

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

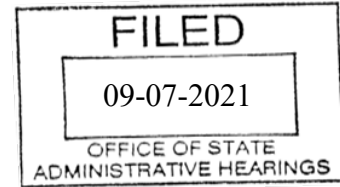
SPORTZ CENTER ACADEMY, INC.,
Petitioner,

v.

**GEORGIA DEPARTMENT OF EARLY
CARE AND LEARNING,**
Respondent.

**Docket No.: 2204795
2204795-OSAH-DECAL-SFSP-44-Teate**

Agency Reference No.: 08466



FINAL DECISION

I. Introduction

Petitioner Sportz Center Academy, Inc. (“Sportz Center”) appeals adverse action for reclaimed meals in the amount of \$179,475.43 and disallowance of reimbursement for meals in the amount of \$113,285.31 with the Summer Food Service Program (“SFSP”) issued on August 9, 2021 by Respondent Bright from the Start: Georgia Department of Early Care and Learning (“DECAL”). Sportz Center appealed on August 10, 2021, and subsequently submitted its documentation and statement for the record review as required by 7 C.F.R. § 225.13(b)(4). DECAL filed the case with the Office of State Administrative Hearings (“OSAH”) on August 26, 2021, and Sportz Center filed responsive documents on August 31, 2021. For the reasons indicated, DECAL’s action reclaiming meal reimbursements in the amount of \$179,475.43 and disallowing reimbursement of meals in the amount of \$113,285.31 is **AFFIRMED**.

II. Findings of Fact

1.

The SFSP is a federally funded, state-administered program that was established to ensure children receive nutritious meals when school is not in session. See Affidavit of Sonja Adams, p. 1, ¶¶ 4-5. The program operates through sponsors that utilize sites approved by DECAL to feed

children free of charge. DECAL, as the administrator of the program in the State of Georgia, oversees SFSP reimbursements to program operators authorized to serve free healthy meals and snacks to children and teens. See 7 C.F.R. § 225.1. DECAL is also responsible for providing qualified consultative, technical, and managerial personnel to administer the program, monitor performance, and measure progress in achieving program goals. See 7 C.F.R. § 225.6(a). Accordingly, DECAL must schedule compliance reviews to deter abuse and justify reimbursements.

2.

Sportz Center applied to DECAL after completing the required training to become a sponsor with the SFSP. See Affidavit of Shelia Robinson, pp. 2-3, ¶¶ 6-7. On June 17, 2014, Sportz Center's agreement with DECAL to participate in the federally funded SFSP became effective. See Affidavit of Sonja Adams, pp. 2-3, ¶¶ 9-13; Sportz Center Participation Agreement.

3.

During its 2021 operational year, DECAL received a complaint in reference to Sportz Center's operation of its SFSP. See Affidavit of Aleisha Golden, pp. 2-3, ¶ 7. In response, DECAL assigned the complaint investigation to its representative MH Miles Company, CPA PC ("MHMC"). MHMC has a contract with DECAL to provide review and consulting services for the Child and Adult Food Care Program and the SFSP. Review services include agreed-upon procedure reviews, compliance reviews, and special/complaint investigations. See Affidavit of Cherese Myree, pp. 1-2, ¶¶ 4-6; Affidavit of Shelia Robinson, p. 1, ¶ 4.

4.

Upon receipt of a review assignment to conduct a complaint assignment, reviewers make an unannounced visit to the review location to investigate the allegations of noncompliance. The

investigation consists of using the online review tool in ATLAS, DECAL's web-based system that provides participants with access to all nutrition program functions, and corresponding instructions to evaluate a program's operations in accordance with program guidance, regulations, handbooks, memorandums, etc. Additionally, the reviewer assesses possible rule violations listed in the complaint intake form along with any other potential violations observed. Once the review is completed, an exit conference is conducted which includes providing a written summary of the findings based on the information evaluated as part of the review. The review staff also discusses and communicates the findings verbally to the designated sponsor contact, and the written findings are made available via ATLAS. See Affidavit of Chereese Myree, p. 2, ¶ 6.

5.

As a sponsor, Sportz Center is required to maintain documentation to support the accuracy of the reimbursement claims submitted to DECAL on behalf of each of its sponsored sites, as well as documentation to support that all expenditures paid with funds from the reimbursements are paid in accordance with state and federal regulations, Food and Nutrition Service guidance, DECAL policies, handbooks, memorandums, etc. It is also expected, in accordance with SFSP Policy 03-5, that program records will be available upon request by the program contact. In the absence of the program contact, a program alternate must be available to provide the records. See Affidavit of Shelia Robinson, p. 3, ¶ 8.

6.

MHMC received an assignment from DECAL's Audits and Compliance Division in March 2021 requesting review of Sportz Center's program operations. MHMC commenced its complaint investigation on April 2, 2021. They began the investigation that day at Sportz Center's office at 5330 Snapfinger Woods Drive, Decatur, Georgia 30035, which is the same location as the Sportz

Center site. See Affidavit of Chereese Myree, pp. 2-4, ¶¶ 7, 10. Another review team began its investigation the same day at Sportz Center’s other location at 1175-C South Hairston, Stone Mountain, Georgia 30088. See Affidavit of Shelia Robinson, pp. 3-4, ¶¶ 9. Inasmuch as the Stone mountain location was closed upon their arrival, the second review team joined the other review team at the Sportz Center office. It was determined no meals were being served there. See Affidavit of Shelia Robinson, p. 4, ¶ 9.

7.

While onsite at the Sportz Center’s office, reviewers requested all the meal count forms, receipts, bank statements, monitoring forms, and documents to support the claims for reimbursement and costs for the months of January, February, and March 2021. Sportz Center failed to provide any of the requested records at that time. See Affidavit of Chereese Myree, pp. 3-4, ¶¶ 8, 11; Affidavit of Shelia Robinson, p. 5, ¶ 12. According to Director Shalika Johnson, the office where the records are maintained was locked, and Constance Chatmon, Sportz Center’s program contact, was the only employee with a key. Johnson thereafter contacted Chatmon, who stated that “she was at the hospital and unable to retrieve the key to provide access to the documents.” See Affidavit of Shelia Robinson, p. 5, ¶ 12. Johnson was informed that the requested records were required to be submitted upon request and would result in reclaimed meal reimbursements if not provided. Johnson confirmed that she was aware that the documents were required to be submitted upon request. Nevertheless, the documents were not provided to the reviewers immediately upon request. See Affidavit of Chereese Myree, pp. 3-4, ¶ 8; Affidavit of Shelia Robinson, p. 5, ¶ 12.

8.

While MHMC staff were still on the premises of Sportz Center’s office, the review team

contacted Aleisha Golden, the compliance manager for DECAL. Cherese Myree, the vice president of MHMC, informed Golden that the MHMC staff requested records for January through March 2021, but Johnson informed them that the office housing the records was locked and she did not have a key. Golden advised Myree to take appropriate action in accordance with SFSP Policy 03-5 if records were not provided and access was not granted. See Affidavit Aleisha Golden, p. 7, ¶ 16; Affidavit of Cherese Myree, p. 6, ¶ 16. Golden confirmed that Sportz Center's management plan indicated that records would be located at its office at 5330 Snapfinger Woods Drive, Decatur, Georgia, and that the records would be made available upon request. See Affidavit Aleisha Golden, pp. 7-8, ¶ 16. Golden then directed Myree to allow Sportz Center a two-hour extension to gain access to the locked room and provide the records. Golden also advised Myree to notify Sportz Center that based upon the recordkeeping requirements of SFSP Policy 03-5, the claims for January and February 2021 would be reclaimed and the claims for March 2021 would be disallowed. See Affidavit Aleisha Golden, p. 8, ¶ 16.

9.

On April 12, 2021, MHMC returned to Sportz Center's office. Myree contacted Golden, who informed her that the January through March 2021 records were provided but contained noticeable discrepancies. Myree was directed to take the records, but the findings would remain that all meals for January and February 2021 would be reclaimed and the meals for March 2021 would be disallowed. Golden also asked Myree to ensure Sportz Center was aware that providing the records would not prevent or change the reimbursement reclaim or disallowance per SFSP Policy 03-5. See Affidavit Aleisha Golden, p. 8, ¶ 17; Affidavit of Cherese Myree, pp. 6-7, ¶ 17.

10.

At the conclusion of the review, Sportz Center was given numerous institutional and site

level findings, but only two findings resulted in adverse actions. See Affidavit of Cherese Myree, pp. 7-9, ¶¶ 18-22; Affidavit of Shannon Goff, pp. 5-6, ¶ 10(l). Specifically, the reimbursements for January 2021 in the amount of \$88,265.45 and February 2021 in the amount of \$91,209.98 were reclaimed, and the reimbursement for March 2021 in the amount of \$113,285.31 was disallowed. The summary of the findings and the adverse actions were discussed with Chatmon and Johnson. See Affidavit of Cherese Myree, p. 9, ¶¶ 23-24.

11.

DECAL's appeals procedures, in accordance with 7 C.F.R. 225.13, provide that Sportz Center is allowed to refute the adverse actions by requesting a written review of the record or a hearing. The request for a hearing or written review of the record must be submitted to DECAL in writing within ten calendar days following the date of receipt of the DECAL's notice of adverse action. See 7 C.F.R. § 225.13. In June 2021, DECAL received a request for appeal in opposition to the reclaim and disallowance of meals reimbursement by Sportz Center. See Affidavit of Aleisha Golden, p. 8, ¶ 18.

12.

On June 8, 2021, Robyn Parham, a compliance supervisor, notified Sportz Center that the SFSP review had been selected to undergo a quality assurance/second party review. The findings and appeal rights were withdrawn pending the outcome of the review. See Affidavit of Aleisha Golden, p. 8, ¶ 19. In preparation for this review, a supervisor or manager uses a quality assurance checklist, reviews instructions, reports writing guidelines, policies, memos, and regulations, and reviews all supporting documentation to complete the assessment. See Affidavit of Shannon Goff, p. 2, ¶ 7. The primary purpose of the review is to assess whether the cited findings and adverse action was appropriate and determine whether the review was conducted correctly in accordance

with current instructions and policies. Shannon Goff was the compliance supervisor assigned to the quality assurance/second party review. As a result of the quality assurance/second party review, only minor revisions were made to the complaint investigation findings. The minor revisions did not alter the findings and adverse actions originally issued by MHMC at the completion of the complaint investigation. Goff notified Chatmon of the changes and that a MHMC representative would be contacting them. See Affidavit of Shannon Goff, pp. 2-3, 7, ¶¶ 7-9, 14.

13.

On August 9, 2021, the MHMC review team conducted an exit conference with Chatmon, informing her of MHMC's findings. See Affidavit of Chereese Myree, p. 9, ¶ 24.

14.

Chatmon forwarded a letter to DECAL, notifying DECAL that Sportz Center was appealing the January and February 2021 reclaims and the March 2021 disallowance. Specifically, Sportz Center stated it is "requesting a hearing on January and February being recouped, and to release the hold on March funds that have been held for one month." Chatmon also admitted that "some funds should be recouped." See Sportz Center's Appeal Request Letter. Within the same hearing request, Chatmon blames the absence and unavailability of the program records on the following: some files were damaged in a flood; Sportz Center was unaware that the flood had to be reported to DECAL; Chatmon's illnesses caused her to be in and out of the hospital; and unexplained malicious acts. See Sportz Center's Appeal Request Letter. To prove that a flood occurred, Sportz Center submitted to DECAL a plumbing invoice, receipts from Home Depot, and photographs of water on its floors. See Sportz Center's Photographs and Invoices. When Chatmon was contacted about the type of appeal she desired for the adverse actions against Sportz Center,

she opted for a record review before OSAH. See Email Correspondence (Aug. 9-11, 2021).

15.

On August 31, 2021, Sportz Center filed two documents: a meal pattern waiver form, and a combined waiver request form. Sportz Center failed to provide any explanation as to these documents' relevancy to this records review. See Sportz Center Meal Pattern Waiver Form; Sportz Center Combined Waiver Request Form.

III. Conclusions of Law

1.

DECAL bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2.

The SFSP is a reimbursement program that requires sponsors to submit claims for reimbursement within thirty calendar days following the end of the month being claimed. See 7 C.F.R. § 225.9(d); SFSP Policy 17-19. Claims for reimbursement shall report information in accordance with the financial management system established by DECAL and in sufficient detail to justify the reimbursement claimed and to enable the agency to provide reports of the SFSP operation required. See 7 C.F.R. §§ 225.8(b), 225.9(d)(5); SFSP Policy 17-19. In submitting a claim for reimbursement, the sponsor must certify that the claim is correct and that records are available to support the claim. "Failure to maintain such records may be grounds for denial of reimbursement for meals served claimed during the period covered by the records in question." 7 C.F.R. § 225.9(d)(5). DECAL must forward reimbursement within forty-five days of receiving a valid claim. 7 C.F.R. § 225.9(d)(4). However, if DECAL "has reason to believe that a sponsor . . . has engaged in unlawful acts in connection with its Program operations, [then] evidence found in

audits, reviews, or investigations shall be the basis for nonpayment of the applicable sponsor's claim for reimbursement." See 7 C.F.R. § 225.9(d)(10).

3.

Sportz Center entered into an agreement with DECAL to become a participant in the SFSP effective June 17, 2014. See Sportz Center Participation Agreement. In this agreement, DECAL agreed, to the extent the funds are available, to reimburse Sportz Center according to applicable requirements, SFSP regulations, and any amendments thereto. DECAL also agreed to monitor Sportz Center's "management and compliance with applicable requirements and regulations of the SFSP through reviews, audits, agreed-upon-procedures reviews, and complaint investigations." Id. DECAL reserved the right to "communicate directly with any approved site that participates in the program through a sponsor and to conduct unannounced reviews." Id. Likewise, Sportz Center agreed to "accept final financial and administrative responsibility for management of an effective program and to comply with the SFSP regulations under 7 C.F.R. § 225 any instructions or procedures issued in connection therewith, and the SFSP policies and guidance of [DECAL] including, but not limited to, attending training and maintaining records." Id. Furthermore, Sportz Center also agreed that "noncompliance with Federal regulations and [DECAL policies] could lead to adverse action." Id.

4.

Furthermore, Sportz Center is subjected to designated compliance reviews and audits. When such reviews occur, any requested records will only be accepted and reviewed if made available upon request and retrieved from the location as stated within the recordkeeping section of Sportz Centre's management plan. See SFSP Policy 03-5. Complying with SFSP Policy 03-5 ensures the integrity of Sportz Center's record maintenance system and eliminates the possibility

of improper revisions and alterations. See id. Also, SFSP Policy 03-5 requires that Sportz Center maintain all records relating to program administration and financial responsibility at the location indicated in its management plan for the current year plus a period of three years after the date of submission of the final claim for the fiscal year to which they pertain. See id. Importantly, SFSP Policy 03-5 states:

Failure to maintain Program records in accordance with Federal regulations, DECAL policy, and/or guidance shall result in a review finding, as well as a meal reclaim for the period in question (the records cover), a cost disallowance for the period in question (the records cover), and/or the sponsor being declared Seriously Deficient.

See id. Additionally, failure to maintain and provide program records could cause denial of reimbursement for costs associated with such records. See 7 C.F.R. §§ 225.12(a), 225.15(a)(1), 225.15(c)(1).

5.

DECAL policy also requires “[i]n the event the Program Contact or designated principal cannot be present at the center/sponsor’s office to provide the requested records, the Program Contact or designated principal must . . . adequately train their Program Alternate on how to effectively retrieve Program records. This also includes providing him or her with the tools needed to retrieve them.” SFSP Policy 03-5. Records must be “available upon request,” meaning the records are immediately retrievable and accessible to the requestor. Id. Moreover, “[t]he absence of the Program Contact or designated principal should neither hinder the availability and accessibility of records nor prevent the reviewer from conducting the review.” Id. Failure to provide a key is a violation that inhibits accessibility contributing to the finding. See id. The absence of the program contract or program alternate as indicated within the online management plan and on the day of the review “will result in an automatic meal reclaim for the period covered

by the records in question for the period covered by the records in question, and the sponsor being declared seriously deficiency.” Id.

6.

Here, Sportz Center was unable to provide records upon request by DECAL; it was not until ten days later that the records were ready to be reviewed. Chatmon failed to provide Johnson with a key to the office so she could access the requested records. The key should have been conveniently located at the site to ensure the records were always accessible for review. DECAL provided Sportz Center the maximum two-hour extension to obtain the records and still failed to provide them. It was not until ten days later that DECAL received the requested records. As such, Sportz Center failed to adhere to the terms of its agreement and thus violated SFSP Policy 03-5 and 7 C.F.R. § 225 regulating recordkeeping, warranting the reclaiming of its January and February 2021 meals reimbursement and disallowing the reimbursement of its March 2021 meals.

7.

In Sportz Center’s appeal, Chatmon contends that the January through March 2021 records were destroyed by a flood. However, neither Chatmon nor Johnson mentioned the requested records were destroyed during the MHMC site visit. Even if such an event occurred, Sportz Center did not follow DECAL’s disaster preparedness guidance which required Chatmon to notify DECAL when program records were partially or fully destroyed. Organizations must notify DECAL of the circumstances that led to the loss, the dates of the losses and types, and the approximate age of the destroyed records. See DECAL Disaster Preparedness Information (Oct. 10, 2018). Sportz Center merely submitted what appeared to be an invoice for plumbing work, receipts from Home Depot, and photographs of its rooms with water on the floor. Therefore, the Court finds this excuse for failing to provide program records for January through March 2021

uncredible and irrelevant.

8.

DECAL has met its burden and proved, by a preponderance of the evidence, that the meal reclaim of \$179,475.43 and disallowance of reimbursement of \$113,285.31 should be affirmed.

IV. Decision

DECAL's action reclaiming meals in the amount of \$179,475.43 and disallowing reimbursement of meals in the amount of \$113,285.31 is **AFFIRMED**.

SO ORDERED, this 7th day of September, 2021.



Steven W. Teate
Administrative Law Judge

