

IOWA DEPARTMENT OF EDUCATION

28 D.o.E. App. Dec. 151

<i>In re: Termination from CACFP</i>)	
)	
GEOVANA LUSH and)	DE Admin Doc. 5073
JEFFREY LUSH,)	DIA No. 18DOE0001
)	
Appellants,)	
)	
v.)	
)	
COMMUNITY, FAMILY &)	
YOUTH SERVICES,)	
)	DECISION
Appellee.)	

Appellants Geovana Lush and Jeffrey Lush filed an appeal from a determination that their day care home is seriously deficient and a proposed termination of their agreement to participate in the Child and Adult Care Food Program (CACFP) and proposed disqualification from future CACFP participation. A telephone hearing in this matter was held on September 19, 2017 before Administrative Law Judge Laura Lockard, designated hearing officer for Ryan M. Wise, Director of the Iowa Department of Education. Appellant Jeffrey Lush appeared and presented testimony. Appellee Community, Family & Youth Services ("CFYS" or "the sponsoring organization") was represented by program specialist Gracy Kirkman, who presented testimony. Joy Ihle of CFYS also testified. CFYS submitted a summary plus Exhibits A through G, which were admitted as evidence.

FINDINGS OF FACT

Geovana Lush and Jeffrey Lush run a child day care home in Des Moines, Iowa. The Lushes' day care home participates in the Child and Adult Care Food Program through an agreement with sponsoring organization Community, Family & Youth Services. CACFP is a federal program that provides reimbursement for meals and snacks provided by providers to children in day care 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.

A telephone audit of parents with children enrolled in the Lushes' day care home was conducted by CFYS on July 11 and 12, 2017. Parents were called by CFYS personnel and asked to provide information about their children's attendance schedules. CFYS staff then checked that information against records submitted by the Lushes showing the times children entered and left each day and meal claim forms. (Kirkman testimony; Exh. A-C).

During the telephone audit, CFYS collected information indicating that the Lushes were not, in some cases, documenting the time children came in and out of the day care home accurately. Additionally, the information collected reflected that the meals that the Lushes claimed for certain children did not correspond with the times that the children were documented as entering and leaving care or the times that their parents reported that they typically entered and left care. Specifically, the following discrepancies were noted:

- Parent of children R.S. and Z.P. reported that they attended Sunday through Saturday from 11 AM through 6 PM and received lunch, PM snack, and dinner. Day care attendance records for Wednesday, July 12, 2017 show R.S. and Z.P. attending from 7:00 to 10:15 AM. On the July claim form, the Lushes claimed breakfast and AM snack for the children for all the days that were claimed.
- Parent of child A.G. reported that she attends Monday through Friday from 8 AM to 5:30 PM. Day care attendance records for July 12 show A.G. attending from 11 AM to 6 PM. On the July claim form, the Lushes claimed lunch, PM snack, and dinner for A.G. on all the days claimed.
- Parent of child A.G.¹ reported that she attends Tuesday through Sunday from 4 to 10:30 PM. Day care attendance records for July 11 and 12 show A.G. attending from 11 AM to 6 PM. On the July claim form, the Lushes claimed lunch, PM snack, and dinner for A.G. on all the days claimed.
- Parent of child A.L. reported that she does not attend day care on Wednesdays. Day care attendance records for July 12, a Wednesday, show A.L. attending from 11 AM to 6 PM. On the July claim form, the Lushes claimed lunch, PM snack, and dinner for July 12. On the June claim form, the Lushes claimed lunch, PM snack, and dinner for A.L. every Wednesday of the month.
- Parent of children A.R. and C.S. reported that they attend Monday through Wednesday from 7 AM to 7 PM; they do not attend weekends. Day care attendance records for July 12 show the children attending from 11 AM to 6 PM. On the June claim form, the Lushes claimed lunch, PM snack, and dinner for both children every day of the month, including weekends.
- Parent of children A.C. and M.S. reported that the children attend from 7 AM to 4 PM, but will be part-time in July. The children do attend care on Saturdays and Sundays, but do not eat dinner there. Day care attendance records for July 11 show the children attending from 7 AM to 10:15 AM. On the June claim form, the Lushes claimed breakfast and AM snack for both children every day during the month.
- Parent of two children, both with initials M.M., reported that her children's last day in the Lushes' care was May 16. The Lushes claimed lunch, PM snack, and dinner for both children every day of the month in June, including weekends.
- Parent of three children, all with initials J.M., reported that her children's last day in the Lushes' care was January 26. The Lushes claimed lunch, PM snack, and dinner for all three children every day of the month in June, including weekends.

¹ There were two children with the initials A.G. This child's parent's initials are N.G. The initials of the parent of the A.G. referenced in the preceding bullet point are B.G.

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(Exh. A; Kirkman testimony).

On July 14, 2017, Kirkman sent a serious deficiency notice to the Lushes. The notice states that the Lushes have submitted false claims for reimbursement to the CACFP sponsor, in violation of 7 C.F.R. § 226.16(l)(2)(ii). Regarding the sponsoring organization's findings, the letter states:

Description of finding(s): 1. Parents have informed us that their children have either dropped your care and you continue to claim them. 2. Parents claim their child is in care from 11-6 and you claim Breakfast and Am snack for some children. 3. Parents claim that their children do not attend daycare on the weekends or certain weekdays and you claimed these days for several children. 4. Some parents claim they are signing the dinner sheet but don't understand what it is for. You are required to inform them of what they are signing. 5. Children were dropped from your care if we never received a phone call back from the parents. Meals have been removed from October 2016 – June 2017. You owe back \$3,989.24. Your June claim was \$1,230.89. We have deducted this amount and now you [owe] us \$2,758.35.

(Exh. C).

The notice lays out three required corrective actions:

1. Have all parents fill out new enrollments with exact times and days that the children come to day care no later than July 31, 2017.
2. Pay back \$2,758.35, via a payment plan if desired.
3. Fill out forms for each child with times in and out, meals served, and parent signatures beginning August 1, 2017. Forms must be turned in every Friday in CFYS's drop box or by bringing them to the office. September 1, 2017 will be the last day to drop off these forms with CFYS.

(Exh. C).

The notice indicates that if the sponsoring organization receives the documentation of corrective action plan and all parent signature forms are turned in weekly, it will temporarily defer the serious deficiency determination and may conduct an unannounced follow-up review to verify the adequacy of the corrective action. The notice also states that if the corrective action plan does not fully and permanently correct the serious deficiencies, CFYS will propose to terminate the Lushes' agreement to participate in CACFP for cause and disqualify them from future CACFP participation. (Exh. C).

On July 26, 2017, Kirkman sent a follow-up letter to Geovana. The letter enclosed the signature sheets referenced in the July 14 notice. The letter states that the signature sheets need to start August 1, 2017; they must contain parent signature with information about time in and out, meals served, and date. The letter lays out a schedule for turning

in the forms; of relevance here, the forms for August 1 through 4, 2017 were due by August 4, 2017 in the CFYS drop box. (Exh. E).

The Lushes did not submit the required attendance form with parent signatures on August 4, 2017. On August 7, 2017, CFYS provided notice to the Lushes that it intended to terminate their agreement to participate in CACFP for cause and disqualify them from future CACFP participation. The letter reiterated the serious deficiency finding from the July 14 serious deficiency notice. It further stated that the Lushes did not submit the documentation mandated in that notice – that is, parent signature forms documenting child in and out times and meals served – on the first week that such forms were due. (Exh. E).

CONCLUSIONS OF LAW

CACFP is established by the Agricultural Risk Protection Act, 42 U.S.C. §1766. The program is intended to provide aid to child and adult participants and family or group day care homes for provision of nutritious foods that contribute to the wellness, healthy growth, and development of young children and the health and wellness of older adults.²

Program funding for day care homes is made available to the Department of Education by applying a formula that relies in part on data collected regarding the number of breakfasts, lunches, dinners, and snacks provided to children in day care homes.³ CFYS, the sponsoring organization, is responsible for reporting to the Department of Education each month the total number of meals, broken down by type (breakfast, lunch, dinner, snack), served to children enrolled in approved day care homes. Prior to submitting its monthly claim, CFYS must conduct reasonable edit checks on the day care homes' meal claims. CFYS receives payment for the meals served based on daily meal counts taken in the day care home.⁴

As part of the sponsoring organization's requirements, it must review each facility, including day care homes, at least three times per year. As part of the review process, the sponsoring organization must examine the meal counts recorded by the facility and, using enrollment and attendance records, determine the number of participants in care during each meal service and attempt to reconcile those numbers to the numbers of breakfasts, lunches, dinners, and/or snacks recorded in the facility's meal count for the day.⁵ CFYS, as a sponsoring organization, is required to train and monitor sponsored facilities, including day care homes. Failure to do so constitutes a serious deficiency for the sponsoring organization and can result in denial of a renewal application.⁶

The sponsoring organization is required to terminate the agreement of a day care home for cause if it determines the day care home has committed a serious deficiency outlined

² 42 U.S.C. § 1766(a)(1)(A)(ii); 7 C.F.R. § 226.1.

³ See 7 C.F.R. § 226.4(e).

⁴ 7 C.F.R. § 226.13(a)-(c).

⁵ 7 C.F.R. § 226.16(d)(4).

⁶ See 7 C.F.R. §§ 226.6(c)(2)(ii)(F), 226.6(c)(2)(iii)(C).

in the regulations.⁷ Serious deficiencies for day care homes include submission of false claims for reimbursement and failure to keep required records.⁸ If the day care home corrects the serious deficiency within the allotted time and to the sponsoring organization's satisfaction, the sponsoring organization may temporarily defer its determination of serious deficiency. If the day care home does not take timely corrective action to fully and permanently correct the serious deficiency cited, the sponsoring organization must issue a notice proposing to terminate the day care home's agreement for cause.⁹ If the proposed termination is upheld, the sponsoring organization must immediately terminate the day care home's agreement and disqualify the day care home.¹⁰

At hearing, Jeffrey disputed some of the information gathered during CFYS's phone audit. Specifically, Jeffrey pointed to several parents – specifically, the parent of A.R. and C.S., the parent of A.C. and M.S., and one other parent whose child is not listed above – who he testified do not speak English very well. The data from the third parent Jeffrey listed is not included in the Findings of Fact as CFYS acknowledged that this parent does not speak English and that it obtained the information regarding the child's attendance from another unidentified person in the household. That method of information gathering gives rise to concerns about the reliability of the information. With regard to the parent of A.R. and C.S., who reported the children are not in care on the weekends, Jeffrey testified at hearing that the parent works odd jobs on the weekends and the children are in care. With regard to A.C. and M.S., Jeffrey testified that they are in care from 7 AM to 6 PM, as the parent has two jobs. Other than the language issue, Jeffrey did not offer an explanation for the discrepancy between this parent's report that the children are not in care on the weekends and the day care having claimed the children for meals on Saturdays and Sundays in June.

Jeffrey also testified at hearing that the parent of the three children with initials J.M., referenced above, has a strained relationship with the Lushes as, according to Jeffrey, Geovana threatened to turn in this parent for child neglect. While Jeffrey asserted at hearing that the three children remain in care at the day care home, the Lushes provided no evidence, such as payment records, to back up this claim. The Lushes provided screen shots of text and Facebook messages that they assert are from the parent of these children to CFYS; these documents were not provided by the Lushes as part of the evidence at hearing. Kirkman acknowledged receiving these screen shots, but indicated that she could not verify whether they were actually from the parent at issue due to the lack of information contained in them. Kirkman also noted that CFYS asked for new enrollments to be turned in for all children who were continuing in care at the Lushes' day care home and no new enrollment was turned in for these children within the time period provided. Under these circumstances, I find the information reported by the parent during the CFYS audit to be more credible regarding her children's attendance than the testimony offered by Jeffrey at hearing.

⁷ 7 C.F.R. § 226.16(D).

⁸ 7 C.F.R. §226.16(D)(2)(ii), (v).

⁹ 7 C.F.R. § 226.16(D)(3)(iii).

¹⁰ 7 C.F.R. § 226.16(D)(3)(v).

Jeffrey acknowledged at hearing that the Lushes are not necessarily reporting to CFYS the actual times that children arrive at and leave day care each day. Jeffrey asserted that, although these times are not being accurately reported, the Lushes are accurately reporting which meals are served to each child throughout the day. Jeffrey provided no credible explanation of how the Lushes are able to accurately report which meals are served without accurate records of when each child arrives and leaves each day.

Even if the children whose parents speak limited English are disregarded, it is clear that the Lushes have not kept accurate records of when children are entering and leaving care each day. This has resulted in submission of false claims for reimbursement. For the children R.S. and Z.P., the Lushes claimed meals that did not match up with the times the children were actually in care. For A.G., the Lushes claimed lunch for her each day when she did not arrive at day care until 4 PM. For A.L., the Lushes claimed meals on Wednesdays when A.L. did not attend on Wednesdays. For the two children with initials M.M. and the three children with initials J.M., the Lushes claimed meals all through June, despite the fact that the children stopped attending care in May and January, respectively.

CFYS relies on accurate reporting from day care homes in order to correctly submit its monthly claim for reimbursement to the Department of Education. When a day care home does not accurately record and report the times children are in care and the corresponding meals that children are actually served, this system breaks down. It is important that a day care home not only accurately report the number of meals that a child is served, but correctly report which meals are served. Meals are reimbursed at different rates, therefore it is not enough to accurately report the number of meals a child receives; the meals claimed must match the meals actually served. The record reflects that the Lushes did not always report the correct meals served for particular children, even if they did not claim a greater number of meals than were served. In addition, the Lushes also overreported for certain children, submitting claims for meals served on days and times when the children were not in care. On these facts, CFYS correctly determined that a serious deficiency existed based on the submission of false claims for reimbursement. Part of the requirement to correct the serious deficiency involved weekly submission of forms containing in and out times, meals served, and parent signatures, with the first submission due August 4, 2017. The Lushes did not submit the weekly form due August 4, 2017. As such, they failed to fully and permanently correct the serious deficiency. Under these circumstances, CFYS, as the sponsoring organization, is required to terminate the participation agreement for cause.

A national disqualified list is maintained by the USDA of institutions and day care homes disqualified from participation in the program.¹¹ If a day care home's agreement is terminated for cause pursuant to 7 C.F.R. 226.16, the day care home is disqualified from participation in the CACFP.¹² The Lushes' day care home must be included on the national disqualified list pursuant to this decision.

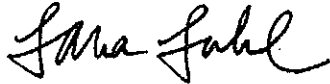
¹¹ 7 C.F.R. § 226.2.

¹² 7 C.F.R. § 226.16(D)(3)(v).

ORDER

The Child and Adult Care Food Program participation agreement between Geovana Lush and Jeffrey Lush and Community, Family & Youth Services is hereby terminated. The day care home shall be placed on the national disqualified list.

Dated this 9th day of October, 2017.



Laura E. Lockard
Administrative Law Judge

It is so ordered.

10-09-17
Date

Ryan M. Wise
Ryan M. Wise, Director
Iowa Department of Education

- cc: Geovana Lush and Jeffrey Lush
- Gracy Kirkman, Community, Family & Youth Services
- Joy Ihle, Community, Family & Youth Services
- Suzanne Secor Parker, DOE
- Ann Feilmann, DOE
- Nicole Proesch, DOE

