

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

MAINE DEPARTMENT OF HEALTH AND)	
HUMAN SERVICES,)	
Appellant,)	
)	
v.)	Docket No. 20-J-0145
)	
UNITED STATES DEPARTMENT OF)	
AGRICULTURE,)	
FOOD AND NUTRITION SERVICE,)	
Appellee.)	

CONSENT DECISION

Appearances:

Aaron M. Frey, Attorney General; Christopher C. Taub, Chief Deputy Attorney General; and Halliday Moncure, Assistant Attorney General, Augusta, ME, for the Appellant, State of Maine, Department of Health and Human Services

Sarah Merrill, Esq., and Eric Shlifer, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Appellee, Food and Nutrition Service

This proceeding was instituted pursuant to Section 16(c)(8)(D)(i) of the Food and Nutrition Act of 2008 (“Act”), 7 U.S.C. § 2025(c)(8)(D)(i), by the Maine Department of Health and Human Services (“Maine” or “State”), challenging the Supplemental Nutrition Assistance Program (“SNAP”) payment error rate liability amount assessed by the United States Department of Agriculture, Food and Nutrition Service (“FNS”) for federal fiscal year (“FFY”) 2019. The Act provides a two-year liability system for excessive payment error rates. Under this system, a liability amount is established for a state agency when, for the second or subsequent consecutive FFY, FNS 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. Food and Nutrition Act § 16(c)(1)(C), 7 U.S.C. § 2025(c)(1)(C). In accordance with this authority, FNS established a liability amount for Maine of \$2,671,540 for FFY 2019.

The Appellant and Appellee have agreed that, pursuant to 7 C.F.R. § 283.10, this proceeding should be terminated by entry of this Consent Decision. For the purposes of this Consent Decision, Appellant Maine and Appellee FNS stipulate that the Secretary of the United States Department of Agriculture (“Secretary”) has jurisdiction over appeals of SNAP Quality Control claims for FFY 2019, and further stipulate to the Findings of Fact set forth below. Additionally, the Appellant waives oral hearing and further procedure; all rights to seek judicial review and otherwise challenge or contest the validity of this decision; and consents and agrees to the entry of this Consent Decision.

Findings of Fact

Appellant and Appellee stipulate to the facts outlined by the attached signed Settlement Agreement, executed in counterparts.

Conclusion

The parties having admitted the jurisdictional facts and having agreed to the entry of this Consent Decision, the Consent Decision will be entered.

Order

Pursuant to 7 C.F.R. § 283.10, the FFY 2019 liability amount of \$2,671,540 shall be addressed pursuant to the terms of the Settlement Agreement reached by the parties. The provisions of this Consent Decision shall become final and effective 30 days after the date of service of this decision and the Consent Decision is not subject to further administrative or judicial review.

Copies of this Consent Decision shall be served upon the parties.

Done at Washington, D.C. this 27th day of May, 2021.

CHANNING STROTHER Digitally signed by CHANNING STROTHER
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Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
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[signatures continue on next page]


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MERRILL

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Chief Deputy Attorney General

Aaron M. Frey
Attorney General

Attorneys for Appellant Maine

SETTLEMENT AGREEMENT

The Maine Department of Health and Human Services (“State”) and the Secretary of Agriculture (“Secretary”) agree, as stated in this settlement agreement (“Agreement”), to settle the Supplemental Nutrition Assistance Program (“SNAP”) payment error rate liability amount (“Liability Amount”), Federal Fiscal Year 2019 (“FFY 2019”), for the State established pursuant to Section 16(c)(1)(C) of the Food and Nutrition Act of 2008, as amended (“Act”). This Agreement is entered into pursuant to Sections 13(a)(1) and 16(c)(1)(D)(ii) of the Act.

[1] Pursuant to Section 16(c)(1)(C) of the Act, for FFY 2019, the Secretary has established a Liability Amount of \$2,671,540 for the State. Pursuant to Section 16(c)(1)(D)(i)(I) of the Act, the Secretary has determined that \$1,335,770, which is fifty (50) percent of the Liability Amount, be used by the State for new investment (“New Investment Amount”), and determined that the remaining \$1,335,770 is an at-risk amount (“At-Risk Amount”) that would be paid to the Secretary in accordance with Section 16(c)(1)(D)(i)(II) of the Act in the following FFY if a liability amount is again established for FFY 2020. The Secretary has notified the State about the statutorily established At-Risk Amount by separate letter. The At-Risk Amount is not affected by this Agreement.

[a] On February 19, 2021, the Food and Nutrition Service (FNS) announced it cannot assess SNAP State error rates or a national performance measure for FFY 2020 due to limited data. As stated in that announcement, since FNS is unable to determine a national performance measure for FFY 2020, no liabilities can be established for FFY 2020. As such, no FFY20 liability amount will be established for the State, meaning the State’s FFY 2019 At-Risk Amount does not need to be paid and the State will no longer be in a potential liability status as of FFY 2020.

[b] Pursuant to FNS’ February 19, 2021 announcement, the State’s FFY 2019 At-Risk amount need not be paid, and the State will no longer be in a potential liability status as of FFY 2020. No further notice of such will be provided to the State.

[2] The State agrees to invest a New Investment Amount, totaling \$1,335,770, which is fifty (50) percent of the FFY 2019 Liability Amount established for the State, 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.

[3] 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 are incorporated into this Agreement as addenda to this Agreement.

[4] 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, regardless of whether other State programs may also benefit from investments.

[5] 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 required in paragraph [3], the Secretary shall collect from the State the unpaid cash payments or the amount of funds not timely invested according to the New Investment Plan, by withholding such funds pursuant to Section 13(a)(1) of the Act from amounts that would otherwise be payable to the State by the Secretary.

[6] Any monies expended by the State for administrative purposes described in Section 16(a) of the Act that are in addition to, and exceed, the amount of the New Investment Amount stated in paragraph [1] may be eligible for Federal matching funds.

[7] 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.

[8] This Agreement shall constitute complete settlement and satisfaction of all administrative claims and 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 2019.

[9] This Agreement shall only affect the State's SNAP error rate Liability Amount for FFY 2019, and shall not affect any liability of the State in future years for exceeding the national performance measure error rate in accordance with Section 16(c)(1)(C) of the Act.

[10] 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: _____

On Behalf of the Secretary:
Cindy Long, Acting Administrator
Food and Nutrition Service
U.S. Department of Agriculture

Date: 5-11-21

Jeanne M. Lambrew, Ph.D., Commissioner
Maine Department of Health and Human
Services

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AGREED:

Date: _____

**CYNTHIA
LONG**

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CYNTHIA LONG
Date: 2021.05.23
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On Behalf of the Secretary:

Cindy Long, Acting Administrator
Food and Nutrition Service
U.S. Department of Agriculture

Date: _____

Jeanne M. Lambrew, Ph.D., Commissioner
Maine Department of Health and Human
Services