USDA
OALJ/OHC

2018 OCT 23 PM 1:09

RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	[FNA]
	)	Docket No. **18-0059**
Florida Department of	)	
Children and Families	)	
	)	
Appellant	)	

DISMISSAL, Without Prejudice

Appearances:

Rebecca Kapusta, Interim Secretary, Florida Department of Children & Families; and Lynn S. Hewitt, Assistant General Counsel, Florida Department of Children & Families, Tallahassee FL 32399; for the Appellant, Florida Department of Children & Families, and

Michael Gurwitz, Esq., and Michael Knipe, Esq., with the Office of the General Counsel, International Affairs, Food Assistance, and Farm and Rural Programs Division, U.S. Department of Agriculture, Washington, DC 20250; for the Appellee, Food and Nutrition Service, U.S. Department of Agriculture.

1. The Appellant, Florida Department of Children and Families, filed its Voluntary Withdrawal of Petition (attached) on October 22, 2018.

2. Accordingly, this case is DISMISSED, Without Prejudice.

Copies of this order "DISMISSAL, Without Prejudice" shall be sent by the Hearing Clerk to each of the parties.

Done at Washington, D.C.
this 23rd day of October 2018

Jill S. Clifton
Administrative Law Judge

Attached: Voluntary Withdrawal of Petition filed October 22, 2018

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington DC 20250-9203
202-720-4443
FAX 202-720-9776
sm.oha.HearingClerks@oha.usda.gov

USDA
OALJ/OHC
2018 OCT 22 PM 3:51
RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,	)	
Appellant,	)	
	)	FNS Docket No. 18-0059
v.	)	
UNITED STATES DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE,	)	
Appellee.	)	

VOLUNTARY WITHDRAWAL OF PETITION

Appellant, Florida Department of Children and Families (State Agency), hereby voluntarily withdraws its petition in the above-styled matter, and in support states as follows:

1. On June 12, 2018, Appellee sent notification to Appellant that it would be assigning Appellant a payment error rate for FY 2017 using a statistical model that was unfamiliar and indecipherable to Appellant.

2. On June 20, 2018, Appellant responded to Appellee's notification, objecting to Appellee's decision to assign an error rate using an arbitrary methodology that had never been published.

3. On June 28, 2018, despite Appellant's objections, Appellee sent Appellant its assigned QC error rate for FY 2017 using the proposed methodology, see **Exhibit A**. The correspondence stated that "FNS' assignment of a FY 2017 error rate may be administratively appealed. Such an appeal is limited to the issue of whether a rational basis exists for the methodology used by the Secretary of Agriculture to establish the State's FY 2017 assigned error rate."

4. On August 27, 2018, Appellant filed its Petition in this Court to challenge Appellee's use of the methodology to assign Appellant's FY 2017 error rate.

5. On or about September 24, 2018, Appellee requested a conference call with Appellant to discuss the outstanding appeal. During that conference call, Appellee stated that the June 28, 2018 correspondence containing appeal rights was sent in error, and that Appellee did not believe that Appellant had rights to appeal the use of the methodology at issue in this matter. Appellee requested that Appellant consider withdrawing its petition.

6. Despite Appellant's continued objections to the methodology used to assign its FY 2017 error rate, which Appellee agrees to continue discussions relating thereto, in the interest of judicial economy, Appellant wishes to withdraw its Petition.

7. In voluntarily withdrawing its Petition, Appellant does not intend to admit any wrongdoing on the part of Appellant, and denies any and all allegations of bias in its QC system, and this Voluntary Withdrawal of Petition in no way constitutes any admission, stipulation or resolution of any issues of law or fact contained in Appellant's Petition filed in this Court.

8. Based on the foregoing, Appellant withdraws its Petition.

Respectfully submitted this 22nd day of October, 2018.

/s/ Lynn S. Hewitt
REBECCA KAPUSTA
Interim Secretary
Florida Department of Children & Families
Rebecca.Kapusta@myflfamilies.com
LYNN S. HEWITT
Assistant General Counsel
Florida Bar No. 057153
Lynn.Hewitt@myflfamilies.com
1317 Winewood Boulevard
Building 2, Room 204
Tallahassee, FL 32399-0700
(850) 488-2381 (Voice)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via E-Mail to Michael Gurwitz (Michael.Gurwitz@ogc.usda.gov) on this 22nd day of October, 2018.

/s/ Lynn S. Hewitt
LYNN S. HEWITT
Assistant General Counsel

EXHIBIT A

USDA

United States Department of Agriculture

Food and Nutrition Service

Park Office Center

3101 Park Center Drive
Alexandria
VA 22302

JUN 28 2018

The Honorable Mike Carroll
Secretary
Florida Department of Children and Families
1317 Winewood Boulevard
Building 1, Room 202
Tallahassee, Florida 32399-0700

Dear Secretary Carroll:

Today the U.S. Department of Agriculture released the official Supplemental Nutrition Assistance Program (SNAP) overpayment, underpayment, and payment error rates for Fiscal Year (FY) 2017 under the quality control (QC) provisions of Section 16(c) of the Food and Nutrition Act of 2008, as amended (the Act). The national performance measure (national average payment error rate) for FY 2017 is 6.30 percent.

Florida was notified on June 12, 2018, that the Food and Nutrition Service (FNS) would assign a payment error rate to the State for FY 2017. The integrity review of Florida's QC system by FNS, conducted December 11, 2017, through January 4, 2018, cited findings of non-compliance with SNAP rules in the State's QC system during the FY 2017 review period that precluded FNS from verifying Florida's reported error rate data as required by 7 CFR 275.23(a). Section 16(c)(4) of the Act provides the Secretary of Agriculture, through FNS, the statutory authority to assign an error rate when the State fails to meet QC reporting requirements established by the Secretary.

Florida's assigned QC error rates for FY 2017 are:

Overpayment Rate	5.28 percent
Underpayment Rate	1.14 percent
Payment Error Rate	6.42 percent

Your assigned payment error rate consists of the sum of the overpayment rate and the underpayment rate. Please note, this sum may not add up to the exact payment error rate due to rounding.

Under the Act, a 2-year liability system is in place. Under this system, a liability amount shall be established when, for the second or subsequent consecutive FY, the Food, Nutrition, and Consumer Services determines that there is a 95 percent statistical probability that a State's payment error rate exceeds 105 percent of the national performance measure for payment error rates. Florida's assigned payment error rate falls within the tolerance level for QC related liability assessments and FY 2017 will not count as a first year for your State agency.

An Equal Opportunity Provider and Employer

FNS' assignment of a FY 2017 error rate may be administratively appealed. Such an appeal is limited to the issue of whether a rational basis exists for the methodology used by the Secretary of Agriculture to establish the State's FY 2017 assigned error rate.

Proper administration of the SNAP QC system is our shared responsibility and is essential to guaranteeing the program is run efficiently, effectively, and with the utmost integrity. FNS will continue working with you as we strive to better serve our participants and practice good stewardship of taxpayer funds. Thank you for your partnership in administering this important program. If you have any questions or need more information, please call your Regional Administrator, Robin Bailey, at (404) 562-1801.

Sincerely,

Brandon Lipps
Administrator
Food and Nutrition Service