

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF KANSAS**

)	
)	Appellant,
)	
vs.)	Appeal No.
)	
)	
DEPARTMENT FOR CHILDREN AND)	
FAMILIES, STATE OF KANSAS,)	
Respondent.)	

MOTION TO DISMISS

COMES NOW the Respondent, Economic and Employment Services Section, Department for Children and Families, State of Kansas, and requests the hearing officer to dismiss Appellant’s request for a fair hearing in this matter.

In support of the Motion to Dismiss, the Respondent states that K.S.A. 75-3306(i) provides that the Respondent “is not required to provide a hearing if: (1) the department. . . lacks jurisdiction of the subject matter.” Additionally, K.S.A. 75-3306(h) provides that “the department. . . shall not have jurisdiction to determine the facial validity of an agency rule and regulation.”

The Appellant is challenging the agency’s authority to decrease food assistance benefits effective November 1, 2013. Such decrease in food assistance benefits is based on federal law. The American Recovery and Reinvestment Act (ARRA), P.L. 111-5, increased food assistance benefits by 13.6% effective April 2009. ARRA increases are expiring November 1, 2013, and the individual states must decrease benefits as a result of this change in federal law. P.L. 111-296.

Therefore, Respondent requests the appeal be dismissed for lack of jurisdiction as the appeal challenges the agency’s authority to act in accordance with federal law and

the hearing officer does not have jurisdiction to determine the facial validity of an agency rule and regulation.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that on _____ day of _____,
20____ a true and correct copy of a Motion to Dismiss was served by depositing the same in the United States mail, first class postage prepaid; to:

Name

Address

Signature