



**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 11, 2018

Mark Matheny, Chairman of the Board
United Methodist Neighborhood
3000 Walnut Grove Road
Memphis, Tennessee 38111-3508

Dear Mr. Matheny,

The Department of Human Services (DHS) - Audit Services Division- staff conducted an unannounced on-site review of the Child and Adult Care Food Program (CACFP) at United Methodist Neighborhood, Application Agreement 00-558, on May 9, 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.

Background

CACFP Sponsors utilize meal count sheets to record the number breakfast, lunch, supper and supplement meals served. Meals served by participating Sponsors must meet the minimum guidelines set by the United States Department of Agriculture (USDA) and DHS to be eligible for reimbursement. The CACFP Sponsor reports the number of meals served through the DHS Tennessee Information Payment System (TIPS) 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 March 21, 2018.

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

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

Condition

The claim for reimbursement for the test month reported 35 participants in the free category, zero participants in the reduced-price category, and five participants in the paid category. However, our review of the Sponsor's records verified 33 participants in the free category, zero participants in the reduced-priced category, and 7 participants in the paid category. The differences were based on the following:

There were two participants reported in the free category that had applications or application information on file older than 12 months. These participants were reclassified to the paid category.

Criteria

Title 7 of the Code of Federal Regulations, Section 220.6 (c) states, "... In submitting a claim for reimbursement, each institution shall certify that the claim is correct and that records are available to support the 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 ensure each participant is classified and reported according to income eligibility applications for child care center participants. Applications should be maintained on file and updated annually.

This is a repeat finding from a prior monitoring report dated July 24, 2013.

2. The Sponsor reported the number of meals served incorrectly

Condition

The claim for reimbursement for the test month reported 571 breakfast meals, 571 lunch meals and 571 supplements as served. However, our review of the Sponsor's records found 609 breakfast meals, 609 lunch meals and 609 supplements served prior to any disallowances. The Sponsor under reported the number of breakfast meals by 38, the number of lunch meals by 38 and the number of supplements by 38.

Criteria

Title 7 of the Code of Federal Regulations, Section 220.6 (c) states, "... In submitting a claim for reimbursement, each institution shall certify that the claim is correct and that records are available to support the claim..."

Recommendation

The Sponsor should ensure the claim for reimbursement is completed based on proper supporting documentation and the reported meal count agrees with the meal count documentation.

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

Condition

A reimbursable lunch meal consists of fluid milk, meat/meat alternate, two vegetables or a fruit and a vegetable and a grain. A reimbursable supplement meal consists of two of the following five components: Fluid milk, meat/meat alternates, vegetables, fruits, and grains. All components must be creditable according to USDA standards. The menu dates listed below had deficiencies and listed the following:

Date	Deficient Component	Disallowed Meals
03/09/18	Deficient component: Meat/Meat Alternate Menu Lists: Milk, popcorn chicken, bananas, mashed potatoes, roll The label provided by the Sponsor for the popcorn chicken is not a child nutrition label nor a product formulation statement, therefore the amount of protein could not be determined	29 lunch meals
03/12/18	Deficient component: Second creditable component Menu lists: Fruit snacks and very berry juice Fruit snacks are not creditable	13 supplement meals
03/13/18	Deficient component: Vegetable Menu lists: Milk, tuna fish, fruit cocktail, veggie chips, Ritz crackers Veggie chips are not creditable	14 lunch meals
03/19/18	Deficient component: Second creditable component Menu lists: Veggie straws and fruit punch juice Veggie straws are not creditable	34 supplement meals
03/21/18	Deficient Component: Meat/Meat Alternate Menu Lists: Milk, ravioli, peaches, sweet peas, roll The label provided for the ravioli is not a child nutrition label nor a product formulation statement, therefore the amount of protein could not be determined	Meals are disallowed in finding 5
03/21/18	Deficient component: Second creditable component Menu lists: Fruit snacks and apple juice Fruit snacks are not creditable	38 supplement meals
03/26/18	Deficient Component: Meat/Meat Alternate Menu Lists: Milk, ravioli, peaches, green beans,	38 lunch meals

	roll The label provided for the ravioli is not a child nutrition label nor a product formulation statement, therefore the amount of protein could not be determined	
03/28/18	Deficient component: Vegetable Menu lists: Milk, tuna fish, bananas, veggie straws, wheat thins Veggie chips are not creditable	36 lunch meals
03/29/18	Deficient component: Second creditable component Menu lists: Fruit snacks and apple juice Fruit snacks are not creditable	33 Supplement meals

As a result, the cost reimbursement of 117 lunch meals and 118 supplements was disallowed.

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 ..."

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, page 33, states, "Snack chips such as banana, fruit, vegetable, and potato chips may not be credited as a fruit or vegetable. However, 100% dried fruits or vegetables are creditable based on the volume served. See page 2-4 of the Food Buying Guide... "

Recommendation

The Sponsor should ensure menus meet the meal patterns established by the USDA and child nutrition labels are kept on file for processed foods for crediting purposes.

4. The Sponsor's menus do not support the requirement that one whole grain-rich grain must be served each day

Condition

In accordance with the revised meal pattern requirements, effective October 1, 2017; at least one serving of grain per day must be whole grain-rich. The Sponsor's menu did not list a whole grain on any menu for the test month of March 2018.

There were no meals disallowed due to the one year grace period given to Sponsors to conform to the revised CACFP meal patterns.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20 (4)(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 menus meet the meal patterns established by the USDA.

5. The Sponsor served meals outside of the approved meal service time

Condition

A meal service observation was attempted on March 21, 2018. The monitor arrived at approximately 11:50 a.m. to observe the lunch meal service approved in TIPS to be served from 12:00 p.m. until 1:00 p.m. Upon arrival, the assistant director informed the monitor that the director was out and the meal had already been served. The assistant director stated that lunch is served from 11:00 a.m. until 12:00 p.m. There were no meals served during the approved meal service time and the monitor advised the assistant director that all lunch meals were non-reimbursable for the day. The monitor also informed the assistant director that the meal service time should be updated in TIPS to reflect the actual meal service time.

The Sponsor reported 38 lunch meals served on this day. As a result, the cost reimbursement for 38 lunch meals was disallowed.

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..."

Title 7 of the Code of Federal Regulations, Section 220.6 (c) states, "... In submitting a claim for reimbursement, each institution shall certify that the claim is correct and that records are available to support the claim..."

Recommendation

The Sponsor should ensure the meals are served as approved in the application.

6. The number of attendance days was reported incorrectly

Condition

The claim for reimbursement for the test month reported 609 participant days. However, based on our review of the Sponsor's records we noted 608 participant days.

Criteria

Title 7 of the Code of Federal Regulations, Section 220.6 (c) states, "...In submitting a claim for reimbursement, each institution shall certify that the claim is correct and that records are available to support the claim..."

Recommendation

The Sponsor should ensure the attendance is recorded and reported correctly. Appropriate documentation should be maintained to support the claim.

7. The number of breakfast meals claimed exceeded the verified attendance days

Condition

Our review of the Sponsor's meal count documentation verified 609 breakfast meals served. However, we verified 608 participant attendance days. The total number of meals cannot exceed the verified attendance. As a result, the cost reimbursement for one breakfast meal is disallowed.

Criteria

Title 7 of the Code of Federal Regulations, Section 220.6 (c) states, "...In submitting a claim for reimbursement, each institution shall certify that the claim is correct and that records are available to support the claim..."

Recommendation

The Sponsor should ensure the number of participants in attendance and meals claimed are recorded correctly, and the meals do not exceed the total attendance. Appropriate documentation should be maintained to support the claim.

8. The Sponsor reported the days of operation incorrectly

Condition

The claim for reimbursement reported 21 days of operation. However, our review of the Sponsor's records verified 19 days of operation.

Criteria

Title 7 of the Code of Federal Regulations, Section 220.6 (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 the claim..."

Recommendation

The Sponsor should ensure the number of days of operation is reported correctly and appropriate documentation is on file to support the claim.

Technical Assistance

Technical assistance was provided concerning new meal pattern requirements, updating TIPS and the claiming of participants.

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 \$493.54.

Corrective Action

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

- Log into the Tennessee Information Payment System (TIPS) and revise the claim submitted for March 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

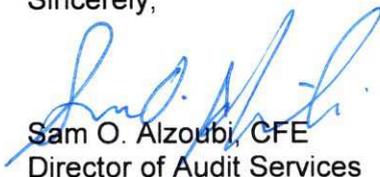
In accordance with the federal regulation found at *7 CFR Part 226.6 (k)*, your institution may appeal the overpayment identified by the monitoring report. The procedures for submitting an appeal are enclosed. The appeal must be submitted to:

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: Iletha Robinson Washington, Director, United Methodist Neighborhood
Allette Vayda, Director of Operations, Child and Adult Care Food Program
Debra Pasta, Program Manager, Child and Adult Food Program
Elke Moore, Administrative Assistant 3, Child and Adult Care Food Program
Constance Moore, Program Specialist, Child and Adult Care Food Program
Marty Widner, Program Specialist, Child and Adult Care Food Program
Comptroller of the Treasury, State of Tennessee

EXHIBIT

Verification of CACFP Independent Center Claim

Name of Agency: United Methodist Neighborhood

Review Month/Year: March 2018

Total Meal Reimbursement Received: \$3,106.58

Program Area	Reported on Claim	Reconciled By Monitoring Review
Number of Days that CACFP Food Service was operated	21	19
Total Attendance	609	608
Number of Breakfasts Served	571	608
Number of Lunches Served	571	454
Number of Supplements Served	571	491
Number of Participants in Free Category	35	33
Number of Participants in Reduced-Price Category	0	0
Number of Participants in Paid Category	5	7
Total Number of Participants	40	40
Total Amount of Eligible Food Costs	XXXXXXXX	\$1,479.64
Total Amount of Eligible Food and Non-Food Costs	XXXXXXXX	\$2,836.73



**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 11, 2018

Mark Matheny, Chairman of the Board
United Methodist Neighborhood
3000 Walnut Grove Road
Memphis, Tennessee 38111-3508

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

Institution Name:	United Methodist Neighborhood
Institution Address:	3000 Walnut Grove Road Memphis, Tennessee 38111-3508
Agreement Numbers:	00-558
Amount Due:	\$493.54
Due Date:	July 12, 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: United Methodist Neighborhood	Agreement No. 00558	<input type="checkbox"/> SFSP <input checked="" type="checkbox"/> CACFP
--	---------------------	--

Mailing Address: 3000 Walnut Grove Road Memphis, Tennessee 38111-3508

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

Name and Title: Mark Metheny, Chairman of the Board	Date of Birth: / /
---	--------------------

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

Monitoring Report: 6/11/2018	Corrective Action Plan: 6/11/2018
------------------------------	-----------------------------------

Section D. Findings

Findings:

1. The Sponsor reported the number of participants in the free and paid categories incorrectly
2. The Sponsor reported the number of meals served incorrectly
3. The Sponsor provided menus that did not meet the USDA meal pattern requirements
4. The Sponsor's menus did not support the requirement that one whole grain rich grain must be served each day
5. The Sponsor served meals outside of the approved meal service time
6. The number of attendance days was reported incorrectly
7. The number of breakfast meals claimed exceeded the verified attendance days
8. The Sponsor reported the days of operation incorrectly

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

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

The finding will be fully and permanently corrected.

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

Name:

Position Title:

Name:

Position Title:

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

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

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

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

Measure No. 3: The Sponsor 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's menus did not support the requirement that one whole grain rich grain must be served each day

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 served meals outside of the 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:

Measure No.6: The number of attendance days 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. 7: The number of breakfast meals claimed exceeded the verified attendance days

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: The Sponsor reported the days of operation 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:

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;

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

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.