

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 82)**

In re Termination from CACFP

Bettie Robinson and Shelly Robinson, Appellants,	:	FINAL
	:	DECISION
vs.	:	
	:	[Admin. Doc. 4596]
West Central Development Corporation, Appellee.	:	

This matter was heard on December 1, 2004, in the State Board Room of the Grimes State Office Building in Des Moines, Iowa, before Carol J. Greta, J.D., designated administrative law judge, presiding on behalf of Judy A. Jeffrey, Director of the Iowa Department of Education. Appellant Shelly Robinson took part in the hearing telephonically on behalf of herself and on behalf of Bettie Robinson. The Appellee, West Central Development Corporation [“West Central”], was represented in person by two employees, Nancy Pash and Eula Green. Neither party was represented by legal counsel.

Present and available to this agency or to either party as expert witnesses were the following persons from the Department of Education’s Bureau of Nutrition Programs and School Transportation: Rod Bakken (who did provide testimony herein), Suzanne Secor Parker, and Robin Searles.

The Iowa Department of Education has jurisdiction over the hearing pursuant to the federal regulation found at 7 C.F.R. 226.6(k). Hearing was held pursuant to this agency’s administrative rules in 281—Iowa Administrative Code chapter 6. The issue presented is whether the Appellants sought reimbursement for meals that they did not actually serve.

**I.
FINDINGS OF FACT**

Bettie Robinson is the mother of Shelly Robinson. The women are partners who run a child care home in Council Bluffs, Iowa. They are participants in the Child and Adult Care Food Program (CACFP) administered in Iowa 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 child-

care homes and centers. Childcare homes must be supervised by a sponsoring organization. The sponsor in this case is the Appellee, West Central Development Corporation [“West Central”].

A CACFP childcare home provider must sign an agreement that provides for most of the terms and conditions of program participation. The agreement between the Appellants and West Central, effective through September 30, 2004, provides in part as follows:

- The sponsor verifies a child’s enrollment/participation in CACFP.
- The sponsor pays CACFP reimbursement to each care provider for up to three meals and three supplements, up to seven days a week, for meals actually served by the provider.
- The home provider records attendance and meal participation daily. Daily attendance is kept by child’s name, date and arrival-departure times. Meal participation is recorded by date, meal type, and child’s name.
- The provider has a current Certificate of Registration from the Iowa Department of Human Services [“DHS”], the licensing agency for childcare providers.

The Certificate of Registration from DHS for this home is issued to both Appellants as co-licensees. They are licensed by DHS to run a “Child Development Home”¹ to care for a maximum number of 12 children at any one time, plus two school-age children before or after school, plus two part-time children. Although Shelly Robinson testified that she is responsible solely for the preschool program of the home provided by she and her mother, she admits that she was the record keeper for the home.

At issue is whether the Robinsons unlawfully submitted claims for reimbursement for meals and snacks they did not serve. West Central submitted documentation regarding claims made regarding eight children. It is necessary for purposes of this hearing that we discuss claims regarding just two of the children, Tyler A. and Hannah A. (non-siblings).

Specifically, the reimbursement claim for Tyler A. shows that he was served an afternoon snack on August 25, 26, 27, 30, and 31. The parties agree that Tyler A. was in public school half-day kindergarten on those dates, and was not served any of the claimed snacks. Hannah A. is a child in all-day kindergarten. The Robinsons’ paperwork showed that Hannah A. was in their care all day for the 11-week days from September 16 to September 30, and that lunch was served to her on those days. Again, the parties agree that this was false. Hannah was present the entire day, and was not served lunch on any of those days.

¹ The nomenclature is immaterial. A Child Development Home is merely DHS’s designation of a child care facility that provides care to six or more children at any one time. Iowa Code Chapter 237A.

On or about October 28, 2004, West Central notified both Appellants of its intention to terminate their CACFP participation for claiming meals not served to participating children. The Robinsons appeal.

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 require that childcare homes operate under the auspices of a sponsoring organization. 7 C.F.R. 226.18(b). Congress specifically authorized the sponsors to determine whether childcare homes should be terminated for cause and to act accordingly. 7 C.F.R. 226.16(l)(1). Thus, because the sponsor has statutory authorization to terminate childcare homes for cause, we review for abuse of discretion. Iowa Code section 17A.19(11)(c); *ABC Disposal Systems, Inc. v. Iowa Department of Natural Resources*, 681 N.W.2d 569 (Iowa 2004).

The regulations at 7 C.F.R. 226.6 enumerate reasons why a childcare home may be terminated from CACFP. Being cited as “seriously deficient” is one cause for termination. “Submission of false claims for” [meal] reimbursement is a “serious deficiency,” and a reason for termination from CACFP. 7 C.F.R. 226.16(l)(2)(ii).

Ms. Robinson admitted that she submitted false claims as to Tyler A. and Hannah A. However, she raised three arguments for consideration: (1) that she had no intent to defraud the government; (2) that West Central did not offer corrective action to the home; and (3) that she did not operate the child care home (for which meals/snacks were served), but just the preschool. For the following reasons, none of her arguments shall prevent the termination herein.

Absence of intent to commit fraud

Shelly Robinson argues that she merely made a mistake in claiming that snacks were served to Tyler A. and lunch to Hannah A. at times and dates when they were not in the childcare home. She cites her inexperience in doing the required paperwork, inasmuch as she inherited the task from someone else.

The CACFP regulations do not make “intent” a required element in order for false claims to be grounds for termination from the program. We note, however, that Ms. Robinson’s conduct goes beyond an excusable mistake. While she may have been new to completing the records, she has been a licensee of DHS and a participant of CACFP for at least one full year. As one who meets the definition of a “principal” as defined in the federal CACFP regulations (7 C.F.R. 226.2), she is deemed to know the requirements imposed by the CACF program.

In addition, the reimbursement claims forms are not complicated or confusing. They are very straightforward. The record keeper records the date, the name and age of each child present, and checks off (in provided boxes) which meals and snacks were served to the child on that date. Accordingly, repeating the same “mistake” 11 times over in the case of Hannah A. bespeaks gross carelessness at best and a callous disregard for the public’s money at worst.

Corrective action

Technically, Ms. Robinson is correct that West Central should have provided her mother and her with a time period for “corrective action.” However, corrective action does *not* include an opportunity to go back and correct false information. The U.S. Department of Agriculture’s training materials² on this issue make the following points:

- The types of corrective action for false claims are limited to the following:
 - Sponsor has made an administrative error,
 - Sponsor has confused two providers with similar or identical names, or
 - Information submitted by the provider was not false.
- The period of time permitted for corrective action should be no longer than a “few days or a week.”
- A provider’s promise not to submit false information again does NOT constitute adequate corrective action.

Accordingly, while it would have been better if – prior to sending out its notice of Notice of Intent to Terminate for Cause – West Central had given the Robinsons no more than one week to demonstrate that the submitted claims were not false or that West Central had erred, Ms. Robinson admitted that the claims were false. Corrective action does not include allowing a childcare provider to correct false claims. Therefore, West Central’s failure was a harmless error in this case.

In the future, all sponsors are directed to give providers an opportunity for corrective action. The only exception to this is when the deficiency relates to an imminent threat to the health or safety to children. Regarding a deficiency for submission of a false claim, the provider must be given a limited amount of time (no more than one week) in which to show that the sponsor made an error or that the claim was not, in fact, false. *Citing error and promising not to err again does not constitute corrective action.*

Responsibility of S. Robinson

Finally, Shelly Robinson asks that she personally not be disqualified from participation in the CACFP. The federal law requires that, upon termination of a childcare home from the CACFP, the home, all responsible principals, and all responsible

² From materials dated April 11, 2003, entitled “CACFP Serious Deficiency Process for Providers.”

individuals be disqualified from participation in the program. The names of the home and all identified persons are placed on a “national disqualified list,” and remain there until the Food and Nutrition Service of the federal Department of Agriculture (in consultation with the appropriate State agency) determines that the serious deficiency has been corrected (not applicable in this case) or until seven years have passed. 7 C.F.R. 226.6(c)(7)(v).

In this case, Shelly Robinson is both a responsible principal (being a co-licensee of the home) and a responsible individual (the record keeper). She cannot escape the statutory consequences of her actions.

While this result may seem harsh to the Robinsons, the rationale for the strictness of the regulations is simple. CACFP is funded by public monies; that is, by taxpayers. A home provider is required to be fiscally accountable to the public for the funds s/he receives through the program. When such accountability is lacking, the public trust is gone, and the sponsor must react accordingly.

III. DECISION

West Central determined that Bettie Robinson and Shelly Robinson were not adequate stewards of the public’s funds. For this and the specific foregoing reasons, the termination of Bettie Robinson and Shelly Robinson from CACFP is hereby **affirmed**.

Date

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

It is so ordered.

Date

Judy A. Jeffrey, Director
Iowa Department of Education