



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. AGR 2183-15

AGENCY DKT. NO. N/A

WORD OF LIFE,

Petitioner,

v.

NJDA SUMMER FOOD SERVICE

PROGRAM (SFSP),

Respondent.

Priscilla McCoy, Executive Director, for petitioner pursuant to N.J.A.C. 1:1-5.4(a)(5)

Cheryl R. Clarke, Deputy Attorney General, for respondent (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Record Closed: August 15, 2015

Decided: October 15, 2015

BEFORE **JOHN SCHUSTER III**, ALJ:

STATEMENT OF THE CASE

In this matter Word of Life (petitioner) appeals the finding of the New Jersey Department of Agriculture (NJDA) that it was overpaid for meals claimed to have been served in the Summer Food Service Program (SFSP) petitioner was running. Word of

Life is also appealing the directive to reimburse the NJDA the monetary equivalent of the disallowed meals. On December 4, 2014 NJDA advised petitioner of the claimed overpayment \$24,618.62. The parties had various communications and petitioner formally appealed the readjustment of meal count figures on January 22, 2015. The matter was transmitted to the Office of Administrative Law (OAL) on February 12, 2015 as a contested case pursuant to N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F- 1 to -13. The matter was heard on February 25, March 6, and April 10, 2015. Post-hearing briefs were submitted and the record closed on August 15, 2015 to give the parties an opportunity to submit rebuttal pleadings.

The NJDA administers the Summer Food Service Program (SFSP). That program provides breakfast and lunch to children of low income families and is an extension of the food program provided by schools during the academic year. The program is run locally by a sponsor such as petitioner who may do so at one or multiple sites. The program is sponsored by the United States Department of Agriculture. As part of the NJDA's administration it is required to oversee sponsors performance and ensure that federal regulations are complied with. See 7 C.F.R. § 225.6. This includes providing training to sponsors and doing site visits. It is also responsible for disbursing funds to program sponsors and reconciling records to confirm regulation compliance. Generally, except for some start up money, the NJDA reimburses a participating sponsor for meals served provided the sponsor satisfies the regulatory requirements. The sponsor also receives an administration fee. If it is later discovered that a sponsor was reimbursed an amount claimed but did not comply with regulatory requirements the NJDA is required to recover the overpayment as that portion of the reimbursement becomes disallowed. See 7 C.F.R. § 225.12(a). Word of Life has been a sponsor in this program for multiple years including the summer of 2014 which is the time frame relevant to the issues in this matter. During that period NJDA was required and did conduct administrative reviews of Word of Life's program sites to ensure regulatory compliance. See 7 C.F.R. § 225.7(d). These consisted of site visits where meals were being served and recordkeeping reviews.

FINDINGS OF FACT

Based on the testimony of the witnesses and a review of the documentary evidence I made the following findings:

Regulations, as discussed below, require that the pre-approved number of meals be served only at specified times preselected by the sponsor. They also require someone make an accurate count of meals served while the service is occurring. As a result of visiting petitioner's meal distribution sites and reviewing petitioner's records NJDA discovered regulation non-compliance and took the actions specified as follows:

1. At the Vineland PAL site the sponsor claimed 711 breakfasts served in July but records could only verify 617. Also sponsor claimed 701 lunches served but records could only verify 607. NJDA disallowed 94 breakfasts and 94 lunches for the week of July 7 to July 11 because the claimed meals exceeded the count form collected at the site. Petitioner did not challenge this disallowance.
2. At the Delsea Village site for July the sponsor claimed 699 lunches but records verified 729 were served. Sponsor received a credit for underclaiming 30 lunches. For August the sponsor claimed 598 breakfasts served but only 596 could be verified. NJDA disallowed 2 breakfast meals. Petitioner did not challenge this disallowance.
3. At the ABC Learning Academy site the sponsor claimed 2105 breakfasts served in July but only 1148 could be verified because there was no meal count record for the entire week of July 7 nor for July 14 and 15. For July 16, 110 breakfast meals were disallowed because they exceeded the number of permitted meals served. Therefore NJDA disallowed 957 breakfasts. Also for July the sponsor claimed 2264 lunches were served but only 1403 could be verified based on meal counts. Therefore NJDA disallowed 861 lunches. For August the sponsor claimed 2194 lunches served but only 2028 could be

verified by the site records and more meals were claimed than were permitted to be served. Therefore NJDA disallowed 166 lunches.

4. At the New Jersey Youth Corp site the sponsor claimed 60 lunch meals were served the week of August 18 to August 22. An inspection by the State monitor was held on August 19 and it was observed and confirmed that the lunch meals were served at 11:15 a.m. instead of the approved serving time of 12:00 p.m. As a result, those 12 lunch meals were disallowed as being served outside the approved time.
5. At the BHS site the sponsor claimed 170 breakfasts served in August above the maximum number of breakfasts that were allowed to be served. As a result 170 breakfasts were disallowed. In addition this sponsor claimed 145 lunches served during that month above the maximum amount permitted. Therefore 145 lunches were disallowed by NJDA.
6. At the Greater Bridgeton Family site the NJDA disallowed 550 breakfasts and 500 lunches for the two week period between July 21 and August 1. Those meals were disallowed as a result of the sponsor not being able to produce a site record form for that period to substantiate the number of meals served. Petitioner did not dispute the disallowance.
7. At the Child Family Center site 450 breakfasts and 450 lunches were disallowed all being claimed by the sponsor as being served in the week of July 14 to July 18. The reason for the disallowance was because the site supervisor could not produce a site record form for that week showing what meals were served on each day. Consequently although sponsor claimed 1,735 breakfasts served only 1,285 breakfasts could be verified. Similarly the sponsor claimed 1,733 lunches served but only 1,283 could be verified. The difference on each being the 450 breakfasts and 450 lunches disallowed. For this site in the month of August the sponsor claimed 375 breakfasts served in the week of August 18 to August 22 but the site record form only indicated 263 breakfasts were served during that week. Consequently 112 breakfasts

were disallowed. Similarly the sponsor claimed 375 lunches were served that week but only 219 could be verified therefore 156 lunches were disallowed. In addition, 100 of those breakfasts and lunches exceeded the amount of meals permitted to be served at that location.

8. At the Kingdom Kids site the sponsor claimed for the week of July 28 to August 1, 87 breakfasts served but NJDA only approved 69 breakfasts during that week. The difference of 18 breakfasts were disallowed because they were served outside of the approved time for breakfast to be served. During that same week 87 lunches were also claimed by the sponsor but only 67 were approved. The difference was 20 lunches disallowed as a result of there not being a site record form to support that those meals were in fact served.
9. At the West Gate Community Program the sponsor claimed 75 breakfasts and 75 lunches for the week of July 28 to August 1. Because no site record form was produced for that week all 75 breakfasts and lunches were disallowed.
10. The Park Towne Apartments site was shut down as a result of multiple program violations as well as health and sanitary concerns.
11. At the Rescue Community Program site for the week of July 28 to August 1 the NJDA disallowed 75 breakfasts and 75 lunches as a result of the sponsor not being able to provide site record forms to the inspector during a site visit.
12. At the Port Norris Fitness Club site the sponsor claimed 125 breakfasts were served during the week of July 7 to July 11. Because this site was only approved for lunch service all 125 claimed breakfast meals were disallowed.
13. During site visits by SFSP personnel it was also observed that excess meals were claimed as served when they were not, some meals were served outside the approved service times and some meals were dispensed for

unapproved off-site consumption. In addition, one site, Park Towne Apartments, was shut down immediately because meals were served by leaving food in an unattended box for anyone to take with no site record keeping and no supervision or refrigeration present.

14.1 **FIND** petitioner claimed to be entitled to reimbursement for 25,944 breakfasts and 29,504 lunches. However, as a result of site inspections and final program audit petitioner is only entitled to credit for 23,446 breakfasts and 24,852 lunches.

15.1 further **FIND** petitioner received total advance payments of \$160,252.78 being \$145,634.16 in food services and \$14,618.62 in administrative costs.

16.1 further **FIND** as a result of the NJDA audit resulting in disallowed meals petitioner is only entitled to \$135,519.89 being \$122,915.56 in food service and \$12,604.33 in administrative costs.

LEGAL ANALYSIS

The Summer Food Service Program is a federal program for underprivileged children administered by the New Jersey Department of Agriculture. As a federal program the Department is required to comply with and enforce the federal regulations governing the SFSP. Pursuant to 7 C.F.R. § 225.15(c) sponsors must maintain accurate financial records showing costs of product and daily records showing the number of meals served for reimbursement. In order to comply with 7 C.F.R. § 225.11(c)(4) a sponsor must record the number of meals served as they are being distributed. Failure to maintain "point of service" meal counts results in a disallowance of reimbursement for those meals.

A sponsor must designate the time period when each meal will be served at each site location. 7 C.F.R. § 225.16(c)(3) makes meals served outside of approved times ineligible for reimbursement. A sponsor must disclose in advance the number of meals

to be served at each site. 7 C.F.R. § 225.9(f) prohibits reimbursement for meals in excess of those approved.

Federal regulations require strict adherence to its Summer Food Service Program requirements. 7 C.F.R. § 225.12(a) requires the NJDA, as its administering agency, to disallow any sponsor claim for reimbursement and recover any overpayment later discovered for failure of the sponsor to comply with the regulations governing the program. The NJDA has no discretion in that regard.

CONCLUSION

I **CONCLUDE** the proofs indicate a substantial lack of supervision demonstrated by the sponsor which resulted in multiple regulatory violations.

I also **CONCLUDE** petitioner was advanced \$160,252.78 for its running of the 2014 Summer Food Service Program but was only entitled to receive \$135,519.89. I further **CONCLUDE** petitioner was over-advanced funds and owes the NJDA \$24,732.89.

ORDER

I **ORDER** Word of Life to reimburse the State of New Jersey the sum of \$24,732.89.

This decision is final pursuant to 7 C.F.R. 225.13(b)(12).

October 15, 2015
DATE


JOHN SCHUSTER III, ALJ

Date Received at Agency:

October 16, 2015

Date Mailed to Parties:

/cb

APPENDIX

WITNESSES

For petitioner:

Priscilla McCoy

For respondent:

Stephanie Sutton-Page

Margaret Dobbs

EXHIBITS

For petitioner:

P-1 Training Agenda dated June 20, 2015

P-2 Invoice record

For respondent:

R-1 Federal-State Agreement

R-2 Sponsor Application Checklist

R-3 Disallowance violations

R-4 Sponsor-State Agreement

R-5 Application approval letter dated July 15, 2014

R-6 Sponsor guidance booklet

R-7 Site Supervisor's guide

R-8 Letter to petitioner from NJDA dated August 7, 2014

R-9 Letter from petitioner to NJDA dated November 20, 2014

R-10 Not admitted

R-11 Not admitted

R-12 Letter from NJDA to petitioner dated August 7, 2014

R-13 Letter from NJDA to petitioner dated August 7, 2014

R-14 State Program Review

- R-15 Letter to petitioner from NJDA dated December 4, 2014
- R-16 Letter to petitioner from NJDA dated January 14, 2015
- R-17 Not admitted
- R-18 Sponsor Administrative Review Report
- R-19 Meal verification worksheet
- R-20 Notes from petitioner exit interview

Berdecia, Christina

From: Berdecia, Christina
Sent: Friday, October 16, 2015 11:05 AM
To: '(douglas.fisher@ag.state.nj.us)'; '(judith.gleason@ag.state.nj.us)'; '(mary.tovar@ag.state.nj.us)'; Greco, Margaret
Cc: 'Greco, Margaret (Margaret.Greco@oal.state.nj.us)'
Subject: AGR 2183-15 Word of Life (Final Decision)
Attachments: AGR 2183-15 Word of Life (Final Decision).docx

Importance: High

Tracking:	Recipient	Delivery
	'(douglas.fisher@ag.state.nj.us)'	
	'(judith.gleason@ag.state.nj.us)'	
	'(mary.tovar@ag.state.nj.us)'	
	Greco, Margaret	Delivered: 10/16/2015 10:59 AM
	'Greco, Margaret (Margaret.Greco@oal.state.nj.us)'	

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Sincerely,

Christina A. Berdecia, Judicial Assistant 1
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DECISION COVER SHEET

This decision

Has not

**been e-mailed to the parties. Please
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