



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

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

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www.tn.gov/humanservices

BILL HASLAM
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

July 10, 2018

John Gentry, Board Chair
Southeast Tennessee Human Resource Agency
PO Box 909
Dunlap, Tennessee 37327-3342

Dear Mr. Gentry,

The Department of Human Services (DHS) – Division of Audit Services staff conducted an unannounced on-site monitoring review of the Child and Adult Care Food Program (CACFP) at Southeast Tennessee Human Resource Agency, (Sponsor), Application Agreement number 00–503, on May 17 and 30, 2018. 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.

Based on our review of the Sponsor's records and information provided, the Sponsor had two childcare centers and 185 Family Daycare Homes operating during the review period. We selected Happy Times Day Care (**Happy Times**) as the sample center, and the homes of **Alberta Brown, Brooke Cross, Judy Dibrell, Cheryl Hamrick, Denise Key, Brittany Lane, Brenda Lockwood-Lorenz, Kathy Neal, Connie Roach, and Janice Sells** were selected as our sample homes.

Background

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

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

Happy Times Day Care Center

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

Condition

The Claim for Reimbursement for the test month for **Happy Times** reported 40 participants in the free category, zero participants in the reduced-price category, and 52 participants in the paid category. However, based on our review of the Sponsor's records, we found that there were 23 participants in the free category, five participants in the reduced-price category, and 61 participants in the paid category.

The differences were based on the following:

- There were two participants reported in the free category that did not have a current CACFP application on file. These participants were reclassified as paid.
- There were two participants reported in the free category, but based on the income reported the participants should have been reported in the reduced-price category. These participants were reclassified as reduced-price.
- There were 11 participants reported in the free category whose applications did not have a determining official's signature or date. These participants were reclassified as paid.
- The Sponsor overreported the number of free participants by two and paid participants by four, and underreported the number of reduced-price participants by three.

As a result, the Sponsor overreported 17 participants in the free category, and underreported five participants in the reduced-price and nine participants in the paid categories. (See Exhibit A)

Criteria

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

Recommendation

The Sponsor should ensure that each participant in the CACFP is classified and reported properly based on categorical or income eligibility.

Note: Our observation of the lunch meal service at **Happy Times** revealed no deficiencies.

Family Day Care Homes

1. **The Sponsor's provider had attendance over the approved licensing capacity during our monitoring visit**

Condition

We completed a monitoring visit to the home of **Connie Roach** on April 19, 2018. We observed 18 children present that were served a lunch meal; however, the licensing capacity of this home was 15 children. The Sponsor claimed 12 lunch meals on this date.

The Sponsor monitoring staff completed on May 26, 2017 for this provider also noted that attendance was over the licensing capacity. There was no documentation to show that the Sponsor performed corrective action to resolve this issue.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.18 (b)(5) states, "The responsibility of the day care home to promptly inform the sponsoring organization about any changes in the number of children enrolled for care or in its licensing or approval status."

Title 7 of the Code of Federal Regulations, Section 226.18 (e) states, "Each day care home must maintain on file documentation of each child's enrollment and must maintain daily records of the number of children in attendance and the number of meals, by type, served to enrolled children"

Recommendation

The Sponsor should ensure that all providers are providing childcare to not exceed their licensing capacity and that all children are present are marked in attendance and counted in the daily meal counts.

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

Condition

Based on our review of the menus provided for the day care home of **Janice Sells**, we noted that menus provided did not meet USDA meal pattern requirements. Menus provided had deficiencies as follows:

Date	Menu	Menu Error	Meal Type	No. of Meals
4/10/18	Pork bacon, lettuce, tomato, cantaloupe, wheat bread, and milk	Pork bacon not creditable	Lunch	5
4/25/18	Pork bacon, lettuce, tomato, cantaloupe, wheat bread, and milk	Pork bacon not creditable	Lunch	9
4/27/18	One infant menu documented milk only	Missing grain and vegetable or fruit	Breakfast	1

Therefore, one breakfast meal and 14 lunch meals served were disallowed. (See Exhibit L)

Criteria

Title 7 of the Code of Federal Regulations, Section 226.17 (b)(4) states, "Each Child Care Center 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...."

Recommendation

The Sponsor should ensure that all meals meet USDA meal pattern requirements.

3. The Sponsor did not serve a whole grain-rich component once per day as required

Condition

The Sponsor provided menus for the homes of **Alberta Brown, Brooke Cross, Judy Dibrell, Denise Key, Brenda Lockwood-Lopez, and Kathy Neal** that did not provide evidence that a whole grain-rich component was served every day.

There were no meals disallowed due to the one year grace period given to Sponsors to conform to the revised CACFP meal pattern requirements effective October 1, 2017.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20 (a)(4)(i)(A) states, "At least one serving per day, across all eating occasions of bread, cereals, and grains, must be whole grain-rich. Whole grain-rich foods contain at least 50 percent whole grains and the remaining grains in the food are enriched, and must meet the whole grain-rich criteria specified in FNS guidance."

Recommendation

The Sponsor should 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.

Note: Our observation of the meal services at the homes of **Alberta Brown, Brooke Cross, Judy Dibrell, Cheryl Hamrick, Denise Key, Brittany Lane, Brenda Lockwood-Lorenz, Kathy Neal, and Janice Sells** revealed no deficiencies.

Technical Assistance Provided

Technical assistance was neither requested nor provided.

Disallowed Meals Cost

Based on the review, we determined that the Sponsor's noncompliance with the applicable Federal and State regulations that govern the CACFP resulted in a disallowed meals cost at **Happy Times** in the amount of \$677.40 and **Janice Sells** in the amount of \$35.75 for a total cost of \$713.15.

Corrective Action

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

- Login to the Tennessee Information Payment System (TIPS) and revise the claim submitted for April 2018, which contains the verified claim data from the enclosed

exhibits. **Please note that if the claim is revised**, TIPS will automatically deduct the overpayment from your next CACFP claim for reimbursement. **OR**

- If you are no longer participating in the CACFP program, remit a check payable to the **Tennessee Department of Human Services** in the amount noted in the report for recovery of the amounts disallowed in this report. ***Please return the attached billing notice with your check***; and
- Prepare and submit a corrective action plan to address the deficiencies identified in this report. The corrective action plan template is attached. Please return the corrective action plan to:

AuditServices.CAPS.DHS@tn.gov

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

Allette Vayda, Director of Operations
Child and Adult Care Food Program
8th Floor Citizens Plaza Building
400 Deaderick Street
Nashville, Tennessee 37243
Allette.Vayda@tn.gov
(615) 313-3769

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

Child and Adult Care Food Program
Fiscal Services
11th Floor, Citizens Plaza Building
400 Deaderick Street
Nashville, Tennessee 37243

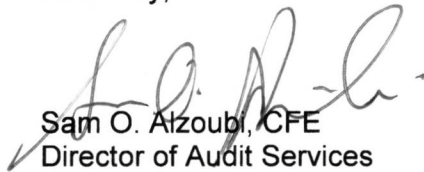
In accordance with the federal regulation found at *7 CFR Part 226.6 (k)*, your institution may appeal the overpayment identified by the monitoring report. The procedures for submitting an appeal are enclosed. The appeal must be submitted to:

Tennessee Department of Human Services
Appeals and Hearings Division, Clerks Office
P.O. Box 198996
Nashville, Tennessee 37219

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

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

Sincerely,



Sam O. Alzoubi, CFE
Director of Audit Services

Exhibits

cc: Nancy Sutherland, Executive Director, Southeast Tennessee HRA
Karen Green, CACFP Manager, Southeast Tennessee HRA
Karen Davis, Director of Community Services, Southeast Tennessee HRA
Allette Vayda, Director of Operations, Child and Adult Care Food Program
Debra Pasta, Program Manager, Child and Adult Care Food Program
Elke Moore, Administrative Services Assistant 3, Child and Adult Care Food Program
Constance Moore, Program Specialist, Child and Adult Care Food Program
Marty Widner, Program Specialist, Child and Adult Care Food Program
Comptroller of the Treasury, State of Tennessee

EXHIBIT A

Verification of CACFP Sponsored Center Claim

Name of Agency: Happy Times Day Care Center

Review Month/Year: April 2018

Total Meal Reimbursement Received: \$3,071.68

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Attendance	1,545	1,545
Percentage of Free or Reduced-price Participants	43%	31%
Number of Breakfasts Served	928	928
Number of Lunches Served	882	882
Number of Supplements Served	1,431	1,431
Number of Participants in Free Category	40	23
Number of Participants in Reduced-Price Category	0	5
Number of Participants in Paid Category	52	61
Total Number of Participants	92	89
Total Amount of Food Costs	XXXXXXXX	\$1,278.28
Total Amount of Eligible Food and Nonfood Costs	XXXXXXXX	\$1,573.78

EXHIBIT B

Verification of CACFP Claim for Home Sponsor

Sponsor: Southeast Tennessee Human Resource Agency

Review Month/Year: April 2018

Total Meal Reimbursement Received: \$137,026.03

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Number of Tier 1 Breakfasts Served	29,290	29,289
Number of Tier 2 Breakfasts Served	594	594
Number of Tier 1 AM Supplements	326	326
Number of Tier 1 Lunches Served	25,368	25,354
Number of Tier 2 Lunches	591	591
Number of Tier 1 PM Supplements	32,013	32,013
Number of Tier 2 PM Supplements	613	613
Number of Tier 1 Suppers Served	4,303	4,303
Number of Tier 2 Suppers Served	0	0
Number of Tier 1 Evening Supplements Served	664	664
Total Number of Tier 1 Homes	181	181
Total Number of Tier 2 Homes	4	4
Total Number of Homes	185	185

EXHIBIT C

Individual Home Review Data

Name of Home/Tier Type: Alberta Brown-Tier 1
Sponsor Reimbursement Paid to the Home: \$171.00
Reimbursement due based on Reported Information: \$171.00
Reimbursement due based on Verified Information: \$171.00

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Tier 1 Attendance	38	38
Number of Tier 1 Breakfasts Served	38	38
Number of Tier 1 Lunches Served	38	38
Number of Tier 1 PM Supplements Served	38	38

EXHIBIT D

Individual Home Review Data

Name of Home/Tier Type: Brooke Cross-Tier 1
Sponsor Reimbursement Paid to the Home: \$433.58
Reimbursement due based on Reported Information: \$433.58
Reimbursement due based on Verified Information: \$433.58

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Tier 1 Attendance	98	100 ¹
Number of Tier 1 Breakfasts Served	97	97
Number of Tier 1 Lunches Served	97	97
Number of Tier 1 PM Supplements Served	93	93

¹The difference in the reported and reconciled attendance is immaterial and was not included in this report as a finding

EXHIBIT E

Individual Home Review Data

Name of Home/Tier Type: Judy Dibrell-Tier 1
Sponsor Reimbursement Paid to the Home: \$1,074.09
Reimbursement due based on Reported Information: \$1,074.09
Reimbursement due based on Verified Information: \$1,074.09

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Tier 1 Attendance	248	248
Number of Tier 1 Breakfasts Served	243	243
Number of Tier 1 Lunches Served	236	236
Number of Tier 1 PM Supplements Served	240	240

EXHIBIT F

Individual Home Review Data

Name of Home/Tier Type: Cheryl Hamrick-Tier 1
Sponsor Reimbursement Paid to the Home: \$366.62
Reimbursement due based on Reported Information: \$366.62
Reimbursement due based on Verified Information: \$366.62

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	15	15
Total Tier 1 Attendance	87	87
Number of Tier 1 Breakfasts Served	71	71
Number of Tier 1 Lunches Served	86	86
Number of Tier 1 PM Supplements Served	85	85

EXHIBIT G**Individual Home Review Data**

Name of Home/Tier Type: Denise Key-Tier 1
Sponsor Reimbursement Paid to the Home: \$454.50
Reimbursement due based on Reported Information: \$454.50
Reimbursement due based on Verified Information: \$454.50

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Tier 1 Attendance	101	101
Number of Tier 1 Breakfasts Served	101	101
Number of Tier 1 Lunches Served	101	101
Number of Tier 1 PM Supplements Served	101	101

EXHIBIT H**Individual Home Review Data**

Name of Home/Tier Type: Brittany Lane-Tier 1
Sponsor Reimbursement Paid to the Home: \$869.96
Reimbursement due based on Reported Information: \$869.96
Reimbursement due based on Verified Information: \$869.96

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Tier 1 Attendance	210	209
Number of Tier 1 Breakfasts Served	182	182
Number of Tier 1 Lunches Served	195	195
Number of Tier 1 PM Supplements Served	208	208

EXHIBIT I**Individual Home Review Data**

Name of Home/Tier Type: Brenda Lockwood-Lorenz-Tier 1
Sponsor Reimbursement Paid to the Home: \$1,060.26
Reimbursement due based on Reported Information: \$1,060.26
Reimbursement due based on Verified Information: \$1,060.26

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Tier 1 Attendance	241	241
Number of Tier 1 Breakfasts Served	233	233
Number of Tier 1 Lunches Served	236	236
Number of Tier 1 PM Supplements Served	239	239

EXHIBIT J**Individual Home Review Data**

Name of Home/Tier Type: Kathy Neal-Tier 1
Sponsor Reimbursement Paid to the Home: \$660.77
Reimbursement due based on Reported Information: \$660.77
Reimbursement due based on Verified Information: \$660.77

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Tier 1 Attendance	147	147
Number of Tier 1 Breakfasts Served	147	147
Number of Tier 1 Lunches Served	147	147
Number of Tier 1 PM Supplements Served	146	146

EXHIBIT K

Individual Home Review Data

Name of Home/Tier Type: Connie Roach-Tier 1
Sponsor Reimbursement Paid to the Home: \$1,266.92
Reimbursement due based on Reported Information: \$1,266.92
Reimbursement due based on Verified Information: \$1,266.92

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Tier 1 Attendance	337	326
Number of Tier 1 Breakfasts Served	308	308
Number of Tier 1 Lunches Served	259	259
Number of Tier 1 PM Supplements Served	310	310

EXHIBIT L

Individual Home Review Data

Name of Home/Tier Type: Janice Sells-Tier 1
Sponsor Reimbursement Paid to the Home: \$788.04
Reimbursement due based on Reported Information: \$788.04
Reimbursement due based on Verified Information: \$752.29

Site Meal Service Activity and Monitor Reconciliation	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Tier 1 Attendance	179	179
Number of Tier 1 Breakfasts Served	175	174
Number of Tier 1 Lunches Served	177	163
Number of Tier 1 PM Supplements Served	169	169



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COMMISSIONER

July 10, 2018

John Gentry, Board Chair
Southeast Tennessee Human Resource Agency
PO Box 909
Dunlap, Tennessee 37327-3342

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

Institution Name:	Southeast Tennessee Human Resource Agency
Institution Address:	PO Box 909 Dunlap, Tennessee 37327-3342
Agreement Numbers:	00-503
Amount Due:	\$713.15
Due Date:	August 13, 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 your institution to reimburse the Department of Human Services the disallowed cost noted in the report

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

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

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

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

Thank you for your attention



Corrective Action Plan for Monitoring Findings

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

Section A. Institution Information

Name of Sponsor/Agency/Site: Southeast Tennessee Human Resource Agency	Agreement No. 00503	<input type="checkbox"/> SFSP <input checked="" type="checkbox"/> CACFP
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Mailing Address: PO Box 909 Dunlap, Tennessee 37327-3342

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

Name and Title: John Gentry, Board Chair	Date of Birth: / /
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Section C. Dates of Issuance of Monitoring Report/Corrective Action Plan

Monitoring Report: 7/10/2018	Corrective Action Plan: 7/10/2018
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Section D. Findings

Findings:
Happy Times Day Care Center

The Sponsor incorrectly reported the number of participants in the free, reduced-price and paid categories
Family Day Care Homes

1. The Sponsor's provider had attendance over the approved licensing capacity during our monitoring visit
2. The Sponsor provided menus that did not meet the USDA meal pattern requirements
3. The Sponsor did not serve a whole grain-rich component once per day as required

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

Measure No. 1: Happy Times Day Care Center

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

The finding will be fully and permanently corrected.

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

Name:

Position Title:

Name:

Position Title:

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

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

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

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

Measure No.2: Family Day Care Homes

The Sponsor's provider had attendance over the approved licensing capacity during our monitoring visit

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 provided menus that did not meet the USDA meal pattern requirements

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

Name: Position Title:

Name: Position Title:

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

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

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

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

Measure No. 4: The Sponsor did not serve a whole grain-rich component once per day as required

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

Name: Position Title:

Name: Position Title:

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

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

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

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

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

Printed Name of Authorized Institution Official:

Position:

Signature of Authorized Institution Official: _____

Date: / /

Signature of Authorized TDHS Official: _____

Date: / /

APPEAL PROCEDURES FOR CHILD AND ADULT CARE INSTITUTIONS AND SPONSORING AGENCIES

Appeal Procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.