United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive
Alexandria, VA 22302-1500

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SUBJECT: Child and Adult Care Food Program - Role and Requirements of Administrative Review Officials

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Recently, the Food and Nutrition Service (FNS) received inquiries from State agencies and institutions concerning the role and responsibilities of administrative review officials. Some State agencies and institutions are concerned with administrative review officials who have exceeded their authority by attempting to interpret the intent or expand the meaning of the Federal regulations. The administrative review official's decision must be based on "the information provided by the State agency, the institution, and the responsible principals and individuals (RPIs), and Federal and State laws, regulations, policies, and procedures governing the Child and Adult Care Food Program (CACFP)" [7 CFR 226.6(k)(5)(viii)].

To reach that end, this memorandum provides: 1) guidance to State agencies and institutions on the role and requirements of administrative review officials in resolving adverse actions issued by State agencies administering and, institutions participating in the CACFP; 2) ways in which State agencies and sponsoring organizations may strengthen guidance materials to train administrative review officials; 3) a typical case study in which an administrative review official's ruling was not based on CACFP requirements; and 4) actions FNS may take when violations are identified related to 7 CFR 226.6(k)(5).

In accordance with CACFP regulations, the administrative review official "must be independent and impartial" [7 CFR 226.6(k)(5)(vii) and 226.6(l)(5)(iv)]. These regulations further clarify that although an administrative review official "may be an employee of the State agency or an employee or board member of the sponsoring organization, he/she must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. CACFP institutions and the RPIs must be permitted to contact the administrative review official directly, pursuant to the regulations if they so desire".

Per 7 CFR 226.6(k)(5)(x) and 226.6(l)(5)(vii), the determination made by the administrative review official "is the final administrative determination to be afforded the institution, RPIs, or providers". Therefore, it is imperative that State agencies and sponsoring organizations provide guidance to administrative review officials responsible for CACFP cases. Some ways in which State agencies and sponsoring organizations may strengthen their guidance materials for training purposes include:

- Provide administrative review officials with copies of the training materials issued by the State agency (e.g., CACFP regulations, policy memoranda, handbooks, etc.);

- Offer to train administrative review officials on a quarterly, semi-annual, or annual basis (e.g., in-person trainings, webinars, etc.);

- Clarify that the role of the administrative review official is to: 1) assess the State agency's or sponsoring organization's action to propose termination; 2) determine whether the actions taken by the State agency, institution, RPIs, and providers followed Federal regulations, policies, and procedures governing the CACFP; and 3) base his/her decisions on the information presented by the State agency, the institution, RPIs, or providers and Federal and State laws regulations, policies, and procedures;

- Emphasize that the authority of the administrative review official does not include: 1) interpreting the intent or expanding the meaning of Federal regulations; 2) validating the serious deficiency determination; 3) verifying whether corrective actions submitted by RPIs fully and permanently corrects Program violations; or 4) establishing settlement of demands for overpayments.

    - In situations where a settlement offer is approved and the State or institution collects less than the full claim established against the institution, FNS will seek to recover the outstanding balance by establishing a claim against the State agency.

- Prepare explicit letters that fully explain the State agency's or sponsoring organization's findings, including specific regulatory citations, and the types of technical assistance provided;

- Learn from the decisions issued by the administrative review official and consider making changes to written materials to address the concerns raised by the administrative review official; and

- Review the decisions that uphold actions taken by the State agency or sponsoring organization and consider strengthening written materials to highlight approaches supported by administrative review officials.

The following case study is a typical case study in which an administrative review official's ruling was not based on CACFP requirements:

> A State licensing agency summarily suspended the license issued to a day care home provider based on findings that conditions on site represented immediate danger to the health, safety, and welfare of children receiving care at the home. Subsequently, the day care home's sponsoring organization proposed to terminate and disqualify the day care home provider because activities that threaten public health or safety constitute a serious deficiency [7 CFR 226.16(1)(4)(i)].
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> Pursuant to 7 CFR 226.16(l)(3)(iii), the provider appealed the proposed termination and disqualification. The administrative review official upheld the termination of the day care home provider for failure of the day care home to have a valid operating license [7 CFR 226.6(d) and 226.18(a)] which is not considered a serious deficiency. The decision should have been based on the fact that the license was suspended due to an imminent threat to health and safety. Consequently, the decision of the administrative review official is considered a "termination for convenience" [7 CFR Part 226.2], which safeguards the provider from being disqualified and placed on the National Disqualified List (NDL).
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> The basis of this ruling was erroneous because the administrative review official did not base the decision on CACFP regulations at 7 CFR 226.16(l)(4), which require that if a provider is cited for imminent threat to health and safety, the sponsoring organization must declare the provider seriously deficient and propose to terminate and disqualify the provider. This would have been considered a termination for cause. This erroneous ruling means that the provider is eligible to reapply for Program participation at any time, instead of being appropriately disqualified and placed on the NDL as required by CACFP regulations.

State agencies are ultimately responsible for ensuring administrative review officials abide by the procedures set forth in 7 CFR 226.6(k)(5). Therefore, when it is identified by FNS through a management evaluation, audit, or other oversight methods, that administrative review officials are not basing their decisions on Federal and State laws, regulations, policies, and procedures and applying them to the facts of CACFP cases, or following the procedures of the administrative review case, FNS may take one or more of the following actions as appropriate per 7 CFR 235.11(b) and 3016.43:

- Temporarily withhold cash payments pending correction of the deficiency by the State agency. The State agency must continue to make Program payments to CACFP participants during this administrative action;

- Disallow all or part of the cost of the activity or action not in compliance and return these funds to FNS;

- Wholly or partly suspend or terminate the award for the State agency's Program;

- Withhold further awards for the Program; or
- Take other remedies that may be legally available.

State agencies are reminded to distribute this information to Program operators immediately. Program operators should direct any questions regarding this memorandum to the appropriate State agency. State agency contact information is available at: http://www.fns.usda.gov/cnd/Contacts/StateDirectory.htm. State agencies should direct questions to the appropriate FNS Regional Office.

Original Signed

Sarah Smith-Holmes
Director
Program Monitoring and Operational Support Division
Child Nutrition Programs