

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 288)

<i>In Re: Termination of CACFP</i>)	
)	
Dionte Congress,)	
Appellant,)	DECISION
)	
v.)	
)	
Community Action of Eastern Iowa,)	Admin. Doc. No. 4760
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellant Dionte Congress, who is an in-home childcare provider requests review of a proposed decision by the Appellee, Community Action of Eastern Iowa, who sponsors and administers the Child and Adult Care Food Program (CACFP), proposing termination of the agreement to participate in the CACFP program and disqualification from future CACFP participation, effective October 3, 2012. The Iowa Department of Education has jurisdiction over the appeal, pursuant to the Federal Code of Regulations found at 7 C.F.R. § 226.6(k). Hearing was held pursuant to this agency's administrative rules in 281—Iowa Administrative Code chapter 6.

This matter was held telephonically on November 13, 2012, before Nicole M. Proesch, J.D., designated administrative law judge, presiding on behalf of Jason E. Glass, Director of the Iowa Department of Education. The Appellant, Dionte Congress, personally participated. The Appellee, Community Action of Eastern Iowa, was represented by CACFP Manager Andrew Brown. Monitoring the hearing, but not otherwise participating, were Suzanne Secor Parker and Robin Holz of the Iowa Department of Education, which is the designated State Agency (SA) to administer the program at issue herein.

The record includes a Notice of Deficiency letter dated August 15, 2012, a proposed termination and disqualification letter dated September 17, 2012, and Ms. Congress' Affidavit of Appeal. The Appellant did not offer any exhibits or supporting documents. Supporting documents, marked Exhibits 1 through 26 were offered into evidence by the Appellee and were admitted into the record without objection.

FINDINGS OF FACT

Dionte Congress runs a child daycare home in Davenport, Iowa. She has participated as a “provider” in the Child and Adult Care Food Program (CACFP), which is administered by the United States Department of Agriculture through the Iowa Department of Education’s Bureau of Nutrition Programs, since June 10, 2010. The CACFP is a federal program that provides reimbursement for meals and snacks provided to children in daycare homes and centers.

Daycare homes such as Ms. Congress’ must be supervised by a sponsoring organization, in this case Community Action of Southeast Iowa [“Community Action”]. To participate in CACFP in Iowa, the home provider must possess a certification of registration from the Iowa Department of Human Services, and must sign an agreement that provides for the terms and conditions of program participation. This agreement provides for announced and unannounced visits to the provider’s daycare site by the sponsor. When the sponsor notes the absence of claimed children during a visit, the sponsor is expected to contact parents/guardians to ensure that reimbursement is not sent to the provider for meals/snacks not actually served to a child.

Such a “parent audit” was triggered in this case. Community Action sent letters to the families whose children were listed in Ms. Congress’ records but who were noted as absent during Community Action visits. The responses from some of the parents led Community Action to send to Ms. Congress a written Notice of Serious Deficient Determination for filing false claims in violation of 7 C.F.R. § 226.16(l)(2)(ii) on August 15, 2012. Specifically, Community Action found during a parent audit that Stephen L. was not in care when claimed. Other reviews showed that children did not arrive or leave the daycare home on July 20, 2012, July 27, 2012, and July 30, 2012, as documented by Ms. Congress, although the children were claimed. Additionally, Community Action found that documents submitted to substantiate claims for the B. family were not authentic as determined by Community Action staff through follow-up.

When a Notice of Seriously Deficient Determination is filed, it is accompanied by a Corrective Action Plan, informing a provider in detail of steps that must be taken to permanently and completely correct the allegation of submission of false claims. On September 17, 2012, Community Action received documentation from Ms. Congress detailing her actions to correct these deficiencies.

During follow-up reviews that were conducted on August 24, 2012, September 11, 2012, and September 14, 2012, Community Action, found that Ms. Congress did not fully and permanently correct the serious deficiencies that were cited in the serious deficiency notice. In a letter dated September 17, 2012, Community Action noted deficiencies found while watching Ms. Congress’ home. On August 24, 2012, Ms. Congress recorded children in her care on sign-in and sign-out sheets, however, Mr. Brown of Community Action was watching the house and observed one of the parents arrive and leave without dropping off the children. After observing Mr. Brown watching her residence Ms. Congress did not submit any claims for the day even though children were claimed on sign-in and sign-out sheets. On September 11, 2012, during a dinner review one child was present but left prior to dinner. This day was the only day in the month dinner was not claimed. On September 14, 2012, children were claimed that were not seen in care of Ms. Congress. Thus, Community Action sent to Ms. Congress a notice of intent to terminate her participation in CACFP.

Ms. Congress denies that she has submitted false claims. Ms. Congress submitted a statement and testimony to support her position that the accusations are false.

The issues remaining in dispute are as follows:

1. *August 24, 2012* - Ms. Congress testified that she canceled only evening care and never claimed the children for that day because she was moving things from her old residence in Denison to her new residence in Davenport. However, Ms. Congress also testified that she moved on August 17-19, 2012, and she was done with her house in Denison. To the contrary an email sent by Ms. Congress on August 24, 2012, states that Ms. Congress is still at her old residence in Denison. Other records submitted show that Ms. Congress had sign-in and sign-out sheets from August 24, 2012, with parent signatures showing the children were in care between 8 a.m. to 10 p.m. with no breaks. Mr. Brown testified that he was present at the Davenport residence between 4:40 p.m. and 5:00 p.m. and observed the B. family arrive and speak to Ms. Congress outside the residence, but leave without any children going in the home. However, the B. family children were all signed in and out on the sign in sheets from 5:00 p.m. to 10 p.m. that day. Mr. Brown testified that Ms. Congress observed him watching the home. This agency does not find Ms. Congress' explanation credible. Ms. Congress' account is peppered by inconsistencies. It defies logic that Ms. Congress provided care throughout the entire day in Denison, canceling only her evening care, and yet did not make any claims for the entire day. Furthermore, if Ms. Congress was in Denison providing 8:00 a.m. to 5 p.m. care for some of the children as evidenced by the sign-in and sign-out sheets, it would be difficult for her to be at her Davenport residence at 4:40 p.m. when she was observed by Mr. Brown. Finally, her sign-in and sign-out sheets were inconsistent with the meals claimed, thus leaving this agency to wonder which documents true.
2. *September 7-11, 2012*ⁱ – Kendall H. – Ms. Congress provided a statement that on September 9, 2012, Kendall H. left her house between 5:00 and 5:30 p.m. because she had to pick up her own child that evening due to an emergency. Ms. Congress provided that she did not have time to heat up dinner for Kendall H. so the child did not eat that evening and she did not claim him. Mr. Brown provided evidence that on September 7, 2012, Kendall H. was signed out at 4:45 p.m., dinner was served at 5:00 p.m., and yet dinner for Kendall H. was claimed.
3. *September 14, 2012* – Rickey Y. – Ms. Congress provided a statement that Rickey Y. was in her care on September 14, 2012 arriving at 7:50 a.m. The sign in sheet states that Rickey arrived at 8:00 a.m.. Mr. Brown testified that he observed the residence from 7:50 a.m. to 8:10 a.m. and no children arrived. Ms. Congress testified that some parents come early and talk for a minute before they leave. Even assuming that Ms. Congress' version of events is true the times recorded on the sign in and sign out sheets would be inaccurate.
4. *B. Family* – Mr. Brown was unable to verify two addresses given for this family on enrollment papers turned in. In fact both addresses were for businesses. Additionally, letters of proof that the children were in Ms. Congress' care during July 2012 were found to be on stolen letterhead from the Salvation Army and the signatures on the documents were forged. Ms. Congress testified that she did not collude with Mrs. B. to submit false claims for care in the month of July. Ms. Congress submits that she requested something from Mrs. B. to show times that her children would be in her care and she did not question what was provided to her.
5. *Knaja C.* – Ms. Congress provided a statement that Knaja C. was in her care on August 1-3, 2012, while the child's parent was registering at the Kimberly Center for

- a GED and looking for work. A parent audit for Knaja C. stated that the child was not in care for August 1-3, 2012. Documents submitted shows that Ms. Congress submitted claims for Knaja C. for those dates. The parents have nothing to gain from their responses however, Ms. Congress does. The agency does not find Ms. Congress' version credible.
6. *Sharose C. and Dionte T.* – Ms. Congress provided a statement that she has provided a new address for these children. Ms. Congress states that the parent and her husband are separated now and living in two different households. Mr. Brown provided evidence that he did not have a good address for these families and the parent audits were returned. Additionally, Mr. Brown testified that the new address provided is listed with the treasurer's office as being owned by the family since 2009. Mr. Brown received a response for Sharose C. and not Dionte T. who is no longer in care.
 7. *ZaKyiah B.* – A parent audit found that this child was not in Ms. Congress' care during the month of July. Ms. Congress provided a statement that the parent audit for ZaKyiah B. is false. Ms. Congress states that the child is no longer in her care because her mother was not paying.
 8. *Stephen L.* – Ms. Congress provided a statement that the claim for Stephen L. is accurate and the parent audit is false. Ms. Congress states the parent used to work for her and when she terminated this working relationship the parent became upset with her. The parent called and advised Mr. Brown that the child was never in Ms. Congress's care. There is an enrollment form for the child on file. Mr. Brown testified that after he reported to Ms. Congress that the parent audit found the child was never in her care, Ms. Congress withdrew the child from enrollment the next day.

Overall this agency does not find the testimony or statements of Ms. Congress credible. The parent audits support the conclusions of the sponsor. This agency has considered the respective motives of the appellant as well as the parents who participate in the parent audits. The parents have nothing to gain from their responses however; Ms. Congress stands to keep her continued CACFP participation.

CONCLUSIONS OF LAW

CACFP is a program created by the Agricultural Risk Protection Act, 42 U.S.C. § 1766. That Act and its regulations dictate the minimum terms of the participation agreement between the sponsor and the home provider.

The regulations at 7 C.F.R. § 226.16 enumerate reasons why a daycare home may be terminated from CACFP. Being cited as "seriously deficient" and not correcting the deficiency is one cause for termination. A serious deficiency includes the provider's submission of false claims for reimbursement. 7 C.F.R. § 226.16(l)(2)(ii).

This Agency has noted in previous CACFP decisions that the regulations governing that program are quite strict. While a termination from CACFP may seem harsh, the rationale for the strictness of the regulations is simple. CACFP is funded by public monies; therefore, a provider is required to be accountable to the public for how s/he operates. When such accountability is lacking, the public trust is gone, and the sponsor is required to take appropriate action. Put another way, the sponsor has a duty, no matter how unpleasant at times that duty may be, to hold its child care homes accountable on behalf of the public.

The evidence presented here as to Kendall H., Knaja C., ZaKyiah B., and Stephen L. supports a finding that Ms. Congress submitted false claims as to those children. The evidence as a whole supports a finding that the submission of false claims is systemic and was not a one-time human error. Ms. Congress has a practice of recording children on in and out sheets and then not claiming them for various reasons which suggest that false claims are being submitted on other children as well. Community Action has shown that Ms. Congress has not permanently and completely corrected the seriously deficient practice of submission of false claims.

Ms. Congress will remain on the National disqualified list until such time as the Bureau of Food and Nutrition determines that the serious deficiencies that led to the placement on the list have been corrected, or until seven years have elapsed since the agreement was terminated for cause. 7 C.F.R. § 226.6(c)(7)(v-vi).

DECISION

For the foregoing reasons, the termination of Ms. Congress from the Child and Adult Care Food Program is hereby **ordered**.

11/28/12
Date

/s/
Nicole M. Proesch, J.D.
Administrative Law Judge

11/28/12
Date

/s/
Jason E. Glass, Director
Iowa Department of Education

ⁱ There are some discrepancies regarding the dates between Ms. Congress' testimony and the documents provided.