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**FOR PUBLICATION**

**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**CNMI NUTRITIONAL ASSISTANCE  
PROGRAM,**

**Plaintiff,**

**v.**

**FRANK PETER EVANGELISTA  
SANTOS,**

**Defendant.**

) **SMALL CLAIMS NO. 17-0215T**  
)  
) **ORDER ESTOPPING CNMI**  
) **NUTRITIONAL ASSISTANCE**  
) **PROGRAM FROM COLLECTING ON A**  
) **FOOD STAMP OVERPAYMENT OF**  
) **\$1650.00 DUE TO ITS (1) FAILURE TO**  
) **FOLLOW PROCEDURES PROVIDED IN**  
) **NMIAC § 55-30-001 et seq AND (2)**  
) **BECAUSE THE COST OF COLLECTION**  
) **PROCEEDINGS WILL EXCEED THE**  
) **AMOUNT TO BE RECOVERED**  
) **PURSUANT TO NMIAC § 55-30-**  
) **285(b)(4)(iv)**

**I. INTRODUCTION**

This matter came before the Court for a bench trial on November 17, 2017 at the Tinian Courthouse. Defendant Frank Peter Evangelista Santos (“Santos”) appeared *pro se*. Assistant Attorney General Thomas Schweiger appeared on the behalf of the Commonwealth of the Northern Mariana Islands Nutritional Assistance Program (“CNMI NAP”).

At the bench trial, the Court heard testimony from the following individuals: Arsene Borja, the Tinian Representative for the Food Stamp Program since 2016; Thomas Fujihara, Issuance Clerk II for the Food Stamp Program at the CNMI NAP Main Office in Saipan; and, Frank Peter Evangelista Santos, the Defendant. CNMI NAP submitted Proposed Findings of Fact and Conclusions of Law on December 29, 2017.



- 1 12. There was a delay between when Santos notified the NAP Tinian Office of his employment  
2 change and when the NAP Tinian Office notified the NAP Saipan Main Office of the change.
- 3 13. If the NAP Saipan Main Office had been timely notified of Santos's ineligibility by the NAP  
4 Tinian Office, the NAP Saipan Main Office would have stopped payment of Santos's food  
5 stamp benefits before they were issued.
- 6 14. In February 2016, CNMI NAP stopped the food stamp benefits to Santos since his monthly  
7 income exceeded the program's guidelines.
- 8 15. An Initial Repayment Notice, demanding that Santos repay the \$1,650.00 in food stamp benefits  
9 he received between November 2015 and January 2016, was sent to Santos on March 23, 2016.
- 10 16. The Initial Repayment Notice instructed Santos to contact either Mr. Fujihira or Mr. Baliman in  
11 the NAP Saipan Main Office. Neither individual received a request from Santos asking for a fair  
12 hearing.
- 13 17. A Second and Final Notice demanding that Santos repay his food stamp benefits was sent to  
14 Santos on April 12, 2016.
- 15 18. On May 9, 2016, Santos responded to the two notices by writing a handwritten note and  
16 delivering it to the NAP Tinian Office. Exh. 1.
- 17 19. Santos's handwritten note asked that he be provided with a fair hearing regarding the two  
18 repayment notices.
- 19 20. The NAP Tinian Office forwarded Santos's note to the NAP Saipan Main Office.
- 20 21. Santos followed up with Mr. Borja, the NAP Tinian Representative, multiple times regarding  
21 his request for a fair hearing.
- 22 22. Although there is a NAP office on Tinian, the NAP Saipan Main Office is the only office able  
23 to schedule hearings.
- 24 23. Santos never received a fair hearing from CNMI NAP.

1 24. Santos did not contact the NAP Saipan Main Office directly, nor the individuals listed on the  
2 two notices. Instead, Santos contacted the Tinian NAP representative, Mr. Borja.

3 25. Santos currently earns \$25,000 annually. Santos is married and has two children, as well as  
4 other dependents.

5 26. Santos's wife also earns \$25,000 annually, bringing the household total income to \$50,000.

6 27. Santos's monthly expenses include \$400-500 per month on rent and expenses, monthly power at  
7 \$250, water at over \$30 per month, food at \$400-600 per month, and car payments of \$800 per  
8 month (beginning in February 2017). Santos owes \$118 per month on a store credit card, and  
9 \$30-80 per month on another card.

10 28. On April 28, 2017, the Court held a preliminary hearing on the matter at the Tinian Courthouse.

11 29. On September 22, 2017, the Court attempted to hold a bench trial and personnel were flown  
12 from Saipan. However, the bench trial was unable to move forward as critical witnesses were  
13 unable to attend.

14 30. On November 17, 2017, a full bench trial was held. Government employees, including a judge,  
15 law clerk, the assistant attorney general, and a representative from the CNMI NAP Main office  
16 in Saipan were flown to the island of Tinian.

17 31. At each hearing, in addition to the government employees who were flown in, a marshal and a  
18 deputy clerk of court were required to render services.

19 32. The Court takes judicial notice pursuant to NMI R. Evid. 201, that according to the 2017  
20 Proposed Governor's Budget, the Assistant Attorney General handling this case has a base  
21 salary of \$70,000 per year, judges earn \$130,000 per year, law clerks earn \$50,000 per year,  
22 deputy clerks make a base of \$20,485, and court marshals make \$16,652 per year.<sup>1</sup> Based on the  
23

24 <sup>1</sup> See COMMONWEALTH OF THE N. MAR. I. OFFICE OF THE GOVERNOR, *Governor's Budget Proposal for 2018* (March 31, 2017), <http://cnmileg.gov.mp/resources/files/A-FY18%20Governor's%20Budget%20Proposal%20Vol%20I.pdf>

1 260 working days in 2017, a single 8 hour work day for these individuals costs the CNMI  
2 government at *least* \$1,104.37. This is the cost of just a one-day hearing in Tinian. In regards  
3 to this case, there were multiple hearings, many hours of preparations, legal research and  
4 drafting of court orders and opinions, as well as the many incidental costs of airline tickets,  
5 daily per diems, rental cars, and hotels, if necessary.

### 6 7 III. CONCLUSIONS OF LAW

8 To determine whether Santos must repay the food stamp benefits he received, the Court  
9 must look to whether CNMI NAP followed its own regulations in collecting the benefits from  
10 Santos. “It is an elemental principle of administrative law that agencies are bound to follow their  
11 own regulations.” *Wilson v. Comm’r of Soc. Sec.*, 378 F.3d 541, 545 (6th Cir. 2004). An agency is  
12 “obliged to abide by the regulations it promulgates.” *Sameena Inc. v. United States Air Force*, 147  
13 F.3d 1148, 1153 (9th Cir. 1998) (citations omitted). “[T]he Government *must* follow its own  
14 regulations. Actions by an agency of the executive branch in violation of its own regulations are  
15 *illegal and void.*” *Vander Molen v. Stetson*, 571 F.2d 617, 624 (D.C. Cir. 1977) (citations omitted)  
16 (emphasis added).

17 “As a general rule, when the rights of an individual are affected, an agency must follow its  
18 own procedure, even where the internal procedures are more rigorous than otherwise would be  
19 required.” *Borowski v. Heckler*, 581 F.Supp. 549, 552 (N.D. Ind. 1984) (citing *Morton v. Ruiz*, 415  
20 U.S. 199 (1974)) (addressing the denial of social security benefits). If an agency fails to follow its  
21 own regulations, it “may result in a violation of an individual’s constitutional rights to due process.”  
22 *Sameena Inc.*, 147 F.3d at 1153 (citing *NRLB v. Welcome-American Fertilizer Co.*, 443 F.2d 19, 20  
23 (9th Cir. 1971)). “Should an agency in its proceedings violate its rules and prejudice results, the  
24 proceedings are tainted and any action resulting from the proceedings cannot stand.” *Borowski*, 581

1 F.Supp. at 552 (citing *Alamo Express, Inc. v. United States*, 613 F.2d 96 (5th Cir. 1980)). Thus, the  
2 Court must look to whether CNMI NAP followed its own internal regulations in handling Santos’s  
3 food stamp benefits.

4 **A. CNMI NAP failed to follow its own internal regulations when Santos notified**  
5 **CNMI NAP of his change in employment.**

6 The rules governing CNMI NAP are contained in Title 55 of the Northern Mariana Islands  
7 Administrative Code, under the Department of Community and Cultural Affairs. NMIAC §§ 55-30-  
8 001 *et seq* provide procedures “intended to serve as a guide in the administration of the [NAP]  
9 program and are broadly written within the limits imposed by the Commonwealth of the Northern  
10 Mariana Islands Nutrition Assistance Program Regulations and the Memorandum of  
11 Understanding.” NMIAC § 55-30-001(a).

12 The household receiving NAP benefits must report “[c]hanges in the sources of income or in  
13 the amount of average gross monthly income” to NAP *within ten days*. NMIAC § 55-30-250(a)(1).  
14 “Reports of changes may be done *personally, by telephone contact or in writing* addressed to the  
15 assigned eligibility worker of the household. In either case, the Certification Unit official shall  
16 document any reported changes on the contact sheet in the case file.” NMIAC § 55-30-250(b)  
17 (emphasis added). The Certification Unit official “shall take prompt action, within three working  
18 days, on all changes to determine whether the change affects the household’s eligibility or  
19 allotment.” NMIAC § 55-30-250(c). If the household becomes ineligible for NAP benefits,

20 [T]he Certification Unit official shall issue a notice of adverse action within ten days of  
21 the date the change was reported. The notice of adverse action shall provide the  
22 household ten days to contest the adverse action. If the adult head of household or its  
authorized representative does not respond within the ten days notice given, the  
decrease in benefit level shall take effect at the next scheduled issuance of benefits.

23 NMIAC §55-30-250(c)(2).

24

1 Here, Santos notified the NAP Tinian Representative verbally of his change in employment  
2 on October 29, 2015, within ten days of obtaining employment on October 19, 2015. Santos also  
3 provided a second notice in writing of a change in his employment on November 13, 2015. The  
4 NAP Saipan Main Office apparently was not timely notified of any change in the Santos's  
5 employment situation by the NAP Tinian Office and thus continued issuing food stamp benefits.

6 **B. CNMI NAP failed to follow its own internal regulations when notifying Santos of**  
7 **his disqualification.**

8 If the household fails to notify the Certification Unit official of any changes and "the  
9 Certification Unit official discovers that the household failed to report a change as required, without  
10 good cause, and as a result received benefits to which it was not entitled, the Certification Unit  
11 Official shall file a claim against the household." NMIAC § 55-30-250(d). "Individuals shall not be  
12 disqualified for failing to report a change unless the individual is disqualified in accordance with  
13 the fraud disqualification procedures." *Id.* Fraud disqualifications are governed by NMIAC § 55-30-  
14 275, while non-fraud claims are governed by NMIAC § 55-30-285.

15 Non-fraud claims are claims against a household "for over issuance which were not caused  
16 by fraud, such as, but not limited to, over issuance caused by administrative error on the part of the  
17 Certification Unit official or a misunderstanding or inadvertent error on the part of the household."  
18 NMIAC § 55-30-285(b). If the household "timely reported a change, but the Certification Unit  
19 Official did not timely act on the change, the first month affected by the Certification Unit official's  
20 failure to act shall be the first month the Certification Unit official should have made the change  
21 effective, subject to the 10-day notice of adverse action requirement." NMIAC § 55-30-  
22 285(b)(2)(i)(B). The code then provides some sample dates: if a household change occurred on  
23 April 20, then the ten days to report would be on April 30, the ten days notice of adverse action  
24

1 would be on May 10, and “the first issuance which could be affected by the notice of adverse action  
2 is June 1.” NMIAC § 55-30-285(b)(2)(i)(C).

3 To collect on a non-fraud claim,

4 The Certification Unit Supervisor shall initiate collection action on all non-fraud claims  
5 unless the total amount of the non-fraud claim is less than twenty dollars or the  
6 eligibility worker has documentation which shows that the adult head of household or its  
7 authorized representative cannot be located. The collection action shall subsequently be  
referred to the Issuance and Accountability Unit Supervisor to execute the written  
demand letter, which is the initial repayment notice (218C), to affected household *as*  
*soon as possible*.

8 NMIAC § 55-30-285(b)(3)(i) (emphasis added). The code then outlines a number of deadlines  
9 related to demand letters:

10 If the adult head of household or its authorized representative does not respond to the  
11 first demand letter, which is the initial repayment notice, *within fifteen days of the date*  
*of the mailing of the first demand letter*, the Issuance and Accountability Unit Supervisor  
12 shall send a second demand letter, which is the final repayment notice (219C), also via  
certified mail with return receipt *by the close of the next work day*. If the adult head of  
13 household or its authorized representative does not respond to the second demand letter  
*within fifteen days of the date of the mailing of the second demand letter*, the Issuance  
14 and Accountability Unit Supervisor shall either file a claim action in the small claims  
court if the outstanding is in the amount of three thousand dollars or less, or, at state  
15 agency nutrition assistance program discretion, formally refer the case to the nutrition  
assistance program’s legal counsel at the Attorney General’s Office for its disposition  
16 when the amount outstanding exceeds the criterion for small claim. The Issuance and  
Accountability Unit Supervisor *shall complete the appropriate action by the close of the*  
*next week day* unless the adult head of household or its authorized representative  
17 responded by paying or agreeing to pay the claim, or until one of the criteria for  
suspending collection action is met.

18 NMIAC § 55-30-285(b)(3)(iii) (emphasis added).

19 Here, the Initial Demand Letter was sent to Santos on March 23, 2016. The Second and  
20 Final Demand Letter was sent to Santos on April 12, 2016, more than fifteen days after the Initial  
21 Demand Letter was sent, despite the fifteen day requirement in the code. NMIAC § 55-30-  
22 285(b)(3)(iii). Santos responded to the two notices via handwritten note on May 9, 2016, requesting  
23 a hearing, which was also later than the fifteen days required in the code. *Id.* The Court notes that  
24 Santos was never given an opportunity for a hearing before CNMI NAP ceased his food stamp



1 benefits, nor was he given an opportunity for a hearing when CNMI NAP began demanding  
2 repayment of the excess food stamp benefits. “The Issuance and Accountability Unit Supervisor  
3 shall take the required initiative to effectively control and monitor [the NAP system] in order to  
4 ensure that recoupment process on all claim cases is acted in accordance with established  
5 guidelines.” NMIAC § 55-30-285(b)(3)(v). Based on the testimony presented to the Court, the NAP  
6 Tinian Office and the NAP Saipan Main Office were not aware of what the other office was doing.

7 **C. CNMI NAP failed to follow its own internal regulations in pursuing collections,**  
8 **which estops the collection.**

9 The code also provides criteria for suspending collection of non-fraud claims:

10 A claim shall be suspended if no collection action was initiated because of conditions  
11 specified in subsection (b)(3)(i) above. If collection action was initiated, and at least one  
12 demand letter has been sent, further collection action *shall* be suspended when:

13 (i) *The household is financially unable to pay the claim;*

14 (ii) There is little likelihood that the household will pay the claim;

15 (iii) The adult head of household or its authorized representative, or other adult  
16 household members cannot be located; or

17 (iv) *The cost of further collection is likely to exceed the amount that can be recovered.*

18 NMIAC § 55-30-285(b)(4) (emphasis added). “The use of the word ‘shall’ in the statute is  
19 mandatory and has the effect of creating a duty, absent any legislative intent to the contrary.”  
20 *Aquino v. Tinian Cockfighting Board*, 3 NMI 284, 292 (1992) (citations omitted). Since Section 55-  
21 30-285(b)(4) states that the “claim *shall* be suspended,” further collection *must* be suspended if the  
22 household is unable to pay the balance due or if “[t]he cost of further collection is likely to exceed  
23 the amount that can be recovered.” NMIAC § 55-30-285(b)(4) (emphasis added). Thus, the Court  
24 will look to whether CNMI NAP is mandated by its own regulations to suspend collection on the  
claim against Santos.

One situation where collection must be suspended is where “[t]he household is financially  
unable to pay the claim.” NMIAC § 55-30-285(b)(4)(i). Based on the testimony provided, Santos

1 and his wife together make \$50,000. There is nothing on the record to clearly demonstrate that  
2 Santos is “financially unable to pay the claim.” *Id.*

3 Another situation where collection must be suspended is where “[t]he cost of further  
4 collection is *likely to exceed* the amount that can be recovered.” NMIAC § 55-30-285(b)(4)(iv)  
5 (emphasis added). Here, the Santos owes a grand total of \$1,650.00. The costs of pursuing this  
6 collection case include the costs of the time of the Assistant Attorney General pursuing this case, as  
7 well as the time of the other government employee witnesses and the Court staff, including the  
8 judge, courtroom clerk, and law clerk at multiple court hearings totals at least \$1,104.37 per day in  
9 base salaries alone. In addition, since this case is a Tinian case, the costs of pursuing this collection  
10 case also includes the airfare, rental car, hotel (if necessary), and daily per diem to travel to Tinian  
11 for the Assistant Attorney General, judge, courtroom clerk, law clerk, and other Saipan government  
12 employees who testified in the hearings. All of these costs taken together are likely to exceed the  
13 recovery of \$1,650.00.

14 “[T]he Government *must* follow its own regulations. Actions by an agency of the executive  
15 branch in violation of its own regulations are *illegal and void.*” *Vander Molen*, 571 F.2d at 624  
16 (citations omitted) (emphasis added). In cases where the cost of recovery is “likely to exceed the  
17 amount that can be recovered,” as in the present case, the collection action must be suspended  
18 NMIAC § 55-30-285(b)(4). Since CNMI NAP has failed to follow its own regulations in pursuing  
19 this claim, CNMI NAP’s claim is both illegal and void.

#### 20 21 **IV. CONCLUSION**

22 For the foregoing reasons, CNMI NAP is **ESTOPPED** from collecting overpaid food stamp  
23 benefits in the amount of \$1,650.00 as CNMI NAP failed to follow its own regulations in pursuing  
24

1 this collection and the cost of collection proceedings is likely to exceed the amount be sought to be  
2 recovered.

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4 **IT IS SO ORDERED** this 31<sup>st</sup> day of July, 2018.



**JOSEPH N. CAMACHO, Associate Judge**

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