

APPELLANT: Girls Vacation Fund d/b/a/
Girls Quest
150 West 30th Street, Suite 901
New York, NY 10001

RESPONDENT: New York State Education Department
Child Nutrition Program Administration
99 Washington Avenue, Room 1623
Albany, NY 12234

STATE: New York; County of Greene

In the Matter of the Appeal of

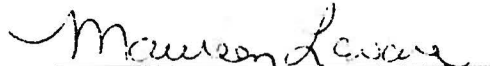
GIRL'S VACATION FUND d/b/a GIRL'S QUEST
LEA CODE: 310200630087

from a decision by the New York State Education Department's Child
Nutrition Program to reclaim \$14,748 from its 2011 Federal Summer
Food Service Program payments

}
}
}
}
} **DECISION**
}

I find that respondent acted in accordance with the Federal Child Nutrition Program's regulations, specifically, those that pertain to the Summer Food Service Program found at 7 CFR Part 225, when it reclaimed \$14,748.00 from appellant's 2011 Summer Food Service Program

This Decision is rendered this 13th day of August 2012


Maureen Lavare
Hearing Officer

LIST OF REPRESENTATIVES:

For the Appellant

Susan Hall, Executive Director
Girls Vacation Fund d/b/a/
Girls Quest
150 West 30th Street, Suite 901
New York, NY 10001

For the Respondent

Frances O'Donnell, Coordinator and
Kimberly Vumbaco, School Food Program Specialist III
New York State Education Department
Child Nutrition Program Administration
99 Washington Avenue, Room 1623
Albany, NY 12234

DOCUMENTS SUBMITTED AND REVIEWED

For the Appellant

- 1) June 25, 2012 letter to Hearing Officer Maureen Lavare from Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest appealing the New York State Education Department's Child Nutrition Program's reclaim of approximately \$12,254
- 2) July 11, 2012 letter to Hearing Officer Maureen Lavare from Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest regarding the timeliness of the appeal request with copies of certified mail receipts attached
- 3) June 18, 2012 letter from Peter Templeton, Principal Clerk of the New York State Education Department's Child Nutrition Program to Girls Vacation Fund, notifying Girls Vacation Fund of a reclaim of \$14,208 federal dollars and \$540 state dollars, for a total of \$14,748.
- 4) June 11, 2012 letter from Marisa Rocco, School Food Program Specialist I of the New York State Education Department's Child Nutrition Program to Ms. Georgiana Bezuyen of Girls Vacation Fund providing formal notification of a reclaim for approximately \$12,254 and mentioning the appeal process (both parties admit the procedures were mistakenly not enclosed with the letter)
- 5) July 24, 2012 letter to Hearing Officer Maureen Lavare from Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest explaining their position on appeal
- 6) January 5, 2012 letter from Marisa Rocco School Food Program Specialist I of the New York State Education Department's Child Nutrition Program to Ms. Georgiana Bezuyen of Girls Vacation Fund stating that the State Education Department will conduct a follow-up review of Girls Vacation Fund's 2011 SFSP to determine if

approved corrective action has been implemented to address the findings from the sponsor's 2010 summer food service program

- 7) Summer Food Service Program Review Checklist
- 8) Emails beginning January 25, 2012 and ending April 25, 2012 between Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest and Marisa Rocco, School Food Program Specialist I of the New York State Education Department's Child Nutrition Program
- 9) Girls Quest Session 1 Participant List
- 10) August 7, 2012 letter to Hearing Officer Maureen Lavare from Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest responding to the August 3, 2012 letter and information provided by Kimberly Vumbaco, School Food Program Specialist III of the New York State Education Department's Child Nutrition Program, submitted at the hearing officer's request

For the Respondent

- 1) July 11, 2012 letter from Paula-Tyner-Doyle, School Food Program Specialist III of the New York State Education Department's Child Nutrition Program to Hearing Officer Maureen Lavare acknowledging that Girls Quest was not sent a copy of the appeal procedures; explaining that Girls Quest was eligible to file an appeal through July 2, 2012, and finally that Girls Quest's request for an appeal dated June 25, 2012 was timely
- 2) July 25, 2011 letter from Kimberly Vumbaco, School Food Program Specialist III of the New York State Education Department's Child Nutrition Program to Hearing Officer Maureen Lavare responding to the appeal by Girls Vacation Fund d/b/a Girls Quest
- 3) Copies of sections of 7 CFR Part 225
- 4) Copy of a page from the New York State Education Department's Child Nutrition Program's powerpoint presentation for 2010 sponsor training, specifically on eligibility
- 5) New York State Education Department - Child Nutrition Program Administration - Summer Food Service Program Site Review Form for a review dated July 30, 2010
- 6) U.S. Department of Agriculture – Food Nutrition Service – Sponsor Review Report Summer Food Service Program for Girls Vacation Fund, date of review December 1, 2010
- 7) January 20, 2011 Notice of Proposed Action letter from Marisa Rocco, School Food Program Specialist I of the New York State Education Department's Child Nutrition Program to Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest finding the sponsor seriously deficient and requiring corrective action
- 8) February 17, 2011 letter from Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest to Marisa Rocco School Food Program Specialist I of the New York State Education Department's Child Nutrition Program with proposed corrective action
- 9) May 13, 2011 Notice of Action letter from Marisa Rocco School Food Program Specialist I of the New York State Education Department's Child Nutrition Program

- to Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest accepting the sponsors corrective action plan and reclaiming \$310.00
- 10) Copies of pages 22 and 23 of the United States Department of Agriculture's Administrative Guidance for Sponsors
 - 11) Copy of a page from the New York State Education Department's Child Nutrition Program's powerpoint presentation for 2011 sponsor training, specifically on income applications
 - 12) New York State Education Department – Child Nutrition Program Administration Summer Food Service Program Administrative Review Form for a review conducted May 24, 2012 of Girls Vacation Fund d/b/a Girls Quest
 - 13) May 24, 2012 Notice of Action letter from Marisa Rocco School Food Program Specialist I of the New York State Education Department's Child Nutrition Program (unsigned) to Georgiana Bezuyen of Girls Vacation Fund d/b/a Girls Quest regarding findings of a follow up review to ensure that the sponsor is in compliance with Summer Food Service Program regulations
 - 14) June 11, 2012 letter from Marisa Rocco, School Food Program Specialist I of the New York State Education Department's Child Nutrition Program (unsigned) to Ms. Georgiana Bezuyen of Girls Vacation Fund providing formal notification of a reclaim for approximately \$12,254 and mentioning the appeal process (both parties admit the procedures were mistakenly not enclosed with the letter)
 - 15) August 3, 2012 letter to Hearing Officer Maureen Lavare from Kimberly Vumbaco, School Food Program Specialist III of the New York State Education Department's Child Nutrition Program responding to the Hearing Officer's July 30, 2012 request for additional information

For the Hearing Officer

- 1) July 3, 2012 letter to Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest and Frances O'Donnell, Coordinator of the New York State Education Department's Child Nutrition Program from Hearing Officer Maureen Lavare requesting additional, relevant information to ascertain whether the appeal request from Girls Quest was timely
- 2) July 11, 2012 letter to Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest and Frances O'Donnell, Coordinator of the New York State Education Department's Child Nutrition Program from Hearing Officer Maureen Lavare finding the request for appeal timely and requiring that all documents either party wants to have considered, be submitted to the hearing officer by July 25, 2012, with a copy to the other party
- 3) July 30, 2012 letter to Frances O'Donnell, Coordinator of the New York State Education Department's Child Nutrition Program and Girls Vacation Fund d/b/a/ Girls Quest from Hearing Officer Maureen Lavare requesting additional information from respondent and allowing appellant to respond to the additional information

PROCEDURAL BACKGROUND

On June 27, 2012 I received a request for appeal, dated June 25, 2012, from Susan Hall, Executive Director of Girls Vacation Fund d/b/a Girls Quest (hereinafter "appellant" or "sponsor") of a decision made by the New York State Education Department's Child Nutrition Program (hereinafter "respondent") to reclaim \$12,254 from appellant's 2011 Summer Food Service Program ("SFSP") (appellant #s 1, 3). Because it was unclear whether the appeal request was timely, by letter dated July 3, 2012, I directed both parties to submit documentation pertaining to the timeliness of the appeal (hearing officer #1). After receiving additional information, I decided that the appeal was requested in a timely manner, and by letter dated July 11, 2012 I notified the parties of my decision (hearing officer #2). Additionally, I required the parties to submit any written documentation they wanted considered as part of the appeal, to my office by July 25, 2012 with a copy to each other. I received letters with attachments from both parties on or before July 25, 2012. The parties copied each other on their submissions.

By letter dated July 30, 2012 I notified the parties that I required additional information (hearing officer #3). I requested that respondent submit documentation from its review of appellant's 2011 SFSP, as to which children it deemed ineligible that appellant made eligible, and why (hearing officer #3). I also requested a better copy of respondent's Exhibit 14, (respondent #12 above) and documentation of how the ineligible children amounted to a reclaim of \$14,748 (hearing officer #3). This documentation was submitted to me on August 3, 2012 (respondent #15). A response was received from appellant on August 7, 2012 (appellant #10).

FACTUAL BACKGROUND

The primary purpose of the SFSP is to provide food service to children from needy areas during periods when area schools are closed for vacation (7 CFR §225.1). For the summer of 2011 appellant applied to be a SFSP "sponsor" meaning that it would provide summer food service similar to that made available to children during the school year under the National School Lunch and School Breakfast programs (7 CFR §225.2). Appellant had also been a sponsor in 2010. Appellant operates its SFSP at Camp Oh-Neh-Tah located in East Windham, New York. During its 2010 program a site review was conducted by respondent on July 30, 2010 (respondent #5). At that time, technical assistance was provided to appellant regarding determining eligibility and processing household income applications (respondent #s 2, 5).

On December 1, 2012 respondent conducted a review of appellant's administration and program operations (respondent #6). After this review, respondent notified appellant by letter dated January 20, 2011 that it found appellant to be "seriously deficient" and that in order to avoid termination from the program appellant was required to submit written corrective action (respondent #7). One of the violations listed in respondent's January 20, 2011 letter to appellant was the inaccurate processing of income applications to determine the eligibility of each child attending camp (respondent #7). By letter dated February 17, 2011 appellant responded to respondent with a corrective action plan. In response to eligibility violations, appellant wrote:

“The summer program serves girls 8-17 during three, two-week (15 day) sessions. To ensure accuracy we have done a complete reassessment of the applications, total number of girls attending each session, and their USDA eligibility. We have completed the Attachment 17 form. In 2011, applications received will be initially reviewed by the program staff (which will be retrained on the proper way to verify income and eligibility), the Executive Director will review each application to ensure its accuracy and her initials will be an indication of approval to ensure that no errors occur. Copies will be made of the USDA forms to keep in the NYC office and the originals will be sent to camp along with participant applications” (respondent #8).

By letter dated May 13, 2011 respondent accepted appellant’s proposed corrective action (respondent #9). On May 24, 2012 respondent conducted a follow-up administrative review of appellant’s 2011 SFSP to determine if it had implemented its corrective action plan (respondent #12). This review included a check of appellant’s July 2011 records to substantiate its July 2011 claim for reimbursement (respondent #s 2, 12 and 13). By letter dated May 24, 2012, respondent notified appellant that, among other violations, it found that appellant did not process applications to determine the eligibility of each child attending camp (respondent #13). Specifically respondent wrote:

“The sponsor has not made eligibility determinations on income applications. Additionally, some applications are missing an adult household member’s signature and social security numbers, when income is being used to qualify, and dates. The sponsor does not have a system in place for collecting and establishing eligibility. It is uncertain how the sponsor came to file a claim without making eligibility determinations for children attending the camp” (respondent #13).

In light of its May 24, 2012 findings, respondent notified appellant by letter dated June 11, 2012 that it would be processing a reclaim of approximately \$12,254 (appellant #4, respondent #14). By letter dated June 18, 2012 respondent notified appellant that the actual amount it would be reclaiming for the 2011 SFSP is \$14,748 (appellant #3). This appeal ensued.

ARGUMENTS MADE ON APPEAL

Appellant asserts that it is undergoing a transition (appellant #7). Appellant also asserts that the review conducted by respondent was done through email, fax and mail; there was no in-person site visit which made the review a "very confusing process" (appellant #2). Appellant states that it had "back-up documents that could have been used to provide additional information on some of the campers who were found ineligible" (appellant #2). Additionally, appellant states that it received no information on how the reclaim amount of \$14,748 was determined. Finally, appellant states that it only provided eligibility applications to respondent for review from its first camp session of July 2011, and therefore respondent could not have reviewed eligibility applications from both sessions.

Respondent argues that, even after the sponsor was required to submit and implement a corrective action plan for violations of its 2010 SFSP, it did not properly process applications to determine the eligibility of the children attending camp in 2011. Respondent states that, in violation of the federal regulations governing the SFSP, appellant does not have a system in place for collecting eligibility information and establishing eligibility.

FINDINGS

The regulations for the Summer Food Service Program are found at 7 CFR Part 225. 7 CFR §225.6(b)(8) states that "applicants which qualify as camps shall be approved for reimbursement only for meals served free to enrolled children who meet the Programs eligibility standards." Additionally, 7 CFR §225.15(f) states, in part that, "the application is used to determine the eligibility of children attending camps..." Further, 7 CFR §225.9(d)(10) states, in part that, "sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for Program meals is documented."

During its July 30, 2010 site review of appellant's camp, respondent provided technical assistance regarding the proper determination and documentation of income eligibility of the children attending appellant's camp (respondent #5). This site review was followed by an administrative review that occurred on December 1, 2010 (respondent #6). Numerous violations were uncovered during the administrative review (respondent #6). By letter dated January 20, 2011 appellant was made aware of the violations, notified that respondent found it to be "seriously deficient" in its SFSP operation, and was required to submit a corrective action plan by February 18, 2011 (respondent #7). One of the violations found during the December 1, 2010 administrative review, and required to be addressed in its corrective action plan, was appellant's failure to "accurately process income applications to determine the eligibility of each child attending camp" (respondent #s 6 and 7). Specifically, respondent's January 20, 2011 letter stated that appellant "incorrectly categorized seven children as eligible and is missing one application" (respondent #7).

As described in the Factual Background section above, appellant submitted a corrective action plan addressing eligibility and other violations in its response to respondent dated February 17, 2011 (respondent #8). By letter dated May 13, 2011, respondent accepted

appellant's corrective action plan but also notified appellant that it would reclaim \$310 from appellant's 2010 SFSP (respondent #9).

In accordance with the requirements of 7 CFR §225.11(f)(1), which requires that respondent "verify that corrective action has been taken," respondent conducted a follow-up review of appellant's SFSP. By letter dated January 5, 2012, respondent notified appellant of this review and requested that certain documents be submitted by January 20, 2012 (appellant #6). It appears that several emails transpired in which respondent requested additional documentation from appellant including income applications used to determine eligibility (appellant #8). On May 24, 2012, respondent completed the SFSP administrative review form and found that although the eligibility documentation was maintained by appellant, eligibility was not accurately determined (respondent #12). Specifically, and as described in the Factual Background section above, respondent found that appellant did not make any eligibility determinations on income applications (respondent #13). In its August 3, 2012 letter to me, respondent further clarified that it reviewed all of appellant's income applications for July and found that "100 percent of the sponsor's income applications lacked the required formal judgments (determinations) by the sponsor [i.e. a check mark in the appropriate category (free, reduced, denied/paid) on each income application or by some other way indicating the eligibility status on each application] and were therefore ineligible" (respondent #15). As part of this appeal, respondent also submitted documentation evidencing that the sponsor's requirements to make eligibility determinations is clearly set forth in annual sponsor training provided by respondent and that the requirement is clearly explained in the United State Department Of Agriculture's Administrative Guidance for Sponsors at pages 22 and 23 (respondent #s, 4, 10 and 11).

Appellant asserts that it has been in the midst of reorganizing and downsizing (appellant #s 2, 10). While this is unfortunate, it is not a valid excuse for failing to determine the eligibility of the children attending its camp in July 2011. Additionally, after being found seriously deficient for its 2010 SFSP and submitting a corrective action plan to respondent, it was imperative that appellant ensure that all of the SFSP regulatory requirements were implemented for the 2011 SFSP.

Appellant also asserts that the 2012 review by respondent, which was done by mail, facsimile and email and not at appellant's camp site or office, was a "very confusing process" and that it could have provided additional documentation and rectified the records at a site review (appellant #s 2, 10). However, as described above, respondent had already conducted both a site review and administrative review in 2010. The purpose of the review conducted in 2012 was "to determine if approved corrective action has been implemented" (appellant #6). The regulations do not require that a follow-up review be conducted on site (7 CFR §225.7[d][3]). Further, appellant's assertion that, at a site visit additional documentation could have been supplied in order to correct application errors, misses the point. Respondent claims that *none* of the applications of the children attending appellant's camp in July 2011 were checked or marked in any manner to show that they were reviewed and determined eligible (respondent #15). Therefore, appellant failed to comply with the regulatory requirements of the SFSP and its own corrective action plan.

Finally, respondent states that it “reviewed all the sponsor’s income applications for both sessions” (respondent #15). Appellant asserts that it only provided information to respondent regarding the children who attended session one in its 2011 summer camp, not both sessions as stated by respondent (appellant #s 2, 10). As evidence of this, appellant submitted emails between Marisa Rocco, respondent’s School Food Program Specialist I and Susan Hall, appellant’s Executive Director. In the April 17, 2012 email Marisa Rocco requests the “roster and applications for your July session this summer” (appellant #8). In response, Susan Hall explains that there were two sessions and she asks Marisa Rocco “do you want applications from both sessions?” (appellant #8). There is no email in response to this last question which was submitted for review. The next email from Marisa Rocco dated April 25, 2012 explains that the wrong information was submitted – she was seeking income applications, not participant applications (appellant #8). This email exchange does not clearly demonstrate that respondent never reviewed income applications from appellant’s second camp session. Nor is any reason provided by appellant as to why respondent would assert that it reviewed documents it did not review.

Based on the evidence provided in this appeal, I find that respondent acted reasonably and rationally when it found that appellant failed to determine the SFSP eligibility of the children attending its camp in July 2011. Thus, in accordance with 7 CFR §225.9(d)(10) which states that “sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for Program meals is documented,” respondent’s reclaim of \$14,748, from appellant, the calculation of which is explained in respondent’s August 3, 2012 letter to me, is sound (respondent #15).

CONCLUSION

I find that respondent acted in accordance with the Federal Child Nutrition Program’s regulations, specifically, those that pertain to the Summer Food Service Program found at 7 CFR Part 225, when it reclaimed \$14,748.00 from appellant’s 2011 Summer Food Service Program