



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

CITIZENS PLAZA BUILDING
400 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1403

TELEPHONE: 615-313-4700 FAX: 615-741-4165
TTY: 1-800-270-1349
www.tn.gov/humanservices

BILL HASLAM
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

CERTIFIED MAIL RECEIPT # 70153010000175366177

June 16, 2017

Harry Smith, Owner
Premier Kids Enrichment Center
3475 N. Watkins Street
Memphis, Tennessee 38127-5523

RE: Notice of Serious Deficiency for the Child and Adult Care Food Program (CACFP) Agreement Number 00-460 and Demand for Overpayment.

Dear Mr. Smith:

The Department of Human Services (DHS) Audit Services staff conducted an on-site unannounced review of the Child and Adult Care Food Program (CACFP) at Premier Kids Enrichment Center (Sponsor), Application Agreement 00460, on April 18, 2017 and May 3, 2017. We reviewed the Sponsor's records of reimbursements and expenditures for March 2017. The purpose of this review was to determine if the Sponsor complied with *Title 7 of the Code of Federal Regulations* (CFR) applicable parts, application agreement, and applicable Federal and State regulations.

SERIOUS DEFICIENCY DETERMINATION

Based on the monitoring review, the Department has determined that Premier Kids Enrichment Center is seriously deficient in its operation of the CACFP. In addition, the Department has identified Harry Smith, Owner as responsible for the serious deficiencies in light of his responsibility for the overall management of Premier Kids Enrichment Center's CACFP.

If Premier Kids Enrichment Center does not fully and permanently correct all of the serious deficiencies and submit documentation of the corrective action by the due date, the Department will:

- Propose to terminate Premier Kids Enrichment Center's, agreement to participate in the CACFP;
- Propose to disqualify Premier Kids Enrichment Center from future CACFP participation; and
- Propose to disqualify Harry Smith, Owner from future CACFP participation.

In addition, if Premier Kids Enrichment Center voluntarily terminates its CACFP agreement after receiving this letter, the Department will propose to disqualify Premier Kids Enrichment Center and Harry Smith, owner from future CACFP participation. If disqualified, Premier Kids Enrichment Center and Harry Smith, owner will be placed on the National Disqualified List (“NDL”). While on the NDL, Premier Kids Enrichment Center will not be able to participate in the CACFP as an institution or facility. Harry Smith, owner will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until the United States Department of Agriculture’s Food and Nutrition Service, in consultation with the Department, determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the list until the debt has been repaid.

The authorization for this action is found in Paragraph 1.e. of your FY 2016 CACFP Provider Agreement and in the CACFP regulations at 7 C.F.R. § 226.6(c)(3). You may not appeal a finding of serious deficiency.

SERIOUS DEFICIENCIES, ADDITIONAL FINDINGS AND REQUIRED CORRECTIVE ACTION

The following paragraphs detail each serious deficiency and additional finding:

Background

CACFP sponsors utilize meal count sheets to record the number of meals served for breakfast, lunch, supper and supplements 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 sponsors report the number of meals served through the DHS Tennessee Information Payment System (TIPS) system to seek 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 and observed a meal service on April 18, 2017.

Our review of the Sponsor’s records for the test month of March 2017 disclosed the following:

- 1. Premier Kids Enrichment Center did not have all records available for the test month.**

This is a Serious Deficiency:

Condition

All records were not available to support the March Claim for Reimbursement. On April 18, 2017, the Department of Human Services Audit Services staff went to the center to conduct an unannounced review. We were told by the owner that the assistant director was no longer employed by the center, and she had taken some of the records that support the CACFP claim. The Sponsor did not have the income eligibility applications, enrollment addendum forms, annual in-house training documentation, Child Nutrition labels, recipes, or receipts to support expenses available on site for review.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.10 (d) states “All accounts and records pertaining to the Program shall be made available upon request, to the representatives of the State

agency, of the Department, and of the U.S. General Accounting Office for auditing review, at a reasonable time and place.”

In addition, the Tennessee Child and Adult Care Food Program Policies and Procedures Manual (p.23) states, “The books, records, and documents of each institution, which are related to work performed or money received under the CACFP must be maintained for a period of three (3) full years, and are subject to audit at any reasonable time and upon reasonable notice by the TDHS, the Tennessee Comptroller of the Treasury, or their duty and appointed representatives. The records must also be readily available for monitoring and auditing purposes by the TDHS, Tennessee Comptroller of the Treasury, U.S Department of Agriculture and other appropriate state and federal agencies”

Recommendation

Premier Kids Enrichment Center management should establish and implement internal controls to ensure files are properly maintained and protected from loss, theft, or damage.

2. The number of participants reported in the free and paid categories was incorrect.

This is a Serious Deficiency:

Condition

The Claim for Reimbursement for the test month reported 284 participants in the free category, and 16 participants in the paid category. However, based on our review of the Sponsor’s records, we found that there were zero participants in the free category and 180 participants in the paid category. The differences were based on the following:

- The Sponsor did not have applications on file for any of the participants claimed for the review month of March 2017. Based on our review of the Sponsor’s available documents, we found that there were 180 participants for the review month. All participants were reclassified as paid.
- The number of participants reported in the free category was over reported by 104 and the paid category was under reported by 16.

There were 300 participants reported in the program. However, based on our review of the Sponsor’s records, we found that there were only 180 participants in the program.

This is a repeat finding from a previous report dated July 20, 2016.

Criteria

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

The Tennessee Child and Adult Care Food Program Policies and Procedures Manual (p. 18) states “To operate the CACFP and receive reimbursement, all independent child care centers and sponsoring organizations must keep accurate records on the eligibility of enrolled participants for free and reduced-price meals.”

Recommendation

The Sponsor should maintain all information used to determine eligibility, and ensure that each participant is classified and reported according to the participants' income eligibility.

3. The Sponsor reported incorrect meal counts

This is a Serious Deficiency:

Condition

The Claim for Reimbursement for the test month showed 3,832 breakfasts, 3,917 lunches, and 3,991 supplements served. However, our review of Sponsor records showed 3,265 breakfasts, 1,911 lunches and 3,409 supplements prior to any meal disallowances.

Therefore, the cost reimbursement for 567 breakfast meals, 2,006 lunch meals and 582 supplements will be disallowed.

This is a repeat finding from a previous report dated July 20, 2016.

Criteria

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

In addition, the Tennessee Child and Adult Care Food Program Policies and Procedures Manual (p. 41) states that "All independent child care centers, outside-school-hours centers, and sponsoring organizations of child care centers must submit to the TDHS accurate monthly reports on the number of meals served."

Recommendation

The Sponsor should ensure that claims for reimbursement are based on the sufficient and proper supporting documents, such as meal count sheets.

4. There were menus that did not meet USDA meal pattern requirements

This is a Serious Deficiency:

The menus provided for Premier Kids Enrichment Center had menu deficiencies as follows:

Condition

Date	Deficient Component	Disallowed Meals (# and type)
03/01/17	Deficient component: Second fruit/vegetable Menu listed- Milk, fish sticks, mac & cheese, fruit salad, and white bread.	9 Lunches
03/06/17	Deficient component: grain/grain alternate Menu listed: Milk, pineapple tidbits, hash browns, and sausage	144 Breakfasts

Date	Deficient Component	Disallowed Meals (# and type)
03/06/17	Deficient component: Meat/meat alternative Menu listed: Milk, taquitos, corn, green beans, sliced diced peaches, and white bread. The Sponsor did not provide a CN label for the taquitos. The amount of protein could not be determined.	66 Lunches
03/07/17	Deficient component: Meat/meat alternate. Menu listed: Milk, spaghetti and meat sauce, turnip greens, fruit cocktail, and white bread. The Sponsor did not provide a recipe for the spaghetti and meat sauce. The amount of protein could not be determined.	65 Lunches
03/08/17	Deficient component: Meat/meat alternative. Menu listed: Milk, pizza rolls, broccoli & cheese, mandarin oranges, and white bread. The Sponsor did not provide a CN label for the pizza rolls. The amount of protein could not be determined.	63 Lunches
03/08/17	Deficient component: A second creditable component. Menu listed: Grape juice and fruit chews. Fruit chews are not creditable.	143 Supplements
03/17/17	Deficient component: A second creditable component. Menu listed: Trail mix and juice. Trail mixes are not creditable if the ingredients included in the mix are not listed on the menu.	152 Supplements
03/20/17	Deficient component: Meat/meat alternative. Menu listed: Milk, chicken nuggets, green beans, applesauce and white bread. The Sponsor did not provide a CN label for the chicken nuggets. The amount of protein could not be determined.	59 Lunches
03/20/17	Deficient component: A second creditable component. Menu listed: Trail mix and 100% juice. Trail mixes are not creditable if the ingredients included in the mix are not listed on the menu.	148 Supplements
03/21/17	Deficient component: Second fruit/vegetable Menu listed- Milk, fish sticks, mac & cheese, diced peaches, and white bread.	61 Lunches
03/24/17	Deficient component: Meat/meat alternative. Menu listed: Milk, pizza rolls, green beans, mandarin oranges, and white bread. The Sponsor did not provide a CN label for the pizza rolls. The amount of protein could not be determined.	67 Lunches
03/27/17	Deficient component: Meat/meat alternative. Menu listed: Milk, chicken nuggets, corn, whipped potatoes, diced sliced pears, and white bread. The Sponsor did not provide a CN label for the chicken nuggets. The amount of protein could not be determined.	69 Lunches
03/28/17	Deficient component: Meat/meat alternative. Menu listed: Milk, chicken alfredo with broccoli, diced peaches and white bread. The Sponsor did not provide a CN label or recipe for the chicken alfredo with broccoli. The amount of protein could not be determined.	70 Lunches

Date	Deficient Component	Disallowed Meals (# and type)
03/30/17	Deficient component: Meat/meat alternative. Menu listed: Milk, pizza rolls, green beans, fruit salad, and white bread. The Sponsor did not provide a CN label for the pizza rolls. The amount of protein could not be determined.	60 Lunches
03/30/17	Deficient component: A second creditable component. Menu listed: Trail mix and 100% juice. Trail mixes are not creditable if the ingredients included in the mix are not listed on the menu.	145 Supplements

Therefore, the cost reimbursement for 144 breakfasts, 649 lunches and 588 supplements was disallowed.

This is a repeat finding from a previous report dated July 20, 2016.

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 ...”

In addition, the Tennessee Child and Adult Care Food Program Policies and Procedures Manual (p. 23) states that “An institution must maintain menus that meet the following requirements: a. All food components, as required for each type of meal to be served (i.e., breakfast, lunch, supper and supplement), are identified.”

The USDA Crediting Foods in the Child and Adult Care Food Program, page 62, states, “When crediting such products as chili-macs, pizzas, pot pies, sloppy Joes, and raviolis toward the meat/meat alternate component, the amount of meat/meat alternate per serving (not the total portion size) is the determining factor for crediting purposes. Because of the uncertainty of the actual amount of meat/meat alternate contained in these products, they should not be used unless (1) they are CN-labeled; or (2) you obtain a Product Formulation Statement signed by an official of the manufacturer (not a sales person) that shows how the crediting has been determined. Remember that only a CN-labeled product carries a warranty that protects against financial audit claims. See the sample formulation statement on page 73 with required information and documentation.”

The USDA Crediting Handbook for the Child and Adult Care Food Program, Revised 2011, (page 63) concerning snack/party mixes, trail mixes states, “These are snack food mixtures with a variety of items including nuts, cereals, seeds, dried fruits, etc. These items cannot be credited unless there is an explanation of the creditable ingredients included in the mix on the menu.”

Recommendation

The Sponsor should

- maintain copies of commercially prepared food CN labels or Product Formulation Statements on file and follow the recommended serving sizes/equivalents listed on the label.
- ensure that all meals prepared meet the meal patterns established by the USDA, and menus should be reviewed to ensure they contain all required meal components to be eligible as a reimbursable meal.

- ensure that when trail mix is listed on the menu, there is an explanation of the creditable ingredients included in the mix on the menu.

5. The Sponsor could not verify the quantities of milk that were purchased

This is a Serious Deficiency:

Condition

Based on the number of meals served with milk as a required component, a total of 28,028 ounces were needed. However, the Sponsor could not provide any receipts or invoices showing milk purchases for the month of March 2017. The Sponsor did not have a milk inventory worksheet to verify the quantities of milk left at the end of February 2017 and available March 1, 2017. Meals served with milk as a required component for the month of March 2017 are disallowed.

Based on the results of our testing, 3,121 breakfasts and 1,262 lunches were disallowed.

Criteria

Title 7 of the Code of Federal Regulations Section 226.20 (c)(2) states, "... Fluid milk, meat and meat alternatives, vegetable, fruits, and grains are required components in the lunch and supper meals ..."

Recommendation

- The Sponsor should purchase enough milk to provide all participants with the required ounces of milk for meals that are claimed for reimbursement.
- The Sponsor should maintain receipts to verify the purchase of the food items identified on the menus.
- The Sponsor should complete a monthly milk inventory which is completed on the last day of operation for each month and list the amount of milk purchased and not used during the month and is available at the close of business on the last day of operation of that month.

6. The Sponsor did not maintain infant menus or infant meal counts

Condition

The Sponsor provided attendance for nine infants. However, the Sponsor did not provide meal counts or menus to support a claim for participants under 12 months.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.15 (e) states "Each institution shall establish procedures to collect and maintain all program records required under this part, as well as any records required by the State agency. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records ..."

Title 7 of the Code of Federal Regulations, Section 226.15 (e)(4) states "Daily records indicating the number of participants in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements), served to participants ..."

Title 7 of the Code of Federal Regulations, Section 226.15 (e)(10) states "... Copies of menus, and any other food service records required by the State agency;"

In addition, the Tennessee Child and Adult Care Food Program Policies and Procedures Manual (p. 23) states that "An institution must maintain daily meal counts listing the number of meals by type and age group served to children (claiming percentage); or daily meal counts by name, eligibility and meal type (actual count)"

Recommendation

- Menus should be used for all participants of the CACFP Program. Menus should be reviewed to ensure they contain all required meal components to be eligible as a reimbursable meal.
- The Sponsor should maintain daily meal counts for all participants to support the claim for reimbursement.

7. The Sponsor did not have a menu posted for the meal observed

Condition

There was no menu posted at the time of our visit on April 18, 2017.

This is a repeat finding from a previous report dated July 20, 2016.

Criteria

The Tennessee Child and Adult Care Food Program Policies and Procedures Manual (p.23-24) states: "An institution must maintain: each menu is posted in a conspicuous place for all parents and guardians to observe."

Recommendation

The Sponsor should ensure that the menu is posted in a visible place where parents and participants can review.

8. A meal observed did not meet USDA component requirements.

Condition

The lunch served on April 18, 2017 consisted of fish sticks, mashed potatoes, peach slices, white sliced bread, and 1% milk. There were five lunches served to infants, ages 7-11 months, on April 18, 2017 that did not include a grain or grain alternative. There were 15 lunches served to participants aged 1-2 years old that included 1% milk. 1-2 year olds are required to be served whole milk.

As a result, 20 lunches are not eligible for reimbursement.

Criteria

The Tennessee Child and Adult Care Food Program Policies and Procedures Manual (p. 26) states: "All meals must meet the meal patterns established by the USDA to be eligible for CACFP reimbursement." The USDA meal pattern requirements are listed on pages 27-32.

Title 7 of the Code of Federal Regulations Section 226.20 (a)(1) states "... Fluid milk must be served as a beverage or on cereal, or a combination of both, as follows:

- (i) Children 1 year old. Children one year of age must be served unflavored whole milk.
- (ii) Children 2 through 5 years old. Children two through five years old must be served either unflavored low-fat (1 percent) or unflavored fat-free (skim) milk.
- (iii) Children 6 years old and older. Children six years old and older must be served unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk ...”

Recommendation

The Sponsor should ensure that all served meals meet the minimum meal pattern requirements. Food service staff should document the ages of children served, and ensure that those who are 1-2 years old are served whole milk.

9. The Sponsor’s documented number of meals served exceeded the verified attendance

Condition

The Claim for Reimbursement for the test month reported 3,997 participant days. However, based on our review of available records, we found that there were 2,509 participant days.

The verified attendance was 2,509. The number of verified supplements exceeded the verified attendance by 312. The number of supplements served cannot exceed the verified attendance of 2,509. Based on the results of our review, 312 supplements were disallowed.

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 ...”

In addition, the Tennessee Child and Adult Care Food Program Policies and Procedures Manual (p. 41) states that “All independent child care centers, outside-school-hours centers, and sponsoring organizations of child care centers must submit to the TDHS accurate monthly reports on the number of meals served.” The Tennessee Child and Adult Care Food Program Policies and Procedures Manual (p.23) also states that “An institution must maintain daily attendance records by each participant's full legal name.”

Recommendation

The Sponsor should implement a reconciliation process for attendance and meal count records to ensure documented meals served do not exceed attendance.

10. There were participants that did not have a CACFP enrollment addendum form

Condition

There were 180 participants that did not have a current CACFP enrollment addendum form on file.

This is a repeat finding from a previous report dated July 20, 2016.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.15 (e)(2) states “Documentation of the enrollment of each participant at centers (except for outside-school-hours care centers, emergency shelters, and at-risk afterschool care centers). 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.”

In addition, the Tennessee Child and Adult Care Food Program Policies and Procedures Manual states: “Each institution must meet the enrollment requirements mandated by child care licensing regulations. In addition, each institution must have an enrollment form for each CACFP participant. The enrollment form must meet the following requirements:

1. Be updated annually and signed by a parent or guardian of the participant;
2. Identify the “normal” days and hours in care for each enrolled participant; and
3. Identify the meals to be received by each enrolled participant.”

Recommendation

The Sponsor should ensure that all participants have a current CACFP enrollment form on file.

11. The Sponsor did not provide documentation for the required annual CACFP training

Condition

The Sponsor did not provide documentation of the annual CACFP training for staff. This training is required and must emphasize food service procedures and record keeping requirements.

This is a repeat finding from a previous report dated July 20, 2016.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.15 (e)(12) states, “Each institution shall establish procedures to collect and maintain all program records required under this part, as well as any records required by the State agency. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records. At a minimum, the following records shall be collected and maintained: (12) Information on training session date(s) and location(s), as well as topics presented and names of participants;”

Recommendation

The Sponsor should document CACFP training annually for all staff with CACFP responsibilities.

12. The Sponsor did not have working thermometers in the refrigerators

This is a Serious Deficiency:

Condition

The classroom refrigerators did not have a thermometer or the thermometer was not working, so we were unable to verify that the milk was stored within a safe temperature range.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20 (l) “Institutions shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions shall ensure that adequate facilities are available to store food or hold meals.”

Recommendation

The Sponsor should ensure that all refrigerators and freezers have a properly working thermometer or establish some other method for verifying that foods are stored within a safe temperature range.

13. The Sponsor did not have an adequate financial management system to ensure program accountability and he did not provide all records that we requested

Condition

During our review of the Premier Kids Enrichment Center’s CACFP support documentation, we noted the following discrepancies:

- a) The Sponsor did not have an adequate accounting system to record administrative and operational transactions.
- b) The owner agreed to provide CACFP expense support documentation for the month of January 2017 during our second on-site visit on May 5, 2017. However, no documentation was provided by the owner during the on-site visits.
- c) The owner agreed to provide CACFP bank statements for October 2016 through April 2017 during the on-site visits. However, no bank statements were provided by the owner for the months of October 2016 through February 2017 as well as April 2017 until after the on-site visits were completed. However, receipts were never provided.

Criteria

7 CFR 226.6 titled *Performance Standard 3 - Program accountability* states *"The new or renewing institution must have internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the Program operates in accordance with the requirements of this part. To demonstrate Program accountability, the new or renewing institution must document that it meets the following criteria:*

- (A) Board of directors. Has adequate oversight of the Program by its governing board of directors;*
- (B) Fiscal accountability. Has a financial system with management controls specified in writing. For sponsoring organizations, these written operational policies must assure:*
 - (1) Fiscal integrity and accountability for all funds and property received, held, and disbursed;*
 - (2) The integrity and accountability of all expenses incurred;*
 - (3) That claims are processed accurately, and in a timely manner;*
 - (4) That funds and property are used, and expenses incurred, for authorized Program purposes; and*
 - (5) That a system of safeguards and controls is in place to prevent and detect improper financial activities by employees;*
- (C) Recordkeeping. Maintains appropriate records to document compliance with Program requirements, including budgets, approved budget amendments, and, if applicable, management plans and appropriate records on facility operations; The institution must maintain appropriate records to document compliance with CACFP requirements, including budgets, accounting records,*

approved budgets and amendments, and, if a sponsoring organization, management plans and appropriate records on facility operations.

(D) A sponsoring organization must document in its management plan that it will:

(1) Provide adequate and regular training of sponsoring organization staff and sponsored facilities in accordance with §§ 226.15(e)(13) and 226.16(d);

(2) Perform monitoring in accordance with § 226.16(d), to ensure that sponsored facilities accountably and appropriately operate the Program;

(3) If applicable, accurately classify day care homes as tier I or tier II in accordance with § 226.15(f); and

(4) Have a system in place to ensure that administrative costs funded from Program reimbursements do not exceed regulatory limits set forth at §§ 226.12(a) and 226.16(b)(1); and

(E) Facility level operations. All independent centers and sponsored facilities must follow practices which result in the operation of the Program in accordance with the meal service, recordkeeping, and other operational requirements of this part. These practices must be documented in the independent center's application or in the sponsoring organization's management plan and must demonstrate that independent centers or sponsored facilities will:

(1) Provide meals that meet the meal patterns set forth in § 226.20;

(2) Comply with licensure or approval requirements set forth in paragraph (d) of this section;

(3) Have a food service that complies with applicable State and local health and sanitation requirements;

(4) Comply with civil rights requirements;

(5) Maintain complete and appropriate records on file; and

(6) Claim reimbursement only for eligible meals."

USDA – CACFP, Guidance for Management Plans and Budgets, Page 22, titled Adequate Documentation, states "All costs charged to the CACFP must be properly documented with receipts, invoices, or mileage logs, and time and attendance records. Payments made must be documented in bank statements, registers, and accounting systems. The State agency may identify the specific documentation it expects based on general business practices. "

Recommendation

Premier Kids Enrichment Center management should establish and maintain an adequate financial management system that properly tracks CACFP revenues and expenses. Premier Kids should also establish and implement record keeping procedures to ensure that records are available upon request.

14. The Sponsor did not have a written compensation policy

Condition

Premier Kids Enrichment Center has not established a written compensation policy; we noted the following compensation discrepancies:

- a) The Sponsor expensed \$144.00 in sick leave benefits for an employee in March 2017. The Sponsor was able to provide an excuse letter from a doctor's office for the timeframe of the employee's paid leave; however, there was no documentation maintained by the Sponsor to track the approval of the leave by a supervisor.

Sick Leave Benefits Approval Not Tracked

Title	Leave Date(s)	Pay Rate	Leave Hours Taken	Pay Date	Total
Cook	2/27/17 & 2/28/17	\$9.00	16.00	3/10/2017	\$144.00

- b) The Sponsor monitored time worked by a hourly employee with a time clock system used by the employee during work hours; however, the Sponsor did not maintain documentation to verify that the employee reviewed and certified the hours worked nor received supervisory approval of time worked by the employee.

No Support for Verification of Hours Worked

Title	Pay Date	Total Pay
Cook	3/10/2017	\$ 562.50
Cook	3/29/2017	\$ 663.75

- c) During on-site visits on April 18th and May 5th, the owner agreed to provide support documentation for all CACFP labor expenses for the month of March 2017. The owner stated that a percentage of labor expenses were allocated to the program for two employees that were approved in the Sponsor's CACFP budget. However, no time and attendance reports or pay distribution reports were provided by the owner for the two employees. The Sponsor's March 2017 bank statement disclosed that the two employees were paid a net pay of \$1,694.15 that was expensed to the CACFP program the month of March 2017.

No Support to Verify Labor Paid

Employee Title	Pay Date	Percentage Allocated to the Program	Net Pay	CACFP Expenses
Assistant Director	3/10/2017	50%	\$ 962.77	\$ 481.39
Assistant Director	3/24/2017	50%	\$ 962.77	\$ 481.39
Executive Director	3/10/2017	25%	\$1,462.75	\$ 365.69
Executive Director	3/24/2017	25%	\$1,462.76	\$ 365.69
Total				\$1,694.15

Criteria

FNS 796-2 Revision 4, Page 44 states, "Institutions must establish and maintain a written compensation policy for every element of compensation charged to the Program. At a minimum, the written compensation policy must apply to any individual or group of individuals employed by the institution and identify:

(a) Rates of pay;

(b) Hours of work, including breaks and meal periods; and

(c) The institution's policy and payment schedule for regular compensation, overtime, compensatory time, holiday pay, benefits, awards, severance pay and payroll tax withholding. The timing and frequency of the institution's payments to its employees will follow a routine schedule as directed by its human resource policy. For example, it may compensate employees weekly, bi-weekly, or monthly.

(d) The compensation policy must also reflect the requirements of the U.S. Department of Labor's FLSA, which directs whether non-salaried employees are compensated for overtime or compensatory time whenever time worked exceeds eight hours per day or forty hours per week.

FNS 796-2 Revision 4, Page 45"(2) states "Time and attendance reports for all labor costs (salaries, wages and benefits) charged to the Program for hourly or salaried employees for part-time, full-time

or piece-work. These reports must identify the total time actually worked by the employee, not just the time spent on Program activities.

(a) At a minimum, these reports must include:

- (i) Start time;
- (ii) End time; and
- (iii) Absences.

(b) The report must be prepared timely and coincide with the employee's pay period."

FNS 796-2 Revision 4, Page 47 states, "In all cases, time and attendance and time distribution reports must be completed by the employee and signed and certified as true and correct by the employee and a responsible supervisory official having firsthand knowledge of the activities performed by the employee during the period covered by the reports".

Recommendation

Premier Kids Enrichment Center management should establish written compensation guidelines to comply with state and federal regulations.

16. The Sponsor did not have adequate procurement standards

Condition

The Sponsor did not have written procurement standards to provide guidance to its officers, employees, or agents engaged in the centers' procurement processes.

Criteria

7 CFR 226.22 (d) states "Institutions shall maintain a written code of standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Program payments."

7 CFR 226.22 Part (e) states "The institution shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by institution officials to avoid the purchase of unnecessary or duplicative items."

Recommendation

Premier Kids Enrichment Center should establish and implement written procurement standards to comply with state and federal regulations.

OVERPAYMENT-RIGHT TO APPEAL

Disallowed Meals Costs

Based on our review, we determined that the Sponsor's noncompliance with the applicable Federal and State regulations that govern the CACFP resulted in a total disallowed meals cost of \$22,030.87.

Remit a check payable to the *Tennessee Department of Human Services* in the amount of \$22,030.87, which the institution owes the Department. **The procedures for submitting an appeal regarding the amount of overpayment are enclosed. Please note that the appeal must be in writing and must be received by our Department no later than fifteen (15) calendar days from your receipt of this letter.** 7 C.F.R. § 226.6(k). 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 overpayment, all appeal procedures must be followed as failure to do so may result in the denial of your request for an appeal.

In accordance with the CACFP regulations at 7 C.F.R. § 226.14(a), in part, the State agency must assess interest 30 days from the initial request for repayment. For information about applied interest rates please visit the following website:

http://www.fiscal.treasury.gov/fsreports/rpt/cvfr/historical_rates.htm

SUMMARY

The Department has determined that Premier Kids Enrichment Center is seriously deficient in its operation of the CACFP and that Harry Smith, Owner is responsible for the serious deficiencies.

You may not appeal the serious deficiency determination itself. If the Department proposes to terminate Premier Kids Enrichment Center's CACFP agreement, or propose to disqualify Premier Kids Enrichment Center and the responsible individuals, you will be able to appeal those actions and you will be advised of your appeal rights and the appeal procedures at that time.

Premier Kids Enrichment Center may continue to participate in the CACFP during the corrective action period. The Department will pay any valid claims for reimbursement submitted by Premier Kids Enrichment Center for the corrective action period. As always, you must submit claims within sixty (60) calendar days of the last day of the month covered by the claim. The Department will deny any portion of a claim we determine is invalid. If the Department denies payment of any portion of a claim submitted for the corrective action period, that action would be appealable.

To provide for the full and permanent correction of the serious deficiencies and findings, please complete the following actions within fifteen (15) days of your receipt of this notice:

Premier Kids Enrichment Center must complete the following actions within 30 days from the date of this report:

1. Login to the Tennessee Information Payment System (TIPS) and revise the claim submitted for each site for March 2017, which contains the reconciled claim data from the enclosed exhibit.
2. Remit a check payable to the *Tennessee Department of Human Services* in the amount of \$22,030.87 for recovery of the amounts disallowed in this report. **Please return the attached billing notice with your check;** and
3. 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:

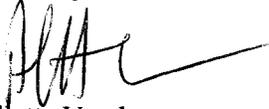
AuditServices.CAPS.DHS@tn.gov

Allette Vayda, Director
Child and Adult Care Food Program
8th Floor Citizens Plaza Building
400 Deaderick Street
Nashville, Tennessee 37243

If the Department does not receive the corrective action plan by the deadline date, or the Department determines that the corrective action plan does not provide for the full and permanent correction of the serious deficiencies and findings, the Department will propose to terminate the Institution's CACFP Provider Agreement and to disqualify you and the Institution from future CACFP participation by issuing a Notice of Proposed Termination and Disqualification.

We appreciate the assistance provided during this review. If you have any questions regarding this report, please contact Jackie Yokley, Audit Director 2, at 615-837-5035 or Jackie.D.Yokley@tn.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Allette Vayda', with a long horizontal flourish extending to the right.

Allette Vayda
Director, CACFP & SFSP

Enclosures

EXHIBIT

Verification of CACFP Independent Center Claim (Claiming Percentages)

Name of Agency: Premier Kids Enrichment Center
Review Month/Year: March 2017
Total Meal Reimbursement Received: \$22,206.50

Program Area	Reported on Claim	Verified By Monitoring Review
Number of Days that CACFP Food Service was operated	23	23
Total Attendance	3,997	2,509
Percentage of Participants in the Free or Reduced-price Category (For Proprietary Center Only)	XXXXXX	0%
Percentage of Participants in the Child Care Certificate Program (CCCP)	XXXXXX	48%
Number of Breakfasts Served	3,832	0
Number of Lunches Served	3,917	0
Number of Supplements Served	3,991	2,509
Number of Participants in Free Category	284	0
Number of Participants in Reduced-Price Category	0	0
Number of Participants in Paid Category	16	180
Total Number of Participants	300	180
Total Amount of Eligible Food Costs	XXXXXXXX	\$00.00
Total Amount of Eligible Food and Non-Food Costs	XXXXXXXX	\$00.00



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

CITIZENS PLAZA BUILDING
400 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1403

TELEPHONE: 615-313-4700 FAX: 615-741-4165
TTY: 1-800-270-1349
www.tn.gov/humanservices

BILL HASLAM
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

June 16, 2017

Harry Smith, Owner
Premier Kids Enrichment Center
3475 N. Watkins Street
Memphis, Tennessee 38127-5523

Notice of payment due to findings disclosed in the monitoring report dated June 16, 2017, for Child and Adult Care Food Program (CACFP).

Institution Name:	Premier Kids Enrichment Center
Institution Address:	3475 N. Watkins Street Memphis, Tennessee 38127-5523
Agreement Number:	00460
Amount Due:	\$22,030.87
Due Date:	July 17, 2017

Based on the monitoring report issued on June 16, 2017, by the Audit Services Division within the Tennessee Department of Human Services, the Community and Social Services - Food Programs - CACFP & SFSP management has agreed with the findings which requires your institution to reimburse the Department of Human Services for disallowed meals cost.

Please remit a check or money order payable to the **Tennessee Department of Human Services** in the amount of \$22,030.87 by the due date to:

**Tennessee Department of Human Services
Fiscal Services 11th Floor
Citizens Plaza Building
400 Deaderick Street
Nashville, Tennessee 37243-1403**

Please note that the unallowed 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, Community and Social Services- Food Programs- CACFP & SFSP at (615) 313-3769 or Allette.Vayda@tn.gov

Thank you for your attention

**CORRECTIVE ACTION PLAN
CHILD AND ADULT CARE FOOD PROGRAM (CACFP)
TENNESSEE DEPARTMENT OF HUMAN SERVICES (TDHS)**

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 Date of Birth on the first page; enter your name, title and date of signature on the last page. Sign your name in ink. **Please return ALL pages of the completed Corrective Action Plan form.**

Section A. Institution Information	
Name of Institution Premier Kids Enrichment Center	CACFP Agreement No. 00-460
Mailing Address: 3475 N. Watkins Street Memphis TN, 38127	
Section B. Responsible Principal(s) and/or Individual(s)	
Name and Title: Harry Smith, Owner	Date of Birth (s):
Section C. Dates of Issuance of Monitoring Report/Corrective Action Plan	
SD Report: June 16, 2017	Corrective Action Plan: June 16, 2017
Section D. Findings	
Findings:	
<ol style="list-style-type: none"> 1. Premier Kids Enrichment Center did not have all records available for the test month. 2. The number of participants reported in the free and paid categories was incorrect 3. The Sponsor reported incorrect meal counts 4. There were menus that did not meet USDA meal pattern requirements 5. The Sponsor could not verify the quantities of milk that were purchased 6. The Sponsor did not maintain infant menus or infant meal counts 7. The Sponsor did not have a menu posted for the meal observed 8. A meal observed did not meet USDA component requirements 9. The Sponsor's documented number of meals served exceeded the verified attendance 10. There were participants that did not have a CACFP enrollment addendum form 11. The Sponsor did not provide documentation for the required annual CACFP training 12. The Sponsor did not have working thermometers in the refrigerators 	

- 13. The Sponsor did not have an adequate financial management system to ensure program accountability and he did not provide all records that we requested
- 14. The Sponsor did not have a written compensation policy
- 15. The Sponsor did not have adequate procurement standards

The following measures will be completed within **15 business days** of my institution's receipt of this corrective action plan:

Measure No. 1: Premier Kids Enrichment Center did not have all records available for the test month.

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 number of participants reported in the free and paid categories was incorrect

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 incorrect meal counts

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: There were menus that did not meet 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 could not verify the quantities of milk that were purchased

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.6: The Sponsor did not maintain infant menus or infant meal counts

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. 7: The Sponsor did not have a menu posted for the meal observed

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. 8: A meal observed did not meet USDA component 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. 9: The Sponsor's documented number of meals served exceeded the verified attendance.

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. 10: There were participants that did not have a CACFP enrollment addendum form

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. 11: The Sponsor did not provide documentation for the required annual CACFP training

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. 12: The Sponsor did not have working thermometers in the refrigerators

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. 13: The Sponsor did not have an adequate financial management system to ensure program accountability and he did not provide all records that we requested

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. 14: The Sponsor did not have a written compensation policy

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. 15: The Sponsor did not have adequate procurement standards

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.

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;

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Revised March 2017

- (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

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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.