



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243
TELEPHONE: 615-313-4700 FAX: 615-741-4165
TTY: 1-800-270-1349
www.tn.gov/humanservices

BILL LEE
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

January 29, 2019

Nicole Johnson, Owner
Super Kids Child Care Center
3272 Chelsea Avenue
Memphis, Tennessee 38108-1906

Dear Ms. Johnson:

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 Super Kids Child Care Center (Sponsor), Application Agreement number 00-517 on December 13, 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.

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) 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 a lunch meal service on October 31, 2018.

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

1. The Sponsor reported meal counts incorrectly

Condition

Based on our review of the Claim for Reimbursement for the test month the Sponsor reported 405 breakfast meals, 323 lunch meals, and 485 supplements served. However, based on our

review of available documents, we found there were 487 breakfast meals, 407 lunch meals, and 568 supplements served, prior to any meal disallowances.

As a result, 82 breakfast meals, 84 lunch meals, and 83 supplements served were underreported. (See Exhibit)

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 claims for reimbursement are completed correctly and based on accurate supporting documents.

2. The Sponsor did not provide documentation of milk purchases to support menus from October 1, 2018 - October 4, 2018

Condition

The Sponsor did not provide receipts to support milk purchases for meals served with milk until October 5, 2018. In addition, the Sponsor did not have documentation of milk carryover from the previous month.

As a result, 68 breakfast meals, 51 lunch meals, and 21 supplements served were disallowed. (See Exhibit)

Criteria

Title 7 of the Code of Federal Regulations, Section 226.15(e) states, "Each institution shall establish procedures to collect and maintain all program records required under this part, as well as any records required by the State agency. Failure to maintain such records shall be grounds for the denial of the reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records. At a minimum, the following records shall be collected and maintained: (6) Copies of invoices, receipts or other records required by the State agency financial management instruction to document..."

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. (iii) Children 6 years and older. Children six years old and older must be served milk that is low-fat (1 percent fat or less) or fat-free (skim). Milk may be unflavored or flavored from July 1, 2018, through June 30, 2019 (school year 2018-2019)." (iv) Adults. Adults must be served milk that is low-fat (1 percent fat or less) or fat-free (skim). Milk may be unflavored or flavored from July 1, 2018, through June 30, 2019 (school year 2018-2019). Six ounces (weight) or 3/4 cup (volume) of yogurt may be used to fulfill the equivalent of 8 ounces of fluid milk once per day. Yogurt may be counted as either a fluid milk substitute or as a meat alternate, but not as both in the same meal."

Recommendation

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

3. The Sponsor did not provide documentation to support sufficient quantities of milk were purchased for all meals reported

Condition

Based on the number of meals served with milk as a component, the Sponsor was required to purchase a total of 3,224 ounces of milk. However, the Sponsor could only document the purchase of 3,072 ounces of milk, resulting in a shortage of 152 ounces of milk.

As a result, 19 supplements served 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)(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. ..."

Title 7 of the Code of Federal Regulations, Section 226.20(a)(1) states, "*Fluid milk.* 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. (iii) *Children 6 years and older.* Children six years old and older must be served milk that is low-fat (1 percent fat or less) or fat-free (skim). Milk may be unflavored or flavored from July 1, 2018, through June 30, 2019 (school year 2018-2019). (iv) *Adults.* Adults must be served milk that is low-fat (1 percent fat or less) or fat-free (skim). Milk may be unflavored or flavored from July 1, 2018, through June 30, 2019 (school year 2018-2019). Six ounces (weight) or 3/4 cup (volume) of yogurt may be used to fulfill the equivalent of 8 ounces of fluid milk once per day. Yogurt may be counted as either a fluid milk substitute or as a meat alternate, but not as both in the same meal."

Recommendation

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

4. The Sponsor provided infant menus that did not meet the CACFP meal pattern

Condition

Based on our review of the infant menus provided by the Sponsor for the test month, the menus provided did not meet the USDA meal pattern requirements. An infant aged 6-11 months must be served 0 to 1/2 slice bread; or 0-2 crackers; or 0-4 tablespoons infant cereal or ready-to-eat

cereals with the supplement meal when the infant is developmentally ready. This component is optional until introduced to the infant's diet, than required. The menus provided for infants had deficiencies and listed the following:

Infant: SE, 11 Months

Date	Menu Deficiency	Deficient Meal
10/3/18	Missing Component: Bread/Cracker/Cereal Menu Listed: Formula, Yogurt, and Blueberry	1 Supplement

Infant: AM, 11 Months

Date	Menu Deficiency	Deficient Meal
10/3/18	Missing Component: Bread/Cracker/Cereal Menu Listed: Formula, Yogurt, and Blueberry	1 Supplement
10/16/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Strawberry Yogurt Bites, and Strawberries	1 Supplement
10/17/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Banana Yogurt Bites, and Pears	1 Supplement

Infant: AM, 8 Months

Date	Menu Deficiency	Deficient Meal
10/31/18	Missing Component: Bread/Cracker/Cereal Menu Listed: Formula, Yogurt and Peaches	1 Supplement

Infant: KS, 10 Months

Date	Menu Deficiency	Deficient Meal
10/3/18	Missing Component: Bread/Cracker/Cereal Menu Listed: Formula, Yogurt and Blueberry	1 Supplement
10/16/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Strawberry Yogurt Bites, and Strawberries	1 Supplement
10/17/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Banana Yogurt Bites, and Pears	1 Supplement
10/18/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Banana Yogurt Bites, and Pineapple	1 Supplement
10/24/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Blueberry Yogurt Bites, and Blackberry	1 Supplement
10/31/18	Missing Component: Bread/Cracker/Cereal Menu Listed: Formula, Yogurt and Peaches	1 Supplement

Infant: NJ, 8 months

Date	Menu Deficiency	Deficient Meal
10/24/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Blueberry Yogurt Bites, and Blackberry	1 Supplement
10/31/18	Missing Component: Bread/Cracker/Cereal Menu Listed: Formula, Yogurt and Peaches	1 Supplement

Infant HH, 10 months

Date	Menu Deficiency	Deficient Meal
10/3/18	Missing Component: Bread/Cracker/Cereal Menu Listed: Formula, Yogurt and Blueberry	1 Supplement
10/16/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Strawberry Yogurt Bites, and Strawberries	1 Supplement
10/17/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Banana Yogurt Bites, and Pears	1 Supplement
10/18/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Banana Yogurt Bites, and Pineapple	1 Supplement
10/24/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Blueberry Yogurt Bites, and Blackberry	1 Supplement
10/31/18	Missing Component: Bread/Cracker/Cereal Menu Listed: Formula, Yogurt and Peaches	1 Supplement

Infant: CT, 9 months

Date	Menu Deficiency	Deficient Meal
10/16/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Strawberry Yogurt Bites, and Strawberries	1 Supplement
10/17/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Banana Yogurt Bites, and Pears	1 Supplement
10/18/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Banana Yogurt Bites, and Pineapple	1 Supplement
10/24/18	Missing Component : Bread/Cracker/Cereal Menu Listed: Formula, Blueberry Yogurt Bites, and Blackberry	1 Supplement
10/31/18	Missing Component: Bread/Cracker/Cereal Menu Listed: Formula, Yogurt and Peaches	1 Supplement

As a result, 24 supplements were disallowed. (See Exhibit)

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20 (b) states, "*Infant meals-(1) Feeding infants*. Foods in reimbursable meals served to infants ages birth through 11 months must be of a texture and a consistency that are appropriate for the age and development of

the infant being fed. Foods must also be served during a span of time consistent with the infant's eating habits. ...”

Title 7 of the Code of Federal Regulations, Section 226.20 (4)(2)(b) states, “Infant meal pattern. Infant meals must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age. ... (ii)(B) Snack. Two to 4 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to ½ slice bread; or 0-2 crackers; or 0-4 tablespoons infant cereal or ready-to-eat cereals; and 0 to 2 tablespoons of vegetable or fruit, or portions of both. Fruit juices and vegetable juices must not be served. A serving of grains must be whole grain-rich, enriched meal, or enriched flour.”

Recommendation

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

5. An annual inventory of food or non-food purchases was not maintained

Condition

The Sponsor did not maintain an annual inventory food and non-food items purchased with CACFP funds. As a result, we could not determine if excess CACFP funds exist.

Criteria

The Independent Center Child Care A Child and Adult Care Food Program Handbook, pages 56-57, in part states, “Many State agencies require the calculation of the “cost of food used” at the end of each month. Other State agencies may, however, require an inventory to be taken once a year so centers can make adjustments in the cost of food on an annual basis. In this case, the same procedure as for the monthly inventory would be followed, but only once a year.... Costs of Nonfood Supplies Nonfood supplies include small kitchen equipment, paper goods, such as napkins and plates, and cleaning supplies used directly for the food service operation. Itemized receipts or invoices must be kept on file as documentation. State agencies may require a monthly or yearly inventory of these supplies.”

Recommendation

The Sponsor should ensure an inventory is completed annually for food and nonfood supplies purchased with CACFP funds.

Note: Our observation of the lunch meal service on October 31, 2018 revealed no deficiencies.

Technical Assistance Provided

The Sponsor was given technical assistance in regards to keeping a milk roll over log, and also in regards to purchasing enough milk for meals served with milk.

Corrective Action

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

- Prepare and submit a corrective action plan to address the deficiency 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

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 Program
Debra Pasta, Program Manager, Child and Adult Care Food Program
Elke Moore, Administrative Services Assistant 3, Child and Adult Care Food Program
Constance Moore, Program Specialist, Child and Adult Care Food Program
Marty Widner, Program Specialist, Child and Adult Care Food Program
Comptroller of the Treasury, State of Tennessee

EXHIBIT

Verification of CACFP Independent Center Claim

Name of Agency: Super Kids Child Care Center

Review Month/Year: October 2018

Total Meal Reimbursement Received: \$2,194.75

Site Meal Service Reconciliation and Monitor Activity	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	22	22
Total Attendance	576	576
Percentage of Free or Reduced-price Category	94%	94%
Number of Breakfasts Served	405	419
Number of Lunches Served	323	356
Number of Supplements Served	485	504
Number of Participants in Free Category	32	32
Number of Participants in Reduced-Price Category	0	0
Number of Participants in Paid Category	2	2
Total Number of Participants	34	34
Total Amount of Eligible Food Costs	XXXXXXXX	\$610.47
Total Amount of Eligible Food and Non-Food Costs	XXXXXXXX	\$1,930.91



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: Super Kids Child Care Center	Agreement No. 00517	<input type="checkbox"/> SFSP <input checked="" type="checkbox"/> CACFP
-----------------------------------------------------------	------------------------	----------------------------------------------------------------------------

Mailing Address: 3272 Chelsea Avenue Memphis, Tennessee 38108-1906

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

Name and Title: Nicole Johnson, Owner	Date of Birth: / /
---------------------------------------	--------------------

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

Monitoring Report: 1/29/2019	Corrective Action Plan: 1/29/2019
------------------------------	-----------------------------------

Section D. Findings

Findings:

1. The Sponsor reported meal counts incorrectly
2. The Sponsor did not provide documentation of milk purchases to support menus from October 1, 2018 - October 4, 2018
3. The Sponsor did not provide documentation to support sufficient quantities of milk were purchased for all meals reported
4. The Sponsor provided infant menus that did not meet the CACFP meal pattern
5. An annual inventory of food or non-food purchases was not maintained

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 meal counts 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 did not provide documentation of milk purchases to support menus from October 1, 2018 - October 4, 2018

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 did not provide documentation to support sufficient quantities of milk were purchased for all meals reported

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 provided infant menus that did not meet the CACFP meal pattern

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: An annual inventory of food or non-food purchases was not maintained

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.