

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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Docket No. 14-0153 FNS

In re:

STATE OF VERMONT, DEPARTMENT FOR
CHILDREN AND FAMILIES

Appellant.

APPROVAL OF CONSENT DECISION

On August 18, 2015, counsel for the United States Department of Agriculture (“USDA”; “Appellee”) filed a “Motion to Submit Settlement Agreement” together with a “Settlement Agreement” signed by counsel for the parties in this matter.

Although atypically fashioned, I am satisfied that the document entitled “Settlement Agreement” represents the full terms and conditions of the parties’ agreement to resolve the dispute involved in the above-captioned matter. I construe the “Settlement Agreement” to constitute a Consent Decision as contemplated by 7 C.F.R. § 1.138. Accordingly, I hereby approve the entry of the Consent Decision.

The Hearing Clerk shall serve copies of this Consent Decision upon the parties

So ORDERED this 19th day of August, 2015, in Washington, D.C.


Janice K. Bullard
Administrative Law Judge

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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STATE OF VERMONT, DEPARTMENT FOR
CHILDREN AND FAMILIES)
Appellant)

v.)

FNS Docket No. 14-0153

UNITED STATES DEPARTMENT OF)
AGRICULTURE, FOOD AND NUTRITION)
SERVICE,)
Appellee)

MOTION TO SUBMIT SETTLEMENT AGREEMENT

Appellee United States Department of Agriculture, Food and Nutrition Service, files the attached Settlement Agreement proposal and requests approval by the administrative law judge presiding over this appeal. The Appellant, Department of Children and Families, State of Vermont, joins in this proposed Settlement Agreement.

Respectfully submitted,



Michael Knipe
Office of the General Counsel
International Affairs, Food Assistance,
And Farm and Rural Programs Division
U.S. Department of Agriculture
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Certificate of Service

I, Michael Knipe, certify that a copy of this notice of appearance was sent via U.S. Mail and E-Mail, this 18th day of August, 2015, to:

Benjamin Battles, Esq
Assistant Attorney General
State of Vermont
Office of the Attorney General
103 South Main Street
Waterbury Vermont
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SETTLEMENT AGREEMENT

The Vermont Department for Children and Families (State) and the Secretary of Agriculture (Secretary) agree, as stated in this settlement agreement (Agreement), to settle the Supplemental Nutrition Assistance Program (SNAP) error rate liability amount (Liability Amount) for Federal fiscal year 2013 (FFY 2013) for the State established pursuant to § 16(c)(1)(C) of the Food and Nutrition Act of 2008 (Act). This Agreement is entered into pursuant to §§ 13(a)(1) and 16(c)(1)(D)(ii) of the Act.

1. Pursuant to § 16(c)(1)(C) of the Act, for FFY 2013, the Secretary initially established a Liability Amount of \$549,198.00 for the State. After notifying the State about this liability amount, the Food and Nutrition Service (FNS), which administers SNAP, discovered that the State's actual payment error rate for FFY 2013 was 9.61%, not 9.66%, reducing the liability amount by \$7503.00 to \$541,695.00. Several months later FNS determined that, for the purpose calculating the State's FFY 2013 payment error rate, it had double counted certain able bodied adult without dependents, further reducing the FFY 2013 Liability Amount by \$35,210.18 to \$506,484.82.

2. Pursuant to § 16(c)(1)(D)(i)(I) of the Act, the Secretary has determined that \$202,593.92, which is forty (40) percent of the Liability Amount (\$506,484.82), be used by the State for new investment (New Investment Amount). The Secretary has also determined that, in accordance with § 16(c)(1)(D)(i)(III) of the Act, \$253,242.41 be designated as an At-risk amount (At Risk Amount) that would be paid by the State if a liability amount was again established for FFY 2014. A liability amount has not been established against the State for FFY 2014, and the FFY 2013 At Risk Amount is not payable to the Secretary.

3. The State has already paid the FFY 2012 at risk amount of \$67,803 as required by § 16(c)(1)(E)(i) of the Act.

4. The State agrees to invest the New Investment Amount in mutually agreed upon activities for improving SNAP administration within the State. This New Investment Amount shall not be eligible for Federal matching dollars, and shall be in addition to the cost of the minimum program administration required by law and regulation. For the purpose of complying with this Agreement, the State may not transfer or borrow funds from existing SNAP operational activities to fund new investment activities.

5. The State shall submit a proposed New Investment Plan to the Secretary within ninety (90) days of the effective date of this Agreement. The New Investment Plan shall state how the New Investment Amount will be expended by the State. The New Investment Plan and any modifications to the plan will be incorporated by reference into this Agreement as addendums upon being submitted by the State to the Secretary.

6. Costs of investment activities funded by the New Investment Amount shall be allocated in accordance with the State's approved New Investment Plan. One hundred percent of the funds invested by the State under this Agreement may be credited as SNAP administrative expenditures so long as the approved activities are aimed at improving SNAP administration.

7. Once the State completes an investment expenditure as part of the New Investment Plan, the expenditure is final and not subject to any future adjustment due to subsequent changes in law. In the event that the State fails to make the expenditures necessary to satisfy the terms of this Agreement, or fails to comply in whole or in part with the New Investment Plan under paragraph 5, the Secretary shall collect from the State an amount equivalent to the funds not timely invested according to the New Investment Plan by withholding funds that would otherwise be payable to the State by the Secretary, as provided by § 13(a)(1) of the Act.

8. Any monies expended by the State for administrative purposes as described in § 16(a) of the Act that are in addition to and exceed the New Investment Amount stated in paragraph 2 may be eligible for Federal matching funds.

9. The State shall provide periodic reports as requested by the Secretary concerning the State's compliance with the terms of this Agreement, the expenditure of funds, and the efforts of the State to improve SNAP program administration.

10. This Agreement shall constitute complete settlement and satisfaction of all administrative claims and judicial causes of action which have been or could have been asserted by the State against the Secretary, or by the Secretary against the State, relating to the State's Liability Amount (including New Investment Amount) for FFY 2013.

11. This Agreement shall only affect the State's SNAP error rate Liability Amount for FFY 2013, and shall not affect any liability of the State in future years for exceeding the national performance measure error rate under § 16(c)(1)(C) of the Act.

12. This Agreement may be signed in separate counterparts and shall become effective only upon the signature affixed by the representatives of the Secretary and the State.

AGREED:

Date: AUG - 5 2015



On Behalf of the Secretary:
Administrator, Food and
Nutrition Service, United States
Department of Agriculture

Audrey Rowe

Date: 6/23/15



Commissioner, Vermont
Department for Children and Families

Ken Schatz