

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
SECRETARY OF HEALTH

In the Matter of the WIC Authorized  
Retailer:

**TOWFIQ HALLAL MEAT AND DELI,**  
WIC RETAILER CONTRACT #1650-W005908(1)

Petitioner.

Master Case No. M2014-155

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
FINAL ORDER

This matter has come before the Review Officer for administrative review of the Findings of Fact, Conclusions of Law, and Initial Order (Initial Order) dated April 7, 2015, of the Presiding Officer, Health Law Judge Heather Francks. The Presiding Officer issued the Initial Order after a hearing held in this matter on February 5-6, 2015.

The hearing in this matter was based on the appeal of Towfiq Hallal Meat and Deli (Petitioner) of the Women, Infants, and Children (WIC) Program's (the Program) Notice of Termination and Disqualification of Appellant's WIC Retailer Contract No. 1650-W005908(1) (Contract).

At the hearing, the Program was represented by Assistant Attorney General Janis Snoey. Petitioner appeared by its owner, Adbi Mohamud, who acted pro se. Mr. Mohamud was provided the services of two Somali interpreters. Both parties presented evidence, witnesses, and arguments related to the case. Following the hearing, the Initial Order terminated the contract, ordered \$8,432.96 reimbursement to the Program, and disqualified Petitioner from WIC vendor status for three years.

## PETITIONER'S PETITION FOR REVIEW

On April 29, 2015, Petitioner filed a timely Petition for Administrative Review (Petition) of the Initial Order. Petitioner described numerous grounds upon which he takes exception. These grounds were summarized well in the Program's Response as follows<sup>1</sup>:

1. The Presiding Officer did not weigh certain evidence.
2. Program did not conduct a physical inventory of Petitioner's store.
3. The inventory audit did not reveal a "pattern."
4. Program unfairly characterized Petitioner's store as "high-risk."
5. Petitioner's store is needed to ensure participant access.
6. Petitioner did not receive a fair hearing due to lack of representation and disability.
7. Program discriminated on the basis of race and national origin.
8. Petitioner has special circumstances that should be considered before imposing sanctions.

Based on these alleged errors, Petitioner requests the Review Officer reverse the Initial Order.

## PROGRAM'S RESPONSE TO PETITION

On May 18, 2015, the Program filed a timely Response to Petitioner's Petition for Administrative Review (Response). The Program refuted each of Petitioner's allegations of error, arguing that some of the allegations are irrelevant and others are not supported by the evidence. The Program asks that the Petition be denied or, in the alternative, the Initial Order should be affirmed with supplementation from the record to reflect any issues not addressed in

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<sup>1</sup> Program's Response at pages 4-5.

the Initial Order.

### REVIEW OFFICER'S ANALYSIS

1. The Presiding Officer did not weigh certain evidence.

The Presiding Officer afforded Petitioner the opportunity to introduce evidence, present oral testimony, and cross examine witnesses at the hearing. It was then her responsibility to weigh all of the evidence and issue an initial order. The fact that she may have found the Program's evidence more persuasive is not an indication that she failed or refused to consider Petitioner's evidence and afford it the weight she found appropriate.

As an example, the Presiding Officer did acknowledge the Program's error in not counting H/Villa eggs in the first inventory audit. However, because Petitioner was given the opportunity to demonstrate the error, and the Program corrected the error in Exhibit 14, its existence in Exhibit 10 was not necessarily of great significance to the final outcome.

Petitioner also emphasizes potential miscounts of three other WIC food items about which he provided testimony at the hearing but the Presiding Officer did not specifically address in the Initial Order. As noted in the Program's Response, there is no requirement "to make findings of fact on all matters about which there is evidence on the record; only those which establish the existence or nonexistence of determinative factual matters need be made." *In re LaBelle*, 107 Wn.2d 196, 219, 728 P.2d 138, 152 (1986). Thirteen food WIC food items in addition to the three noted by Petitioner were lacking sufficient inventory pursuant to Exhibit 14. It was not necessary for the Presiding Officer to discuss each item. It was sufficient that she found the evidence as a whole supported the finding of a pattern of Petitioner not having sufficient inventory to support the amount of WIC checks redeemed.

2. Program did not conduct a physical inventory of Petitioner's store.

Petitioner argues that the Program should have completed a physical inventory of the store in order to understand what products were available to WIC clients. This argument fails for two reasons. First, the law does not require a physical inventory. A compliance investigation of a high-risk vendor may be considered complete when the State agency determines that a sufficient number of compliance buys have been conducted to provide evidence of program noncompliance, when two compliance buys have been conducted in which no program violations are found, or when an inventory audit has been completed. 7 CFR § 246.12(j)(4) A physical inventory audit is not an option given to the Program.

Second, a physical inventory audit would have provided extremely limited information to the Program. It would show what the inventory was on that very day, but not any other day or week or month during the audit period. Whether a store has twenty or a hundred boxes of eggs on the particular day of a physical inventory doesn't mean it had sufficient eggs in prior or future months to support the number of WIC checks redeemed during that period.

3. The inventory audit did not reveal a "pattern."

Petitioner argues that the word "pattern" has already been defined by Washington courts as "a regular, mainly unvarying way of acting or doing (behavior patterns)." This definition is taken from *State v. Russell*, 69 Wash. App. 237, 247, P.2d 743, 750 (1993). *Russell* was a criminal case involving a conviction for homicide by abuse of a 20 month old child. The crime required proof that the defendant previously engaged in a pattern or practice of assault or torture of the victim. The defendant contended this was unconstitutional vague. The court held that when the statute does not define words, it looks to existing law, ordinary

usage, and the general purpose of the statute. In so doing it referenced the dictionary definition now cited by Petitioner.

In this case, the word "pattern" is defined in the WIC rules as "more than one documented incident of the same type of violation within a thirty-six month period." WAC 246-790-105(4) (as in effect during the relevant time period). It is reasonable that a single audit can reveal a pattern when that audit covers nine months and 28 separate food items. In addition, the WAC definition was supported by the federal agency with oversight of the WIC program in Exhibit 18: "When conducting inventory audit, a "pattern" is established when a vendor claims reimbursement for two or more food items that cannot be supported by invoices."

4. Program unfairly characterized Petitioner's store as "high-risk."

7 CFR § 246-12(j)(3) requires the Program to identify high-risk vendors at least once a year using criteria developed by the Food and Nutrition Service of the United States Department of Agriculture or other statistically based criteria developed by the Program.

Petitioner claims his store, along with 20 other Somali-owned stores, was intentionally targeted and designated as high-risk by the Program. As evidence of this claim, Mr. Mohamud testified that he and other Somali grocery stores received uniform letters from the Program containing the same language and allegations. No documentation of these other letters was offered as evidence and no corroborating testimony was presented.

Program staff testified in detail about the criteria used to identify high-risk vendors. Melissa Trapp-Petty described criteria that serve as "red flags" but are not necessarily violations: low variation in the total redemption value of WIC checks; a large portion of WIC checks redeemed at the maximum value, which can show very high prices at that store; and a

high volume of WIC business, which can show an unusual number of customers go to this store (although this isn't always a red flag – it can be a sign of good service). The data used to satisfy these criteria is pulled from the WIC banking system. Ethnicity or culture is not considered when assessing risk.

The fact that other Somali-owned stores may have been designated as high-risk or subject to compliance investigations does not, in itself, show bias or discrimination. The Program is required by 7 CFR § 246-12(j)(4) to conduct compliance investigations of a minimum of five percent of WIC vendors each fiscal year, and must conduct compliance investigations on all high-risk vendors up to the five percent minimum. Petitioner has not shown that the designation as "high-risk" or selection of his store for a compliance investigation was based on anything other than the neutral criteria described by the Program.

5. Petitioner's store is needed to ensure participant access.

Petitioner claims that his store is necessary to ensure that WIC clients receive the services they need and have come to rely upon such as language and literacy. These services provide comfort to his customers. The store also provides culturally appropriate foods for the East African community. This offers customers the convenience of doing all their shopping in one place rather than having to go to one store for WIC foods and another for culturally appropriate foods. He also points out that most of his customers are WIC clients, have very large families, and have different buying behaviors than other cultures.

Participant access is a consideration when determining sanctions. Prior to disqualifying a vendor, the Program must determine whether the disqualification would result in inadequate participant access. If so, the Program must impose a civil penalty in lieu of

disqualification. 7 CFR § 246-12 (l)(1)(ix). When making participant access determinations, the Program must consider the availability of other WIC vendors in the same area and any geographic barriers to using such vendors. 7 CFR § 246-12 (l)(8). The federal rule does not include any considerations related to culture or convenience.

The Program determined that 444 WIC clients live within the one-mile urban buffer zone around Petitioner's store and there are three other WIC vendors to serve them. The Program further found no geographic barriers to using these three stores.

6. Petitioner did not receive a fair hearing due to lack of representation and disability.

Mr. Mohamud states that he is a 56 year-old disabled man, his right hand being totally non-functional, his right leg disabled, and his left ribs broken. He also describes his experiences opening his store and providing for his family. For him to have pursued this dream and made it a reality is, without a doubt, admirable. However, it does not relieve him of his obligation under the Contract to keep and provide adequate inventory records.

Nor does it grant him special privileges related to the hearing. Petitioner was represented by counsel through most of the pre-hearing process. Counsel filed motions, a prehearing conference memorandum with witness and exhibit lists, and a motion for summary judgment. The hearing was continued at least twice at Petitioner's request. When counsel withdrew one week before the re-scheduled hearing date, an additional two month continuance was granted to allow Mr. Mohamud to find another attorney. Mr. Mohamud was apparently unable to secure substitute counsel.

Due process in an administrative hearing requires notice and an opportunity to be heard prior to final agency action. *Motley-Motley, Inc. v. State*, 127 Wn. App. 62, 81, 110 P.3d

812 (2005). Federal WIC regulations require that the Program provide Petitioner with the opportunity to be represented by counsel. 7 CFR 246-18(b)(6). The presence of counsel is an option but not a right in an administrative hearing. RCW 34.05.428, WAC 246-10-108(1)(a).

Mr. Mohamud was allowed to consult with his employee when formulating questions during the hearing. He was provided interpreter services at the hearing in accordance with WAC 246-10-122. He was afforded opportunities to cross-examine the Program's witnesses, call witnesses of his own, and provide an opening statement and closing argument. Thus, he was afforded adequate due process under the law.

7. Program discriminated on the basis of race and national origin.

As previously discussed, there is no evidence that Petitioner was identified as high-risk or singled out for an inventory audit based on discriminatory factors. The record reveals no discriminatory acts or motives during the adjudicative process by the Program or the Department. However, if Petitioner believes he has been the victim of illegal discrimination, appropriate venues are available to him. In fact, such a complaint was made and forwarded to the appropriate entity for resolution.

8. Petitioner has special circumstances that should be considered before imposing sanctions.

A finding that a vendor engaged in a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specified period of time carries a mandatory sanction. 7 CFR § 246.12(l)(1). The Program and the Department have no discretion to create an alternative sanction related to Petitioner's individual circumstances.

Based on the foregoing, the Review Officer issues the following Final Order.

## ISSUES

Did the Program conduct its inventory audit of documents submitted by the Petitioner in a manner consistent with WIC requirements?

Did Petitioner engage in a "pattern" of claiming reimbursement for the sale of WIC foods that exceeds documented store inventory of the items during an audit period, and thus commit a violation of 7 CFR § 246.12?

If a pattern is established, does termination/disqualification of Petitioner result in inadequate participant access so as to warrant a civil penalty?

Did Petitioner experience bias or discrimination either before or during the inventory audit?

## PROCEDURAL HISTORY

At the hearing, the Program presented the testimony of Abdi Mohamud, Petitioner, owner of Towfiq Hallal Meat and Deli; Janet Charles, Director of Nutrition Services, Women, Infants, and Children Program (WIC); Susan Evans, WIC Program Banking Contract Manager; and Melissa Trapp-Petty, WIC Program Fraud and Analytics. Petitioner presented the testimony of Abdi Mohamud. Two Somali language interpreters, Ismael Mohamud and Abdul Mihileh, provide interpretation services.

The Presiding Officer admitted the following Exhibits:

Exhibit P-1: WIC Contract No. 1650-W005908 for the period from April 1, 2012, to March 31, 2015;

Exhibit P-2: WIC Shopping Guide;

Exhibit P-3: WIC Annual Training Requirements;

Exhibit P-4: Letter from Steve Shahan to Abdi Mohamud, Towfiq Hallal Meat and Deli, dated August 20, 2012;

Exhibit P-5: Warehouse item inquiry prints, item summaries, warehouse receipts, and similar documents, date-stamped as received by the Program on

September 24, 2012;

Exhibit P-6: Letter from Stuart Brotherston to Abdi Mohamud, Towfiq Hallal Meat and Deli, dated March 8, 2013;

Exhibit P-7: Cover letter and copies of warehouse item inquiry prints, item summaries, warehouse receipts, and similar documents, date stamped as received by the Program on April 12, 2013;

Exhibit P-8: Cover letter and copies of warehouse inquiry prints, item summaries, warehouse receipts, and similar documents, date stamped as received by the Program on May 6, 2014;

Exhibit P-9: The Programs invoice tally;

Exhibit P-10: Towfiq Hallal Meat and Deli Inventory Audit Report April 2012 to December 2012, with correction to page 5;

Exhibit P-11: Letter from Steve Strong to Abdi Mohamud, dated November 25, 2013;

Exhibit P-12: Letter from Steve Strong to Abdi Mohamud, dated December 17, 2013;

Exhibit P-13: Letter from Abdi Mohamud to Steve Strong, dated January 5, 2014;

Exhibit P-14: Letter from Steve Strong to Abdi Mohamud, dated January 15, 2014;

Exhibit P-15: Investigation Summary Form;

Exhibit P-16: Participant Access for Towfiq Hallal, dated April 3, 2014;

Exhibit P-17: Email communication chain between the Program and USDA, primarily between Steve Strong and Michal Murphy, between September 24, 2013, and November 21, 2013;

Exhibit p-18: Letter from Rona Bach to Janet Charles, dated November 25, 2013; and

Exhibit P-19: Participant Access for Towfiq Hallal, dated July 18, 2014.

## FINDINGS OF FACT

1.1 The federal Special Supplemental Nutrition Program (SNAP) provides qualifying pregnant, postpartum, or breastfeeding women, infants, and young children with supplemental food benefits through the WIC Program. See 7 CFR § 246. SNAP provides the food benefits through the payment of cash grants to the states. The state then distributes the food benefits through one of three types of food delivery systems (retail; home delivery; or direct distribution) to accomplish the goals of the WIC Program. The state of Washington uses the retail delivery system, in which qualified WIC clients receive WIC vouchers or WIC "checks." The check specifies on the face of the document what types and amounts of food the client is allowed to purchase from a WIC vendor. See Exhibit P-2, page 18 (example of WIC check). The WIC vendor then redeems the value of the check by submitting it to the WIC Program's banking system.

1.2 Abdi Mohamud owns Towfiq Hallal Meat and Deli, which is located in the International District on 23<sup>rd</sup> Avenue South in Seattle, Washington. During the time period at issue, Petitioner was one of four authorized WIC vendors in the relevant geographic area (a one mile radius of Towfiq Hallal Meat and Deli as defined by the 98144 zip code) that sold supplemental food items to qualifying WIC clients. See Exhibits P-16 and P-19. Petitioner entered into the WIC retailer contract No. 1650-W005908<sup>2</sup> with the Program in March of 2012. See Exhibit P-1. As an authorized WIC vendor, Petitioner agreed to comply with all of the contract's terms and conditions, including Petitioner's agreement to maintain inventory records

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<sup>2</sup> The contract was subsequently amended for reasons not relevant to this case. The amended contract is No. 1650-W005908(1).

and to provide copies of those inventory records to the Program upon request. See Exhibit P-1, page 7 (Inventory Management).

1.3 Federal regulations require the Program to identify high-risk WIC vendors at least once per year using criteria developed by US Department of Agriculture, Food and Nutrition Services (FSN) or other statistically-base criteria developed by the Program. Any criteria developed by the Program must be approved by FNS. 7 CFR § 246.12(j)(3). The Program's criteria for identifying high-risk vendors include high redemption vendors (vendors with a large volume of WIC clients in comparison to other similarly sized vendors<sup>3</sup>) and low variance vendors (vendors that redeem a large percentage of WIC checks for the maximum amount allowed on the face of the check. The determination is based only on statistical data. WIC vendors meeting the high-risk criteria are not necessarily engaging in improper acts. Testimony of Melissa Trapp-Petty.

1.4 Each year, the Program must conduct compliance investigations of a minimum of five percent of WIC vendors in the state. The Program must conduct compliance investigations of all high-risk vendors up to the five percent minimum. A compliance investigation of a high-risk vendor can be through either compliance buys or an inventory audit. 7 CFR § 246.12(j)(4).

1.5 An inventory audit is the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of supplemental foods to provide participants the quantities specified on food instruments (WIC checks) redeemed by

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<sup>3</sup> WIC vendor size is measured by the square footage of the store and the number of cash registers the store contains. Petitioner's store is about 3500-4000 square feet and has one cash register. See Exhibit P-19.

the vendor during a given period of time. 7 CFR § 246.12.

1.6 The Program's inventory audit process did not include, and was not required to include, a physical inspection of Petitioner's store. The inventory audit process is report driven. The Program relies on inventory records received from the vendor and redemption data for the vendor to determine a vendor's compliance or non-compliance regarding the inventory requirement. See Exhibit P-10, pages 3-4. To ensure fairness during the audit process, the Program incorporates several assumptions to give the vendor the benefit of any uncertainty. See Exhibit P-10, page 5. The assumptions include, but are not limited to:

A. The vendor sold all WIC foods itemized on inventory purchase receipts to WIC clients in exchange for WIC checks, unless the receipts show the vendor purchased more of a WIC food than was redeemed.

B. Vendors purchase inventory on a rotational/revolving basis based on a product's shelf life. The assumption is the vendor would not purchase additional or new stock if the store had sufficient inventory.

C. The Program does not include redemptions for the first month of the inventory period because the vendor may have purchased the inventory in the preceding month. The Program includes all inventory purchased in the last month of the audit period, even though many of the food items are likely to be sold in the following month.

D. The inventory audit does not include fruits and vegetables because those products are counted by the dollar amount of the product rather than a specific quantity.

E. WIC clients do not have to purchase all items listed on the WIC check. For example, the Program estimates that when a redemption report shows the store redeemed WIC checks for 120 boxes of milk in a given month, the vendor actually sold 104 boxes or 86.6 percent of the redemption. Partial redemption rates are based on research performed by the Department of Agriculture.

F. The Program uses the lowest unit price for a food item if the vendor has listed more than one unit price for that item during the inventory audit period.

1.7 On August 20, 2012, the Program requested Petitioner's inventory records to determine if the store had purchased sufficient WIC foods (those foods authorized by the WIC shopping guide) when compared to the redemption of WIC checks by WIC clients. The Program chose Petitioner for an inventory audit because it identified Petitioner as a high-risk vendor using its established criteria. The Program requested that Petitioner "submit copies of all itemized sales receipts for all purchases of store inventory you made during the period from January 1, 2012, through July 31, 2012." Sales receipts "must come from a wholesale supplier or other nonretail supplier" to be acceptable. See Exhibit P-4.

1.8 Petitioner provided inventory records in response to the Program's request. See Exhibit P-5.

1.9 On March 8, 2013, the Program sent a second letter notifying Petitioner that the Program was expanding the inventory audit period to include all of 2012. This expansion was based on a preliminary finding that the previous records submitted were "inadequate to justify your WIC sales for that period." In addition to inventory records for the expanded time period, Petitioner was notified that he could also submit any receipts he failed to submit for the original audit period of January 1, 2012, through July 31, 2012. The Program requested Petitioner to send the receipts within fifteen days. See Exhibit P-6.

1.10 On April 11, 2013, Petitioner submitted additional inventory records to the Program in response to the March 8, 2013, request. See Exhibit P-7.

1.11 After receiving all of Petitioner's 2012 inventory records, the Program chose April

1, 2012, through December 31, 2012, as the audit period. The Program determined that Petitioner maintained insufficient inventory of WIC foods when compared to the quantities of those foods redeemed through WIC checks. The Program further determined that Petitioner overcharged the Program in the amount of \$10,683.06 based on the sale of 8,276 items more than Petitioner had in stock during the audit period according to inventory records. See Exhibit P-11.

1.12 On November 25, 2013, the United States Department of Agriculture (the federal agency in charge of the SNAP and WIC programs) confirmed to the Program that if a WIC vendor is found to engage in a pattern of claiming reimbursement of an amount of supplemental food items in excess of the store's documented inventory, the Program must disqualify the vendor for a period of three years in addition to requiring payment of the claim. Further, "[W]hen conducting inventory audits, a "pattern" is established when a vendor claims reimbursement for two or more food items that cannot be supported by invoices. Please note that, unlike compliance buy investigations, the State agency only needs to conduct one inventory audit in order to establish a pattern of vendor non-compliance." See Exhibit P-18.

1.13 On November 25, 2013, the Program issued a Notice of Termination and Disqualification (Notice) to Petitioner. The Notice advised Petitioner of the opportunity to justify the violations or correct any errors contained in the inventory report:

You have thirty (30) days to provide valid documents showing you had sufficient inventory of all WIC food items found to be insufficient in the attached inventory report. If you fail to timely provide the required evidence the Department will take the following actions:

- ) )
1. Thirty (30) days after your receipt of this notice the Department will terminate your WIC Retailer Contract without further notice...

The Notice also advised Petitioner that any appeal of the Program's action must be filed within 28 days of the contract termination date.

1.14 On December 9, 2013, Petitioner requested an extension of 90 days to accommodate review of the documents. The Program extended the contract termination date by 30 days to February 6, 2014. See Exhibit P-12.

1.15 On January 5, 2014, Petitioner submitted a letter contesting a number of items in the inventory audit including the omission of: 1) 551 boxes of eggs; 2) 120 cans of Similac Advance powder; and 3) 2,146 ounces of cereal. In addition, Petitioner claimed that a WIC check for four cans of Similac Alimentum powder, 12.4, was not redeemed at the store; some items do not expire within a year; he sometimes engaged in "quick shopping" to purchase WIC food items for clients; and the characterization as high-risk was unfair and "has underlying issues." See Exhibit P-13.

1.16 On January 15, 2014, the Program issued a second Notice of Termination and Disqualification (Second Notice) to Petitioner. The Program acknowledged that it did not recognize H/Villa as a brand of eggs and agreed to count 494 boxes of 12-count eggs in the inventory. The Program also acknowledged that it missed one entry for 120 cans of Similac Advance, and three entries for a total of 370 ounces of cereal. Based on these concessions, the Program adjusted its claim to \$8,432.96. The Program also addressed Petitioner's other contentions, including providing a copy of the WIC check for four cans of Similac Alimentum

powder redeemed by Petitioner on November 8, 2012, and a list of shelf life expectations for WIC foods based on US Food and Drug Administration recommendations and/or specific company guidelines. The Second Notice informed Petitioner that the store was disqualified from participation in the WIC Program for a minimum of three years, commencing February 6, 2014. Petitioner was again provided the opportunity to justify the violations or correct any errors contained in the corrected inventory report, and provided notice regarding the opportunity to appeal. See Exhibit P-14

1.17 Petitioner filed an appeal of the Second Notice on February 4, 2014. In the request for appeal, Petitioner made claims similar to those in the January 5, 2014 letter. However, Petitioner did not dispute any specific item counts and did not provide any additional inventory records.

1.18 Based on the totality of the record, Petitioner was out of compliance with the requirements of WIC contract 1650-W005908(1). Petitioner was unable to provide inventory records to support the amount of two or more WIC foods redeemed by the store through submission of WIC checks during the audit period (April 2012 through December of 2012). See Exhibit 14.

1.19 Three other WIC vendors are located within a one mile radius of Petitioner. Although it may be less convenient for some WIC clients, no geographic barriers prevent WIC clients from accessing these WIC vendors.

1.20 Mr. Abdi Mohamud is clearly invested in the wellbeing of his community and the

clients he serves. He provides language and other assistance to clients who do not speak English and may be illiterate even in their native language. Similar assistance may not be available from other WIC vendors in the area.

## CONCLUSIONS OF LAW

2.1 The Secretary of Health (and by designated authority, the Review Officer) has jurisdiction over Respondent and the subject matter of this proceeding. 7 CFR § 246.18(b)(8), chapter 34.05 RCW, and chapter 246-790 WAC.

2.2 Petitioner's Petition for Review and the Program's Response were timely filed. WAC246-10-701.

2.3 The Secretary of Health is authorized to designate a Review Officer to review initial orders and to enter final orders. RCW 43.70.740.

2.4 Except as otherwise required by law, the Program bears the burden of proving the allegations set forth in the Notice of Termination and Disqualification dated January 15, 2014, by a preponderance of the evidence. WAC 246-10-606.

2.5 The version of WAC 246-790-105 in effect during the time period at issue<sup>4</sup> states in relevant part:

(1) When a retailer is out of compliance with the requirements of 7 C.F.R. 246.12, this chapter, or the contract, the department may initiate appropriate enforcement action which may include notices of violation, unless the department determines that

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<sup>4</sup> The Department adopted revisions to chapter 246-709 WAC on November 16, 2014. Petitioner's contract was subject to the earlier version of chapter 246-790 WAC, adopted on December 22, 2011.

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notifying the retailer would compromise the investigation; claims for reimbursement; and disqualification.

(2) The department shall disqualify an authorized retailer for violations stated in 7 C.F.R. § 246.12(l).

...  
(3) A "pattern" of violations means more than one documented incident of the same type of violation within a thirty-six month period;

(4) An authorized retailer's contract is terminated on the effective date of a disqualification.

2.6 "Vendor violation" is defined as "any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the vendor agreement or Federal or State statutes, regulations, policies, or procedures governing the Program." 7 CFR§ 246.2.

2.7 The State agency must disqualify a vendor for three years for a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specified period of time. 7 CFR § 246.12(l)(1)(iii)(B).

2.8 The Program has proven by a preponderance of the evidence that Petitioner was out of compliance with the requirements of the WIC contract. Using the assumptions in the audit process, Petitioner did not have sufficient inventory to support the amount of WIC foods redeemed through submission of WIC checks during the audit period, April 2012 through December 2012.

2.9 The Program has proven by a preponderance of the evidence that Petitioner engaged in a pattern of violations by proving more than one documented incident of the same type during the audit period. Specifically, Petitioner redeemed WIC checks for two or more WIC food items for which there were insufficient inventory records during several months of the audit period.

2.10 Although there is no evidence that Petitioner acted with the intent to overcharge the Program, a finding of violation does not require proof of an intentional act.

2.11 Prior to disqualifying a WIC vendor for claiming reimbursement for the sale of WIC foods that exceed the store's documented inventory, the State agency must determine whether disqualification of the vendor would result in inadequate participant access. 7 CFR § 246-12(l)(1)(ix).

2.12 The State agency must develop participant access criteria. When making participant access determinations, the State agency must consider the availability of other WIC vendors in the same area and any geographic barriers to using such vendors. 7 CFR § 246.12(l)(8). The Program has proven by a preponderance of evidence that three other WIC vendors are located within a one-mile radius of Petitioner and no geographic barriers prevent access to those vendors. See Exhibit P-19.

2.13 Additional services provided by the Petitioner is not one of the factors used to determine adequate participant access. The additional language and other assistance Mr. Abdi Mohamud provides to his customers is not a relevant factor when determining participant access.

2.14 The Program has met its burden of proving the allegations set forth in the

Notice of Termination and Disqualification by a preponderance of the evidence. As such, three year disqualification and reimbursement of \$8,432.96 is appropriate.

### III. FINAL ORDER

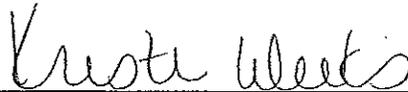
Based on the foregoing, IT IS HEREBY ORDERED that:

- 3.1 Petitioner's WIC Retail contract No. 1650-W005908(1) is TERMINATED;
- 3.2 Petitioner must reimburse the Program in the amount of \$8,432.96; and
- 3.3 Petitioner is DISQUALIFIED as a WIC vendor for a period of three years

from the effective date of this Order.

Dated this 10<sup>th</sup> day of August, 2015

JOHN WIESMAN, DrPH, MPH  
SECRETARY OF HEALTH



By KRISTI WEEKS  
REVIEW OFFICER

### NOTICE TO PARTIES

Either Party may file a petition for reconsideration. RCW 34.05.461(3); RCW 34.05.470. The petition must be filed within ten (10) days of service of this Order with:

Adjudicative Clerk Office  
Adjudicative Service Unit  
Post Office Box 47879  
Olympia, WA 98504-7879

and a copy must be sent to:

Agriculture and Health Division  
Office of the Attorney General  
Post Office Box 40109  
Olympia, WA 98504-0109

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. WAC 246-10-704. The petition for reconsideration is considered denied twenty (20) days after the petition is filed if the Adjudicative Clerk Office has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A petition for judicial review must be filed and served within thirty (30) days after service of this Order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the thirty (30) day period for requesting judicial review does not start until the petition is resolved. RCW 34.05.470(3).

The Order remains in effect even if a petition for reconsideration or petition for judicial review is filed. "Filing" means actual receipt of the document by the Adjudicative Clerk Office. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

Final Orders will be reported as required by law. Final orders will be placed on the Department of Health's website, and otherwise disseminated as required by the Public Records Act, (chapter 42.56 RCW). All orders are public documents and may be released.