

**IOWA DEPARTMENT OF EDUCATION
26 D.o.E. App. Dec. 494**

In re Termination from CACFP

Melissa Hughes, Appellant,	:	14DOE003
v.	:	ORDER of TERMINATION
Community Action of Eastern Iowa.	:	
Appellee.	:	[Admin. Doc. 4784]

This matter was heard telephonically on April 15, 2014, before Administrative Law Judge Carol J. Greta, on an appeal filed by Melissa Hughes from a determination that the child care center is seriously deficient for the reasons specified herein.

The Appellant, Melissa Hughes failed to appear, although the Notice of Hearing sent to her was not returned by the postal service as undeliverable. The Appellee, Community Action of Eastern Iowa [“Community Action”], was represented by CACFP director Andrew Brown.

Prior to the hearing, Community Action submitted Exhibits 1 – 7, as follows:

- 1 Notice of 07/05/13 deferring serious deficiency determination
- 2 Worksheet from review on 03/12/14
- 3 Email of 03/12/14
- 4 Proposed termination letter of 03/12/14
- 5 Email of 04/02/14
- 6 Appeal letter
- 7 Screen shot showing no records downloaded as of April 10, 2014

All of the above exhibits were admitted as evidence herein.

Federal regulations state that a hearing must be held if requested. 7 CFR § 226.6(k)(5)(vi). Pursuant to the foregoing regulation, the hearing was held in the absence of Ms. Hughes.

FINDINGS OF FACT

Melissa Hughes runs a child daycare home in Davenport. 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. Hughes 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 specifies that a provider shall keep required records. Required records include, but are not limited to, attendance, meal pattern, meal counts, and menu records. 7 CFR § 226.16(d)(4)(i).

On June 5, 2013, Community Action sent a Serious Deficiency Notice to Ms. Hughes, citing lack of contemporaneous meal records. The specifics of the accusation are not pertinent to this appeal. What is relevant is that Ms. Hughes was given a chance to correct the deficiency, and on July 5, 2013, her corrective action plan was accepted by Community Action, and the termination of her participation in CACFP was deferred. (Exhibit 1) The Summary section of the letter of July 5 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 visited Ms. Hughes at her daycare on March 12, 2014, they found that meal records had not been maintained since January 15, 2014. (Exhibit 2) Community Action sent to her another proposed termination and disqualification notice, dated March 12, 2014, based on the subsequent failure to maintain required meal records. (Exhibit 4) Because of the earlier notice of serious deficiency, Community Action did not have to give Ms. Payne the opportunity to correct the deficiency. (Exhibit 1)

Ms. Hughes filed a timely appeal of the proposed termination and disqualification, writing, "I have been ill a little bit lately causing me to fall behind in my record keeping of meals."

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 failure to maintain records. 7 CFR § 226.16(e).

Ms. Hughes successfully corrected her first serious deficiency, allowing the sponsor to temporarily defer a determination of serious deficiency under 7 CFR § 226.16(l)(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 (l)(3)(iii) of this section.” (Emphasis added.) *Id.* This is what occurred here.

The evidence presented here supports a finding that Ms. Hughes has not permanently or completely corrected the deficiency of failing to maintain records. The evidence also supports a finding that such failure is systemic and not a one-time human error. Ms. Hughes had already been put on notice regarding the importance of keeping required records. There was no indication that she was ill to the point that she had to close her daycare. Community Action has shown that Ms. Hughes has not permanently and completely corrected the seriously deficient practice of failure to maintain records.

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. Hughes 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 Melissa Hughes from the Child and Adult Care Food Program is hereby **ordered**.

Entered this 16th day of April, 2014.

/s/ _____

Carol J. Greta
Administrative Law Judge

It is so ordered.

4/17/2014
Date

/s/ _____
Brad A. Buck, Director
Iowa Department of Education

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