

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
ADJUDICATIVE SERVICE UNIT**

In the Matter of the WIC Authorized Retailer:

RENTON HALAL, LLP,  
WIC Retailer Contract # W005933(1),  
  
Petitioner.

Master Case No. M2013-1411

PREHEARING ORDER NO. 5:  
ORDER ON SUMMARY  
JUDGMENT

**APPEARANCES:**

Renton Halal, LLP, by  
Simburg, Ketter, Sheppard & Purdy, LLP. (Petitioner), per  
James A. Jackson, Attorney at Law

Department of Health Prevention and Community Health Division,  
Office of Nutrition Services, Women, Infants, and Children (WIC)  
Program (Program), by  
Office of the Attorney General, per  
Janis Snoey, Assistant Attorney General

**PRESIDING OFFICER:** John F. Kuntz, Review Judge

The Petitioner filed a Motion for Summary Judgment on July 15, 2014, which requested an order stating there is no genuine issue of material fact and the Petitioner is entitled to a judgment as a matter of law. More specifically, the Petitioner requests that the Presiding Officer issue an order voiding/vacating the termination of the Petitioner's WIC Retailer Contract. Motion DENIED.

**I. PROCEDURAL HISTORY AND FINDINGS OF FACT**

1.1 On November 26, 2013, the Program issued a Final Notice of Termination and Disqualification, establishing a claim for repayment by the Petitioner in the amount of \$11,446.74 and disqualifying the Petitioner from participation in the WIC Program for

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a minimum of three years, commencing 30 days following the Petitioner's receipt of the Final Notice.

1.2 On December 23, 2013, the Petitioner filed an appeal of the Notice of Termination and Disqualification pursuant to WAC 246-790-125 and 7 C.F.R. 246.18.

1.3 On January 2, 2014, the Adjudicative Service Unit issued a Scheduling Order/Notice of Hearing, which set the motion cutoff date for March 20, 2014. Following several authorized continuances, the Presiding Officer set a summary judgment motion schedule with the parties on June 27, 2014, which stated the summary judgment order will be issued no later than August 25, 2014. Prehearing Order No. 3.

1.4 On July 15, 2014, the Petitioner filed a Motion for Summary Judgment with the Adjudicative Service Unit. The Petitioner contends summary judgment is appropriate in this matter because the WIC Program did not: (1) Notify the Petitioner prior to conducting the inventory audit of the Petitioner's store; (2) Perform a physical inventory to determine if the Petitioner engaged in a pattern of claiming reimbursement; and (3) Establish a "pattern" of claiming reimbursement for the sale of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time. The Petitioner argues that establishing a "pattern" requires defining the term, given that it is not defined in chapter 7 C.F.R. 12.

1.5 On July 28, 2014, the WIC Program filed its Response to Petitioner's Motion for Summary Judgment with the Adjudicative Service Unit. The WIC Program contends that: (1) It is not required to give prior notice to the Petitioner prior to

conducting an inventory audit; (2) The WIC Program is not required to perform a physical inventory to complete an inventory audit. A documented inventory is sufficient to establish whether a vendor is claiming reimbursement for the sale of food items which exceed the store's documented inventory; and (3) For purposes of 7 C.F.R. 246.12(l)(1)(iii)(B), and under WAC 246-790-105(4), a "pattern" is defined and exists if the vendor does not have invoices to support two or more food items,

1.6 On August 4, 2014, the Petitioner filed its Reply for Summary Judgment. The Petitioner contends the WIC Program merely challenges the Petitioner's claims regarding the appropriate interpretation of the phrase "documented inventory" and the word "pattern" as they are used in 7 C.F.R. 246.12(l)(1)(iii)(B), without meeting its burden of showing sufficient facts exist to show there is a genuine issue of material fact (that is sufficient evidentiary facts and not conclusions of fact).

1.7 The WIC Program did not conduct a physical inventory of the Petitioner's store. It relied on an inventory audit to establish its claim for repayment of \$11,446.74 from the Petitioner, and to support its decision to impose a disqualification for three years.

1.8 The WIC Program did not provide the Petitioner with prior notice of a violation.

## **II. CONCLUSIONS OF LAW**

2.1 The Presiding Officer shall rule on motions. WAC 246-10-403(1). An administrative agency may employ summary procedures, and may enter an order

summarily disposing of a matter if there is no genuine issue of material fact. *Asarco v. Air Quality Coalition*, 92 Wn.2d 685, 697, 601 P.2d 501 (1979).

2.2 Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). See also *State Farm General Ins. Co. v. Emerson*, 102 Wn.2d 477 (1984). In a summary judgment motion, the moving party bears the initial burden of demonstrating there is no genuine dispute as to any material fact. *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If the moving party meets its initial burden, the burden shifts to the non-moving party to set forth specific facts showing the existence of a genuine issue of material fact. *Id.* All facts submitted and all reasonable inferences from them must be viewed in the light most favorable to the nonmoving party. *Id.* at 226.

2.3 A material fact is one upon which the outcome of the litigation depends. *Tran v. State Farm Fire & Casualty Co.*, 139 Wn. 2d 214, 223 (1998). The court does not weigh the evidence or determine the truth of the matter; the only question is whether there is a genuine issue for trial. *Arreygue v. Lutz*, 116 Wn. App. 938, 940-941 (2003).

2.4 The WIC Program did not perform a physical inventory of the Petitioner’s store. Neither did the WIC Program give the Petitioner prior notice of the violation that is at issue here. However, these undisputed facts do not resolve the issue on summary judgment. These issues go to the method used to conduct the inventory and not whether the result of inventory is correct.

2.5 The genuine issue of material fact in the present matter is whether the Petitioner claimed reimbursement for the sale of an amount of a specific supplement food item which exceeds the store's documented inventory. The WIC Program contends the Petitioner claimed reimbursement in an amount exceeding the store's inventory. The Petitioner denies doing so. The Petitioner argues that inasmuch as the Program never conducted an inventory, or established a starting point from which the Program could establish a pattern of claiming reimbursement that exceeds the store's inventory, it cannot prove the claimed reimbursement. There is a genuine issue of material fact which will determine if the Petitioner owes the amount claimed and must be disqualified from participating in WIC for three years. Given the disagreement of the parties, summary judgment is not appropriate for that reason.

2.6 In addition, the Petitioner's principals suggest that they did not think to question what the WIC Program requested, which suggests that there may be further evidence bearing on the issues at hearing in this matter. See Declaration of Ibrahim Bulhan in Support of Petitioner's Motion for Summary Judgment. Where material facts are particularly within the knowledge of the moving party, it is preferable that the matter proceed to trial so that the opponent may be allowed to disprove such facts by cross examination and by the demeanor of the moving party while testifying. See *Arreygue v Lutz*, 116 Wn. App. at 941(citations omitted).

**III. ORDER**

Based on the foregoing Procedural History and Findings of Fact, and Conclusions of Law, the Petitioner's Motion for Summary Judgment is DENIED.

Dated this \_\_18\_\_ day of August, 2014.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN F. KUNTZ, Review Judge  
Presiding Officer

DECLARATION OF SERVICE BY MAIL

I declare that today I served a copy of this document upon the following parties of record:

**JAMES A. JACKSON, ATTORNEY AT LAW AND JANIS SNOEY, AAG** by mailing a copy properly addressed with postage prepaid.

DATED AT OLYMPIA, WASHINGTON THIS \_\_\_\_ DAY OF AUGUST, 2014.

\_\_\_\_\_  
Adjudicative Service Unit

cc: **STEVEN STRONG**

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