

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	FSP Docket No. 06-0001
	)	
Idaho Department of Health and	)	
Welfare, Statewide Self Reliance	)	
Programs,	)	
	)	
Appellant	)	<b>Decision and Order</b>

**PROCEDURAL HISTORY**

Roberto Salazar, the Administrator, Food and Nutrition Service, United States Department of Agriculture [hereinafter the Administrator], pursuant to the Food Stamp Act, as amended [hereinafter the Food Stamp Act],<sup>1</sup> sent a letter dated June 23, 2006, to the Idaho Department of Health and Welfare [hereinafter Idaho] notifying Idaho of its food stamp program quality control error rate for fiscal year 2005. The Administrator also informed Idaho that the letter served as notice of Idaho's \$240,951 liability amount for fiscal year 2005 and that, if Idaho wished to appeal the \$240,951 liability amount, it must file a notice of appeal with the Hearing Clerk, within 10 days of receipt of the liability amount and notice of claim/bill for collection. Attached to the June 23, 2006, letter was a

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<sup>1</sup>7 U.S.C. §§ 2011-2036 (2000 & Supp. IV 2004).

bill for collection of the \$240,951 liability amount.<sup>2</sup> On June 26, 2006, Idaho received the June 23, 2006, letter and bill for collection. On July 13, 2006, Idaho filed a notice of appeal with the Hearing Clerk stating “[a] statement of the issues, our position, and evidence supporting our position will be sent within the next 30 days.”

In mid-July 2006, the Hearing Clerk, by letter, informed Idaho that its notice of appeal had been received, that it must file and serve its appeal petition not later than 60 days after receiving a notice of the claim, and that failure to file a timely appeal petition may result in a waiver of further appeal rights.

On September 8, 2006, Idaho filed a Petition to Appeal Error Rate Liability Assessment. On November 6, 2006, the Administrator filed a Motion to Dismiss contending Idaho’s Petition to Appeal Error Rate Liability Assessment had not been timely filed. The Administrator asserted Idaho received a notice of the claim on June 26, 2006, but did not file its Petition to Appeal Error Rate Liability Assessment with the Hearing Clerk until September 8, 2006, 74 days after receipt of the notice of the claim and 14 days late. On November 20, 2006, Idaho filed a response to the Administrator’s Motion to Dismiss and requested that the case be scheduled for hearing.

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<sup>2</sup>Pursuant to the Food Stamp Act, the Administrator placed 50 percent of the liability amount (\$120,475.50) at-risk for payment to the Secretary of Agriculture if an excessive payment error rate is established for fiscal year 2006 and designated 50 percent of the liability amount (\$120,475.50) to be used by Idaho for new investment to improve Idaho’s administration of the food stamp program. (See 7 U.S.C. § 2025(c)(1)(D) (2000 & Supp. IV 2004).)

On January 23, 2007, Chief Administrative Law Judge Marc R. Hillson [hereinafter the Chief ALJ] filed a Decision and Order Dismissing Appeal in which he granted the Administrator's Motion to Dismiss. On February 20, 2007, Idaho filed an Appeal Petition for Review by Judicial Officer and Idaho's Brief in Support of Reversal by Judicial Officer. On March 23, 2007, the Administrator filed Appellee's Response in Opposition to the State of Idaho's Appeal Petition and Brief in Support Thereof. On March 29, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.<sup>3</sup>

### **DISCUSSION**

The Food Stamp Act requires the Secretary of Agriculture to notify a state agency if its fiscal year payment error rate gives rise to a payment claim or liability amount based on the difference between the state agency's error rate and the national average payment error rate.<sup>4</sup> The Food Stamp Act further provides, if a state agency disagrees with the Secretary of Agriculture's determination of the payment claim or liability amount, the state agency shall submit to an administrative law judge: (1) a notice of appeal not later than 10 days after receiving notice of the payment claim or liability amount; and (2) evidence in support

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<sup>3</sup>I had some concern regarding my jurisdiction to issue a decision in the instant proceeding. Through Stephen M. Reilly, an attorney with the Office of the Judicial Officer, I requested that each party submit a brief regarding my jurisdiction, and, in June 2007, each party submitted a brief which supports the argument that I have jurisdiction to issue a decision in the instant proceeding.

<sup>4</sup>7 U.S.C. § 2025(c)(8)(C) (2000 & Supp. IV 2004).

of the appeal not later than 60 days after receiving notice of the payment claim or liability amount.<sup>5</sup>

The Secretary of Agriculture promulgated regulations further detailing the procedures for state agency appeal of these quality control claims.<sup>6</sup> The regulations relating to state agency appeal of quality control claims of \$50,000 or more<sup>7</sup> require the Hearing Clerk, after receiving a notice of appeal from a state agency, to inform the state agency, by letter, that the state agency must file and serve its appeal petition not later than 60 days after receiving a notice of the claim and that failure to file a timely appeal petition may result in a waiver of further appeal rights.<sup>8</sup>

The record establishes that Idaho received the Administrator's notice of claim and bill for collection on June 26, 2006.<sup>9</sup> On July 13, 2006, Idaho filed a notice of appeal with the Hearing Clerk.<sup>10</sup> After receiving Idaho's notice of appeal, the Hearing Clerk informed Idaho by letter that Idaho must file and serve its appeal petition, as set forth in 7 C.F.R. §

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<sup>5</sup>7 U.S.C. § 2025(c)(8)(D) (2000 & Supp. IV 2004).

<sup>6</sup>7 C.F.R. pt. 283.

<sup>7</sup>7 C.F.R. §§ 283.4-.23.

<sup>8</sup>7 C.F.R. § 283.4(e)(1).

<sup>9</sup>Motion to Dismiss, Exhibit B.

<sup>10</sup>Idaho filed a notice of appeal, dated July 3, 2006, with the wrong United States Department of Agriculture office (Motion to Dismiss, Exhibit C). Idaho sent a second notice of appeal, dated July 6, 2006, to the Hearing Clerk (Motion to Dismiss, Exhibit D). Idaho filed this second notice of appeal with the Hearing Clerk on July 13, 2006. The timeliness of Idaho's filing its notice of appeal is not at issue in this proceeding.

283.22, “not later than 60 days after receiving a notice of the claim” and “[f]ailure to file a timely appeal petition may result in a waiver of further appeal rights.” (Emphasis in original.) Idaho received the Hearing Clerk’s informational letter on July 17, 2006.<sup>11</sup>

Thus, in accordance with the Food Stamp Act, the regulations detailing the procedures for state agency appeal of quality control claims, and the Hearing Clerk’s mid-July 2006 letter, Idaho was required to file its appeal petition with the Hearing Clerk no later than August 25, 2006. Idaho filed its appeal petition with the Hearing Clerk on September 8, 2006, 14 days after the time expired for Idaho’s filing an appeal petition. Therefore, I affirm the Chief ALJ’s Decision and Order Dismissing Appeal in which he granted the Administrator’s Motion to Dismiss.

#### **IDAHO’S PETITION FOR REVIEW BY THE JUDICIAL OFFICER**

Idaho raises four issues in its Appeal Petition for Review by Judicial Officer and Idaho’s Brief in Support of Reversal by Judicial Officer. First, Idaho asserts it was not given adequate notice that it was required to file its appeal petition not later than 60 days after it received the Administrator’s notice of claim and bill for collection on June 26, 2006. Idaho contends 7 C.F.R. § 283.4(e)(1)(iii) is vague; it reasonably understood the Hearing Clerk’s letter, which Idaho received on July 17, 2006, as the notice of claim; and it believed it had until September 17, 2006, to file its appeal petition. Idaho argues it should not be denied the opportunity to present its case on the merits because it reasonably

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<sup>11</sup>United States Postal Service Track and Confirm for Article Number 7000 1670 0003 5453 2515.

misread 7 C.F.R. § 283.4(e)(1)(iii). (Idaho's Brief in Support of Reversal by Judicial Officer at 2-6.)

The regulations provide that the Hearing Clerk must send the state agency a letter which advises the state agency that it must file its appeal petition not later than 60 days after receiving a notice of the claim.<sup>12</sup> The regulations clearly distinguish between the Hearing Clerk's informational letter and a notice of the claim.<sup>13</sup> I find no reasonable basis for Idaho's misreading 7 C.F.R. § 283.4(e)(1)(iii).

Moreover, the Administrator's letter dated June 23, 2006, and served on Idaho on June 26, 2006, plainly states it is the notice of claim and informs Idaho of its right to appeal the notice of claim, as follows:

USDA is required by Section 16(c)(8)(C) of the Act to notify State agencies of payment claims or liability amounts. This letter serves as notice of your State's liability amount pursuant to Section 16(c)(1)(C) of the Act. Enclosed is a Notice of Claim/Bill for Collection in the amount of \$240,951.00.

....

... Section 16(c)(8)(D)(i) of the Act provides that if a State agency decides to pursue an appeal, it must file a notice of appeal, pursuant to 7 CFR § 283.4 within 10 days of receipt of the liability amount and Notice of Claim/Bill for Collection. However, the statute further provides that this time period may be extended as needed by the Department's Office of the Administrative Law Judges (OALJ). In accordance with 7 CFR § 283.22 of the FSP regulations, a request for an extension must be submitted to the OALJ prior to the original due date. The notice of appeal or a request for an extension shall be filed with the Hearing Clerk, U.S. Department of Agriculture, Office of Administrative Law Judges, Room 1081, South

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<sup>12</sup>7 C.F.R. § 283.4(e)(1)(iii).

<sup>13</sup>See 7 C.F.R. § 283.4(e).

Agriculture Building, Washington, D.C. 20250 within 10 days of receipt of the liability amount and the Notice of Claim/Bill for Collection.

Letter dated June 23, 2006, from the Administrator to Idaho at 2-3.

Further, the Hearing Clerk's mid-July 2006, letter to Idaho does not indicate that it is a notice of the claim. Instead, the Hearing Clerk's letter clearly states that it is an informational letter. The Hearing Clerk's letter refers Idaho to the procedures applicable to state agency appeal of quality control claims and explicitly states that Idaho's appeal petition must be filed and served not later than 60 days after receiving a notice of the claim.

Idaho cites two cases, *Laurson v. Massanari*, 164 F. Supp.2d 317 (E.D.N.Y. 2001), and *Hernandez v. Sullivan*, 1991 WL 243451 (S.D.N.Y. 1991), in support of its position that it did not receive adequate notice of the requirements for filing a timely appeal petition. I find both cases inapposite.

*Laurson* and *Hernandez* involve individuals seeking social security disability benefits. In *Laurson*, the Court held the Commissioner of Social Security failed to provide adequate notice that a claimant for disability benefits must request an extension of time to bringing suit for judicial review within 60 days after notice of the Appeals Council's denial is mailed to the claimant. The Court found that neither the Commissioner's regulations nor the Commissioner's notice to the *pro se* claimant explicitly notified the claimant that the request for an extension of time must be made within 60 days after notice of the Appeals Council's denial is mailed to the claimant. The Court further stated "[t]o

be added to the mix is the realization that many claimants for social security benefits are not well educated or are not adept in the English language; moreover, they invariably are not represented by counsel.” In *Hernandez*, the Court held that faulty legal advice provided to a claimant was sufficient to toll the 60-day period during which a claimant may seek judicial review of the Appeals Council’s denial.

In contrast to the claimants in *Laurson* and *Hernandez*, Idaho is a state agency with significant resources and has been continually represented by counsel in this proceeding. Further, unlike the regulation at issue in *Laurson*, both the Food Stamp Act and the regulations detailing the procedures for state agency appeal of quality control claims explicitly provide that a state agency must file its appeal petition not later than 60 days after receiving a notice of the claim.<sup>14</sup> Finally, unlike the faulty legal advice sent to the claimant in *Hernandez*, the Administrator and the Hearing Clerk fully and correctly advised Idaho of the procedures applicable to appeal of the Administrator’s notice of the liability amount.

Second, citing section 16(c)(9)(E) of the Food Stamp Act,<sup>15</sup> Idaho contends the administrative law judge has authority to extend the deadline for filing a state agency’s appeal petition when there is a significant circumstance beyond the control of the state agency (Idaho’s Brief in Support of Reversal by Judicial Officer at 3).

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<sup>14</sup>7 U.S.C. § 2025(c)(8)(D)(ii) (2000 & Supp. IV 2004); 7 C.F.R. § 283.4(e)(1)(iii).

<sup>15</sup>7 U.S.C. § 2025(c)(9)(E) (2000).



As an initial matter, the “good cause” provision cited by Idaho relates only to “the contention of a State agency that the claim or liability amount should be waived”[;]<sup>16</sup> it does not relate to extensions of time for filing an appeal petition.

The only basis provided in the Food Stamp Act for not meeting the 60-day deadline for filing an appeal petition is an extension of time granted by an administrative law judge for cause shown.<sup>17</sup> Any request for an extension of time to file an appeal petition must be submitted to the administrative law judge prior to the expiration of the original time for filing the appeal petition.<sup>18</sup> Idaho did not request an extension of time to file its appeal petition by August 25, 2006, the date its appeal petition was due. Therefore, there is no basis under the Food Stamp Act or the regulations detailing the procedures for state agency appeal of quality control claims for Idaho’s failure to meet the 60-day deadline for filing its appeal petition.

Third, Idaho contends the Chief ALJ erroneously concluded the phrase “a notice of the claim” found at 7 C.F.R. § 283.4(e)(1)(iii) is the semantic equivalent of “the Notice of Claim.” Idaho argues that it “had good cause to misread the deadline language in the regulation” and asserts, if the term “QC claim,” or the capitalized form, “Notice of Claim,” had been used in 7 C.F.R. § 283.4(e)(1)(iii), instead of the term that was used, “a notice of

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<sup>16</sup>7 U.S.C. § 2025(c)(8)(H) (2000 & Supp. IV 2004).

<sup>17</sup>7 U.S.C. § 2025(c)(8)(I) (2000). See also 7 C.F.R. § 283.22(f).

<sup>18</sup>7 C.F.R. § 283.22(f).

the claim,” Idaho would have been reasonably notified that the term had special meaning. (Idaho’s Brief in Support of Reversal by Judicial Officer at 6-8.)

Based on the record before me, I find no reasonable basis for Idaho’s confusing the Hearing Clerk’s mid-July 2006, informational letter with a notice of the claim. The Administrator’s letter, dated June 23, 2006, explicitly states that the letter serves as notice of Idaho’s liability amount pursuant to section 16(c)(1)(C) of the Food Stamp Act.<sup>19</sup> Enclosed with the letter was a “Notice of Claim/Bill for Collection.” In addition, the Administrator’s June 23, 2006, letter states, if a state agency appeals, the state agency must, pursuant to section 16(c)(8)(D)(i) of the Food Stamp Act,<sup>20</sup> file a notice of appeal, pursuant to 7 C.F.R. § 283.4, with the Hearing Clerk “within 10 days of receipt of the liability amount and Notice of Claim/Bill for Collection.” In accordance with the Food Stamp Act, the regulations detailing procedures for state agency appeal of quality control claims, and the Administrator’s June 23, 2006, letter, Idaho filed a notice of appeal with the Hearing Clerk. I find Idaho’s filing the notice of appeal indicates Idaho knew it was appealing a notice of the claim; I cannot find any other reason for Idaho’s filing a notice of appeal pursuant to section 16(c)(8)(D)(i) of the Food Stamp Act<sup>21</sup> and 7 C.F.R. § 283.4.

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<sup>19</sup>7 U.S.C. § 2025(c)(1)(C) (2000 & Supp. IV 2004).

<sup>20</sup>7 U.S.C. § 2025(c)(8)(D)(i) (2000 & Supp. IV 2004).

<sup>21</sup>7 U.S.C. § 2025(c)(8)(D)(i) (2000 & Supp. IV 2004).

Moreover, the Hearing Clerk’s mid-July 2006, letter to Idaho does not indicate that it is a notice of the claim. Instead, the Hearing Clerk’s letter clearly states it is an informational letter. The Hearing Clerk’s letter refers Idaho to the procedures applicable to state agency appeal of quality control claims and explicitly states that Idaho’s appeal petition must be filed and served not later than 60 days after receiving a notice of the claim.

Further still, the Food Stamp Act explicitly states a state agency desiring to appeal a payment claim or a liability amount must submit a notice of appeal and an appeal petition within specified times after receiving a notice of the claim or liability amount, as follows:

**§ 2025. Administrative cost-sharing and quality control**

.....

**(c) Quality control system**

.....

**(8) Criteria for payment by a State agency**

.....

(D) A State agency desiring to appeal a payment claim or liability amount . . . shall submit to an administrative law judge—

(i) a notice of appeal, not later than 10 days after receiving a notice of the claim or liability amount; and

(ii) evidence in support of the appeal of the State agency, not later than 60 days after receiving a notice of the claim or liability amount.

7 U.S.C. § 2025(c)(8)(D) (2000 & Supp. IV 2004). In light of the language in the Food Stamp Act, the regulations detailing the procedures for state agency appeal of quality control claims, the Administrator’s letter dated June 23, 2006, and the Hearing Clerk’s mid-July 2006 letter, I find no basis for Idaho’s argument that it “had good cause to

misread the deadline language in the regulation” and Idaho’s assertion that it had a reasonable basis for confusing the Hearing Clerk’s mid-July 2006, informational letter with a notice of the claim.

Fourth, Idaho contends the Chief ALJ gave inadequate weight to the fact that the term “claim” is commonly applied in the field of law to mean “claim for relief,” exactly the sense in which Idaho construed it. Idaho states its request “for a hearing right based on operative facts that Idaho believed entitled it to be relived of food stamp error penalties” constitutes a “claim.” (Idaho’s Brief in Support of Reversal by Judicial Officer at 8-9.)

According to Idaho’s reasoning, the 60-day time period for Idaho’s filing an appeal petition began on the date Idaho filed a request for hearing. Idaho first filed a request for hearing on September 8, 2006.<sup>22</sup> I find Idaho’s argument that its request for hearing constitutes “a notice of the claim” without merit. The regulations detailing the procedures for state agency appeal of quality control claims provide no basis for Idaho’s confusing its request for hearing with a notice of the claim. The regulations explicitly state the appeal petition shall contain a request for oral hearing, if desired by the state agency.<sup>23</sup> As the request for oral hearing is required to be included in the appeal petition, I find that the request for hearing could not also constitute the beginning of the 60-day period for filing the appeal petition. Moreover, the regulations provide that a state agency must file its

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<sup>22</sup>Petition to Appeal Error Rate Liability Assessment at 11.

<sup>23</sup>7 C.F.R. § 283.4(g)(3).

appeal petition not later than 60 days after receiving a notice of the claim.<sup>24</sup> Idaho cannot be said to have “received” its request for hearing; I find, instead, that Idaho issued and filed its request for hearing.

For the foregoing reasons, the following Order is issued.

**ORDER**

1. The Administrator’s Motion to Dismiss is granted.
2. Idaho’s request for oral hearing is denied.

This Order shall become final and take effect 30 days after the date of delivery or service on Idaho.<sup>25</sup>

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<sup>24</sup>7 C.F.R. § 283.4(e)(1)(iii).

<sup>25</sup>See 7 U.S.C. § 2023(a)(5) (2000).

### JUDICIAL REVIEW

Idaho has the right to seek judicial review of the Order in this Decision and Order in the United States District Court for the District of Idaho in accordance with 7 U.S.C. § 2023(a) (2000 & Supp. IV 2004). Idaho must seek judicial review by filing a complaint against the United States within 30 days after the date of delivery or service of this Decision and Order upon Idaho.<sup>26</sup>

Done at Washington, DC

June 27, 2007

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William G. Jenson  
Judicial Officer

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<sup>26</sup>See 7 U.S.C. § 2023(a)(13) (2000); 7 C.F.R. § 283.20(j)(4).