

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 104)

<i>In re Termination from CACFP</i>	:	
Rebecca Bailey,	:	
Appellant,	:	DECISION
v.	:	
Community Action of Eastern Iowa,	:	[Admin. Doc. 4731]
Appellee.	:	

This matter was heard telephonically on July 11, 2011, 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, Rebecca Bailey, personally participated. The Appellee, Community Action of Eastern Iowa, was represented by CACFP director Andrew Brown.

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).

FINDINGS OF FACT

Rebecca Bailey runs a child daycare home in Davenport. She has 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, for approximately nine years. In the parlance of CACFP, Ms. Bailey 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 ["Community Action"]. 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. This agreement provides for announced and unannounced visits to the provider's daycare site by the sponsor. When the sponsor notes the absence of claimed children during a visit, the sponsor is expected to contact parents/guardians to ensure that reimbursement is not sent to the provider for meals/snacks not actually served to a child.

Such a “parent audit” was triggered here. Community Action sent letters to the families whose children were listed in Ms. Bailey’s records but who were noted as absent during the sponsor visits. The responses from some of the parents led Community Action to send to Ms. Bailey a two written Notices of Serious Deficient Determination for filing false claims.

When a Notice of Seriously Deficient Determination is filed, it is accompanied by a Corrective Action Plan, informing a provider in detail of steps that must be taken to permanently and completely correct the allegation of submission of false claims. Ms. Bailey submitted evidence from some of the parents/guardians of children in her care to adequately respond to certain of the allegations, but not all of the allegations. Thus, Community Action sent to Ms. Bailey a notice of its intent to terminate her participation in CACFP.

The issues remaining are as follows:

1. *Aissa S.* Aissa’s father told Mr. Brown that his daughter has not been in Ms. Bailey’s care since October 2010. Ms. Bailey testified that Aissa was in her care until May 7, 2011, when she informed Aissa’s father that she would no longer care for Aissa. On behalf of the sponsor, Mr. Brown found the father to be a credible person. Ms. Bailey testified that Aissa’s father was angry with her for dismissing his daughter from her daycare.

The records submitted regarding Aissa date back to October 2010, and show Aissa to be claimed by Ms. Bailey every day from October 1, 2010, through May 7, 2011, with the exception of Sundays, Thanksgiving Day, Christmas Day, New Years Day, *and Tuesday, April 12, 2011, the day of the sponsor’s visit.* Ms. Bailey testified that the reason for Aissa’s absence on this weekday – the only non-holiday weekend on which Aissa was absent – was that Aissa’s father “sometimes” took a break from his over-the-road trucker job to pull Aissa from daycare to be with him. This agency does not find Ms. Bailey’s explanation to be credible. It simply defies logic that the only non-holiday weekday Aissa would be absent was the date of the sponsor’s visit. It is more likely that Ms. Bailey falsely claimed Aissa to be present and served meals or snacks more often than was the case.

2. *Kelsey M.* Initially, it appeared that Ms. Bailey had requested reimbursement for Kelsey on a number of Mondays during which Kelsey was not under Ms. Bailey’s care. The parties agree that the false claim for Kelsey is limited to one Monday, which Ms. Bailey attributes to her own “human error.”
3. *Jayden U. and Cadence W.* Both of these children were claimed by Ms. Bailey has having been fed breakfast and morning snack by her on May 20, when in fact Ms. Bailey admits they were not in her care until 2:30 p.m. on that day. Ms. Bailey owned up to this error, stating “sometimes [in filling out the required records] you make an error.”

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 C.F.R. § 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 making of false claims. 7 C.F.R. § 226.16(l)(2)(ii).

This Agency has noted in previous CACFP decisions that the regulations governing that program 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 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.

The evidence presented here as to Kelsey, Jayden, and Cadence supports a finding that Ms. Bailey submitted false claims as to those children. The evidence as to Aissa supports a finding that the submission of false claims is systemic and was not a one-time human error. Community Action has shown that Ms. Bailey has not permanently and completely corrected the seriously deficient practice of submission of false claims.

Ms. Bailey has the opportunity to request reinstatement to CACFP after two years. 7 CFR 226.6(c)(7)(v, vi). We encourage her to maintain records during the time she is disqualified from the Program to demonstrate that her recordkeeping now reflects the thoughtfulness and accuracy required for CACFP participation.

DECISION

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

07/12/11
Date

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

It is so ordered.

07/12/11
Date

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