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APPELLANT: Congregation Machne Sva Rotzhon
1303 53rd Street, #312
Brooklyn, NY 11219

RESPONDENT: New York State Education Department
Child Nutrition Program Administration
Education Building, Room 55/119
Albany, NY 12234

STATE: New York; Sullivan County

In the Matter of the Appeal by

CONGREGATION MACHNE SVA ROTZHON
SPONSOR LEA CODE: 332000100021

from a decision by the New York State Education Department
terminating their participation in the Federal Summer Food
Service Program, denying reimbursement for certain claims, and
reclaiming approximately \$42,787 from its 2010 Federal
Summer Food Service Program

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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 terminated appellant from the SFSP; denied appellant reimbursement for 4,931 breakfast meals, 5,124 lunch meals, 4,926 supper meals and 4,456 fourth meal supplements; and reclaimed approximately \$42,787.00 from appellant.

This Decision is rendered this 28th day of March 2011.

Maureen Lavare

Maureen Lavare
Hearing Officer

LIST OF REPRESENTATIVES

For the Appellant:

Yehuda Kornreich
Administrator
Congregation Machne Sva Rotzhon
1303 53rd Street, #312
Brooklyn, NY 11219

For the Respondent:

Francis O'Donnell
Coordinator
Child Nutrition Program Administration
New York State Education Department
Education Building Room 55/119
Albany, NY 12234

Paula Tyner-Doyle
School Food Programs Specialist III
Child Nutrition Program Administration
New York State Education Department
Education Building Room 55/119
Albany, NY 12234

DOCUMENTS SUBMITTED AND REVIEWED

FOR THE APPELLANT:

1. March 10, 2011 letter from Yehuda Kornreich, Administrator for Machne Sva Rotzhon, enclosing supporting documentation and reason for appeal:

Appendix 1: New York State Education Department – Child Nutrition Program Administration, Summer Food Service Program Site Review Form, Follow-up dated July 30, 2009

Appendix 2: August 10, 2009 Notice of Action letter from Kylie Smith, School Food Program Specialist I with the New York State Education Department's Child Nutrition Program

Appendix 3: August 13, 2009 letter from Yehuda Kornreich to New York Department of Education, in response to August 10, 2009 letter

Appendix 4: New York State Education Department – Child Nutrition Program Administration, Summer Food Service Program Site Review Form, Follow-up dated August 21, 2009

Appendix 5: New York State Education Department – Child Nutrition Program Administration, Summer Food Service Program Site Review Form, Initial Review dated July 7, 2010

Appendix 6: July 7, 2010 letter from Yehuda Kornreich to New York Department of Education, in response to July 7, 2010 site visit

Appendix 7: New York State Education Department – Child Nutrition Program Administration, Summer Food Service Program Site Review Form, Follow-up dated August 16, 2010

Appendix 8: August 19, 2010 letter from Yehuda Kornreich to New York Department of Education, in response to August 16, 2010 site visit.

Appendix 9: December 3, 2010 Notice of Action letter from Kylie Smith, School Food Program Specialist I with the New York State Education Department’s Child Nutrition Program

Appendix 10: December 20, 2010 letter from Yehuda Kornreich to New York Department of Education, in response to December 3, 2010 Notice of Action letter

Appendix 11: January 24, 2011 Notice of Action letter from Kylie Smith, School Food Program Specialist I with the New York State Education Department’s Child Nutrition Program responding to letter received January 3, 2011

Appendix 12-A to 12-C: Meal counts claimed and deducted

Appendix 13-A to 13-C: Meal counts

Appendix 14-A: Camp roster list for first session

Appendix 14-B: Camp roster list for second session

Appendix 15: States “A Full Meal Count for Whole Summer”

Appendix 16-A to 16-C: Meal counts after making small children ineligible for the whole summer

Appendix 17-A: Camp Roster showing non-camp program children marked as ineligible for First Session

Appendix 17-B: Camp Roster showing non-camp program children marked as ineligible for Second Session

Appendices 18, 19 and 20: 7 CFR §225.2 and 7 CFR §225.16 and blank site report form

Appendix 21: USDA Administrative Guidance for Sponsors for the Summer Food Service Program pages 43 - 48

Appendix 22: Site Personal Training

Appendix 23: USDA Administrative Guidance for Sponsors for the Summer Food Service Program pages 43 - 53

Appendix 24: Copy of 10 NYCRR subpart 14-1 sections

Appendix 25: Description of food protection course from New York City Department of Health and Mental Hygiene

Appendix 26: New York State Department of Health – Food Service Establishment Inspection Report dated 7/27/10

Appendix 27: Document entitled “The Safe Food Handler” and “Hand Washing & Glove Use for Food Workers – Questions and Answers”

Appendix 28: “Food Protection”

Appendix 29: Copy of 7 CFR §225.16

FOR THE RESPONDENT:

1. March 16, 2011 letter from Paula Tyner-Doyle, School Food Program Specialist III with New York State Education Department’s Child Nutrition Program, enclosing supporting documentation regarding appeal:
 - a. Copies of various sections of 7 CFR Part 225
 - b. August 10, 2009 Notice of Action letter from Kylie Smith, School Food Program Specialist I with the New York State Education Department’s Child Nutrition Program
 - c. New York State Education Department – Child Nutrition Program Administration, Summer Food Service Program Site Review Form, Initial Review dated July 7, 2010

- d. New York State Education Department – Child Nutrition Program Administration, Summer Food Service Program Site Review Form, Follow-up Review dated July 7, 2010
- e. July 11, 2010 letter from Yehuda Kornreich to New York State Education Department in response to July 7, 2010 site visit
- f. New York State Education Department – Child Nutrition Program Administration, Summer Food Service Program Site Review Form, Follow-up Review #2 dated August 16, 2010
- g. August 19, 2010 letter from Yehuda Kornreich to New York State Education Department in response to August 16, 2010 site visit
- h. Sponsor Review Report Summer Food Service Program conducted November 29, 2010
- i. December 3, 2010 Notice of Action Letter from Kylie Smith, School Food Program Specialist I with the New York State Education Department’s Child Nutrition Program
- j. December 20, 2010 letter from Yehuda Kornreich to New York State Education Department in response to December 3, 2010 letter
- k. January 24, 2011 Notice of Action letter from Kylie Smith, School Food Program Specialist I with the New York State Education Department’s Child Nutrition Program

PROCEDURAL BACKGROUND

By letter dated February 7, 2011 appellant appealed respondent’s decisions to terminate its participation in the Summer Food Service Program (SFSP), deny it reimbursement for certain claims, and reclaim approximately \$42,787.00 from its 2010 SFSP. Appellant was notified of respondent’s decision by letter dated January 24, 2011 (respondent’s document k; appellant’s appendix 11). Because it was unclear whether the request for hearing was submitted in a timely manner, by letter dated February 11, 2011, I directed both parties to provide me with additional documentation pertaining to the timeliness of the appeal. I subsequently decided that the request for hearing was timely. In its request, appellant asked to be given a copy of the relevant documentation pertaining to its termination in order to prepare a response. Respondent agreed to provide such. Therefore, by letter dated March 7, 2011, I directed respondent to provide documentation to appellant by March 11, 2011. I also directed both parties to submit all relevant documentation they wanted considered as part of this appeal, to me by March 18, 2011. Both parties submitted their documentation to my office, with a copy to the opposing party, in a timely manner. Appellant did not request a hearing.

FACTUAL FINDINGS BASED ON SUBMITTED DOCUMENT

Appellant is a SFSP "sponsor", meaning that it is a public or private, nonprofit, residential summer camp which provides 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's only approved site for the SFSP is Camp Sva Rotzhon located at 101 Tunnel Hill Road, South Fallsburg, New York, Sullivan County (hereinafter referred to as the site or the camp). By letter dated January 24, 2011 respondent notified appellant that it does not have the operational and administrative capability to operate a SFSP site and it was therefore terminated from the SFSP (respondent's document k; appellant's appendix 11). Respondent is also denying reimbursement for 4,931 breakfast meals, 5,124 lunch meals, 4,926 supper meals and 4,456 fourth meal supplements (respondent's document k; appellant's appendix 11). Finally, respondent is reclaiming approximately \$42,787.00 from appellant (respondent's document k; appellant's appendix 11).

Respondent asserts that, since 2007, it has conducted 10 site and two administrative reviews of appellant's SFSP sponsorship (respondent document 1). Respondent states that appellant has had numerous findings of noncompliance and has failed to permanently address the outstanding noncompliance. Both parties agree that respondent has provided technical assistance to appellant on numerous occasions, including a specialized one on one training session on July 23, 2009 (respondent document i).

Respondent conducted its first site review of appellant's camp for the 2010 SFSP on July 7, 2010. At that site visit, conducted during breakfast, respondent found the following items of noncompliance:

- 1) poor food safety procedures (7 CFR §225.16[a]);
- 2) feeding children not enrolled in the residential camp program (7 CFR §225.2 and 225.6[b][8]);
- 3) meal counts were significantly different than those proposed by appellant for previous days (7 CFR §225.15[c][1]);
- 4) eligibility errors on income application forms (7 CFR §225.16[b][1];
- 5) nutritional integrity issues with the food being served (7 CFR §225.16[d] and 225.16 [f][ii]) and
- 6) meal service did not begin at the approved time (7 CFR §225.16[c][3][4])(appellant appendix 5, respondent document c).

All of these items of noncompliance pertain to the first shift of meal service at the family dining room (respondent document c). Also on July 7, 2010, respondent's staff returned to the site to observe lunch. Upon arriving at the site at 1:20 it appeared to respondent's staff that no lunch preparations had begun, although lunch was to be served at 1:30 (respondent document 1). Respondent again found that there was no accurate system to count complete meals (7 CFR §225.15[c][1]) and that incomplete meals were served (7 CFR §225.16[d]) (respondent document d).

Appellant responded to these site visits by letters dated July 7, 2010 (appellant's appendix 6) and July 11, 2010 (respondent's document e). In appellant's July 11, 2010 letter it stated that it would begin using an attendance sheet as a revised meal count method.

On August 16, 2010 respondent conducted a follow-up site visit at appellant's camp. Respondent found the following items of noncompliance at this site visit:

- 1) meals were being served outside of the approved meal times (7 CFR §225.16[c][3][4]);
- 2) incomplete meals were served missing required components (7 CFR §225.16[d] and 225.16 [f][ii]);
- 3) adults were observed leaving the dining room with plates of food (7 CFR §225.15[a]);
- 4) the site did not have an accurate system to count complete first meals and all meal types and was not using the counting method proposed in its July 11, 2010 letter (7 CFR §225.15[c][1]);
- 5) poor food safety procedures (7 CFR §225.16[a]);
- 6) all required eligibility documentation was not being maintained (7 CFR §225.15[f]);
- 7) non-program adults did not pay for their meal (7 CFR §225.15[a]) and
- 8) the site was not maintaining accurate meal counts for adults thereby justifying all costs and meals claimed (7 CFR §225.15[c][1]) (appellant appendix 7, respondent document f)

By letter dated August 19, 2010 appellant submitted a written response to respondent's August 16, 2010 follow-up site visit findings (appellant appendix 8 and respondent document g) Appellant agreed not to claim any meals for the younger children since August 16, 2010 and to install surveillance cameras to ensure that adults do not leave the dining premises with food.

On November 20, 2010 respondent conducted an announced administrative review of appellant's records and found that appellant was not assigning a cost to the beginning inventory (respondent document h). On December 3, 2010 respondent sent appellant a Notice of Action letter giving appellant a final opportunity to submit a corrective action plan that would correct all of its outstanding violations from 2007, 2008, 2009 and 2010 (appellant appendix 9, respondent document i). Appellant responded by letter dated December 20, 2010 proposing six corrective action measures (appellant appendix 10, respondent document j). By letter dated January 24, 2011 respondent notified appellant that it determined that appellant does not have the operational and administrative capability to operate a SFSP site and it was therefore terminated from the SFSP; (appellant's appendix 11, respondent's document k). Respondent also denied appellant reimbursement for 4,931 breakfast meals, 5,124 lunch meals, 4,926 supper meals and 4,456 fourth meal supplements and reclaimed approximately \$42,787.00 (appellant's appendix 11, respondent's document k). Appellant proceeded to bring this appeal.

Appellant breaks its appeal down into multiple categories and requests that I approve a change in site status from residential camp to "closed-enrolled" so that it will be able to obtain reimbursement for the children who were provided meals but were not enrolled in the residential camp program. Appellant also submits that its proposed corrective action of having a separate meal count for non-program adults should have been acceptable to respondent. Appellant denies that its meals did not comply with the meal pattern requirements required by the federal regulations and that

it has serious food safety issues at the site. Finally, appellant asserts that it is allowed to provide large and/or second portions of food to children in its SFSP.

Respondent argues that to date, appellant has failed to demonstrate that it has administrative and operational control over its food service program. Violations have been found since 2007 and after a substantial amount of technical assistance, appellant has remained unable to comply with the requirements of the SFSP. Additionally, respondent argues that appellant's proposed corrective action is inadequate and it is therefore required to terminate appellant as a sponsor in accordance with the federal regulations governing the SFSP (7 CFR §225.11[f][2], 7 CFR §225.18[b][2] and 7 CFR §225.14[c][1][3][4]).

Based on the evidence provided in this appeal, I must conclude that respondent's determination to terminate appellant from the SFSP, deny reimbursement of certain costs and reclaim approximately \$42,787.00 was reasonable. The violations documented at appellant's site are multitudinous and cover several years of operation at the site.

Appellant has been unable to prove that it is providing free meals only to the enrolled children who meet the program's eligibility standards. During both days of site reviews conducted by respondent in 2010, it was noted that families and adults were provided meals during the set time for the program's enrolled children. Also, large portions and second portions were observed. While appellant points out that extra portions may be allowed within the scope of the SFSP, it ignores respondent's underlying concern that SFSP funding is not properly being used to pay only for the meals for the enrolled children who meet the program's eligibility standards. Appellant was approved as a "camp" as that term is defined in 7 CFR §225.2 and, in accordance with the federal regulations at 7 CFR §225.6(b)(8), it is therefore only authorized to serve free or reduced price meals with SFSP funding to properly qualified children who meet the SFSP's eligibility requirements. In its appeal letter to me, appellant requests that its status as a camp be converted to a "closed enrolled site," in order to claim the non-camp children for two meals a day. I am not authorized to make such a change and I find that this request further documents respondent's finding that appellant fed persons other than enrolled children, meeting program eligibility requirements, with SFSP funding in violation of 7 CFR §225.6(b)(8). Further, it appears that serving additional people through the SFSP led to findings by respondent that appellant has systemic meal count inaccuracies, in violation of 7 CFR §225.15(c)(1).

Additionally, respondent has documented, at each of the 2010 site reviews, that appellant's meals lacked required meal components (appellant's appendices 5 and 7, respondent documents c, d and f). I agree with appellant that this finding for one meal missing milk during the July 7, 2010 breakfast site review is excessive. However, the finding on August 16, 2010 that a hastily prepared lunch of pancakes with several meal components missing, in violation of 7 CFR §225.16(d), verifies that this is another serious deficiency in appellant's SFSP operation.

Appellant also denies respondent's findings of poor food safety procedures and cites to its July 27, 2010 inspection report from the New York State Department of Health (DOH) as evidence (appellant appendix 26). Respondent's findings do not clearly articulate what state or local laws or regulations appellant is not in conformance with regarding health and food safety (7 CFR

§225.16[a]). Additionally, an inspection by the New York State Health Department, which took place in between respondent's two days of site reviews, wherein no violations or concerns were documented, weighs in favor of appellant's argument that the respondent's observations, while disconcerting, did not rise to the level of a violation of the federal SFSP regulations. Therefore, without specific reference to what state or local laws appellant did not comply with, and in light of the Department of Health's inspection report, I must agree with appellant and find that the alleged violation of 7 CFR §225.16(a) is unfounded.

Respondent also submitted documentation that appellant does not approve SFSP applications correctly and does not maintain accurate eligibility documentation supporting the number of eligible children it claims (appellant appendices e and g; respondent documents b, c and f). In 2007 respondent found that the site had incorrectly approved applications (respondent document b). In 2008 respondent noted that there were no applications or rosters maintained at the site (respondent document b). In 2009 respondent found that applications were incorrectly approved and it could only verify 188 eligible children of 284 children claimed (respondent document b). These violations carried over to appellant's 2010 SFSP wherein it was again documented by respondent that appellant was not correctly approving applications and that some application for eligible children were not on file (appellant appendices e and g; respondent documents c and f). In light of the multiple years that these violations of 7 CFR §§225.16(b)(1) and 225.15(f) have continued, I must agree with respondent that this is another systemic violation at appellant's site, further documenting appellant's inability to administratively and operationally operate its site within the regulatory confines of the SFSP.

Finally, respondent submitted evidence that even when appellant stated that it would implement corrective action measures it did not properly do so. For example, after its July 7, 2010 site review, appellant wrote to petitioner on July 11, 2010 stating that it would implement a revised counting method using an attendance sheet for the meal service (respondent document e). During an August 16, 2010 follow-up site review, however, respondent observed that the new counting method was not being properly utilized, leading to further findings of noncompliance, specifically, meals were provided to children with missing food components (appellant appendix 7, respondent document f). Appellant addressed this issue again in its proposed corrective actions submitted in its December 20, 2010 letter to respondent by stating that it would hire a second meal-counter to ensure accurate meal counts (respondent document j). It also stated that it would notify non-program adults that they were not to access the food service and have supervision in the cafeteria ensuring this does not happen in the future. As further corrective action measures, appellant stated that it deducted 20 children from its claim, and will provide additional training on meal pattern and food safety requirements to its staff. Respondent rejected these corrective actions, stating that they were inadequate and lacked information on the training to be provided to staff. In light of respondent's previous finding that appellant did not properly implement corrective actions, and its determination that appellant's corrective actions listed in its December 20, 2010 letter were inadequate, respondent appropriately found that appellant "failed to take action to correct program violations" as required by the federal regulations at 7 CFR §225.11(f)(2).

Regarding termination, the federal regulations implementing the SFSP state, in pertinent part, that: “[T]he State agency shall terminate the participation of a sponsor’s site if the sponsor fails to take action to correct the program violations noted in a State agency review report within the timeframes established by the corrective action plan” (7 CFR §225.11[f][2]). Additionally, the regulations state, in pertinent part, that: [N]o applicant sponsor shall be eligible to participate in the Program unless it; (1) demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service; (3) will conduct regularly scheduled food service for children; (5) has adequate supervisory and operational personnel for overall monitoring and management of each site” (7 CFR §225.14[c][1][3][4]). Finally, the regulations also state, in pertinent part, that: “[A] State agency shall terminate a sponsor’s participation in the Program by written notice whenever it is determined by the State agency that the sponsor has failed to comply with the conditions of the program” (7 CFR §225.18[b][2]). As discussed above, respondent has documented that appellant does not have the operational and administrative capability to operate a SFSP site and that appellant has failed to take adequate action to correct the multiple violations at its site.

Regarding disallowances and reclaims, the federal regulations implementing the SFSP state, in pertinent part, that: “[T]he State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable under this part. State agencies may consider claims for reimbursement not properly payable if a sponsor’s records do not justify all costs and meals claimed” (7 CFR §225.12 [a]). As discussed above, respondent has documented multiple violations at appellant’s site, requiring the disallowance of claims and the reclaim of funds already provided.

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 determined that appellant does not have the operational and administrative capability to operate a SFSP site and it terminated appellant from the SFSP; it denied reimbursement for 4,931 breakfast meals, 5,124 lunch meals, 4,926 supper meals and 4,456 fourth meal supplements; and reclaimed approximately \$42,787.00 from appellant.
