

No. 07-AA-771

---

DISTRICT OF COLUMBIA COURT OF APPEALS

---

CHRISTIANE SCHLIEFSTEINER,

Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN SERVICES,

Respondent.

---

On Petition for Review from  
the Office of Administrative Hearings

---

BRIEF OF THE LEGAL AID SOCIETY OF THE DISTRICT OF COLUMBIA  
AS AMICUS CURIAE SUPPORTING REVERSAL

---

Peter G. Wilson\*  
Eric Angel (#444731)  
Legal Aid Society of the District of Columbia  
1331 H Street, N.W., Suite 350  
Washington, D.C. 20005  
PH: (202) 628-1161

Counsel for Amicus Curiae

\* Licensed to practice in the State of New York. Practicing under District of Columbia Court of Appeals Rule 49(c)(9)(B). Supervised by Eric Angel (#444731).

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
INTEREST OF THE AMICUS CURIAE .....	1
QUESTIONS PRESENTED .....	2
STATEMENT OF THE CASE.....	2
SUMMARY OF THE ARGUMENT .....	8
ARGUMENT.....	10
I.    THE ALJ ERRED BY FAILING TO RECOGNIZE THAT THE DEPARTMENT OF HUMAN SERVICES HAS THE AUTHORITY TO SETTLE, ADJUST, OR COMPROMISE FOOD STAMP OVERPAYMENT CLAIMS IF THE RECIPIENT IS UNABLE TO REPAY THE DEBT. ....	10
II.   THE DEPARTMENT OF HUMAN SERVICES’ FOOD STAMP DEMAND LETTER DOES NOT EXPLAIN, IN “EASILY UNDERSTANDABLE LANGUAGE,” THAT THE AGENCY HAS THE AUTHORITY TO COMPROMISE OVERPAYMENT CLAIMS IN CASES OF ECONOMIC HARDSHIP. ....	17
CONCLUSION .....	21

## TABLE OF AUTHORITIES

### CASES:

<u>Allentown Mack Sales &amp; Service, Inc. v. NLRB</u> , 522 U.S. 359 (1998) .....	16
<u>Amisub (PSL), Inc. v. Colorado Dep’t of Social Servs.</u> , 879 F.2d 789 (10th Cir. 1989) .....	11
<u>Anderson v. Spear</u> , 356 F.3d 651 (6th Cir. 2004).....	11
<u>Berkley v. D.C. Transit, Inc.</u> , 950 A.2d 749 (D.C. 2008).....	10, 19
<u>Bliek v. Palmer</u> , 916 F.Supp. 1475 (N.D. Iowa Feb. 1, 1996).....	16
* <u>Bliek v. Palmer</u> , 102 F.3d 1472 (8th Cir. 1997) .....	11, 12, 18
<u>Chevron, U.S.A., Inc. v. NRDC, Inc.</u> , 467 U.S. 837 (1984).....	10, 11
<u>Global NAPS, Inc. v. Verizon New Eng., Inc.</u> , 444 F.3d 59 (1st Cir. 2006).....	11
<u>Gray Panthers v. Schweiker</u> , 652 F.2d 146 (D.C. Cir. 1980) .....	19
<u>GTE South, Inc. v. Morrison</u> , 199 F.3d 733 (4th Cir. 1999) .....	11
<u>Hogan v. Vermont Dep’t of Soc. &amp; Rehabilitation Servs.</u> , 727 A.2d 1242 (Vt. 1998).....	11
<u>In re RCN of N.Y.</u> , 892 A.2d 636 (N.J. 2006).....	11
* <u>Johnson v. United States</u> , 398 A.2d 354 (D.C. 1979).....	15, 16
<u>Langnes v. Green</u> , 282 U.S. 531 (1931) .....	16
<u>MCI Telcom. Corp. v. Bell Atlantic-Pennsylvania</u> , 271 F.3d 491 (3d Cir. 2001).....	11
<u>Memphis Light, Gas &amp; Water Div. v. Craft</u> , 436 U.S. 1 (1978).....	19
<u>Orthopaedic Hospital v. Belshe</u> , 103 F.3d 1491 (9th Cir. 1997) .....	11
<u>Turner v. Perales</u> , 869 F.2d 140 (2d Cir. 1989) (per curiam) .....	11
<u>United States Dep’t of Agric. v. Moreno</u> , 413 U.S. 528 (1973) .....	2
<u>Washington v. D.C. Dep’t of Pub. Works</u> , 954 A.2d 945 (D.C. 2008) .....	10

* <u>Waters-Haskins v. N.M. Human Servs. Dep't</u> , 192 P.3d 1230 (N.M. Ct. App. July 8, 2008).....	12, 15, 16
---	------------

\* Cases principally relied upon

## **STATUTES:**

7 U.S.C. 2011.....	2
7 U.S.C. 2011 note.....	2
7 U.S.C. 2016(f).....	2
7 U.S.C. 2022(a)(1).....	11
D.C. Code 2-510(a)(3)(A).....	10

## **REGULATIONS:**

7 C.F.R. 271.4.....	2, 3
7 C.F.R. 271.4(b) .....	11, 13, 15
7 C.F.R. 273.2(j) .....	3
7 C.F.R. 273.9.....	3
7 C.F.R. 273.13.....	4
7 C.F.R. 273.13(a)(2).....	4, 18
7 C.F.R. 273.18.....	11
7 C.F.R. 273.18(e)(1).....	13
7 C.F.R. 273.18(e)(3)(iv) .....	4, 13, 18
7 C.F.R. 273.18(i) .....	11, 15
20 C.F.R. 416.550.....	17
10 Colo. Code Regs. § 2506-1 .....	15
Mass Regs. Code tit. 106, § 367.495(F) .....	15

## OTHER MATERIALS:

District of Columbia Access To Justice Commission, <u>Justice For All? An Examination Of The Civil Legal Needs Of The District Of Columbia's Low-Income Community</u> (Oct. 2008) .....	20
District of Columbia Dep't of Human Services, <u>IMA Policy Manual</u> .....	14
Maryland Dep't of Human Resources, <u>Food Stamp Manual</u> .....	14
Nevada Div. of Welfare and Supportive Services, <u>Eligibility and Payments Manual</u> .....	14
Oregon Dep't of Human Services, <u>Family Services Manual</u> .....	15
Ann Marie Rakowski, <u>Just Who Do You Think You're Talking To? The Mandate For Effective Notice To Food Stamp Recipients With Mental Disabilities</u> , 37 Colum. J.L. & Soc. Probs. 485 (2004) .....	20
David A. Super, <u>Encouraging Moderation In State Policies On Collecting Food Stamp Claims</u> , Sept.-Oct. 2005 Clearinghouse Rev. J. of Poverty Law and Policy 352 .....	13
Urban Institute, <u>Food Stamp Participation And Market Access In The District Of Columbia</u> (June 2006) .....	1
U.S. Dep't of Agric., <u>Characteristics Of Food Stamp Households: Fiscal Year 2007</u> (Sept. 2008) .....	1
U.S. Dep't of Agric., <u>Customer Service In The Food Stamp Program</u> (July 1999) .....	20
U.S. Dep't of Agric., <u>Food Stamp Program: Recipient Claim Establishment And Collection Standards</u> , Final Rule, 65 Fed. Reg. 41752 (July 6, 2000) .....	3, 4, 13, 14, 17
U.S. General Accounting Office, <u>Food Stamp Program: States Seek To Reduce Payment Errors and Program Complexity</u> (Jan. 2001) .....	3
Virginia Dep't of Social Services, <u>Virginia Food Stamp Program Manual</u> .....	14

## INTEREST OF THE AMICUS CURIAE

The Legal Aid Society of the District of Columbia (Legal Aid) submits this brief in response to the Court of Appeals' Order of October 22, 2008, appointing Legal Aid as amicus curiae. Legal Aid was formed in 1932 to "provide aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better serve their needs." Legal Aid By-Laws, Art. II. It is the oldest general civil legal service program in the District of Columbia. Legal Aid's Appellate Advocacy Project, founded in 2004, has represented parties or amici in more than 60 cases before the Court of Appeals.

Legal Aid's principal practice areas are housing, family, consumer, and public benefits law. It represents clients receiving or seeking food stamp benefits. Roughly 83,000 residents of the District of Columbia received food stamp benefits in the 2007 fiscal year, including 17,000 children and 14,000 elderly or disabled persons. U.S. Dep't of Agric., Characteristics Of Food Stamp Households: Fiscal Year 2007 (Sept. 2008) 69. A large majority of these individuals live in high-poverty neighborhoods with few comprehensive food stores. Urban Institute, Food Stamp Participation And Market Access In The District of Columbia (June 2006) 8-9. Nearly 80 percent of District households receiving food stamp benefits are concentrated in four of the District's eight wards. Id. 5. This appeal raises important issues about the interpretation and application of the federal laws and regulations governing the food stamp program.

## QUESTIONS PRESENTED

1. Whether the Office of Administrative Hearings erred as a matter of law in concluding that the Department of Human Services lacks the authority to settle, adjust, or compromise a claim to recoup food stamp benefits that were erroneously paid to a household where the household lacks the resources to repay the debt.
2. Whether the demand letter used by the Department of Human Services to notify food stamp recipients of the agency's intention to recoup benefits satisfies the federal regulations requiring the agency to explain in "easily understandable language" that it "may reduce any part of the claim if the agency believes that the household is not able to repay the claim."

## STATEMENT OF THE CASE

1. **The Food Stamp Program.** "The federal food stamp program was established in 1964 in an effort to alleviate hunger and malnutrition among the more needy segments of our society." United States Dep't of Agric. v. Moreno, 413 U.S. 528, 529 (1973) (citing 7 U.S.C. 2011). The program allows eligible households to purchase food coupons, or "stamps," at a discount determined by the household's size and income. "The food stamps are then used to purchase food at retail stores, and the Government redeems the stamps at face value, thereby paying the difference between the actual cost of the food and the amount paid by the household for the stamps." Id.<sup>1</sup>

Although the food stamp program is funded primarily by the federal government, the Secretary of Agriculture has delegated responsibility for administering the program to the states. See 7 C.F.R. 271.4. In the District of Columbia, the agency charged with administering the food stamp program is the D.C. Department of Human Services. The powers delegated by the Secretary of Agriculture to participating state agencies include the "certification of applicant

---

<sup>1</sup> As of October 1, 2008, the benefits program formerly known as the "Food Stamp Program" was renamed the "Supplemental Nutrition Assistance Program" (SNAP). See Food, Conservation, and Energy Act of 2008, 122 Stat. 1651, 4001, 7 U.S.C. 2011 note. In addition, recent amendments to the program have eliminated the traditional paper coupons in favor of an electronic debiting system. See 7 U.S.C. 2016(f). This brief refers to the benefits as "food stamp benefits."

households,” the “issuance, control, and accountability of coupons,” and “the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households.” 7 C.F.R. 271.4. Neither Congress nor the Secretary has granted authority to the states to interpret federal food stamps laws or regulations or to adopt policies contrary to regulations issued by the Secretary.

Financial eligibility for food stamp benefits is typically determined using one of two methods. Some households are deemed “categorically eligible” if all household members receive benefits through the Supplemental Security Income, Temporary Assistance to Needy Families, or General Assistance programs. See 7 C.F.R. 273.2(j). Other households may be eligible for food stamp benefits if the household’s gross monthly income is at or below 130 percent and its net monthly income is at or below 100 percent of the federal poverty guidelines. See 7 C.F.R. 273.9. For purposes of the food stamp program, a household’s net monthly income is calculated by subtracting certain specified costs, such as medical care, child care, and rent, mortgage, or property tax payments, from the gross monthly income. See id.

State agencies’ calculations of food stamp benefits are frequently inaccurate, resulting in both the overpayment and underpayment of benefits. See, e.g., U.S. General Accounting Office, Food Stamp Program: States Seek To Reduce Payment Errors and Program Complexity (Jan. 2001) 3. To ensure that benefits are calculated and distributed accurately, the federal government requires each state to conduct an annual audit of its cases. Id. 5. The Department of Agriculture has also issued regulations governing the collection of claims that may arise in cases involving the overpayment of benefits. See U.S. Dep’t of Agric., Food Stamp Program: Recipient Claim Establishment And Collection Standards, Final Rule, 65 Fed. Reg. 41752 (July



6, 2000); 7 C.F.R. 272-273. These regulations “aim to strike the optimal balance among various competing goals including program integrity, fiscal accountability, practical claim management, and the rights of individuals and households.” 65 Fed. Reg. at 41753.

Federal regulations also require participating state agencies to provide households that receive food stamp benefits with written notice “[p]rior to any action to reduce or terminate a household’s benefits.” 7 C.F.R. 273.13. Notices in cases involving the alleged overpayment of benefits must provide certain information, including, among other things, the “amount of the claim,” the “reason for the claim,” and “how the claim was calculated.” 7 C.F.R. 273.18(e)(3)(iv). Such notices must also inform households “[t]hat the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.” Id. This information must be provided “in easily understandable language.” 7 C.F.R. 273.13(a)(2).

**2. The Petitioner’s Claim.** Petitioner Christiane Schliefstainer is a 63-year-old woman who “live[s] \* \* \* on a Social Security Disability income and a small pension.” App. 17; see id. 19-20; id. 27.<sup>2</sup> Ms. Schliefstainer, an employee of Sibley Memorial Hospital for 26 years, became disabled after suffering a “puncture wound from a dirty needle in the trash can which [she] had to clean,” as well as “slip and fall injuries.” Id. 17. In 1999, Ms. Schliefstainer was “given the wrong medication for bleeding injuries,” id., and now suffers from a “life threatening bleeding disease.” Id. 134.

Ms. Schliefstainer applied for food stamp benefits on August 26, 2005. App. 19. The Department of Human Services calculated her net monthly income by subtracting her mortgage payment, utilities, and a “monthly tax credit of \$1,196.30” from her disability benefits and pension. Id. The agency determined that she was eligible for \$147 in monthly food stamp

---

<sup>2</sup> All references to the record are to the Appendix of the District of Columbia.

benefits as of October 1, 2005. Ms. Schliefssteiner continued to receive food stamp benefits throughout 2006, and filed an annual recertification form on August 29, 2006.<sup>3</sup> After recalculating her income, the agency determined that she was no longer eligible to receive food stamp benefits. Id. 20. It also referred her case to its quality control division for further review. Id.

A quality control examiner determined that a Department of Human Services employee had miscalculated Ms. Schliefssteiner's net monthly income when she first applied for food stamp benefits by deducting a credit for property taxes using the amount paid every six months rather than prorating that figure on a monthly basis. App. 20. Due to this error, the agency alleged that it had erroneously overpaid \$1,572.00 in benefits from October 1, 2005 through September 30, 2006.

The Department of Human Services subsequently issued a "Food Stamp Demand Letter" informing Ms. Schliefssteiner of the overpayment. App. 5. The demand letter consisted of a single page of text printed entirely in capital letters. The first paragraph stated that the overpayment was the result of a state agency error. Id. It also stated that the Department of Human Services "intend[ed] to collect this overpayment from all adults in the household at the time the overpayment occurred." Id.

The second full paragraph consisted of three sentences:

YOU HAVE THE RIGHT TO INSPECT AND COPY RECORDS RELATED TO THE CLAIM AND THE DEPARTMENT OF HUMAN SERVICES MAY REDUCE ANY PART OF THE CLAIM IF THE AGENCY BELIEVES YOU ARE UNABLE TO REPAY THE CLAIM. YOU MAY MAKE AN AGREEMENT TO REPAY THIS CLAIM. YOUR OPTIONS FOR REPAYMENT ARE DESCRIBED IN THE REPAYMENT AGREEMENT WHICH WILL BE SENT TO YOU SEPARATELY.

---

<sup>3</sup> The Department of Human Services decreased Ms. Schliefssteiner's monthly food stamp benefits to \$123 on February 1, 2006, after determining that she had received an increase in her monthly disability benefits. See App. 19-20.

The letter also stated that the agency could “reduce [Ms. Schliefssteiner’s] benefits by 10 percent,” refer the claim to a debt collection agency, or “use a variety of methods to collect the claim” if it did not receive a repayment agreement by February 26, 2007. App. 5.

Ms. Schliefssteiner requested a fair hearing to contest the agency’s claim. See App. 16 (“Request For A Hearing”). She “request[ed] a waiver” of the overpayment claim and argued that it was “not fair for [her] to have to pay back a food stamp overpayment that was the government’s fault.” Id. She reiterated that she had acted in good faith. Id. (“I would never have use[d] my food stamps without legal permission.”).

**3. The Hearing Before OAH.** Ms. Schliefssteiner was given a hearing in the Office of Administrative Hearings (OAH). App. 11-12. Prior to the hearing, the parties participated in an Administrative Review Conference before appeals officer Jane Jones. Id. 18-21. Ms. Jones sustained the agency’s overpayment claim. Id. 21 (“Even though the Food Stamp Overpayment was established as an agency error, you are still required to repay the amount owed.”). Ms. Schliefssteiner renewed her request for a hearing before OAH.

On June 25, 2007, Administrative Law Judge Joan Davenport of OAH held a hearing on Ms. Schliefssteiner’s appeal. Ms. Schliefssteiner appeared pro se. Erika Hinton, a Supervisory Social Service Representative, appeared on behalf of the Department of Human Services. App. 96-97.

The ALJ characterized “the basis of [Ms. Schliefssteiner’s] request” to be that “it isn’t fair for [her] to have to pay back a food stamp overpayment that was the Government’s fault.” 6/5/07 Tr. at 6 (App. 100). She asserted that Ms. Schliefssteiner “ha[d] the burden of persuasion in this matter.” Id. 10 (App. 104).

Ms. Schliefssteiner argued that she should not have to repay the food stamp benefits she had received because she lacked the money to repay the alleged debt. 6/5/07 Tr. at 14 (App. 108) (“I don’t have no money.”); id. 35 (App. 129) (“I do not have the money because I am sick.”); id. 42 (App. 136) (“It’s just I don’t have the money. That’s what I’m trying to say.”); id. 49 (App. 143) (“[I]f you deny me that, I just have to file bankruptcy, because I don’t have the money.”). She also reiterated that she had acted in good faith. Id. 14 (App. 108). Ms. Schliefssteiner’s testimony was not contradicted.

Ms. Hinton conceded that the overpayment of food stamp benefits was the result of the Department of Human Services’ error. 6/5/07 Tr. at 22 (App. 116); id. 24 (App. 118). She contended that federal law required the agency to pursue its claim for the full amount of the overpayment, irrespective of the agency’s fault and Ms. Schliefssteiner’s professed poverty. Id. 25 (App. 119) (“[W]hether it’s client error or Agency error, she received benefits of those monies and she was not entitled to them, thus, she would have to pay those back. There’s no wiggle room around this matter.”). Ms. Hinton did not attempt to reconcile that position with the statement in the food stamp demand letter that the agency could “reduce any part of the claim” in cases of economic hardship.

Although Ms. Schliefssteiner repeatedly asserted that her financial status was relevant to the government’s claim, the ALJ rejected that argument. The ALJ characterized the governing law to be that “if there is an overpayment due to either client error or Agency error, you still – if you were the recipient of the overpayment, you will have to repay whatever the overpayment was.” 6/5/07 Tr. at 28 (App. 122).

4. **The Final Order.** On July 5, 2007, OAH issued a Final Order affirming the \$1,572.00 judgment. At the outset, the ALJ found that “the overpayment was the result of an accounting error made by Agency personnel.” Final Order 2 (App. 156).

The ALJ perceived that “federal regulations mandate that the administering States, as well as the District of Columbia establish and collect any debt(s) owed to the federal government, including but not limited to overpayments.” Final Order 3 (App. 157) (citing 7 C.F.R. 273.18). The ALJ characterized Ms. Schliefssteiner as “depending solely on what she ‘feels,’” and as lacking “any legal support for her proposition that she should not be held liable for the overpayment due to Agency error.” *Id.*

The ALJ concluded that there were no circumstances in which a recipient of food stamp benefits could avoid repaying an overpayment, even if the recipient lacked sufficient funds to repay the debt. Final Order 4 (App. 158) (“Notwithstanding the Agency’s miscalculations, Petitioner will have to repay the claim of \$1,572 because the regulations mandate that the overpayment be reimbursed to the government regardless of who was at fault.”). The Final Order does not mention the food stamp demand letter or the federal regulations concerning the compromise of overpayment claims.

#### **SUMMARY OF THE ARGUMENT**

The Department of Human Services has broad authority to settle, adjust, or compromise food stamp overpayment claims if the recipient household is unable to repay the debt. That authority arises out of the federal food stamp statute, which delegates to the Secretary of Agriculture both responsibility for the issuance of food stamp benefits and the power to reduce the amount of overpayment claims. The Secretary of Agriculture, in turn, has delegated essentially the same authority to the states that participate in the food stamp program, including

the District of Columbia. The Department of Human Services' failure to exercise that authority in this case, or to provide reasons for its refusal to do so, requires that this Court remand this case for the agency to consider whether to compromise its claim in light of Ms. Schliefssteiner's undisputed poverty.

This case must also be remanded because the food stamp demand letter issued by the Department of Human Services was deficient as a matter of federal law. Regulations issued by the Department of Agriculture require state agencies participating in the food stamp program to provide specific information in their demand letters, including that the state agency has the authority to compromise overpayment claims if the recipient cannot repay the debt. The same regulations require such information to be conveyed in "easily understandable language." The demand letter used in this and other cases fails to convey, in easily understandable language, that the District is not required to collect an overpayment if the recipient is unable to repay. Indeed, neither the District's representative nor the ALJ appear to have understood from the demand letter that the agency is not obligated to recover the entire overpayment from a recipient household that is unable to pay. A letter that fails to convey the correct legal standard to the District's own representatives or to an ALJ cannot be deemed sufficiently understandable to an unsophisticated food stamp recipient. Ms. Schliefssteiner was plainly prejudiced by the confusing nature of the demand letter, because, when pressed by the ALJ, she was unable to identify the precise legal basis for her argument that she should not have to repay a debt she could not afford. "Easily understandable language" in the demand letter would have solved the problem.

## ARGUMENT

- I. **THE ALJ ERRED BY FAILING TO RECOGNIZE THAT THE DEPARTMENT OF HUMAN SERVICES HAS THE AUTHORITY TO SETTLE, ADJUST, OR COMPROMISE FOOD STAMP OVERPAYMENT CLAIMS IF THE RECIPIENT IS UNABLE TO REPAY THE ALLEGED DEBT.**

The ALJ erroneously accepted the District's position before OAH (which it echoes to this Court on appeal) that federal law requires the Department of Human Services to collect food stamp overpayments even if the recipient of the overpayment is unable to repay the debt. See Final Order 4 (App. 158) ("Petitioner will have to repay the claim of \$1,572 because the regulations mandate that the overpayment be reimbursed to the government regardless of who was at fault."); see also Dep't of Human Services' Motion for Summary Affirmance 4 ("Schliefssteiner ha[s] to repay the overage."); id. 5; id. 6-7. To the contrary, the food stamp regulations require participating states to consider the economic circumstances of each household that receives an overpayment of food stamp benefits before determining the amount, if any, to collect from that household. State agencies are required in some cases to establish overpayment claims, but once they have done so they have broad authority to settle claims in a manner that promotes fairness and avoids economic hardship. Because the Department of Human Services disclaimed that authority, and the ALJ failed altogether to consider the relevant provisions of law, this case must be remanded. D.C. Code 2-510(a)(3)(A); see, e.g., Berkley v. D.C. Transit, Inc., 950 A.2d 749, 759 (D.C. 2008) ("[W]e do not affirm an administrative determination which reflects a misconception of the relevant law or a faulty application of the law.").<sup>4</sup>

---

<sup>4</sup> The District's brief claims that this Court owes deference to OAH's interpretation of the federal food stamp statute and regulations. See Dep't of Human Services' Motion for Summary Affirmance 7. That is a claim for deference under Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984), and it is incorrect for two reasons. First, OAH is an agency responsible for adjudicating administrative disputes. It has no expertise in or responsibility for administering the food stamp program. No rationale for Chevron deference can apply to a legal determination by OAH in adjudicating an administrative dispute. See Washington v. D.C. Dep't of Pub. Works, 954 A.2d 945, 948 (D.C. 2008) (refusing to defer to OAH with respect to the Litter Control Act because "it does not have the kind of subject matter expertise \* \* \* that would warrant deference on our part when we interpret the statute."). Second, because the statute and regulations here are federal, no District agency has been delegated authority to make or interpret the law, as is

1. Congress has delegated “plenary settlement authority regarding overissuance claims” to the United States Secretary of Agriculture. Bliek v. Palmer, 102 F.3d 1472, 1474 (8th Cir. 1997) (citing 7 U.S.C. 2022(a)(1)). That authority includes “the power to determine the amount of and settle and adjust any claim and to compromise or deny all or part of any such claim or claims arising under [the food stamp program].” Id. The Secretary of Agriculture, in turn, has delegated much of this authority to the states. See 7 C.F.R. 271.4(b) (granting states “the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households,” subject to the standards of 7 C.F.R. 273.18); see also 7 C.F.R. 273.18(i) (“As a State agency, you may compromise a claim or any portion of a claim if it can be reasonably determined that a household’s economic circumstances dictate that the claim will not be paid in three years.”); Bliek, 102 F.3d at 1474. Contrary to its representations to OAH and to this Court, the D.C. Department of Human Services has the authority to reduce overpayment claims, including the claim in this case.

The courts that have examined the issue have ruled (contrary to the District’s position) that a state cannot validly wield the power to collect overpayments without acknowledging its

---

required for Chevron deference. The District’s contrary position has repeatedly been rejected. See, e.g., Global NAPS, Inc. v. Verizon New Eng., Inc., 444 F.3d 59, 70 n.10 (1st Cir. 2006) (refusing to defer to state agency’s interpretation of federal law); Turner v. Perales, 869 F.2d 140, 141 (2d Cir. 1989) (per curiam) (same); MCI Telecom. Corp. v. Bell Atlantic-Pennsylvania, 271 F.3d 491, 516 (3d Cir. 2001) (same); GTE South, Inc. v. Morrison, 199 F.3d 733, 745 (4th Cir. 1999) (same); Anderson v. Spear, 356 F.3d 651, 669 (6th Cir. 2004) (same); Orthopaedic Hospital v. Belshe, 103 F.3d 1491, 1495-1496 (9th Cir. 1997) (same); Amisub (PSL), Inc. v. Colorado Dep’t of Social Servs., 879 F.2d 789, 795-796 (10th Cir. 1989) (same); In re RCN of NY, 892 A.2d 636, 641-642 (N.J. 2006) (same); Hogan v. Vermont Dep’t of Soc. & Rehabilitation Servs., 727 A.2d 1242, 1244 (Vt. 1998) (same). In any event, as the cryptic language in the demand letter indicates, the Department of Human Services does not interpret the federal regulations to require it to collect overpayments regardless of the recipient’s inability to repay.



authority to compromise them. See Waters-Haskins v. N.M. Human Servs. Dep't, 192 P.3d 1230 (N.M. Ct. App. July 8, 2008); Bliek, 102 F.3d at 1474.

In Waters-Haskins, the Court of Appeals of New Mexico ruled that because the New Mexico Human Services Department had refused to consider compromising its claim in light of the recipient's poverty, it had necessarily abused its discretion. Id. at 1233 ("A failure to exercise discretion conferred by law is, of itself, an abuse of discretion."). The court rejected the New Mexico agency's claim that "as a delegatee of federal authority, its hands [were] tied by federal law requiring recovery of overpayments." 192 P.3d at 1231. The New Mexico agency's position, which mirrors the arguments of the Department of Human Services before OAH and in this Court, was premised on an "unduly harsh interpretation of federal law," id., and did not take into account the federal regulations permitting state agencies to compromise overpayment claims in cases of economic hardship. Id. at 1232.

In Bliek, the United States Court of Appeals for the Eighth Circuit similarly concluded that a state agency's failure to inform recipients of alleged overpayments of its authority to compromise claims in cases of economic hardship violated due process. Bliek, 102 F.3d at 1476. The agency in Bliek violated due process because it failed to "inform the [recipients] of the state's settlement power," instead "giv[ing] the impression to the [recipients] \* \* \* that they have no alternative but to agree to reduce their future allotment of food stamps." The Eighth Circuit recognized that by failing to inform households that their poverty mattered, the agency was effectively failing to exercise its authority to compromise claims based on inability to pay.<sup>5</sup>

---

<sup>5</sup> Although the Department of Agriculture disagreed with the court's conclusion that it had violated the recipients' due process rights, it embraced the outcome and amended the federal regulations governing the collection of overpayment claims to require states to inform households of their compromise authority. Food Stamp Program: Recipient Claim Establishment And Collection Standards, Final Rule, 65 Fed. Reg. 41752, 41761 (July 6, 2000) ("[W]e are

That is not to say that federal law “permit[s] a state simply to ignore claims against honest households resulting from their inadvertent errors or from the errors of the state agency.” David A. Super, Encouraging Moderation In State Policies On Collecting Food Stamp Claims, Sept.-Oct. 2005 Clearinghouse Rev. J. of Poverty Law and Policy 349, 352. Regulations require participating state agencies to “begin collection action on all claims,” subject to certain exceptions inapplicable in this case. 7 C.F.R. 273.18(e)(1) (emphasis added). But the states possess broad authority to settle, adjust, or compromise claims once they are established. See Super, Sept.-Oct. 2005 Clearinghouse Rev. at 352 (“[States’] options include compromising claims to avoid hardship, distinguishing between current and former recipients [of food stamp benefits], and reducing claims to the amounts that households can repay in three years.”).<sup>6</sup> That the Department of Human Services is required to “begin collection action on all claims” does not mean that it cannot then settle or compromise those claims in cases of hardship or inequity. See 7 C.F.R. 271.4(b).<sup>7</sup>

The Department of Agriculture’s responses to comments received during the 1998-2000 rulemaking process that generated the regulations currently governing the collection of overpayment claims confirm that the states possess the authority to compromise food stamp

---

including language for the demand letter specifying that the State agency may compromise a claim in the demand letter requirements.”) (citing 7 C.F.R. 278.18(e)(3)(iv)(M)).

<sup>6</sup> The Department of Agriculture purposefully chose to require states to establish claims in all overpayment cases discovered during quality control audits, even where the amount of the overpayment is relatively small, before deciding whether to compromise the claim. It did so to ensure “that any claims threshold not create an incentive for households to obtain overpayments below the threshold with impunity.” Recipient Claim Establishment And Collection Standards, 65 Fed. Reg. at 41760. Thus, “any overpayment, regardless of size, may be subject to establishment and collection.” Id.

<sup>7</sup> An agency’s authority to compromise a claim before it is collected is distinct from its authority to terminate a claim it has already attempted to collect. See D.C. Dep’t of Human Services, IMA Policy Manual, Part VIII, Chapter 6.4.3 (discussing circumstances in which the Department of Human Services will “write off” overpayment claims).

overpayment claims. The Department defended the states' authority to compromise overpayment claims against criticism, arguing that such authority allows states to "manage their outstanding receivables better by pursuing amounts that they can expect to collect." 65 Fed. Reg. 41752, 41764. The Department also rejected a proposed \$20,000 limit to the value of claims that the states could compromise. Id. ("Past practices by State agencies show that the current compromise policy (that has no dollar limit) is not being abused."). And it reinforced that "State agencies are currently authorized to compromise claims when households are unable to pay because of hardship or similar reasons." Id. at 41765.

As this history indicates, other states have long recognized the authority to compromise overpayment claims in cases of economic hardship. In Nevada, for example, overpayment claims "may be waived permanently or temporarily" if pursuit of the claim would limit the recipient's ability to pay for critical medical care, shelter, or other basic necessities, or where the recipient's gross monthly income is less than 100% of the federal poverty guidelines. Nevada Div. of Welfare and Supportive Services, Eligibility and Payments Manual F-160. In Maryland, Virginia, and a number of other states, agency regulations or policy manuals make clear that an overpayment claim that "cannot be liquidated in three years" may be reduced "to the amount that allows the household to make restitution within three years." Maryland Dep't of Human Resources, Food Stamp Manual 490.17 (Maryland); Virginia Dep't of Social Services, Va. Food Stamp Program Manual 17(E)(2) (Virginia); accord, e.g., Mass. Regs. Code tit. 106, § 367.495(F) (Massachusetts); 10 Colo. Code Regs. § 2506-1 (Colorado). In Oregon, the government considers, among other factors, whether pursuing the full claim would cause the recipient household economic hardship, and whether the costs of pursuing the claim exceed the

amount of the overpayment. Oregon Dep't of Human Services, Family Services Manual, Chapter 13(C)(3)(J) (listing 8 factors to be considered).

These diverse approaches to dealing with overpayments of food stamps benefits belie the conclusion that "the federal regulations mandate that the administering States \* \* \* establish and collect any debt(s) owed to the federal government, including but not limited to overpayments." Final Order 3 (App. 157); id. 4 (App. 158); see also Dep't of Human Services' Motion for Summary Affirmance 6; id. 5; id. 7. The District's Department of Human Services, no less than its counterparts in other jurisdictions, has the authority to compromise claims in cases of economic hardship and to determine, within broad limits, which claims should be compromised. It is not entitled to refuse to exercise that authority or to give reasoned consideration to each such case. Johnson v. United States, 398 A.2d 354, 363 (D.C. 1979) ("An outright failure or refusal to exercise that judgment is wholly defeating."); see, e.g., Waters-Haskins, 192 P.3d at 1233.

2. The practice in other states reflects general principles that must guide the Department of Human Services' development of specific criteria to implement the federal regulations requiring states to determine whether the recipient of an overpayment of food stamps benefits is reasonably likely to be able to repay the debt within three years. See 7 C.F.R. 271.4(b); 7 C.F.R. 273.18(i).

First, because the federal regulations provide the Department of Human Services with a measure of discretion in determining whether a household will be unable to repay an overpayment of benefits, the agency must give individualized consideration to each case before deciding whether to compromise its claim. The agency cannot adopt a blanket policy that purports to require discretion but in fact produces the same result in every case. Johnson, 398 A.2d at 361 ("[T]he core of 'discretion' as a jurisprudential concept is the absence of a hard and

fast rule that fixes the results produced under varying sets of facts.”) (citing Langnes v. Green, 282 U.S. 531, 541 (1931)).

Second, the agency must articulate the standards it will use to determine whether a household will be able to repay an alleged debt, and it must follow those standards consistently. The Department of Human Services must ensure that the same criteria are applied in the same manner in all overpayment cases. “Because reasoned decisionmaking demands it, and because the systemic consequences of any other approach are unacceptable, the [agency] must be required to apply in fact the clearly understood legal standards that it enunciates in principle.” Allentown Mack Sales & Service, Inc. v. NLRB, 522 U.S. 359, 376 (1998).

Third, the agency should adopt criteria that promote fairness and good government while avoiding economic hardship. Well-chosen criteria can benefit both participating households and the Department of Human Services by focusing the government’s limited resources on cases involving bad faith and on seeking amounts it can reasonably expect to recover.

To pursue the full amount of overpayment claims even where doing so would inflict future economic hardship on recipients would be inconsistent with the essential purpose of the food stamp program, which is to eliminate malnutrition in low-income households. Cf. Waters-Haskins, 192 P.3d at 1232 (“Realistically, recoupment of overpayment does not ‘even things out,’ because, when food stamps are intended to provide marginally adequate coverage, a temporary reduction, even for ‘recoupment,’ is a reduction below the marginally adequate level.”) (quoting Blick v. Palmer, 916 F.Supp. 1475, 1489 n.10 (N.D. Iowa Feb. 1, 1996)). The District should focus its efforts on recovering only those amounts that will allow participating households to maintain an adequate level of nutrition and other basic necessities, such as housing, medical and transportation costs.

Moreover, the pursuit of overpayment claims where the cost of collecting the claim exceeds the amount of the alleged debt is inefficient and consumes resources intended for the benefit of needy families. The argument advanced by the government before OAH and this Court would lead to absurd results: the discovery of overpaid benefits would seemingly require the agency to pursue relentless collection efforts, no matter how costly, even if the recipient household lacks the resources to pay the debt. See, e.g., Dep't of Human Services' Motion for Summary Affirmance 5 ("The states are required to recoup any overpayment of coupons from the recipient."); id. 6 ("The District was obligated, under federal law, to recoup those overpayments."). Such a practice is not required by federal or District law.<sup>8</sup>

**II. THE DEPARTMENT OF HUMAN SERVICES' FOOD STAMP DEMAND LETTER DOES NOT EXPLAIN, IN "EASILY UNDERSTANDABLE LANGUAGE," THAT THE AGENCY HAS THE AUTHORITY TO COMPROMISE OVERPAYMENT CLAIMS IN CASES OF ECONOMIC HARDSHIP.**

Although this case must be remanded because of the ALJ's erroneous interpretation of the food stamps regulations, the inadequate and confusing content of the food stamp demand letter provides an independent basis for remand. The Department of Human Services had to provide Ms. Schliefssteiner written notice of her rights and options in "easily understandable language." 7 C.F.R. 273.13(a)(2). Because the demand letter used in this case did not

---

<sup>8</sup> One approach to compromising food stamp overpayments that has proven successful is a policy modeled on the waiver rules followed by the Social Security Administration (SSA). See 65 Fed. Reg. at 14765 (acknowledging the merit of applying the SSA approach to the food stamp program). Under SSA regulations, overpayment claims can be waived if the recipient was without fault and the government's pursuit of the claim would "defeat the purpose" of the Supplemental Security Income or Social Security program; would be "against equity or good conscience"; or would "impede efficient or effective administration [of the program] due to the small amount involved." 20 C.F.R. 416.550. Although the food stamps regulations do not limit the category of overpayment claims that may be compromised to those cases where the recipient was without fault (since the Department of Human Services has authority to compromise claims even in cases of fraud), a policy similar to the SSA waiver rules would benefit individuals like Ms. Schliefssteiner, who cannot afford to repay the alleged overpayment.

adequately explain whether and how Ms. Schliefssteiner could request that the Department of Human Services compromise its claim, the final order cannot be affirmed.

Federal regulations dictate the timing and content of notices issued in food stamp overissuance cases. Such notices must explain, among other things, the amount the agency is seeking to recover from the household, whether the error was caused by the household or the agency, and how the agency calculated the amount of the claim. See 7 C.F.R. 273.18(e)(3)(iv). The notices must also explain the household's right to request a fair hearing to contest the claim, and "[t]hat the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim." Id.

The demand letter issued in this case failed to satisfy the requirements of the applicable federal regulations because it did not provide the required information in a format and language that an unsophisticated individual could reasonably be expected to understand. Specifically, the demand letter failed to inform Ms. Schliefssteiner in "easily understandable language" of her right to request that the Department of Human Services compromise the overpayment claim. 7 C.F.R. 273.13(a)(2); cf. Bliet v. Palmer, 102 F.3d 1472 (8th Cir. 1997) (holding that a state agency's failure to make any mention of its compromise authority in its demand letter violated due process).

The only mention of the agency's authority to compromise overpayment claims comes in the middle of a single sentence, appearing in the middle of a paragraph printed entirely in capital letters.<sup>9</sup> The relevant sentence fragment states that the "Department of Human Services may reduce any part of the claim if the agency believes you are unable to repay the claim." App. 5.

---

<sup>9</sup> It bears mention that the excessive use of capital letters, as opposed to standard word processing formats, creates additional confusion for the reader, both because the text is difficult to read and because it does not distinguish information that merits special emphasis (such as a recipient's right to request a compromise in cases of economic hardship).

That statement is an inadequate explanation of the law. It does not explain whether the recipient is entitled to provide any information to the Department of Human Services before the agency determines whether the recipient is too impoverished to repay the debt. It also fails to explain how the recipient should provide the agency with proof of their poverty, implying that the recipient cannot or at least is not expected to do so. The demand letter does state that the recipient is entitled to a fair hearing, but it does not explain whether that hearing is the appropriate venue in which to argue that the recipient is unable to repay the debt. Indeed, the demand letter implies that the fair hearing is not the appropriate venue in which to make such an argument, because it specifies that it is the “belie[f]” of the Department of Human Services that is dispositive, rather than the judgment of OAH, the agency that actually conducts the fair hearing.

Concerns about the adequacy of notices are particularly compelling in the context of the food stamp program. Agencies have a duty to ensure that notices and instructions will be comprehensible to their recipients. Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 14 n.15 (1978) (requiring clear notice to utilities consumers “of various levels of education, experience, and resources”); Gray Panthers v. Schweiker, 652 F.2d 146, 170 (D.C. Cir. 1980) (analyzing due process challenge to a Medicare notice with reference to “the unique characteristics of [elderly Medicare recipients] in order to appraise the accentuated effects of these notice defects.”); see generally Berkley v. D.C. Transit, Inc., 950 A.2d 749, 758 (D.C. 2008) (reversing agency order because the administrative law judge provided a “confusing and erroneous” explanation of the burden of proof to an unsophisticated pro se litigant).

Food stamp recipients are poor, disproportionately undereducated, and without ready access to affordable attorneys who can decipher confusing legal documents. See, e.g., U.S.



Dep't of Agric., Customer Service In The Food Stamp Program 23 (July 1999) (finding that 43 percent of food stamp recipients nationwide had less than a high school education); Ann Marie Rakowski, Just Who Do You Think You're Talking To? The Mandate For Effective Notice To Food Stamp Recipients With Mental Disabilities, 37 Colum. J.L. & Soc. Probs. 485, 485-487 (2004) (discussing need for effective notice because of the substantial number of public benefits recipients with mental disorders, learning disabilities or functional illiteracy); District of Columbia Access to Justice Commission, Justice for All? An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community (Oct. 2008) 24 (discussing the lack of legal services providers in the District's poorest communities). When issuing notices to such an audience, the Department of Human Services has an obligation to use simple, non-technical language; to use an easily readable format; and to provide an accurate explanation of the law.

The record in this case vividly reflects the need for greater clarity in the Department of Human Services' food stamp demand letter. Ms. Schliefssteiner apparently did not contact the Department of Human Services to request that it compromise its claim. Instead, she attempted to explain her inability to pay the claim during the hearing before OAH. When she did so, the ALJ repeatedly pressed her to identify the legal basis for her argument. See, e.g., 6/5/07 Tr. at 15 (App. 109) ("Do you have any documents, or any law, or anything saying that you – if there is an overpayment of food stamps, even if the error was made by the Government, that the recipient of the overpayment is not responsible for paying it back?"); id. ("Do you have anything to say that you are not supposed to pay?"); id. 17-18 (App. 111-112) ("[I]s there anything in your side of the story that shows that, if the Government makes an error \* \* \* in giving benefits to people, that it is a Governmental error, then the person who's the recipient does not have to pay?"); id. 20 (App. 114) ("I keep asking the same question.").

Ms. Schliefssteiner attempted to answer these questions by reiterating that she lacked the money to repay the debt. See, e.g., 6/5/07 Tr. at 14 (App. 108) (“I don’t have [any] money.”); id. 14-15 (App. 108-109); id. 35 (App. 129); id. 48 (App. 142). That testimony bore directly on the question of whether the Department of Human Services was required to compromise its claim and was not contradicted by anything in the record. But the ALJ, apparently unaware of the language in the demand letter and the regulations concerning the compromise of overpayment claims, characterized the argument as irrelevant and as contrary to law. See, e.g., id. 28 (App. 122) (“Is there anything in your Written Request that would negate what the law is?”); id. 35 (App. 129) (“This isn’t before me.”); id. 36 (App. 130) (“[I]t is not relevant to what I am here for.”); id. 48 (App. 142) (“I don’t think that’s the issue before the Court.”). A clear statement of the Department of Human Services’ obligation to consider compromising its claim would have clarified the basis of Ms. Schliefssteiner’s argument – both to her and to the ALJ – and would have allowed the ALJ to assess any substantive justification the Department of Human Services might have for refusing to compromise its claim.

### CONCLUSION

The Final Order of the Office of Administrative Hearings must be reversed and this case must be remanded for additional proceedings. Because it is the responsibility of the Department of Human Services to weigh the recipient household’s inability to pay in the first instance, OAH should be directed to remand the matter to the Department of Human Services.

Respectfully submitted.



---

Peter G. Wilson\*  
Eric Angel (#444731)  
Legal Aid Society of the District of Columbia

1331 H Street, NW, Suite 350  
Washington, D.C. 20005  
PH: (202) 628-1161

***Counsel for Amicus Curiae***

\* Licensed to practice in the State of New York. Practicing under District of Columbia Court of Appeals Rule 49(c)(9)(B). Supervised by Eric Angel (#444731).

## CERTIFICATE OF SERVICE

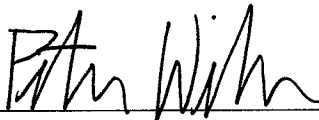
I hereby certify that I caused a true and correct copy of the foregoing Brief Of The Legal Aid Society As Amicus Curiae Supporting Reversal to be delivered by first-class mail, postage prepaid, this 30<sup>th</sup> day December 2008, to:

Ms. Christiane M. Schliefssteiner  
5230 MacArthur Boulevard, N.W.  
Washington, D.C. 20016

Petitioner

David A. Hyden  
Assistant Attorney General  
Office of the Solicitor General  
441 Fourth Street, N.W.  
Suite 600 South  
Washington, D.C. 20001

Counsel for Respondent

  
\_\_\_\_\_  
Peter G. Wilson