

IOWA DEPARTMENT OF EDUCATION

(Cite as 26 D.o.E. App. Dec. 463)

<i>In re Termination from CACFP</i>	:	
Maria Payne,	:	DIA Docket # 13DOE006
Appellant,	:	[DE Admin. Doc. 4780]
v.	:	
Community Action of Eastern Iowa,	:	DECISION
Appellee.	:	

This matter was heard telephonically on January 14 and 24, 2014, before Administrative Law Judge Carol J. Greta, on behalf of Brad A. Buck, Director of the Iowa Department of Education. The Iowa Department of Education has jurisdiction over the hearing pursuant to 7 CFR § 226.6(k) and 281—Iowa Administrative Code Chapter 6.

The Appellant, Maria Payne (“Ms. Payne”), appeared personally and testified on her own behalf. The Appellee, Community Action of Eastern Iowa (“Community Action”), was represented by its CACFP director Andrew Brown.

Prior to the hearing on January 14, Community Action submitted Appellee’s Exhibits 1 – 15, which were admitted into evidence. Near the conclusion of the hearing on January 14, it became evident that another hearing date would be necessary to conclude the taking of evidence and to allow both parties to submit evidence to respond to the defense raised by Ms. Payne, as discussed in the Findings of Fact. An order was entered on January 15, suspending the hearing until January 24, 2014, on the sole issue of whether the children of Kelly K. were in Ms. Payne’s care after September 24, 2013. A few days before the hearing, Mr. Brown submitted Appellee’s Exhibits 16 – 20, all of which were admitted into evidence. Ninety minutes prior to the hearing on January 24, Ms. Payne commenced the submission of numerous documents via electronic mail. After reviewing the proffered exhibits, the undersigned administrative law judge admitted only Appellant’s Exhibit 8 as pertinent to the issue herein.

FINDINGS OF FACT

Maria Payne runs a child daycare home in Muscatine. She participated in the Child and Adult Care Food Program (CACFP), which is administered by the United States Department of Agriculture through the Iowa Department of Education’s Bureau of Nutrition Programs. In the parlance of CACFP, Ms. Payne is a “provider.”

The CACFP is a federal program that provides reimbursement for meals and snacks provided by providers to children in daycare homes and centers. A provider is required to keep detailed, accurate records of the provider’s menus, as well as of the attendance and meals/snacks served to each child in the care of the provider.

The participation of providers in CACFP is supervised by a sponsor, in this case Community Action of Eastern Iowa. To participate in CACFP in Iowa, the provider must possess a certification of registration from the Iowa Department of Human Services, and must sign an agreement that provides for the terms and conditions of program participation. One of the provisions in the agreement rather self-evidently specifies that a provider shall not submit a false claim to the sponsor for reimbursement.

On December 10, 2012, Community Action sent a Serious Deficiency Notice to Ms. Payne, citing false claims. The specifics of the accusation are not pertinent to this appeal. What is relevant is that Ms. Payne was given a chance to correct the deficiency, and on February 4, 2013, her corrective action plan was accepted by Community Action, and the termination of her participation in CACFP was deferred. (Exh. 1) The Summary section of the letter of February 4 states as follows:

We have temporarily deferred our serious deficiency determination. However, if we find in any subsequent review that corrections for any of these serious deficiencies have not been maintained, we will immediately propose to terminate your agreement for cause and propose to disqualify you without any further opportunity for corrective action.

(*Id.*)

Because personnel from Community Action were unable to find Ms. Payne at home during unannounced daytime visits, Community Action sent a "parent audit" to the parents of the children Ms. Payne listed as being in her care. In her audit, parent Kelly K. informed Community Action that September 24, 2013 was the last date Ms. Payne provided care for her children. Because Ms. Payne claimed to have provided a total of 282 reimbursable meals or snacks during the months of September, October, and November to five children of parent Kelly K. after September 24, 2013, Community Action sent to her another proposed termination and disqualification notice, dated December 13, 2013, based on submission of false claims. (Exh. 2) Because of the earlier notice of serious deficiency, Community Action did not have to give Ms. Payne the opportunity to correct the deficiency. (Exh. 1)

The overpayment was deducted from Ms. Payne's November reimbursement check. She was informed that she could appeal the overpayment determination, as well as the proposed termination of her CACFP agreement and her proposed disqualification from the CACFP program. She filed a timely appeal of the proposed termination and disqualification only.

At hearing on January 14, Ms. Payne claimed that Kelly K. lied in her audit because of a dispute between the two women. Ms. Payne further testified that Kelly K. recanted the assertion she made in her parent audit. Thus, the hearing was suspended until January 24 to give the parties opportunity to present evidence on the issue whether the children of Kelly K. were in the care of Ms. Payne after September 24, 2013.

On January 15, 2014, Mr. Brown contacted Kelly K. via text messaging, photos of which he submitted as Exhibit 20. Mr. Brown informed Kelly K. that the matter had come to administrative hearing and that Ms. Payne had testified that Kelly K. had recanted her

audit statement. Mr. Brown asked Kelly K. whether what she wrote on the audit was the truth. Kelly K. responded, "What I wrote on the audit is the truth." (Exh. 20) She added, "[Ms. Payne] told me that she was allowed to claim the girls even when they are not there." (*Id.*)

The other documentation provided by Community Action shows that the landlord of Kelly K. verified that the family moved out of state on October 18, 2013. (Exhs. 16 – 19)

Ms. Payne maintained that Kelly K. lied in her parent audit, and that she actually continued to provide care for the children until mid-November. Ms. Payne stated that Kelly K. was angry at her about an issue not related to this appeal. The "transcript" that Ms. Payne prepared of text messages between herself and Kelly K. (Exh. 8) demonstrates hard feelings between the two women, but falls far short of showing anything to contradict Kelly K.'s statement in her parent audit, especially in light of the fact that Kelly K. maintained to Mr. Brown that what she wrote on the audit is the truth.

CONCLUSIONS OF LAW

CACFP is a program created by the Agricultural Risk Protection Act, 42 U.S.C. § 1766. That Act and its regulations dictate the terms of the participation agreement between the sponsor and the provider.

The regulations at 7 CFR § 226.16 enumerate reasons why a daycare home provider may be terminated from CACFP. Being cited as "seriously deficient" and not correcting the deficiency is one cause for termination. A serious deficiency includes the provider's making of false claims. 7 CFR § 226.16(f)(2)(ii).

Ms. Payne successfully corrected her first serious deficiency, allowing the sponsor to temporarily defer a determination of serious deficiency under 7 CFR § 226.16(f)(3)(ii). The federal regulation provides, "However, if the sponsoring organization accepts the provider's corrective action, but later determines that the corrective action was not permanent or complete, the sponsoring organization must then propose to terminate the provider's Program agreement and disqualify the provider, as set forth in paragraph (f)(3)(iii) of this section." *Id.* This is what occurred here.

The evidence presented here as to the children of Kelly K. supports a finding that Ms. Payne submitted false claims as to those children after September 24, 2013. The evidence also supports a finding that the submission of false claims regarding these children over several weeks is systemic and was not a one-time human error. Ms. Payne had already been put on notice regarding the importance of filing accurate claims. Community Action has shown that Ms. Payne has not permanently and completely corrected the seriously deficient practice of submission of false claims.

The regulations governing CACFP are quite strict, purposefully so. While a termination from CACFP may seem harsh, the rationale for the strictness of the regulations is simple. CACFP is funded by public monies; therefore, a provider is required to be accountable to the public for how s/he operates. When such accountability is lacking, the public trust is gone, and the sponsor is required to take appropriate action. Put another way, the sponsor has a duty, no matter how unpleasant at times that duty may be, to hold its providers accountable on behalf of the public.

Ms. Payne has the opportunity to request reinstatement to CACFP "until such time as the State agency determines that the serious deficiency ... has been corrected, or until seven years have elapsed" unless the day care home has failed to repay debts owed under the Program." 7 CFR 226.6(c)(7)(v, vi). Therefore, she is encouraged to maintain records during the time she is disqualified from the CACFP to demonstrate that her recordkeeping now reflects the accuracy required for CACFP participation.

DECISION

For the foregoing reasons, the termination of Maria Payne from the Child and Adult Care Food Program is hereby **ordered**.

Entered this 27th day of January, 2014.



Carol J. Greta
Administrative Law Judge

It is so ordered.

1/27/14
Date



Brad A. Buck, Director
Iowa Department of Education

cc: Appellant
Appellee
Ann Feilmann, Suzanne Secor Parker, Robin Holz – Department of Education