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FISCAL YEAR 2015
CHILD AND ADULT CARE FOOD PROGRAM
OPERATIONAL MEMORANDUM #8

TO: Child and Adult Care Food Program Institutions

FROM: Marla J. Moss, Director
Office of School Support Services

DATE: January 6, 2015

SUBJECT: Roles and Requirements of Administrative Review Officials

The Food and Nutrition Service (FNS) has received inquiries from State agencies such as the Michigan Department of Education (MDE) and participating child care institutions concerning the role and responsibilities of administrative review officials. There have been concerns about administrative review officials who have potentially exceeded their authority by attempting to interpret the intent or expand the meaning of the Federal regulations over the Child and Adult Care Food Program (CACFP). The administrative review official's decision must be based on "the information provided by the State agency (MDE), 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)].

This memorandum provides 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; ways in which state agencies and sponsoring organizations may strengthen materials used to train administrative review officials on the CACFP; and a typical case study in which an administrative review official's ruling was not based on CACFP requirements.

In compliance 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)]. The 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".

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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". As such, it is important that MDE provide guidance to administrative review officials responsible for CACFP cases. Some ways in which MDE provides guidance materials for training purposes include:

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

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

- Provides clarification on the role of the administrative review official. Their role is to assess MDE's or sponsoring organization's action to propose termination; to determine whether the actions taken by MDE, the institution, RPIs, and providers followed Federal regulations, policies, and procedures governing the CACFP; and to base his/her decisions on the information presented by MDE, the institution, RPIs, and Federal and State laws regulations, policies, and procedures.

- Emphasizes the authority of the administrative review official does not include interpreting the intent or expanding the meaning of Federal regulations; validating the serious deficiency determination; verifying whether corrective actions submitted by RPIs fully and permanently corrects CACFP violations; or establishing settlement of demands for overpayments.

- Prepares explicit letters that fully explain MDE's or the sponsoring organization's findings, including specific regulatory citations, and the types of technical assistance provided.

- Learns from the decisions issued by the administrative review official and considers changes to written materials to address the concerns raised by the administrative review official.

- Reviews the decisions that uphold actions taken by the MDE or sponsoring organization and considers 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).

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.

If you have any questions regarding this memorandum, contact the CACFP office at 517-373-7391.