



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

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

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BILL HASLAM
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

CERTIFIED MAIL RECEIPT #70163010000073892128

January 18, 2018

Doris Wise, Owner
The Pumpkin Patch
1811 Old Troy Road
Union City, Tennessee 38261-5565

Dear Ms. Wise,

The Department of Human Services (DHS) - Audit Services Division Staff conducted unannounced an on-site review of the Child and Adult Care Food Program (CACFP) at The Pumpkin Patch (Sponsor), Application Agreement number 00534, on November 20, 2017. We reviewed the Sponsor's records of reimbursement and expenditures for September 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 The Pumpkin Patch is seriously deficient in its operation of the CACFP. In addition, the Department has identified Doris Wise, Owner as responsible for the serious deficiencies in light of their responsibility for the overall management of The Pumpkin Patch's CACFP.

If The Pumpkin Patch 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 The Pumpkin Patch's agreement to participate in the CACFP;
- Propose to disqualify The Pumpkin Patch from future CACFP participation; and
- Propose to disqualify Doris Wise, Owner, from future CACFP participation.

In addition, if The Pumpkin Patch voluntarily terminates its CACFP agreement after receiving this letter, the Department will propose to disqualify The Pumpkin Patch, Doris Wise, Owner, from future CACFP participation. If disqualified, The Pumpkin Patch, and Doris Wise, Owner will be placed on the National

Disqualified List (“NDL”). While on the NDL, The Pumpkin Patch will not be able to participate in the CACFP as an institution or facility. Doris Wise, 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

Background

CACFP Sponsors utilize meal count sheets to record the number of meals served for breakfast, lunch, supper and supplement meals. 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 reports the number of meals served through the DHS Tennessee Information Payment System (TIPS) to seek reimbursement. We inspected meal count 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 attempted to observe a meal service on September 18, 2017.

The Sponsor had two sites operating during the month of September 2017. The Pumpkin Patch 0002 was selected as the sample site. Applications from The Pumpkin Patch 0001 were also reviewed.

Our review of the Sponsor’s records for September 2017 disclosed the following:

1. The number of participants in the free, reduced-price and paid categories was reported incorrectly

Condition

The claim for reimbursement for the test month of September 2017 reported 64 participants in the free category, six participants in the reduced-price category and one participant in the paid category. However, based on our review of the Sponsor’s records, we noted 27 participants in the free category, five participants in the reduced-price category and 39 participants in the paid category. The differences were based on the following:

The Pumpkin Patch 0001

- There were five participants reported in the free category, but the applications on file did not have a parent’s signature. These participants were reclassified as paid.
- There were two participants reported in the free category, but the applications on file were not signed or dated by the determining official. These participants were reclassified as paid.

- There was one participant reported in the free category, but the application on file did not have the date of the determining official's signature. This participant was reclassified as paid.
- There was one participant reported in the reduced-price category, but the application on file was not signed or dated by the determining official. This participant was reclassified as paid.

The Pumpkin Patch 0002

- There were twelve participants reported in the free category, but the participants did not have an application on file. These participants were reclassified as paid.
- There were eight participants reported in the free category, but their applications were not signed or dated by the determining official. These participants were reclassified as paid.
- There were eight participants reported in the free category, but their applications did not have any income listed or a Families First number listed. Additionally, the applications were not signed or dated by the determining official. These participants were reclassified as paid.
- There was one participant reported in the free category, but the application did not have a parent signature or social security number. Additionally, the application was not signed or dated by the determining official. This participant was reclassified as paid.

Criteria

Title 7 of the Code of Federal Regulations Section 226.10(c) states, in part, "... 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 226.17 (b)(8) states, "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) ... 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."

Recommendation

The Sponsor should review all applications and ensure each participant is categorized and reported correctly. The Sponsor should also ensure that documentation is on file to support the claim.

This is a repeat finding from the monitoring report dated May 16, 2014.

2. The Sponsor did not meet the requirement that at least 25% of the enrollment or license capacity be beneficiaries of the Child Care Certificate Program (CCCP) or participants who are eligible for free or reduced-price meal payments for the test month at one center.

This is a Serious Deficiency:

Condition

The Pumpkin Patch 0002

The verified enrollment for the test month of September 2017 was 33 participants for The Pumpkin Patch 0002. However, our review showed four of the 33 participants, or 12%, were eligible for free or reduced-price meals. Two participants, or 6%, were beneficiaries of the Child Care Certificate Program (CCCP). Therefore, The Pumpkin Patch center 0002 did not meet the requirement that at least 25% of the enrollment or license capacity be beneficiaries of the Child Care Certificate Program (CCCP) or participants who are eligible for free or reduced-price meal payments. As a result, the meals reported for the month of September 2017 were not eligible for reimbursement and the total amount of reimbursement for the entire claim is disallowed for this site. The Sponsor reported 519 breakfasts, 488 lunches and 489 supplements for The Pumpkin Patch 0002.

Criteria

Title 7 of the Code of Federal Regulations Section 226.17 (b)(4) states, "For-profit child care centers may not claim reimbursement for meals served to children in any month in which less than 25% of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries."

Recommendation

The Sponsor should ensure the requirement is met at least 25% of the enrollment or license capacity be beneficiaries of the Child Care Certificate Program (CCCP) or participants who are eligible for free or reduced-price meal payments.

3. There were participants who did not have current enrollment addendum forms on file

Condition

The Pumpkin Patch 0002

There were 21 participants that did not have a current enrollment addendum form on file at The Pumpkin Patch 0002.

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."

Recommendation

The Sponsor should ensure that each participant has an enrollment form on file and that the enrollment form is updated annually.

4. The Sponsor did not provide documentation that infant meals are being offered as obligated

Condition

The Sponsor has infants present in the day care. However, the Sponsor did not keep documentation of enrollment information, applications, meal counts, menus or attendance for the infants as proof of meals were being offered.

Criteria

USDA Memo Code CACFP 14-2015 (v.2) dated June 24, 2015 states, "Centers and day care homes participating in CACFP must offer Program meals to all eligible children enrolled in their center or day care home. Program regulations define an enrolled child as "a child whose parent or guardian has submitted to an institution a signed document which indicated that the child is enrolled in child care" [7 CFR 226.2]. A center or day care home may not avoid this obligation by stating that the infant is not "enrolled" in the CACFP, or by citing logistical or cost barriers to offering infant meals. Decisions on offering Program meals must be based on whether the child is enrolled for care, not if the child is enrolled in the CACFP."

Recommendation

The Sponsor should ensure each child present in the day care center is offered meals compliant with USDA standards. Additionally, the sponsor should maintain documentation showing that each child, regardless of age, is offered the meals. The Sponsor should ensure that this documentation is available upon request, even if the Sponsor chooses not to claim the participants.

5. The site served outside of approved meal service time

Condition

We attempted to observe a lunch meal service on September 18, 2017; however, upon our arrival at 11:15 AM to the feeding site, we noticed that children were leaving the feeding site, and we were told that the lunch meal was already served. The lunch meal was served before the approved meal service time which was from 11:30AM until 12:00PM. The Sponsor did not claim those meals.

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 the application in accordance with the meal pattern requirements. ..."

Recommendation

The Sponsor should ensure that the meals are served according to the approved meal service time.

OVERPAYMENT-RIGHT TO APPEAL

Disallowed Costs

Based on our review, we determined that the Sponsor's noncompliance with the applicable Federal and State regulations that govern CACFP resulted in a total disallowed cost of \$4,844.76

Remit a check payable to the *Tennessee Department of Human Services* in the amount of \$4, 844.76, 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 The Pumpkin Patch is seriously deficient in its operation of the CACFP and that Doris Wise, Owner is responsible for the serious deficiencies.

You may not appeal the serious deficiency determination itself. If the Department proposes to terminate The Pumpkin Patch's CACFP agreement, or propose to disqualify The Pumpkin Patch 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.

The Pumpkin Patch may continue to participate in the CACFP during the corrective action period. The Department will pay any valid claims for reimbursement submitted by The Pumpkin Patch 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 thirty (30) days of your receipt of this notice:

The Pumpkin Patch 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 September 2017, which contains the verified claim data from the enclosed exhibit. A copy of the claim form is attached for your use;
- Remit a check payable to the *Tennessee Department of Human Services* in the amount of \$4,844.76 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 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 Sean Baker, Audit Director 2, at 615-313-4727 or Sean.Baker@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 A

Verification of CACFP Sponsor of Affiliated Centers Claim

Name of Sponsor: The Pumpkin Patch

Review Month/Year: September 2017

Total Meal Reimbursement Received: \$6,661.54

Program Area	Reported on Claim	Reconciled By Monitoring Review
Number of Days that CACFP Food Service was operated	20	20
Total Attendance	1,155	1,155
Percentage of Participants in the Free or Reduced-price Category (For Proprietary Center Only)	XXXXXX	45%
Number of Breakfasts Served	1,155	636
Number of Lunches Served	1,123	635
Number of Supplements Served	1,082	593
Number of Participants in Free Category	64	27
Number of Participants in Reduced-Price Category	6	5
Number of Participants in Paid Category	1	39
Total Number of Participants	71	71
Total Amount of Eligible Food Costs	XXXXXXXX	\$4,250.76
Total Amount of Eligible Food and Non-Food Costs	XXXXXXXX	\$5,251.94

EXHIBIT B**Verification of Affiliated Sponsored Center Data****Name of Sponsor: The Pumpkin Patch****Site Name: The Pumpkin Patch 0002****Review Month/Year: September 2017****Total Meal Reimbursement Received: \$3,028.27**

Program Area	Reported on Claim	Reconciled By Monitoring Review
Number of Days that CACFP Food Service was operated	20	20
Total Attendance	519	519
Percentage of Participants in the Free or Reduced-price Category (For Proprietary Center Only)	XXXXXX	12%
Percentage of Participants on the Child Care Certificate Program	XXXXXX	6%
Number of Breakfasts Served	519	0
Number of Lunches Served	488	0
Number of Supplements Served	489	0
Number of Participants in Free Category	33	4
Number of Participants in Reduced-Price Category	0	0
Number of Participants in Paid Category	0	29
Total Number of Participants	33	33
Total Amount of Eligible Food Costs	XXXXXXXX	\$1,909.06
Total Amount of Eligible Food and Non-Food Costs	XXXXXXXX	\$2,341.93

EXHIBIT C

Verification of Affiliated Sponsored Center Data

Name of Sponsor: The Pumpkin Patch
Site Name: The Pumpkin Patch 0001
Review Month/Year: September 2017
Total Meal Reimbursement Received: \$3,633.27

Program Area	Reported on Claim	Reconciled By Monitoring Review
Number of Days that CACFP Food Service was operated	NA	NA
Total Attendance	NA	NA
Percentage of Participants in the Free or Reduced-price Category (For Proprietary Center Only)	XXXXXX	74%
Number of Breakfasts Served	NA	NA
Number of Lunches Served	NA	NA
Number of Supplements Served	NA	NA
Number of Participants in Free Category	31	23
Number of Participants in Reduced-Price Category	6	5
Number of Participants in Paid Category	1	10
Total Number of Participants	38	38
Total Amount of Eligible Food Costs	XXXXXXXX	NA
Total Amount of Eligible Food and Non-Food Costs	XXXXXXXX	NA



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BILL HASLAM
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

January 18, 2018

Doris Wise, Owner
The Pumpkin Patch
1811 Old Troy Road
Union City, Tennessee 38261-5565

Notice of payment due to findings disclosed in the monitoring report dated January 18, 2018, for Child and Adult Care Food Program (CACFP)

Institution Name:	The Pumpkin Patch
Institution Address:	1811 Old Troy Road, Union City, Tennessee 38261-5565
Agreement Numbers:	00534
Amount Due:	\$4,844.76
Due Date:	February 6, 2018

Based on the monitoring report issued 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 require The Pumpkin Patch to reimburse the Department of Human Services disallowed cost noted in the report.

Please remit a check or money order payable to the *Tennessee Department of Human Services* in the amount of \$4,844.76 by the due date to:

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

Please note that the disallowed 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 The Pumpkin Patch	CACFP Agreement No. 00-534
Mailing Address: 1811 Old Troy Road Union City, Tennessee 38261	
Section B. Responsible Principal(s) and/or Individual(s)	
Name and Title: Doris Wise, Owner	Date of Birth (s):
Section C. Dates of Issuance of Monitoring Report/Corrective Action Plan	
SD Report: January 18, 2018	Corrective Action Plan: January 18, 2018
Section D. Findings	
Findings:	
<ol style="list-style-type: none"> 1. The number of participants in the free, reduced-price and paid categories was reported incorrectly. 2. The Sponsor did not meet the requirement that at least 25% of the enrollment or license capacity be beneficiaries of the Child Care Certificate Program (CCCP) or participants who are eligible for free or reduced-price meal payments for the test month at one center. 3. There were participants who did not have current enrollment addendum forms on file 4. The Sponsor did not provide documentation that infant meals are being offered as obligated 5. The site served outside of approved meal service time 	

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

Measure No. 1: The number of participants in the free, reduced-price and paid categories was reported 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.2: The Sponsor did not meet the requirement that at least 25% of the enrollment or license capacity be beneficiaries of the Child Care Certificate Program (CCCP) or participants who are eligible for free or reduced-price meal payments for the test month at one center.

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: There were participants who did not have current enrollment addendum forms on file

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 did not provide documentation that infant meals are being offered as obligated

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 site served outside of approved meal service time

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;

Appeal Procedures for Child and Adult Care Food Program-Institutions
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

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.