



## II. Undisputed Material Facts

1.

Petitioner is the owner of three subsidiary business entities—Winn-Dixie Raleigh, Inc., Winn-Dixie Stores, Inc., and Samson Merger Sub, LLC—each of which own one or more of the Harvey's Supermarket and Winn-Dixie store locations that were terminated by the Georgia WIC Program based on the alleged reproduction of their respective state-issued vendor stamps. Winn-Dixie Raleigh, Inc. owns Harvey's Supermarket #1697 (Vendor Number 0750). Winn-Dixie Stores, Inc. owns Winn-Dixie #166 (Vendor Number 1187) and Harvey's Supermarket #1695 (Vendor Number 1979). Samson Merger Sub, LLC, owns Harvey's Supermarket #1619 (Vendor Number 6430), Harvey's Supermarket #1635 (Vendor Number 6449), Harvey's Supermarket #1608 (Vendor Number 6459), Harvey's Supermarket #1609 (Vendor Number 6456), Harvey's Supermarket #1613 (Vendor Number 6458), Harvey's Supermarket #1624 (Vendor Number 6462), Harvey's Supermarket #1649 (Vendor Number 6466), and Harvey's Supermarket #1663 (Vendor Number 6493). Each of these stores signed individual vendor agreements (the Vendor Agreements). (Respondent's Exhibits 1, 3, 4, 5, 6, 7, 13.)

2.

Pursuant to the Georgia WIC Vendor Handbook, each of the above-mentioned stores was provided a vendor stamp embossed with a unique WIC identification number. All food instruments accepted by the vendor must be stamped with this stamp in preparation for a bank deposit. (Respondent's Exhibit 15, p. 31.)

3.

It is Petitioner's stores' practice to apply their respective official WIC vendor stamps, which read "GA WIC VENDOR" and bear a unique number, to each WIC voucher received before the

stores present any such voucher to a bank for further processing. (Petitioner's Exhibit B, ¶ 5.)

4.

The Vendor Agreements prohibit vendors from reproducing the vendor stamp issued to it by the Georgia WIC Program. By signing the Vendor Agreements, Petitioner and the authorized store locations under its ownership agreed to not reproduce their state-issued vendor stamps. This prohibited activity is echoed in Georgia WIC Program policy as outlined in the Georgia WIC Program Vendor Handbook, which is incorporated by reference in the Vendor Agreements. (Respondent's Exhibits 1 and 3, Section III.L; Respondent's Exhibit 4-7, Section III.K; Respondent's Exhibit 15, pp. 31, 38.)

5.

The Vendor Agreements and the Vendor Handbook provide that reproduction of a state-issued vendor stamp by an authorized vendor is a ground for termination of the Vendor Agreements. (Respondent's Exhibits 1-7; Respondent's Exhibit 15, p. 51.)

6.

WIC vouchers returned by a vendor's bank of first deposit that are stamped with a specific error code, such as "unreadable vendor stamp" or "missing vendor stamp," may be corrected and resubmitted for payment through the vendor's bank deposit. Once a bank returns a voucher due to having an invalid, unreadable, or missing vendor stamp, the vendor has 45 days to correct the error and resubmit the voucher for payment through the bank. (Respondent's Exhibit 15, p. 36.)

7.

The Georgia WIC Program has contracted with CSC to provide and manage its banking system, which includes the processing of transacted Georgia WIC Program vouchers that are deposited by WIC-authorized vendors for payment. (Respondent's Exhibit 11, ¶¶ 3, 4.)

8.

On February 8, 2016, CSC notified the Georgia WIC Program that it identified 150 WIC vouchers deposited by two Harvey's Supermarket store locations—one of which was Harvey's #1635—that were stamped with an unauthorized vendor stamp. The WIC vouchers, which had been previously rejected for having an illegible or missing vendor stamp, were resubmitted by the two Harvey's store locations for payment by the Georgia WIC Program. The resubmitted WIC vouchers contained the imprint of a stamp that was not from the approved, state-issued vendor stamps for these two stores. (Respondent's Exhibit 8, ¶ 8; Respondent's Exhibit 9, ¶ 12; Respondent's Exhibit 11, ¶ 10; Respondent's Exhibit 11-A, p. 2.)

9.

Georgia WIC Vendor Relations and Compliance Consultant, Edwardo Hebbert, investigated CSC's February 8, 2016 report. (Respondent's Exhibit 8, ¶¶ 10, 11; Respondent's Exhibits 8-A to 8-D; Respondent's Exhibit 9, ¶¶ 12-13; Respondent's Exhibit 9-A.)

10.

On February 10, 2016, CSC notified the Georgia WIC Program of an additional 266 WIC vouchers that were stamped with an unauthorized stamp by seventeen of Petitioner's stores. The unauthorized stamp imprinted on the 266 WIC vouchers matched that found on the 150 WIC vouchers identified on February 8, 2016. (Respondent's Exhibit 8, ¶ 14; Respondent's Exhibit 9, ¶ 14; Respondent's Exhibit 9-B; Respondent's Exhibit 11, ¶¶ 13-15; Respondent's Exhibit 11-B, p. 4.)

11.

Mr. Hebbert emailed the Petitioner on February 10, 2016 to inform it that the generic four-digit rotary stamp should not be used. This was the first time Petitioner received indication that their

practice for correcting and resubmitting vouchers to the bank was improper. (Petitioner's Exhibit B, ¶ 10.)

12.

On February 15, 2016, Mr. Hebbert received an email from one of Petitioner's representatives, Justin Lang, informing him that when WIC vouchers were returned by the bank, they were directed to a "centralized corporate team" that processed them for resubmission. He further explained that returned WIC vouchers were stamped with a generic four-digit rotary stamp with the appropriate corresponding vendor number to clarify which particular store the voucher was associated with. The rotary stamp applied a four-digit number only and does not contain any reference to the WIC Program. Petitioner did not intend to "reproduce" any of the stores' state-issued vendor stamps. Instead, Petitioner's only intention was to correct the returned voucher for resubmission by clearly identifying the store's vendor number. Nevertheless, Petitioner immediately stopped using the generic rotary stamp, and, on February 15, 2016, notified Mr. Hebbert that the use of the four-digit rotary stamp had been discontinued. (Petitioner's Exhibit B, ¶¶ 6, 8, 9, 11; Respondent's Exhibit 3-H; Respondent's Exhibit 8, ¶ 18; Respondent's Exhibit 8-H.)

13.

Based upon the investigative findings, the Georgia WIC Program decided to terminate the Vendor Agreements for the seventeen stores implicated on February 8, 2016 and February 10, 2016. (Respondent's Exhibit 8, ¶ 16; Respondent's Exhibits 8-D, 8-H; Respondent's Exhibit 9, ¶ 15.)

14.

Prior to issuing the Notices of Termination for Cause, the Department's Office of Inspector General's WIC Program Investigations Unit ("OIG") completed participant access assessments for each store to determine whether terminating the stores would result in inadequate participant access. Per Georgia WIC Program policy, inadequate participant access occurs when there is not another authorized WIC vendor within ten miles of the vendor who has committed the violation. At the conclusion of the assessment, the Georgia WIC Program determined that termination of eleven of the seventeen stores implicated would not create inadequate participant access because at least one other WIC-authorized store was located within ten miles of each of the eleven stores. Accordingly, Notices of Termination for Cause were issued against the following stores: Winn-Dixie #166, Harvey's #1697, Harvey's #1695, Harvey's #1619, Harvey's #1635, Harvey's #1609, Harvey's #1613, Harvey's #1608, Harvey's #1624, Harvey's #1663, and Harvey's #1649. (Petitioner's Exhibit A; Respondent's Exhibit 8, ¶¶ 17, 19; Respondent's Exhibit 9, ¶ 17; Respondent's Exhibit 10, ¶¶ 8, 10; Respondent's Exhibit 10-D to 10-N; Respondent's Exhibit 13-15.)

15.

Petitioner requested an administrative review of the Department's decisions by written request, dated March 1, 2016. (Petitioner's Exhibit A.)

### **III. Legal Standard**

1.

A summary judgment motion 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); 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. Atlanta*, 232 Ga. 415, 416 (1974); *see also* O.C.G.A. § 9-11-56(c); *Sanders v. Colwell*, 248 Ga. 376, 378 (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**

##### *I. Background*

1.

WIC is a program of the United States 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

from families with inadequate income by providing them supplemental foods and nutrition services. 7 C.F.R. § 246.1; *see also So v. Ledbetter*, 434 S.E.2d 517, 667 (1993). The U.S.D.A. has delegated the administration of the WIC program to the states through the provision of cash grants. 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 Respondent 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 while others are subject 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, which, at a minimum, must include that the matter be heard before an “impartial decision-maker, whose determination is based solely on whether the [s]tate agency has correctly applied [f]ederal and [s]tate 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 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.

The Georgia WIC Program utilizes a retail food delivery system, providing the food benefits to WIC participants through authorized vendors. *See* 7 C.F.R. § 246.12(b). Authorized vendors are owners of retail grocery establishments that accept WIC food instruments and cash value vouchers in exchange for supplemental food items prescribed on a voucher. *See* 7 C.F.R. §§ 246.2, 246.12(e).

5.

Authorized vendors must enter into a vendor agreement with the Georgia WIC Program. *See* 7 C.F.R. § 246.12(h)(1). Authorized vendors must comply with the vendor agreement, federal and state statutes, regulations, policies and procedures governing the WIC Program, and the vendor selection criteria, including any changes made thereto during the agreement period. 7 C.F.R. § 246.12(h)(3)(xxiii); Ga. Comp. R. & Regs 511-8-1-.05; *Vendor Agreements*, Section III. The Vendor Agreement outlines the relationship between an authorized vendor and the Georgia WIC Program, including each party's responsibilities.

## *II. State-Issued Vendor Stamps*

6.

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, each with its own unique vendor identification number and vendor stamp. 7 C.F.R. § 246.2; *see also* 7 C.F.R. § 246.12(f)(3). WIC vouchers transacted at an authorized store location must 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); *Georgia WIC Program Vendor Handbook*, p. 31. Only WIC vouchers stamped with an authorized vendor's identification number using its state-issued vendor stamp will be paid. *Id.* WIC vouchers stamped with an unauthorized vendor stamp will not be paid. *Id.*

7.

The Vendor Agreements and the Vendor Handbook provide that the Vendor Agreements may be terminated for cause if the vendor "reproduces" its WIC vendor stamp. *Georgia WIC Program Vendor Handbook*, at p. 31, 51; *Respondent's Exhibits 1 and 3*, at Section III.L; *Respondent's Exhibits 4-7*, at Section III.K. Neither the Vendor Agreements nor the Handbook contain any definition of what it means to reproduce the vendor stamp.

8.

This case falls on the meaning of the word "reproduce." The parties agree that when a term is undefined, courts routinely look to the dictionary to determine its usual and common meaning. *See, e.g., Am. Nat. Prop. & Cas. Co. v. Amerieast, Inc.*, 297 Ga. App. 443, 446-47 (2009) (internal citation omitted). Merriam-Webster defines "reproduce" as "to make a copy of" and "to produce something *that is the same as or very similar to.*" *Reproduce, Merriam-Webster.com*, 2016, <http://www.merriam-webster.com/dictionary/reproduce> (Apr. 28, 2016) (emphasis added).<sup>1</sup> Petitioner argues that it did not "reproduce" the vendor stamp because it did not attempt to recreate the vendor stamp, but instead used only a generic rotary stamp in an effort to clarify or add the vendor numbers only on vouchers the bank returned. The Court agrees that when applying the ordinary meaning of the word "reproduce," the Harvey's and Winn-Dixie stores did not reproduce their official WIC vendor stamps.

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<sup>1</sup> The parties agreed that this was the appropriate definition for the term "reproduce."

9.

Respondent contends that Petitioner reproduced its stamps because it utilized an unauthorized stamp to process WIC vouchers for payment. In so arguing, Respondent states that “reproduction” encompasses any activity engaged in to process WIC vouchers that affects “the same end result as that rendered by using the authorized, [s]tate-issued vendor stamp . . . .” The Court is not persuaded that utilizing a generic rotary stamp to clarify vendor numbers on returned vouchers constitutes reproduction of a vendor stamp that would authorize termination of the Vendor Agreement. However, the WIC Program Handbook does state that food instruments stamped with an unauthorized vendor stamp will not be paid. *Georgia WIC Program Vendor Handbook*, p. 31. Additionally, the WIC Program Handbook states only that reproduction of a stamp will result in termination, with no mention of unauthorized stamps. *Georgia WIC Program Vendor Handbook*, p. 31-38.

10.

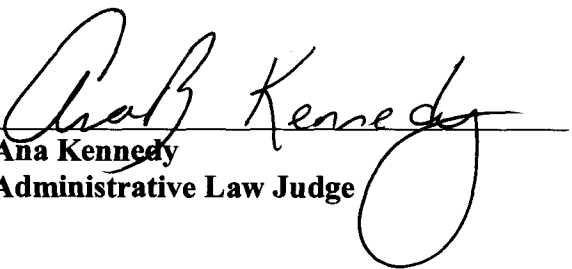
This case is distinguished from a previous matter considered by OSAH wherein a vendor reproduced an identical stamp because the previous stamp was damaged. See *Wal-Mart Stores East v. Ga. Dep’t of Pub. Health*, No. OSAH-DPH-WICV-1606570-21-Kennedy (Dec. 8, 2015). Here, the store merely stamped the WIC vendor numbers on the vouchers that the bank had returned as a correction method. The Vendor Handbook contains no guidance on how to correct illegible vendor stamps. As the drafter of the agreement, the WIC Program had an opportunity to define appropriate methods for correction, but chose not to. It was therefore fair and reasonable for a vendor to interpret its authority to correct returned vouchers to include methods such as handwriting the store number, stamping the store number, or typing the store number, rather than re-stamping all the vouchers with the state-issued stamp until such time that Respondent clarified

that such methods are not acceptable. While Petitioner's method of correction was determined to not be appropriate and may properly result in non-payment of the vouchers, the correction method was nonetheless reasonable to the extent that it did not constitute a "reproduction." Accordingly, Petitioner's Vendor Agreements are not subject to termination.

**V. ORDER**

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

**SO ORDERED**, this 2<sup>nd</sup> day of May, 2016.

  
**Ana Kennedy**  
**Administrative Law Judge**