

1990

Vincent Mendez v. State of Utah, Department of Social Services : Brief of Appellee

Utah Court of Appeals

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R. Paul Van Dam; Attorney General; Richard Hummel; Assistant Attorney General; Attorneys for Appellee.

Michael E. Bulson; Attorney for Appellant.

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**IN THE COURT OF APPEALS OF
THE STATE OF UTAH**

VINCENT MENDEZ,	:	
Plaintiff/Appellant,	:	Case No. 900151-CA
vs.	:	
STATE OF UTAH,	:	Priority No. 15
Department of Social Services,	:	
Defendant/Appellee.	:	

BRIEF OF APPELLEE

Appeal from a final order on motion for summary judgment of the Second Judicial District Court, the Honorable Stanton M. Taylor, presiding, entered February 1, 1990.

Michael E. Bulson #0486
Utah Legal Services, Inc.
550 - 24th Street #300
Ogden, UT 84401

Attorney for Appellant

R. Paul Van Dam
Attorney General of Utah
State Capitol Building
Salt Lake City, UT 84114

Richard A. Hummel #4057
Assistant Attorney General
Office of Recovery Services
2540 Washington Boulevard
Ogden, UT 84401

Attorneys for Appellee

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Attorney for Appellant

R. Paul Van Dam
Attorney General of Utah
State Capitol Building
Salt Lake City, UT 84114

Richard A. Hummel #4057
Assistant Attorney General
Office of Recovery Services
2540 Washington Boulevard
Ogden, UT 84401

Attorneys for Appellee

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Department of Social Services,	:	
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BRIEF OF APPELLEE

JURISDICTION OF THE COURT OF APPEALS

This is an appeal from a final order of the district court granting the defendant's motion for judgment on the pleadings. The district court reviewed the informal adjudicative proceedings of the State of Utah, Department of Social Services pursuant to the plaintiff's complaint. Jurisdiction is proper pursuant to Utah Code Annotated §78-2a-3(2)(b) (1990).

ISSUE ON APPEAL AND STANDARD OF APPELLATE REVIEW

The only issue on appeal is whether estoppel may be raised as a defense in an action by the Office of Recovery Services to recover the value of food stamps issued in error to a recipient when the overissuance was caused by agency error. The correction

of error standard is the proper standard of appellate review in this case since the court is reviewing the district court's ruling on a motion for judgment on the pleadings. Berube v. Fashion Centre Ltd., 771 P.2d 1033, 1039 (Utah, 1989).

**DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES
AND REGULATIONS**

U.S. Constitution, art. VI, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Utah Code Annotated §55-15a-24(1)(a), (4) (1953, as amended):

(1) Any person who engages in any of the following acts shall be liable to the state of Utah for the value of all funds or other benefits received by any person as a result of those acts:

a) receiving assistance payments, medical services, food stamps or any other thing of value under the provisions of this chapter, to which they were not entitled;

(4) The liability to the state set forth in this chapter shall arise whether the acts engaged in were due to the fraud, mistake or administrative or factual error, intentional or unintentional, of any party.

Utah Code Annotated §62A-9-129(1)(a), (4) (1988):

(1) Any person who engages in any of the following acts is liable to this state for the value of all funds or other benefits received by any person as a result of those acts:

(a) receiving public assistance, medical benefits, or any other thing of value, under the provisions of this chapter, to which he was not entitled;

(4) The liability to this state set forth in this chapter arises whether the acts engaged in were due to the fraud, mistake, or administrative or factual error, intentional or unintentional, of any party.

Utah Code Annotated §68-3-2 (1953, as amended):

The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of this state. The statutes establish the laws of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice. Whenever there is any variance between the rules of equity and the rules of common law in reference to the same matter the rules of equity shall prevail.

7 C.F.R. §273.18 (1990)

(See addendum)

STATEMENT OF THE CASE

The State of Utah, Department of Social Services agrees with Mr. Mendez' statement concerning the nature of the case, the course of proceedings, disposition in the court below, and, for purposes of this appeal only, the statement of facts.

SUMMARY OF THE ARGUMENT

Utah law and federal regulations mandate that the Office of Recovery Services (ORS) recover all overpayments of food stamps which are the result of administrative error. ORS has no discretion regarding the recovery of overpayments of food stamps except where specifically allowed by regulation. The federal regulations specifically allow some defenses to recovery of overpayments but do not allow states to recognize the defense of equitable estoppel. With the exception of one or two lower

courts in states that do not have the same statutory scheme as Utah, it has never been found that equitable estoppel should bar the recovery of food stamp overpayments.

Equitable estoppel cannot be used to circumvent a statutory mandate. State legislation mandates recovery of food stamp overpayments even where the overpayment is caused by agency error. Where a legal right or obligation exists, equity cannot circumscribe that right. The clear wording of the Utah statute requiring liability for overpayments precludes the use of equitable defenses.

The nature of the equitable estoppel defense and its elements are inconsistent with Utah law and the federal regulations. The necessary elements of equitable estoppel are not present in food stamp overpayment cases.

Allowing equitable estoppel in this statutory and regulatory setting would violate the supremacy clause of the U.S. Constitution. Preventing recovery of food stamp overpayments by equitable estoppel would diminish the pool of resources intended for those who are substantively eligible for the benefits.

ARGUMENT

POINT I

FEDERAL AND STATE LAW REQUIRING COLLECTION OF OVERPAYMENTS OF FOOD STAMPS DOES NOT ALLOW CONSIDERATION OF EQUITABLE DEFENSES

A. The Office of Recovery Services is required by Utah law and by federal regulations to establish a claim against Mr. Mendez for the collection of the over-issuance of food stamps he received.

Under Utah law, the Office of Recovery Services, which is a subdivision of the Department of Social Services, has a statutory

duty to "recover public assistance provided to persons for which they were ineligible . . . and to cooperate with the federal government in programs designed to recover health and social service funds." Utah Code Annotated §62A-11-104. It cannot be disputed that cooperating with the federal government includes complying with federal regulations pertinent to the administration of the food stamp program. The regulations specifically say:

The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

7 CFR §273.18(a) (emphasis added). It is not disputed that Mr. Mendez received more food stamps than he was entitled to receive. Therefore, in order for the Office of Recovery Services to comply with federal regulations, it must establish a claim against Mr. Mendez.

B. The establishment of a claim for the recovery of an overissuance of food stamps is mandatory even when the overissuance is the result of administrative error.

Federal regulations state, "The State agency [ORS] shall take action to establish a claim against any household that received an overissuance due to . . . administrative error if the criteria specified in this paragraph [relating to time periods of collection] have been met." 7 CFR §273.18(b). The regulations give specific examples of what could be considered administrative error:

(2) Instances of administrative error which may result in a claim include but are not limited to the following:

(i) A State agency failed to take prompt action on a change reported by the household;

(ii) A State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

. . .

(v) The State agency failed to provide a household a reduced level of food stamp benefits because its public assistance grant changed.

(iv) An agency of the State or local government took an action or failed to take an appropriate action, which resulted in the household improperly receiving public assistance.

7 CFR §273.18(b)(2). Any or all of the above examples could accurately describe Mr. Mendez' case. ORS is, therefore, required to establish a claim against food stamp recipients in Mr. Mendez' situation.

C. ORS has no discretion whatsoever regarding the recovery of food stamp overpayments.

Mr. Mendez argues that the state agency may use its own discretion in deciding whether to collect overpayments and that estoppel is therefore a proper consideration. In support of that argument, he refers to Section 62A-11-110 of the Utah Code, which specifically grants the agency discretion in recovering small overpayments. He also refers to the overpayment case of Utah ORS v. Westfall, Case No. 60195145R2 (June 26, 1990) where the state dismissed a claim after considerable litigation.

Mr. Mendez' argument in this regard is clearly misplaced. The discretion granted by the legislature to not recover small administrative error overpayments is allowed purely for financial reasons. Those who drafted the federal regulations realized that

is would not make sense to require the state agencies to spend a great deal of money to collect a small debt so they allowed some discretion in that area. See CFR 273.18(e)(1). Section 62A-11-110 is the state's statutory response to the regulatory guidelines. ORS is allowed to exercise discretion in recovering small overpayments so that limited welfare resources may be spent on the needy rather than wasted in fruitless collection efforts.

Mr. Mendez also points to the administrative overpayment case of Utah ORS v. Westfall, case no. 60195145R2 (June 26, 1990) for the proposition that the state agency has broad discretion in deciding whether to collect overpayments. In that case, the state dismissed an overpayment claim against the defendant. Counsel for Mr. Mendez in this case also represented the defendant in that case. He was successful over the state's objections in having a default judgment set aside concerning an overpayment that was many years old. The basis for the overpayment claim was that the welfare recipient had allegedly withheld information concerning her household which would have made her ineligible for benefits. By the time the default was set aside, all evidence necessary to prove ineligibility for benefits was no longer available. Since it was impossible for the state to prove an overpayment ever existed, the case was dismissed. It was not dismissed for discretionary reasons as Mr. Mendez would lead the court to believe. With Mr. Mendez, the fact of the overpayment is undisputed. In Westfall, no overpayment could be proved.

In Childs v. Essex County Division of Welfare, 564 A.2d 889 (N.J. Super. Ct. Law Div. 1988), a person charged with a welfare overpayment was held liable to repay the benefits received in error. In making its determination, the court noted that the agency had no discretion but is required to recover all overpayments of public assistance:

CWA [County Welfare Agency] has no discretion whatsoever with regard to seeking recovery of overpayments of public assistance funds or over-issuances of food coupons. The foregoing recovery provisions are mandatory. Under the AFDC program, federal financial participation can be jeopardized for failure of states diligently to seek recovery of monies paid out in excess of what is mandated. 45 C.F.R. §205. Similarly, under the totally federally-funded food stamp program, states are subject to severe sanctions, not merely state reduction of participation in the program, but state liability for overissuance of coupons, should a state fail to recover or make good faith efforts to recover. 7 C.F.R. §§ 275, 276.

Id. at 896. ORS has no discretion but must recover food stamps issued to those who are not eligible.

D. The federal regulations have provided exceptions to this mandate and equitable estoppel is not included.

The federal regulations allow some exceptions to the mandate requiring state agencies to recover all overpayments of public assistance. 7 C.F.R. §273.18(b)(3) states:

(3) Neither an administrative error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the following:

(i) A State agency failed to insure that a household fulfilled the following procedural requirements:

- (A) Signed the application form,
- (B) Completed a current work registration form,
- or
- (C) Was certified in the correct project area;

(ii) The household transacted an expired ATP, unless the household altered its ATP.

7 C.F.R. §273.18 (b)(3). All of the above exceptions relate to procedural deficiencies that result in overpayments. There are no exceptions for cases like Mr. Mendez' where the recipient is substantively ineligible.

Failure of the lawmakers to include an "equitable" exception to recovery of administrative overpayments while specifically providing other exceptions clearly indicates that they did not intend to make the equitable estoppel defense available. This is consistent with a policy of insuring that limited public benefits are available for those who have the actual need for them as opposed to allowing someone to enjoy a windfall benefit because the agency erred.

The courts have generally been sensitive to the procedural/substantive distinction when dealing with public benefits cases. For example, Mr. Mendez relies on Lentz v. McMahon, 49 Cal.3d 393, 777 P.2d 83, 261 Cal. Rptr. 310 (1989) where the court determined that estoppel can be asserted against government in welfare cases. However, in Lentz, welfare recipients were found ineligible for benefits received due to a procedural deficiency caused by the state agency. The court determined that the state should be estopped from denying benefits in that case but found that if the recipient had been substantively ineligible, the result might have been much different. It stated:

[E]stoppel against a welfare agency may be appropriate when, as in Canfield . . . a government agent has negligently or intentionally caused a claimant to fail to comply with a procedural precondition to eligibility, and the failure to invoke estoppel would

cause great hardship to the claimant. A more difficult question is posed, however, when estoppel is asserted against the government to defeat substantive limitations on eligibility for public benefits. To bar recoupment of benefits from a person whose circumstances did not qualify him for such benefits under applicable substantive eligibility rules might amount to a bestowal of benefits not contemplated by the Legislature. In this regard, we share the United States Supreme Court's view that it is "the duty of all courts to observe the conditions defined by [the legislative branch] for charging the public treasury." (Schweiker v. Hansen, supra, 450 U.S. at P.788, 101 S. Ct. at 1471) (emphasis in the original).

Id. at 87. Lentz, therefore, supports the state's position that estoppel should not bar recovery of overpayments from recipients who were not substantively eligible for the benefits. The procedural/substantive eligibility distinction also distinguishes other cases relied on by Mr. Mendez. Glover v. Adult and Family Services Division 613 P.2d 495 (Or. App. 1980) (Benefits disallowed because invoices lacked the required signatures). Filipo v. Chang, 618 P.2d 295 (Haw. 1980) and Canfield v. Prod, 67 Cal. App. 3d 722, 137 Cal. Rep. 27 (1977). In fact, when actually faced with cases similar to Mr. Mendez', the Oregon and Hawaiian courts have refused to stop recoupment of benefits when estoppel was raised as a defense. Thrift v. Adult and Family Services Division 646 P.2d 1358 (Or. App., 1982) and Cudal v. Sunn 742 P.2d 352 (Haw. 1987).

POINT II

ESTOPPEL CANNOT BE USED TO NULLIFY THE STATE'S STATUTORY MANDATE TO RECOVER FOOD STAMP OVERPAYMENTS

As noted above, Utah law and federal regulations mandate that ORS recover the overissuance of food stamps received by Mr. Mendez. The Utah legislature spoke clearly when it stated:

(1) Any person who engages in any of the following acts is liable to this state for the value of all funds or other benefits received by any person as a result of those acts . . .

(b) cashing checks, using food stamps, or using medical cards which do not belong to that person, without proper authority, or without being entitled to the benefits thereunder: . . .

(4) the liability to this state set forth in this chapter arises whether the acts engaged in were due to the fraud, mistake or administrative or factual error, intentional or unintentional, of any party.

Utah Code Annotated §62A-9-129 (emphasis added). This statute was enacted in January, 1988. The overpayment in this case, however, occurred prior to that time. At that time, the applicable statute was Utah Code Ann, Section 55-15a-24, which states:

(1) Any person who engages in any of the following acts shall be liable to the State of Utah for the value of all funds or other benefits received by any person as a result of those acts:

(a) Receiving assistance payments, medical services, food stamps, or any other thing of value under the provisions of this chapter, to which they were not entitled . . .

(4) The liability to this state set forth in this chapter shall arise whether the acts engaged in were due to fraud, mistake, or administrative or factual error, intentional or unintentional, of any party.

(Emphasis added). Both of these statutes show the clear intent of the legislature that liability for overpayments caused by administrative or factual error shall be mandatory. The mandatory language of the statute leaves no room for the doctrine of equitable estoppel as a defense. If the legislature had intended that there be equitable exceptions to liability, it could have listed possible exceptions or defenses to liability

within the statute itself, or it could have used permissive terms such as "may be liable" rather than "shall" be liable.

It is a fundamental rule of law that statutory law takes precedence over and controls common law. In re: Garr's Estate 31 Utah 57, 68-69, 86P. 757, 761 (1906). The Utah Supreme Court spoke on the relationship between common law and statutory law when it stated:

Utah does not follow the rule of the common law that statutes in derogation thereof are to be strictly construed. Rather, the statutes of this state are to be "liberally construed with a view to effect the objects of the statutes and to promote justice."

Asay v. Watkins 751 P.2d 1135 (Utah, 1988). See also Utah Code Ann. Section 68-3-2 (1953, as amended).

The Utah Court of Appeals also spoke on this issue when it stated:

In construing this legislation, we must give effect to the legislature's underlying intent, American Coal Company v. Sandstrom, 689 P.2d 1, 3 (Utah, 1984), and assume that each term in the statute was used advisedly. West Jordan v. Morrison, 656 P.2d 445, 446 (Utah, 1982). We will interpret and apply the statute according to its literal wording unless it is unreasonable, confused or inoperable. Id.; Horne v. Horne, 737 P.2d 244, 247 (Utah App., 1987). A proper construction of its terms must further the statute's purposes. RDG Assocs/Jorman Corp. v. Industrial Comm'n 741 P.2d 948, 951 (Utah, 1987)

Gleave v. Denver and Rio Grande Western Railroad Company 749 P.2d 660 (Utah App. 1988).

Furthermore, "where a legal right is clearly established, the equitable doctrine of estoppel cannot be used to circumscribe that right." The American National Bank of Denver v. Tina Marie Homes, Inc., 476 P.2d 573 (Colo. App. 1970). See also, In re Scholtz-Mutual Drug Co., 298 F. 539 (D. Colo. 1924) (A court's

"duty to interpret the statute precludes the use of its equity powers"); Stevenson v. Burgess, 552 S.W.2d 99, 105 (Tex. 1977) ("estoppel . . . cannot be invoked to nullify a mandatory statutory restriction, especially when such restriction is enacted for the benefit of the general public"); Morris v. Morris 631 S.W.2d 188, 191 (Tex. App. 1982).

It is true, as pointed out by Mr. Mendez, that equitable estoppel has been applied against various government agencies in this state. Celebrity Club, Inc. v. Utah Liquor Control, 602 P.2d 689 (Utah, 1979), Morgan v. Board of State Lands, 549 P.2d 695 (Utah, 1976), Utah State University v. Sutro and Co., 646 P.2d 715 (Utah, 1982), and Eldridge v. Utah State Retirement Board, 137 Utah Adv. Rep. 25 (Utah App. 1990). But the facts of each of these cases clearly distinguish them from Mr. Mendez' situation. Those cases do not involve agencies disbursing federal funds with a federal mandate that errors in disbursement be corrected and that overpayments be collected. Nor does their result turn on a state statute that imposes liability regardless of whether the acts giving rise to the liability were due to "administrative or factual error, intentional or unintentional, of any party." Utah Code Ann. §55-15a-24(4) (1953, as amended) and §62A-9-129(4)(1988). Eldridge v. Utah State Retirement Board, 137 Utah Adv. Rep. 25 (Utah App. 1990) is the Utah case closest factually to Mr. Mendez' situation. There, the court was faced with the "anti-estoppel" effect of a state retirement statute. But the court did not determine whether the statutory mandate had to give way to the doctrine of estoppel because it

decided that the "anti-estoppel" statute was inapplicable to the facts of that case. Id. at 29. The precise issue involved in Mr. Mendez' appeal was avoided

Furthermore, Eldridge can be distinguished because the court, in accepting the estoppel argument, was influenced by the fact that the Retirement Board provides a proprietary function rather than a governmental function and therefore, the court did not need to be as cautious in applying estoppel against the state. Id., at 28. The disbursement of public benefits to Mr. Mendez clearly involved a governmental, rather than a proprietary, function.

Since the wording of the state statutes leaves no room for exceptions to liability of the recipient of a public assistance overpayment, it is clear that the ALJ and the district court were correct in refusing to consider the defense of equitable estoppel in this case. In fact, had they ignored the legislative mandate and applied the doctrine of equitable estoppel, they would have abused their judicial discretion by violating the doctrine of separation of powers.

POINT III

THE EQUITABLE ESTOPPEL DEFENSE AND ITS ELEMENTS ARE INCONSISTENT WITH UTAH LAW AND THE FEDERAL REGULATIONS

(A). Equitable estoppel implies fault to one of the parties while Utah law imposes liability upon the recipient regardless of fault.

In order to prevail on the defense of estoppel, it must be established that the party to be estopped is at fault.

Sederquist v. Tahoe Regional Planning Agency, 652 F.Supp. 341, 347 (D.Nev. 1987); United States v. Georgia Pacific, 421 F.2d 92,

97 (9th Cir. 1970); Brown v. Minnesota Department of Public Welfare, 268 N.W.2d 906, 910 (Minn. 1985). Mr. Mendez must show the agency to be at fault in order for estoppel to succeed. Mr. Mendez seeks to estop ORS from collecting the overissuance because the administrative agency is at fault. However, under Utah law, Mr. Mendez is liable regardless of fault:

(1) Any person who engages in any of the following acts shall be liable to the State of Utah for the value of all funds or other benefits received by any person as a result of those acts:

(a) receiving public assistance, medical benefits, or any other thing of value, under the provisions of the chapter, to which he was not entitled;

(4) The liability to this state set forth in this chapter arises whether the acts engaged in were due to the fraud, mistake, or administrative or factual error, intentional or unintentional, of any party.

Utah Code Ann. §55-15a-24 (emphasis added) (replaced by §62A-9-129 in 1988). Mr. Mendez received public assistance in the form of food stamps for which he was not entitled. The statute above makes no distinction between cases where the recipient is at fault or the agency is at fault but treats the issue of fault as irrelevant. Estoppel, however, requires that the party to be estopped be at fault. The nature of estoppel is therefore, inconsistent with the liability imposed by the statute.

In Castregon v. Huerta, 119 Ariz 343, 580 P.2d 1197 (1978), the appellant was the recipient of General Assistance benefits from the Arizona Department of Economic Security. This made the recipient ineligible for Supplemental Security Income benefits which the recipient began receiving as a result of administrative error. By the time the error was discovered, the recipient had

been overpaid \$565.00. In upholding the ruling of the hearing officer, the Supreme Court of Arizona stated, "[W]e think the hearing officer could properly conclude that why appellant was overpaid was immaterial. . . ." Id. at 1199. Fault is not relevant to the liability of the overpaid recipient and therefore, considering the defense of estoppel is inappropriate.

(B) "Silence" can only substitute for an "affirmation of fact" when there is a duty to speak. Mere inaction on the part of the state does not imply such a duty and is not sufficient to invoke estoppel.

The first element of estoppel is "1) an admission, statement, or act inconsistent with the claim afterwards asserted." Celebrity Club, Inc. v. Utah Liquor Control Commission, 602 P.2d 689, 694 (Utah, 1979). In the extant case, the agency did not admit, state nor act but simply failed to discover the error until three months of overissuance had occurred.

Mr. Mendez, relying on Morgan v. Board of State Lands, 549 P.2d 619 (Utah, 1976), contends that the agency's "silence" in not informing him of the error (an error the agency had not yet discovered) is sufficient to satisfy the first element of estoppel. In Morgan, the court stated that silence is sufficient to satisfy the first element of estoppel when "he ought to speak, intentionally or through culpable negligence. . . ." Id. at 695. During the three months that Mr. Mendez was overissued the food stamps, the state was unaware of the error. Since the state was unaware that an error had been committed it would be incorrect to assert that the state "ought to have spoken" about something which it did not know. Id. at 695. The State obviously did not

error "intentionally" and if "culpable negligence" is being asserted, then that raises the question of fault again which was discussed above. Morgan simply does not apply. "Mere inaction by the state is not sufficient to invoke estoppel." Pavlokos v. Department of Labor, 111 Ill.2d 257, 489 N.E.2d 1320, 1328 (1985). Nor will a misunderstanding "support the application of equitable estoppel." Anderson v. Commissioner of the Department of Human Services, 489 A.2d 1094, 1099 (Me, 1985). The first element necessarily fails in cases where recovery of an overpayment of public assistance is sought by the state.

(C) Injury of sufficient gravity must be demonstrated if estoppel against the state is to succeed and the federal regulations were drafted to avoid such detriment.

The third element of estoppel is "3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement or act." Celebrity Club, Inc. v. Utah Liquor Control Commission, 602 P.2d 689, 694 (Utah 1979). The severity of the injury, or detriment, must be significantly greater when asserting estoppel against the state. In Celebrity Club, the court stated that "estoppel may be applied against the state . . . if necessary to prevent manifest injustice, and the exercise of governmental powers will not be impaired as a result. . . ." Id. In Utah State University v. Sutro and Co., 646 P.2d 715 (Utah, 1982), the court stated that the general rule is not to apply estoppel against the state and that it requires "unusual circumstances, when it is plainly apparent that its application would result in injustice, and there would be no substantial adverse effect on public policy" Id. at 718.

In Cudal v. Sunn, 742 P.2d 352 (Haw. 1987) the Supreme Court of Hawaii held that the recovery of an overpayment of public assistance does not constitute manifest injustice. Id. at 358. There, the plaintiff had been receiving public assistance throughout 1984. On September 9, 1984, she moved in with her parents which made her ineligible for the amount of public assistance she had been receiving. She immediately notified the Department of Social Services and Housing (DSSH) and hand delivered a letter from her mother verifying the move along with receipts of mortgage payments and utility bills paid by her parents. The hearing officer found that this put the agency on notice. DSSH made no attempt to adjust the benefits nor to recover the overpayment. A social worker even told her that the move would not effect her AFDC payments. On May 3, 1985, DSSH finally informed her that she had been overpaid and that repayment action would be taken.

Mrs. Cudal asserted the defense of equitable estoppel to no avail. The court, while finding that generally government can be estopped to prevent manifest injustice, held that the "circumstances here to not cry out for an invocation of estoppel against the government." Id. at 358. That result was reached even without mention of any state "anti-estoppel" statute.

The prevention of "manifest injustice" is built into the federal regulations. When an overissuance of food stamps has occurred due to administrative error, the recipient has several options for repayment. 7 C.F.R. §273.18(g). The recipient is allowed to choose the method of repayment which is most

convenient. Id. If the recipient chooses to have his monthly allotment reduced, the amount of that payment is to be negotiated between the agency and the household and "no household shall have its allotment reduced by an amount with which it does not agree for payment of an administrative error claim." 7 C.F.R §273.18(g)(3). The regulations simply do not allow the type of manifest injustice necessary for satisfying the third element of estoppel against the state.

POINT IV

THE CIRCUMVENTION OF THE FEDERAL REGULATIONS BY THE DEFENSE OF EQUITABLE ESTOPPEL VIOLATES THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION AND IS THEREFORE UNCONSTITUTIONAL.

The Supremacy Clause of the U.S. Constitution provides that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby. . . ." U.S. Const., art. VI, cl. 2. Where both Congress and a state assert power in the same area, the state legislation is suspended to the extent it frustrates or burdens the federal purpose. Jones v. Rath Packing Co., 430 U.S. 519 (1977). See also Douglas v. Seacoast Products, Inc., 431 U.S. 265 (1977). In the instant case the federal purpose which would be frustrated is that of the Omnibus Budget Reconciliation Act. The general purpose of the Act is to reduce federal spending through budget reconciliation as recommended by the specialized committees of the United States Congress. See S. Rep. No. 97-139, 97th Cong., 1st Sess. 2-3, *reprinted* in 1981 U.S. Code Cong. & AD. News 396, 397-98. In reference to the AFDC program, the Senate Committee

on Finance stated in its reconciliation recommendation to the Committee on the Budget:

[T]he committee believes that a policy of insuring the correctness of payment is crucial if the AFDC program is to continue to have public support. By requiring the correction of both overpayments and underpayments, the committee believes that recipients and welfare agencies alike will be encouraged to take greater responsibility for assuring the accuracy of administration.

S. Rep at 519, 1981 U.S. Code Cong. & Ad. News at 786. Allowing the defense of equitable estoppel to circumvent the federal regulations which mandate the recovery of food stamp overpayments would frustrate the purposes set forth above. In the instant case, the defense of equitable estoppel is, therefore, unconstitutional.

CONCLUSION

While it is true that recovering overpayments from public assistance recipients such as Mr. Mendez may work a hardship on them, it is also true that they have received a windfall benefit to which they are not rightfully entitled. The legislature, in requiring recoupment of those overpayments, is merely trying to conserve the pool of public funds so that the funds may be distributed to those who are properly entitled to receive them.

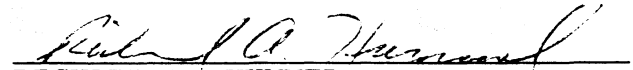
The agency clearly recognizes the need to eliminate agency errors and is diligently working toward that goal. Allowing the doctrine of equitable estoppel as a defense in overpayments cases caused by administrative error will not reduce the number of agency errors, but will only shift resources away from those who would otherwise be entitled to receive them. There is no equity or justice to be had in that result.

If there is an injustice to Mr. Mendez in this case because of the unavailability of the common law defense of equitable estoppel, it is an injustice that must be addressed by the legislature rather than the courts. In that forum, the hardship to the individual can be balanced against the needs of the public and the financial reality of limited public assistance resources.

The decisions of ALJ Mallory and Judge Taylor should be affirmed.

RESPECTFULLY submitted this 29th day of August, 1990.

R. PAUL VAN DAM
ATTORNEY GENERAL

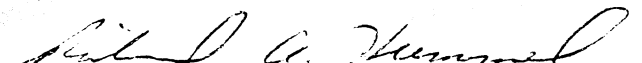

RICHARD A. HUMMEL
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I served four true and exact copies of the foregoing Brief of Appellee on Michael E. Bulson, by mailing the same, by first class, U.S. Mail, postage prepaid, to the following address(es):

Michael E. Bulson
Attorney for Plaintiff/Appellant
Utah Legal Services
550 - 24th Street, Suite 300
Ogden, UT 84401

DATED this 29th day of August, 1990.


RICHARD A. HUMMEL
Assistant Attorney General

ADDENDUM

fits are being restored, the household shall receive the lost benefits as determined by the State agency pending the results of the fair hearing. If the fair hearing decision is favorable to the household, the State agency shall restore the lost benefits in accordance with that decision.

(2) If a household believes it is entitled to restoration of lost benefits but the State agency, after reviewing the case file, does not agree, the household has 90 days from the date of the State agency determination to request a fair hearing. The State agency shall restore lost benefits to the household only if the fair hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the State agency was initially informed of the household's possible entitlement to lost benefits shall not be restored.

(d) *Computing the amount to be restored.* After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the 12-month time limits described in paragraphs (b) and (c) of this section, the State agency shall calculate the amount to be restored as follows:

(1) If the household was eligible but received an incorrect allotment, the loss of benefits shall be calculated only for those months the household participated. If the loss was caused by an incorrect delay, denial, or termination of benefits, the months affected by the loss shall be calculated as follows:

(i) If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application, or for an eligible household filing a timely reapplication, the month following the expiration of its certification period.

(ii) If an eligible household's application was delayed, the months for which benefits may be lost shall be calculated in accordance with procedures in § 273.2(h).

(iii) If a household's benefits were erroneously terminated, the month the loss initially occurred shall be the first month benefits were not received as a result of the erroneous action.

(iv) After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or the first month the household is found ineligible.

(2) For each month affected by the loss, the State agency shall determine if the household was actually eligible. In cases where there is no information in the household's case file to document that the household was actually eligible, the State agency shall advise the household of what information must be provided to determine eligibility for these months. For each month the household cannot provide the necessary information to demonstrate its eligibility, the household shall be considered ineligible.

(3) For the months the household was eligible, the State agency shall calculate the allotment the household should have received. If the household received a smaller allotment than it was eligible to receive, the difference between the actual and correct allotments equals the amount to be restored.

(4) If a claim against a household is unpaid or held in suspense as provided in § 273.18, the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household. At the point in time when the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset claims, even if the initial allotment is paid retroactively.

(e) *Lost benefits to individuals disqualified for intentional Program violation.* Individuals disqualified for intentional Program violation are entitled to restoration of any benefits lost during the months that they were disqualified, not to exceed twelve months prior to the date of State agency notification, only if the decision which resulted in disqualification is subsequently reversed. For example, an individual would not be entitled to restoration of lost benefits for the period of disqualification based solely on the fact that a criminal conviction could not be obtained, unless the individual successfully challenged the disqualification period imposed by an adminis-

trative disqualification in a separate court action. For each month the individual was disqualified, not to exceed twelve months prior to State agency notification, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference equals the amount to be restored. Participation in an administrative disqualification hearing in which the household contests the State agency assertion of intentional Program violation shall be considered notification that the household is requesting restored benefits.

(f) *Method of restoration.* Regardless of whether a household is currently eligible or ineligible, the State agency shall restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive. The State agency shall honor reasonable requests by households to restore lost benefits in monthly installments if, for example, the household fears the excess coupons may be stolen, or that the amount to be restored is more than it can use in a reasonable period of time.

(g) *Changes in household composition.* Whenever lost benefits are due a household and the household's membership has changed, the State agency shall restore the lost benefits to the household containing a majority of the individuals who were household members at the time the loss occurred. If the State agency cannot locate or determine the household which contains a majority of household members the State agency shall restore the lost benefits to the household containing the head of the household at the time the loss occurred.

(h) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for documenting a household's entitlement to restoration of lost benefits and for recording the balance of lost

benefits that must be restored to the household. Each State agency shall at a minimum, document how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system shall be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

(i) *Losses of benefits that occurred prior to elimination of the purchase requirement.* Households assigned a purchase requirement that was too high or assigned an incorrect household size shall be entitled to restoration of lost benefits if the household received fewer bonus stamps as a result. The amount to be restored is equal to the difference between the bonus stamps the household received and the correct amount the household should have received. State agencies shall restore the lost benefits in accordance with the procedures outlined in this section.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 225, 48 FR 16831, Apr. 19, 1983; Amdt. 314, 54 FR 24518, June 7, 1989]

§ 273.18 Claims against households.

(a) *Establishing claims against households.* All adult household members shall be jointly and severally liable for the value of any oversuance of benefits to the household. The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

(1) *Inadvertent household error claims.* A claim shall be handled as an inadvertent household error claim if the oversuance was caused by:

(i) A misunderstanding or unintentional error on the part of the household;

(ii) A misunderstanding or unintentional error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income and/or household size amount;

(iii) SSA action of failure to take action which resulted in the household's categorical eligibility provided a claim can be calculated based on a change in net income and/or household size.

(2) **Administrative error claims.** A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action or, in the case of categorical eligibility, an action by an agency of the State or local government which resulted in the household's improper eligibility for public assistance provided a claim can be calculated based on a change in net income and/or household size.

(3) **Intentional Program violation claims.** A claim shall be handled as an intentional Program violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional Program violation as defined in § 273.16(c), or an individual is disqualified as a result of signing either a waiver of his/her disqualification hearing as discussed in § 273.16(f) or a disqualification consent agreement in cases referred for prosecution as discussed in § 273.16(h). Prior to the determination of intentional Program violation or the signing of either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases of deferred adjudication, the claim against the household shall be handled as an inadvertent household error claim.

(b) **Criteria for establishing inadvertent household and administrative error claims.** The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error if the criteria specified in this paragraph have been met. At a minimum, the State agency shall take action on those claims for which 12 months or less have elapsed between the month an overissuance occurred and the month the State agency discovered a specific case involving an overissuance. The State agency may choose to take action on those claims for which more than 12 months have elapsed. However,

the State agency shall not take action on claims for which more than six years have elapsed between the month an overissuance occurred and the month the State agency discovered a specific case involving an overissuance.

(1) Instances of inadvertent household error which may result in a claim include, but are not limited to, the following:

(i) The household unintentionally failed to provide the State agency with correct or complete information;

(ii) The household unintentionally failed to report to the State agency changes in its household circumstances; or

(iii) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits.

(iv) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for PA and/or SSI at the time they received it.

(v) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI.

(2) **Instances of administrative error which may result in a claim include, but are not limited to, the following:**

(i) A State agency failed to take prompt action on a change reported by the household;

(ii) A State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

(iii) A State agency incorrectly issued duplicate ATP's to a household which were subsequently transacted;

(iv) The State agency continued to provide a household food stamp allotments after its certification period had expired without benefit of a reapplication determination; or

(v) The State agency failed to provide a household a reduced level of food stamp benefits because its public assistance grant changed.

(vi) An agency of the State or local government took an action or failed to

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take an appropriate action, which resulted in the household improperly receiving PA.

(3) Neither an administrative error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the following:

(i) A State agency failed to insure that a household fulfilled the following procedural requirements:

(A) Signed the application form,

(B) Completed a current work registration form, or

(C) Was certified in the correct project area;

(ii) The household transacted an expired ATP, unless the household altered its ATP.

(c) **Calculating the amount of claims.**—(1) **Inadvertent household and administrative error claims.** (i) For each month that a household received an overissuance due to an inadvertent household or administrative error, the State agency shall determine the correct amount of food stamp benefits the household was entitled to receive. The amount of the inadvertent household or administrative error claim shall be calculated based, at a minimum, on the amount of overissuance which occurred during the 12 months preceding the date the overissuance was discovered. The State agency may choose to calculate the amount of the claim back to the month the inadvertent household or administrative error occurred, regardless of the length of time that elapsed until the inadvertent household or administrative error was discovered. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. In cases involving reported changes, the State agency shall determine the month the overissuance initially occurred as follows:

(A) If, due to an inadvertent error on the part of the household, the household failed to report a change in its circumstances within the required timeframes, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been timely reported. However, in

no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(B) If the household timely reported a change, but the State agency did not act on the change within the required timeframes, the first month affected by the State's failure to act shall be the first month the State agency would have made the change effective had it timely acted. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred. If a notice of adverse action was required but was not provided, the State agency shall assume for the purpose of calculating the claim that the maximum advance notice period as provided in § 273.13(a)(1) would have expired without the household requesting a fair hearing.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. For categorically eligible households, a claim will only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

(iii) After calculating the amount of the inadvertent household or administrative error claim, the State agency shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with § 273.17. The State agency shall then initiate collection action for the remaining balance, if any.

(2) **Intentional Program violation claims.** (i) For each month that a household received an overissuance due to an act of intentional Program violation, the State agency shall determine the correct amount of food

stamp benefits, if any, the household was entitled to receive. The amount of the intentional Program violation claim shall be calculated back to the month the act of intentional Program violation occurred, regardless of the length of time that elapsed until the determination of intentional Program violation was made. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. If the household member is determined to have committed intentional Program violation by intentionally failing to report a change in its household's circumstances, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. When determining the amount of benefits the household should have received, the State agency shall not apply the 20 percent earned income deduction to that portion of earned income which the household intentionally failed to report.

(iii) Once the amount of the intentional Program violation claim is established, the State agency shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with § 273.17.

(d) *Collecting claims against households*—(1) *Criteria for initiating collection action on inadvertent household and administrative error claims.*

(i) State agencies shall initiate collection action against the household on all inadvertent household or administrative error claims unless the

claim is collected through offset or one of the following conditions apply:

(A) The total amount of the claim is less than \$35, and the claim cannot be recovered by reducing the household's allotment. However, any State agency shall have the option to initiate collection action for other claims under \$35 at such time that multiple overissuances for a household total \$35 or more. If the State agency chooses this option, households shall be informed of this policy.

(B) The State agency has documentation which shows that the household cannot be located.

(ii) The State agency may postpone collection action on inadvertent household error claims in cases where an overissuance is being referred for possible prosecution or for administrative disqualification, and the State agency determines that collection action will prejudice the case.

(2) *Criteria for initiating collection action on intentional Program violation claims.* If a household member is found to have committed intentional Program violation (by an administrative disqualification hearing official or a court of appropriate jurisdiction) or has signed either a waiver as discussed in § 273.16(f) or a consent agreement as discussed in § 273.16(h), the State agency shall initiate collection action against the individual's household. In addition, a personal contact with the household shall be made, if possible. The State agency shall initiate such collection unless the household has repaid the overissuance already, the State agency has documentation which shows the household cannot be located, or the State agency determines that collection action will prejudice the case against a household member referred for prosecution. The State agency shall initiate collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. In cases where a household member was found guilty of misrepresentation of fraud by a court or signed a disqualification consent agreement in cases referred for prosecution, the State agency shall request that the

matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and accused individual.

(3) *Initiating collection on claims.*

(i) State agencies shall initiate collection action by providing the household a written demand letter which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the amount of the claim, unless the household has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing. If there is an individual or organization available that provides free legal representation, the written demand letter shall also advise the household of the availability of the service. For inadvertent household error and intentional Program violation claims, the household shall also be informed of the length of time the household has to decide which method of repayment it will choose and inform the State agency of its decision and of the fact that the household's allotment will be reduced if the household fails to agree to make restitution. For administrative error claims, the household shall also be informed of the availability of allotment reduction as a method of repayment if the household prefers to use this method. In addition, any household against which the State agency has initiated collection action shall be informed of its right to request renegotiation of any repayment schedule to which the household has agreed in accordance with paragraph (g)(2) of this section should the household's economic circumstances change. The demand letter shall provide space for the household to indicate the method of repayment and a signature block.

(ii) Each State agency shall develop a written demand letter for initiating collection action on claims which contains the information required by this section. A model form letter for demanding restitution of an overissuance

is available from FNS for adaptation by any State agency.

(iii) If the household pays the claim, payments shall be accepted and submitted to FNS in accordance with the procedures outlined in paragraphs (g) and (h) of this section.

(4) *Action against households which fail to respond.* (i) If the household against which collection action has been initiated for repayment of an inadvertent household error or intentional Program violation claim is currently participating in the program and does not respond to the written demand letter within 30 days of the date the notice is mailed, the State agency shall reduce the household's food stamp allotment.

(ii) If any nonparticipating household or if any currently participating household against which collection action has been initiated for repayment of an administrative error claim does not respond to the first demand letter, additional demand letters shall be sent at reasonable intervals, such as 30 days, until the household has responded by paying or agreeing to pay the claim, until the criteria for suspending collection action specified in paragraph (e) of this section have been met, or until the State agency initiates other collection actions.

(iii) The State agency may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any inadvertent household error, administrative error, or intentional Program violation claim. If the State agency chooses to pursue other collection actions and the household pays the claim, payments shall be submitted to FNS in accordance with the procedures outlined in paragraph (h) of this section and the State agency's retention shall be based on the actual amount collected from the household through such collection actions.

(e) *Suspending and terminating collection of claims*—(1) *Suspending collection of inadvertent household and administrative error claims.* An inadvertent household or administrative error claim may be suspended if no collection action was initiated because

of conditions specified in paragraph (d)(1)(i) of this section. If collection action was initiated, and at least one demand letter has been sent, further collection action of an inadvertent household error claim against a non-participating household or of any administrative error claim may be suspended when:

(i) The household cannot be located; or

(ii) The cost of further collection action is likely to exceed the amount that can be recovered.

(2) *Suspending collection of intentional Program violation claims.* The State agency may suspend collection action on intentional Program violation claims at any time if it has documentation that the household cannot be located. If the State agency has sent at least one demand letter for claims under \$100, at least two demand letters for claims between \$100 and \$400, and at least three demand letters for claims of more than \$400, further collection action of any intentional Program violation claim against a nonparticipating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered.

(3) *Terminating collection of claims.* A claim may be determined uncollectible after it is held in suspense for 3 years. The State agency may use a suspended or terminated claim to offset benefits in accordance with § 273.17.

(f) *Change in household composition.* State agencies shall initiate collection action against any or all of the adult members of a household at the time an overissuance occurred. Therefore, if a change in household composition occurs, State agencies may pursue collection action against any household which has a member who was an adult member of the household that received the overissuance. The State agency may also offset the amount of the claim against restored benefits owed to any household which contains a member who was an adult member of the original household at the time the overissuance occurred. Under no circumstances may a State agency collect more than the amount of the claim. In pursuing claims, the

State agency may use any of the appropriate methods of collecting payments in § 273.18(g).

(g) *Method of collecting payments.* As specified in paragraph (d) of this section, State agencies shall collect payments for claims against households as follows:

(1) *Lump sum.* (i) If the household is financially able to pay the claim at one time, the State agency shall collect a lump sum cash payment. However, the household shall not be required to liquidate all of its resources to make this one lump sum payment.

(ii) If the household is financially unable to pay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, the State agency shall accept this method of payment.

(iii) If the household chooses to make a lump sum payment of food stamp coupons as full or partial payment of the claim, the State agency shall accept this method of repayment.

(2) *Installments.* (i) The State agency shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. Payments shall be accepted by the State agency in regular installments. The household may use food stamp coupons as full or partial payment of any installment. If the full claim or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to pay the claim in 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17.

(ii) If the household fails to make a payment in accordance with the established repayment schedule (either a lesser amount or no payment), the State agency shall send the household a notice explaining that no payment or an insufficient payment was received. The notice shall inform the household that it may contact the State agency to discuss renegotiation of the payment schedule. The notice

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shall also inform the household that unless the overdue payments are made or the State agency is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which an inadvertent household error or intentional Program violation claim has been established may be reduced without a notice of adverse action.

(iii) If the household responds to the notice, the State agency shall take one of the following actions as appropriate:

(A) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, permit the household to do so;

(B) If the household requests renegotiation, and if the State agency concurs with the request, negotiate a new payment schedule;

(C) If the household requests renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement, the State agency may continue renegotiation until a settlement can be reached. The State agency shall have the option to invoke allotment reduction against a currently participating household for repayment of an inadvertent household error or intentional Program violation claim if a settlement cannot be reached.

(iv) If a currently participating household against which an inadvertent household error or intentional Program violation claim has been established fails to respond to the notice, the State agency shall invoke allotment reduction. The State agency may also invoke allotment reduction if such a household responds by requesting renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement. If allotment reduction is invoked, no notice of adverse action is required.

(v) In cases where the household is currently participating in the program and a payment schedule is negotiated for repayment of an inadvertent household error or intentional Program

violation claim, the State agency shall ensure that the negotiated amount to be repaid each month through installment payments is not less than the amount which could be recovered through allotment reduction. Once negotiated, the amount to be repaid each month through installment payments shall remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both the State agency and the household shall have the option to initiate renegotiation of the payment schedule if they believe that the household's economic circumstances have changed enough to warrant such action.

(3) *Reduction in food stamp allotment.* State agencies shall collect payments for inadvertent household error claims and intentional Program violation claims from households currently participating in the program by reducing the household's food stamp allotments. State agencies shall collect payments for administrative error claims from households currently participating in the program by reducing the household's food stamp allotments if the household prefers to use this method of repayment. Prior to reduction, the State agency shall inform the household of the appropriate formula for determining the amount of food stamps to be recovered each month and the effect of that formula on the household's allotment (i.e., the amount of food stamps the State agency expects will be recovered each month), and of the availability of other methods of repayment. If the household requests to make a lump sum cash and/or food stamp coupon payment as full or partial payment of the claim, the State agency shall accept this method of payment. The State agency shall reduce the household's allotment to recover any amounts of an inadvertent household error or intentional Program violation claim not repaid through a lump sum cash and/or food stamp coupon payment, unless a payment schedule has been negotiated with the household. The provision for a \$10 minimum benefit level for households with one and two members only, as described in § 273.10(e)(2)(ii)(C), shall apply to the

allotment prior to reduction in accordance with this paragraph. If the full or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to make restitution within 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17. The amount of food stamps to be recovered each month through allotment reduction shall be determined as follows:

(i) *Inadvertent household error claims.* For inadvertent household error claims, the amount of food stamps shall be the greater of 10 percent of the household's monthly allotment or \$10 per month.

(ii) *Administrative error claims.* For administrative error claims, the amount of food stamps to be recovered each month from a household choosing to use this method shall be negotiated with the household. Choice of this option is entirely up to the household and no household shall have its allotment reduced by an amount with which it does not agree for payment of an administrative error claim.

(iii) *Intentional Program violation claims.* For intentional Program violation claims, the amount of food stamps shall be the greater of 20 percent of the household's monthly entitlement or \$10 per month.

(h) *Submission of payments.* (1) The State agency shall retain the value of funds collected for inadvertent household error, intentional Program violation, or administrative error claims. This amount includes the total value of allotment reductions to collect claims, but does not include the value of benefits not issued as a result of a household member being disqualified. The States' letter of credit will be amended on a quarterly basis to reflect the States' retention of 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program violation claims collected, as well as full retention by FNS of all administrative error overissuance recoveries.

(2) Each State agency shall submit quarterly a Form FNS-209, Status of

Claims Against Households, to detail the State's activities relating to claims against households. This report is due no later than 30 days after the end of each calendar year quarter and shall be submitted to FNS even if the State agency has not collected any payments. In addition to reporting the amount of funds recovered from inadvertent household error and intentional Program violation claims each quarter on Form FNS-209, the State agency shall also report these amounts on other letter of credit documents as required. In accounting for inadvertent household error and intentional Program violation claims collections, the State agency shall include cash or coupon repayments and the value of allotments recovered or offset by restoration of lost benefits. However, the value of benefits not issued during periods of disqualification shall not be considered recovered allotments and shall not be used to offset an intentional Program violation claim. In addition, each State agency shall establish controls to ensure that officials responsible for intentional Program violation determinations will not benefit from the State share of recoveries.

(3) The State agency may retain any amounts recovered on a claim being handled as an inadvertent household error claim prior to obtaining a determination by an administrative disqualification hearing official or a court of appropriate jurisdiction that intentional Program violation was committed, or receiving from an individual either a signed waiver or consent agreement, at the rate applicable to intentional Program violation claims, once the determination or signed document is obtained. In such cases, the State agency shall include a note in an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the additional amounts being retained on amounts already recovered as a result of the change in status of the claim.

(4) If a household has overpaid a claim, the State agency shall pay the household any amounts overpaid as soon as possible after the overpayment becomes known. The household shall be paid by whatever method the State agency deems appropriate considering

the household's circumstances. Overpaid amounts of a claim which have previously been reported as collected via the FNS-209 and which have been repaid to the household shall be reported in the appropriate column on the FNS-209 for the quarter in which the repayment occurred. The amount of the repayment shall be subtracted from the total amount collected. The appropriate retention rate shall be applied to the reduced collection total.

(5) In cases where FNS has billed a State agency for negligence, any amounts collected from households which were caused by the State's negligence will be credited by FNS. When submitting these payments, the State agency shall include a note as an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the amount that should be credited against the State's bill.

(i) *Returned coupons.* If coupon books collected from households as payment for claims are returned intact and in usable form, the State agency may return them to coupon inventory. The State agency shall destroy any coupons or coupon books which are not returned to inventory in accordance with the procedures outlined in § 274.7(f).

(j) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FNS in any bankruptcy proceeding against bankrupt households owing food stamp claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distribution of assets, to the same extent as FNS. Acting as FNS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FNS might have filed. Any amounts collected under this authority shall be transmitted to FNS as provided in paragraph (h) of this section.

(k) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring claims against households. At a minimum, the accounting system

shall be designed to readily accomplish the following:

(1) Document the circumstances which resulted in a claim, the procedures used to calculate the claim, the methods, used to collect the claim and, if applicable, the circumstances which resulted in suspension or termination of collection action.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households that have failed to make installment payments on their claims.

(4) Document how much money was collected in payment of a claim and how much was submitted to FNS.

(i) *Interstate claims collection.* In cases where a household moves out of the area under a State agency's jurisdiction, the State agency should initiate or continue collection action against the household for any overissuance to the household which occurred while it was under the State agency's jurisdiction. The State agency which overissued benefits to the household shall have the first opportunity to collect any overissuance. However, if the State agency which overissued benefits to the household does not take prompt action to collect, then the State agency which administers the area into which the household moves should initiate action to collect the overissuance. Prior to initiating action to collect such overissuances, the State agency which administers the area into which the household moves shall contact the State agency which overissued benefits to ascertain that it does not intend to pursue prompt collection. The State share of any collected claims, as provided in § 273.18(h), shall be retained by the State agency which collects the overissuance.

[Amdt. 242, 48 FR 6861, Feb. 15, 1983, as amended by Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 274, 51 FR 18751, May 21, 1986; Amdt. 298, 52 FR 36400, Sept. 29, 1987; Amdt. 271, 54 FR 7004, Feb. 15, 1989; Amdt. 314, 54 FR 24518, June 7, 1989]