

(Cite as 28 D.o.E. App. Dec. 534)

IOWA DEPARTMENT OF EDUCATION

In re: National School Lunch Program

AHSTW COMMUNITY SCHOOL DISTRICT

DIA Case No. 18DOE0002

DOE Admin Doc. No. 5080

Appellant,

vs.

IOWA DEPARTMENT OF EDUCATION,
BUREAU OF NUTRITION AND HEALTH
SERVICES

DECISION

Appellee.

STATEMENT OF THE CASE

The Appellant, AHSTW Community School District, appealed from a decision of the Appellee, Iowa Department of Education, assessing a fiscal action of \$628.08 against it as a result of a School Nutrition Program Administrative Review.

This matter came on for telephone hearing on April 17, 2018 before Administrative Law Judge Kristine M. Dreckman, designated hearing officer for Ryan M. Wise, Director of the Iowa Department of Education. Kelly Allen and Mary Kay Sievers appeared and participated on behalf of AHSTW Community School District ("AHSTW"). Present on behalf of the Department of Education ("the Department") was Ann Feilmann, Brenda Windmuller, and Patti Harding.

The Department submitted exhibits marked A through H that were admitted into the record without objection. Official notice was taken of the administrative file.

ISSUE

Whether the Department properly assessed a fiscal action of \$628.08 against AHSTW as a result of a School Nutrition Program Administrative Review.

DECISION

The Department's decision is MODIFIED.

FINDINGS OF FACT

Case No. 18DOE0002
Page 2 of 5

AHSTW had been a participant of the National School Lunch Program ("the Program") for an undisclosed period of time. The Department re-certified AHSTW for continued participation in the Program effective October 1, 2012. (Exhibit F).

Thereafter, in February 2015, the Department conducted an administrative review of AHSTW's compliance with the program. During that administrative review, the Department found that AHSTW failed to offer the requisite amount of dark green vegetables each week. Additionally, the Department determined that five children were provided free- or reduced-priced lunches without meeting the Program's criteria. (Feilmann Testimony; Windmuller Testimony; Exhibit G).

The Department conducted a subsequent administrative review of AHSTW's compliance with the program in beginning January 6, 2018 through January 18, 2018. As a part the review, the Department reviewed AHSTW's production records, observed the school's offerings, and interviewed AHSTW's staff. (Windmuller Testimony; Exhibit H).

At the conclusion of its most recent administrative review, the Department determined that AHSTW failed to show that adequate quantities of dark green vegetables were prepared and served during the review period. Specifically, the Department determined that AHSTW served iceberg lettuce, a non-qualifying item, as the dark green vegetable food offering twice a week. The Department additionally concluded that free lunches were provided to two students who only qualified for the reduced price. (Windmuller Testimony; Exhibit H).

Based on its findings, the Department assessed a "fiscal action" against AHSTW on March 5, 2018 in the amount of \$628.08. A portion of that fiscal assessment, \$568.79, represented the amount AHSTW was reimbursed by the Department for meals that failed to include a compliant dark green vegetable during December 2017. Additionally, a portion of that assessment, \$41.36, reflected the difference in the amount AHSTW was reimbursed by the Department for free meals provided to two students instead of a reduced-price meal in December 2017 (\$20.08) and January 2018 (\$21.28). According to the Department, the remaining \$17.93 included in the March 5, 2018 decision was inappropriately assessed to AHSTW and it was no longer seeking repayment of that amount. (Notice of Assessment; Exhibits B, C, E, and G; Windmuller Testimony; Feilmann Testimony).

AHSTW timely appealed the Department's action. On appeal, the school does not dispute the findings from the Department's administrative review nor the amount of overpayment assessed by the Department. Rather, AHSTW requested that the Department waive the fiscal action in its entirety. In support of its request, AHSTW asserts that it has made several corrections to its food service program including seeking further guidance from the Department and providing its staff continuing education and coaching. (Acknowledgment of Appeal, Allen Testimony).

CONCLUSIONS OF LAW AND ANALYSIS

The purpose the Program is to safeguard the health and well-being of the nation's children by assisting the states, through grants and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school

Case No. 18DOE0002
Page 3 of 5

lunch programs.¹ Accordingly, the Department of Agriculture provides states with general and special cash assistance and donations of food to be used to assist schools in serving nutritious lunches to children each school day.² In furtherance of the Program's objectives, participating schools are required to serve lunches that are considered nutritionally adequate, as set forth in the Program's regulations.³

To participate in the Program, a school food authority must be accepted by and enter into a written agreement with the state agency responsible for the operation of the Program.⁴ The school food authority must also meet the specific meal and pricing requirements of the Program.⁵

In turn, a participating state agency is required to match federal Program funding, provide general program management, and conduct administrative reviews of school food authorities.⁶ An administrative review is defined as a comprehensive, off-site and/or on-site evaluation of all school food authorities participating in the Program.⁷ The term "administrative review" reflects both critical and general areas of the Program.⁸ Critical areas are defined as the following two performance standards:

- 1) All free, reduced price and paid school meals claimed for reimbursement are served only to children eligible for free, reduced price and paid school meals, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims; and
- 2) Reimbursable lunches and breakfasts meet the meal requirements as required under the Program's regulations.⁹

Schools must offer nutritious, well-balanced, and age-appropriate meals to all the children they serve to improve their diets and safeguard their health.¹⁰ School lunches offered to children age 5 or older must meet, at a minimum, certain daily and weekly meal requirements to be considered nutritious and well-balanced. The Program requires schools to offer the food components and quantities required in the lunch meal pattern as set forth under the rules.¹¹ In relevant part, those rules require that the meal patterns include a minimum of 3 ¾ cups of vegetables each week, a ½ cup of which must consist of dark green vegetables.¹² Dark green vegetables includes vegetables such as bok choy, broccoli, collard greens, dark green leafy lettuce, kale, mesclun, mustard greens, romaine lettuce, spinach, turnip greens, and watercress.¹³

¹ 7 CFR 210.1.

² *Id.*

³ *Id.*

⁴ 7 CFR 210.9.

⁵ 7 CFR 210.10.

⁶ 7 CFR 210.17, 210.18, and 210.19.

⁷ 7 CFR 210.18(b).

⁸ *Id.*

⁹ *Id.*

¹⁰ 7 CFR 210.10(a).

¹¹ 7 CFR 210.10(c).

¹² *Id.*

¹³ 7 CFR 210.10(c)(2)(iii)(A).

Case No. 18DOE0002
Page 4 of 5

In the present case, it is undisputed that AHSTW claimed for reimbursement meals that were served free of charge to students who were only eligible to receive them at a reduced price. Additionally, it is undisputed that AHSTW's meal patterns did not include at least ½ cup serving of a qualifying dark green vegetable each week. The evidence submitted into the record shows that these violations were identical to those discovered during a previous administrative review. Those violations served as the basis for the fiscal action issued by the Department on March 5, 2018.

A fiscal action includes the recovery of overpayment through direct assessment or offset of future claims.¹⁴ The Department is required to take fiscal action for all certification and benefit issuance errors.¹⁵ These errors include claiming for reimbursement free or reduced price meals that were served to children that were not eligible for the same.¹⁶ Additionally, the Department is required to apply fiscal action for repeated violations involving vegetable subgroups.¹⁷

Accordingly, the Department assessed a fiscal action of the \$628.08 that was overpaid to AHSTW. At the time of hearing, the Department represented that a portion of that fiscal action, the amount of \$17.93, was assessed in error. Therefore, the Department asserted the correct amount of fiscal action assessed against AHSTW was \$610.15.


AHSTW did not dispute the amount of fiscal action that was assessed in this matter. Rather, it requested the Department exercise some leniency and disregard the fiscal action. The Department does have authority to disregard overpayment, but only if it does not exceed \$600.¹⁸ Consequently, the Department does not have the discretion to waive the overpayment at issue for this matter.

For these reasons, the Department properly assessed a fiscal action against AHSTW as a result of an administrative review; however, as acknowledged by the Department, the amount of fiscal action as stated in its March 5, 2018 was incorrect. Therefore, the Department's decision must be modified to assess the corrected fiscal action of \$610.15.

ORDER

The Department of Education's fiscal action against AHSTW Community School District is hereby modified to \$610.15.

Dated this 9th day of May, 2018.



¹⁴ 7 CFR 210.19 (c)

¹⁵ 7 CFR 210.18(l)(1).

¹⁶ 7 CFR 210.18(g)(1)(i).

¹⁷ 7 CFR 210.18(l)(2)(ii).

¹⁸ 7 CFR 210.19 (d)

Case No. 18DOE0002

Page 5 of 5

Kristine M. Dreckman
Administrative Law Judge

It is so ordered.

5 - 8 - 2018
Date

Ryan M. Wise
Ryan M. Wise, Director
Iowa Department of Education

cc: Jesse Ulrich, ASHTW CSD
Brian Gruhn, Attorney
Kelly Allen, ASHTW CSD
Mary Sievers ASHTW CSD
Brenda Windmuller, DOE
Ann Feilmann, DOE
Nicole Proesch, DOE