

WELFARE (SOCIAL SERVICES): DEPARTMENT OF SOCIAL SERVICES.

1996 amendment to Food Stamp Program authorizing monthly allotment reduction to collect overissuances of food stamp benefits may be applied retroactively to overissuance that occurred prior to amendment. Six-year time limitation within which action may be taken on administrative error claims runs from month state agency first acquires knowledge of overissuance.

The Honorable Clifton A. Woodrum

Member, House of Delegates

November 19, 1998

You inquire regarding a 1996 amendment to the federal Food Stamp Program¹ ("Food Stamp Act") authorizing collection by state agencies of overpayments made to food stamp recipients arising from the overissuance of food stamp coupons prior to the effective date of the amendment. You advise that between 1987 and 1989 some constituents received overissuances of food stamps due to state agency error. You advise also that one constituent received notice of the error shortly after the error occurred.

You first ask whether a state agency may retroactively apply the 1996 amendment for collection of overpayments made to a food stamp recipient that arose from the agency's erroneous overissuance of food stamp coupons prior to the effective date of the 1996 amendment. You next ask whether the statute of limitations contained in § 273.18(b) of the federal regulations² runs from the date the overissuance is actually discovered or from the date the notice of such discovery is sent to the food stamp coupon recipient.

"The Food Stamp Program was enacted in 1964 to 'alleviate hunger and malnutrition' among America's poor."³ Pursuant to this program, eligible households receive food stamp coupons that can be redeemed for food items at participating retail stores.⁴ The program is administered by the United States Secretary of Agriculture who is responsible for issuing regulations consistent with the program.⁵ The Secretary is also authorized to delegate to state agencies the responsibility for administering the program.⁶ Accordingly, "state agencies make the individual eligibility determinations and actually distribute the food stamps to the eligible households."⁷ State agencies are also enabled to establish a claim against any household that has received more food stamp benefits than the household is entitled to receive.⁸

The states that participate in the food stamp program designate a state agency that is responsible for administering the program at the state level.⁹ In Virginia, the State Board of Social Services is authorized to implement the food stamp program "in accordance with the federal Food Stamp Act."¹⁰ Although the federal government is responsible for the cost of food stamp benefits, the state and federal governments share the costs of administering the program.¹¹

The disposition of claims for payment arising from the overissuance of food stamp coupons is addressed in § 2022 of the Food Stamp Act. With respect to overissuances arising from agency error prior to the 1996 amendment, § 2022(b)(2) provided:

(A) State agencies shall collect any claim against a household arising from the overissuance of coupons, other than ... claims arising from an error of the State agency, by reducing the monthly allotments of the household. These collections shall be limited to 10 per centum of the monthly allotment (or \$10 per

month, whenever that would result in the faster collection rate)
....^[12]

(B) State agencies may collect any claim against a household arising from the overissuance of coupons, other than claims collected pursuant to paragraph (1) or subparagraph (A), by using other means of collection.^[13]

Accordingly, a state agency collecting claims for overpayments was previously authorized by § 2202(b)(2)(A) "to collect overissuances from recipients by reducing their monthly allotment by the greater of 10% or \$10 until the overissuance is recovered, *unless* the overissuance resulted from agency error."¹⁴ If the overissuance was the result of agency error, "[s]ection 2022(b)(2)(B) provides that ... it may be recovered using 'other means of collection' [such as] 'collection agencies, court-ordered garnishments, or liens against household property.'"¹⁵ Thus, the agency was not permitted to recover overpaid amounts arising from agency error by reducing monthly allotments, but could use other means.¹⁶

On August 22, 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, making sweeping changes to federal laws affecting public assistance,¹⁷ including the federal food stamp program.¹⁸ Section 2022(b) of the Food Stamp Act was amended to provide:

"[A] State agency shall collect any overissuance of coupons issued to a household by—

"(A) reducing the allotment of the household;

"(B) withholding amounts from unemployment compensation from a member of the household ...;

"(C) recovering from Federal pay or a Federal income tax refund ...; or

"(D) any other means."^[19]

In revising § 2022(b)(2), Congress eliminated the language restricting state agencies from utilizing the monthly allotment reduction collection method for overpayments arising from agency error. The new language is consistent with the intent of Congress that "[e]xisting overissuance collection rules [be] replaced" and with the mandate that "[s]tates must collect any overissuance of food stamp benefits by reducing future benefits ... or any other means."²⁰ The 1996 amendment clearly furthers the legislative intent that "existing authority for States to collect overissued food stamp benefits [be] greatly expanded."²¹ A state agency is now authorized to collect on overissuances resulting from agency error by a reduction in the recipient's monthly allowance as well as by other means previously afforded it.

You first ask whether the collection of an overissuance that occurs prior to the 1996 amendment and that arises from agency error is a retroactive application of the amendment. The application of the collection methods now afforded state agencies, including the ability to reduce monthly allotments,²² is a prospective application of the amendment inasmuch as the monthly allotments

to be reduced are the future monthly allotments. Moreover, the fact that the indebtedness underlying the collection action arose from events occurring before the effective date of the amendment is not necessarily tantamount to a retroactive application of the collection methods.

In addition to the legislative history supporting the intent of the amendment to grant states expanded authority and flexibility to collect overissuances, including those caused by agency error, "the application of [§ 2022] to valid indebtedness whenever incurred is a prospective application of the statute."²³ Indeed, "[e]ven if the application of the new collection procedure to existing indebtedness is considered a retroactive application of section [2022] [this section] is procedural or remedial in nature and may be applied retroactively."²⁴ Furthermore, to maintain that a state agency must wait until it discovers "new" agency errors in order to exercise the options granted by the 1996 amendment to § 2022(b)(2) is clearly inconsistent with the congressional intent of the amendment granting states greater flexibility to collect prior overpayments and the accompanying removal of the language barring collection of overpayments resulting from agency error through reduction of monthly allotments.²⁵

You also ask whether the statute of limitations in § 273.18(b), prohibiting agency action on claims for which more than six years have elapsed between the month an overissuance occurred and the month the agency discovered the overissuance, runs from the date of the actual discovery of the overissuance or from the date the notice of such discovery is sent to the food stamp coupon recipient. Section 273.18(b) prohibits a state agency from taking action on administrative error 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."²⁶ When calculating the amount of the claim, "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*."²⁷

The term "discover" is not defined for purposes of § 273.18. In the absence of any statutory definition, the term should be given its plain and ordinary meaning, given the context in which it is used.²⁸ "Discover" means "to get knowledge of what has existed but has not theretofore been known to the discoverer."²⁹ The time limitation contained in the federal regulation refers to the month in which the state agency "discovered" the overissuance. Although such a determination is necessarily a factual one, the regulation clearly contemplates the month in which knowledge that an overissuance has occurred is first acquired. Accordingly, the date of such discovery is the operative date, irrespective of any other dates³⁰ utilized in the collection process.

Based on the above, it is my opinion that § 2022(b)(2) of the Food Stamp Act authorizes a state agency to collect overpayments arising from the overissuance of food stamp coupons due to an agency error occurring either prior or subsequent to the effective date of the 1996 amendment to this statute. It is further my opinion that the time limitation contained in § 273.18(b) relates to the month in which knowledge of the overissuance is first acquired by the state agency.

¹7 U.S.C.A. §§ 2011-2036 (West 1988 & Supp. 1998).

²"[T]he 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." 7 C.F.R. § 273.18(b) (1998).

³Lopez v. Espy, 83 F.3d 1095, 1097 (9th Cir. 1996) (quoting 7 U.S.C. § 2011).

⁴7 U.S.C.A. § 2013(a) (West 1988).

⁵Section 2013(a), (c) (West 1988). The Secretary of Agriculture has promulgated regulations consistent with the food stamp program. See 7 C.F.R. ch. 2, subch. C, pts. 271-285 (1998).

⁶7 C.F.R. § 271.4(a).

⁷*Bliek v. Palmer*, 102 F.3d 1472, 1474 (8th Cir. 1997).

⁸7 C.F.R. § 273.18(a).

⁹7 U.S.C.A. § 2012(n) (West 1988) (defining "state agency").

¹⁰Va. Code Ann. § 63.1-25.2.

¹¹7 U.S.C.A. § 2013(a) (West 1988); § 2025 (West 1988 & Supp. 1998).

¹²7 U.S.C.A. § 2022(b)(2)(A) (West 1988), *as amended by* Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Pub. L. No. 102-237, § 911, 105 Stat. 1818, 1887 (ellipsis at end of § 2022(b)(2)(A) indicating omitted amendatory language that is irrelevant to this opinion).

¹³7 U.S.C.A. § 2022(b)(2)(B) (West 1988).

¹⁴*Lopez v. Espy*, 83 F.3d at 1099.

¹⁵*Id.* (quoting Omnibus Budget Reconciliation Act of 1982, S. Rep. No. 97-504, at 96 (1982), *reprinted in* 1982 U.S.C.C.A.N. 1641, 1734).

¹⁶*Id.* at 1100; *see also* *James v. Madigan*, 806 F. Supp. 239, 243 (M.D. Ala. 1992) (noting that administrators of state food stamp program are enjoined by § 2022(b)(2)(A) from reducing monthly food allowance at all to recoup overissuances due to agency error).

¹⁷Pub. L. No. 104-193, 110 Stat. 2105 (1996).

¹⁸*See id.* tit. VIII, subtit. A, 110 Stat. at 2308.

¹⁹*Id.* § 844(a)(1), 110 Stat. at 2332 (codified as amended at 7 U.S.C. § 2022(b)(1)).

²⁰*See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. Rep. No. 104-651, at 80 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183, 2214.

²¹*Id.* at 2203.

²²Note that such reduction is still subject to the 10% (or \$10) limitation.

²³*Alexander v. Robinson*, 756 F.2d 1153, 1155 (5th Cir. 1985) (holding that predecessor statute to § 2022 is prospectively applied where state reduces current food stamp benefits to offset valid debts, despite fact that debts were outstanding on date of enactment of Omnibus Budget Reconciliation Act of 1981).

²⁴*Id.* at 1156 (noting that providing government with new collection tool is statutory change which is procedural or remedial and may be applied retroactively).

²⁵ *But see* Aktar v. Anderson, 58 Cal. App. 4th 1166, 68 Cal. Rptr. 2d 595 (1997) (holding that application of new law to preexisting administrative error overissuances results in increase in recipients' liability for past benefits thus having retroactive effect). I am not persuaded by the California state court's reasoning and note that the court's opinion does not consider legislative intent or federal case law.

²⁶ 7 C.F.R. § 273.18(b) (1998) (emphasis added).

²⁷ Section 273.18(c) (emphasis added).

²⁸ Commonwealth v. Orange-Madison Coop., 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); 1997 Op. Va. Att'y Gen. 135, 136.

²⁹ Black's Law Dictionary 465 (6th ed. 1990).

³⁰ *E.g.*, the date of a notice sent to the recipient of food stamps that an overissuance (and resulting overpayment) has occurred.