



**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

October 1, 2018

Tim Sinks, Board Chair
Martha O' Bryan Center
711 South 7th Street
Nashville, TN 37206-3895

Dear Mr. Sinks,

The Department of Human Services (DHS) – Division of Audit Services staff conducted an unannounced on-site monitoring review of the Summer Food Services Program (SFSP) at Martha O'Bryan Center (Sponsor), Application Agreement number 00-102, on August 27, 2018. Additional information was requested and provided on August 29, 2018. 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.

Based on our review of the Sponsor's records and information provided, the Sponsor had three feeding sites operating during the review period. The **Southside** feeding site was selected as the sample. In addition, we monitored the Sponsors' food management companies **PepsiCo** and **Second Harvest**. In addition, the meal counts for May, June, and July 2018 were combined on the Claim for Reimbursement; therefore, meal counts were reviewed for all three months.

Background

SFSP 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 SFSP Sponsor reports the number of meals served through the DHS Tennessee Information Payment System (TIPS) to seek reimbursement. We inspected meal counts sheets for our test period and reconciled the meals claimed to the meals reported as served for each meal service. We also assessed compliance with civil rights requirements. In addition, we observed meal services during our site visits throughout the review period.

Our review of the Sponsor's records for May, June, and July 2018 disclosed the following:

1. The Sponsor reported the number of meals as served incorrectly

Condition

Martha O'Bryan - feeding site

Based on our review of the Claim for Reimbursement for the test period, we noted that the Sponsor reported 1,146 breakfast meals, one 2nd breakfast meals, 1,269 lunch meals, and six 2nd lunch meals as served. However, based on our review of the Sponsor's records, we noted that there were 1,264 breakfast meals, 1,391 lunch meals, and 25 2nd lunch meals as served, prior to any meal disallowances.

As a result, 118 1st breakfast meals, 122 1st lunch meals and 19 2nd lunch meals served were underreported. (See Exhibit B)

Southside - sample feeding site

Based on our review of the Claim for Reimbursement for the test period, we noted that the Sponsor reported 333 1st lunch meals, seven 2nd lunch meals, 153 1st supplements, and one 2nd supplement as served. However, based on our review of the Sponsor's records, we noted that there were 402 1st lunch meals, seven 2nd lunch meals, 212 1st supplements, and three 2nd supplements as served, prior to any meal disallowances.

As a result, 69 1st lunch meals, 61 1st supplements served were under claimed. (See Exhibit D)

Criteria

Title 7 of the Code of Federal Regulations, Section 225.9 (d) (5) states, "... In submitting a claim for reimbursement, each sponsor shall certify that the claim is correct and that records are available to support this claim...."

Recommendation

The Sponsor should ensure that claims for reimbursement are completed correctly and based on accurate supporting documents.

2. The number of operational days reported was incorrect

Condition

Martha O'Bryan - feeding site

The Sponsor reported 22 days of operation when meals were reported as served. However, the Sponsor's record showed that there were 24 days of operation.

Southside - sample feeding site

The Sponsor reported 19 days of operation when meals were reported as served. However, the Sponsor's record showed that there were 18 days of operation.

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 the correct numbers of operational days are reported.

Technical Assistance

During our on-site monitoring visit on June 7, 2018, the Sponsor requested technical assistance regarding meal counting and record keeping. Technical assistance and additional information were provided to the Sponsor via email on June 11, 2018.

Corrective Action

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

- 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
Summer Food Service Program
8th Floor Citizens Plaza Building
400 Deaderick Street
Nashville, Tennessee 37243
Allette.Vayda@tn.gov
(615) 313-3769

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: Marsha Edwards, CEO, Martha O'Bryan Center
Allette Vayda, Director of Operations, Summer Food Service Program
Debra Pasta, Program Manager, Summer Food Service Program
Elke Moore, Administrative Services Assistant 3, Summer Food Service Program
Constance Moore, Program Specialist, Summer Food Service Program
Marty Widner, Program Specialist, Summer Food Service Program
Comptroller of the Treasury, State of Tennessee

Exhibit A

Sponsor: Martha O'Bryan Center
Review Month/Year: May, June and July 2018
Claim Reimbursement Total: \$12,828.16

Site Meal Service Reconciliation and Monitor Activity	Reported on Claim	Reconciled to Documentation
Number of Participating Sites for Breakfast	1	1
Number of Participating Sites for Lunch	3	3
Number of Participating Sites for PM Snacks	1	1
Number of 1 st Breakfasts Served	1,146	1,264
Number of 2 nd Breakfasts Served	1	1
Number of 1 st Lunches Served	2,590	2,781
Number of 2 nd Lunches Served	48	52
Number of 1 st Snacks Served	153	212
Number of 2 nd Snacks Served	1	3
Total Amount of Food Costs	XXXXXXXX	
Total Amount of Eligible Food and Nonfood Costs	XXXXXXXX	

Exhibit B

Site: Martha O'Bryan-001
Review Month/Year: May, June and July 2018

Site Meal Service Reconciliation and Monitor Activity	Reported on Claim	Reconciled to Documentation
Total Number of Days Food Served	22	24
Number of 1 st Breakfasts Served	1,146	1,264
Number of 2 nd Breakfasts Served	1	1
Number of 1 st Lunches Served	1,269	1410
Number of 2 nd Lunches Served	6	25

Exhibit C**Site: College Zone-002****Review Month/Year: May, June and July 2018**

Site Meal Service Reconciliation and Monitor Activity	Reported on Claim	Reconciled to Documentation
Total Number of Days Food Served	29	29
Number of 1 st Lunches Served	988	988
Number of 2 nd Lunches Served	24	24

Exhibit D**Site: Southside-003****Review Month/Year: May, June and July 2018**

Site Meal Service Reconciliation and Monitor Activity	Reported on Claim	Reconciled to Documentation
Total Number of Days Food Served	19	18
Number of 1 st Lunches Served	333	402
Number of 2 nd Lunches Served	18	18
Number of 1 st Snacks Served	153	212
Number of 2 nd Snacks Served	1	3

SUMMER FOOD SERVICE PROGRAM SPONSOR APPEAL PROCEDURES

7 C.F.R. § 225.13 governs appeals in the Summer Food Service Program and the maximum time limit for processing appeals is nineteen (19) calendar days for the Summer Food Service Program as follows:

1. The Department shall notify the appellant (Sponsor) in writing of the grounds upon which the Department has based the action. The Department's notice of action shall be sent by certified mail, return receipt requested, and shall also state that the sponsor or food service management company has the right to appeal the Department's action.
2. Appealable actions are outlined in 7 C.F.R. § 225.13(a) and are: A denial of an application for participation; a denial of a sponsor's request for an advance payment; a denial of a sponsor's claim for reimbursement (except for late submission under 7 CFR § 225.9(d)(6)); the Department's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim, a claim against a sponsor for remittance of a payment, the termination of the sponsor or a site, a denial of a sponsor's application for a site, a denial of a food service management company's application for a site; of a food service management's registration, if applicable.
3. The time period allowed for filing the appeal where actions are appealable as specified in 7 C.F.R. § 225.13(a) is ten (10) calendar days from the date on which the notice of action sent by certified mail return receipt requested is received.
4. The appeal must be in writing and must conform to the requirements outlined in 7 C.F.R. § 225.13(b) (4), which are set forth in number (6) below.
5. The address to file an appeal is as follows:

**Tennessee Department of Human Services
Appeals and Hearings Division, Clerk's Office
P.O. Box 198996
Nashville, TN 37219-8996
Toll Free. (866) 757-8209
Local (615) 744-3900
Fax. (866) 355-6136
AppealsClerksOffice.DHS@tn.gov**

6. The appellant is allowed to refute the charges in the notice of action in person, or by filing written documentation with the review official. If the appeal letter does not specifically request a hearing, a review of written documentation in lieu of a hearing will occur. To be considered, written documentation must be submitted by the appellant within seven (7) calendar days of submitting the appeal. An appellant is allowed the

opportunity to review information upon which the action described in the notice of action was based.

7. If the appellant requested a hearing in the appeal letter, the appellant shall be given at least five (5) calendar days advance written notice by certified mail, return receipt requested, of the date, time, and place of hearing.
8. If the appellant requested a hearing in the appeal letter, the hearing will be conducted within fourteen (14) calendar days of the receipt of the appeal. However, the hearing will not be held before the appellant's written documentation is received where the appellant has requested to submit the written documentation. The appellant may retain legal counsel or may be represented by another person. If the appellant institution or sponsoring agency is a corporation, partnership or other legally created entity, then the sponsoring institution or agency must be represented by an attorney. Otherwise, the individual representing the agency will have limited participation in the hearing. If the appellant institution or sponsoring agency is a natural person (not a corporation, partnership or other artificial entity), he/she may retain an attorney, represent themselves or be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official. The review officer shall be independent of the original decision-making process.
9. Within five (5) working days after receiving the written documentation, and where a hearing was not requested in the appeal letter, the administrative review official, based on a full review of the administrative record, will inform the appellant, by certified mail, return receipt requested, of the official's determination.
10. Within five (5) working days after the hearing has been held, when a hearing was requested in the appeal letter, the hearing official, based on a full review of the administrative record, will inform the appellant, by certified mail, return receipt requested, of the official's determination.
11. 7 CFR. § 225.13(11) requires the Program's administrative action to remain in effect during the appeal process.
12. Participating sponsors and sites may continue to operate during an appeal of a termination.
13. Reimbursement shall be paid for meals served during the appeal process if the administrative review determination overturns the Program's administrative action that was appealed.

14. If the sponsor or site has been terminated for the reason of imminent dangers to the health or welfare of children, the operation shall not be allowed to continue during the appeal process and this reason shall be specified in the notice of action.
15. The review official will make a determination based on information provided by the State agency and the appellant, and on Program regulations.
16. The determination made by the hearing official is the final administrative determination provided under 7 225.13(12), and will become the Final Order and set forth the time limits for seeking judicial review.

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.



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: Martha O'Bryan Center	Agreement No. 00-102	<input checked="" type="checkbox"/> SFSP <input type="checkbox"/> CACFP
Mailing Address: 711 South 7 th Street		

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

Name and Title: Tim Sinks, Board Chair	Date of Birth: / /
--	--------------------

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

Monitoring Report: 10/1/2018	Corrective Action Plan: 10/1/2018
------------------------------	-----------------------------------

Section D. Findings

Findings:

1. The Sponsor reported the number of meals as served incorrectly
2. The number of operational days reported was incorrect

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 meals as 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.2: The number of operational days reported was incorrect

The finding will be fully and permanently corrected.

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

Name:

Position Title:

Name:

Position Title:

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

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

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

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

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: / /