

IOWA DEPARTMENT OF EDUCATION

27 D.o.E. App. Dec. 581

In re Termination from Child and Adult Care Food Program (CACFP)

Cheryl Hill,	:	15DOE001
Appellant,	:	
v.	:	DECISION
Polk County Community Family & Youth Services,	:	[Admin. Doc. 5004]
Appellee.	:	

The Appellant, Cheryl Hill ["Ms. Hill" or "the provider"], filed an appeal from a determination that her child care home is seriously deficient for the reasons specified herein. This matter was heard telephonically on March 5, 2015, before Administrative Law Judge Carol J. Greta, designated hearing officer on behalf of Brad A. Buck, Director of the Department of Education.

Ms. Hill, appeared personally and testified on her own behalf. The Appellee, Polk County Community Family & Youth ["the sponsor"], was represented by CACFP specialist Gracy Kirkman, CACFP home care monitor Lorna Morano, and program administrator Joy Ihle. Ms. Kirkman and Ms. Morano testified for Polk County Community Family & Youth.

Polk County Community Family & Youth submitted Exhibits A – S. Exhibits A and B were not admitted as evidence. They are notes from 2010 that include information duplicative of that in Exhibit C. Exhibits C – S were admitted without objection. They are as follows:

- C 10-27-10 notice of serious deficiency sent to Ms. Hill by the sponsor, as well as Ms. Hill's signature on her corrective action plan
- D 01-13-11 written rescission of finding of serious deficiency
- E 5-27-11 corrective action plan developed by the sponsor in reaction to a site visit on same date
- F 5-27-11 letter to Ms. Hill from the sponsor requiring her to use the "same day button" for data entry
- G 9-23-11 corrective action plan developed by the sponsor in reaction to a site visit on same date
- H 9-27-11 proposed termination and disqualification from CACFP
- I 11-91-11 termination and disqualification due to lack of appeal
- J 10-10-12 request from Ms. Hill for assignment of a new monitor and early reinstatement to CACFP

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- K 11-15-13 final version of request for early reinstatement from Ms. Hill
- L 11-18-13 notice to USDA of Ms. Hill's request
- M 12-10-13 notice from State Agency (Iowa Department of Education) to the sponsor that Ms. Hill had been reinstated
- N 12-13-13 notes from preapproval visit and subsequent site visits
- O 01-28-15 emails to and from Ms. Hill and the sponsor
- P 01-28-15 notes from site visit of same date, as well as guidance from State Agency on 01-29-15
- Q 02-03-15 proposed termination and disqualification notice
- R 02-05-15 receipt by Ms. Hill of Exhibit Q
- S 02-16-15 Ms. Hill's appeal letter

FINDINGS OF FACT

Cheryl Hill runs a child daycare home in Des Moines. She began her participation in the Child and Adult Care Food Program (CACFP) in 2002. CACFP is a federal program that provides reimbursement for meals and snacks provided by providers 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 and Health Services (State Agency).

A CACFP provider, such as Ms. Hill, is required to keep contemporaneous detailed, accurate records of the provider's menus, as well as of the attendance and meals/snacks served to each individual child in the care of the provider. 7 CFR § 226.16(d)(4)(i).

The participation of providers in CACFP is supervised by a sponsor, in this case Polk County Community Family & Youth. 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. In addition to the recordkeeping requirement, providers must agree to allow unannounced reviews of their operations. 7 CFR § 226.6(b)(4)(iii). The sponsor must give a daycare home that does not adhere to these requirements the opportunity to take corrective action. 7 CFR § 226.16(l)(3).

Ms. Hill's participation in CACFP has not been a smooth run. Prior to fall of 2010, she was required to take corrective action on five different occasions, all for untimely recordkeeping.

On October 27, 2010, Polk County Community Family & Youth sent a Serious Deficiency Notice to Ms. Hill, citing the failure to keep required meal records for the first week of September, 2010. (Exhibit C) Ms. Hill agreed in writing to correct the deficiency by entering meals and attendance records daily. (*Id.*) One of the tools used to correct this deficiency was to require Ms. Hill to use what is

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known as a "same day entry button" or "same day button." This is an application installed on the provider's computer that requires data entry via use of the button before midnight each day that meals are served to children in the daycare home.

The sponsor rescinded the serious deficiency determination by letter dated January 13, 2011, finding that Ms. Hill "fully and permanently corrected the serious deficiencies [sic] that were cited in the Serious Deficiency Notice." (Exhibit D) However, by a separate letter also dated January 13, 2011, Ms. Kirkman informed Ms. Hill that the "same day button" would be reactivated. (*Id.*)

During a review on May 27, 2011, the sponsor noted that Ms. Hill's daily work was not completed for the period May 3 - 26. Another corrective action plan was written. (Exhibit E) Also on May 27, Ms. Hill was informed that she was being required again to use the same day entry button. (Exhibit F)

Despite being required to use the same day button, Ms. Hill's daily work was not entered for the period September 1 - 22, 2011; again, a corrective action plan was written. (Exhibit G) However, the sponsor did not find Ms. Hill's proposed actions to be sufficient to fully and permanently correct the serious deficiency of failure to keep required CACFP records. Thus, on September 27, 2011, the sponsor gave written notice to Ms. Hill that it proposed to terminate her participation in CACFP and disqualify her from future CACFP participation. (Exhibit H) Because Ms. Hill did not appeal from the proposed termination and disqualification, she was terminated as a CACFP provider and her name was placed on the National Disqualification List (NDL). (Exhibit I)

During 2013, Ms. Hill asked to be removed from the NDL and reinstated to the CACFP. On November 15, 2013, Ms. Hill wrote that she had done the following to remain in compliance with CACFP recordkeeping requirements:

- Incorporated a daily reminder on her cell phone to enter the data.
- Created several menu templates.
- Purchased an annual online service - Minute Menu Pro - to document meal participation of children.
- If internet is not functioning, do her work on her tablet or go to a local library to do the work.
- Had her husband, Eric Hill, trained on use of Minute Menu Pro.

(Exhibit K)

In reliance on the above steps, the USDA removed Ms. Hill's name from the NDL, and the State Agency reinstated her as a CACFP participant, subject to a pre-approval visit by the sponsor and date Ms. Hill stated to maintain required records. (Exhibit M) The pre-approval visit took place on December 13, 2013, and she was reinstated as a CACFP provider. (Exhibit N)

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The early morning of January 28, 2015, Ms. Hill and Ms. Kirkman had an email exchange in which Ms. Hill asked for additional time to input her January records, stating, "I had class last night so could not work on it." Ms. Kirkman replied, "Make sure that you have everything on the daily meal worksheets otherwise meals get removed and you could get kicked off." (Exhibit O) Later that day, as they had already planned on, Ms. Kirkman and Ms. Morano stopped at Ms. Hill's day care. The January records had not been done. (Exhibit P) Ms. Hill attributed the lack of contemporaneous recordkeeping to illness, but acknowledged that she did not have Eric Hill input the data. (Hill Testimony)

After conferring with Suzanne Secor Parker of the State Agency, the sponsor sent notice to Ms. Hill of a proposed termination and disqualification, which stated in pertinent part as follows:

This letter concerns the determination in the December 27, 2010 Serious Deficient Notice that you are seriously deficient in your operation of the ... CACFP.

We received the documentation detailing the actions taken to fully and permanently correct these serious deficiencies on November 15, 2013 when you asked to be reinstated on our program. We conducted an unannounced visit on January 28, 2015 to verify the adequacy of the corrective actions.

Based on our review of the documentation, we have determined that you have not fully and permanently corrected the serious deficiencies that were cited in the Serious Deficiency Notice.

As a result, we propose to:

- terminate your agreement to participate in the CACFP for cause effective March 1, 2015, and
- disqualify you from future CACFP participation effective March 1, 2015.

(Exhibit Q)

At the hearing, Ms. Hill stated that she provides an important service to the community because she is one of the few providers who keep very extended hours. She pledged that she had "turned over a new leaf," pointing out that she had nearly two years¹ of keeping records "perfectly," and emphasizing that her January lapse was due to a prolonged illness. (Hill Testimony) During any illness, her day care remained opened and her husband, who was trained to do so, did not make any entries in the Minute Menu Pro system.

¹ Ms. Hill was reinstated in December 2013. She demonstrated only one year of appropriate recordkeeping.

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. Hill successfully corrected her first serious deficiency, allowing the sponsor to rescind its determination of serious deficiency under 7 CFR § 226.16(l)(3)(ii) (2009). In July 2011, the pertinent federal regulation was amended to *require* a sponsor to move directly to termination without giving a provider another opportunity for corrective action. New section 226.16(l)(3)(ii) 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.)

“Being on the NDL means that the [day care home] failed to take corrective action at least once and has already been given due process.” CACFP Handbook dated February 2015, page 77. See http://www.fns.usda.gov/sites/default/files/CACFP_Serious_Deficiency_Handbook.pdf.

Polk County Community Family & Youth was correct to immediately move to terminate Ms. Hill’s agreement and disqualify her from the CACFP program as of March 1, 2015. Ms. Hill successfully corrected her first serious deficiency, allowing the sponsor to reinstate her to the CACFP. However, the evidence presented here supports a finding that Ms. Hill has not fully or permanently 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. Hill had repeatedly 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. The sponsor has shown that Ms. Hill has not fully and permanently 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

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unpleasant at times that duty may be, to hold its providers accountable on behalf of the public.

DECISION

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

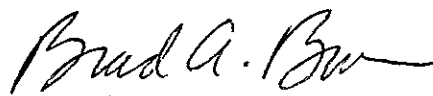
Entered this 11th day of March, 2015.



Carol J. Greta
Administrative Law Judge

It is so ordered.

3/11/15
Date



Brad A. Buck, Director
Iowa Department of Education

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