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BRUCE E. BABBITT
ATTORNEY GENERAL

June 19, 1975

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ARIZONA ATTORNEY GENERAL

Mr. John Huerta
Director
Department of Economic Security
1717 West Jefferson
Phoenix, Arizona 85007

Dear Mr. Huerta:

In a letter dated April 2, 1975 from your department, the following question was posed:

Is the determination of an overpayment of a public assistance grant an appealable event within the jurisdiction of the Welfare Appeals Board?

Regulations of the Department of Health, Education and Welfare provide that as a requirement of Federal financial assistance for social and rehabilitation services, the State agency responsible for administering such programs must provide an aggrieved applicant for public assistance the opportunity for a hearing:

An opportunity for a hearing shall be granted to any applicant who requests a hearing because his claim for financial assistance is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance or termination of assistance. (45 C.F.R. 205.10(a) (5).)

To implement 45 C.F.R. 205.10(a) (5), the Arizona Legislature has enacted A.R.S. § 46-205 mandating the creation of a Welfare Appeals mechanism:

§ 46-205. Appeal to state department from denial of application or failure of the local office to act; consideration by state department on own motion.

A. If the local office of the department does not act with reasonable promptness on an application, or if the

application is denied wholly or in part by the local office of the department, the applicant or recipient may appeal to the state department in the manner and form prescribed by the state department. The state department shall, upon receipt of the appeal, give the applicant or recipient an opportunity for a hearing.

B. The state department may also, upon its own motion, receive and consider any application upon which a recommendation has not been made by the local office of the department within a reasonable time. The state department may make additional investigation as it deems necessary, and shall make a decision as to granting assistance or service and the amount of assistance or service to be granted applicant which in its opinion is justified and in conformity with the provisions of this title. If the application is denied wholly or in part by the state department, or if any award or assistance or service is modified or cancelled by the state department, the applicant or recipient may appeal to the state department. The state department shall, upon receipt of the appeal, give the applicant or recipient an opportunity for a hearing.

C. All decisions of the state department shall be final, and shall be binding upon the local office of the department. As amended 1962, Ch. 117 § 16; Laws 1972, Ch. 142 § 72.

Thus, any reduction in present or future assistance grants as a result of the determination of an overpayment is an appealable event within the jurisdiction of the Welfare Appeals Board. Note, however, that both the Federal Regulations and the state statute require a hearing only in the case of grant modification, reduction, or suspension. The mere determination of the existence of an overpayment, without such modification, reduction, or suspension of the grant, denies the applicant of no property and has no adverse effect on his rights.

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Should the Department pursue the collection of the overpayment through means other than the modification, reduction, or suspension of the grant, the courts must be the ultimate arbitrator and protector of the applicant's rights. This is a necessary result, because the Appeals Board lacks jurisdiction necessary to compel the recipient of an overpayment to produce other resources in satisfaction of his debt.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce E. Babbitt".

BRUCE E. BABBITT
Attorney General

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