



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1403

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

BILL LEE
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

May 21, 2019

Mercedes Fernandez, Owner
Fernandez Enterprises dba Bright Futures
60 Lawson Drive
Crossville, TN 38555-4736

Dear Ms. Fernandez,

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 Fernandez Enterprises / dba Bright Futures (Sponsor), Application Agreement number 00-270, on April 10, 2019. The purpose of this review was to determine if the Sponsor complied with the *Title 7 of the Code of Federal Regulations* (CFR) applicable parts, provider agreement, and applicable Federal and State regulations.

Background

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

We inspected meal counts sheets for our test period and reconciled the meals claimed to the meals reported as served for each meal service. We also assessed compliance with civil rights requirements. In addition, we observed a lunch meal service on March 9, 2019.

Our review of the Sponsor's records for March 2019 disclosed the following:

1. The Sponsor provided a menu that did not meet the USDA meal pattern requirements

Condition

Based on our review of the menu provided by the Sponsor for March 2019, the menu for supplement on March 21, 2019 was not in accordance with the USDA meal pattern requirements. The Sponsor's menu stated that apple juice, bananas, and raisins were served.

The three components served may be creditable as a fruit component, but a second component of the five components available for supplement was documented as served.

As a result, 36 supplements served were disallowed. (See Exhibit)

This is a repeat finding from a previous report dated July 8, 2016

Criteria

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

Title 7 of the Code of Federal Regulations, Section 226.20(c)(3) states, "Serve two of the following five components: Fluid milk, meat and meat alternates, vegetables, fruits, and grains. Fruit juice, vegetable juice, and milk may comprise only one component of the snack...."

Recommendation

The Sponsor should ensure menus meet the meal patterns established by the USDA.

2. The Sponsor did not provide documentation to support sufficient quantities of milk were purchased for all meals claimed for reimbursement

Condition

Based on the number of meals claimed for reimbursement with milk as a component, the Sponsor was required to purchase a total of 5,902 ounces of milk. However, the Sponsor could only document the purchase of 3,456 ounces of milk, resulting in a shortage of 2,446 ounces of milk.

As a result, 418 breakfast meals and nine (9) lunch meals claimed for reimbursement were disallowed. (See Exhibit)

Criteria

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

Title 7 of the Code of Federal Regulations, Section 226.20 (c)(1) states, in part, "Fluid milk, vegetables or fruit, or portions of both, and grains are required components of the breakfast meal."

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

Title 7 of the Code of Federal Regulations, Section 226.20(a)(1) states, "Fluid milk must be served as a beverage or on cereal, or a combination of both, as follows: (i) Children 1 year old. Children one year of age must be served unflavored whole milk. (ii) Children 2 through 5 years old. Children two through five years old must be served either unflavored low-fat (1 percent) or unflavored fat-free (skim) milk."

Recommendation

The Sponsor should perform a month-end inventory for milk and maintain all receipts for food purchases to support the required amount of milk was purchased and served for meals claimed for reimbursement.

3. The Sponsor provided a meal that did not meet the USDA meal pattern requirements during an observed meal service

Condition

During our on-site monitoring visit on March 9, 2019, we observed a lunch meal service. The observed meal served included one hot dog on a white bread bun, green beans, pineapple chunks, and milk. The hot dog served did not contain enough protein to be considered a creditable meat or meat alternative.

The Sponsor did not claim these lunch meals; as a result, no meals were 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..."

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

Recommendation

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

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

Condition

Based on our review of the menus provided, the Sponsor did not document a whole grain-rich component was served once per day as required for March 4 and 7, 2019.

Due to the new the CACFP meal patterns requirements and emphasis on providing technical assistance during the implementation process, there were no meals disallowed.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20(a)(4)(a)(b) 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."

Title 7 of the Code of Federal Regulations, Section 226.14(b) states, "In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal

requirements of §226.20, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect.”

Recommendation

The Sponsor should ensure menus meet the meal patterns established by the USDA.

5. The Sponsor provided menus that contained grain-based desserts

Condition

Based on our review of the menus provided by the Sponsor for March 2019, the menus provided did not meet the USDA meal pattern requirements. The menus provided for supplements listed a grain-based dessert: oatmeal cookies, strawberry granola bars, and blueberry granola bars.

The menus provided had deficiencies as follows:

Date	Menu	Supplements
3/8/19	Oatmeal cookie, apple juice	34
3/13/19	Oatmeal cookie, apple juice	34
3/14/19	Strawberry granola bars, apple juice	31
3/15/19	Blueberry granola bars, apple juice	29
3/29/19	Strawberry granola bars, apple juice	28

Due to the new the CACFP meal patterns requirements and emphasis on providing technical assistance during the implementation process, there were no meals disallowed.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20(a)(4)(iii) states, “Grain-based desserts do not count towards meeting the grains requirement.”

Title 7 of the Code of Federal Regulations, Section 226.14(b) states, “In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of §226.20, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect.”

Recommendation

The Sponsor should ensure menus meet the meal patterns established by the USDA.

6. The Sponsor served breakfast cereals that did not meet the USDA meal component requirements

Condition

Based on our review of the menus for breakfast meals provided by the Sponsor, the menus were not in accordance with the USDA meal pattern requirements.

- Apple Jacks cereal was served for breakfast on March 1, 2109. This cereal contains 14.5 grams of sugar per 28 gram serving of dry cereal, or approximately 56 grams of sugar per 100 grams of dry cereal.
- Fruit Loops cereal was served for breakfast on March 4, 2019. This cereal contains 12 grams sugar per 29 gram serving of dry cereal, or approximately 46 grams of sugar per 100 grams of dry cereal.
- Honey Nut Cheerios cereal was served for breakfast on March 15, 2019 and for supplement on March 18, 2019. This cereal contains 12 grams sugar per 41 gram serving of dry cereal, or approximately 30 grams of sugar per 100 grams of dry cereal.

Due to the new the CACFP meal patterns requirements and emphasis on providing technical assistance during the implementation process, there were no meals disallowed.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20(a)(4)(ii) states, "... Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal)...."

Title 7 of the Code of Federal Regulations, Section 226.14(b) states, "In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of §226.20, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect."

Recommendation

The Sponsor should ensure that menus meet the USDA meal pattern requirements.

7. The Sponsor did not provide documentation of annual CACFP training

Condition

During our monitoring visit to the Sponsor on April 10, 2019, we requested documentation of training in the past 12 months. The Sponsor provided training documentation dated January 9, 2018 for CACFP. Civil Rights training was completed on June 26, 2018 and documentation was available in TIPS.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.15(e) states, "... At a minimum, the following records shall be collected and maintained: (12) Information on training session date(s) and location(s), as well as topics presented and names of participants; and (14)... records documenting the attendance at annual training of each staff member with monitoring responsibilities. Training must include instruction, appropriate to the level of staff experience and duties, on the Program's meal patterns, meal counts, claims submission and claim review procedures, recordkeeping requirements, and an explanation of the Program's reimbursement system."

The USDA Monitoring Handbook for State Agencies, page 30, states, "Training must include instructions, appropriate to the level of staff experience and duties, on the Program's meal

patterns, meal counts, claims submission and claim review procedures, recordkeeping requirements, and an explanation of the Program's reimbursement system and adherence with civil rights requirements."

Recommendation

The Sponsor should ensure that the all required training for CACFP employees is completed annually and the training documentation is maintained.

Technical Assistance Provided

During our visits on March 9 and April 10, 2019, the Sponsor requested technical assistance regarding meat and meat alternatives, whole grain requirements, allowable amounts of sugar for cereal, and meal pattern guidelines. We provided technical assistance during our visits. Further assistance was provided April 11, 2019 via email.

Disallowed Meals Cost

Based on the review, we determined that the Sponsor's noncompliance with the applicable Federal and State regulations that govern the CACFP resulted in a total disallowed cost of \$598.89.

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 2019, 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
James K. Polk Building, 15th Floor
505 Deaderick Street
Nashville, Tennessee 37243
Allette.Vayda@tn.gov
(615) 313-3769

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

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

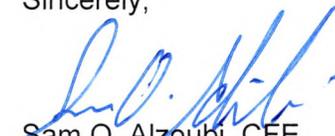
In accordance with the federal regulation found at 7 *CFR Part 226.6 (k)*, your institution may appeal the amount of disallowed cost identified in this monitoring report. The procedures for submitting an appeal are enclosed. The appeal must be submitted to:

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

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

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

Sincerely,


Sam O. Alzoubi, CFE
Director of Audit Services

Exhibit

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

EXHIBIT

Verification of CACFP Independent Center Claim

Name of Agency: Fernandez Enterprises Bright Futures

Review Month/Year: March 2019

Total Meal Reimbursement Received: \$2,586.73

Site Meal Service Reconciliation and Monitor Activity	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	21	21
Total Attendance	687	687
Percentage of Free or Reduced-price Category	69%	69%
Number of Breakfasts Served	418	0
Number of Lunches Served	618	609
Number of Supplements Served	658	622
Number of Participants in Free Category	26	26
Number of Participants in Reduced-Price Category	1	1
Number of Participants in Paid Category	12	12
Total Number of Participants	39	39
Total Amount of Eligible Food Costs	XXXXXXXX	\$1,063.53
Total Amount of Eligible Food and Non-Food Costs	XXXXXXXX	\$1,272.88



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BILL LEE
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

May 21, 2018

Mrs. Mercedes Fernandez, Owner and Director
Fernandez Enterprises, dba: Bright Beginnings
60 Lawson Drive
Crossville, Tennessee 38555-4736

Note: If you are no longer participating in the CACFP, remit a check payable to the Tennessee Department of Human Services in the amounts disallowed in this report to the address below. Please return the attached billing notice with your check.

If you continue to participating in the CACFP, log into the Tennessee Information Payment System (TIPS) and revise the claim submitted for March 2019, which contains the verified claim data from the enclosed exhibits.

Institution Name:	Fernandez Enterprises Bright Futures
Institution Address:	60 Lawson Drive; Crossville, TN 38555-4736
Agreement Numbers:	00-270
Amount Due:	\$598.89
Due Date:	June 24, 2019

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

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

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

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

Thank you for your attention



Corrective Action Plan for Monitoring Findings

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

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

Section A. Institution Information

Name of Sponsor/Agency/Site: Fernandez Enterprises dba Bright Futures	Agreement No. 00270	<input type="checkbox"/> SFSP <input checked="" type="checkbox"/> CACFP
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Mailing Address: 60 Lawson Drive Crossville, TN 38555-4736

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

Name and Title: Mercedes Fernandez, Owner	Date of Birth: / /
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Section C. Dates of Issuance of Monitoring Report/Corrective Action Plan

Monitoring Report: 5/21/2019	Corrective Action Plan: 5/21/2019
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Section D. Findings

Findings:

1. The Sponsor provided a menu that did not meet the USDA meal pattern requirements
2. The Sponsor did not provide documentation to support sufficient quantities of milk were purchased for all meals claimed for reimbursement
3. The Sponsor provided a meal that did not meet the USDA meal pattern requirements during an observed meal service
4. The Sponsor did not serve a whole grain-rich component once per day as required
5. The Sponsor provided menus that contained grain-based desserts
6. The Sponsor served breakfast cereals that did not meet the USDA meal component requirements
7. The Sponsor did not provide documentation of annual CACFP training

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 provided a menu 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.2: The Sponsor did not provide documentation to support sufficient quantities of milk were purchased for all meals claimed for reimbursement

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 a meal that did not meet the USDA meal pattern requirements during an observed meal service

The finding will be fully and permanently corrected.

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

Name: _____ Position Title: _____

Name: _____ Position Title: _____

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

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

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

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

Measure No. 4: The Sponsor 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:

Measure No. 5: The Sponsor provided menus that contained grain-based desserts

The finding will be fully and permanently corrected.

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

Name:

Position Title:

Name:

Position Title:

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

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

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

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

Measure No.6: The Sponsor served breakfast cereals that did not meet the USDA meal component requirements

The finding will be fully and permanently corrected.

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

Name:

Position Title:

Name:

Position Title:

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

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

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

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

Measure No. 7: The Sponsor did not provide documentation of annual CACFP training

The finding will be fully and permanently corrected.

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

Name:

Position Title:

Name:

Position Title:

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

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

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

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

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

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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.