

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 245)

<i>In re: Termination from CACFP</i>)	
)	
Amanda Burmeister,)	
)	DECISION
Appellant,)	
v.)	
)	
New Opportunities, Inc.,)	Admin. Doc. No. 4757
)	(DIA Docket No. 12DOE004)
Appellee.)	
)	

STATEMENT OF THE CASE

Amanda Burmeister requests review of a determination by New Opportunities, Inc., a home sponsor for the Child and Adult Care Food Program (CACFP), proposing termination of her agreement to participate in the CACFP program and disqualification from future CACFP participation, effective August 9, 2012. The Iowa Department of Education has jurisdiction over the appeal, pursuant to 7 Code of Federal Regulations [C.F.R.] 226.6(k).

This matter was heard by telephone conference call on August 27, 2012, before designated Administrative Law Judge Christie J. Scase, J.D., , presiding on behalf of Jason E. Glass, Director of the Iowa Department of Education. Appellant Amanda Burmeister participated and testified on her own behalf. Appellee New Opportunities, Inc. was represented by CACFP Provider Assistant Melanie Girard and CACFP Director Paula Klocke. Ms. Girard testified. The record includes a proposed termination letter dated July 23, 2012 and Ms. Burmeister’s Affidavit of Appeal. Supporting documents, marked as exhibits 1 through 4 were offered into evidence by the Appellee and were admitted into the record without objection.

FINDINGS OF FACT

Amanda Burmeister operates a registered child day care home in Coon Rapids, Iowa. She has participated in the Child and Adult Care Food Program for approximately two years. CACFP is a federal program that provides reimbursement for the cost of meals and snacks provided to children in daycare homes and centers. The program is administered by the United States Department of Agriculture (USDA), through the Iowa Department of Education’s Bureau of Nutrition Programs.

Daycare homes participating in CACFP, such as Ms. Burmeister's, must be supervised by a public or private nonprofit sponsoring organization. In this case New Opportunities, Inc., a nonprofit public service corporation, serves as the home-sponsor. To participate, a child care home provider must possess a certification of registration from the Iowa Department of Human Services authorizing operation as a child care home, and must sign an agreement with the sponsoring organization setting out the terms and conditions of program participation.

The agreement between New Opportunities and Ms. Burmeister requires Burmeister, as the provider, to prepare and serve meals that meet specified meal patterns; to maintain records of menus and the number of meals, by type, served to enrolled children; to promptly inform New Opportunities about any change in the number of children enrolled; and to notify New Opportunities whenever she is planning to be out of the home during the meal service period. The agreement also provides that New Opportunities, as the sponsoring organization, may make announced or unannounced review visits to the day care home and may access its meal service and records during normal hours of operation. (Girard testimony; *see also* 7 C.F.R. § 226.18(b))

All participating day care homes must maintain daily records of the number of children in attendance and the number of meals, by type, served to enrolled children. The records are to be completed daily. The USDA regulations governing CACFP designate the failure to keep required records as a serious deficiency in program compliance.

During a review visit conducted on December 21, 2011, New Opportunities noted that Ms. Burmeister had no records on file for December 19th or 20th. New Opportunities withheld payment for meals on these days and counseled Ms. Burmeister about the importance of entering attendance and meal information by the end of each day. The sponsor made another unannounced review visit on March 9, 2012 and found that records had not been completed for the period of March 1st through March 8th. Meals served on these days were disallowed and Ms. Burmeister was again reminded of the daily record-keeping requirement. The sponsor issued a verbal warning that if they found records had not been completed at the time of the next review, Burmeister would be found to be seriously deficient.

The next review was done on June 27, 2012. The sponsor found that no records were on file for the month of June (June 1st to June 26th). Ms. Burmeister explained that she was having computer issues. The sponsor advised her that, in light of the prior warnings, she would receive written notice of a serious deficiency and explained the serious deficiency process, noting that a failure to follow through with corrective measures would result in termination of her CACFP participation. Written notice of the deficiency was issued on June 27th. The notice detailed the corrective measures that Burmeister needed to take to cure the deficiency and set July 20, 2012, as the deadline for response. The corrective measures included submission of a written statement on how she would ensure that all required records were completed by the end of each business day. The "Minute Menu," an online record entry system for the program,

was set to automatically disallow any and all meals not entered into the system by the end of the business day. (Gerard testimony)

New Opportunities did not receive any documentation detailing actions taken by Ms. Burmeister to correct the deficiencies by the July 20th deadline. The sponsor sent notice to Burmeister on July 23, 2012, telling her that her CACFP agreement and program participation would be terminated on August 9, 2012. Burmeister filed a timely affidavit appealing the decision to terminate her agreement. She said that she took corrective action by submitting information into the system daily, but that she failed to mail in a statement about her plan for compliance.

At hearing, Ms. Burmeister acknowledged that she has not always kept daily records for the food program. She knew that she needed to enter information into the system daily, but she did not understand the importance of the daily record-keeping requirement. She admitted that she has always been bad with paperwork and organization. Burmeister explained that her computer was not working and was out of her home for service in June. Attendance for day care was low after the end of the school year and Burmeister was very busy with her own children. She did not plan to make a claim for June and thought that letting the record-keeping go would not be a big problem if she did not request reimbursement for meals that month.

Ms. Girard, the representative for New Opportunities, noted that the Minute Menu system can be accessed from any computer. Ms. Burmeister could have completed the required entries at a library or other public place with an accessible computer. Further, Burmeister did not notify New Opportunities about her computer problem prior to the June 27th home visit and did not request an alternate means of documenting her meal service.

CONCLUSIONS OF LAW

The Child and Adult Care Food Program is established under the Agricultural Risk Protection Act. 42 U.S.C. § 1766. The Act and implementing regulations adopted by the USDA dictate the minimum terms of a participation agreement between the sponsor and a daycare home provider. 7 C.F.R. § 226.18(b). The regulations also list reasons why a daycare home may be terminated from the CACFP. Being cited as “seriously deficient” and not correcting the deficiency is cause for termination. 7 C.F.R. § 226.16(l). “Serious deficiencies,” in this context, include the “failure to keep required records.” 7 C.F.R. § 226.16(l)(2)(v).

The USDA maintains a list of disqualified providers to ensure that those entities and persons do not participate in CACFP during their periods of disqualification. When a day care home’s termination from participation in CACFP is upheld on administrative review, the sponsoring organization must immediately terminate the day care home’s agreement, disqualify the day care home, and place the day care home and principals on the National disqualified list. The maximum period any a day care home is to be on the list is seven years, unless monies are

owed to the CACFP, in which case the period of ineligibility is extended until the program is fully reimbursed. This agency can release a day care home from the list when the serious deficiency that led to placement on the list has been corrected. 7 C.F.R. § 226.6(c)(7)(vi).

This agency's previous CACFP decisions recognize that the regulations governing the CACFP are quite strict. The regulations specifically dictate that "[e]ach day care home must maintain on file documentation of each child's enrollment and must maintain daily records of the number of children in attendance and the number of meals, by type, served to enrolled children." 7 C.F.R. § 226.18(e). Ms. Burmeister does not challenge the finding that she was repeatedly out of compliance with this requirement. Indeed, she admits that she frequently failed to comply with the CACFP record-keeping requirements because she did not fully understand them, or the consequences of noncompliance.

While termination from CACFP may seem harsh under these circumstances, it is the outcome that the program regulations call for and the rationale for strict program oversight is simple. CACFP is funded by public monies; therefore, a provider is required to be accountable to the public for how she operates. When such accountability is lacking, the public trust is gone and the sponsor is required to take appropriate action. The sponsor has a duty, no matter how unpleasant at times that duty may be, to hold child care homes accountable on behalf of the public.

The evidence presented here amply supports a finding that Ms. Burmeister failed to permanently and completely correct the seriously deficient practice of failure to maintain adequate records within the time allowed. She received two verbal warnings and a written deficiency notice during a six-month period. Despite this, she failed to complete the corrective action steps laid out by the sponsor. Ms. Burmeister testified that she now understands the importance of compliance with the program rules, including the daily record-keeping requirement. Apparently the seriousness of the sponsor's action and this proceeding have convinced her that compliance is mandatory.

Although Ms. Burmeister's willingness to correct past practices does not excuse her conduct, we do take it into consideration as a mitigating circumstance determining how long she should be disqualified from the CACFP program. Because this is her first time to be terminated from CACFP and because the record-keeping deficiency did not involve fraud, the submission of false information, or other intentional misconduct, she will be allowed to request reinstatement to CACFP after six (6) months.

DECISION

For the foregoing reasons, the proposed termination of Amanda Burmeister from the Child and Adult Care Food Program is hereby upheld. She shall be allowed to request reenrollment in the program at any time six months or later after the date of this decision.

August 29, 2012
Date



Christie J. Scase, J.D.
Administrative Law Judge

September 4 , 2012
Date

/s/
Jason E. Glass, Director
Iowa Department of Education