



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243
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BILL LEE
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

May 1, 2019

Connie Gammons, Owner
Creative Kidz, LLC
1029 East Tickle Street
Dyersburg, Tennessee 38024-2517

Dear Ms. Gammons,

The Department of Human Services (DHS) - Division of Audit Services staff conducted an unannounced on-site monitoring review of the Child and Adult Care Food Program (CACFP) at Creative Kidz, LLC (Sponsor), Application Agreement number 00228, on March 19, 2019. The purpose of this review was to determine if the Sponsor complied with *Title 7 of the Code of Federal Regulations* (CFR) applicable parts, provider agreement, and applicable Federal and State regulations.

Based on our review of the Sponsor's records and information provided, the Sponsor had one feeding site operating during the review period.

Background

CACFP Sponsors utilize meal count sheets to record the number of breakfast, lunch, supper, and supplement meals served. Meals served by participating Sponsors must meet the minimum guidelines set by the United States Department of Agriculture (USDA) and DHS to be eligible for reimbursement. The CACFP Sponsor reports the number of meals served through the DHS Tennessee Information Payment System (TIPS) for reimbursement.

We inspected meal counts sheets for our test period and reconciled the meals claimed to the meals reported as served for each meal service. We also assessed compliance with civil rights requirements. In addition, we observed a lunch meal service on December 4, 2018.

Our review of the Sponsor's records for December 2018 disclosed the following:

- 1. The Sponsor incorrectly reported the number of participants in the free and paid categories**

Condition

Based on our review of the Claim for Reimbursement for December 2018, we noted that the Sponsor reported 64 participants in the free category, 15 participants in the reduced-price category, and 26 participants in the paid category. However, based on our review of the records available, we noted that there were 63 participants in the free category, 15 participants in the reduced-price category and 27 participants in the paid category.

The differences were based on the following:

- There was one participant classified as free on the application but did not have the date or determining official's signature on the application. This participant was reclassified as paid.
- There was one participant classified as reduced-price on the application but did not have the last four digits of the social security number for an adult on the application. This participant was reclassified as paid.
- There was one participant classified as free on the application but did not have the date or determining official's signature on the application. In addition, the last four digits of the social security number for an adult were not listed on the application. This participant was reclassified as paid.
- There were three participants reported in the free category whose applications did not have the last four digits of the social security number for an adult on the application. These participants were reclassified as paid.
- There was one participant categorized correctly in the free category on the application, but the participant was reported incorrectly in the reduced-price category. This participant was reclassified as free.
- There were two participants categorized correctly in the reduced-price category on the application, but the participants were reported incorrectly in the free category. These participants were reclassified as reduced-price.
- There was one participant categorized correctly in the paid category on the application, but the participants were reported incorrectly in the reduced-price category. This participant was reclassified as paid.
- There was one participant categorized correctly in the paid category on the application, but the participant was reported incorrectly in the free category. This participant was reclassified as paid.
- There was one participant categorized correctly in the reduced-price category on the application, but the participant was reported incorrectly in the paid category. This participant was reclassified as reduced-price.
- There were six participants under reported in the free category and six participants over reported in the paid category. This difference was based on the Sponsor's claim and what was documented on the attendance roster.

As a result, the Sponsor overreported the number of participants in the free category by one and under reported the number of participants in the paid category by one. (See Exhibit)

Criteria

Title 7 of the Code of Federal Regulations, Section 226.10(c) states, "... In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim ..."

Title 7 of the Code of Federal Regulations, Section 226.15(e)(2) states, "All types of centers, except for emergency shelters and at-risk afterschool care centers, must maintain information used to determine eligibility for free or reduced-price meals in accordance with §226.23(e)(1). For child care centers, such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care."

Title 7 of the Code of Federal Regulations, Section 226.17(b)(8) states, in part, "Child care centers shall collect and maintain documentation of the enrollment of each child, including information used to determine eligibility for free and reduced price meals in accordance with §226.23(e)(1). ..."

Recommendation

The Sponsor should maintain all information used to determine eligibility, and ensure each participant is classified and reported accurately based on categorical or income eligibility.

2. The Sponsor reported meal counts incorrectly

Condition

Based on our review of the Claim for Reimbursement for December 2018, the Sponsor reported 1,248 breakfast meals, 1,142 lunch meals, and 1,430 supplements served. However, based on our review of available documents, we noted that there were 1,247 breakfast meals, 1,139 lunch meals, and 1,430 supplements served, prior to any meal disallowances.

As a result, one breakfast meal claimed for reimbursement was overreported and disallowed. (See Exhibit)

This is a repeat finding from a previous report dated March 21, 2016

Criteria

Title 7 of the Code of Federal Regulations, Section 226.10(c) states, "... In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim...."

Recommendation

The Sponsor should ensure all claims for reimbursement are completed correctly and based on accurate supporting documents.

3. The Sponsor reported an incorrect number of meals from an observed meal service

Condition

On December 4, 2018, we conducted unannounced site visit at Creative Kidz to observe a lunch meal service. We observed 60 lunch meals served during the approved meal service time. However, the Sponsor claimed for reimbursement 63 lunch meals.

As a result, three lunch meals claimed for reimbursement were disallowed. (See Exhibit)

Criteria

Title 7 of the Code of Federal Regulations, Section 226.10(c) states, "... In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim...."

Recommendation

The Sponsor should ensure all claims for reimbursement are completed correctly and based on accurate supporting documents.

4. The Sponsor provided infant menus that did not meet the USDA meal pattern requirements

Condition

Based on our review of the infant menus provided by the Sponsor for December 2018, we noted that several menus did not meet the USDA meal patterns requirements. The infant menus that the Sponsor provided contained the following deficiencies:

Infant: SA, 7 Months

| Date | Menu Deficiency | Deficient Meal |
|----------------------|--|----------------|
| 12/04/18 12/11/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 2 Lunch |
| 12/12/18 12/13/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, chicken | 2 Lunch |
| 12/14/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, beef | 1 Lunch |
| 12/14/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, iron-fortified infant rice cereal | 1 Breakfast |
| 12/17/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 1 Lunch |
| 12/20/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, beef | 1 Lunch |

Infant: CR, 8 Months

| Date | Menu Deficiency | Deficient Meal |
|----------------------|---|-----------------------|
| 12/04/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 1 Lunch |
| 12/07/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, beef | 1 Lunch |
| 12/11/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 1 Lunch |
| 12/12/18 12/13/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, chicken | 2 Lunch |
| 12/14/18 12/20/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, beef | 2 Lunch |

Infant: BA, 8 Months

| Date | Menu Deficiency | Deficient Meal |
|----------------------|---|-----------------------|
| 12/04/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 1 Lunch |
| 12/07/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, beef | 1 Lunch |
| 12/11/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 1 Lunch |
| 12/12/18 12/13/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, chicken | 2 Lunch |

Infant: LS, 10 Months

| Date | Menu Deficiency | Deficient Meal |
|----------------------|---|-----------------------|
| 12/04/18 12/11/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 2 Lunch |
| 12/12/18 12/13/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, chicken | 2 Lunch |
| 12/14/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, beef | 1 Lunch |
| 12/17/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 1 Lunch |
| 12/20/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, beef | 1 Lunch |

Infant: NL, 10 Months

| Date | Menu Deficiency | Deficient Meal |
|----------------------|--|-----------------------|
| 12/04/18 12/11/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 2 Lunch |
| 12/12/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, chicken | 1 Lunch |
| 12/14/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, determining and cheese, beef | 1 Lunch |
| 12/21/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 1 Lunch |

Infant: MR, 11 Months

| Date | Menu Deficiency | Deficient Meal |
|-------------|--|-----------------------|
| 12/04/18 | Missing Component: Fruit or Vegetable Menu Listed: Iron-fortified infant formula, mac, and cheese, turkey | 1 Lunch |

As a result, one breakfast meal and 32 lunch meals claimed for reimbursement were disallowed. (See Exhibit)

Criteria

Title 7 of the Code of Federal Regulations, Section 226.17(b)(4) states, “Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in §226.20 ...”

Title 7 of the Code of Federal Regulations, Section 226.20 (b) states in part, “... Infant meals-(1) Feeding infants. Foods in reimbursable meals served to infants ages birth through 11 months must be of a texture and a consistency that are appropriate for the age and development of the infant being fed. Foods must also be served during a span of time consistent with the infant’s eating habits.”

Title 7 of the Code of Federal Regulations, Section 226.20 (b)(ii)(A) states “Breakfast, lunch, or supper. Six to 8 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both; and 0 to 4 tablespoons of iron-fortified dry infant cereal, meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0 to 2 ounces (weight) of cheese; or 0 to 4 ounces (volume) of cottage cheese; or 0 to 4 ounces of yogurt; and 0 to 2 tablespoons of vegetable, fruit, or portions of both. Fruit juices and vegetable juices must not be served.”

Recommendation

The Sponsor should ensure that menus meet the USDA meal pattern requirements for meals claimed for reimbursement.

5. The Sponsor provided menus that did not specify 100% juice was served

Condition

The Sponsor provided menus that did not denote 100% juice was served. The receipts did show 100% juice was purchased; however, the Sponsor did not document 100% juice was served on the menus.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20 (3)(i) states, in part, "... A serving may contain fresh, frozen, canned, dried fruits, or fruit juice. ... Pasteurized, full-strength fruit juice may be used to fulfill the entire requirement."

Food & Nutrition Service (FNS) 796-2, Rev. 4, states, "Menu records that identify the meal components served to participants must be maintained. Menu records must be updated to reflect changes to planned menus so that the menu records reflect the actual meal components and foods service to participants."

Recommendation

The Sponsor should document 100% juice served on the menu.

Technical Assistance Provided

Technical assistance was provided regarding menu requirements and application requirements.

Disallowed Meals Cost

Based on the review, we determined that the Sponsor's noncompliance with the applicable Federal and State regulations that govern the CACFP resulted in a total disallowed cost of \$158.72.

Corrective Action

The Sponsor must complete the following actions within 30 days from the date of this report:

- Log into the Tennessee Information Payment System (TIPS) and revise the claim submitted for December 2018, which contains the verified claim data from the enclosed exhibit. ***Please note that, if the claim is revised***, TIPS will automatically deduct the overpayment from your next CACFP claim for reimbursement. **OR**
- If you are no longer participating in the CACFP program, remit a check payable to the ***Tennessee Department of Human Services*** in the amount noted in the report for recovery of the amounts disallowed in this report. ***Please return the attached billing notice with your check***; and
- Prepare and submit a corrective action plan to address the deficiencies identified in this report. The corrective action plan template is attached. Please return the corrective action plan to:

AuditServices.CAPS.DHS@tn.gov

If you have questions relative to the corrective action plan please contact:

Allette Vayda, Director of Operations
Child and Adult Care Food Program
James K. Polk Building, 15th Floor
505 Deaderick Street
Nashville, Tennessee 37243
Allette.Vayda@tn.gov
(615) 313-3769

Please note that the amount of disallowed cost is subject to an interest charge. The interest charge will be waived if your revised claim within 30 days from the date of this report. If the revised claim is not completed by the 30-day deadline, an interest charge may be billed to your institution. Please mail your check and the billing notice to:

Child and Adult Care Food Program
Fiscal Services
James K. Polk Building, 16th Floor
505 Deaderick Street
Nashville, Tennessee 37243

In accordance with the federal regulation found at *7 CFR Part 226.6 (k)*, your institution may appeal the amount of disallowed cost identified in this monitoring report. The procedures for submitting an appeal are enclosed. The appeal must be submitted to:

Tennessee Department of Human Services
Appeals and Hearings Division, Clerk's Office
P.O. Box 198996
Nashville, TN 37219

If the Institution decides to appeal the amount of disallowed administrative and meals cost, all appeal procedures must be followed as failure to do so may result in the denial of your request for an appeal.

We appreciate the assistance provided during this review. If you have any questions regarding this report, please contact Sean Baker, Audit Director 2, at 615-313-4727 or Sean.Baker@tn.gov.

Sincerely,



Sam O. Alzoubi, CFE
Director of Audit Services

Exhibit

cc: Bonnie Lovell, Director, Creative Kidz, LLC
Allette Vayda, Director of Operations, Child and Adult Care Food Program
Debra Pasta, Program Manager, Child and Adult Care Food Program
Elke Moore, Administrative Services Assistant 3, Child and Adult Care Food Program
Constance Moore, Program Specialist, Child, and Adult Care Food Program
Marty Widner, Program Specialist, Child, and Adult Care Food Program
Comptroller of the Treasury, State of Tennessee

EXHIBIT

Verification of CACFP Independent Center Claim

Name of Agency: Creative Kidz, LLC

Review Month/Year: December 2018

Total Meal Reimbursement Received: \$5,768.72

| Site Meal Service Reconciliation and Monitor Activity | Reported on Claim | Reconciled to Documentation |
|--|--------------------------|------------------------------------|
| Total Days of CACFP Food Service | 19 | 19 |
| Total Attendance | 1,543 | 1,543 |
| Percentage of Free or Reduced-price Category | XXXXXX | 74% |
| Number of Breakfasts Served | 1,248 | 1,246 |
| Number of Lunch Served | 1,142 | 1,107 |
| Number of Supplements Served | 1,430 | 1,430 |
| Number of Participants in Free Category | 64 | 63 |
| Number of Participants in Reduced-Price Category | 15 | 15 |
| Number of Participants in Paid Category | 26 | 27 |
| Total Number of Participants | 105 | 105 |
| Total Amount of Eligible Food Costs | XXXXXXXX | \$3,051.01 |
| Total Amount of Eligible Food and Non-Food Costs | XXXXXXXX | \$4,678.01 |



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

JAMES K. POLK BUILDING
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BILL LEE
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

May 1, 2019

Connie Gammons, Owner
Creative Kidz, LLC
1029 East Tickle Street
Dyersburg, Tennessee 38024-2517

Notice of payment due to findings disclosed in the monitoring report for Child and Adult Care Food Program (CACFP)

| | |
|----------------------|---|
| Institution Name: | Creative Kidz, LLC |
| Institution Address: | 1029 East Tickle Street, Dyersburg, TN 38024-2517 |
| Agreement Numbers: | 00228 |
| Amount Due: | \$158.72 |
| Due Date: | June 3, 2019 |

Based on the monitoring report issued, Division of Audit Services within the Tennessee Department of Human Services, the Community and Social Services- Food Programs- CACFP & SFSP management has agreed with the findings which require your institution to reimburse the Department of Human Services the disallowed cost noted in the report

Please remit a check or money order payable to the *Tennessee Department of Human Services* in the amount noted above by the due date to:

**Fiscal Services
James K. Polk Building, 16th Floor
505 Deaderick Street
Nashville, Tennessee 37243
Tennessee Department of Human Services**

Please note that the disallowed meals cost/overpayment of the CACFP is subject to an interest charge. The interest charge will be waived if the payment is received by the due date. If payment is not received by the end of 5th day of the due date, an interest charge may be added to the original amount due and will be billed to your entity.

If you have any questions regarding this notice, please feel free to contact Allette Vayda, Director of Operations at (615) 313-3769 or Allette.Vayda@tn.gov.

Thank you for your attention



Corrective Action Plan for Monitoring Findings

Instructions: Please print in ink or type the information to complete this document. Enter the date of birth for each Responsible Principal and/or Individual in Section B. Attach the additional documentation requested. Enter your name, title and date of signature on the last page. Please sign your name in ink.

Please return ALL pages of the completed Corrective Action Plan form.

Section A. Institution Information

| | | |
|---|------------------------|--|
| Name of Sponsor/Agency/Site: Creative Kidz, LLC | Agreement No. 00228 | <input type="checkbox"/> SFSP <input checked="" type="checkbox"/> CACFP |
|---|------------------------|--|

| |
|--|
| Mailing Address: 1029 East Tickle Street Dyersburg, Tennessee 38024-2517 |
|--|

Section B. Responsible Principal(s) and/or Individual(s)

| | |
|---------------------------------------|--------------------|
| Name and Title: Connie Gammons, Owner | Date of Birth: / / |
|---------------------------------------|--------------------|

Section C. Dates of Issuance of Monitoring Report/Corrective Action Plan

| | |
|-----------------------------|----------------------------------|
| Monitoring Report: 5/1/2019 | Corrective Action Plan: 5/1/2019 |
|-----------------------------|----------------------------------|

Section D. Findings

Findings:

1. The Sponsor incorrectly reported the number of participants in the free and paid categories
2. The Sponsor reported meal counts incorrectly
3. The Sponsor reported an incorrect number of meals from an observed meal service
4. The Sponsor provided infant menus that did not meet the USDA meal pattern requirements
5. The Sponsor provided menus that did not specify 100% juice was served

The following measures will be completed within **30 calendar days** of my institution's receipt of this corrective action plan:

Measure No. 1: The Sponsor incorrectly reported the number of participants in the free and paid categories

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name:

Position Title:

Name:

Position Title:

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No.2: The Sponsor reported meal counts incorrectly

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name:

Position Title:

Name:

Position Title:

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 3: The Sponsor reported an incorrect number of meals from an observed meal service

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 4: The Sponsor provided infant menus that did not meet the USDA meal pattern requirements

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 5: The Sponsor provided menus that did not specify 100% juice was served

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

I certify by my signature below that I am authorized by the institution to sign this document. As an authorized representative of the institution, I fully understand the corrective measures identified above and agree to fully implement these measures within the required time frame. I also understand that failure to fully and permanently correct the findings in my institution's CACFP or SFSP will result in its termination from the program, and the placement of the institution and its responsible principals on the National Disqualified List maintained by the U.S. Department of Agriculture.

Printed Name of Authorized Institution Official:

Position:

Signature of Authorized Institution Official: _____

Date: / /

Signature of Authorized TDHS Official: _____

Date: / /

APPEAL PROCEDURES FOR CHILD AND ADULT CARE INSTITUTIONS AND SPONSORING AGENCIES

Appeal Procedures

1. Pursuant to 7 CFR §226.6(k)(4), the TN Department of Human Services (TDHS) must provide administrative review procedures to institutions and responsible principals and responsible individuals as follows:

- (a) Annually to all institutions;
- (b) To an institution and to each responsible principal and responsible individual when the State agency takes any action subject to an administrative review as described in 7 CFR §226.6(k)(2); and
- (c) Any other time upon request.

2. Pursuant to 7 CFR 226.6(k)(3) and (k)(9), some administrative actions are not subject to administrative review. Those actions are listed in paragraph 2.(a). Other administrative actions may be administratively appealed. Those actions are listed in paragraph 2.(b) and (c). All institutions and sponsoring agencies may appeal any adverse administrative action listed in paragraph 2.(b) which are taken by the TDHS by requesting a fair hearing to appear in person to refute the action, or by requesting a review of written information in lieu of a fair hearing.

(a) Pursuant to 7 CFR Part 226.6 (k)(3) TDHS is prohibited from offering administrative reviews of the following actions:

- (i) FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim.
- (ii) Determination of serious deficiency.
- (iii) State agency determination that corrective action is inadequate.
- (iv) Disqualification and placement on State agency list and National disqualified list.
- (v) Termination.
- (vi) State agency or FNS decision regarding removal from the National disqualified list.
- (vii) State agency's refusal to consider an application submitted by an institution or facility on the National disqualified list.

(b) Pursuant to 7 CFR Part 226.6(k)(9), an abbreviated appeal process is available for the following actions. TDHS must limit the administrative review to a review of written submissions by the TDHS and institutions or sponsoring agencies concerning the accuracy of the State agency's determination if the application was denied, or the State agency proposes to terminate the institution's agreement because:

- (viii) The information submitted on the application was false;
- (ix) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list;
- (x) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program;

- (xi) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity;

(c) Administrative review is also available if the State agency notifies the institution and responsible principal or responsible individual of the following actions: proposed disqualification of a responsible principal or responsible individual, denial of a budget, denial of a line item within a budget, downward adjustment of the amount approved in a budget, suspension of an institution's participation, denial of start-up or expansion funds, denial of a request for advanced payment, recovery of an advance in excess of a claim, denial of a claim for reimbursement (except for late submission), decision not to forward an exception request for payment of a late claim, overpayment demand, denial of a new or renewing institution's application for participation, denial of sponsored facility application, notice of proposed termination, claim denial, claim deadline exceptions and requests for upward adjustments to a claim, or any other action affecting an institutions participation or claim for payment.

3. All appeal requests must be presented in writing to the TDHS Division of Appeals and Hearings not later than 15 calendar days after the date the institution or sponsoring agency receives the notice of adverse administrative action.

4. The date of an institution's or sponsoring agency's receipt of a notice of suspension and/or proposed termination and disqualification will be governed by the federal regulation at 7 CFR Part 226.2. The notice must specify the action being proposed or taken and the basis for the action, and is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.

5. The TDHS Division of Appeals and Hearings will acknowledge the receipt of the appeal request within 10 calendar days of the receipt of the institution's or sponsoring agency's request for review. The written request for review should state if a fair hearing is requested or if a review of written information in lieu of a fair hearing is requested. If the appeal request from the institution or sponsoring agency does not specifically request a hearing, a review of written information in lieu of a hearing will occur. If a fair hearing is requested and the institution or sponsoring agency's representative fails to appear, the right to a personal appearance is waived.

6. If an institution or sponsoring agency does not request a fair hearing or a review of written information in lieu of the hearing within 15 calendar days from the date the institution or sponsoring agency receives a Notice of Proposed Termination, the TDHS will issue a letter advising the institution or sponsoring agency that it is terminated from the CACFP effective on the 16th calendar day following the institution's or sponsoring agency's receipt of the notice, and that the responsible principals and individuals of the institution or sponsoring agency are disqualified from participation.

7. To be considered for a fair hearing or for a review of written information in lieu of a fair

Appeal Procedures for Child and Adult Care Food Program-Institutions
Revised March 2017

hearing, all written documents must be submitted to the TDHS Division of Appeals and Hearings not later than 30 days after receipt of the notice of adverse administrative action.

8. The action of the TDHS must remain in effect during the administrative review. The effect of this requirement on particular actions by TDHS is as follows:

(i) *Overpayment demand.* During the period of the administrative review, TDHS is prohibited from taking action to collect or offset the overpayment. However TDHS must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the TDHS's action.

(ii) *Recovery of advances.* During the administrative review, TDHS must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(iii) *Program payments.* The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of 7 CFR §226.6.

9. The institution or sponsoring agency must refute the charges contained in the notice during the fair hearing or in the written information that is provided in lieu of the hearing.

10. The institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

11. If a fair hearing is requested, the institution or sponsoring agency will be notified in writing of the time, date and place of the fair hearing at least 10 calendar days in advance.

12. Any information which supports an adverse administrative action taken by the TDHS shall be available to the institution or sponsoring agency for inspection from the date of the receipt of the request for a fair hearing or a review of written information in lieu of the hearing.

13. In accordance with 7 CFR Part 226.6 (k)(8), the TDHS Division of Appeals and Hearings must conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

14. The procedures contained in the Uniform Administrative Procedures Act found at TCA 4-5-301 et seq. shall be followed in rendering a decision on all appeals. The decision of the hearing officer is the final administrative determination to be afforded to the institution or sponsoring agency, and shall be rendered in a timely manner not to exceed 60 calendar days from the date of the receipt of the request for a fair hearing.

15. The processing limits for administrative appeals MUST be met. In the event a continuance is requested by a party, one continuance may be granted at the Hearing Official's discretion. This

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continuance shall not be for a period longer than ten (10) calendar days unless there are exceptional circumstances. Exceptional circumstances must be detailed in the order of continuance and the order must contain a date certain for the hearing, to be set as soon as possible. A report of pending CACFP desk review and fair hearing requests will be generated and reviewed daily by the Clerk's Office and the Legal Director for Appeals and Hearings who will monitor the dates for timeliness. In the event a decision has not been rendered within forty-five (45) calendar days of the date of receipt of the request for fair hearing or desk review, the Legal Director for Appeals and Hearings or their back-up shall notify the hearing official to take appropriate action.

16. All requests for a fair hearing or for a review of written information in lieu of a hearing must be submitted to:

Tennessee Department of Human Services
Division of Appeals and Hearings
PO Box 198996, Clerk's Office
Nashville, TN 37219-8996
Fax: (615) 248-7013 or (866) 355-6136
E-mail: AppealsClerksOffice.DHS@tn.gov

17. If a termination action is upheld by the hearing officer, the TDHS will issue a letter to the institution or sponsoring agency and its responsible principals and individuals advising that the termination and disqualification are effective on the date of the ruling issued by the hearing officer. The agency maintains searchable records of all administrative reviews and their dispositions for a period of five (5) years.

18. As required by 7 CFR Part 226.6 (c)(7), each disqualified institution, sponsoring agency, principal and individual will be placed on the National Disqualified List maintained by the U.S. Department of Agriculture (USDA). Once included on the National Disqualified List, an institution, sponsoring agency, principal and individual shall remain on the list until such time as the USDA, in consultation with the TDHS, determines that the serious deficiencies that led to their placement on the list have been corrected, or until seven years have elapsed since they were disqualified from participation. However, if the institution, sponsoring agency, principal or individual has failed to repay debts owed under the program, they will remain on the list until the debt has been paid.