

**IOWA DEPARTMENT OF EDUCATION
26 D.o.E. App. Dec. 76**

In re Termination from CACFP

Teresa Bulicek, d/b/a Showtime Child Care, :	:	
Appellant,		
v.	:	ORDER of
		TERMINATION
Bureau of Nutrition, Health and	:	
Transportation Services,		
Appellee.		[Admin. Doc. 4721]

This matter first was heard telephonically on November 22, 2010, on Ms. Bulicek's appeal from determinations that her child care center is seriously deficient for the three reasons specified in the undersigned's order of November 23, 2010. Following the evidentiary hearing of November 22, the undersigned delayed ordering termination of Ms. Bulicek's center from the Child and Adult Care Food Program (CACFP), on the conditions that Ms. Bulicek complete all of the following items on or before December 31, 2010:

1. Attend and document attendance of owner, director, and CACFP coordinator at the CACFP Steps to Success Workshop on December 16, 2010.
2. Develop and submit a plan of action for income application collection and approval, and staff monitoring and training, based on the Required Best Practices and Regulations and Policy sections of Chapters 3 and 7 of the Iowa CACFP Administrative Manual.
3. Submit claim revisions electronically for each month of 2009-2010 federal fiscal year (October 1, 2009 – September 30, 2010) based on correct free and reduced price income status of enrolled and claimed children as discussed at the evidentiary hearing.

The Bureau of Nutrition Health and Transportation Services ["Bureau"] has submitted a summary, concluding that Ms. Bulicek has not fully and permanently corrected the serious deficiencies because the above corrective actions continue to be deficient. Accordingly, a follow-up hearing was held on January 10, 2011, to give Ms. Bulicek the opportunity to respond to the Bureau's determination that she has not fully and permanently corrected the serious deficiencies.

The Appellant, Teresa Bulicek, appeared on her own behalf. The Appellee, Bureau of Nutrition, Health and Transportation Services of the Iowa Department of Education ["Bureau"], was represented by employees Sandra Fiegen and Robin Holz.

The facts are as stated in the order of November 23, 2010. The original serious deficiencies alleged by the Bureau of Ms. Bulicek were as follows:

1. Failure to maintain adequate records of families eligible for free or reduced price eligibility;

2. Errors in computation of reimbursement due to incomplete and erroneous income applications; and
3. Failure to adequately train or document such training of staff persons who are deemed to be key to program operations.

Attendance at the CACFP workshop was accomplished. At issue is whether Ms. Bulicek complied with the following by December 31, 2010:

- Develop and submit a plan of action for income application collection and approval, and staff monitoring and training, based on the Required Best Practices and Regulations and Policy sections of Chapters 3 and 7 of the Iowa CACFP Administrative Manual.
- Submit claim revisions electronically for each month of 2009-2010 federal fiscal year (October 1, 2009 – September 30, 2010) based on correct free and reduced price income status of enrolled and claimed children as discussed at the evidentiary hearing.

The plan of action (first bullet) submitted by Ms. Bulicek lists several persons she deems to be key to her child care operations, but lists an inadequate plan of training for them. Some of the persons listed as responsible to complete key program functions are new names to the Bureau; these persons should have been named in online application materials. The training plan submitted by Ms. Bulicek does not indicate how key persons are trained and what methods of oversight are in place. This is crucial in this case because Ms. Bulicek is “seldom” at the center and relies heavily on other persons to perform key functions of the Program.

At hearing, Ms. Bulicek stated that she was waiting for feedback from Ms. Fiegen as to whether her plan was acceptable. This response is not acceptable. The templates on pages 3-7, 3-8, 7-3, and 7-5 of the CACFP Administrative Manual, if used, would have led Ms. Bulicek to adequately communicate all of the missing information. The order of November 23, 2010, directed Ms. Bulicek to the appropriate chapters of the Manual. It is clear that she did not take the time to follow through.

The claim revisions (second bullet above) were eventually submitted with corrected information, but only after several “false starts” by Ms. Bulicek. Three times before getting it right, Ms. Bulicek submitted claims with incorrect information or incorrect computations or incorrect forms. Ms. Fiegen has submitted a chronology of activity, detailing the attempts of Ms. Bulicek to comply with the second bullet above. The detail in the chronology will not be repeated here; suffice it to say that it is clear that Ms. Bulicek has not demonstrated an understanding of how to submit accurate claims.

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 minimum terms of the participation agreement between the sponsor and the home provider.

The regulations at 7 C.F.R. § 226.16 enumerate reasons why a daycare home may be terminated from CACFP. Being cited as “seriously deficient” and not correcting the deficiency is one cause for termination.

The regulations governing the CACFP are quite strict. 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 Bureau is required to take appropriate action. Put another way, the Bureau has a duty, no matter how unpleasant at times that duty may be, to hold its providers accountable on behalf of the public.

Bureau staff serve as a resource for CACFP providers, and work dutifully to assist providers. The result is that less than 5% of CACFP providers are terminated from the Program. Ultimately, however, the responsibility for compliance rests with the provider.

The conclusion reached by Ms. Fiegen of the Bureau states in part as follows:

[I]f allowed to continue sponsoring the CACFP, [Ms. Bulicek] will continue to do less than accurate work at compliance, and will continue to submit false claim information. After this many years of struggling with CACFP compliance, she has not taken the time to learn ... the regulations. She is quick to blame someone else in her operations for the problems that are her responsibility, but does not seem to have the time to learn herself what she needs to do.

The undersigned agree with this conclusion. The evidence presented here amply supports a finding that Ms. Bulicek has failed to permanently and completely correct the seriously deficient practices of submitting erroneous applications and not adequately training staff or herself regarding CACFP regulations and requirements.

DECISION

For the foregoing reasons, the proposed termination of Teresa Bulicek, d/b/a Showtime Child Care, from the Child and Adult Care Food Program is hereby **affirmed**.

01/11/11
Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

01/11/11
Date

Kevin Fangman, Acting Director
Iowa Department of Education