

STATE OF NORTH CAROLINA  
COUNTY OF CABARRUS

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 DHR 09009

<p>VICENCIO MARTINEZ PETITIONER,</p> <p>v.</p> <p>WIC PROGRAM RESPONDENT.</p>	<p><b>FINAL DECISION ORDER GRANTING SUMMARY JUDGMENT FOR RESPONDENT</b></p>
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THIS MATTER was considered by the undersigned judge upon the motion of Respondent for summary judgment pursuant to N.C.G.S. § 1A-1, Rule 56; the response of Petitioner; and the Respondent’s response to the Petitioner’s response. Based on the pleadings, there is no genuine issue as to any of the following material.

**FINDINGS OF FACTS**

1. Petitioner is a business/business-owner. Carniceria Acapulco is located at 1321 N. Cannon Blvd. in Kannapolis, North Carolina.
2. The WIC Program is the federally funded Special Supplemental Nutrition Program for Women, Infants and Children, which is administered in North Carolina by Respondent.
3. The WIC program provides supplemental foods to pregnant women, infants, and children up to age five (called “participants”) who have a nutritional risk.
4. WIC supplemental foods are provided to participants through the retail grocery system via food instruments that list the authorized foods a participant may obtain. The WIC Program contracts with retail grocery stores to serve as authorized WIC vendors.
5. Authorized WIC vendors accept food instruments in exchange for WIC supplemental foods provided to participants.
6. The WIC Vendor Agreement is the contract between the vendor and the State and local agencies through which the vendor agrees to comply with the terms of the Agreement and State and Federal WIC Program rules, regulations, and laws.
7. Carniceria Acapulco is a WIC authorized store.
8. Petitioner admitted in his Petition that “a human error was made on the WIC prices.”

9. Petitioner admitted in his Response to Respondent's Motion for Summary Judgment that "[w]e do take full responsibility on the mistake."

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has subject and personal matter jurisdiction.
2. Petitioner has admitted the vendor violation and presented no defense.
3. Based on the pleadings, there is no genuine issue as to any material fact and that Respondent is entitled to a judgment as a matter of law.

### **SUMMARY JUDGMENT-STANDARD OF REVIEW**

Summary judgment is designed to eliminate formal trials where material facts are not disputed and only questions of law are involved. Since summary judgment is a drastic remedy, it should be used cautiously, with due regard to its purposes and a cautious observance of its requirements and never as a tool to deprive any party of a trial when genuinely disputed factual issues exist. See *Brown v. Greene*, 98 N.C.App. 377, 390 S.E.2d 695 (1990). The standard of review is whether there is a genuine issue of material fact and whether the movant is entitled to judgment as a matter of law. See *Kessing v. National Mortgage Corp.*, 278 N.C. 523, 534, 180 S.E.2d 823, 830 (1971). Summary judgment is an extreme remedy and should be awarded only where the truth is quite clear. See *Lee v. Shor*, 10 N.C.App. 231, 233, 178 S.E.2d 101, 103 (1970). To entitle one to summary judgment, the movant must conclusively establish a legal bar to the nonmovant's claim or complete defense to that claim. See *Virginia Elec. and Power Co. v. Tillett*, 80 N.C.App. 383, 385, 343 S.E.2d 188, 190-91, *cert denied*, 317 N.C. 715, 347 S.E.2d 457 (1986).

The burden of establishing a lack of any triable issue resides with the movant. See *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 313 N.C. 488, 329 S.E.2d 350 (1985). The trial court must determine if there is a triable material issue of fact, viewing all evidence presented in the light most favorable to the nonmoving party.

### **FINAL DECISION**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that summary judgment is granted in favor of Respondent against Petitioner; and that Respondent's decision to disqualify Petitioner's store, Carniceria Acapulco, as an authorized WIC vendor for three years should be **UPHELD**.

### **NOTICE**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 03.0102, 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.

IT IS SO ORDERED.

This the 22nd day of November, 2016.

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J Randall May  
Administrative Law Judge