

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
)  
STATE OF VERMONT, DEPARTMENT ) FNS Docket No. 18-0060  
FOR CHILDREN AND FAMILIES, )  
)  
Petitioner. )

REC'D - USDA/OALJ/OHC  
2019 AUG 9 AM 11:56

**ORDER GRANTING PETITIONER'S MOTION  
TO WITHDRAW PETITION FOR APPEAL TO JUDICIAL OFFICER**

Appearances:

*Heidi Moreau, Esq., Legal and Policy Advisor, Vermont Department for Children and Families, for the Petitioner, State of Vermont, Department for Children and Families ("DCF"); and*

*Michael Gurwitz, Esq., Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Respondent, Food and Nutrition Service ("FNS").*

*Order entered by Judge Bobbie J. McCartney, Judicial Officer.*

This is a proceeding under the Food and Nutrition Act of 2008 (7 U.S.C. §§ 2011 *et seq.*).

The case was initiated on July 9, 2018 by the State of Vermont, Department for Children and Families ("Petitioner"<sup>1</sup>), with a Notice of Appeal "of the assignment of a payment error rate for federal fiscal year 2017 by the United States Department of Agriculture, Food and Nutrition Service" ("Respondent").<sup>2</sup>

On June 18, 2019, Chief Administrative Law Judge Channing D. Strother entered a Decision and Order dismissing the case for lack of subject-matter jurisdiction.<sup>3</sup> On July 18, 2019,

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<sup>1</sup> Precedent indicates that "Petitioner" and "Respondent" are the more proper designations of the respective parties in this type of proceeding, rather than "Appellant" and "Appellee." *See Dep't of Public Health & Social Service, Guam*, 75 Agric. Dec. 163, 163 n.1 (U.S.D.A. 2016) (stating that the "terms 'Appellant' and 'Appellee' refer to appeals of initial decisions and orders by USDA Administrative Law Judges to the Judicial Officer for the Secretary of the United States Department of Agriculture").

<sup>2</sup> Notice of Appeal at 1.

<sup>3</sup> *See* Decision and Order at 19-20.

Petitioner filed a "Petition for Appeal to Judicial Officer to Reverse Decision and Order Dismissing Case and Remand for a Decision on the Merits."


On August 5, 2019, Petitioner filed a motion "request[ing] that DCF's petition for appeal to the Judicial Officer in the above-captioned case, filed on July 18, 2019, be withdrawn."<sup>4</sup>

**ORDER**

Petitioner's Motion to Withdraw Petition for Appeal to the Judicial Officer is hereby GRANTED.

Copies of this Order shall be served by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, DC,  
this 8<sup>th</sup> day of August 2019

  
Judge Bobbie J. McCartney  
Judicial Officer

Hearing Clerk's Office  
United States Department of Agriculture  
South Building, Room 1031  
1400 Independence Avenue, SW  
Washington, DC 20250-9203  
Tel.: 202-720-4443  
Fax: 202-720-9776  
SM.OHA.HearingClerks@OHA.USDA.GOV

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<sup>4</sup> Motion at 1.