

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13DHR12129

<p>Supermexicana Los Reyes Elena D Flores Garcia Owner, Petitioner,</p> <p>v.</p> <p>NUTRITION SERVICES BRANCH, NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC HEALTH, Respondent.</p>	<p><b>AMENDED FINAL DECISION</b></p>
--	--------------------------------------

Under 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the above-captioned Final Decision, issued from this Office on August 1, 2013 is amended as follows:

This contested case was heard before Beecher R. Gray, Administrative Law Judge, on June 20, 2013, in High Point, North Carolina. Petitioner's proposed decision as corrected and approved by Respondent's counsel was filed on August 20, 2013.

#### **APPEARANCES**

For Petitioner: Jason G. Goins, Attorney at Law  
167 E. Salisbury Street  
Asheboro, NC 27203

For Respondent: Donna Smith  
Assistant Attorney General  
N.C. Department of Justice  
PO Box 629  
Raleigh, NC 27602

#### **ISSUE**

Whether Petitioner's claimed reimbursement for the sale of an amount of a specific supplemental food item, which exceeded the store's documented inventory of that supplemental

food item for six or more days within a 60 day period, violated 7 C.F.R. § 246.12(1)(1)(iii)(B), 10A N.C.A.C. 43D .0708 (30), and .0710(a)(1), and the WIC Vendor Agreement.

### **DOCUMENTARY EVIDENCE**

The following exhibits were admitted into evidence.

#### **For Petitioner:**

1. March 22, 2012, Page 1, of La Tortilleria invoice to Petitioner

#### **For Respondent:**

1. N.C. WIC Vendor Application, December 1, 2009
2. WIC Vendor Agreement, October 1, 2009 through September 30, 2012
3. N.C. WIC Vendor Information Update, August 8, 2011
4. Letter to Elena del C. Flores Garcia dated June 29, 2012.
5. Letter to Elena del C. Flores Garcia dated September 27, 2012
6. Notice of Intent to Disqualify and Notice of Claim dated April 3, 2013
7. Reduction of Claim dated May 31, 2013
8. WIC Inventory count dated March 23, 2012
9. Letter to Elena del C. Flores Garcia dated March 26, 2012
10. WIC Inventory count dated June 22, 2012
11. Purchase documentation request dated June 22, 2012
12. Letter to Elena del C. Flores Garcia dated June 26, 2012
13. Invoice summary with invoices
14. Daily sales with food instruments
15. Daily inventory
16. Audit summary
17. Audit memorandum dated September 25, 2012
18. Invoice date-stamped received October 3, 2012
19. Audit memorandum dated March 28, 2013
20. Daily inventory
21. Audit summary
22. Audit memorandum dated May 23, 2013
23. Renewal Training for Authorized WIC Program Vendors 2011, agenda with training materials
24. WIC Program Vendor Training 2011 Verification of Attendance
25. N.C. WIC Program Vendor Manual Oct. 1, 2011 to Sept. 30, 2012
26. participant access data

## **WITNESSES**

### **Witnesses for Petitioner:**

1. Elena Flores Garcia, Owner of Supermexicana Los Reyes

### **Witnesses for Respondent:**

1. Gerell Smith, Vendor Compliance Officer, Nutrition Services Branch, NC DHHS
2. Craig Forsythe, Senior Auditor, Office of the Internal Auditor, NC DHHS
3. Janet Nelson-Cagle, Vendor Manager, Randolph County Health Department

## **FINDINGS OF FACT**

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Respondent conducted an inventory audit of Petitioner's inventory with respect to WIC infant formulas from March 23, 2012 to June 22, 2012. The auditor was Craig Forsythe, Senior Auditor, Office of the Internal Auditor, NC DHHS.
3. An inventory audit is an examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of WIC supplemental foods to provide participants the quantities specified on food instruments transacted by the vendor during the audit period.
4. On March 23, 2012, Auditor Forsythe introduced himself to Petitioner Elena Garcia at her store. He asked whether any food instruments had been transacted that day, and Petitioner responded "no." Auditor Forsythe counted product on the shelf in the presence of Petitioner and asked where the infant formula was. Auditor Forsythe asked Petitioner whether there was any more of that product in the store, her car, etc. Auditor Forsythe felt that he had no problem communicating with Petitioner.
5. Auditor Forsythe returned to Petitioner's store on June 22, 2012, and re-counted inventory. Auditor Forsythe also provided to Petitioner on June 22, 2012, a written request to submit to his office by July 22, 2012, all purchase documentation for specific WIC infant formulas purchased for the store during the audit period.
6. Afterward, Auditor Forsythe obtained and reviewed food instruments transacted at the store during the audit period for the specific WIC infant formulas that he was auditing.
7. Auditor Forsythe issued an audit memorandum containing his audit findings on September 25, 2012. The findings were based upon Auditor Forsythe's review of

Petitioner's beginning and ending inventory on March 23, 2012, and June 22, 2012, Petitioner's purchase documentation for the audit period, and food instruments transacted at Petitioner's store for the specific audited WIC infant formulas during the audit period.

8. The audit identified what Auditor Forsythe believed were seven (7) patterns of claiming reimbursement for the sale of Enfamil PREMIUM infant powdered formula, 12.5 oz., which exceeded the store's documented inventory of that WIC infant formula during the audit period. The seven (7) patterns identified by the audit resulted in an overpayment amount to the Petitioner of \$417.81 for the Enfamil PREMIUM Infant powdered formula. The audit also identified an overpayment to Petitioner of \$549.75 for Enfamil GENTLELEASE powdered formula, 12.4 oz., but no pattern was identified.
9. Based on the audit findings, Petitioner was served notice on April 3, 2013, of the Respondent's intent to disqualify Supermexicana Los Reyes from the WIC Program for three years for the seven (7) patterns of claiming reimbursement for the sale of Enfamil PREMIUM Infant powdered formula, 12.5 oz., which exceeded the store's documented inventory of that WIC infant formula during the audit period.
10. Petitioner filed a Petition with the Office of Administrative Hearings on May 3, 2013, in response to the April 3, 2013, Notice of Intent to Disqualify Supermexicana Los Reyes from the WIC Program.
11. An amended audit memorandum was issued on May 23, 2013, based upon further review of the food instruments transacted at Supermexicana Los Reyes during the audit period. The amended findings reduced the number of patterns of claiming reimbursement for the sale of Enfamil PREMIUM Infant powdered formula, 12.5 oz., in excess of the store's documented inventory during the audit period from seven (7) patterns to three (3) patterns. This reduction in patterns also reduced the overpayment amount for Enfamil PREMIUM Infant powdered formula, 12.5 oz., to \$351.84. Respondent notified Petitioner of the amended audit findings by letter dated May 31, 2013.
12. Petitioner submitted original purchase documentation to Auditor Forsythe. Petitioner's Exhibit 1, Page 1 of a shipping document with delivery date March 22, 2012, from La Tortilleria to Petitioner included five cases of Enfamil Lipil Premium Polvo, 6 cans per case, for a total of 30 cans of formula. This document had not been provided to Respondent prior to the hearing date, and, therefore, was not considered in Auditor Forsythe's audit.
13. Petitioner testified that on March 23, 2012, these 30 cans of Enfamil were in her store, temporarily stored in space underneath her cash register because of lack of shelf space in the store. Petitioner further testified that she had not understood Auditor Forsythe's questions about additional product, which was not on the shelf.
14. Auditor Forsythe determined that including these additional 30 cans of Enfamil PREMIUM Infant powdered formula in the beginning inventory count of the audit eliminated all identified patterns and days of claiming reimbursement for the sale of

Enfamil PREMIUM Infant powdered formula, 12.5 oz., in excess of the store's documented inventory during the audit period.

15. Gerell Smith, Vendor Compliance Officer for NC DHHS, Division of Public Health, explained the WIC Program. Compliance Officer Smith explained that federal regulation defines vendor violation as intentional or unintentional actions by the vendor or its employees, with or without management's knowledge, that violate WIC Program rules, regulations and laws. USDA requires the State agency to determine vendor compliance by routine monitoring by the local agency, compliance buys, and inventory audits.
16. Mrs. Janet Nelson-Cagle has been Randolph County's WIC vendor manager for 25 years. WIC Manager Nelson-Cagle explained the WIC vendor training process. WIC Manager Nelson-Cagle conducted annual WIC vendor training on July 27, 2011. An interpreter fluent in Spanish was available at the July 27, 2011, WIC vendor training to answer questions; however, the training was not actually conducted in Spanish. There is no WIC Program requirement that vendor training or training materials be provided in other languages. Daylen Gonzalez attended the July 27, 2011, training as the vendor representative for Supermexicana Los Reyes.
17. Dulce Vazquez was sworn as an interpreter for Petitioner Elena D. Flores Garcia for purposes of this contested case hearing. Petitioner, first being sworn, testified through the interpreter.
18. Petitioner testified that Auditor Forsythe was very friendly and very professional but that she did not understand much of what he said to her. She testified that she sent an employee to the WIC training sessions who spoke better English than she did.
19. Relevant definitions for the purposes of this hearing are included in 10A NCAC 43D.0202 and 7 C.F.R. § 246.2.
20. Title 7 C.F.R. § 246.12(l)(1)(iii)(B) provides that 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 specific period of time. Title 10A N.C.A.C. 43D .0710(a)(1) provides that a pattern is established when a vendor claims 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 six or more days within a 60-day period.
21. The relevant statutes, rules, and regulations are as follows: N.C. Gen. Stat. § 130A-361; 7 C.F.R. § 246.12(1)(1)(iii)(B); and 10A N.C.A.C. 43D.0708 and .0710(a)(1).
22. It appears by a preponderance of the evidence that Respondent's audit did not include page 1 of a purchase document for 30 cans of Enfamil PREMIUM Infant powdered formula delivered to Petitioner on March 22, 2013, introduced into evidence as Petitioner's Exhibit 1.

## CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Because of a language barrier and incomplete understanding by Petitioner of Auditor Craig Forsythe's instructions about inventory not on the shelf, Auditor Forsythe's initial inventory count of March 23, 2012, did not include the additional 30 cans of Enfamil PREMIUM Infant powdered formula shown by Petitioner's Exhibit 1, which was stored in storage space under Petitioner's cash register. The existence of this additional amount of Enfamil was supported and corroborated by the invoice admitted as Petitioner's Exhibit 1. Inclusion of this amount of inventory would have brought Petitioner into WIC Program compliance as to that product.
3. A pattern has not been established of claiming reimbursement for the sale of Enfamil PREMIUM Infant powdered formula, 12.5 oz., in excess of the store's documented inventory of that WIC infant formula during the audit period. Therefore, Supermexicana Los Reyes is not subject to a 3-year disqualification from the WIC Program.
4. Petitioner is entitled to a refund of \$354.84 for the overpayment assessed as a result of the three (3) patterns of claiming reimbursement for the sale of Enfamil PREMIUM Infant powdered formula, 12.5 oz., in excess of the store's documented inventory of that WIC infant formula during the audit period. The overpayment assessed for Enfamil GENTLELEASE powdered formula of \$549.75 remains in effect.

## FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Respondent's intent to disqualify Supermexicana Los Reyes as an authorized WIC vendor for three years is **REVERSED**. Additionally, Petitioner is entitled to a refund of \$354.84.

## NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review.

Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 28<sup>th</sup> day of August, 2013.

---

Beecher R. Gray  
Administrative Law Judge

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13DHR12129

<p>SUPERMEXICANA LOS REYES ELENA D. FLORES GARCIA OWNER, Petitioner,</p> <p>v.</p> <p>NUTRITION SERVICES BRANCH, NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC HEALTH, Respondent.</p>	<p><b>FINAL DECISION</b></p>
---	------------------------------

This contested case was heard before Beecher R. Gray, Administrative Law Judge, on June 20, 2013, in High Point, North Carolina. Petitioner's proposed decision as corrected and approved by Respondent's counsel was filed on July 17, 2013.

### **APPEARANCES**

For Petitioner: Jason G. Goins, Attorney at Law  
167 E. Salisbury Street  
Asheboro, NC 27203

For Respondent: Donna Smith  
Assistant Attorney General  
N.C. Department of Justice  
PO Box 629  
Raleigh, NC 27602

### **ISSUE**

1. Whether Petitioner's claimed reimbursement for the sale of an amount of a specific supplemental food item, which exceeded the store's documented inventory of that supplemental food item for six or more days within a 60 day period, violated 7 C.F.R. § 246.12(1)(1)(iii)(B), 10A N.C.A.C. 43D .0708 (30) and .0710(a)(1), and the WIC Vendor Agreement.
2. Whether Respondent correctly assessed \$967.56 as overpayment for WIC approved infant formula as a result of an audit.



## **BURDEN OF PROOF**

Under N.C. Gen. Stat. § 108C-12(d), Respondent bears the burden of proof in this matter.

## **DOCUMENTARY EVIDENCE**

The parties agreed and stipulated to the authenticity and admissibility of the following exhibits which were admitted into evidence:

### **For Respondent:**

1. N.C. WIC Vendor Application, December 1, 2009
2. WIC Vendor Agreement, October 1, 2009 through September 30, 2012
3. N.C. WIC Vendor Information Update, August 8, 2011
4. Letter to Elena D. Flores Garcia dated June 29, 2012.
5. Letter to Elena D. Flores Garcia dated September June 27, 2012
6. Notice of Intent to Disqualify and Notice of Claim dated April 3, 2012
7. Reduction off Claim dated May 31, 2012
8. WIC Inventory count dated March 23 ,2012
9. Letter to Elena D. Flores Garcia dated March 26, 2012
10. WIC Inventory count dated June 22, 2012
11. Purchase documentation request dated June 22, 2012
12. Letter to Elena D. Flores Garcia dated June 26, 23012
13. Invoice summary with invoices
14. Daily sales with food instruments
15. Daily inventory
16. Audit summary
17. Audit memorandum dated September 25, 2012
18. Invoice date-stamped received October 3, 2012
19. Audit memorandum dated March 28, 2012
20. Daily inventory
21. Audit summary
22. Audit memorandum dated May 23, 2013
23. Renewal Training for Authorized WIC Program Vendors 2011, agenda with training materials
24. WIC Program Vendor Training 2011 Verification of Attendance
25. N.C. WIC Program Vendor Manual Oct. 1, 2011 to Sept. 30, 2012
26. participant access data

### **For Petitioner:**

1. March 22, 2012 Page 2 of La Tortilleria invoice to Petitioner

## **WITNESSES**

### **Witnesses for Petitioner:**

Petitioner

### **Witnesses for Respondent:**

Gerrell Smith, Vendor Compliance Officer, Nutrition Services Branch, NC DHHS

Craig Forsythe, Senior Auditor, Office of the Internal Auditor, NC DHHS

Janet Nelson-Cagle, Vendor Manager, Randolph County Health Department

## **FINDINGS OF FACT**

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Petitioner does not dispute the finding of an overpayment by Respondent to Petitioner from the Hearing Officer's decision in the following amount: \$967.56. Petitioner already has paid Respondent the sum of \$967.56 as reimbursement of the alleged overpayment to Petitioner.
3. Respondent conducted a review of Petitioner's inventory with respect to WIC items on March 23, 2012, and again on June 22, 2012. The auditor was Craig Forsythe, Senior Auditor, Office of the Internal Auditor, NC DHHS.
4. Auditor Forsythe testified that the purpose of his audit was to check whether Petitioner had sufficient infant formula, in relation to her transaction amount on food instruments submitted for payment.
5. On March 23, 2012, Auditor Forsythe introduced himself to Petitioner Elena Garcia at her store. He asked whether any food instruments had been transacted that day, and Petitioner responded "no." Auditor Forsythe counted product on the shelf in the presence of Petitioner and asked where the infant formula was. Auditor Forsythe asked Petitioner whether there was any more of that product in the store, her car, etc. Auditor Forsythe felt that he had no problem communicating with Petitioner.
6. Auditor Forsythe returned to Petitioner's store on June 22, 2012 and re-counted inventory.
7. Afterward, Auditor Forsythe obtained transaction documents for the items that he was auditing: WIC items of supplemental foods; Enfamil Gentlease, 12.4 oz powder; Enfamil PREMIUM Infant, 12.5 oz powder; and other WIC-endorsed products.
8. Auditor Forsythe documented what he believed to be 7 patterns of claiming reimbursement for the sale of the WIC supplemental food items shown below, which exceeded the store's documented inventory:

- a. WIC Supplemental food
- b. Enfamil PREMIUM Infant, 12.5 oz powder.

Auditor Forsythe found what he believed to be seven patterns of violation.

9. Petitioner was served notice of the violations on April 3, 2013, and May 31, 2013. Petitioner was requested to submit all documentation of all purchases of all infant formula and all transaction documents to Auditor Forsythe.
10. Petitioner submitted original documents to Auditor Forsythe. Petitioner's exhibit 1, Page 1 of a shipping document with delivery date March 22, 2012 from La Tortilleria to Petitioner included five cases of Enfamil Lipil Premium Polvo 5/12. This document had not been considered in Auditor Forsythe's audit.
11. Petitioner testified that on March 23, 2012, there were 60 cans of Enfamil in her store, temporarily stored in space underneath her cash register because of lack of shelf space in the store. Petitioner further testified that she had not understood Auditor Forsythe's questions about additional product, which was not on the shelf. Had these 60 can been included in Auditor Forsythe's audit, Petitioner would not have been found in violation of WIC requirements during the subject audit period.
12. Gerelle Smith, Vendor Compliance Officer for NCDHHS Public Health, explained the WIC Program. Compliance Officer Smith explained that vendor violations violate federal regulation violations. A violation is an act that violates the WIC program. WIC vendors are checked by monitors or audit and reviewed by the USDA.
13. Compliance Officer Smith explained the audit process as an examination of purchase documents to see if a vendor purchased enough food to cover instruments for a certain time period. If a vendor's claims for money exceed inventory, then WIC must proceed with a claim.
14. Mrs. Janet Nelson Cagle testified that she has been Randolph County's WIC vendor manager for 25 years. WIC Manager Cagle explained the WIC vendor training process. She stated that an interpreter fluent in Spanish was available at the July 27, 2011, WIC vendor training; however, the training was not actually conducted in Spanish.
15. Dulce Vazquez was sworn as an interpreter for Petitioner Elena D. Flores Garcia for purposes of this contested case hearing. Petitioner, first being sworn, testified through the interpreter.
16. Petitioner testified that Auditor Forsythe was very friendly and very professional but that she did not understand much of what he said to her. She testified that she sent an employee to the WIC training sessions who spoke better English than she did. Petitioner did pay the original assessment to Respondent for the alleged overpayment of \$967.56. She testified that her understanding of the WIC program was to help the poor.

17. Auditor Forsythe agreed that an additional 30 cans of infant formula on Petitioner's premises would have put her in compliance with the WIC requirements during the audit period.
18. Relevant definitions for the purposes of this hearing are included in 10A NCAC 43D.0202 et seq.
19. Title 7 C.F.R. § 246.12(1)(iii)(B) provides that 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 specific period of time. Title 10A N.C.A.C. 43D .0710(A)(1) provides that a pattern is established when a vendor claims 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 six or more days within a 60-day period.
20. The relevant statutes, rules, and regulations are as follows: N.C. Gen. Stat. § 130A-361; 7 C.F.R. § 246.12(1)(1)(iii)(B); and 10A N.C.A.C. 43D.01087(30) and .071(a)(1).
21. It appears by a preponderance of the evidence that Respondent's audit did not include page 1 of a purchase document for Enfamil delivered to Petitioner on March 22, 2013, introduced into evidence as Petitioner's Exhibit 1.

### **CONCLUSIONS OF LAW**

1. The parties properly are before the Office of Administrative Hearings.
2. Respondent bears the burden of proof in this matter under the provisions of N.C. Gen. Stat. § 108C-11D.
3. Because of a language barrier and incomplete understanding by Petitioner of Auditor Craig Forsythe's instructions about inventory not on the shelf, Auditor Forysth's initial inventory of March 23, 2013, did not include 60 cans of Enfamil, which was stored in storage space under Petitioner's cash register. The existence of this additional amount of Enfamil was supported and corroborated by the invoice admitted as Petitioner's Exhibit 1. Inclusion of this amount of inventory would have brought Petitioner into WIC Program compliance as to that product.
4. The incomplete initial audit did not establish a pattern of violation of a specific supplemental food item--Enfamil--which exceeded the store's documented inventory of that supplemental food item for six or more days within a 60-day period and does not create cause for Petitioner's disqualification from the WIC program.

5. Petitioner is entitled to a refund of \$967.56, the amount she repaid to Respondent upon Respondent's request for repayment upon its contention that Petitioner had been overpaid by that amount for the allegation of a violation by Petitioner in this contested case.

### **FINAL DECISION**

Petitioner did not establish a pattern of violations in the audit conducted by Senior Auditor Craig Forsythe for the WIC Program from March 23, 2012, through June 22, 2012, under the evidence shown in this hearing. Petitioner is not disqualified from the WIC program under the evidence produced in this hearing and is entitled to a reimbursement of \$967.56 from Respondent.

### **NOTICE**

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 1st day of August, 2013.

---

Beecher R. Gray  
Administrative Law Judge