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STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

MICHAEL P. FLANAGAN
SUPERINTENDENT OF
PUBLIC INSTRUCTION

FISCAL YEAR 2012
CHILD AND ADULT CARE FOOD PROGRAM
OPERATIONAL MEMORANDUM #17

TO: Child and Adult Care Food Program Institutions

FROM: Kyle L. Guerrant, Director
Office of School Support Services

DATE: August 1, 2012 (K.G.) 8-1-12

SUBJECT: Appeal Procedures - Revised

Attached is a revision to the Child and Adult Care Food Program (CACFP) Appeal Procedures. These procedures are to provide institutions, responsible principals, and responsible individuals procedures for appealing actions subject to administrative review taken by the Michigan Department of Education.

This procedure is located on the CACFP website under Resources.

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

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CHILD AND ADULT CARE FOOD PROGRAM

APPEAL PROCEDURES

The United States Department of Agriculture's (USDA) Child and Adult Care Food Program (CACFP) regulations, 7CFR 226.6(k), provide institutions, responsible principals, and responsible individuals procedures for appealing actions subject to administrative review taken by the Michigan Department of Education (MDE).

Actions that are subject to administrative review include:

- Denial of an institution's application for participation.
- Denial of an application submitted by a sponsoring organization on behalf of a facility.
- Notice of proposed termination of an institution's agreement.
- Notice of proposed disqualification of a responsible principal or responsible individual.
- Suspension of an institution's participation dealing with suspension for health or safety reasons or submission of a false or fraudulent claim.
- Denial of an institution's application for start-up or expansion payments.
- Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.
- Denial of a request for an advance payment.
- Denial of all or part of the claim for reimbursement, except for late submission under 7CFR 226.10(e).
- Failure of MDE CACFP to forward to USDA Food and Nutrition Service (FNS) an exception requested by the institution for payment of a late claim or a request for an upward adjustment to the claim after the 60 day deadline.
- Demand for the remittance of any overpayment.
- Any other action of MDE CACFP affecting the participation of an institution or the institution's claim for reimbursement.

Actions that are NOT subject to an administrative review include:

- USDA Food and Nutrition Service (FNS) decisions on claim deadline exceptions and requests for upward adjustments to claims.
- Determination of serious deficiency.
- Disqualification and placement on state agency list and National Disqualified List (NDL).
- Termination of a participating institution's agreement including termination of a participating institution's agreement based on the disqualification of the institution by another state agency or FNS.
- Determination that the corrective action was not complete and permanent.
- Decision by MDE or FNS that an institution's corrective action is inadequate to be removed from the NDL.

- Refusal to consider an institution's application to participate when either the institution or one of its principals is on the NDL, or refusal to consider an institution's application to participate submitted by a sponsoring organization on behalf of a facility that is on the NDL.

Family Day Care Home Sponsors only:

- Denial of an institution's application for start-up or expansion payments.
- Denial of an advance payment.
- Recovery of all or part of an advance in excess of the claim for the applicable period.

Procedure for Filing and Appeal

1. A request for administrative review must be submitted to MDE CACFP no later than 15 calendar days after the notice of action was received by the institution. If the notice of action is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home, five days after being sent to the addressee's last known mailing address. The request for administrative review will be denied if the request is not submitted within the 15-day deadline. The request for the administrative review must be sent to the following address:

   Michigan Administrative Hearing System
   Ottawa Building, Second Floor
   611 West Ottawa Street
   P.O. Box 30004
   Lansing, MI 48909

2. The request for an administrative review must be in writing and must:
   a. Specify the action or notice being appealed.
   b. Include the institution's name and MDE CACFP agreement number.
   c. Explain the disagreement with each finding and/or action taken by MDE CACFP.
   d. **Specifically request either of the following:**

   i) **File Review** (For example: XYZ Child Care hereby requests a File Review)

   With a "File Review," an administrative law judge (ALJ), employed by the Michigan Administrative Hearing System (MAHS), reviews the documentation contained in the institution's CACFP file and submitted to him or her by representatives of the MDE CACFP. The ALJ also reviews any written documentation submitted by the institution, responsible principals, and responsible individuals. The final administrative determination of the ALJ is based solely on written information.

   or an

   ii) **In-Person Review** (For example: XYZ Child Care hereby requests an In-Person Review)

   With an "In-Person Review," an ALJ, employed by MAHS, schedules a hearing in Lansing, Michigan. At the hearing, the institution's

representatives, responsible principals, and responsible individuals or other witnesses may testify under oath and present written documentation to the ALJ. Representatives of the MDE CACFP may attend the hearing to present information, respond to testimony, answer questions of the ALJ, and present written documentation. The final administrative determination of the ALJ is based upon the institution's MDE CACFP file, as well as testimony and written documentation submitted to the ALJ.

3. If the institution's written request for review does not specifically request an In-Person Review, the ALJ will conduct a File Review. An In-Person Review is held only when the written request for administrative review includes a request for an In-Person Review.

4. The MDE CACFP will acknowledge receipt of the request for administrative review within 10 calendar days of receipt of the request. Thereafter, all correspondence regarding the appeal must be submitted to the MAHS at the following address:

Michigan Administrative Hearing System
Attention: James Ward
Ottawa Building, Second Floor
611 West Ottawa Street
Lansing, Michigan 48933

Telephone Number: (517) 373-8772
Facsimile Number: (517) 373-9238

5. Regardless of whether the request for administrative review is a request for a File Review or an In-Person Review, the institution, responsible principals, and responsible individuals may submit to MAHS written documentation refuting the findings in the notice of action not later than 30 calendar days after the notice of action was received, unless otherwise directed by the ALJ. A copy of any documentation or correspondence submitted to MAHS must be simultaneously provided to the MDE CACFP. Documentation submitted after this deadline, or not submitted in accordance with the direction of the ALJ, will not be considered.

6. The MDE CACFP may submit to MAHS its legal and/or factual justification for its actions or findings not later than 15 calendar days after the institution's deadline for submitting documentation expires.

7. If an In-Person Review is requested, MAHS will schedule a hearing. MAHS shall provide the institution, the responsible principals, responsible individuals, and the MDE CACFP with at least 10 days advance notice of the time and place of the hearing.

8. If the institution's representative, the responsible principals, responsible individuals, or their representative fail to appear at a scheduled hearing, they waive the right to a personal appearance before the ALJ, unless the ALJ agrees to reschedule the In-Person Review.

9. Any information on which the MDE CACFP bases its action will be available to the institution, the responsible principals, and responsible individuals upon request for inspection from the date of receipt of the request for administrative review.

10. The institution may retain legal counsel or may be represented by another person. The attorney or representative must file an appearance with the MAHS and with the MDE CACFP no later than 30 calendar days after the institution received notice of the action.

11. The ALJ will make the final administrative determination based solely on information provided by the MDE CACFP, the institution, the responsible principals, and responsible individuals, and based on federal and state laws, regulations, policies, and procedures governing the MDE CACFP. The ALJ will inform the MDE CACFP, the institution's executive director, and chairman of the board of directors, the responsible principals, and responsible individuals of the administrative review's outcome within 60 days of the receipt of the request for administrative review. This timeframe is an administrative requirement of the federal regulations and may not be used as a basis for overturning the MDE CACFP's action if a decision is not made within the specified timeframe.

12. The determination of the ALJ is the final administrative determination to be afforded to the institution, the responsible principals, and responsible individuals.

Program Payments

Participating institutions and facilities may continue to operate in the MDE CACFP during an appeal of Proposed Termination and Proposed Disqualification to terminate unless participation has been suspended. Reimbursement for eligible meals and allowable administrative costs will continue to be paid to the institution provided that records to support the claim are available pending the outcome of the administrative review.