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BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

WAL-MART STORES EAST, LP d/b/a :
WAL-MART SUPERCENTER #1227, :

Petitioner, :

v. :

GEORGIA DEPARTMENT OF PUBLIC :
HEALTH, :

Respondent. :

Docket No. :
OSAH-DPH-WICV-1606570-21-Kennedy

Agency Reference No. 5713

K. Westray
Kevin Westray, Legal Assistant

FINAL DECISION

I. Introduction

Wal-Mart Stores East, LP d/b/a Wal-Mart Supercenter #1227 (Petitioner) appeals the Georgia Department of Public Health's (Respondent) decision to terminate Petitioner's participation in Georgia's Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) for a period of one year.

On August 25, 2015, Respondent filed a Motion for Summary Determination. Petitioner filed a Response to Respondent's Motion for Summary Determination and simultaneously a Cross-Motion for Summary Determination on September 23, 2015. Respondent then filed a response in opposition to Petitioner's Cross-Motion for Summary Determination and a reply brief in support of Respondent's Motion for Summary Determination on October 13, 2015.

For the reasons set forth below, Respondent's Motion for Summary Determination is **GRANTED** and Petitioner's Cross-Motion for Summary Determination is **DENIED**. The court

AFFIRMS Respondent's decision to terminate for cause Petitioner's Vendor Agreement because such action was taken in accordance with applicable statutes, regulations, policies and procedures governing the WIC Program.

II. Undisputed Material Facts

1.

Petitioner, Wal-Mart Stores East, LP d/b/a Wal-Mart Supercenter #1227, is located at 260 Bobby Jones Expressway, Augusta, Georgia 30907. (Respondent's Exhibit 3)

2.

Petitioner is one of 179 WIC-authorized Wal-Mart store locations in the state of Georgia that is owned by Wal-Mart Stores East, LP. (Respondent's Exhibit 5, ¶ 7)

3.

Petitioner has continuously served as an authorized vendor for the Georgia WIC Program since July 30, 2008. (Petitioner's Exhibit 1, ¶ 4; Respondent's Exhibit 5, ¶ 7.)

4.

Upon Petitioner's initial authorization to serve as an authorized vendor for the Georgia WIC Program, Respondent issued Petitioner a vendor stamp embossed with Petitioner's designated unique vendor identification number, 5713. (Respondent's Exhibit 4, ¶ 6; Respondent's Exhibit 5, ¶ 6.)

5.

Wal-Mart Stores East, LP most recently applied for reauthorization of its then-authorized Georgia store locations, including Wal-Mart Supercenter #1227, during the 2013 reauthorization period. (Respondent's Exhibit 1; Respondent's Exhibit 3; Respondent's Exhibit 5, ¶ 7.)

6.

Wal-Mart Stores East, LP was subsequently approved to continue serving as an authorized vendor. The parties executed a new Vendor Agreement, effective October 1, 2013, to September 30, 2016, and the Corporate Attachments for each store location, including Wal-Mart Supercenter #1227, became an addendum to that Vendor Agreement. All authorized stores, including Wal-Mart Supercenter #1227, maintained their unique state-issued vendor identification number. (Petitioner's Exhibit 1, ¶ 4; Respondent's Exhibit 2; Respondent's Exhibit 3; Respondent's Exhibit 4, ¶ 5; Respondent's Exhibit 5, ¶¶ 6, 8.)

7.

The Vendor Agreement was signed by Petitioner's representative, Amy Bates, on September 26, 2013, and by Respondent's representative, Debra Keyes, on October 7, 2013. Among other provisions, the Vendor Agreement provides that Petitioner agrees to "not reproduce the vendor stamp."¹ The Vendor Agreement further provides that Respondent may terminate the vendor agreement for cause after providing at least 15 days advance written notice if Petitioner reproduces the WIC vendor stamp. If a vendor is terminated, the vendor may re-apply no sooner than one year after being terminated from the Georgia WIC Program. (Respondent's Exhibit 2, Section III.L. and V.(15); Respondent's Exhibit 4, ¶ 8; Respondent's Exhibit 5, ¶ 10.)

8.

During the 2013 reauthorization period, Petitioner's store representative, Norman L. Williams, Project Manager II, participated in training and completed the required Corporate Vendor Training Checklist on behalf of Wal-Mart Supercenter #1227. By completing the required Corporate Vendor Training Checklist, Mr. Williams acknowledged that he (1) had been trained,

¹ The admonition to not reproduce a vendor stamp is repeated several times in the Georgia WIC Procedures Manual & State Plan. Specifically the admonition can be found at pages VM62, VM69, VM101, and VM116. (Petitioner's Exhibit 2.)

(2) had received the Vendor Handbook, effective October 1, 2012 through March 30, 2014, (3) understood how to contact Georgia WIC, (4) understood the terms of the vendor agreement, (5) understood that the vendor is responsible for training its employees on the information discussed at training, and (6) understood the procedures for redeeming Georgia WIC vouchers, including use of the State-issued vendor stamp. (Respondent's Exhibit 5, ¶ 12; Respondent's Exhibit 5-A, ¶¶ 1, 2, 4, 8.)

9.

Most recently, Wal-Mart Supercenter #1227 participated in annual vendor training for Federal Fiscal Year 2014. Temica Harding, Assistant Manager for Wal-Mart Supercenter #1227, participated in the annual training and completed the required Corporate Vendor Training Checklist. By completing the Annual Vendor Training Checklist, Ms. Harding acknowledged that she had been trained and had received the current Vendor Handbook, effective April 1, 2014. She further acknowledged that she (1) knew how to contact Georgia WIC, (2) understood the terms of the vendor agreement, (3) understood that the vendor is responsible for training its employees on the information discussed at training, and (4) understood the procedures for redeeming Georgia WIC vouchers, including the use of the State-issued vendor stamp. (Respondent's Exhibit 5, ¶ 13; Respondent's Exhibit 5-B, ¶¶ 1, 2, 4, 8.)

10.

Federal regulations, as well as Georgia WIC Program policy, require that WIC vouchers transacted at an authorized store location must be stamped with that store location's vendor number prior to being deposited at its banking institution. (*See* 7 C.F.R. § 246.12(f)(3); *see also* Respondent's Exhibit 4, ¶ 7; Respondent's Exhibit 5, ¶ 15; Respondent's Exhibit 9 at p. 17; Respondent Exhibit 10 at p. 23.)

11.

If a vendor's State-issued stamp is lost, stolen, or damaged, a vendor must immediately report it to the Georgia WIC Program's Office of Vendor Management so that a new stamp can be issued to allow the vendor to continue timely redeeming vouchers. Under no circumstances is a vendor allowed to reproduce a vendor stamp if the vendor experiences difficulties with the use of the State-issued vendor stamp. (Respondent's Exhibit 2, Section III.L; *see also* Respondent's Exhibit 5, ¶ 16; Respondent's Exhibit 9 at pp. 21 and 28; Respondent's Exhibit 10 at pp. 27 and 34.)

12.

Upon notice that a vendor's State-issued stamp has been lost, stolen or damaged, Respondent will process the report and provide a replacement vendor stamp. The report is typically processed within twenty-four hours, but never outside the timeframe within which a vendor is required to redeem a transacted voucher. (Respondent's Exhibit 4, ¶ 9; Respondent's Exhibit 5, ¶¶ 9, 16.)

13.

Section III.L of the Vendor Agreement expressly prohibits vendors from reproducing the vendor stamp issued to it by Respondent. By signing the Vendor Agreement, Petitioner specifically agreed not to reproduce its vendor stamp. (Respondent's Exhibit 2; Respondent's Exhibit 4, ¶ 8).

14.

The Georgia WIC Program policy is outlined in the Georgia WIC Program Vendor Handbook and is incorporated by reference into the Vendor Agreement. Similar to the provisions of the Vendor Agreement, the Vendor Handbook specifically prohibits vendors from reproducing their

State-issued vendor stamp under any circumstances. The Vendor Handbook further provides that vendors who redeem vouchers stamped with a reproduced vendor stamp may be investigated by Respondent. Additionally, WIC vouchers that are stamped with an unauthorized vendor stamp will not be paid. (Respondent's Exhibit 4, ¶¶ 7, 9; Respondent's Exhibit 9 at pp. 21 and 28; Respondent's Exhibit 10 at pp. 27 and 34.)

15.

Vendors are fully accountable for the "actions of its paid or unpaid owners, officers, managers, agents, and employees," including the decision to reproduce a State-issued vendor stamp and the use of an unauthorized vendor stamp to process transacted WIC vouchers. (Respondent's Exhibit 2 at Section III.A(1).)

16.

Georgia WIC Program policy further provides that reproduction of a State-issued vendor stamp by an authorized vendor is grounds for termination of its Vendor Agreement. (Respondent's Exhibit 2 at Sections III.L and V.(15); *see also* Respondent's Exhibit 9 at pp. 28 and 34 (#13); and Respondent's Exhibit 10 at pp. 34 and 40 (#13).)

17.

CSC has contracted with Respondent to operate and maintain its back-end data processing and to provide the banking system for the Georgia WIC Program. (Respondent's Exhibit 6, ¶ 3.)

18.

As part of its contractual responsibilities with respect to managing the WIC banking system in Georgia, CSC processes the Georgia WIC Program vouchers that are transacted by authorized vendors at their stores to ensure accurate and efficient payments to vendors. (Respondent's Exhibit 6, ¶ 4.)

19.

WIC vouchers that meet all WIC requirements for payment will be paid by the Georgia WIC Program. However, WIC vouchers that do not meet all WIC requirements will be rejected and returned to a vendor's bank of first deposit. (Respondent's Exhibit 6, ¶ 6.)

20.

CSC reviews WIC vouchers to verify that the voucher has been stamped with an approved, State-issued vendor stamp. If it is determined that the stamp, or imprint, on a voucher does not match the approved design, even if the vendor number is valid, the voucher must be rejected and returned unpaid to the vendor's bank of first deposit. CSC will also flag a voucher(s) that contains this error for further review and action by Respondent, and obtain a decision from Respondent whether the voucher should be re-deposited for payment. (Respondent's Exhibit 6, ¶ 7.)

21.

On June 25, 2015, CSC notified Respondent that it had identified fifty-seven WIC vouchers presented for payment by Petitioner that were imprinted with an unapproved vendor stamp, as evidenced by the format of the stamp being different from the unique imprint rendered using an approved, State-issued vendor stamp. (Respondent's Exhibit 4, ¶ 10; *see also* Respondent's Exhibit 5, ¶ 18; Respondent's Exhibit 6, ¶¶ 9, 10; Respondent's Exhibits 6-A, 6-B, and 6-C.)

22.

Based on CSC's report, Respondent initiated an investigation to ascertain why the vouchers appeared to have been stamped with an unauthorized vendor stamp. Rolandria Boyce, WIC Vendor Relations and Compliance Consultant, was assigned to look into CSC's report.

(Respondent's Exhibit 4, ¶ 10; Respondent's Exhibit 5, ¶¶ 17, 18; Respondent's Exhibit 9 at p. 25, #14; Respondent's Exhibit 10 at p. 31, #14.)

23.

Ms. Boyce first attempted to contact the store's corporate point of contact, Sharon Pitt, to apprise her of the CSC's report. Upon being unable to reach Ms. Pitt, Ms. Boyce next called the local store at issue, Wal-Mart Supercenter #1227, and spoke with the manager on duty, who identified himself as Eric, and who confirmed that the store did not have multiple WIC vendor stamps at the store. Eric recommended that Ms. Boyce speak with the accounting office if she had any further questions. Ms. Boyce next spoke with a representative from the accounting office, who identified herself as Lynne, and who disclosed to Ms. Boyce that the State-issued vendor stamp had been reproduced because the State-issued stamp was damaged and no longer usable. She further admitted that the State-issued stamp had been thrown away because it was damaged. (Respondent's Exhibit 4, ¶¶ 11-12.)

24.

However, despite what Lynne had relayed to Ms. Boyce, as of June 25, 2015, Petitioner's accounting department's hourly employees were prohibited from using any stamp other than the State-issued stamp. (Petitioner's Exhibit 1, ¶ 8.)

25.

Susan Rosa, Petitioner's Store Manager, conducted her own investigation upon learning of the issue surrounding the use of an unapproved vendor stamp. (Petitioner's Exhibit 1, ¶¶ 3, 9-11.)

26.

Ms. Rosa learned that several WIC vouchers had been rejected by CSC because CSC had determined the stamp was unreadable. The accounting department failed to inform Petitioner's

management regarding the rejected vouchers. (Petitioner's Exhibit 1, ¶ 10.) The Georgia WIC Handbook provides that if a food instrument is returned by the vendor's bank stamped "unreadable vendor stamp," it should be corrected and resubmitted for payment through the vendor's bank of deposit. The vendor has 45 days to resubmit the food instrument before it will be considered stale and unredeemable. (Petitioner's Exhibit 2, at p. VM-67.)

27.

Instead of correcting and resubmitting the rejected vouchers, someone in the accounting department took it upon themselves to obtain a stamp other than the State-issued vendor stamp on or about June 17, 2015. (Petitioner's Exhibit 1, ¶ 11.) The unapproved replacement stamp was then used on 57 different vouchers.² (Respondent's Exhibit 4, ¶ 10; Respondent's Exhibit 5, ¶ 18; Respondent's Exhibit 6, ¶¶ 9, 10; Respondent's Exhibits 6-A, 6-B, and 6-C.)

28.

According to Ms. Rosa, the original State-issued vendor stamp was not lost, damaged or stolen, and was not thrown away. (Petitioner's Exhibit 1, ¶ 12.) However, neither party presented evidence of whether the State-issued vendor stamp has been returned to Respondent, as required under the Vendor Agreement, as a result of the termination. (Record as a Whole.)

29.

Based on Lynne's statement to Ms. Boyce that the vendor stamp had been reproduced because the State-issued vendor stamp was damaged, and based on the fact that federal regulations provide that a vendor may transact and redeem WIC vouchers until the effective date of an

² At Ms. Boyce's request, Lynne faxed a copy of the rendering of the imprint of the reproduced stamp to Ms. Boyce. The faxed imprint of the reproduced stamp matched the imprint on the vouchers in question that CSC had identified. (Respondent's Exhibit 4, ¶ 12; Respondent's Exhibit 4-A; Respondent's Exhibit 5, ¶ 19; Respondent's Exhibit 6-B.)

adverse action, Respondent immediately issued a replacement vendor stamp that same day. (Respondent's Exhibit 4, ¶ 14; Respondent's Exhibit 4-B.)

30.

Further, based on the findings that Petitioner had reproduced the State-issued vendor stamp, Respondent instructed CSC to not pay any WIC vouchers Petitioner presented for payment that were imprinted with the unauthorized vendor stamp. (Respondent's Exhibit 5, ¶ 20; Respondent's Exhibit 6, ¶ 11; Respondent's Exhibit 6-D.)

31.

On July 8, 2015, Respondent issued a notice to terminate Petitioner's Vendor Agreement for a period of one year effective July 23, 2015.³ At the conclusion of the one year period, Petitioner could reapply seeking to once again become an authorized vendor in the Georgia WIC Program. The termination was based on Petitioner's accountant's admission that it had reproduced its State-issued vendor stamp, which constituted a breach of Section III.L of the Vendor Agreement and was also a violation of Georgia WIC Program policy. (Respondent's Exhibit 7.) A Vendor Violation is defined as any "intentional or unintentional action of a vendor's current owners, officers, managers, agents or employees (with or without the knowledge of management) that violates the vendor agreement or Federal or State statutes, regulations, policies, or procedures governing the program." (7 C.F.R. § 246.2; Petitioner's Exhibit 2, at VM-76 and Glossary-19; Respondent's Exhibit 10 at p. 41.)

32.

On July 22, 2015, Petitioner requested an administrative review of Respondent's decision. (Respondent's Exhibit 8.)

³ Between July 30, 2008 and July 7, 2015, Petitioner has not been subject to any other sanction or termination by Respondent related to its authorized WIC vendor status. The sanction at issue is the first sanction against Petitioner in nearly seven years. (Petitioner's Exhibit 1, ¶ 5.)

Inadequate Participant Access Consideration

33.

Prior to disqualifying a vendor for any mandatory or state agency violations, Respondent is required to determine whether disqualification of the vendor would result in inadequate participant access. If Respondent determines and documents that disqualification of the vendor will result in inadequate participant access, a civil monetary penalty must be imposed in lieu of disqualification. (*See* 7 C.F.R. §§ 246.12(g)(1) and (l)(1)(ix). *See also* Respondent's Exhibit 4, ¶ 16; Respondent's Exhibit 9 at p. 40; Respondent's Exhibit 10 at p. 46.)

34.

The Georgia WIC Program standard for determining inadequate participant access is whether any other WIC-authorized vendors are located within ten miles of the vendor at issue. (*See* 7 C.F.R. § 246.12(l)(8). *See also* Petitioner's Exhibit 2, at pp. VM-91 and Glossary-9; Respondent Exhibit 4, ¶ 16; Respondent's Exhibit 9 at p. 40; Respondent's Exhibit 10 at p. 46.)

35.

Respondent determined that at least two other WIC-authorized vendors were located less than ten miles away from Petitioner's location,⁴ such that inadequate participant access was not an issue that would bar disqualification. (Respondent's Exhibit 4, ¶ 16.)

36.

Petitioner maintains that although there are two other authorized vendors within ten miles of Petitioner's store location, disqualification of Petitioner's store location would result in inadequate participant access because of the difficulties WIC participants would encounter in trying to access the other stores. (Petitioner's Exhibit 1, ¶¶ 13-18.)

⁴ One store was located 8.0 miles from Petitioner's location, the other store was located 4.8 miles from Petitioner's location. (Respondent's Exhibit 4, ¶ 16.)

37.

Petitioner serves several low income neighborhoods that are located anywhere from 3.5 miles away to 7.9 miles away. Petitioner also serves public housing communities that are located 4.6 and 4.9 miles from Petitioner's store location. (Petitioner's Exhibit 1, ¶ 13.)

38.

The WIC participants from these areas often walk to Petitioner's store location. (Petitioner's Exhibit 1, ¶ 14.)

39.

According to Ms. Rosa, WIC participants walking to Petitioner's store location would encounter Cranes Creek, a geographic barrier, when accessing the two other authorized vendors identified by Respondent. They would also encounter Bobby Jones Expressway and Washington Road, both of which are four-lane, high-traffic roads. (Petitioner's Exhibit 1, ¶¶ 15-16.)

40.

Additionally, although Petitioner's store is on Augusta Public Transit Bus Route No. 2, the other authorized vendors cannot be accessed by Route No. 2. (Petitioner's Exhibit 1, ¶ 17.)

41.

Finally, Petitioner is open 24-hours, seven days a week, whereas the other authorized vendors do not maintain these same store hours. (Petitioner's Exhibit 1, ¶ 18.) However, Respondent only requires that WIC authorized vendors be open for business at least eight hours per day, six days per week. (Petitioner's Exhibit 2, at pp. VM-32, VM-46.) There is no evidence that the other two identified stores are not open for at least the minimum time required. (Record as a whole.)

III. Legal Standard

1.

A summary judgment motion before the Court is properly granted where the moving party demonstrates that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. *Prince v. Esposito*, 278 Ga. App. 310, 310 (1) (2006). *See also* Ga. Comp. R. & Regs. 616-1-2-15. When ruling on a motion for summary judgment, the opposing party is given “the benefit of all reasonable doubt, and the court should construe the evidence and all inferences and conclusions arising therefrom most favorably toward the party opposing the motion.” *Moore v. Goldome Credit Corp.*, 187 Ga. App. 594, 595-96 (1988). “A motion for summary judgment should not be granted unless it affirmatively appears from the pleadings and evidence that the party so moving is entitled to prevail.” *Finch v. City of Atlanta*, 232 Ga. 415, 416 (1974). *See generally* O.C.G.A. § 9-11-56(c); *Sanders v. Colwell*, 248 Ga. 376 (1981).

2.

In this matter, Respondent has the burden of proof as to all issues of fact, except as to any affirmative defenses raised by Petitioner. The administrative review is *de novo*, and the standard of proof as to all issues is a preponderance of evidence. Ga. Comp. R. & Regs 616-1-2-.07(1); Ga. Comp. R. & Regs 616-1-2-.21(4).

3.

The sole issue for determination is whether Respondent correctly applied the federal and state statutes, regulations, policies and procedures governing the WIC Program according to the evidence presented. 7 C.F.R. § 246.18(b)(8); Ga. Comp. R. & Regs. 511-8-1-.06(2)(b)(5).

IV. Analysis

1.

WIC is a program of the U.S. Department of Agriculture (“U.S.D.A.”) authorized under the Child Nutrition Act of 1966, 42 U.S.C. §§ 1786 – 1793, to assist women, infants, and children up to age 5, from families with inadequate income by providing them supplemental foods, health care referrals, nutrition services, and nutrition education. 7 C.F.R. § 246.1. (*See also* Respondent’s Exhibit 4, ¶ 2; Respondent’s Exhibit 5, ¶ 2.) The U.S.D.A. has delegated the administration of the WIC program to the states through the provision of cash grants so that the state can administer the WIC Program to eligible individuals and families at no cost. 7 C.F.R. §§ 246.1, 246.3(b); Ga. Comp. R. & Regs. 511-8-1-.04(1)(a). In Georgia, the WIC Program is administered by the Georgia Department of Public Health on behalf of the U.S.D.A. in accordance with specifications found in both federal and state law. *See* 42 U.S.C. § 1786; 7 C.F.R. § 246.1; O.C.G.A. § 31-2A-8; Ga. Comp. R. & Regs. 511-8-1-.04.

2.

Federal regulations provide that a vendor may appeal certain adverse actions imposed by the Georgia WIC Program and that certain appealable adverse actions are subject to full administrative review and others to an abbreviated administrative review. *See* 7 C.F.R. §§ 246.18(a)(1)(i), (ii). Federal regulations further require that Respondent develop procedures for a full administrative review of those adverse actions subject to such a review, which, at a minimum, must include that the matter be heard before an “impartial decision-maker whose determination is based solely on whether the State agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program, according to the evidence presented at the review.” 7 C.F.R. § 246.18(b)(8); Ga. Comp. R. & Regs. 511-8-1-.06(2)(b)(5).

3.

State regulations governing the administration of the WIC Program provide that matters subject to full administrative review must be referred to the Office of State Administrative Hearings (OSAH) for an initial decision. Ga. Comp. R. & Regs. 511-8-1-.06(2)(b)(3). OSAH must “comply with all applicable federal statutes, regulations, and guidelines, including those related to time frames for hearings, release of decisions, and other procedural requirements.” O.C.G.A. § 50-13-43.

4.

In this matter, Respondent terminated Petitioner’s Vendor Agreement for cause, which resulted in a disqualification period of one year, based on a determination that Petitioner had reproduced its State-issued vendor stamp.

5.

Federal regulations provide that each vendor operated by a single business entity constitutes a separate vendor and must be authorized separately from other stores operated by the business entity, with its own unique vendor identification number. 7 C.F.R. § 246.2; *see also* 7 C.F.R. § 246.12(f)(3). Federal regulations further require that WIC vouchers transacted at an authorized store location be stamped with that store location’s unique vendor identification number prior to being deposited at its banking institution using only the State-issued vendor stamp. 7 C.F.R. § 246.12(f)(3). (*See also* Respondent’s Exhibits 9 at pp. 17, 21; Respondent’s Exhibit 10 at pp. 23, 27.) If it is discovered that a vendor has reproduced its State-issued vendor stamp, Respondent will terminate the Vendor Agreement for cause. (Respondent’s Exhibit 2 at Sections III.L and V.(15); *see also* Respondent’s Exhibit 9 at pp. 28 and 34 (#13); Respondent’s Exhibit 10 at pp. 34 and 40 (#13).) Moreover, vouchers submitted for redemption that have not been stamped

with the State-issued vendor stamp will not be paid. (Respondent's Exhibit 9 at p. 21; Respondent's Exhibit 10 at p. 27.)

6.

Petitioner was contractually bound to the terms of the executed Vendor Agreement, which required that it submit WIC vouchers for redemption "in accordance with the redemption and voucher payment procedures outlined in the most recent version of the Vendor Handbook" and expressly prohibited the reproduction of its State-issued vendor stamp. (Respondent's Exhibit 2, Sections III.E.(5) and III.L.) Respondent has established that Petitioner reproduced its State-issued vendor stamp in violation of the terms of its Vendor Agreement and the policies set forth in the incorporated Vendor Handbook. Based on Petitioner's actions in reproducing its State-issued vendor stamp, Respondent was authorized to terminate for cause its Vendor Agreement with Petitioner.

7.

Petitioner argues that WIC policy only provides that Respondent "may" terminate the vendor agreement for cause if a vendor reproduces the WIC vendor stamp, such that Respondent is not mandated to or required to terminate the agreement. (Petitioner's Exhibit 2, at pp. VM-74, VM-75.) Petitioner asserts that Respondent is not authorized in this matter to terminate for cause because the nature and severity of the violation does not warrant termination. However, Petitioner has not shown that Respondent's actions were arbitrary or capricious, or unauthorized. Although the vendor stamp was reproduced without the knowledge of management, under WIC policy Petitioner is responsible for the actions of its employees and agents whether done with or without management's knowledge. (Petitioner's Exhibit 2, at VM-76 and Glossary-19.)

8.

Petitioner further argues that even if Respondent is authorized to terminate the vendor agreement for cause, Respondent is not permitted to impose a one-year disqualification period before Petitioner can reapply to become a vendor because such disqualification is inconsistent with federal law. 7 C.F.R. § 246.12(l). Petitioner asserts that the one-year disqualification period is the imposition of a sanction, which Petitioner argues would require Respondent to establish a pattern of violations and since the reproduction of the vendor stamp was a single incidence and not a pattern of violations, disqualifying Petitioner would be inconsistent with federal requirements regarding imposition of sanctions. 7 C.F.R. § 246.12(l)(2)(i). However, Petitioner has not persuaded the undersigned that Respondent is required to establish a pattern for this particular violation, which is not one of the vendor violations found in the Georgia WIC Program Sanction Schedule but which is instead is one of the basis provided for terminating an agreement for cause. (Petitioner's Exhibit 2, at pp. VM-77 to VM-81; Respondent's Exhibit 10 at pp. 40(#13), 43-45.) Respondent was authorized to terminate for cause based solely on Petitioner's violation of having reproduced the vendor stamp. (Respondent's Exhibit 2; Respondent's Exhibit 4, ¶¶ 7-9; Respondent's Exhibit 9 at pp. 21, 28, 34; Respondent's Exhibit 10 at pp. 27, 34, 40) The one-year period in which Petitioner cannot reapply to become a WIC vendor again is automatically imposed upon the termination of a vendor agreement for cause, which in this case was authorized because of the violation in reproducing the vendor stamp.

9.

Finally, Petitioner argues that Respondent failed to give proper consideration as to whether the one-year disqualification period will result in inadequate participant access. Specifically, Petitioner asserts that Respondent's procedures for determining adequate participant access are

deficient because the policy fails to consider geographic barriers that may exist, and the availability of the other authorized vendors that are within ten miles of the store at issue. However, the "validity or appropriateness of the State agency's participant access criteria and the State agency's participant access determinations" are not subject to Administrative Review. 7 C.F.R. § 246.18(a)(1)(iii)(C); Ga. Comp. R. & Regs. 511-8-1-.06(4)(c). *See also* Petitioner's Exhibit 2, at p. VM-86, VM-118 to VM-119, and VM-145.

V. ORDER

For the foregoing reasons, Respondent's Motion for Summary Determination is **GRANTED**, and Petitioner's Cross-Motion for Summary Determination is **DENIED**. The court hereby **AFFIRMS** Respondent's decision to terminate for cause its Vendor Agreement with Petitioner.

SO ORDERED, this 8th day of December, 2015.



Ana Kennedy
Administrative Law Judge

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

WAL-MART STORES EAST LP,	:	
Petitioner,	:	Docket No.: OSAH-DPH-WICV-1606570-
	:	121-Kennedy
v.	:	
	:	Agency Reference No.: 1606570
GEORGI AGEORGIA DEPARTMENT OF	:	
PUBLIC HEALTH,	:	
Respondent.	:	

NOTICE OF FINAL DECISION

Pursuant to 7 CFR § 246.18(e), review decisions rendered by the Judge are the final State agency action.

FILING A MOTION

Any party that disagrees with this final decision may file a motion for reconsideration or rehearing, or if a default or dismissal order was entered, a motion to vacate or modify the default or dismissal order. The motion must be filed within 10 days of the issuance date of this decision or order and must include the case docket number. A copy of the motion must be served upon all other parties and the original must be filed with:

Clerk, Office of State Administrative Hearings
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, Georgia 30303-1534

PETITION FOR JUDICIAL REVIEW

A petition for judicial review may be filed within 30 days after service of this final decision or order or, if a rehearing is requested, within 30 days after the order thereon. The petition may be filed in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner, or, if the petitioner is a corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the petitioner maintains its principal place of doing business in this state. A copy of the petition must be served simultaneously upon all parties of record and a copy must also be filed with the Clerk at the above address.