

**IOWA DEPARTMENT  
OF EDUCATION**  
(Cite as 23 D.o.E. App. Dec. 252)

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| <i>In re Termination from CACFP</i>                         | : |                   |
| Karrie Feekin, d/b/a Karrie's<br>Kinder Kare,<br>Appellant, | : |                   |
| vs.   | : | DECISION          |
| West Central Development Corp.,                             | : |                   |
| Appellee.   | : | [Admin. Doc 4617] |

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This matter was heard in person on August 26, 2005, before Carol J. Greta, J.D., designated administrative law judge, presiding on behalf of Judy A. Jeffrey, Director of the Iowa Department of Education. The Appellant, Karrie Feekin, was personally present and was represented by legal counsel, Stephen Rubes. The Appellee, West Central Development Corporation, was represented by its Executive Director Joel Dirks, and by employees Nancy Pash and Eula Green. 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).

**I.  
FINDINGS OF FACT**

Karrie Feekin runs a child daycare home – Karrie's Kinder Kare – out of her residence in rural Pottawattamie County. She stated that for the past eight years 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 Food and Nutrition. The CACFP is a federal program that provides reimbursement for meals and snacks provided to children (and adults, though such is not the case here) in daycare homes and centers.

Daycare homes such as Kinder Kare must be supervised by a sponsoring organization, in this case the West Central Development Corporation ("WCDC"). To participate in CACFP in Iowa, the home provider must be licensed by the Iowa Department of Human Services. Ms. Feekin's daycare is appropriately licensed. In addition, a CACFP daycare home provider must sign an annual agreement that provides for the terms and conditions of program participation. The present agreement between

Ms. Feekin and WCDC was signed by Ms. Feekin on August 29, 2004. Some of the applicable provisions in the agreement are as follows:

- That the sponsor must conduct at least two unannounced visits to the home per federal fiscal year (October 1 – September 30), and that at least one of the unannounced visits must include a review of an observed meal service.
- That the home provider shall record attendance and meal participation information daily.
- That the home provider shall have all records immediately accessible for review by the sponsor.
- That the home provider shall give the sponsor prior notification of plans to be out of the home during the time of meal service.

Ms. Feekin provides child care seven days a week. At the time in question (records were provided for April 1 – 15, 2005), she cared for 11 children in addition to her own two school-age children during the week. She also cared for eight children in addition to her own on weekends. This is a total of 19 children for whom she provided child care, exclusive of her own children. The alleged discrepancies that gave rise to the “Notice of Seriously Deficient Practice” issued by WCDC to Ms. Feekin involved seven of the 19 children.

Payton and Paige are the children of Shelly S. On her enrollment form for the present federal fiscal year, Shelly S. indicated that she needed Ms. Feekin to provide regular care for Payton and Paige on the weekends only. She signed a notarized statement to this effect. The claims for meal reimbursement submitted by Ms. Feekin show that she provided meals to these two children only on the weekends. Only a routine parent survey filled out by Shelly S. contradicted the foregoing information. The survey indicated that her children attend Ms. Feekin’s daycare on weekdays, not on weekends. No one from WCDC called Shelly S. to clear up this discrepancy.

Caleb and Emily are the children of Jamie B. The enrollment form for these children states that Ms. Feekin would be asked to provide care for Caleb and Emily in the afternoons and evenings, Monday through Thursday. The claims for meal reimbursement submitted by Ms. Feekin for Caleb and Emily show that she provided meals to these two children Monday through Friday in the afternoons and evenings. However, the parent survey filled out by Jamie B., who is a registered nurse who uses another child care provider in addition to Ms. Feekin, indicated that her children attend Ms. Feekin’s daycare on weekday mornings and early afternoons and not at any time on Wednesdays. Jamie B. signed a notarized statement consistent with the information on the submitted claims for reimbursement (afternoons and evenings, Monday through Friday). She was not called to testify in this hearing.

Dylan and Andy are the children of Susan R. A parent survey was not returned by their mother. Their enrollment form information established the expectation that Ms. Feekin would provide care for Dylan and Andy on the weekend evenings only, and this is consistent with the claims filed by Ms. Feekin. The affidavit submitted by Susan R. states that Dylan and Andy are in Ms. Feekin's care on the weekend evenings. Susan R. was contacted by Nancy Pash of WCDC on May 31, 2005 when she did not return the parent survey. She told Ms. Pash that Ms. Feekin provided care for her children on Monday through Friday evenings. This information is contrary to all written information. No one from WCDC contacted her after May 31; she was not called to testify herein.

Finally, the seventh child is Jake L. The identity of his parent is not known, but claim forms show that he generally was in the care of Ms. Feekin from mid-afternoon into the evening, Monday through Friday. No other information about Jake is known. His only relevance herein pertains to his absence from Kinder Kare on July 22, 2005.

The following events – as well as the discrepancies noted above in the attendance information between the parent survey information and the enrollment forms for the children of Sally S., Jamie B., and Susan R. – are critical herein:

- On June 12, 2004, WCDC personnel attempted an unannounced lunch review at Kinder Kare. Ms. Feekin and her family were just ending a family vacation that day, and daycare was not in session. She had not given prior notice to WCDC that she would be absent June 1 – 13.
- On December 16, 2004, WCDC personnel arrived unannounced during the lunch hour. Rather than prepare a claimed meal, Ms. Feekin was serving the children lunch from a local fast food restaurant. (This is allowable under the CACFP rules as long as no reimbursement claim is made for the meal.) She did not submit a claim for the noon meal of December 16. WCDC was unable to observe an allowable meal service at that time.
- On April 20, 2005, personnel from WCDC conducted an unannounced supper visit and discovered that the records for the previous day were not complete. The five children present when WCDC personnel arrived at 5:00 p.m. all left by 5:20 p.m., so there was no evening meal service to be observed. Ms. Feekin had provided no prior notice to WCDC that she would not have children in her care that evening.

West Central Development Corporation provided a "Notice of Seriously Deficient Practice" to Ms. Feekin on or about June 7, 2005. The Notice listed two seriously deficient practices, (1) failure to daily record required records and (2) claiming meals not served to participants. The "Corrective Action Plans" attached to the Notice addressed only the second allegation, that meals had been claimed that had not actually been served.

to participating children. The two required corrective actions addressing this issue were as follows:

1. "Upon receipt of this notice the provider will contact the CACFP Representative not less than 2 hours prior to the approved scheduled meal time when the provider will not have evening or weekend care OR when the provider will not be preparing a meal (serve take-out, etc.)."
2. "Submit [within seven days] notarized statements from the parents of Dylan and Andy [R.] and Payton and Paige [S.] that states their children attend your daycare on Saturday and Sunday only as indicated on the daily meal count records. The statements must include the dates, day of the week and arrival/departure times the children were present at your daycare for the month of April 2005. Submit a notarized statement from the parents of Caleb and Emily [B.] that state Caleb and Emily attend your daycare Monday through Friday for evening care. The statement must include the dates, day of the week and arrival/departure times the children were present at your daycare for the month of April 2005."

After the Notice and Corrective Action Plans were given to Ms. Feekin, she timely submitted affidavits from Shelly S., Jamie B., and Susan R. to WCDC. The affidavits were attested to by the notary public in such a manner as to cause WCDC personnel to question whether the parents had actually signed the statements. Nancy Pash of WCDC called Jamie B., who told her that she did sign the statement, although not in the presence of the notary public, and that she had not read the statement. Ms. Pash read the statement to Jamie B. over the telephone; the parent then indicated to Ms. Pash that the information on the statement was false. She also stated to Ms. Pash that she would read any further statements that Ms. Feekin asked her to sign. An affidavit dated August 22, 2005, bears the signature of Jamie B. It was signed after Ms. Pash and Jamie B. spoke with each other. The statement bears information identical to the information that Jamie B. told Ms. Pash was false.

On July 22, 2005, WCDC arrived at Kinder Kare for an unannounced supper review. Two children were present, but had already been fed supper by their parent before arriving at Kinder Kare. The child who was scheduled to be present, Jake L., was not there. Ms. Feekin had not heard from Jake's parent and, at 5:05 p.m., was not preparing supper for Jake.

By document dated August 2, 2005, WCDC gave Ms. Feekin Notice of Intent to Terminate her participation in CACFP for her failure to permanently and completely

correct the seriously deficient practices of which she was provided notice earlier. Her timely appeal to this agency followed.

## II. 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 submission of false claims for reimbursement and failure to daily record required records. 7 C.F.R. 226.16(1)(2). The regulations also mandate the procedure to be used if the sponsor determines that a home provider has committed one or more serious deficiencies. Offering an opportunity to take corrective action is mandated in rule 226.16(1)(3).

The first deficiency cited by the sponsor was failure to daily record required records. Because no Corrective Action Plan was ever offered to Ms. Feekin to address this allegation, she cannot be terminated from the Program based on this deficiency.<sup>1</sup>

The second deficiency cited by the sponsor was claiming meals not served to participants (submission of false claims for reimbursement). Two Corrective Action Plans were offered to Ms. Feekin, as set forth verbatim earlier herein. The first corrective action quite reasonably required statements from the parents of those children for whom meal service was in question. The plan was unreasonable insofar as it required notary publics to attest to the statements.<sup>2</sup> This does not negate the intent of the Corrective Action Plan, which was to seek some type of verification from the parents regarding when their children were served meals by Ms. Feekin. However, WCDC's attempts to ascertain the truth were incomplete and inconclusive.

WCDC asserts that Ms. Feekin was claiming *fewer* meals for the children of Shelly S. and Susan R. (claims were made for meals for two days per week whereas WCDC believes meals were actually provided five days per week). Jamie B.'s statement

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<sup>1</sup> When viewed in a light most favorable to the sponsoring organization, the record herein shows that Ms. Feekin failed on one occasion only – April 19, 2005 – to have the attendance and meal records of that day executed by the following day. This falls short of the type of systemic failure for which an allegation of a seriously deficient practice should be used.

<sup>2</sup> Assuming for the sake of argument that WCDC could require some type of sworn statement by the parents, Iowa Code section 622.1 provides for "certification" in lieu of witnessing by a notary public using substantially the following form:

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct. (Date) (Signature)

to Ms. Pash in May was that Ms. Feekin did not provide care to her children on Wednesdays, but the statement she signed for Ms. Feekin disputes this information. A discrepancy of one day per week can be sufficient legally to prove an allegation of submission of false claims. In this case, however, there is insufficient proof that meals were not served to the children of Jamie B. as per her affidavit.

A false claim allegation could also be founded in a case of a provider claiming fewer, rather than more, actual meals served (as in the case of the children of Shelly S. and Susan R.). But no proof was presented by WCDC to refute the affidavits signed by those two parents. Ms. Feekin complied with the Corrective Action Plan in that she submitted statements from Shelly S. and Susan R. that state that their children attend her daycare "on Saturday and Sunday only as indicated on the daily meal count records," including "the dates, day of the week and arrival/departure times" of the children for the month of April 2005. (Second Corrective Action Plan language.) WCDC has not sustained its burden of showing that the parents' written statements were not true.

The second Corrective Action Plan required of Ms. Feekin is not supported by the regulations that govern the Child and Adult Care Food Program. The second plan required her to contact WCDC personnel at least two hours in advance of a meal service if she would not be preparing that particular meal. A sponsor has authority under 7 C.F.R. 226.18(b)(14) to require a home provider to give advance notice when the provider is "planning to be out of their home during the meal service period." [Emphasis added.] If Ms. Feekin had planned to serve fast food or some other non-creditable meal that evening, or if she planned to closed her daycare that evening, certainly she could reasonably be expected to give prior notice to WCDC. Home providers have no control over "no shows," such as Jake L.'s status on the late afternoon of July 22. The law recognizes this reality, and provides no authority for requiring prior notice that a meal will not be prepared.

### III. DECISION

For the foregoing reasons, the proposed termination of Ms. Feekin from the Child and Adult Care Food Program is hereby **dismissed**. Ms. Feekin may continue with full participation in the CACFP.

9-7-05

Date

It is so ordered.

9.7.05

Date



Carol J. Greta, J.D.

Administrative Law Judge



Judy A. Jeffrey, Director  
Iowa Department of Education