

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

July 7, 2022

**OFFICE OF
APPELLATE COURTS**

In the Matter of the Denial of Claims for)
Reimbursement under the Child and)
Adult Care Food Program for Meals and)
Snacks Served in November and)
December 2021)

**PETITION FOR WRIT OF
CERTIORARI**

Appellate Court Case No: _____

PARTNERS IN NUTRITION d/b/a)
PARTNERS IN QUALITY CARE,)

DATE OF DECISIONS:
June 7, 2022 and July 5, 2022

Relator,)

vs.)

**DATE AND DESCRIPTION OF
EVENT TRIGGERING APPEAL**

MINNESOTA DEPARTMENT OF)
EDUCATION,)

TIME: Publication of the Final
Administrative Determinations of the
MDE Appeal Panel dated
June 7, 2022, and July 5, 2022.

Respondent.)

TO: THE COURT OF APPEALS OF THE STATE OF MINNESOTA:

The Relator, Partners in Nutrition d/b/a Partners in Quality Care (“PIQC”) hereby timely petitions the Court of Appeals for a Writ of Certiorari pursuant to Minn. R. Civ. App. P. 115 to review two final decisions of the Minnesota Department of Education (“MDE”) issued on June 7, 2022, and July 5, 2022. This appeal is authorized by Minn. Stat. § 14.63 (or, alternatively, Minn. Stat. § 606.01) and by the common law right to seek judicial review of quasi-judicial administrative decisions.

The grounds supporting the Petition are:

1. The Child and Adult Care Food Program (“CACFP”) is a federal grant program run by the United States Department of Agriculture (“USDA”) and regulated

under 7 C.F.R. § 226.1 *et seq.* The CACFP “is intended to provide aid to child and adult participants and family or group day care homes for provision of nutritious foods that contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired persons.” 7 C.F.R. § 226.1.

2. As provided in 7 C.F.R. § 226.3(b), “[w]ithin the States, responsibility for the administration of the [CACFP] shall be in the State agency.” “State agency” is defined in 7 C.F.R. § 226.2 as “the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive, or by the legislative authority of the State, and has been approved by the [United States Department of Agriculture] to administer the [CACFP] within the State” MDE meets this definition of “State agency” and is responsible for the administration of CACFP in the State of Minnesota.

3. Pursuant to 7 C.F.R. § 226.2, a “sponsoring organization” includes a “nonprofit private organization that is entirely responsible for the administration of the [CACFP] in . . . [a]ny combination of childcare centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care centers, adult day care centers, and day care homes.” PIQC meets the definition of “sponsoring organization” under 7 C.F.R. § 226.2.

4. On January 20, 2022, MDE sent a communication to PIQC stating, “MDE is suspending all payments to Partners in Nutrition dba Partners in Quality Care.” MDE’s communication stated that its action was “being taken in response to the federal investigation of organizations participating in the USDA Child Nutrition programs for mail fraud, wire fraud, conspiracy and money laundering” and referenced “warrants and

affidavits” documenting “CACFP site operators and organizations,” “[a] number of” which “are connected to sites sponsored by [PIQC].”

5. On February 2, 2022, MDE transmitted to PIQC by email a document titled “Meal Claim Instructions.” In this document, MDE purported to require PIQC to provide “additional” documentation supporting claims for CACFP reimbursement submitted on behalf of the sites under its sponsorship during the “suspension period” initiated against PIQC on January 20, 2022.

6. On March 25, 2022, MDE sent a communication to PIQC stating that MDE was denying payment for seventy-eight (78) claims for reimbursement for meals and snacks served in November 2021. The claims were each denied in their entirety, for one of five stated reasons: (1) “Invoice and/or menu do not support the claim”; (2) “Delivering groceries (ingredients) not meals”; (3) “No documents uploaded to support claim”; (4) “Missing some documents”; or (5) “Facts of the affidavit do not support the claim.” An administrative hearing was held before the MDE Appeal Panel (“Appeal Panel”) on May 26, 2022.

7. On June 7, 2022, the Appeal Panel issued a final decision affirming in substantial part MDE’s March 25, 2022 agency action and vacating and remanding in part. The Appeal Panel affirmed MDE’s denial of thirty-six (36) claims on the basis, “[i]nvoice and/or menu do not support the claim”; thirty-three (33) claims on the basis, “[d]elivering groceries (ingredients) not meals”; and three (3) claims on the basis, “[n]o documents uploaded to support claim.” The Appeal Panel vacated and remanded MDE’s denial of the remaining six (6) claims for the reason, “[f]acts of the affidavit do not support the claim,”

determining that such action was “procedurally premature and improper.” The Appeal Panel’s June 7, 2022 decision indicated that ruling constituted MDE’s final agency action on the matter.

8. On April 22, 2022, MDE sent a communication to PIQC stating that MDE was denying payment for seventy-eight (78) claims for reimbursement for meals and snacks served in December 2021. Four days later, on April 26, 2022, MDE sent another communication to PIQC, stating that MDE was denying payment for an additional one hundred three (103) claims for reimbursement for meals and snacks served in December 2021. These claims for meals and snacks served in December 2021 were each denied in their entirety, for one of the same five reasons stated in MDE’s March 25, 2022 action: (1) “Invoice and/or menu do not support the claim”; (2) “Delivering groceries (ingredients) not meals”; (3) “No documents uploaded to support claim”; (4) “Missing some documents”; or (5) “Facts of the affidavit do not support the claim.” A consolidated administrative hearing was held before the Appeal Panel on June 14, 2022.

9. On July 5, 2022, the Appeal Panel issued a final decision affirming MDE’s April 22 and April 26, 2022 agency actions in substantial part and vacating and remanding in part. The Appeal Panel affirmed MDE’s denial of sixty-nine (69) claims on the basis, “[i]nvoice and/or menu do not support the claim”; one-hundred two (102) claims on the basis, “[d]elivering groceries (ingredients) not meals”; and three (3) claims on the basis, “[n]o documents uploaded to support claim.” The Appeal Panel vacated and remanded MDE’s denial of the remaining six (6) claims for the reason, “[f]acts of the affidavit do not support the claim,” determining that such action was “procedurally premature and

improper.” The Appeal Panel’s July 5, 2022 decision indicated that ruling constituted MDE’s final agency action on the matter.

10. PIQC hereby petitions the Court of Appeals for a Writ of Certiorari to review the MDE Appeal Panel’s June 7, 2022, and July 5, 2022 decisions on the following grounds:

- a. The June 7, 2022 and July 5, 2022 decisions are arbitrary and capricious, founded on errors of law, and made upon unlawful procedure in that they failed to follow mandatory federal procedural requirements contained in 7 C.F.R. §§ 226.6, 226.7, and 226.14.
- b. The June 7, 2022 and July 5, 2022 decisions are arbitrary and capricious and unsupported by substantial evidence for the following reasons:
 - i. The decisions denied valid claims that met federal recordkeeping requirements for contrived and unsupported reasons.
 - ii. The decisions denied claims in their entirety without determining whether any portion of the claim was payable, in violation of 7 C.F.R. § 226.14(a).
- c. The MDE appeals procedure and actions taken in this matter violate the PIQC’s right to due process of law under the 14th Amendment of the United States Constitution and Article I, Sections 2 and 7 of the Minnesota Constitution for the following reasons:
 - i. The June 7, 2022 and July 5, 2022 decisions engaged in adverse agency action affecting PIQC’s ability to participate in federal programming without proper notice or hearing, and otherwise without due process of law.
 - ii. The June 7, 2022 and July 5, 2022 decisions failed to state the basis for the claims denial with sufficient specificity and are therefore unconstitutionally vague.
 - iii. The Appeal Panel, presiding over an intra-agency appeal and comprised of employees within the same state agency undertaking the appealed action, is not a truly independent arbiter of agency action taken by MDE.

11. Relator PIQC therefore petitions for certiorari review of: (a) MDE's Final Determination dated June 7, 2022, which affirmed the denial of seventy-eight (78) claims for reimbursement under CACFP for meals and snacks served in November 2021; and (b) MDE's Final Determination dated July 5, 2022, which affirmed the denial of one hundred eighty-one (181) claims for reimbursement under CACFP for meals and snacks served in December 2021.

Dated: July 7, 2022.

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