

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

<b>HALAL MEAT MARKET,</b>	:
	:
<b>Petitioner,</b>	:
	:
<b>v.</b>	: <b>Docket No.:</b>
	: <b>OSAH-DPH-WICV-1561610-44-Miller</b>
	:
<b>GEORGIA DEPARTMENT OF</b>	:
<b>PUBLIC HEALTH,</b>	:
	:
<b>Respondent.</b>	:
	:

**INITIAL DECISION  
ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY DETERMINATION**

**I. SUMMARY OF PROCEEDINGS**

The Petitioner, Halal Meat Market, appeals a decision by the Respondent, the Georgia Department of Public Health (“Department”), to terminate the agreement authorizing the Petitioner to serve as a vendor for Georgia’s Special Supplemental Nutrition Program for Women, Infants, and Children (“Georgia WIC program”). As grounds for the termination, the Department contends that the Petitioner has failed to comply with the Georgia WIC program’s vendor selection criteria, in violation of 7 C.F.R. § 246.12(h)(3)(xxv), by operating a store that does not meet the minimum square footage requirement for continuous retail food sales space. This proceeding is a full administrative review provided pursuant to 7 C.F.R. § 246.18(a).

On July 1, 2015, the Department moved for summary determination in its favor, arguing that the undisputed material facts show that the Department is entitled to judgment as a matter of law. The Petitioner responded to the Department’s Motion on August 25, 2015,<sup>1</sup> and the Department replied on September 3, 2015. For the reasons set forth below, the Department’s

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<sup>1</sup> Although the Administrative Rules of Procedure contemplate a twenty-day time frame for the filing of a response to a motion for summary determination, the Petitioner was afforded additional time pursuant to the Scheduling Order entered on August 5, 2015. See Ga. Comp. R. & Regs. 616-1-2-.15(b).

Motion for Summary Determination is **GRANTED**, and its decision to terminate the Petitioner's vendor agreement is **AFFIRMED**.

## II. STANDARD ON SUMMARY DETERMINATION

Summary determination in this proceeding is governed by Rule 15 of the Administrative Rules of Procedure ("A.R.P."), which provides, in relevant part:

A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate there is no genuine issue of material fact such that the moving party "is entitled to a judgment as a matter of law on the facts established." Pirkle v. Env'tl. Prot. Div., Dep't of Natural Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at \*6-7 (OSAH 2004) (citing Porter v. Felker, 261 Ga. 421, 421 (1991)); see generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304-05 (2006) (noting summary determination is "similar to summary judgment" and elaborating that an administrative law judge "is not require to hold a hearing" on issues properly resolved by summary determination).

Further, pursuant to A.R.P. Rule 15:

When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(3); see Lockhart v. Dir. Env'tl. Prot. Div., Dep't of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at \*3 (OSAH 2007) (citing Leonaitis v. State Farm Mutual Auto Ins. Co., 186 Ga. App. 854 (1988)).

### III. UNDISPUTED MATERIAL FACTS

Pursuant to A.R.P. Rule 15(1), a motion for summary determination must include “a short and concise statement of each of the material facts as to which the moving party contends there is no genuine issue for determination.” Ga. Comp. R. & Regs. 616-1-2-.15(1). Similarly, a response to a statement of undisputed material facts must contain “a short and concise statement of each of the material facts as to which the party opposing summary determination contends there exists a genuine issue for determination.” Ga. Comp. R. & Regs. 616-1-2-.15(2). In this case, although the Petitioner has responded to the Department’s Motion with a pleading and accompanying affidavit, he has not identified any facts proposed by the Department that are genuinely in dispute. Consequently, after streamlining the Department’s proposed facts and relying only upon those that are both undisputed and material to the issues presented for summary determination, the Court finds as follows:

1.

The Petitioner was initially approved as a WIC vendor on March 27, 2008, and has served continuously as a WIC vendor since that date, using the unique WIC vendor identification number 5656. The Petitioner’s initial vendor agreement with the Georgia WIC program was in effect from March 27, 2008 to September 30, 2010. (Respondent’s Motion for Summary Determination [“Motion”] ¶ 2(C)-(D); Exhibits R-1, R-2.)

2.

On May 30, 2013, the Department received the Petitioner’s most recent application for reauthorization as a WIC vendor. The Petitioner’s application was approved, and a new vendor agreement was executed and effective for the period October 1, 2013 to September 30, 2015. (Motion ¶ 2(D); Exhibits R-3, R-4.)

3.

As a condition of authorization, a WIC vendor is required to comply with the vendor agreement, as well as federal and state statutes, regulations, policies, and procedures governing the Georgia WIC Program, including any changes made during the agreement period. (Motion ¶ 2(E); Exhibits R-4 at 3, R-5 at ¶ 7; R-10 at 4, R-11 at 8.)

4.

The vendor agreement requires a vendor to comply with the vendor selection criteria in effect throughout the agreement period, including any changes thereto. One such criterion is the requirement, found in the Georgia WIC Program Vendor Handbook effective April 1, 2014 (“April 2014 Handbook”), that a vendor must have at least “3,000 square feet of continuous retail food sales space open to the public, excluding administrative and storage space.” In addition, “[n]o portion of the store may be located inside of a separate building, nor may any portion be located inside of a facility that is not food retail in nature . . . .” (Motion ¶ 2(F)-(G); Exhibits R-4 at 3, R-5 at ¶¶ 7-8, R-11 at 12.)

5.

The April 2014 Handbook provides for an exception from the current minimum square footage requirement for certain authorized vendors, like the Petitioner, who were participating in the WIC program prior to October 1, 2013. The minimum square footage requirement for these vendors is “3,000 square feet of continuous retail food sales space open to the public, *including* administrative and storage space,”<sup>2</sup> as provided in the Georgia WIC Program Vendor Handbook that was in effect from October 1, 2012 through March 31, 2014 (“October 2012 Handbook”) (emphasis added). (Motion ¶ 2(H); Exhibits R-10 at 5, R-11 at 12.)

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<sup>2</sup> This exception expired on September 30, 2015. (Exhibit R-11 at 12.)

6.

On October 18, 2012, the Petitioner completed an FFY 2013 Vendor Certification Form, as required of all authorized vendors, and submitted it to the Department. On the form, the Petitioner reported that the store consisted of 3,500 square feet, including administrative and storage space. Attached to the form was a copy of a Lease Amendment dated June 1, 2012, which documented the store's acquisition of an adjacent business suite. The Petitioner's most recent application for vendor reauthorization, which was submitted on May 30, 2013, reiterated that the store consisted of 3,500 square feet, including administrative and storage space. (Motion ¶ 2(I); Exhibits R-3, R-5 at 4-5, R-5A.)

7.

During the vendor agreement period effective from October 1, 2013, through September 30, 2015, the WIC Program updated the selection criterion for minimum square footage and issued an addendum to the current Vendor Agreement to all authorized WIC vendors. The addendum, Addendum 14-01, outlined the policy and procedural changes to be implemented on April 1, 2014, including the increase in the minimum square footage requirement. On March 27, 2014, as required of all authorized vendors, the Petitioner submitted a Verification Checklist for Addendum 14-01 signed by its owner, Ahmed Mohamed. By signing the Verification Checklist, Mr. Mohamed acknowledged that he had reviewed and understood Addendum 14-01 and its contents, including the expectation that the Petitioner would comply with all new requirements as of April 1, 2014. (Motion ¶ 2(K)-(L); Exhibits R-5 at 5, R-5B.)

8.

In 2014, the Department engaged Myers and Stauffer LC ("auditors") to conduct an inventory testing and analysis ("audit") of the Petitioner's store. During the inventory analysis

component of the audit, the auditors determined that the voucher redemptions for contract brand infant formula were supported by documented inventory in compliance with federal regulations and WIC program policies and procedures. However, during site visits on July 8 and August 12, 2014, the auditors observed that some fruits and vegetables on display at the store were rotten. The auditors further observed several rotten vegetables stored in a walk-in freezer at the back of the store. Based on these observations, the auditors noted a Category I violation for “stocking one or more WIC food items outside of manufacturer’s expiration date.” The auditors memorialized their findings in an Independent Auditor’s Report on Applying Agreed-Upon Procedures Regarding WIC Inventory Testing and Analysis for Halal Meat Market. (Motion ¶ 2(N)-(O); Exhibits R-5 at 6, R-7 at 5, R-7B, R-7C, R-11 at 43.)

9.

On January 28, 2015, the auditors conducted a square footage assessment of the Petitioner’s store and determined that it contained 2,138 square feet of continuous retail food sales space open to the public, including administrative and storage space. More specifically, although the store’s total area is nearly 4,000 square feet, the auditors excluded from the calculation 1,838 square feet devoted to non-grocery retail (1,288 square feet), meat preparation (462 square feet), and a restroom (88 square feet). Included in the calculation of continuous retail food space were 1,975 square feet devoted to food retail, as well as two storage areas totaling 163 square feet. The auditors’ findings were memorialized in an Independent Auditor’s Report on Applying Agreed-Upon Procedures for Square Footage Assessment for Halal Meat Market. (Motion ¶ 2(Q); Exhibits R-5 at 6, R-6 at 5-6, R-6B, R-6C, R-6D, R-6E, R-6F.)

10.

On May 19, 2015, based on the auditors' findings, the Department issued a Notice of Termination for Cause to the Petitioner. The proposed termination was based on the store's failure to comply with the minimum square footage selection criterion in effect as of April 1, 2014. The Department also issued a warning to the Petitioner based on a Category I violation for "stocking one or more WIC food items outside of manufacturer's expiration date." On May 27, 2015, the Petitioner requested an administrative review hearing. (Motion ¶ 2(S); Exhibits R-5 at 7, R-6F, R-7B, R-9, R-11 at 12 & 43.)

### III. CONCLUSIONS OF LAW

1.

WIC is a program of the U.S. Department of Agriculture ("USDA") authorized under the Child Nutrition Act of 1966, 42 U.S.C. § 1771–1786, to assist women, infants, and children from families with inadequate income with supplemental food and nutrition education through grants to state agencies. 7 C.F.R. § 246.1. Although the USDA oversees the WIC program, it has delegated the administration of the program to the states. 7 C.F.R. § 246.3(b). In Georgia, the WIC Program is administered by the Department, in accordance with specifications found in federal and state law. See 42 U.S.C. § 1786; 7 C.F.R. § 246; O.C.G.A. § 31-2A-8; Ga. Comp. R. & Regs. 511-8-1-.04.

2.

Federal regulations require the Georgia WIC Program to develop and implement criteria to determine which stores are selected for authorization in the vendor program. 7 C.F.R. § 246.12(h)(3)(xxv). As a condition of authorization, all WIC vendors must comply with the vendor agreement, federal and state statutes, and the regulations, policies, and procedures that

govern the Georgia WIC Program. 7 C.F.R. § 246.12(h)(3)(xxiii); Ga. Comp. R. & Regs. 511-8-1-05. Vendors are required to comply with the vendor selection criteria throughout the term of the vendor agreement, including any changes made during the agreement period. 7 C.F.R. § 246.12(h)(3)(xxv); Ga. Comp. R. & Regs. 511-8-1-05.

3.

In compliance with federal regulations, the Georgia WIC Program has developed and implemented a system for monitoring vendor compliance with program rules. 7 C.F.R. §§ 246.12(j)(1), 246.12(l); Georgia WIC Program Vendor Handbook (eff. Oct. 1, 2012) (“2012 Vendor Handbook”) at 31-32 (Exhibit R-10); Georgia WIC Program Vendor Handbook (eff. Apr. 1, 2014) (“2014 Vendor Handbook”) at 37-38 (Exhibit R-11). Vendors may be reassessed for compliance with the vendor selection criteria at any time during the agreement period. Id. A WIC vendor that fails to comply with all vendor selection criteria in effect during the agreement period must be terminated from the program. 7 C.F.R. § 246.12(h)(3)(xxv); 2012 Vendor Handbook at 33-34; 2014 Vendor Handbook at 39-40.

4.

The vendor selection criteria for the Georgia WIC program are itemized in the Vendor Handbook. As of April 1, 2014, when the 2014 Handbook took effect, vendors were required to maintain “3,000 square feet of continuous retail food sales space open to the public, excluding administrative and storage space.” 2014 Vendor Handbook at 12. However, because the Petitioner had been a WIC vendor for more than six months, the store was afforded an exception that allowed the Petitioner to include administrative and storage space in its square footage calculation through September 30, 2015. Id.

5.

In this case, it is undisputed that the Petitioner's store contained just 2,138 square feet of continuous retail food sales space, including administrative and storage space.<sup>3</sup> This did not meet the vendor selection criterion for minimum square footage, which required the Petitioner to maintain at least 3,000 square feet of continuous retail food sales space as of April 1, 2014. The Petitioner argues that it should not be terminated from the program based on "substantial compliance" with the minimum square footage requirement. However, federal regulations specifically provide that "[t]he State agency *will* terminate the vendor agreement if the vendor fails to meet the current vendor selection criteria." 7 C.F.R. § 246.12(h)(3)(xxv) (emphasis added). Thus, the Department is not authorized to take any action short of termination.<sup>4</sup> Consequently, because the Petitioner failed to comply with all vendor selection criteria in effect for the duration of the vendor agreement, its participation in the Georgia WIC program must be terminated. 7 C.F.R. § 246.12(h)(3)(xxv); 2012 Vendor Handbook at 33-34; 2014 Vendor Handbook at 39-40.

#### IV. Decision

Having carefully considered the parties' arguments and submissions, the Court concludes that the undisputed facts, when viewed in the light most favorable to the Petitioner, warrant judgment as a matter of law in favor of the Department. Accordingly, the Department's Motion for Summary Determination is **GRANTED**, and its decision to terminate the Petitioner's vendor agreement and participation in the Georgia WIC program is hereby **AFFIRMED**.

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<sup>3</sup> Whether or not the Petitioner inadvertently misunderstood the criteria, the Department's auditors properly excluded the store's non-retail space, meat preparation area, and restroom from their calculation of its continuous retail food sales space. 2014 Vendor Handbook at 12 ("No portion of the store may be located . . . inside of a facility that is not food retail in nature . . .").

<sup>4</sup> Furthermore, the Department was not required to provide the Petitioner with an opportunity to correct its noncompliance before initiating the termination action. Id.

**SO ORDERED, this \_\_\_\_\_ day of October, 2015.**

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**KRISTIN L. MILLER**  
**Administrative Law Judge**