2013) (quoting *Thomas v. State Ret. & Pension Sys. of Maryland*, 420 Md. 45, 54-55 (2011)).

II. ANALYSIS

Maryland courts have repeatedly stressed that a court’s role in reviewing an agency’s decision is “narrow,” “limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions[] and to determin[ing] if the . . . decision is premised upon an erroneous conclusion of law.” *Dep’t of Lab. v. Boardley*, 164 Md. App. 404, 421 (2005) (quoting *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005)). If the agency’s decision is “not sufficiently clear to allow for [meaningful appellate] review, . . . fail[s] to reflect findings or reasons, or [is] based on an erroneous conclusion of law,” the reviewing court may remand the matter to the agency. *Boardley*, 164 Md. App. at 420. But “the order of an administrative agency must be upheld on judicial review if it is not based on an error of law[] and if the agency’s conclusions reasonably may be based upon the facts proven.” *Bd. of Cnty. Comm’rs for St. Mary’s Cnty. v. S. Res. Mgmt., Inc.*, 154 Md. App. 10, 25 (2003) (quoting *People’s Couns. for Baltimore Cnty. v. Md. Marine Mfg. Co.*, 316 Md. 491, 496-97 (1989)). Applying these principles, we hold that the Board’s decision was supported by substantial evidence and without legal error.

The Board, in denying the requested relief, concluded that it lacks remand authority⁷ and that Ms. Schindler failed to show she was otherwise eligible for a SCD pension by satisfying the requirements of County Code § 5-3-307(c). In her administrative appeal filing, Ms. Schindler stated that she “seeks[, in part,] a ruling that she is entitled to have her application for a disability pension processed in the normal course and, ultimately, that she be granted a [SCD] [p]ension.” To be awarded a SCD retirement pension, County Code § 5-3-307(c) provides a number of conditions that must be met, including that the disability occurred “without willful negligence on the participant’s part,” “the participant has exhausted sick leave and accident and sickness benefits from programs . . . to which the County makes contributions,” and “the participant was making employee contributions under this title immediately prior to the participant’s date of disability.”⁸ The only evidence submitted for consideration by the

⁷ The circuit court did not expressly indicate that the Board erred in reaching this conclusion. It is not clear whether Ms. Schindler challenges this determination. In her brief’s statement of facts, she states: “The Board felt constrained because it assumed it had no authority to remand. This procedural limitation misses the mark. The Board . . . is certainly within its authority to reverse the decision of the personnel officer and to require the personnel officer to consider Ms. Schindler’s pension application.” Ms. Schindler, however, provides no citation to any legal authority in support of that assertion. *See* Md. Rule 8-504(a)(6), (c) (requiring that an appellate brief contains an “[a]rgument in support of the party’s position on each issue” and permitting this Court to “dismiss the appeal or make any other appropriate order” in the event of noncompliance); *HNS Dev., LLC v. People’s Couns. for Baltimore Cnty.*, 425 Md. 436, 458-60 (2012) (declining to consider an argument when the party failed to cite any controlling law to support its “sweeping accusations and conclusory statements”).

⁸ County Code § 5-3-307(c) reads in full:

(c) Service-connected disability retirement pension. A participant who is not eligible to retire on a normal retirement pension may be retired by the Personnel Officer on a service-

connected disability retirement pension beginning on the date the following conditions are met:

(1) the Personnel Officer determines on the basis of a medical examination by one or more physicians selected by the Personnel Officer that:

(i) the participant has a total and permanent disability as the natural and proximate result of bodily injury in the performance of the participant's regular occupation or occupational disease incurred in the performance of the participant's regular occupation at some definite time or place without willful negligence on the participant's part; and

(ii) is unable to engage in the participant's regular occupation as an employee;

(2) the participant has exhausted sick leave and accident and sickness benefits from programs, exclusive of federal Social Security, to which the County makes contributions;

(3) for a tier one employee, the participant was making employee contributions under this title immediately prior to the participant's date of disability; and

(4) the disability is the result of injury compensable under the State Workers' Compensation Law and a claim is filed with the State Workers' Compensation Commission.

Board was the parties’ joint stipulation of facts,⁹ which we produced in its entirety in the above section of this opinion, and the Board found that the stipulated facts did not satisfy those three conditions. The Board’s determination is supported by substantial evidence.¹⁰

In deciding to remand the case, the circuit court agreed that the record supported the Board’s finding that Ms. Schindler did not prove she was eligible for a SCD pension under County Code § 5-3-307(c), but it identified no legal error made by the Board. Rather, to justify the remand, the court referenced former Rule 871(a), which has been recodified in Rule 8-604(d)(1), asserting “it is within the court’s discretion to remand the case if it concludes that the substantial merits of the case will not be determined by

⁹ In its memorandum opinion, the Board mentioned that the joint stipulation of facts “was handed to the Board[] but not made a part of the record” and that it nonetheless “g[ave] the parties accommodation on this point.”

¹⁰ Relatedly, in a footnote at the end of her brief’s statement of facts, Ms. Schindler states, without providing any record citations, that the County did not submit its administrative record to the Board and that when she “attempted to supplement the [c]ircuit [c]ourt record with the administrative record[,] . . . on motion of the County, the [c]ircuit [c]ourt struck that administrative record.” She then asserts that “[a]s indicated in the administrative record[,] . . . it is clear that she was otherwise eligible for a pension.” As this Court has previously explained, a reviewing court is limited to considering the evidence presented before the agency from which the appeal is taken. *See Hersl v. Fire & Police Employees’ Ret. Sys.*, 188 Md. App. 249, 261 (2009). Ms. Schindler makes no argument that we should deviate from this standard and consider the County’s administrative record when reviewing the Board’s decision.

affirming.”¹¹ But former Rule 871(a) and Rule 8-604(d)(1)¹² govern appellate review in this Court and the Court of Appeals.

Rule 7-209, which both parties cite in their respective briefs, is applicable when the circuit court reviews an administrative agency decision. Pursuant to that Rule, “[u]nless otherwise provided by law, the court may dismiss the action for judicial review or may affirm, reverse, or modify the agency’s order or action, remand the action to the

¹¹ The circuit court also included a citation to State Government Article § 10-222(h)(1) and *Bernstein v. Real Estate Commission of Maryland*, 221 Md. 221, 230 (1959), in which the Court applied an older version of that provision, without further explanation of either cited source.

¹² In pertinent part, Former Rule 871(a) provides:

If it shall appear . . . that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment from which the appeal was taken, or that the purposes of justice will be advanced by permitting further proceedings in the cause, . . . then this Court, instead of entering a final order affirming, reversing or modifying the judgment from which the appeal was taken, may order the case to be remanded Upon remand[,] . . . such further proceedings shall be had by . . . introduction of additional evidence, . . . or otherwise, as may be necessary for determining the action upon its merits

Similarly, Rule 8-604(d)(1) states:

If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

agency for further proceedings, or an appropriate combination of the above.” While Ms. Schindler claims that Rule 7-209 affords the circuit court “extremely broad authority,” this Court has cautioned that “even when statutes and rules authorize a reviewing court to remand an administrative decision to the agency under appropriate circumstances, *see, e.g.,* Md. Rule 7-209, the court must not exercise that authority in a manner that effectively substitutes the court’s discretion for that of the agency.” *Boardley*, 164 Md. App. at 420.

Ms. Schindler makes a number of arguments in an apparent attempt to identify an error committed by the Board in rendering its decision. She argues that the County waived the issue of the adequacy of the evidence by failing to argue this before the Board, that the Board “never asked questions pertaining to [such issues],” and that the “reasons for denying the SCD pension were raised *sua sponte* by the Board . . . for the first time in its written decision.” None of these assertions, however, are supported by citations to any relevant legal authority. *See Konover Prop. Tr., Inc. v. WHE Assocs., Inc.*, 142 Md. App. 476, 494 (2002) (refusing to address argument lacking citation to supporting legal authority and stating that “[i]t is not this Court’s responsibility to attempt to fashion coherent legal theories to support appellant’s sweeping claims”). Moreover, Ms. Schindler seemingly claims that the Board did not make adequate findings regarding the sufficiency of the evidence. We disagree. The Board’s opinion sets forth its finding, under the applicable law and in a clear manner, that Ms. Schindler did not prove her eligibility for SCD retirement. In light of the adequate record that Ms. Schindler did not

prove her eligibility for SCD retirement and absence of legal error, the Board’s decision should be affirmed. *See Stansbury v. Jones*, 372 Md. 172, 185 (2002) (“[T]he order of an administrative agency must be upheld on judicial review if it is not based on an error of law[] and if the agency’s conclusions reasonably may be based upon the facts proven.” (quoting *Md. Marine Mfg. Co.*, 316 Md. at 496-97)). Consequently, we reverse the judgment of the circuit court and remand for the court to affirm the Board’s decision. In doing so, we need not address Ms. Schindler’s contention concerning the alleged age discrimination. *See Boardley*, 164 Md. App. at 415 (“[A]n appellate court will review an adjudicatory agency decision solely on the grounds relied upon by the agency.” (quoting *Dep’t of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 123 (2001))).

**JUDGMENT OF THE CIRCUIT COURT
OF ANNE ARUNDEL COUNTY
REVERSED; CASE REMANDED TO THE
CIRCUIT COURT WITH DIRECTIONS
TO AFFIRM THE DECISION OF THE
COUNTY BOARD OF APPEALS OF ANNE
ARUNDEL COUNTY; COSTS TO BE PAID
BY APPELLEE/CROSS-APPELLANT.**