

**IOWA DEPARTMENT OF EDUCATION
25 D.o.E. App. Dec. 269**

In re Termination from CACFP

Misty Rhodes,	:	
Appellant,	:	
	:	DECISION
v.	:	
	:	
Polk County Community, Family and Youth Services,	:	[Admin. Doc. 4714]
	:	
Appellee.	:	

This matter was heard telephonically on May 6, 2010, before Carol J. Greta, J.D., designated administrative law judge, presiding on behalf of Kevin Fangman, Acting Director of the Iowa Department of Education.

The Appellant, Misty Rhodes, did not appear, nor did anyone for her. The record shows that she was given notice of the time, date, and place of the hearing. She was provided with written instructions on how to call in to participate in the hearing telephonically, and was provided a phone number to call if she had any questions or problems. She has made no contact with anyone from this agency.

The Appellee, Polk County Community, Family and Youth Services, was represented by employees Gracy Kirkman and Treva Olson.

Also present were Rod Bakken, Suzanne Secor-Parker, and Robin Searles of the Iowa Department of Education, which is the designated State Agency (SA) to administer the program at issue herein. Ms. Secor-Parker testified in this matter; Mr. Bakken and Ms. Searles monitoring the hearing, but did not otherwise participate.

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

Pursuant to rule 281—IAC 6.19, the undersigned presiding officer proceeded with the hearing and is rendering a decision in the absence of the Appellant.

Misty Rhodes runs a child daycare home in Des Moines, Polk County. She participates 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. 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. Rhodes's must be supervised by a sponsoring organization, in this case Polk County Community, Family and Youth Services ["Polk County CFYS"]. To participate in CACFP in Iowa, the home 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 her agreement with Polk County CFYS, Ms. Rhodes agreed as follows:

- That she would maintain accurate daily records of attendance and meals served, and submit the same to her sponsor. [§B, ¶¶ 3 and 5]
- That she will notify her sponsor in advance when planning to be out of the home during meal service time. [§B, ¶18]
- That she will complete corrective action plan when required. [§B, ¶19]
- That the sponsor has the right to make unannounced visits to her home. [§B, ¶10]

On February 25, 2010 (a Thursday), Treva Olson from Polk County CFYS and Suzanne Secor-Parker from the SA made an unannounced visit to Ms. Rhodes daycare home. The time was approximately 1:30 p.m. Both Ms. Olson and Ms. Secor-Parker heard children's voices and the sound of scurrying feet from within Ms. Rhodes' home and saw a child's nose "peek through the window blinds." The women knocked on the door and rang the doorbell. After no one answered the door, Ms. Olson tried to call Ms. Rhodes to let her know she was at the door, no one answered the phone. The vehicle known by Ms. Olson to be used by Ms. Rhodes was in the driveway, and the garage door was open. The women left after having waited 12 minutes.

Ms. Olson and Ms. Secor-Parker returned to Ms. Rhodes' home at 3:21 p.m. on February 25, and again heard children's voices from within the house. No one answered their knocks on the door or the ringing of the doorbell. Concerned that Ms. Rhodes was incapacitated and that the children were at risk, Ms. Olson called the Department of Human Services, the agency with whom Ms. Rhodes is registered as a daycare provider for children.¹ After a few more minutes, Ms. Olson did reach Ms. Rhodes on the latter's cell phone, and was informed by Ms. Rhodes that she was at "the hospital" with one of her children.

On or about March 4, 2010, Polk County CFYS provided a written Notice of Seriously Deficient Practice to Ms. Rhodes. (Exhibit E.) The seriously deficient practice in the Notice to her was Ms. Rhodes's alleged failure to keep required CACFP records and conduct that threatens the health or safety of children in her care. The Notice also informed Ms. Rhodes of the Corrective Action Plan required to demonstrate full and permanent compliance with CACFP rules. Her Corrective Action Plan asked Ms. Rhodes to submit a timeline of events of February 25, documentation proving arrival and departure time from the hospital she claims to have been at with her daughter, "a note" as to the whereabouts of the children in her care during the time she claims to have been at a hospital, and the documents from which she entered her claims for February 19 – 25.

¹ DHS did not investigate until at least two weeks later.

The documents provided to Polk County CFYS by Ms. Rhodes present a stark contrast to the testimony of Ms. Olson and Ms. Secor-Parker. (Exhibits F,L.) It is the contention of Ms. Rhodes as follows:

- That her three year old daughter tripped and fell from her van when Ms. Rhodes arrived back home from taking her older daughter to school;
- That she and the father of her injured child loaded all the children (her child and three others) in her van and were gone from approximately 11:45 to 4:45;²
- That she and her injured child were at an urgent care clinic on the South side of Des Moines from noon to 4:00; and
- That while she and her injured child were at the urgent care clinic, the father of her child had the other children at a nearby McDonald's Restaurant.

Ms. Rhodes provided Polk County CFYS with a document on Mercy Clinics, Inc. letterhead. (Exhibit K.) The note purported to state that the Rhodes child was seen on February 25 at the Mercy South Medical Clinic. Because the document raised suspicions with Ms. Kirkman about its authenticity, Ms. Kirkman asked the clinic manager of the Mercy South Medical Clinic if she could verify the note produced by Ms. Rhodes. **The clinic manager sent a letter to Polk county CFYS stating that the note "was not written by a Mercy South provider or staff member."** (Exhibit M.)

Ms. Rhodes also represented that the father of her child was approved by DHS to assist her with her childcare. This is refuted by DHS. (Exhibit H.)

As explained below, this agency concludes that Ms. Rhodes failed to fully and permanently correct the serious deficiency regarding conduct that threatens the health and safety of the children in her care.

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.

The regulations governing the CACFP 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 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,

² She explains the report of Ms. Olson and Ms. Secor-Parker of hearing children's voices from her home by suggesting that because she lives across the street from a school, the women heard those children and thought there were in Ms. Rhodes' home. The school in question is Hoover High School. Ms. Olson and Ms. Secor-Parker testified that they are capable of distinguishing between the voices of high school students and preschool age children.

"[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 evidence presented here amply supports a finding that Ms. Rhodes failed to permanently and completely correct the seriously deficient practices of conduct that threatens the health and safety of children in the provider's care. This agency finds Ms. Rhodes' version of the events of February 25 to be completely lacking in credibility. If she were at Mercy South for four hours on the afternoon of February 25, the children left in her care were either at her home unsupervised or were left with a person *not* approved by DHS. While the whereabouts of Ms. Rhodes on the afternoon of February 25 are still unknown, we conclude that children were in her home that afternoon.

Ms. Rhodes failed to demonstrate that the health and safety of the children in her care was not at risk. In addition, rather than correct any deficiencies, she provided false information to Polk County CFYS regarding the events of February 25, including required information about the arrival/departure time of each child and the meal/snack service to each child on that day.

DECISION

For the foregoing reasons, the proposed termination of Misty Rhodes from the Child and Adult Care Food Program is hereby **affirmed**.


5.7.10
Date



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

It is so ordered.

5.7.10
Date



Kevin Fangman, Acting Director
Iowa Department of Education