

APPEAL PROCEDURES FOR CHILD AND ADULTCARE FOOD PROGRAM-INSTITUTIONS

1. 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. Except as provided at 7 CFR Part 226.6(k)(3) and (k)(9), all institutions and sponsoring agencies may appeal any adverse administrative action 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) If the adverse administrative action concerns one or more of the circumstances identified at 7 CFR Part 226.6 (k) (3), such actions are not subject to administrative review. The 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) If the adverse administrative action concerns one or more of the circumstances identified at 7 CFR Part 226.6(k)(9), an abbreviated appeal process will be observed and only written information that is submitted by the TDHS and institutions and sponsoring agencies will be reviewed. TDHS must limit the administrative review to a review of written submissions 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:

- (i) The information submitted on the application was false
- (ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list
- (iii) 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

- (iv) 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
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 institution's executive director and chairman of the board, and the responsible principal and responsible individuals must be given notice of the action being taken or proposed, 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 Intent to Terminate, the TDHS will issue a letter advising the institution or sponsoring agency that it is terminated from the CACFP effective on the 16th calendar day following the institution's or sponsoring agency's receipt of the notice, and that the responsible principals and individuals of the institution or sponsoring agency are disqualified from participation.
7. To be considered for a fair hearing or for a review of written information in lieu of a fair hearing, all written documents must be submitted to the TDHS Division of Appeals and Hearings not later than 30 days after receipt of the notice of adverse administrative action.
8. The action of the TDHS must remain in effect during the administrative review. The effect of this requirement on particular actions by TDHS is as follows:
 - (i) *Overpayment demand.* During the period of the administrative review, TDHS is prohibited from taking action to collect or offset the overpayment. However TDHS must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the TDHS's action.

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

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

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

10. The institution or sponsoring agency 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, that is, the administrative review official must not have been involved in the action that is subject to the administrative review or have a direct personal or financial interest in the outcome of the review as set forth in §226.6(k) (5) (vii). The administrative review official must make a determination based solely on the information provided by the state agency, the institution, and the responsible principals and responsible individuals, based on Federal and State laws, regulations, policies, and procedures governing the Program as set forth in §226.6(k) (5) (viii). The State agency must maintain searchable records of all administrative reviews and their disposition. As set forth in §226.6(k) (7). The State agency 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 as set forth in §226.6(k) (8).

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 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 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. They 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.

18. As required by the federal regulation at 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.

APPEAL PROCEDURES FOR DAY CARE HOME PROVIDERS

1. The State agency or the sponsoring organization must provide administrative review procedures to day care homes as follows:
 - a) Annually to all day care homes;
 - b) To a day care home when the sponsoring organization takes any action subject to an administrative review as described in paragraph (1)(2) of this section; and
 - c) Any other time upon request.

2. The Sponsoring Agency will issue a Notice of Intent to terminate unless immediate termination is warranted based on the actions of the Home Provider which imminently threaten the health and safety of participants or the public. Actions Subject to Administrative Review - day care home providers have the right to appeal a Notice of Intent to Terminate their agreement for cause or a suspension of their participation must inform the Home Provider of the ground(s) for proposed termination and disqualification. The notice must also inform the Home Provider of his/her right to request a fair hearing or to request that written information be reviewed by a hearing officer in lieu of a hearing, and that meal payments will not be withheld during the appeal process so long as the appropriate records to support the meal payments are available pending the outcome of the fair hearing.

3. If a Notice is issued to immediately suspend a Home Provider for participation and payment cause based on an imminent threat to the health and safety of participants or to the public, the letter must inform the Home Provider of the ground(s) for proposing termination and disqualification and of the date for this action. The notice must also inform the Home Provider of his/her right to request a fair hearing.

4. A request for a fair hearing or for the review of written information in lieu of a hearing must be presented by the Home Provider in writing to the TDHS Division of Appeals and Hearings not later than 15 calendar days from the date the Home Provider receives the Notice of Intent to Terminate. The TDHS Division of Appeals and Hearings must notify the Home Provider of the receipt of the request within 10 calendar days of the receipt of the request. If the request for a fair hearing or for the review of written information in lieu of a hearing is sent to the Sponsoring Agency, the Sponsoring Agency must forward the request with a photocopy of the Notice of Intent to Terminate and photocopies of any monitoring reports or other related materials to the TDHS Division of Appeals and Hearings immediately upon receipt of the Home Provider's request.

5. 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

6. If the written appeal request from the Home Provider does not specifically request a hearing, a review of written information in lieu of a hearing will occur. To be considered for a fair hearing or for a review of written information in lieu of a fair hearing, all written documents must be submitted to the TDHS Division of Appeals and Hearings not later than 30 days after receipt of the Notice of Intent to Terminate. If the written documents are submitted to the sponsoring agency, the sponsoring agency will forward the written documents to TDHS Division of Appeals and Hearings immediately upon receipt.

7. The hearing officer must be independent and impartial and shall be designated by the TDHS Division of Appeals and Hearings. If a fair hearing is requested, the TDHS Division of Appeals and Hearings must notify the Home Provider in writing of the date and place of the fair hearing at least 10 calendar days in advance. A copy of the written notice will also be provided by the TDHS Division of Appeals and Hearings to the CACFP program staff of the Tennessee Department of Human Services.

8. The Home Provider must refute the charges contained in the Notice of Intent to Terminate during the fair hearing or in the written information that is submitted in lieu of the hearing.

9. The Home Provider may retain legal counsel, or may be represented by another person.

10. Except in situations that imminently threaten the health and safety of participants or the public and that are identified in the notice of action by the Sponsoring Agency, program payments will not be withheld during the appeal process for the Home Provider. This is providing that appropriate records to support the payments are available and maintained by the Home Provider. If the Home Provider does not request a fair hearing within 15 calendar days from the date the Home Provider receives the proposed termination notice, the Sponsoring Agency will issue a letter advising the Home Provider that it is terminated and disqualified from the CACFP effective on the 16th calendar day following the Home Provider's receipt of the Notice of Intent to Terminate.

11. Any information on which the Sponsoring Agency based its adverse administrative action shall be available to the Home Provider for inspection from the date of the receipt of the appeal request from the Home Provider.

12. The hearing officer must make a determination based on the information provided by the sponsoring organization and the day care home and on Federal and State laws, regulations, polices, and procedures governing the Program in accordance with 7 CFR Part 226.6 (l)(5)(v).

13. The decision of the hearing officer shall be the final administrative determination to be afforded to the Home Provider, and shall be rendered in a timely manner not to exceed 60 calendar days from the date of the receipt of the Home Provider's appeal request by the Sponsoring Agency.

14. 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 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. They 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.

15. If the Notice of Intent to Terminate is upheld by the hearing officer, the Sponsoring Agency will issue a final termination and disqualification notice to the Home Provider. The effective date of the termination and disqualification will be the date of the appeal ruling issued by the hearing officer.

16. As required by the federal regulation at 7 CFR Part 226.6 (c) (7), each disqualified Home Provider will be placed on the National Disqualified List maintained by the U.S. Department of Agriculture (USDA). Once included on the National Disqualified List, a Home Provider shall remain on the list until such time as the TDHS determines in consultation with FNS, that the serious deficiencies that led to the provider's placement on the list have been corrected, or until seven years have elapsed since the provider's agreement was terminated for cause. However, if the Home Provider has failed to repay debts owed under the program, the provider will remain on the list until the debt has been paid.