

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. AGR-SF 7764-14

**MARS COMMUNITY DEVELOPMENT
CORPORATION,**

Petitioner,

v.

**NJDA SUMMER FOOD SERVICE PROGRAM
(SFSP),**

Respondent.

Robert Mosley, Chief Financial Officer **and Brenda Hill-Riggs**, co-owner, on
behalf of petitioner, pro se

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

Record Closed: July 3, 2014

Decided: July 11, 2014

BEFORE **JEFF S. MASIN**, ALJ:

MARS Community Development Corporation (“Mars CDC” or “Mars”) applied to participate as a provider of food services in the Summer Food Service Program, which is administered by the New Jersey Department of Agriculture (“Department”) under a federal program that is under the jurisdiction of the United States Department of Agriculture. The State operates the Program subject to a Federal-State Agreement. (R-1.) By letter dated June 12, 2014, the Department’s Coordinator for the Summer Food Service Program, Cherrie M. Walker, advised Mars that it would not be granted participation in the program as a provider. The letter advised that the denial was based upon three grounds. First, the Department deemed that the application first submitted by Mars on April 15, 2014 was, and as of June 12 remained, incomplete. Second, Mars personnel had failed to attend mandatory training in May 2014, as required. Third,

Mars had failed to obtain required satisfactory State Health Department inspection for its proposed meal preparation location(s). Mars filed an appeal of the decision to deny its application on June 12, 2014. The Department, in accordance with 7 C.F.R. § 225.13, transferred the appeal to the Office of Administrative Law for a hearing and the issuance of a final administrative decision. The hearing was held on July 2, 2014, and the record was held open until close of business on July 3, for the submission of additional documentation and legal information as requested by the judge and by the applicant. These were received and the record closed on July 3, 2014.

Mars is described as the non-profit subsidiary of a for-profit-business owned by Brenda Hill-Riggins and her husband. It is a 501(c)3 corporation and is closely held. Ms. Hill-Riggins, who lives in Florida, comes from Southern New Jersey and described her interest in returning to this State, in which she has always maintained a presence, and involving her business in community-supportive activities in South Jersey, as it has apparently done in the past elsewhere. This attempt to become involved in the Summer Food Service Program was, however, Mars first foray into this program. Ms. Hill-Riggins and Robert Mosley, who she described as having been brought on to assist in the project and who is the Chief Financial Officer (CFO) of Mars CDC, noted that as this was their first involvement in this program, there was a learning curve involved.

Stephanie Sutton-Page, the Department's Assistant Coordinator for the Summer Food Service Program, described the Program as providing nutritional meals for children during the summer months, as an extension of sorts of the meal programs that operate in schools during the school year for children who qualify for the National School Lunch Program, which provides free and reduced rate meals for qualified children. The rules that the Department must follow in regard to the Program are established by the United States Department of Agriculture and set forth in the Code of Federal Regulations ("CFR"). Among these is a deadline for the submission of applications to participate in the Program as a food provider. The CFR refers to participation as a "sponsor." 7 C.F.R. § 225.14. The deadline for this summer's program was June 15, 2014. 7 C.F.R. § 225.6(b)1. However, in order to effectively process the applications, which ultimately numbered 101 and which resulted in 100 approved sponsors operating at over 1,000 feeding sites, the State established an initial

deadline for filing of April 15, with the final decision on the applications to be made by the federal deadline of June 15. Thus, after an application was received by April 15, there was a two-month period during which the applicant could correct, complete or otherwise modify the contents of the application prior to the Department issuing its decision to approve or to deny the application. Mars' application was received on April 15. However, as Ms. Sutton-Page recounted in her testimony, from the Department's initial and later reviews of the application, it was incomplete and deficient in several areas. The initial "review" was undertaken by Ms. Sutton-Page's administrative assistant, Nicole Castelize, on or about April 15. According to Sutton-Page, this consisted largely of organizing the submitted paperwork in the proper order, a cursory check of the material. Sutton-Page then reviewed the application in detail on May 23, 2014, one of many such applications to be reviewed.

A Mars representative attended a mandatory New Sponsor Application Training held on March 14, 2014. At that session, the application process was reviewed in detail and extensive materials concerning the Program and the application process were distributed, including checklists, sample forms and instructions.

In its application, Mars noted its intention to be a self-prep sponsor, that is, rather than serve food prepared by some other entity, it intended to arrange for the preparation of the food itself.

Ms. Sutton-Page noted that when the applicant submits its application it signs the Sponsor Application Package Checklist indicating by the signature that "I have correctly completed and am submitting all the required documents listed above for 2014 Summer Food Service Program approval."

While the testimony presented by the Department's witness involved much regarding alleged deficiencies in the application and an ultimate failure to provide and/or correct deficiencies, the most uncomplicated ground for denial was the asserted failure of any representative of Mars to attend the one mandatory training session, that was scheduled to be offered in two locations, in Bordentown on May 21, and in Edison on May 29, 2014. It is undisputed that no one representing Mars attended either

session. Ms. Sutton-Page testified that a notice of these meetings and of their mandatory nature was sent by regular mail to each of the applicants for sponsorship in April 2014. The notice, in evidence as R-5, refers to “**MANDATORY OPERATIONAL TRAINING**” as the subject of the communication. In the middle of the first page are the words “**THIS SESSION IS MANDATORY,**” in larger font and bolded. Directions to the two sites are included. Ms. Sutton-Page noted that while the document states that reservations for training must be confirmed by calling Ms. Castelize, it is not unusual for applicants to fail to register and to simply appear at the training session.

The notice of this mandatory training was mailed to Mars at 865 Hogbin Road, Millville, New Jersey 08332. According to Ms. Riggins-Hill and Mr. Mosley, this location consists of a farm, with a house and other attendant buildings, where Mr. Riggins has lived for several months and where there are farm employees located. The address was utilized on the appeal letter sent to the Department on June 12, 2014, and is acknowledged as the mailing address for Mars CDC. According to Mosley, the notice of the mandatory training was never received by Mars. However, Ms. Sutton-Page testified that the material was never returned as undelivered. Mr. Mosley testified that as he, Ms. Castelize and Ms. Sutton-Page were in regular contact by telephone and e-mail throughout the period after the submission of the application in April and through the dates of the mandatory training sessions, he would have hoped that seeing that Mars had not registered for one of the sessions, someone would have said something to him about the sessions. However, as Ms. Sutton-Page noted, the Department is never certain who will or will not appear, as many times applicants simply show up without pre-registering, or someone other than the pre-registered representative of the applicant will appear.

A second ground for denial was the failure of Mars to obtain necessary State Health inspector clearance for the food preparation site or sites that Mars intended to utilize. In fact, there were several sites identified at one time or another, but the evidence is that none were ever approved. In regard to this requirement, Ms. Sutton-Page explained that the necessary positive health inspection for these facilities had to be obtained from the State. Supplemental information presented in the record following the hearing in response to my inquiry to the parties indicates that the use of the State

Department of Health for these inspections is required under the terms of the New Jersey Department of Agriculture's Program Management and Administrative Plan, a plan required by and approved by the USDA pursuant to 7 C.F.R. §225.4. Municipal and/or County Health Department approvals, while in other instances sufficient for different regulatory schemes, were not acceptable.

The first feeding sites identified by Mars in its application were St. Paul's Baptist Church, located in Vineland, New Jersey; Asselta Acres, also in Vineland; and Brenmar Farms, located at 865 Hogbin Road, Millville. In respect to each of these, Ms. Sutton-Page testified that the information provided on the Site Information Sheet, a portion of the application, was incomplete. In part, this was because the "School Survey Data" that Mars had chosen to rely upon as the required basis for the fact that the site was in "an area in which poor economic conditions exist (at least 50% needy children)" (that is, eligible for free or reduced lunch in the School Lunch Program) was not appropriate, as the schools listed were not listed as within such areas. In the absence of such a listing, it would be an option to provide enrollment data to verify the site as within an eligible area. As for Brenmar Farm, while Millville Senior High School was the school listed for the "School Survey Data," and that school was listed with 54.1 percent eligible for the School Lunch Program, when Ms. Sutton-Page reviewed this site, she was unclear if this farm provided an appropriate place for congregate feeding, and a pre-approval visit would be necessary. A drive-by of the site was conducted and photos were taken.

Ms. Sutton-Page contacted the State Department of Health to arrange for the required health inspection with the State Department of Health. Patricia VanOrden-Hogue, a Registered Environmental Health Inspector 3 and a thirty-five-year employee of the agency, undertook the inspections. She testified that at first, her Department was told that an inspection was needed at a location in Trenton. According to Ms. Sutton-Page, the Department received a call from a Pastor Moss, who advised that food preparation would take place at 1043 46th Street in Trenton. Department Health Inspector David Kaczka determined that there was no such location in Trenton. At the hearing, Mr. Mosley and Ms. Hill-Riggins were apparently baffled as to why any such representation about this alleged Trenton site had been made to the Department.

Ms. VanOrden-Hogue testified that she undertook an inspection of the Marino Center, a food preparation location identified by Mars CDC. Ms. Sutton-Page explained that when she received the information about the non-existent location in Trenton, she told Mr. Mosley, on May 7, 2014, that since Mars had no approved food preparation site, perhaps Mars should find an existing sponsorship and serve as a food server for such an existing operation during the summer of 2014, while it geared up for the 2015 application period. However, Mosley told her that Mars had another food preparation location, Loreno, as she heard him pronounce it, or as it actually was, Marino Center. She was provided with an address for this facility at 11 Washington Street, Millville, as shown on a lease. However, when Ms. VanOrden-Hogue went there to inspect, she discovered that in fact the location was a private residence. After she inquired, she learned that in fact the Marino Center was located at 11 Washington Street in Bridgeton. She went there and found that it was a catering establishment, which in addition to weddings and birthday events, also provided 338 meals a day for local day care facilities. The supposed operator of the facility, a Mr. Spartinao, was unavailable to meet with VanOrden-Hogue, but he advised her that Bobby Jackson, who was on-site, would assist her during the inspection. However, when she asked Jackson about the number of meals that would be prepared, the type of meals (hot/cold), the preparation and packaging arrangements, the arrangements for transport, and the like, Jackson could offer her no assistance. On the phone, she learned from Spartinao that he anticipated preparing 1,100 hot and cold meals a day. VanOrden-Hogue saw only a small walk-in refrigerator and one stand-up refrigerator. She also was not able to determine whether anyone working there had the required Serve Safe certification. She determined that given the lack of substantive information and the limited facilities she had observed that she could not approve the facility. A follow-up call from Spartinao, in which he expressed his dissatisfaction with her decision, was characterized by Spartinao's "very argumentative" approach. When VanOrden-Hogue conveyed her denial of the Marino Center to Mr. Mosley on June 4, he told her that he might have a church facility that would meet standards for serving as a food preparation site. He was supposed to get back to her by Monday, June 9, but she never heard from him.

The Department's letter denying the application was issued on June 12. By that date, Mars had still not identified a food preparation location for which there existed a State Health Department inspection approving the location. However, in its appeal papers filed on June 12, prior to the federal deadline, Mars identified yet another proposed food service location, not a church, but instead the Cornbread House. When Ms. VanOrden-Hogue was advised of this, she determined, without actually going to the location, that it was "an active restaurant location serving the general public." She testified that prior experience in regard to sites for the Summer Food Program had shown that such a public restaurant was not a suitable location for food preparation or feeding for the Program. Thus, she could not approve the location. This left Mars without any approved site.

As previously noted, the third ground for denial was the incomplete nature of the application as filed by Mars. Taken with the two previously discussed grounds, the failure to attend the mandatory training and the lack of an approved location for food preparation, the lack of a complete application led Ms. Sutton-Page to determine that Mars had failed to demonstrate that it was administratively capable of operating such a food preparation and feeding program. Ms. Sutton-Page detailed many examples of required information either missing from the application or incomplete. Among these noted in her review on May 23 were missing protected class information from the press release that was to be issued on letterhead (it was not presented on letterhead) by the sponsor, missing information for the NWS Site Participation List, no Sponsor Management Plan or training agenda, missing information from the Pre-Award Civil Rights Questionnaire, a missing Financial and Administrative Certification, missing contact numbers, and an incomplete W-9 Questionnaire. There were also problems with the menus that were proffered, which did not meet all of the rather specific requirements set down by the federal regulations, even though these requirements had been the subject of "extensive" training during the first training session in March 2014. She also explained the efforts undertaken to work with the applicant to obtain adequate information to permit a review of a fully complete and sufficient application. Unfortunately, communication between the agency and Mr. Mosley proved difficult and Ms. Sutton-Page could not report that all of the many deficiencies had been cured.

As one example of Mars's deficient submission of required data, Ms. Sutton-Page pointed to its failure to supply an active Data Universal Numbering System (DUNS) number, which signifies registration with the Federal Government's System for Award Management, a registration necessary for the receipt of Federal funds by contractors. The number supplied by Mars was found to have expired on June 30, 2011. Thus, Mars was considered to be in an inactive status. In the application, Ms. Riggins-Hill, President and Chief Executive Officer of Mars CDC, certified that "my agency has registered with the . . . (SAM), which is the federal repository into which an entity must provide information required for the conduct of business as an award recipient or sub recipient. I realize that I am required to update required information about my agency on an annual basis." Given that the registration for the number provided had expired, the company was advised as part of the information provided to it about the deficiencies found in its application, that the SAMs information was incomplete. It was not updated by the time of the hearing on the appeal. Additionally, the lack of an active registration was seen as an indication that Ms. Riggins-Hill had presented a false certification.

At the close of the hearing, Mr. Mosley explained that there were different classes or categories that one could register in the SAM system, and that he had personally registered Mars CDC in February 2014. He claimed to have some documentary proof of this, and was permitted to fax that proof to the judge by close of business on July 3. I have received two faxes. The Deputy Attorney General faxed a printout from the Defense Logistics Agency, purportedly confirming that the DUNS number supplied by Riggins-Hill in her certification of March 28, 2014, expired as of June 30, 2011 and that Mars "is not currently registered in SAM." Mars faxed an e-mail, dated February 25, 2014, sent to Mr. Mosley by "The System for Award Management (SAM) Administrator." This e-mail congratulates Mosley for having "successfully completed the registration process for" Mars CDC in the SAM. It explains that the registration would then undergo "an external validation process with the" IRS (if applicable) and the Defense Logistics Agency's Commercial and Government Entity (CAGE) Case System. Thus, from the available evidence, it appears that Mosley did register Mars CDC in February, but whether that registration was ever validated after review is unknown. The printout offered by the Department indicates that it was last

updated on March 7, 2014, about ten days after the e-mail to Mosley. This document shows that the “CAGE status” is “active.” The “SAM Expiration Date” was June 30, 2011. The word “registration” does not appear on this printout. As such, it is unclear precisely what the relationship is between the information on this printout and that revealed in the e-mail which states that Mosley had registered the company on or about February 25. Without more information, I **FIND** that I cannot conclude that Ms. Riggins-Hill’s Certification to the effect that the company was registered is not accurate.

Much of the applicant’s presentation at hearing was to explain their commitment to community service and to the provision of such in the South Jersey area. Additionally, while acknowledging that Ms. Sutton-Page had been most cooperative and helpful, the company representatives denied receiving the letter concerning mandatory training, and made a point about the fact that even though they had been in frequent contact, by phone and e-mail with Ms. Sutton-Page and her assistant Nicole, neither had mentioned to either Mosley or Riggins-Hill that mandatory training was to be held and that Mars had not registered for that training. Mr. Mosley asserted that if the same effort shown by the agency’s representatives to point out the deficiencies and problems with the application had been put into assisting Mars “to get over the finish line, we wouldn’t be having this conversation,” apparently meaning the application would have been accepted and this hearing would have been unnecessary.

Discussion

The application filed by Mars CDC seeking approval to participate in the Summer Food Service Program was found to be incomplete and eventually was denied by the Department for several reasons. In addition to the incomplete nature of the information supplied or not provided as required, as detailed at length in the record, Mars ultimately failed to have anyone attend the mandatory training session held in May 2014. Every other applicant attended, 100 in all. The testimonial evidence is that the letter sent to the company by regular mail to its acknowledged correct address in Millville was never returned. When mail is placed in the United States Mail Service and addressed to a proper mailing address and is not returned as undeliverable, there may exist a legal presumption that it was properly delivered.

The conditions that must be shown to invoke the presumption are (1) that the mailing was correctly addressed; (2) that proper postage was affixed; (3) that the return address was correct; and (4) that the mailing was deposited in a proper mail receptacle or at the post office. Lamantia v. Howell Tp., 12 N.J. Tax 347, 352 (1992).

The question presented in this case is what level of proof must be demonstrated in order to trigger the presumption of mailing. In the absence of any administrative rule or regulation to the contrary, the traditional preponderance of the evidence standard applies to administrative agency matters. In re Polk, 90 N.J. 550, 561, 449 A.2d 7 (1982); Atkinson v. Parsekian, 37 N.J. 143, 149, 179 A.2d 732 (1962)

[SSI Medical Services, Inc. v. Department of Human Services, Division of Medical Assistance and Health Services, 146 N.J. 614 (1996).]

Here there is no certification of mailing presented, and in the absence of the details outlined above it is not appropriate to raise any presumption of receipt. Nevertheless, as noted in the cases cited, the standard of proof for any issue in an administrative appeal is generally preponderance of the evidence. Given that the other 100 applicants all attended the one required session of the training that was conducted in two locations on two different dates, I **FIND** that the preponderance of the evidence overwhelmingly indicates that the letter was indeed mailed to Mars at the proper address, just as it was to the other applicants, and that Mars received it. Of course, it is always possible that the mail service failed to deliver the notice, but the heavy preponderance of the evidence here supports that this notice was delivered to the Hogbin Road address. If all 100 other applicants received notice and attended, it is hard to imagine that only Mars failed to receive the notice. The testimony of Mr. Mosley to the effect that it was not received is not especially credible, but it is possible that it was actually received at the address but was lost, misplaced or otherwise ignored. Exactly why no one attended is unknown, but no one did. And that failure can hardly be pinned upon some asserted failure by representatives of the Department to question anyone from Mars about their failure to pre-register for the training. It is obviously the case that once the Department sends notices of a mandatory training to applicants at a proper mailing address, there is no legal obligation placed upon the Department to monitor and police the applicants to see that they fulfill their obligation to attend. Instead, it was the applicant's responsibility to make sure that it did. Further, as the

testimony explained, applicants often fail to pre-register and simply show up at the training. As such, it would not have been of much significance to agency personnel that an applicant had not pre-registered. In the end, the fault in failing to attend lies directly with Mars, and I **FIND** that failure is a significant fact that provides the Department with a legitimate basis to question Mars's ability to fulfill the requirements of the Program.¹

In addition to the failure to attend mandatory training, another ground for denial was the complete failure of Mars to provide any food preparation site for which it had obtained a positive State Health Inspection. This prerequisite for approval is necessarily a vital element in regard to a program in which food is to be prepared for large numbers of persons. Each location provided was unacceptable. In one case, a mysterious person, a Pastor Moss, provided the agency with a location in Trenton that did not even exist. Who he was and why this location was supplied have never been satisfactorily explained.² This would then appear to be another example of the faulty management of the application process by Mars. Added to that was the provision of an address for Marino that was discovered to be a private residence, in the wrong town. And for that location, no one with any real authority or knowledge was made available to answer the inspector's legitimate questions, hardly a sign of a serious and competent effort to assure that the needed approval was obtained in a timely manner. The last minute attempt to provide a site in a public restaurant, (only identified after the letter of rejection was already sent and received) which at the hearing was explained to be not really functioning as such, appears to be a last gasp effort. While it might be said that Ms. VanOrden-Hough should have gone to the site and evaluated it to assure herself that the location was indeed what she thought, in which case her experience had taught her it would not be acceptable, given the other deficiencies and problems with the application already experienced by the Department, rejection of the applicant was certainly sustainable even had the Cornbread House passed muster.

¹ It should also be noted that I **FIND** that the Department's representatives provided substantial assistance to the applicant and attempted to assist it in completing a sufficient application.

² While the provision of this address was characterized by Ms. Sutton-Page as involving the provision of "false" information, I do not find that there was, on the part of Mr. Mosley or Ms. Riggins-Hill, any purposeful intent to deceive or to falsify the location. Indeed, how this was provided is unclear. The address was indeed a false one in that it was not an accurate location.

I **CONCLUDE** that the entire record in this matter supports the determination of the Department of Agriculture to deny Mars's application. While there is no reason at all to doubt the sincerity of Ms. Riggins-Hill in her desire to assist in the effort to supply children in need with nutritious food, the effort to obtain approval as a sponsor for the summer of 2014 was marked by a serious lack of management responsibility to assure that the applicant fulfilled all the requirements of the application process and met all the requirements for approval. I **FIND** that the missteps and failures were of such a nature as to give the agency legitimate concern about whether this putative sponsor was administratively competent to deliver the vital services. Additionally, the applicant failed to comply with required training. Possibly a future effort for approval in another year will bring a different result, but as for the current application, I **CONCLUDE** that the Department acted in a reasonable manner and that the appeal from the denial of approval must be **DISMISSED**.

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

July 11, 2014 _____

DATE

JEFF S. MASIN, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

mph

WITNESSES:

For petitioner:

Brenda Hill-Riggins
Robert Mosley

For respondent:

Stephanie Sutton-Page
Patricia VanOrden-Hogue

EXHIBITS:

For petitioner:

- P-1 E-mail from Stephanie Sutton-Page to Robert Mosley, dated June 9, 2014
- P-2 Faxed copy of e-mail to Robert Mosley, dated February 25, 2014

For respondent:

- R-1 Federal-State Agreement, Child Nutrition and Food Distribution Programs
- R-2 2014 Application Package
- R-3 2014 Sponsor Application Package Checklist
- R-4 Retail Food Inspection Report
- R-5 Memo to Summer Food Service Program Sponsors, re: Mandatory Operational Training, April 2014
- R-6 E-mail from Nicole Castelize to Stephanie Sutton-Page, May 8, 2014
- R-7 Commercial Lease between Marino Center and Mars Development Corporation
- R-8 E-mail from Robert Mosley to Stephanie Sutton-Page, May 12, 2014
- R-9 E-mail from Stephanie Sutton-Page to Robert Mosley, dated May 12, 2014

- R-10 2014 Summer Food Service Program, Application Approval Log
- R-11 Entity Record, Mars Community Development Corporation
- R-12 Agreement 06-3900
- R-13 E-mail from Stephanie Sutton-Page to Patricia VanOrden, dated May 27, 2014
- R-14 Retail Food Inspection Report
- R-15 E-mail from Patricia VanOrden to Stephanie Sutton-Page, dated June 4, 2014
- R-16 E-mail from Robert Mosley to Stephanie Sutton-Page, dated June 9, 2014
- R-17 E-mail from Stephanie Sutton-Page to Robert Mosley, dated June 9, 2014
- R-18 E-mail from Robert Mosley to Stephanie Sutton-Page, dated June 9, 2014
- R-19 For identification only
- R-20 Kitchen Facilities Use Agreement
- R-21 Report of Inspection
- R-22 E-mail from Stephanie Sutton-Page to Robert Mosley, dated June 12, 2014
- R-23 Letter from Mars Community Development to Department of Agriculture, response to letter of denial, dated June 12, 2014
- R-24 Agreement 06-3900 (Third Corrective Action Review)
- R-25 E-mail from Stephanie Sutton-Page to Patricia VanOrden-Hogue, dated June 20, 2014
- R-26 General Instructions for Registering in DUNS/SAM
- R-27 Letter dated July 9, 2014 from Clarke, D.A.G., with attached New Jersey Department of Agriculture New Jersey Management and Administrative Plan Summer Food Service program for Children Fiscal Year 2014