

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 174)

<i>In re Termination from CACFP</i>	:	
Marsha Wheeler,	:	
Appellant,	:	DECISION
v.	:	
Mid-Iowa Community Action, Inc.,	:	[Admin. Doc. 4745]
Appellee.	:	

This matter was heard in person on January 30, 2012, before Carol J. Greta, J.D., designated administrative law judge, presiding on behalf of Jason E. Glass, Director of the Iowa Department of Education. The Appellant, Marsha Wheeler, personally participated. The Appellee, Mid-Iowa community Action, Inc. (MICA), was represented by CACFP director Kristine Polich.

Hearing was held pursuant to this agency's administrative rules in 281 Iowa Administrative Code 6. The Iowa Department of Education has jurisdiction over the hearing pursuant to the federal regulation found at 7 C.F.R. 226.6(k). The only issue on appeal is whether Ms. Wheeler failed to fully and permanently correct her serious deficiency of failing to attend an annual training obligation.

FINDINGS OF FACT

Marsha Wheeler runs a child daycare home in Ames, Story County, Iowa. She has participated in the Child and Adult Care Food Program (CACFP) since October of 2009. The CACFP is a federal program that provides reimbursement for meals and snacks provided to children in daycare homes and centers. Daycare homes such as Ms. Wheeler's must be supervised by a sponsoring organization; in this case the sponsor is MICA.

To participate in CACFP in Iowa, the home provider must agree to terms and conditions of program participation. One of the conditions of participation Ms. Wheeler agreed to is that she would annually attend a CACFP-related training approved by MICA. The minimum requirement is one training per federal fiscal year (FFY), October 1 – September 30. This is specified in the annual written agreement between Ms. Wheeler and MICA at Section B, paragraph 15.

In FFY 2011, which ended on September 30, 2011, Ms. Wheeler failed to attend any training for CACFP. As a result, MICA placed her on a corrective action plan. The corrective action plan gave Ms. Wheeler an additional 90 days (until December 29, 2011) in which to attend a training opportunity. MICA included information to Ms. Wheeler regarding a free on-line training opportunity that would have fulfilled the training

requirement. On December 30, 2011, Ms. Wheeler attended and successfully completed the on-line training.

On or about January 4, 2012, MICA provided a written Proposed Termination and Proposed Disqualification to Ms. Wheeler, who filed a timely appeal to the undersigned. At hearing, Ms. Wheeler testified that she was ill with pneumonia during November and December, 2011, which MICA does not dispute. Ms. Wheeler also testified that she did not attend a training opportunity on September 1 in Ames because her hip was bothering her, and that on September 13 she drove to a training opportunity at Fort Dodge, but could not find the correct building by any means, including use of the global positioning system (GPS) on her personal phone.

MICA does not dispute that Ms. Wheeler was ill during November and December, but notes that she was providing child care during those months because Ms. Wheeler submitted electronic claims for reimbursement for meals she served during November and December.

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. A serious deficiency includes the provider’s failure to participate in training. 7 C.F.R. § 226.16(l)(2)(viii). Offering an opportunity to take corrective action is mandated in rule 226.16(l)(3). This procedure ensures that no provider is terminated without being given a second chance.

The regulations governing the CACFP are strict. The rationale for the strictness of the regulations is simple. CACFP is funded by public monies; therefore, a home 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. Ultimately, “[e]ach sponsoring organization shall accept final administration and financial responsibility for food service operations in all child ... day care facilities under its jurisdiction.” 7 C.F.R. § 226.16(c). Each sponsor has a duty to hold its home providers accountable on behalf of the public.

The CACFP procedures were followed correctly by MICA. Ms. Wheeler was given her second chance with the 90 day extension. The purpose of the corrective action plan was to give Ms. Wheeler the opportunity to demonstrate that she would permanently correct this deficiency. Her failure to attend any training opportunities during the 90 day extension shows that she has not permanently corrected the deficiency. She may have had a legitimate reason for not attending a training in November and December, but that does not account for her failure to attend any training during FFY 2011 itself or her failure to attend the on-line training in October before she was ill.

Ms. Wheeler argues that because she has been compliant in other areas of the law governing CACFP, MICA should overlook the fact that she was just one day tardy in

completing the required training. Neither MICA nor this agency can give her another second chance. MICA met its obligation under the federal law; Ms. Wheeler not meet hers. The federal law did not permit this agency to give the appellants relief in two previous cases regarding this issue. See, *Cash v. Southern Iowa Economic Development Association*, 26 D.o.E. App. Dec. 161 (2011) and *Al-Hameed v. Mid-Iowa Community Action, Inc.*, 25 D.o.E. App. Dec. 21 (2007).¹

MICA promotes all training opportunities through monthly newsletters distributed to all CACFP providers through the email addresses by which providers send their claims for reimbursement for meals and snacks served. Ms. Wheeler stated that she did not receive the monthly newsletters. Ms. Wheeler submits her claims for reimbursement via email, so the MICA officials are aware of her address. Regardless, MICA is under no obligation to do more than it has done to make Ms. Wheeler aware of training opportunities. MICA offers seven (7) trainings per FFY. As sponsor, MICA also sends a letter during the last quarter of the fiscal year to providers who have not yet fulfilled the training requirement. Ms. Wheeler acknowledges that she received such a letter dated July 20, 2011 from MICA.

The evidence presented here supports a finding that Ms. Wheeler failed to permanently and completely correct the seriously deficient practices of failure to participate in training.

DECISION

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

1/31/12
Date

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

It is so ordered.

1/31/12
Date

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

¹ In *Cash*, we upheld the termination of a provider from CACFP where the provider attended a make-up training opportunity for FFY 2009, but then again missed all training opportunities during FFY 2010. In *Al-Hameed*, the provider's termination from CACFP was upheld where the provider did not attend any training during the FFY and missed the "make up" training because it was cancelled for lack of sufficient numbers of registrants. The lesson in all cases is not to procrastinate in attending a training opportunity.