

STATE OF NORTH CAROLINA  
COUNTY OF CHATHAM

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 DHR 00936

<p>Saul Mario Calderon Owner of Tienda El Centro Inc d/b/a Tienda El Centro Petitioner,</p> <p>v.</p> <p>NC Department of Health and Human Services, Nutrition Services, Women Infants &amp; Children Program Respondent.</p>	<p style="text-align: center;"><b>FINAL DECISION ORDER OF DISMISSAL GRANTING SUMMARY JUDGMENT</b></p>
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**THIS MATTER** is before the Undersigned upon Respondent's Motion for Summary Judgment ("Motion") pursuant to N.C. Gen. Stat. §§ 150B-23 and 33 and N.C. Gen. Stat. § 1A-1, Rule 56 of the North Carolina Rules of Civil Procedure, N.C. Gen. Stat. § 55-2-02, Petitioner's response thereto, and for good cause shown, the undersigned hereby **GRANTS** Summary Judgment for Respondent as follows:

**APPEARANCES**

For Petitioner: Saul Mario Calderon, President of Tienda El Centro

For Respondent: Lisa Bradley  
Special Deputy Attorney General  
North Carolina Department of Justice

**ISSUE**

Whether there are genuine issues of material fact and if Respondent is entitled to summary judgment as a matter of law?

**UNDISPUTED FINDINGS OF FACT**

1. Respondent North Carolina Department of Health and Human Services, through its Nutrition Services Branch of the Division of Public Health, administers the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program. The WIC Program is federally funded by the United States Department of Agriculture and provides supplemental foods, health care referrals, and nutrition education to low-income breastfeeding, pregnant, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk.

The WIC Program services are provided by and delivered in the individual counties, by each county's local WIC agency.

2. The WIC program is federally funded and provides supplemental foods through authorized WIC vendors to WIC participants. Authorized WIC vendors accept e-WIC cards from the WIC participants in exchange for WIC approved supplemental foods. Vendors are then financially reimbursed by the WIC program for the e-WIC exchanges.

3. To be designated as an authorized WIC vendor, individuals and entities must agree, inter alia, to abide by and sign a WIC vendor agreement which contains relevant WIC federal and state laws, regulations, administrative codes, and policies. Violations of the WIC vendor agreement result in sanctions or disqualification depending on the violations.

4. Tienda El Centro Inc, d/b/a Tienda El Centro, is a North Carolina corporation and an authorized WIC vendor with Respondent's WIC program. Saul Mario Calderon is the President of Tienda El Centro but is not an authorized WIC vendor.

5. On February 25, 2022, Respondent issued a Notice of Intent to Disqualify Petitioner Tienda El Centro Inc, d/b/a Tienda El Centro from participating in the WIC Program as an authorized WIC vendor for a period of three years for engaging in a pattern of claiming reimbursement for the sale of specific WIC supplemental food(s) (whole wheat bread 16 oz) which exceeded the WIC Vendor's documented inventory of that supplemental food during six or more days within a 60-day audit period ("audit period").

6. On March 14, 2022, Saul Mario Calderon filed a contested case petition on behalf of Tienda El Centro, Inc., d/b/a Tienda El Centro appealing Respondent's February 25, 2022 Notice of Intent to Disqualify. Mr. Calderon alleged that Respondent exceeded its authority or jurisdiction in issuing the Notice of Intent to Disqualify in that a three-year WIC disqualification was too long a disqualification for "two extra breads that could have been misplace [sic] at the time of the inventory as a lost receipt." Mr. Calderon also alleged that such disqualification would not only affect him but also would affect families in his community that are used to shopping at his business. (Petition)

7. After Respondent filed a Motion to Dismiss this case on April 19, 2022, Petitioner filed a response to Respondent's Motion. Mr. Calderon admitted the vendor violation, on behalf of the corporation, by stating "I understand that there was violation [sic] in my business (with the difference of 2 whole wheat bread, 16 oz, like shown in the inventory audit report) that could have easily been looked over or also been a loss [sic] receipt." (Petitioner's Response to Motion)

8. Respondent filed a Motion for Summary Judgment motion on May 9, 2022. On May 20, 2022, this Tribunal received Mr. Calderon's response dated May 17, 2022. Mr. Calderon admitted the loss of a 10-ounce wheat bread purchase invoice was his mistake and contended that the 3-year disqualification was very severe. Petitioner's response did not present any facts tending to establish there was a genuine issue of material fact in this case.

9. Mr. Calderon has not disputed any material fact regarding the procedure and rules employed by the Respondent in issuing the disqualification. In fact, Mr. Calderon has admitted the vendor violation.

10. Tienda El Centro, Inc. as the WIC vendor has raised no objections to these proceedings.

11. There are no genuine issues as to any material fact that the subject WIC vendor engaged in a pattern of claiming reimbursement for the sale of specific WIC supplemental food(s) (whole wheat bread 16 oz) which exceeded the WIC Vendor's documented inventory of that supplemental food during the audit period.

12. Alternatively, pursuant to N.C. Gen. Stat. § 150B-23, a business entity may represent itself before the Office of Administrative Hearings if a non-attorney representative of that entity meets certain statutory requirements and files a prior notice of non-attorney representation, under penalty of perjury, to the Clerk's office on a form provided by the Clerk's office. N.C. Gen. Stat. § 150B-23(a).

13. On May 4, 2022, this Tribunal issued an Order informing Mr. Calderon that "in order to proceed in this contested case, he **must** file the non-attorney representation form, which was attached to the Order, with the Office of Administrative Hearings on or before May 14, 2022." Mr. Calderon did not file the non-attorney representation form with the Office of Administrative Hearings.

### **CONCLUSIONS OF LAW**

1. This contested case is subject to dismissal pursuant to N.C. Gen. Stat. § 1A-1, Rules 56 of the Rules of Civil Procedure, Rule 12(b)(1) of the Rules of Civil Procedure, N.C. Gen. Stat. §§ 150B-33(b)(3a) and -36(d); and 26 NCAC 3 .0105 and .0114.

2. Rule 56(c) of the North Carolina Rules of Civil Procedure provides that summary judgment will be granted:

[If] the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.

3. On a motion for summary judgment, the question before this Tribunal is whether the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact, and that a party is entitled to judgment as a matter of law. *Meadows v. Cigar Supply Co., Inc.*, 91 N.C. App. 404, 371 S.E.2d 765 (1988). Only a fact, resolution of which would

prevent the party against whom it is resolved from prevailing, is material. *Bone International, Inc. v. Brooks*, 304 N.C. 371, 374, 283 S.E.2d 518, 520 (1981).

4. 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).

5. Since Mr. Calderon, as President of WIC vendor Tienda El Centro Inc, admitted the subject WIC violation and presented no defense to the allegations in Respondent's Notice of Intent to Disqualify, there are no genuine issues of material fact that the subject WIC vendor engaged in a pattern of claiming reimbursement for the sale of specific WIC supplemental food(s) (whole wheat bread 16 oz) which exceeded the WIC Vendor's documented inventory of that supplemental food during the audit period.

6. As there are no genuine issues as to any material fact, Respondent is entitled to a judgment as a matter of law.

### **FINAL DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned **GRANTS** Respondent's Motion for Summary Judgment against Petitioner and **UPHOLDS** Respondent's decision to disqualify the corporation, Tienda El Centro, Inc. d/b/a Tienda El Centro, as an authorized WIC vendor for three years.

### **NOTICE OF APPEAL**

**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 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 as indicated by 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 to ensure the timely filing of the record.

**SO ORDERED**, this the 27th day of May, 2022.



Melissa Owens Lassiter  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Saul Mario Calderon  
108 South Chatham Ave  
Siler City NC 27344  
Petitioner

Lisa Karen Bradley  
NC Department of Justice  
lbradley@ncdoj.gov  
Attorney For Respondent

This the 27th day of May, 2022.



Daniel Chunko  
Law Clerk  
N. C. Office of Administrative Hearings  
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Raleigh, NC 27609-6285  
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