UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 14-0136

Department of Human Services,
State of Rhode Island,

Appellant

v.

Food and Nutrition Service,
United States Department of Agriculture,

Appellee

Appearances: Gail A. Theiault, Esquire, Administrative and Legal Support Services Administrator, Rhode Island Office of Health and Human Services (OHHS), Office of Legal Services, Cranston, Rhode Island for the Appellant
Michael Knipe, Esquire, Office of the General Counsel, United States Department of Agriculture, Washington, DC for the Appellee

Decision and Order

Preliminary Statement

This action is an appeal of a Quality Control Claim in the amount of $683,350.00 for Fiscal Year 2013 (FY 2013) issued by the Food and Nutrition Service of the United States Department of Agriculture [hereinafter FNS" or "Appellee"] against the State of Rhode Island [hereinafter "Rhode Island" or "Appellant"] brought under Section 16(c)(8)(D)(i) of the Food and Nutrition Act of 2008, [hereinafter the "Act"], 7 U.S.C. § 2025. The Bill for Collection dated June 25, 2014 was assessed against the State of Rhode Island following release of the Department's official Supplemental Nutrition Assistance Program [hereinafter "SNAP"] overpayment, underpayment, and payment

error rates for Federal Fiscal Year [hereinafter "FFY"] 2013 under the quality control (QC) provisions of Section 16(c) of the Act.

Procedural History

On June 26, 2014, Appellant filed its Notice of Appeal with the Hearing Clerk's Office of the United States Department of Agriculture [hereinafter "USDA"]. On August 26, 2014, Appellant filed a "Motion for Extension of Time" in which to file its Petition for Appeal and on the same date I entered an Order granting Appellant's Motion for Extension of Time and allowing Appellant until September 15, 2014 to file its Petition for Appeal.

On September 15, 2014, Appellant filed a "Petition for Appeal of Penalty Error Rate and Supportive Evidence" asserting that it should be entitled to "good cause relief" from the penalty error rate for FFY 2013 and the corresponding Notice of Claim/Bill for Collection in the amount of $683,350.00 issued by Appellee. In its Petition Appellant requested an oral hearing pursuant to 7 C.F.R. § 283.4(g)(3).

On November 14, 2014, Appellee filed an "Answer to Appellant's Petition" admitting jurisdiction of the appeal was proper, admitting the facts listed on page one of Appellant's Petition for Appeal, stating its position and defenses to each of the allegations of the Petition for Appeal, and denying "all facts and allegations not specifically admitted."[1]

The record before me consists of the above-described documents and the parties' pleadings and attached exhibits. Appellant's Petition for Appeal contains Exhibits "A" through "E 1-7," hereinafter "RI-X-A" through "RI-X-E, 1-7" and Appellee's Answer to Appellant's Petition contains Exhibits "1" through "6," hereinafter "FNS-X-1" through

[1] Answer to Appellant's Pet., p. 1.

"FNS-X-6". Upon review of the documents and arguments submitted by both parties, I find that an oral hearing in this matter is not necessary and will enter a Decision and Order based upon the record before me.

Background of the SNAP Program

SNAP, formerly known as the Food Stamp Program [hereinafter "FSP"],[2] is a Federal aid program designed to "alleviate . . . hunger and malnutrition" among Americans by allowing "low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation." 7 U.S.C. § 2011. The program, which is administered by FNS,[3] allows low-income and no-income households to receive benefits that are to "be used only to purchase food from retail food stores which have been approved for participation in the supplemental nutrition assistance program." 7 U.S.C. § 2013(a); 7 C.F.R. § 271.3(a). The amount of benefits a recipient receives will vary and is dependent upon the household's size, income, and expenses. The Act authorizes the Secretary of Agriculture to pay each State agency[4] fifty percent (50%) of all administrative costs associated with administration of the program; meanwhile, the federal government funds one-hundred percent (100%) of the cost of the SNAP benefits.[5] 7 U.S.C. § 2025(a).

Programs to distribute commodities in kind, or in later programs the means to purchase commodities to the needy, appear to have grown out of initial outrage prompted

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[2] *See* Affum v. United States, 566 F.3d 1150, 1154 (D.C. Cir. 2009) ("In 2008, Congress amended the Food Stamp Act, renaming it the Food and Nutrition Act and renaming the 'food stamp program' the 'supplemental nutrition assistance program' . . .") (citing Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 4001, 122 Stat. 1651, 1853) (2008)).

[3] Although FNS was established as an agency on August 8, 1969, many of the food programs it administers date back to the 1930s.

[4] The name of the state agency making the distribution varies but is usually the Division of Social Services or Child and Family Services.

[5] CONG. BUDGET OFFICE, THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM 7 (2012), *available at* http://www.cbo.gov/sites/default/files/04-19-SNAP.pdf.

by a well-intentioned, yet ill-advised 1933 initiative of the Agricultural Adjustment Administration to raise the wholesale price of agricultural produce by creating artificial scarcity. Under the program, planted fields were ploughed up[6] and left unharvested and six million (6,000,000) pigs were killed and their carcasses discarded. The resulting public outcry over the waste contributed to the establishment of the Federal Surplus Relief Corporation in October of 1933.[7] Later that year, the corporation diverted quantities of apples, beans, canned beef, and cotton to local relief organizations, and in December of 1933, the corporation distributed three million (3,000,000) tons of coal to the unemployed in Wisconsin, Minnesota, Michigan, North and South Dakota and Iowa. The following year, the corporation distributed 692,228,274 pounds of foodstuffs to the unemployed in thirty (30) U.S. states.[8]

The idea for the first FSP is generally credited to Secretary of Agriculture Henry A. Wallace and the program's first administrator, Milo Perkins. The life of that program was relatively short lived,[9] lasting only from May 16, 1939 to Spring of 1943, but it reached approximately 20 million (20,000,000) people in nearly half of the counties in the United States at a cost of two hundred sixty-two million dollars ($262,000,000). The

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[6] Subsequent programs, such as those under the Land Bank, provided payments to farmers for not planting crops or for limiting the number of acres planted.
[7] Multiple "alphabet" agencies were established in the 1930s as part of President Roosevelt's New Deal, including the Federal Surplus Relief Corporation, Commodity Credit Corporation, Farm Credit Administration, and others. Most were merged into other government departments during World War II, and their functions continue today. The Federal Surplus Relief Corporation changed its name in 1935 to the Federal Surplus Commodities Corporation [hereinafter "FSCC"] and placed Secretary of Agriculture Henry A. Wallace (head of the Agricultural Adjustment Administration and Governor of the Farm Credit Administration) on its board. The FSCC then expanded it focus into the school lunch program and by 1939 had over 14,000 schools participating with nearly 900,000 children being fed daily. . GORDON W. GUNDERSON, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *National School Lunch Program (NSLP)*, WHITEHOUSE.GOV (Jun. 17, 2014), , http://www.fns.usda.gov/nslp/history_4.
[8] "Relief Foods Total 692,228,274 Pounds," New York Times, October 18, 1934
[9] The program ended "since the conditions that brought the program into being --unmarketable food surpluses and widespread unemployment --no longer existed. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Supplemental Nutrition Assistance Program ("SNAP"): A Short History of SNAP*, WHITEHOUSE.GOV (Nov. 20, 2014).

initial program permitted individuals on relief to purchase orange stamps equal to their normal food expenditures; for every $1.00 worth of orange stamps purchased, $0.50 worth of blue stamps were received. Orange stamps could be used to buy any food; the blue stamps could be used to buy only food determined by the Department of Agriculture to be surplus.[10]

Eighteen years elapsed between the end of the first FSP and the enactment of Public Law 86-341 on September 21, 1959 which authorized the Secretary of Agriculture to operate a food stamp system through January 31, 1962. Although the authority existed, the Eisenhower Administration never used it, and it wasn't until President Kennedy took office before an Executive Order issued by him called for expanded food distribution.[11]

The Pilot FSP, which lasted from May 29, 1961 until 1964, retained the requirement that food stamps be purchased but dropped the program feature of special stamps for surplus foods. At the behest of President Johnson, Congress passed the Food Stamp Act of 1964 making the FSP permanent.[12] Program participation grew rapidly, topping a half million (500,000) participants by April of 1965, one million (1,000,000) in March of 1966, two million (2,000,000) in October of 1967, and 15 million (15,000,000) in October of 1974.[13] Uniform standards of eligibility were established in 1971 by Public Law 91-671,[14] and the program was expanded to Guam, Puerto Rico, and the Virgin

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[10] *Id.*
[11] Executive Order No. 10914, 26 Fed Reg. 639 (Jan. 24, 1961).
[12] Pub. L. No. 88-525, 78 Stat. 703 (1964)
[13] *See*, fn 8. According to Congressional Budget Office figures, outlays for SNAP benefits more than doubled between 2007 and 2011 from $30 billion to $72 billion and in 2013, CNSNews reported that USDA indicated that the cost of SNAP benefits was $79,641,880 for 23,052,388 households, twenty percent (20%) of the 115,013,000 households reported by the Census Bureau. Matt Cover, *Senate-Passed Farm Bill Is 80 Percent Food Stamps*, CNSNEWS.COM (Jun. 28, 2012), http://cnsnews.com/news/article/senate-passed-farm-bill-80-percent-food-stamps (last visited Dec. 9, 2014).
[14] Pub. L. No. 91-671, 84 Stat. 2048 (1971).

Islands. Additional expansion of the program was made by the Agriculture and Consumer Protection Act of 1973 (Pub. L. No. 93-86), and in 1974, Public Law 93-347 authorized the Department to pay fifty percent (50%) of the State's costs of administering the program and established the requirement for efficient and effective administration by the States.

With bi-lateral support in Congress, the Food Stamp Act of 1977 eliminated the requirement for individuals to purchase food stamps. Other provisions eliminated categorical eligibility; established statutory income eligibility guidelines at the poverty line; included provisions defining income and deductions and how resources would be valued; allowed cash change up to $0.99; set specific vendor requirements; added access provisions; and included integrity provisions, including fraud disqualifications.[15]

Because of its rapidly increasing costs, FSP came under increasing scrutiny in the 1980s and cutbacks were enacted in both 1981 and 1982.[16] By the latter half of the 1980s however, recognition of the existence of a severe domestic hunger problem prompted relief legislation in 1985 and 1987 that resulted in the elimination of sales tax on food stamp purchases, reinstatement of categorical eligibility; increased resource limits; eligibility for the homeless; and expansion of nutritional education.[17] The Hunger Prevention Act of 1988[18] and the Mickey Leland Memorial Domestic Hunger Relief Act of 1990[19] continued the hunger relief philosophy with additional program adjustments.

[15] Pub. L. No. 95-113, 91 Stat. 958 (1977).
[16] Pub. L. No. 97-253, 96 Stat. 772 (1982); Pub. L. No. 97-98, 95 Stat. 1282 (1981).
[17] Pub. L. No. 100-232, 101 Stat. 1566 (1987); Pub. L. No. 99-570, 100 Stat. 3374 (1986).
[18] Pub. L. No. 100-435, 102 Stat. 1645 (1988).
[19] Pub. L. No. 101-624, 104 Stat. 3783 (1990).

Driven by concerns of abuse of food stamps,[20] the 1988 legislation authorized one or more pilot programs to test whether the use of benefit cards or other electronic benefit systems could enhance the efficiency or effectiveness of program operations for both program administrators and recipients. The first electronic benefits transfer [hereinafter "EBT"] program had been successfully implemented in Reading, Pennsylvania as early as 1984 and was hailed as a promising tool for reducing both costs and fraud. The 1990 legislation established EBT as an issuance alternative and permitted the Department to conduct EBT demonstration projects. Additional support for the EBT initiative came from the Conference Report on Public Law 103-66, the Omnibus Budget Reconciliation Act of 1993[21] and a mandate to implement EBT was included in the Personal Responsibility and Work Opportunity Reconciliation Act.[22] Continuing emphasis on the EBT implementation followed in the Electronic Benefit Transfer Interoperability and Portability Act of 2000[23] and the Farm Security and Rural Investment Act of 2002.[24]

Increased commitment to Federal food assistance secured passage of the Food Conservation and Energy Act of 2008, (also known as the 2008 farm bill).[25] The law also changed the name of the Federal program to the Supplemental Nutrition Assistance Program and the name of the Food Stamp Act of 1977 to the Food and Nutrition Act of 2008.[26]

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[20] In certain areas of the country, food stamp abuse became rampant. Food stamps could be sold at a discount by the recipients to ineligible individuals for cash and the stamps would then be used by the purchasers as a second form of currency. Criminal elements could either launder the stamps, redeeming them for cash or use them in stamp form to purchase an almost limitless variety of unauthorized items, to include illegal drugs.
[21] Pub. L. No. 103-66, 107 Stat. 312 (1993).
[22] Pub. L. No. 104-93, 110 Stat. 2105 (1996).
[23] Pub. L. No. 106-171, 114 Stat. 3 (2000).
[24] Pub. L. No. 107-171, 116 Stat. 134 (2002).
[25] Pub. L. No. 110-234, 122 Stat.923 (2008).
[26] Food, Conservation, and Energy Act of 2008, H.R. 2419, 110th Cong. § 4001 (2008).

Discussion

1. *Supplemental Nutrition Assistance Program*

The Food and Nutrition Act of 2008 ("the Act") (7 U.S.C. §§ 2011 *et seq.*) applies to the adjudication of the instant proceeding. In addition to providing the benefits that are to "be used only to purchase food from retail food stores which have been approved for participation in the supplemental nutrition assistance program, the Act establishes a quality-control system for SNAP, which directs FNS to evaluate each State agency's payment accuracy based upon its error rates." 7 C.F.R. § 275.23(b). Payment error rate is structured as a two-year liability system that compares each State's performance to a national performance measure[27] [hereinafter "NPM"]. FNA § 16(c)(6)(A); 7 U.S.C. § 2025(c)(6)(A). A State will be deemed to be in "liability status" the first FFY in which FNS determines that a 95 percent (95%) statistical probability exists that the State's payment error rate exceeds 105 percent (105%) of the NPM. Liability status, in effect, serves to warn that if a State agency's performance error rate again exceeds the NPM in the subsequent FFY that State will be assessed a monetary liability amount.[28] A liability amount must be established when, for the second or subsequent FFY, FNS determines that there is a 95 percent (95%) statistical probability that a State agency's payment error rate exceeded 105 percent (105%) of the NPM for payment error rates. F.N.A. § 16(c)(1)(D); 7 U.S.C. § 2025(c)(1)(D). The Secretary and, by delegation, FNS are authorized to waive some or all of the liability amount, to require that up to 50 percent (50%) of the amount be newly invested in SNAP improvement activities by the State, to

[27] The national performance measure ("NPM") is the sum of the products of each State agency's error rate multiplied by that State agency's proportion of the total value of national allotments, or SNAP household units, in that federal fiscal year. F.N.A. §16(c)(6)(A); 7 U.S.C. 2025(c)(6)(A). The NPM is not subject to administrative or judicial review. FNA 16 § (c)(6)(D); 7 U.S.C. § 2025(c)(6)(D).
[28] Answer to Appellant's Pet., p. 4.

designate up to 50 percent (50%) to be held "at-risk" contingent upon the State's payment error performance the following year, or to take any combination of these actions. F.N.A. 16 § (c)(1)(D); 7 U.S.C. § 2025(c)(1)(D).[29]

The administrative review process for SNAP provides that "[a] State agency aggrieved by a claim shall have the option of requesting a hearing to present its positon in addition to a review of the record and any written submission presented by the State agency." 7 C.F.R. § 276.7(a)(2). Specifically, a State may seek review of its State agency's liability amount by filing an appeal which is heard by an independent and impartial Administrative Law Judge, who may consider all grounds, in whole or in part, that the State asserts for relief from the liability amount, including for "good cause." F.N.A. § 16(c)(7),(8); 7 U.S.C. § 2025(c)(7),(8); 7 C.F.R. § 275.23(f). Relevant to the case at bar, a State is entitled to seek relief from liability of all claims on the basis that the State agency "had good cause for not achieving the payment error rate tolerance" where the agency has shown "otherwise effective administration" of SNAP. 7 C.F.R. § 275.23.

"Good cause" is defined in 7 C.F.R. § 275.23(f):

> (f) Good cause. When a State agency with otherwise effective administration exceeds the tolerance level for payment errors as described in this section, the State agency may seek relief from liability claims that would otherwise be levied under this section on the basis that the State agency had good cause for not achieving the payment error rate tolerance. State agencies desiring such relief must file an appeal with the Department's Administrative Law Judge (ALJ) in accordance with the procedures established under part 283 of this chapter. Paragraphs (f)(1) through (f)(5) of this section describe the unusual events that are considered to have a potential for disrupting program operations and increasing error rates to an extent that relief from a resulting liability amount is appropriate. The occurrence of an event(s) does not automatically result in a determination of good cause for an error rate in excess of the national performance measure. The State agency must demonstrate that the event had an adverse and uncontrollable impact on program operations during the relevant period, and the event caused an uncontrollable increase in the error rate. Good cause relief will only be considered

[29] These decisions are not subject to judicial review. F.N.A. § 16(c)(7)(C); 7 U.S.C. § 2025(c)(7)(C).

> for that portion of the error rate /liability amount attributable to the unusual event…..

The record in the instant case indicates that on June 25, 2014, FNS notified Rhode Island by letter that it had committed an "excessive" error-rate percentage during FFY 2013, as provided by the quality-control provisions of section 16(c) of the Act. FNS-X-5, p. 1. Specifically, the letter advised that Rhode Island had an 8.25 percent (8.25%) error rate, a figure substantially greater than the NPM of 3.20 percent (3.20%) for FFY 2013. *Id.* Due to the fact that FFY 2013 marked Rhode Island's second year of liability status, Rhode Island became liable for both the liability amount for FFY 2013 and the "at-risk" dollar amount for FFY 2012. Answer to Appellant's Pet for Appeal, p. 2. In its Answer to Appellant's Petition for Appeal, without disclosing the specifics of the offer, FNS stated that it had "offered a settlement of [A]ppellant's FFY 2013 liability amount, but [A]ppellant declined the settlement offer." *Id.*

Pursuant to 7 U.S.C. § 2023(a)(6) and 7 C.F.R. § 283.4(a), on September 15, 2014 Rhode Island appealed the liability claim and its Bill for Collection in the amount of $683,350.00 that was claimed due by FNS. In its Petition for Appeal, Rhode Island asserts that it is entitled to good cause relief from its liability amount based upon caseload growth purportedly caused by high unemployment rates, poor economic conditions, staff shortages, and several storms. FNS filed an Answer on November 14, 2014 denying that Rhode Island is entitled to any relief from the liability amount and arguing that Rhode Island failed to establish the required direct causal connection between caseload growth and payment error rate as required by FNS regulations. Answer to Appellant's Pet., pp. 1-2.

2. *Opportunity for Hearing*

Pursuant to the Food and Nutrition Act and corresponding FNS regulations, a State agency that is "aggrieved" by a quality-control liability claim is entitled to administrative judicial review of such action. 7 U.S.C. §§ 2023(a)(1)(3)(6); 7 C.F.R. § 275.23(f). Section 2023 of the Act provides, in pertinent part:

> Determinations regarding [liability] claims . . . (including determinations as to whether there is good cause for not imposing all or a portion of the penalty) shall be made on the record after opportunity for an agency hearing . . . in which one or more administrative law judges appointed . . . shall preside over the taking of evidence.

7 U.S.C. § 2023(a)(6).

Neither the Act nor FNS regulations, however, require that the "agency hearing" be oral. *Id.* To the contrary, support for the proposition that hearings are not always required is found in 7 C.F.R. §276.7(h) which provides:

> (h) Scheduling and conducting hearings- *When a hearing is afforded*, the Appeals Board or hearing officer has up to 60 days from receipt of State agency's information….to schedule and conduct the hearing. (emphasis added).

In addition to the above conditional language, FNS regulations further direct that an Administrative Law Judge shall, upon a party's motion, schedule a hearing "*[i]f any material issue of fact is joined by the pleadings*." 7 C.F.R. § 283.15(b) (emphasis added). Case law affirms that an oral hearing is necessary only in cases that present an issue of material fact.[30] As held in *Joe Phillips & Associates, Inc. v. U.S. Dep't of Agric.*, "*even when a statute generally prescribes a hearing*, no hearing is required where no genuine

[30] *See, e.g.*, Carpenito Bros. v. U.S. Dep't of Agric., 851 F.2d 1500, 1500 (D.C. Cir. 1988) ("As we only recently stated, a hearing is not necessary in the absence of any genuine dispute of material fact.") (citations omitted); Veg-Mix, Inc. v. U.S. Dep't of Agric., 832 F.2d 601, 607-08 (D.C. Cir. 1987) ("[A]n agency may ordinarily dispense with a hearing when no genuine dispute exists."); Cmty. Nutrition Inst. v. Young, 773 F.2d 1356, 1364 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1123, 106 S.Ct. 1642, 90 L.Ed.2d 187 (1986) ("A request for hearing must contain evidence that raises a material issue of fact on which a meaningful hearing might be held.") (citation omitted).

issue of material fact exists." 50 Agric. Dec. 847, 851 (U.S.D.A. 1991) (citing *United States v. Consolidated Mines & Smelting Co.*, 445 F.2d 432, 453 (9th Cir. 1971)) (emphasis added).[31] "In such situations, the rationale is that Congress does not intend administrative agencies to perform meaningless tasks." *Id.*

The policy encouraging Administrative Law Judges to forego oral hearings in cases that present no genuine issues of material fact is soundly based upon the mandate of judicial efficiency and, more specifically, a desire to avoid litigation that would serve no useful purpose.[32] As the prior decisions have indicated, "[c]ommon sense suggests the futility of hearings when there is no factual dispute of substance." *In re: Samuel S. Napolitano Produce, Inc.*, 52 Agric. Dec. 1607, 1615 (U.S.D.A. 1993). "[T]he right of opportunity for hearing does not require a procedure that will be empty song and show, signifying nothing." *Citizens for Allegan County, Inc. v. Federal Power Comm'n*, 414 F.2d 1125, 1128 (D.C. Cir. 1969). Such is the situation in the present case, where "all material issues are resolved on the face of relevant documents." *Joe Phillips &*

[31] *See also* United States v. Cheramie Bo-Truc #5, Inc., 538 F.2d 696, 698 (5th Cir. 1976) ("A long line of cases establishes the rule that even when a statute mandates an adjudicatory proceeding, neither the statute, nor due process, nor the APA requires an agency to conduct a meaningless evidentiary hearing when the facts are undisputed."); *accord* Indep. Bankers Ass'n of Ga. v. Bd. of Governors of Fed. Reserve Sys., 516 F.2d 1206, 1220 (D.C. Cir. 1975). In *Cheramie Bo-Truc #5, Inc.*, the Fifth Circuit Court of Appeals declined to follow the "long line of cases" that had refrained from hearings on the basis that, in that instant case, "the agency [had] summarily disregarded a controlling statute that clearly mandate[d] a hearing." *Cheramie Bo-Truc #5, Inc.*, 538 F.2d at 698-99. The facts of *Cheramie Bo-Truc #5, Inc.* are distinguishable from the case at bar in that controlling statute here, 7 U.S.C. § 2023, does not "clearly mandate a hearing." *Id.*

[32] *See In re:* Pets Calvert Co., 2010 WL 2771783, at *2 (U.S.D.A. 2010) ("A respondent in an administrative proceeding does not have a right to an oral hearing under all circumstances, and an agency may dispense with a hearing when there is no material issue of fact on which a meaningful hearing can be held."); *In re:* Levinson, 2006 WL 2685397, at **2-5 (U.S.D.A. 2006) (affirming Chief Administrative Law Judge's denial of oral hearing and refusing oral argument before Judicial Officer on basis that "the issues are not complex and oral argument would appear to serve no useful purpose."); *In re:* Moore Marketing Int'l, Inc., 46 Agric. Dec. 961, 961 (U.S.D.A. 1987) (where USDA Judicial Officer ruled on Certified Question that a decision should be entered on the pleadings revoking the respondent's license under the Animal Welfare Act) ("It has been held in many prior cases . . . that this Department is not interested in respondent's excuses for its failures to pay. Accordingly, *a hearing would serve no useful purpose*, and the decision based on the pleadings. . . should be entered revoking respondent's license.") (emphasis added).

Associates, Inc., 50 Agric. Dec. at 851-52. *See also Citizens for Allegan County, Inc.*, 414 F.2d at 1128 ("The precedents establish, for example, that no evidentiary hearing is required where there is no dispute on the facts and the agency proceeding involves only a question of law."). For an Administrative Law Judge to hold an oral hearing where a Petition for Appeal and Answer provide sufficient undisputed facts for him to enter a judgment on the pleadings and exhibits alone would prove nugatory and discredit the stature of administrative proceedings.[33]

FNS regulations governing the administrative review process also indicate a preference for judicial efficiency. 7 C.F.R. § 276.7 provides, in relevant part, that the presiding Administrative Law Judge "shall have full authority to ensure a fair and impartial proceeding, avoid delays, maintain order and decorum, receive evidence, examine witnesses, and *otherwise regulate the course of the hearing*." 7 C.F.R. § 276.7(h)(2) (emphasis added). In granting Administrative Law Judges the discretion to "regulate the course of the hearing" as they deem appropriate and by referencing the avoidance of delays and maintenance of "order and decorum," it appears that FNS regulation grants Administrative Law Judges the option to conduct a hearing solely on the record if doing so would constitute a "fair and impartial proceeding." This is consistent with case law regarding the Department's Rules of Practice Governing Formal Adjudicatory Proceedings and Instituted by the Secretary Under Various Statutes [hereinafter "Rules of Practice"] (7 C.F.R. §§ 1.130-1.151) and the authority of an

[33] *See* Joe Phillips & Assoc., Inc. v. U.S. Dep't of Agric., 50 Agric. Dec. 847, 851-52 (U.S.D.A. 1991) ("To argue that the Constitution requires the performance of meaningless tasks trivializes our great charter and erodes its power to command obedience and respect.").

Administrative Law Judge to enter summary judgment decisions.[34] For example, in *In re: Bargery*, this Department held that "when facts established in a collateral proceeding show that there is no material issue of fact, a decision without a hearing—*in effect a summary judgment*—can be issued." 61 Agric. Dec. 772, 772 (U.S.D.A. 2002) (emphasis added).

3. *No Genuine Issue of Material Fact Exists in the Present Case*

As previously discussed, FNS regulations allow State agencies to "seek relief from liability claims" assessed for payment error rates "on the basis that the State agency had good cause for not achieving the payment error rate tolerance." 7 C.F.R. § 275.23(f). There are five "unusual events" that State agencies "may use as a basis for requesting good cause relief": (1) natural disasters and civil disorders; (2) strikes; (3) caseload growth; (4) program changes; and (5) significant circumstances beyond the control of the State agency. 7 C.F.R. §§ 275.23(f)(1),(2),(3),(4),(5). These five grounds, however, constitute exceptions to a State agency's "*otherwise effective administration*" of SNAP. 7 C.F.R. § 275(f) (emphasis added). The regulations provide:

> The occurrence of an event(s) does not automatically result in a determination of good cause for an error rate in excess of the national performance measure. The State agency must demonstrate that the event *had an adverse and uncontrollable impact* on program operations during the relevant period, *and the event caused an uncontrollable increase* in the error rate.

Id. (emphasis added).

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[34] *See, e.g.*, *In re:* Eysaman, 70 Agric. Dec. ___, 2011, WL 2436628, at *2 (U.S.D.A. 2011) ("An administrative law judge may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or other materials show that there I no genuine issue as to any material fact.") (citing *Veg-Mix, Inc.*, 832 F.2d at 607). Although the Rules of Practice "do not specifically provide for a motion for summary judgment" yet do "prohibit motions for summary judgment based on the pleadings," the Administrative Procedure Act, which controls OADMINISTRATIVE LAW JUDGE proceedings, "does not preclude summary judgments." *In re:* Bargery, 61 Agric. Dec. 772, 773 (U.S.D.A. 2002) (internal citations omitted).

Here, Rhode Island argues that it should be relieved of its liability amount for good cause on the basis of caseload growth pursuant to 7 C.F.R. § 275(f)(3). Specifically, Rhode Island argues that its SNAP caseload has experienced "sharp and impactful growth" in the "past five years" as a result of: (1) "[c]ontinued increase in Rhode Island's unemployment rate;" (2) "Rhode Island's rapid and steep economic downturn during the national recession;" and (3) "[d]ecrease in Appellant's staffing in comparison to previous years in which the State was experiencing better economic growth, thereby affecting the Appellant's case management capacity." Appellant's Pet. for Appeal, p. 2. While these misfortunes may in fact be legitimate causes of SNAP caseload growth, Rhode Island is only entitled to good-cause relief if it demonstrates how those factors actually impacted and caused excessive payment error rates. *See* 7 C.F.R. §§ 275(f), (f)(3).

Rhode Island not only failed to establish how its caseload growth had an "adverse and uncontrollable impact" on operation of its SNAP program and that the caseload growth "caused an uncontrollable increase" in its payment error rate as required by 7 C.F.R. § 275(f); it also failed to demonstrate that but for the "unusual event" of caseload growth its administration of SNAP has been "otherwise effective." *See* 7 C.F.R. § 275(f); Appellant's Pet. for Appeal, pp. 2-7. The "otherwise effective" administration requirement is a threshold prerequisite provided in the first sentence of the "good cause" regulation, 7 C.F.R. § 275(f). As Rhode Island has a lengthy recent history of deficient SNAP administration performance,[35] it is not entitled to relief from liability. The material

[35] The record reflects that from FFY 2009 through FFY 2013 Rhode Island's payment error rate exceeded the NPM four (4) times. FFY 2009 was the only year in which Rhode Island's error rate was below the NPM. *See* FNS-X-1 through FNS-X-5. From FFY 2010 to FFY 2013, Rhode Island's payment errors generated a total cost of $1,597,139.00. *See* FNS-X-2 through FNS-X-5.

fact that Rhode Island consistently failed to effectively administer SNAP cannot be denied in the present case. The State agency's continuing inefficiency must be considered as a matter *res ipsa loquitur,* manifest from the pleadings, and to hold a hearing on this non-issue would be pointless. Rhode Island clearly is not entitled to relief from its liability amount.

Even had Rhode Island satisfied the "otherwise effective administration" of SNAP good-cause prerequisite of 7 C.F.R. § 275(f), it would nevertheless be ineligible for relief on the grounds of caseload growth because it has failed to demonstrate that such growth had an "adverse and uncontrollable impact on program operations" and "caused an uncontrollable increase" in its error rate for FFY 2013. *See* 7 C.F.R. § 275(f). As FNS correctly notes in its Answer, Rhode Island's Petition for Appeal is essentially an ambagious and prolix account of how increasing unemployment rates, poor economic conditions due to a national recession, and severe storms affected SNAP caseload growth and the measures it has taken to improve SNAP administration in the future. *See* Appellant's Pet for Appeal, pp. 2-10; Answer to Appellant's Pet., p. 9. Rather than establish a nexus between caseload growth and payment error rate as required by FNS regulation, Rhode Island essentially offers a plethora of rudimentary and conclusory justifications for its excessive error rates.[36] In so doing, Rhode Island failed to meet its

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[36] *Inter alia*, Appellant claims that "because of the steep, rapid and persistent recessionary economic decline in Rhode Island, [Appellant's] attempt to add staff has been affected because of positions lost through attrition and inter-departmental hiring," which has caused "strain" on Appellant's "case management capacity." Appellant's Pet. for Appeal, p. 5. Appellant apparently fails to recognize that neither lack of resources nor ordinary administrative difficulties contributing to excessive error rates is a basis for good cause relief. *See* Answer to Appellant's Pet. for Appeal, p. 14; 56 Fed. Reg. 1,578, 1,582 (Jan. 16, 1991) (to be codified at 7 C.F.R. pt. 275) ("The failure of State and local governments to provide sufficient financial and other resources to manage the Food Stamp Program under normal circumstances does not constitute a basis for good cause relief from quality control liabilities."); ("It has already been noted that FNS does not intend to grant relief for the effects of normal levels of management difficulties . . ."); H.R. REP. NO. 96-788, at 907 (1980), *reprinted in* 1980 U.S.C.C.A.N. 843 ("Good cause would not

burden of quantitatively demonstrating how and to what extent SNAP caseload growth contributed to its payment error rates. Perhaps most troubling, Rhode Island failed to provide any analysis—or even make reference to—a causal relationship between its caseload growth and payment error rate. *See* Appellant's Pet. for Appeal, pp. 2-10; Answer to Appellant's Pet. for Appeal, p. 9.

Rhode Island's argument for a good-cause waiver is further weakened by the undisputed fact that, between July 1, 2012 and June 30, 2013, the State agency was responsible for administering 3,714 SNAP cases—thus experiencing a mere 9.02 percent (9.02%) increase statewide. Appellant's Pet. for Appeal, p. 4. When addressing "significant growth" in SNAP caseload, 7 C.F.R. § 275(f)(3) provides that 15 percent (15%) [or more] growth during a FFY would constitute an unusual event to qualify for good-cause relief. Rhode Island's 9.02 percent (9.02 %) caseload growth obviously falls short of the 15 percent (15%) caseload growth increase that FNS regulation envisions as "significant." Accordingly, even had Rhode Island met its burden of establishing how caseload growth caused uncontrollable and adverse effects on SNAP administration and on its FFY 2013 payment error rates, it is readily apparent that its actual percentage of growth is not "significant" enough to warrant good-cause relief.

Based upon the foregoing, an oral hearing on this matter is not necessary. Rhode Island fails to merit good-cause relief on the grounds of its caseload growth because, as the record clearly indicates, in addition to failing to experience a caseload growth meeting the threshold set forth in the regulation, Rhode Island failed to establish how its

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encompass any state failure to act upon necessary legislative changes or to obtain budget authorization or needed staff or other resources, since those failures are clearly within state control.").

SNAP caseload growth increase affected its FFY 2013 payment error rates as required by both the Food and Nutrition Act and corresponding FNS regulations.

Findings of Fact

1. Appellant, the Department of Human Services for the State of Rhode Island, administers the State of Rhode Island's Supplemental Nutrition Assistance Program. . RI-X-E1 through E7); Appellant's Pet. for Appeal, pp. 1, 5-7.

2. For FFY 2009, Appellant's SNAP payment error rate was 3.67 percent (3.67%). FNS-X-1; *see* RI-X-E2.

3. For FFY 2009, the NPM for SNAP payment error rates was 4.36 percent (4.36%). FNS-X-1.

4. For FFY 2010, Appellant's SNAP payment error rate was 5.98 percent (5.98 %). FNS-X-2; *see* RI-X-E3.

5. For FFY 2010, the NPM for SNAP payment error rates was 3.81 percent (3.81%). FNS-X-2.

6. For FFY 2010, a 95 percent (95%) statistical probability existed that Appellant's payment error rate exceeded 105 percent (105%) of the NPM for SNAP payment error rates. FNS-X-2.

7. For FFY 2011, Appellant's SNAP payment error rate was 7.89 percent (7.89%). FNS-X-3; *See* RI-X-E4.

8. For FFY 2011, the NPM for SNAP payment error rates was 3.80 percent (3.80%). FNS-X-3.

9. For FFY 2011, a 95 percent (95%) statistical probability existed that Appellant's payment error rate exceeded 105 percent (105%) of the NPM for SNAP payment error rates. FNS-X-3.

10. For FFY 2012, Appellant's SNAP payment error rate was 7.36 percent (7.36%). FNS-X-4; *see* RI-X-E5.

11. For FFY 2012, the NPM for SNAP payment error rates was 3.42 percent (3.42%). FNS-X-4.

12. For FFY 2012, a 95 percent (95%) statistical probability existed that Appellant's payment error rate exceeded 105 percent (105%) of the NPM for SNAP payment error rates. FNS-X-4.

13. Appellant and Appellee, the USDA Food and Nutrition Service, settled Appellant's liability amount claim for FFY 2012. FNS-X-4 ("Settlement Agreement").

14. For FFY 2013, Appellant's SNAP payment error rate was 8.25 percent (8.25%). FNS-X-5; *see* RI-X-E6.

15. For FFY 2013, the NPM for SNAP payment error rates was 3.20 percent (3.20%). FNS-X-5.

16. For FFY 2013, a 95 percent (95%) statistical probability existed that Appellant's payment error rate exceeded 105 percent (105%) of the NPM for SNAP payment error rates. FNS-X-5.

17. As a result of Appellant's error rates in FFY 2012 and FFY 2013, Appellee established a liability amount of $683,350.00 for Appellant for FFY 2013. FNS-X-5.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Oral hearing is not necessary in this matter as no genuine issue of material fact exists.

3. Appellant is not entitled to good-cause relief for its SNAP payment error rates of FFY 2013 because it failed to maintain "otherwise effective administration" of its SNAP program as required by FNS regulations.

4. Appellant is not entitled to good-cause relief on the basis of caseload growth for its FFY 2013 payment error rate because it also failed to establish that caseload growth had an adverse and uncontrollable impact on SNAP operations during that period and moreover failed to demonstrate that caseload growth caused an uncontrollable increase in the error rate.

Order

1. The Petition for Appeal by Appellant, State of Rhode Island Department of Human Services, is denied.

2. Appellant is assessed a monetary liability of $683,350.00 for FFY 2013.

3. This Decision and Order shall become final and effective thirty (30) days after the date of service thereof unless a petition for review is filed with the Judicial Officer pursuant to 7 C.F.R. § 283.20.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

December 10, 2014

Peter M. Davenport

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Peter M. Davenport
Chief Administrative Law Judge