

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) FNS Docket No. 09-0012
)
Anitra Hayes,)
)
Petitioner)

Order Granting Motion to Dismiss for Lack of Jurisdiction

In this appeal of an order affirming a decision ordering that Petitioner Anitra Hayes repay the City of Virginia Beach Department of Social Services (DSS), via an offset against her federal income tax refund, for overpayment of Food Stamp Program benefits she received, I find that the United States Department of Agriculture's Office of Administrative Law Judges has no jurisdiction to hear cases of this nature, and I dismiss the appeal.

Ms. Hayes, a resident of Virginia Beach, Virginia, was notified by the DSS on November 7, 2007, that they had determined that her household had been overpaid \$1933 in Food Stamp Program benefits. The DSS offered and scheduled a hearing on March 12, 2008 for Ms. Hayes to contest this determination, but she did not appear or otherwise respond to the notice. After the DSS Hearing Officer unsurprisingly affirmed the initial determination of the DSS¹, Ms. Hayes chose to not avail herself of the opportunity to appeal that decision to a Virginia Circuit Court.

¹ See Respondent's Exhibit 3, dated April 8, 2008.

After Ms. Hayes was notified on July 31, 2008, that DSS intended to submit the claim for \$1933 to the Department of the Treasury under the Treasury Offset Program (TOP) to be collected via Federal income tax refund offset, Ms. Hayes timely requested federal review. The Atlanta Regional office of the Food and Nutrition Service (FNS) of the United States Department of Agriculture issued a determination letter on October 10, 2008, affirming the earlier determination, and informing her that any further appeals must be made “through the courts.”²

Ms. Hayes initially filed an appeal with the Departmental Appeals Board of the Department of Health and Human Services, which was dismissed for lack of jurisdiction³. Ms. Hayes then filed a Request for Hearing with the USDA on October 23, 2008. Respondent filed a Motion to Dismiss on November 25, 2008, Petitioner filed a reply on December 10, and Respondent filed a short reply on December 12, 2008.⁴

Most aspects of the Food Stamp Program are administered by the states. 7 U.S.C. § 2020. In particular, collections of overissuances are conducted by the State agency. 7 U.S.C. § 2022(b). The only cases where the Office of Administrative Law Judges has jurisdiction over cases involving the Food Stamp Program are where a State agency in charge of the food stamp program chooses to challenge an action by the FNS finding that the State’s Quality Control program did not meet federal standards. 7 C.F.R. Part 283. Questions concerning individual benefits are subject to a carefully crafted multi-layer review process at the state level, but Petitioner chose not to avail herself of this process. Further, when Petitioner was notified that the TOP process was going to be instituted, she was offered federal review under that program’s

² Respondent’s Exhibit 7. The FNS letter is non-specific as to the nature of “the courts.”

³ Petitioner’s Exhibit 14.

⁴ I grant Respondent’s Motion for Leave to Reply to Petitioner’s Motion.

regulations. Having participated unsuccessfully in that process, there were no more administrative remedies for Petitioner. Her only recourse is with the appropriate courts.

Wherefore, Respondent'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 time⁵.

MARC R. HILLSON
Chief Administrative Law Judge

December 23, 2008

⁵ The documents in this case file contain personally identifiable information relating to Ms. Hayes. I direct the Hearing Clerk to either seal this file or to redact such information.