

IOWA DEPARTMENT OF EDUCATION
29 D.o.E. App. Dec. 225

<i>In re: Termination from CACFP</i>)	
)	
CATHERINE MILLER)	DE Admin Doc. 5110
)	DIA No. 20DOE0002
)	
Appellants,)	
)	
v.)	
)	
POLK COUNTY COMMUNITY, FAMILY & YOUTH SERVICES,)	
)	
Appellee.)	DECISION

Appellant Catherine Miller (Miller) filed an appeal from a determination that her day care home is seriously deficient, a proposed termination of her agreement to participate in the Child and Adult Care Food Program (CACFP), and a proposed disqualification from future CACFP participation. A telephone hearing in this matter was held on October 29, 2019 before Administrative Law Judge Rachel Morgan, designated hearing officer for Ryan M. Wise, Director of the Iowa Department of Education (the Department). Appellant Catherine Miller did not appear after receiving proper notice of the hearing. Appellee Community, Family & Youth Services (“CFYS” or “the sponsoring organization”) was represented by program specialist Gracy Kirkman (Kirkman), who presented testimony. Joy Ihle (Ihle) of CFYS also testified. A representative of the Department, Suzanne Secor Parker, appeared but did not testify. CFYS submitted a summary plus Exhibits A through E, which were admitted as evidence. Miller submitted a written statement prior to the hearing, which was also admitted into the record (Miller Statement).

FINDINGS OF FACT

Miller and her co-provider, LaTosha Prather (Prather) run a day care home in Des Moines, Iowa. Miller’s 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 Department’s Bureau of Nutrition and Health Services.

On August 30, 2019, the Department of Human Services (DHS) notified the Department that it was recommending that Miller’s day care home registration be revoked. The reasons for the revocation include the following:

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- Health and Safety Concerns: The primary provider of the child day care home, Prather, is unavailable to provide care and the co-provider, Miller, has been knowingly caring for too many children.

Specifically, on August 26, 2019, DHS received a complaint that Miller was caring for too many children at the day care home. DHS visited Miller's co-provider, Prather, in jail. Prather reported that she was arrested on August 21, 2019 and that she and Miller agreed to temporarily close the day care home until Prather was released. (Ex. A).

DHS interviewed Miller. Miller acknowledged that she is a co-provider of the day care home with Prather. Miller stated that no child care has occurred since Prather's arrest. (Ex. A).

DHS learned that although both Miller and Prather reported that Prather's arrest took place on August 21, 2019, it actually took place on August 20, 2019 during child care hours when day care children were present. Child care assistance billing was submitted to DHS for the day care home requesting compensation for care for 9-13 children on August 20, 2019 and August 21, 2019, after Prather was arrested. Under Iowa law, Miller was only authorized to watch 8 children on her own. 441 Iowa Administrative Code (IAC) § 110.15 (Ex. A).

Miller and Prather had been previously cited for caring for too many children and had previously indicated that they understood all of the capacity requirements under Iowa law. Therefore, Miller was aware that she could only lawfully care for 8 children without Prather present, yet cared for 9-13 at various times on August 20 and 21, 2019. (Ex. A).

- Unauthorized Resident in Home: Prather and Miller allowed an unauthorized inhabitant in the day care home that had not passed background checks or been approved by DHS.

Prather admitted to DHS officials that the unauthorized individual resided in the day care home for a time. Prather agreed to have the individual move out immediately.

(Ex. A; Kirkman testimony).

On September 3, 2019, the Department sent a serious deficiency notice to Miller and Prather (the Notice). The Notice stated that based on DHS' recommendation to revoke their day care home registration, CFYS determined that Miller and Prather are "seriously deficient" in their operation of the CACFP. The Notice noted the following deficiencies:

- Conduct or Conditions that Threaten the Health or Safety of the Children in Care: Miller cared for too many children and an unapproved individual was residing in the day care home.

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- Circumstances related to non-performance of the Sponsor-Provider Agreement: The CACFP Agreement requires home providers to have a current registration and operate within capacity. DHS has revoked Miller's day care home registration and thus, Miller is not in compliance with the CACFP Agreement.

The Notice concluded that due to the immediate risk, CFYS is immediately suspending Miller's CACFP Agreement pursuant to 7 CFR 226.6(c)(5)(ii)(D) effective September 3, 2019. CFYS also disqualified Miller from future CACFP participation effective September 18, 2019.

Miller appealed CFYS' decision. In support of her appeal, Miller submitted a written response. In regards to caring for too many children, Miller argued that the allegation that she cared for too many children "wasn't factual or proven" and that she passed compliance checks by the DHS in the past. In regards to the unauthorized individual living in the day care home, Miller stated that the individual residing in the home had undergone a background check for his employment and she believed that this was sufficient for DHS. Miller stated that she has since had the unauthorized individual complete the background screening for DHS and he no longer lives in the day care home. (Miller Statement).

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.¹

Program funding for day care homes is made available to the Department 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.² 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.³

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 in the regulations.⁴ Serious deficiencies include when a state agency determines that there are "serious health or safety violations" or there is an "imminent threat to the

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

² See 7 C.F.R. § 226.4(e).

³ 7 C.F.R. § 226.13(a)-(c).

⁴ 7 C.F.R. § 226.16(l).

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health or safety of participants at an institution.”⁵ If there is a serious violation due to a state agency finding serious health of safety violations or an imminent threat to health and safety, the sponsoring organization must immediately suspend the day care home’s participation in CACFP.⁶

In this case, CFYS argues that it correctly suspended Miller’s CACFP participation and proposed to terminate Miller’s CACFP Agreement because Miller’s conduct threatened the health or safety of children in her care and Miller failed to perform under her CACFP Agreement.⁷

Health and Safety of Children

DHS found that Miller cared for too many children in her day care home and that an unapproved individual was residing in the day care home. CFYS states that this conduct threatens the health and safety of the children in Miller’s day care home and is in violation of the CACFP. (Kirkman Testimony). Specifically, DHS found that although Prather and Miller reported that Prather was arrested on August 21, 2019 and no day care was provided after she was arrested, Prather was actually arrested on August 20, 2019 when day care children were present. Pursuant to logs provided to the DHS regarding child care assistance payments, Miller continued to provide care for between 9-13 children after Prather was arrested on August 20, 2019 and August 21, 2019. (Ex. A). Miller is only authorized to provide care for 8 children on her own.⁸

In addition, Prather and Miller have a history of repeatedly providing care for too many children. Specifically, the day care home was over capacity on the following dates:

- November 2016: over capacity by 3 school aged children.
- December 2016: over capacity by 5 school aged children.
- January 2019: over capacity by 1 infant and 3 school aged child.
- February 2019: over capacity by 1 infant and 1 school aged children.
- March 2019: over capacity by 1 school aged child.
- May 2019: over capacity by 1 infant and 2 school aged children.

(Ex. E).

Miller argues that DHS’ finding that she provided care for too many children wasn’t proven and is a mere allegation. (Miller Statement). However, DHS stated that records submitted for child care assistance payments by either Prather and/or Miller requested compensation for care provided to 9-13 children. Further, CYFS presented claim error reports indicating that Miller did care for too many children and that she and Prather have a history of caring for too many children. (Ex. E). Thus, DHS’ finding that Miller provided care for too many children is supported by the record. In regards to the

⁵ 7 C.F.R. § 226.6(c)(5)(i).

⁶ *Id.*

⁷ 7 C.F.R. § 226.16(l)(2)(vi); 7 C.F.R. § 226.16(l)(2)(ix).

⁸ 411 Iowa Administrative Code 110.15 stating that if there is only one provider present, no more than eight children may be present.

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allegation that Miller had an unauthorized individual in the day care home, Miller admitted in her written statement that the individual did reside in the day care home without proper DHS background screening. (Miller Statement).

Both violations found by DHS, *i.e.*, caring for too many children and an unauthorized individual in the day care home, relate to the health and safety of the children in Miller's care and thus constitute health and safety violations. Accordingly, Miller's conduct of caring for too many children and allowing an unauthorized individual to reside in the day care home constitute serious health and safety violations under 7 C.F.R. § 226.16, and CFYS correctly suspended Miller's CACFP agreement and participation.

Performance of CACFP Agreement

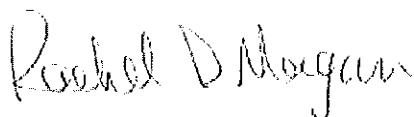
Under 7 C.F.R. § 226.16, a "serious violation" also includes instances of non-performance of the CACFP sponsor-provider agreement. Miller's CACFP agreement with CYFS provides that Miller must maintain a current DHS Certificate of Registration. The DHS determined that serious violations occurred at Miller's day care home and terminated Miller's child care registration. Therefore, Miller no longer has a current registration with DHS and is in violation of her CACFP Agreement with CYFS. Accordingly, Miller's violation of her CACFP Agreement constitutes a "serious violation" and CYFS correctly proposed termination of Miller's CACFP Agreement for cause and disqualification of Miller from CACFP participation.

A national disqualified list is maintained by the USDA of institutions and day care homes disqualified from participation in the program.⁹ 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.¹⁰ Miller's day care home and Miller's name must be included on the national disqualified list pursuant to this decision.

ORDER

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

Dated this 1st day of November, 2019.



Rachel D Morgan
Administrative Law Judge

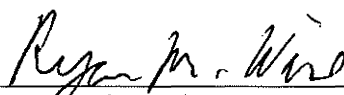
⁹ 7 C.F.R. § 226.2.

¹⁰ 7 C.F.R. § 226.16(D)(3)(v).

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It is so ordered.

11-7-19
Date



Ryan M. Wise, Director
Iowa Department of Education

cc:

Catherine Miller
Gracy Kirkman, Community, Family & Youth Services
Joy Ihle, Community, Family & Youth Services
Suzanne Secor Parker, DOE
Nicole Proesch, DOE