

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

In the Matter of:

TOWFIQ HALLAL MEAT AND DELI,  
WIC Retailer Contract #1650-W005908(1),

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Appellant.

Master Case No. M2014-155

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND INITIAL ORDER

**APPEARANCES:**

Towfiq Hallal Meat and Deli (Appellant), by  
Abdi Mohamud, pro se

Department of Health Office of Nutrition Services, Women, Infants,  
and Children Program (Program), by

Office of the Attorney General, per  
Janis Snoey, Assistant Attorney General

**PRESIDING OFFICER:** Heather Francks, Health Law Judge

A hearing was held in this matter on February 5-6, 2015, regarding the Appellant's appeal of the WIC Program's Notice of Termination and Disqualification, of the Appellant's WIC Retailer Contract #1650-W005908(1)(Contract), dated January 15, 2014. Contract terminated, \$8,432.96 reimbursement ordered, and Appellant disqualified from WIC vendor status for three years.

**ISSUES**

- A. Did the Program conduct its inventory audit of documents submitted by the Appellant in a manner consistent with WIC requirements?
- B. Did the Appellant engage in a "pattern" of claiming reimbursement for the sale of WIC foods that exceeds document store inventory of the items during an audit period, and thus commit a violation contained in 7 .C.F.R. § 246.12?

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C. If a pattern is established, does termination/disqualification of the Appellant result in “inadequate participant access” so as to warrant a civil penalty?

### **SUMMARY OF PROCEEDINGS**

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

The Presiding Officer admitted the following Program exhibits:

- P-1: WIC Contract No. 1650-W005908(1) for the period from April 1, 2012 to March 31, 2015;
- P-2: WIC Shopping Guide;
- P-3: WIC 2013 Annual Training Requirements;
- P-4: Letter from Steve Shahan to Abdi Mohamud, Towfiq Hallal Meat and Deli, dated August 20, 2012;
- P-5: Warehouse Item Inquiry Prints, item summaries, warehouse receipts, and similar documents date-stamped as received by the Program on September 24, 2012;
- P-6: Letter from Stuart Brotherston to Abdi Mohamud, Towfiq Hallal Meat and Deli, dated March 8, 2013;
- 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;

- P-8: Cover letter and copies of Warehouse Item Inquiry Prints, Item Summaries, warehouse receipts, and similar documents, date-stamped as received by the Program on May 6, 2014;
- P-9: The Program's Invoice Tally;
- P-10: "Towfiq Hallal Meat and Deli" Inventory Audit Report April 2012 to December 2012, with correction to Page 5;
- P-11: Letter from Steve Strong to Abdi Mohamud, dated November 25, 2013;
- P-12: Letter from Steve Strong to Abdi Mohamud, dated December 17, 2013;
- P-13: Letter from Abdi Mohamud to Steve Strong, dated January 5, 2014;
- P-14: Letter from Steve Strong to Abdi Mohamud, dated January 15, 2014;
- P-15: "Investigation Summary Form;"
- P-16: Participant Analysis for Towfiq Hallal, dated April 3, 2014;
- P-17: Email communication chain between the Program and USDA primarily between Steve Strong and Michal Murphy, from September 24, 2013, to November 21, 2013;
- P-18: Letter from Rona Bach to Janet Charles, dated November 25, 2013; and
- P-19:** Participant Analysis for Towfiq Hallal, dated July 18, 2014.

## **I. FINDINGS OF FACT**

1.1 The federal Special Supplemental Nutrition Program provides qualifying pregnant, postpartum, or breastfeeding women, infants, and young children with supplemental food benefits through the WIC program. See 7 C.F.R. § 246.

The federal Special Supplemental Nutrition Program 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 recipients receive WIC vouchers or WIC checks. The WIC check specifies on the face of the document what types of foods (for example, eggs, milk, baby food, infant formula, and fresh fruits and vegetables) the WIC recipient can purchase from the WIC retailer. See Exhibit P-2, page 18 of 21 (example of WIC check). The WIC retailer then redeems the value of the voucher or WIC check by submitting it to the WIC Program's banking system.

12 Abdi Mohamud owns Towfiq Hallal Meat and Deli, which is located in the International District on 23rd Ave. S., Seattle, Washington. The Appellant is one of four authorized WIC Retailers in the relevant geographic area (a one-mile radius of the Appellant's store as defined by the 98144 zip code) and sells supplemental food items to qualifying WIC recipients. See Exhibit P-19 pages 2 and 3. The Appellant entered into the WIC retailer contract with the WIC Program in March 2012. See Exhibit P-1. As an authorized WIC retailer, the Appellant agreed to comply with all of the contract's terms and conditions. The terms and conditions included the Appellant's agreement to maintain inventory records and to provide the WIC representative with copies of the Appellant's inventory records upon request. See Exhibit P-1 page 7 (Inventory Management).

1.3 On August 20, 2012, the WIC Program requested the Appellant's records to determine if the Appellant's store possessed sufficient WIC foods (those foods authorized in the WIC Shopping Guide) for redemption by WIC recipients upon a submission of a WIC check. The WIC Program's request to the Appellant was one of several random audits (known as inventory audits) for that purpose.<sup>1</sup> In fact, the WIC Program specifically chose the Appellant for the inventory audit because the Appellant was identified as a "high risk" vendor. The WIC Program uses a computer algorithm<sup>2</sup> to identify high risk vendors based on identified Program criteria.<sup>3</sup> The Program criteria include high redemption providers (providers with a large volume of WIC clients in comparison to other like-sized providers)<sup>4</sup> and low variance providers (redeeming a large percentage of WIC checks for the maximum amount allowable on the face of the WIC check). The Program requested the Appellant "submit copies of all itemized sales receipts for all purchases of store inventory made during the period from January 1, 2012, through July 31, 2012." See Exhibit P-4. The Appellant provided all of the records in the store's possession in response to the WIC Program request. See Exhibit P-5.

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<sup>1</sup> An inventory audit is part of a compliance investigation. Federal rules require the WIC Program conduct compliance investigations of at least five percent of WIC retailers per year. *See* 7 C.F.R. § 246.12(j)(4).

<sup>2</sup> "Algorithm" is defined as a predetermined set of instructions for solving a specific problem in a limited number of steps. *See Webster's New College Dictionary*, page 35 (copyright 2009). The Appellant submitted no evidence to contest the validity of the WIC Program's algorithm.

<sup>3</sup> The criteria include: (1) commodity description; (2) redemptions by month; (3) adjusted redemptions per month; (4) receipts by month and total receipts; (5) storages (the difference between the WIC food items the store claimed to sell and the items in the store's inventory; (6) the unit price for each audited WIC food taken from the unit price list the supplies; and (7) overcharges. *See* Exhibit P-10 (page 3).

<sup>4</sup> WIC Retail provider size is measured by the square footage of the store and the number of cash registers the store contains. The appellant's store is about 3500-4000 square feet and has one cash register. *See* Exhibit P-19.

1.4 The WIC Program's inventory audit process did not include, nor was it required to include, a physical inspection of the Appellant's store. See 7 C.F.R. § 246.12(j)(3) and 7 C.F.R. § 246.2 ("inventory audit" means the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of supplemental food to provide recipients the quantities specified on food instruments redeemed by the vendor during a given period of time). The inventory audit process is report driven, that is, the WIC Program relies on reports it receives to determine the Appellant's compliance or non-compliance regarding the inventory requirement. See Exhibit P-10 pages 3 and 4. To provide fairness in the audit process, the WIC Program incorporates several assumptions. See Exhibit P-10, Page 4. These assumptions include, but are not limited to:

- A. The retailer sold all WIC foods itemized on inventory purchase receipts in exchange for WIC checks, unless the receipts show the store purchased more of a WIC food than had been redeemed.
- B. Retailers purchase inventory on a rotational/revolving basis based on a product's shelf life. The assumption is the store would not purchase additional or new stock if the store had sufficient inventory.
- C. The WIC Program does not include the redemptions for the first month of the inventory period because the store may have purchased the inventory in the preceding month. The WIC Program also gives the benefit of the doubt to the store by including all inventory purchased in the last month of the audit period, even though many of the food items are more likely to be sold in the following month.
- D. The inventory did not include fruits and vegetables and whole grains.

- E. WIC customers need not purchase all items on the WIC check. Partial redemption rates are based on Department of Agriculture research. For example, the WIC Program estimates that when a food quantity purchase report shows the store redeemed 120 boxes of milk for a given month, the store actually sold 104 boxes (or an 86.8 percent of the redemption).
- F. The WIC Program uses the lowest unit price for a food item if the retailer has listed more than one unit price in calculating any overcharge.

15 On March 8, 2013, the WIC Program issued a second letter notifying the Appellant that the Program was expanding the time period covered by the inventory audit. See Exhibit P-6. The Program's stated reason for the expanded audit period was that the Appellant's records to the Program were inadequate to justify the WIC sales in the earlier January–July 2012 period. The WIC Program requested the Appellant "submit copies of all itemized sales receipts for all purchases of store inventory made from August 1, 2012, through December 31, 2012." The Appellant submitted additional itemized sales receipts to the WIC Program in response to the March 8, 2013, request. See Exhibit P-7. The Appellant provided all of the relevant records to the WIC Program in response to the Program's March 2013 request.

1.6 After receiving all of the Appellant's 2012 records, the WIC Program chose the April–December 2012 period for the inventory audit, and the Program determined that the Appellant overcharged the WIC Program in the amount of \$ 10,683.06. In other words, the WIC Program compared the WIC checks the Appellant redeemed against the Appellant's available inventory to redeem the WIC checks. A review of the checks redeemed to the available inventory showed the Appellant was deficient in several supplemental food categories. See Exhibit P-11.

On November 25, 2013, the WIC Program issued a Notice of Termination and Disqualification to notify the Appellant that it owed that amount and established a claim for \$10,683.06 as a result of the sale of 8,276 items more than Appellant had in stock according to inventory purchase records. See Exhibit P-11. The Notice advised the Appellant that they had an opportunity to justify or correct the violations or errors contained in the inventory report. The Notice of Termination and Disqualification further advised the Appellant:

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 audit 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 November 2013 Notice of Termination and Disqualification advised the Appellant that any appeal of the WIC Program action must be filed within 28 days.

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

1.7 On January 5, 2014, the Appellant submitted a letter contesting a number of items in the inventory audit including the omission of 494 boxes of eggs identified as H/Villa on the Cash & Carry receipts. See Exhibit P-13. The Program had not recognized H/Villa as a brand of eggs. On January 15, 2014, the Program sent a response to the Appellant.



See Exhibit P-14. Following the Appellant's request to justify/correct the records, the WIC Program reduced its claim amount to \$8,432.96.

18 On November 25, 2014, The United States Department of Agriculture (the federal agency in charge of the Special Supplemental Nutrition Program) confirmed that if the Appellant had a pattern<sup>5</sup> of claiming reimbursement of an amount of supplemental food items in excess of the store's documented inventory, then the WIC Program *must* disqualify the Appellant for a period of three years in addition to requiring payment of the claim. See Exhibit P-18.

19 As set forth in Paragraph 1.7 above, the WIC Program reduced its overpayment claim amount. Based on the adjustment, the WIC Program issued a Notice of Termination and Disqualification to the Appellant on January 15, 2014. The Notice of Termination and Disqualification informed the Appellant that its store was disqualified from participation in the WIC Program for a minimum period of three years, commencing on February 6, 2014. The Appellant filed an appeal of the WIC Program notice on February 4, 2014.

1.10 Based on the totality of the evidence, the Presiding Officer finds that the Appellant's store was out of compliance with the WIC contract requirements. The store did not have sufficient inventory to support the amount of WIC foods the

<sup>5</sup>A "pattern" means more than one documented incident of the same type of violation within a 36-month period. WAC 246-790-105(4).

store redeemed through the submission of WIC checks during the April–December 2012 period.

There was a pattern (that is, more than one violation) during the relevant period based on the Appellant store’s inventory records. See Exhibit P-15.

1.11 Three other WIC vendors are located within a one mile radius of the Appellant. No geographic barriers prevent access to those other vendors. Exhibit P-19.

1.12 In addition to access to WIC foods, the Appellant’s owner, Abdi Mohamud, provides language and other assistance to clients who include non-English speakers and those who are illiterate.

## **II. CONCLUSIONS OF LAW**

21 The Secretary of Health (and by designated authority, the Presiding Officer) has jurisdiction over the Appellant and the subject of this proceeding. 7 C.F.R. § 246.12, chapter 34.05 RCW, and chapter 246-790 WAC.

2.2 The WIC Program bears the burden of proving the allegations set forth in the Notice of Termination and Disqualification by a preponderance of the evidence. WAC 246-10-606.

WAC 246-790-105 states in relevant part:

- ◊ When a retailer is out of compliance with the requirements of 7 CFR 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 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).

.....

- (4) A “pattern” of violations means more than one documented incident of the same type of violation within a 36 month period.
- (5) An authorized retailer’s contract is terminated on the effective date of a disqualification.

2.3 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 C.F.R. § 246.12(l)(1)(iii)(B) (Emphasis added).

2.4 Based on the totality of the evidence, the Presiding Officer concludes that the Appellant’s store was out of compliance with the requirements of his WIC contract. Using the assumptions of the audit, the Appellant’s store did not have sufficient inventory to support the amount of WIC foods it redeemed through the submission of WIC checks during the April – December 2012 period. There was a pattern of violations (that is, more than one documented incident of the same type of violation within the audit period). The Appellant admitted it provided all of the records in the store’s possession, and those records established the pattern.

2.5 However, prior to disqualifying a vendor for claiming reimbursement for the sale of supplemental food items which exceed the stores documented inventory, the State agency must determine if disqualification of the vendor would result in inadequate participant access. See 7 C.F.R § 246(l)(1)(ix);

7 C.F.R § 246.12(l)(8); WAC 246-790-105(2).

When making participant access determinations, the State agency must consider the availability of other authorized vendors in the same area as the violative vendor and any geographic barriers to using such vendors. *Id.* The above findings of fact show that Appellant's disqualification will not result in inadequate participant access as three other WIC stores are located within a one-mile radius of Appellant and no geographic barriers prevent access to those other vendors. See Exhibit P-19.

2.7 Additional services provided by the Appellant are not one of the factors used to determine inadequate participant access. Therefore, the above findings of fact on additional language and other services provided by Appellant are not criteria relevant to participant access.

2.8 The WIC 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, contract termination, three year disqualification, and reimbursement of \$8,432.96 is the appropriate remedy.

### **III. ORDER**

Based on the foregoing Procedural History and Findings of Fact, and Conclusions of Law, it is ORDERED:

31 Appellant's WIC Retailer's contract # 1650-W0005908(1) is TERMINATED;

3.2 Appellant must reimburse the WIC Program \$8,432.96; and

3.3 Appellant is DISQUALIFIED as a WIC Retailer for a period of three years from the effective date of this Order.

Dated this 7 day of April, 2015.

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/s/  
HEATHER FRANCKS, Health Law Judge  
Presiding Officer

### NOTICE TO PARTIES

When signed by the presiding officer, this order shall be considered an initial order. Chapter 109, law of 2013 (Sec. 3); WAC 246-10-608.

Any party may file a written petition for administrative review of this initial order stating the specific grounds upon which exception is taken and the relief requested. WAC 246-10-701(1).

A petition for administrative review must be served upon the opposing party and filed with the Adjudicative Clerk Office within 21 days of service of the initial order. WAC 246-10-701(3). "Filed" means actual receipt of the document by the Adjudicative Clerk Office. RCW 34.05.010(6). "Served" means the day the document was deposited in the United States mail. RCW 34.05.010(19). The petition for administrative review must be filed within 21 calendar days of service of the initial order with:

Adjudicative Clerk Office  
Adjudicative Service Unit  
P.O. Box 47879  
Olympia, WA 98504-7879

and a copy must be sent to the opposing party. If the opposing party is represented by counsel, the copy should be sent to the attorney. If sending a copy to the Assistant Attorney General in this case, the mailing address is:

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

**Effective date: If administrative review is not timely requested as provided above, this initial order becomes a final order and takes effect, under WAC 246-10-701(5), at 5:00 pm on . Failure to petition for administrative review may result in the inability to obtain judicial review due to failure to exhaust administrative remedies. RCW 34.05.534.**

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 (Chap. 42.56 RCW). All orders are public documents and may be released.

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