

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)	

Decision and Order Dismissing Appeal

Appellee Food and Nutrition Service’s Motion to Dismiss is **GRANTED**. I conclude that, as a result of Appellant’s late filing of its appeal petition, I have no jurisdiction to conduct a hearing in this matter. Accordingly, I must dismiss the appeal.

Procedural Background

On June 23, 2006, Roberto Salazar, Administrator of the United States Department of Agriculture’s Food and Nutrition Service, sent a letter to Richard Armstrong, Director, Idaho Department of Health and Welfare, informing him that the Idaho Department of Health and Welfare was liable for penalties in the amount of \$240,951 for quality control (QC) errors resulting in excessive payments under the food stamp program pursuant to the Food Stamp Act of 1977 (the Act). The letter further informed Mr. Armstrong that “This letter serves as notice of your State’s liability amount pursuant to Section 16(c)(I)(C) of the Act. Enclosed is a Notice of Claim/Bill for Collection in the amount of \$240,951.00.” The letter advised Mr. Armstrong that if the

State of Idaho wished to appeal this assessment it must file a Notice of Appeal within 10 days of receipt of the Notice of Claim/Bill for Collection.

On July 6, 2006, Russell Barron, Administrator of Appellant, filed Idaho's appeal with USDA's Office of Administrative Law Judges.¹ The Notice of Appeal was received on July 13, 2006, at which point Joyce Dawson, USDA's Hearing Clerk, sent a letter to Appellant assigning a docket number to the case. In her letter, the Hearing Clerk specifically informed appellant that "the State agency must file and serve its appeal petition, as set forth in § 283.22 not later than 60 days after receiving a notice of the claim. Failure to file a timely appeal petition may result in a waiver of further appeal rights." (emphasis in original).

A Petition to Appeal Error Rate Liability Assessment, dated September 8, 2006 was submitted that day via fax to the Hearing Clerk.

On November 6, 2006, Appellee filed a Motion to Dismiss, pursuant to 7 C.F.R. § 283.5, contending that Appellant filed its Appeal Petition in an untimely manner. Appellee contended that Appellant received the Notice of Claim letter on June 26, 2006, but did not file its appeal petition until September 8, 2006, 74 days after receipt of the notice of claim and 14 days out of time.

On November 20, 2006 Appellant filed a response to the Motion to Dismiss and requested that the case be scheduled for hearing.

I conducted a conference call with the parties on January 12, 2007 to discuss the Motion to Dismiss. Willard Abbott, Esq., represented Appellant and Angela Gusky, Esq. represented Appellee.

¹ An appeal dated July 3, 2006 was mistakenly filed with the wrong USDA office, but the timeliness of the filing of the Notice of Appeal is not an issue.

Discussion

The Food Stamp Act of 1977 requires the Secretary of Agriculture to notify states if their payment error rates give rise to a liability amount based on the difference between the state's error rate and the national average payment error rate. 7 U.S.C. § 2025(c). The Secretary must notify the state of the payment claims or liability amounts before June 30 after the end of the fiscal year in question. If the state disagrees with the Secretary's determination of the payment claim or liability amount, the state

. . . 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, no later than 60 days after receiving a notice of the claim or liability amount.

7 U.S.C. § 2025 (c) (8) (D).

The Secretary promulgated regulations further detailing the procedures for appealing these claims. The procedures for appealing QC claims of over \$50,000 requires the Hearing Clerk, after receiving the Notice of Appeal, to assign the case a docket number and to instruct the state as to the requirements of the appeal petition. The Hearing Clerk is specifically required to notify the state of the necessity of filing the petition within 60 days of receipt of the notice of claim. 7 C.F.R. § 283.4(e)(iii).

It is undisputed that all the procedural niceties were complied with here. Appellant contends, however, that certain aspects of the regulations were ambiguous or confusing so that it can be excused for filing its petition late. I disagree.

First, Appellant contends that the word "claim" as defined in the regulations does not necessarily refer to the term "QC claim." Appellant cites to an obvious typographical

error in that the definition section of the regulations defines “OC claim” as the claim made pursuant to 7 U. S. C. § 2025(c). However, the absence of any such term as “OC claim” in the regulations, coupled by the fact that by its own terms the definition is referring to the claim specified in the statute, renders this contention feckless.

Second, Appellant contends that the fact Appellee referred to its demand for payment as a “Notice of Claim/Bill for Collection” somehow entitled Appellant to believe that it was not the document that was referred to in either the regulations or statute. This argument is particularly puzzling given that the June 23, 2006 letter specifically stated that the Act required the Secretary “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.” If that somehow did not indicate to Appellant that the Secretary was submitting a Notice of Claim, the next page of the letter clearly spells out Appellant’s appeal rights, with the cite to the governing regulations. Further, Appellant did file an appeal and one must ask what Appellant thought it was appealing if not the Notice of Claim. Moreover, upon receipt of the appeal the Hearing Clerk specifically and unambiguously notified Appellant of the requirement that the appeal petition be filed within 60 days of receipt of the Notice of Claim. There is nothing in this record that would justify me to find that Idaho had “no concrete basis” for construing the Notice of Claim as anything other than a claim made pursuant to 7 U. S. C. § 2025(c).

Likewise, Appellant’s final contention that the 60 day period in the Hearing Clerk’s letter referred to Idaho’s “claim” for a hearing rather than the “Notice of Claim” is weak. The letter clearly states that the 60 days was calculated from Idaho’s receipt of

the notice of claim. This can hardly be confused with Idaho's "claim"² for a hearing, which would not have been "received" by Appellant. Indeed, Appellant had not even requested a hearing in their appeal letter, but only indicated they would be submitting³ a "statement of the issues, our position and evidence supporting our position." It was not until the untimely filed petition on September 8, 2006 that Idaho even requested a hearing, so the grounds for the State's alleged confusion are basically nonexistent.

At the telephone conference, Counsel for Appellant suggested that I should find that the regulations, and perhaps the statute, were vague and obscure and that I should deny the Motion to Dismiss and schedule the matter for hearing. Unfortunately, the filing of evidence in support of the State's appeal within 60 days is a statutory mandate, something which I have no authority to overturn. While the Act allows me to extend deadlines "for cause shown," none of the reasons for late filing propounded by Appellant constitutes good cause. 7 U.S.C. 2025(c)(8)(i).

Order

Appellee's Motion to Dismiss is **GRANTED**.

This decision shall become final and effective 30 days after service unless appealed to the Judicial Officer within that time.

MARC R. HILLSON
Chief Administrative Law Judge

January 19, 2007

² A hearing is normally requested or demanded or moved for rather than being claimed. Thus, the rules indicate that the appeal petition contain "A request for an oral hearing, if desired." 7 C.F.R. § 283.4(g)(3).

³ Mr. Barron's appeal letter stated " . . . evidence . . . will be sent within the next 30 days."