

[REDACTED]
APPELLANT

v.

* BEFORE EMILY DANEKER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DHS-[REDACTED]-01-18-29676

* * * * *

DECISION

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STATEMENT OF THE CASE

[REDACTED] (Appellant) received benefits through the Food Supplement Program (FSP or SNAP)¹ from May 2017 to May 2018,² for a household of [REDACTED]. On or about May 16, 2018, the Overpayment Unit of the [REDACTED] (Local Department) received an internal overpayment referral for the Appellant's household, maintaining that the household was at all times ineligible for FSP benefits due the household members' status as "diversity" visa holders, and, as such, they were overpaid FSP benefits. Consequently, in a letter dated June 28, 2018, the Local Department notified the Appellant that his household had been overpaid FSP benefits in the total amount of \$4,676.00 and that this

¹ The federal program is entitled the "Supplemental Nutrition Assistance Program" (SNAP).

² The only exception being the month of September 2017, for which the Appellant and his household were not issued benefits under the Food Supplement Program.

amount must be repaid. On September 20, 2018, the Appellant filed a request for a fair hearing.³ 7 C.F.R. § 273.15(h) (2018);⁴ *see also* Code of Maryland Regulations (COMAR) 07.01.04.03B.

On October 17, 2018, I held a hearing at the Local Department's office at [REDACTED] in [REDACTED] Maryland. 7 C.F.R. §§ 273.15(a), 273.18(e)(3)(iv)(I); *see also* COMAR 07.01.04.21B. [REDACTED] Appeals Overpayment Representative, represented the Local Department. COMAR 07.01.04.10H. The Appellant was present and his wife, [REDACTED] (Wife), an adult member of the FSP household, represented the household.⁵ COMAR 07.01.04.10G.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Human Services (DHS), and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); 7 C.F.R. § 273.15 (l) through (q); COMAR 07.01.04; COMAR 28.02.01.

ISSUES

Is the Local Department entitled to repayment from the Appellant's household for overpaid FSP benefits for the periods of May 2017 through August 2017 and October 2017 through May 2018? and

If so, what is the amount of the overpayment that must be repaid?

³ At the same time, and based on the same reasoning, the Local Department also determined that the Appellant had been over-issued Temporary Cash Assistance (TCA). That appeal was consolidated with this one for purposes of the hearing. A separate decision will be issued in the TCA appeal.

⁴ The federal regulations that apply to the FSP are found in Title 7 of the Code of Federal Regulations (C.F.R.). Unless otherwise noted, all citations herein to the C.F.R. are to the 2018 volume.

⁵ An [REDACTED] interpreter was present to interpret the proceedings. COMAR 07.01.04.10C.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Local Department:

- LD Ex. 1 - Summary for Appeal Hearing, dated October 4, 2018, with the following attachments:
- Request for Fair Hearing, dated September 20, 2018
 - Notices of Hearing, both dated September 20, 2018
 - Overpayment Referral Form, dated April 26, 2018 (received May 16, 2018)
 - Overpayment Notices, both dated June 28, 2018
 - U.S. Department of Health and Human Services, Volume I, RCA/RMA⁶ excerpt, Descriptions and Examples of Cards, Forms, and Letters Verifying Immigrant Status, undated
 - U.S. Citizenship and Immigration Services Statuses for Appellant's household, printed March 30, 2017
 - Redetermination application, received March 20, 2018
 - SAIL Application for Assistance, dated January 22, 2018
 - Energy Assistance Application, dated January 22, 2018
 - Redetermination application, received July 19, 2017
 - Family Investment Administration Application for Assistance, received March 29, 2017
 - TCA and FSP Benefit History Listings, both printed June 18, 2018
 - TCA and FSP overpayment calculation worksheets, printed May 24, 2018
 - Maryland Automated Benefits System Wage History, dated February 5, 2018 and April 10, 2018
 - [REDACTED] verifications, dated April 10, 2018
 - COMAR 07.07.03.17.09-1, 07.03.03.06, 07.03.14.03, 07.03.17.54
- LD Ex. 2 - [REDACTED] Customer FSP Transaction History, printed October 17, 2018
- LD Ex. 3 - [REDACTED] Customer TCA Transaction History, printed October 17, 2018

I held the record open, with the consent of the Local Department, for the Appellant to submit documentation of an alleged change in the household's benefits. On October 22, 2018, via email, the Appellant submitted the following documents, which I admitted into the evidentiary record:⁷

⁶ These initialisms were not explained.

⁷ Both documents related to the Appellant's TCA benefits, but because the matters were consolidated for purposes of the hearing and because the documents were admitted into the record, I include them as part of the record in this FSP appeal as well.

App. Ex. 1 - Notice of Denial, dated November 7, 2017

App. Ex. 2 - Notice of Change in Benefits, dated September 9, 2017

Testimony

[REDACTED] the Local Department's representative, read the Summary for Appeal Hearing and testified.

The Wife testified on behalf of the Appellant.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Appellant, his Wife, and his [REDACTED] minor children emigrated from [REDACTED] to the United States in or about February 2017 and are lawful permanent residents of the United States.

2. The Appellant's Class of Admission is DV1, meaning he is a "diversity immigrant" pursuant to sections 201 and 203(c) of the Immigration and Naturalization Act.⁸
(See LD Ex. 1 at 35.)

3. The Wife's Class of Admission is DV2, signifying that she is the spouse of a DV1 immigrant.

4. The Appellant's children are classified as DV3 immigrants, signifying that they are the children of a DV1 immigrant.

5. The Appellant's children are: [REDACTED] date of birth [REDACTED] 2014; [REDACTED] date of birth [REDACTED] 2016; and [REDACTED] date of birth [REDACTED] 2001.

6. As diversity immigrants the Appellant had a sponsor who agreed to financially support the family, as necessary, so that they would not become public charges.

⁸ 8 U.S.C. §§1151(a)(3), 1153(c) (2018). Unless otherwise indicated, all citations to the United States Code (U.S.C.) are to the 2018 version.

7. On March 29, 2017, at the suggestion of a friend, the Appellant completed a Family Investment Administration (FIA) Application for Assistance seeking cash assistance and FSP benefits, among other things.

8. The Local Department approved the Appellant's household for FSP benefits and, as relevant here, the household received FSP benefits in the following amounts:

May 2017	\$229.00
June 2017	\$331.00
July 2017	\$331.00
August 2017	\$331.00
October 2017	\$415.00
November 2017	\$504.00
December 2017	\$504.00
January 2018	\$504.00
February 2018	\$45.00
March 2018	\$504.00
April 2018	\$504.00
May 2018	\$474.00
Total	\$4,676.00

DISCUSSION

Applicable Law

The purpose of the FSP is to provide "nutrition assistance to help eligible low-income households buy the food they need for good health." COMAR 07.03.17.01; *see also* 7 C.F.R. § 271.1(a). Local departments of social services administer the FSP under the supervision of the DHS and in accordance with State and federal law. Md. Code Ann., Hum. Servs. § 5-501(c)

(Supp. 2018); *see also* 7 C.F.R. pt. 272. Through the FSP Manual, the Secretary of DHS provides guidance to local departments relating to the interpretation of State and federal regulations.⁹

In the event a household receives more FSP benefits than it is entitled to receive, a local department is required to establish a claim against the household and pursue repayment of the over-issuance. COMAR 07.03.17.54B, D. The over-issued amount is calculated as the difference between the FSP benefit the household received and the amount the household should have received if accurate information had been considered. COMAR 07.03.17.54G(2); *see also* 7 C.F.R. § 273.18(c)(1)(ii). Even if the over-issuance of FSP benefits resulted from an error on the part of the local department, the recipient is required to repay the over-issued FSP benefits. COMAR 07.03.17.54; *see also* 7 C.F.R. § 273.18(a)(2) (providing that a claim based on overpaid benefits “is a Federal debt subject to this and other regulations governing Federal debts [and] [t]he State agency must establish and collect any claim by following these regulations”).

Where the overpayment is the result of an administrative error,¹⁰ a local department is to reach back and include any over-issued amounts within the twelve months prior to its discovery¹¹ of the over-issuance. COMAR 07.03.17.54F(1) (“Beginning with the date of the discovery of the over-issuance, the local department shall include in its calculation of the amount of over-issuance any over-issuance for the . . . 12 preceding months, in the case of an [administrative error].”); *see also* 7 C.F.R. § 273.18(c); FSP Manual §490.4(B)(1)(a) (rev’d November 2017).

⁹ The FSP Manual is a settled, pre-existing policy officially promulgated by the DHS and I am bound by it “to the same extent as the agency is or would have been bound if it were hearing the case.” Md. Code Ann., State Gov’t § 10-214(b) (2014). The manual is available online at <http://dhr.maryland.gov/business-center/documents/manuals>. The FSP Manual is updated through Family Investment Administration (FIA) Action Transmittals. These transmittals will be cited if applicable.

¹⁰ An “administrative error” is an error that is “caused by the local department’s action or failure to act.” COMAR 07.03.17.02B(2). This is what the local department referred to as “agency error” in its November 2, 2017 letter to the Appellant. *See* FSP Manual § 490.3 (rev’d November 2017).

¹¹ The date of discovery is “the date that the case manager has sufficient information to determine that an overpayment . . . occurred.” FSP Manual § 490.4(A)(1) (rev’d November 2017).

The standard of proof in this case is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 07.01.04.12C(2). The appeal is from the Local Department's determination that the Appellant's household was overpaid FSP benefits and is subject to recoupment of those benefits. *See* COMAR 07.01.04.03B(8); *see also* 7 C.F.R. § 273.18. As such, the Local Department bears the burden of proof to establish the fact of the overpayment and the amount of the overpayment. COMAR 07.01.04.12B(2).

Analysis

The following facts were undisputed with regard to the Local Department's claim that the Appellant's household was overpaid FSP benefits: At all relevant times, the Appellant, his Wife, and [REDACTED] minor children have been lawful permanent residents of the United States, and from May 2017 through May 2018 they received FSP benefits in the total amount of \$4,676.00. The Local Department asserts that it must recoup the full \$4,676.00, even though it acknowledges that the alleged overpayment was the result of its own error and not the result of any fault by the Appellant. The Appellant asserts that he did nothing wrong and does not have the means to repay the \$4,676.00 sought by the Local Department.

Benefits under the FSP are established through a formula that takes various financial factors into consideration, including the household's income¹² and some expenses. *See* 7 C.F.R. § 273.9. Certain individuals are required to be included in the FSP household, and thus their income must be considered in determining the household's eligibility for FSP benefits; for a sponsored alien, the sponsor's income is considered in some, but not all, FSP financial eligibility determinations. 7 C.F.R. §§ 273.1(b)(1), 273.11; COMAR 07.03.17.03C; COMAR 07.03.17.09-1A; *but see* COMAR 07.03.17.09-1E(2), H (specifying certain instances where a sponsor's income and resources are not considered available to the household). Notable here, the sponsor's

¹² "Income" means all income from any source, with certain exclusions. COMAR 07.03.17.30A, D; *see also* 7 C.F.R. § 273.9(b), (c).

income is not considered in calculating the eligibility of children younger than eighteen years of age. *See* FSP Manual §120.6B (“Sponsor deeming requirements do not apply to sponsored children who are younger than 18 years old. Reminder: Do not count the deemed income or resources of a sponsor as available to any immigrant who is not eligible for [food stamps].”) (rev’d May 2017); FSP Manual §120.19B (rev’d May 2017) (“Do not count a deemed portion of a sponsor’s income in calculating eligibility or benefit level if the sponsored immigrant is not included in the FSP household.”).

In addition to being financially eligible for FSP benefits, recipients must also meet certain technical eligibility requirements, including citizenship restrictions. In this regard, a person is ineligible to receive FSP benefits unless the person is a U.S. citizen or, as potentially relevant here, both a qualified alien and an eligible alien. 7 C.F.R. § 273.4(a)(6); COMAR 07.03.17.09A(5), F(3); COMAR 07.03.17.02B(21); *see also* 8 U.S.C. §§ 1641, 1642.

As the Local Department asserts that the Appellant’s household did not meet the technical eligibility requirements for FSP benefits, I consider those requirements first. Under the FSP regulations a “qualified alien” includes a noncitizen who is “lawfully admitted for permanent residence under the Immigration and Nationality Act.” COMAR 07.03.17.02B(21)(a); *see also* 8 U.S.C. §1641; 7 C.F.R. § 273.4(a)(6)(i). The term qualified alien is not an immigration status of its own, but rather is a term used for purposes of public benefits laws and covers a variety of immigration statuses. The Appellant, his Wife, and their [REDACTED] minor children each meet the definition of a qualified alien—as diversity visa holders, they are lawful permanent residents under the Immigration and Nationality Act. 8 U.S.C. §§ 1151(a)(3), 1153(c); (*see also* LD Ex. 1 at 35-38).

In order for a qualified alien to be eligible for FSP benefits, the qualified alien must meet an additional eligibility criterion. The criteria, of which only one need be met, are laid out in the applicable regulation:

- B. Time Limited Eligibility. An immigrant is an eligible immigrant if the individual has:
- (1) Been admitted to the United States as a refugee under §207 of the Immigration and Nationality Act;
 - (2) Been granted asylum under §208 of the Immigration and Nationality Act;
 - (3) Had the immigrant's deportation or removal withheld under §243(h) or §241(b)(3) of the Immigration and Nationality Act;
 - (4) Been granted status as a Cuban and Haitian entrant as defined in §501(e) of the Refugee Education Assistance Act of 1980;
 - (5) Been admitted to the United States as an Amerasian immigrant under 8 U.S.C. §1612(a)(2)(A); or
 - (6) Been certified by the United States Department of Health and Human Services Office of Refugee Resettlement as a victim of a severe form of trafficking in persons in accordance with Public Law 106-386 Trafficking Victims Protection Act of 2000.
- C. Work Quarters. An immigrant who is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act is eligible if the individual:
- (1) Has worked 40 qualifying quarters of coverage as defined under Title II of the Social Security Act; or
 - (2) Can be credited with the qualifying quarters.
- D. Military Connection. An immigrant who is a qualified alien is eligible if the individual is:
- (1) An honorably discharged veteran of the U.S. armed forces who fulfills the minimum active duty service requirements of 38 U.S.C. §5303A(d), including an individual who died in active military, naval, or air service;
 - (2) On active military duty, other than active duty for training in the U.S. armed forces;
 - (3) The spouse or unmarried dependent child of an individual described in §D(1) or (2) of this regulation if the:
 - (a) Marriage fulfilled the requirements of 38 U.S.C. §1304; and
 - (b) Spouse has not remarried; or
 - (4) An unmarried biological or legally adopted dependent child of an individual described in §D(1) or (2) of this regulation if the child is:
 - (a) 17 years old or younger,
 - (b) 21 years old or younger and a full time student, or
 - (c) Disabled and 18 years old or older if the child was disabled and dependent on the individual described in §D(1) or (2) of this regulation when the child was younger than 18 years old.

- E. An immigrant who is a qualified alien and who was lawfully residing in the U.S. on August 22, 1996, is eligible if the individual was born on or before August 22, 1931.
- F. An immigrant who is a qualified alien as defined in Regulation .02B of this chapter is eligible if the individual:
 - (1) Is disabled as described in Regulation .02B of this chapter;
 - (2) Has resided in the United States as a qualified alien for 5 years or more, beginning on the date of the immigrant's entry into the United States; or
 - (3) **Is a child younger than 18 years old.**

COMAR 07.03.17.09 (emphasis added); *see also* 7 C.F.R. §273.4(a)(6)(ii), (iii); FSP Manual §§ 120.4 to 120.13 (rev'd May 2017).

The Appellant and his Wife have been in the United States less than five years and do not meet any of the eligibility criteria, COMAR 07.03.17.09; thus they are ineligible to receive FSP benefits. However, their [REDACTED] minor children are eligible aliens under COMAR 07.03.17.09F(3), as children younger than eighteen years of age. *See also* 7 C.F.R. § 273.4(a)(6)(ii)(j); FSP Manual § 120.6A (rev'd May 2017); FSP Manual § 120.20, Examples #3 and #4 (rev'd May 2017). As the [REDACTED] children are both qualified and eligible aliens, FSP benefits are available to them.¹³

The Local Department based the FSP allotment for the Appellant's household on an erroneous determination that all [REDACTED] members of the household were eligible for FSP benefits. Only [REDACTED] of the [REDACTED] household members (the children) were eligible, qualified aliens; thus, it is plain that the Local Department over issued FSP benefits to the Appellant.

The remaining issue is the amount by which the household was over-issued FSP benefits; this turns on the amount of any allotment the [REDACTED] children were entitled to receive. *See* COMAR 07.03.17.54G(2) (the over-issued amount is the difference between the amount received and the amount that properly should have been received); *see also* 7 C.F.R. § 273.18(c)(1)(ii).

¹³ Provided they meet the financial eligibility criteria based on the methodology for households that include ineligible aliens. *See* FSP Manual §120.20 (rev'd May 2017).

The U.S. Department of Agriculture has recognized that the “SNAP policy on non-citizen financial eligibility is complicated” and “issues like sponsorship, deeming, special income rules, reporting and public charge can affect . . . the level of benefit allotments.” United States Department of Agriculture, *Supplemental Nutrition Assistance Program: Guidance on Non-Citizen Eligibility* at 2 (June 2011).

The Local Department understood (incorrectly) that the Appellant’s household was entirely ineligible for FSP benefits, because they are diversity visa-holders; thus, it did not focus on the household’s financial eligibility. Nonetheless, the Local Department’s exhibit included financial eligibility worksheets for the months at issue. (LD Ex. 1 at 86-91); *see also* COMAR 07.03.17.25; COMAR 07.03.17.43. Due to the presence of both eligible and ineligible aliens in the household, however, the household’s income and expenses must be prorated. *See* FSP Manual § 120.6B, C (rev’d May 2017); FSP Manual § 120.20, Examples #3 and #4 (rev’d May 2017); *see also* 7 C.F.R. § 273.11(c)(3) (determining the eligibility and benefit level of remaining household members of a household containing an ineligible alien); COMAR 07.03.17.40 (specifying the method for calculating the income and resources of a household with an ineligible immigrant); COMAR 07.03.17.04 (determining the household size and benefit level for a household with an ineligible immigrant). Additionally, I note that the Local Department terminated the household’s FSP benefits in their entirety as of May 2018, yet it is possible that the [REDACTED] minor children continued to be eligible for FSP benefits during that time. In the circumstances of this case, the Local Department must be given the opportunity to review the case as a whole and recalculate the amount of the over-issuance based on the prorated amount ([REDACTED] [REDACTED]) of the household’s income and expenses.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant's household was overpaid FSP benefits for the periods of May 2017 through August 2017 and October 2017 through May 2018, and the Local Department may recoup an over-issuance of FSP benefits caused by an administrative error by the agency. 7 C.F.R. § 273.18(a)(2), (c)(1)(ii); 7 C.F.R. § 273.4(a)(6); COMAR 07.03.17.02B(21); COMAR 07.03.17.09; COMAR 07.03.17.54; COMAR 07.03.17.09A(5), F(3); *see also* 8 U.S.C. §§ 1151(a)(3), 1153(c), 1641, 1642; FSP Manual §§ 120.4 to 120.13; FSP Manual §490.4(B)(1)(a).

I further conclude, as a matter of law, that the Local Department must determine the amount of the overpayment after determining the proper FSP allotment that the [REDACTED] minor children in the household were entitled to receive, based upon proration of the family's income without sponsor deeming. COMAR 07.03.17.54G(2); *see also* 7 C.F.R. § 273.18(c)(1)(ii); FSP Manual §120.6B; FSP Manual §120.19B; FSP Manual § 120.20, Examples #3 and #4.

REMAND ORDER

I ORDER that the case be REMANDED to the [REDACTED]

[REDACTED] Within fifteen business days, the Local Department shall:

1. Determine the correct amount of FSP benefits that the Appellant's household should have received for the months of May 2017 through May 2018;
2. Determine, based upon the FSP benefits actually issued to the Appellant's household and the FSP benefits to which the Appellant's household is entitled, the amount of the over-issuance and the amount that remains outstanding, after consideration of any FSP benefits that should have been paid, but were not; and
3. Issue a new notice stating the amount of the over-issuance that remains to be repaid.

The Appellant retains the right to appeal if he has a factual dispute regarding the revised calculations.

November 15, 2018
Date Decision Issued

Signature Appears on Original

Emily Danecker
Administrative Law Judge

ED/cj
#176676

REVIEW RIGHTS

A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county in which any party resides or has a principal place of business. The petition must be filed within thirty (30) days of the date of this decision. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2018); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. The Office of Administrative Hearings is not a party to any review process.

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