

**IOWA DEPARTMENT OF EDUCATION**  
**29 D.o.E App. Dec. 371**

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*In re Termination from CACFP*

KIMBERLY ALBERIGO,

Appellant,

vs.

POLK COUNTY COMMUNITY, FAMILY,  
& YOUTH SERVICES

Appellee.

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DE Admin. Doc. 5130  
DIA No. 21DOECACFP0001

**DECISION**

**STATEMENT OF THE CASE**

Kimberly Alberigo filed an appeal from a determination that her day care home is seriously deficient and a proposed termination of her agreement to participate in the Child and Adult Care Food Program (CACFP) and proposed disqualification from future CACFP participation. A hearing was held on November 16, 2020 via videoconference before Administrative Law Judge Kristine M. Dreckman, designated hearing officer for Ann Lebo, Director of the Iowa Department of Education. Appellant Kimberly Alberigo appeared self-represented and presented testimony. Appellee Polk County Community, Family & Youth Services (“CFYS” or “the sponsoring organization”) was represented by program specialist Gracy Kirkman, who also presented testimony. Suzanne Secor-Parker of the Bureau of Nutrition and Health Services division of the Iowa Department of Education was also present. CFYS submitted a summary plus exhibits marked A through F that were admitted into the record.

**FINDINGS OF FACT**

Kimberly Alberigo runs a daycare home in Des Moines, Iowa. Her day care home participates in the Child and Adult Care Food Program (CACFP) through an agreement with the sponsoring organization, CFYS. 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 Iowa Department of Education’s Bureau of Nutrition and Health Services.

A telephone audit of parents with children enrolled in Alberigo’s day care home was conducted by CFYS in August and September 2020. An audit form was sent to the parents in August 2020. CFYS personnel called parents who failed to return their audit forms on September 9 and 10, 2020 and asked the parents to provide information about their children’s attendance schedules.

CFYS staff then checked that information against records submitted by Alberigo showing the times children entered and left each day and her meal claim forms. (Kirkman Testimony; Exhibits A, B).

During the audit, CFYS collected information indicating Alberigo had not accurately documented when some of the children came in and out of the day care home. Additionally, the information collected during the audit revealed that Alberigo claimed meals for certain children which did not correspond with the times those children were in her care. Specifically, the following discrepancies were noted:

1. Parent of E.C, J.C., and L.C reported that the children received care from 9:30 a.m. through 8:30 p.m. on Tuesdays, Wednesdays, and Fridays. On the her July 2020 claim form, Alberigo claimed the children were served breakfasts on Tuesdays, Wednesdays, and Fridays when they were not present for those meals. Alberigo additionally claimed the children were present for breakfast, morning snack, lunch, afternoon snack and dinner on Sundays, Mondays, Thursdays, and Saturdays during the month of July 2020.
2. Parent of G.K. and T.K. reported the children received only dinner while in Alberigo's care Mondays through Fridays, with an occasional Saturday. On the July 2020 form, Alberigo claimed lunch and afternoon snacks for the children on several of the days during that month.
3. Parent of E.L. and I.L. indicated the children were in Alberigo's care 7:00 a.m. through 4:00 p.m. Monday through Friday. Alberigo claimed dinners for the children on her July 2020 claim form.
4. Parent of N.G. and G.W. indicated the children were in Alberigo's care 1:00 p.m. through 12:30 a.m. Monday through Friday, with the occasional weekend. Alberigo claimed lunches for the children on her July 2020 claim form.
5. Parent of H.T. indicated the child was not in Alberigo's care from April 1, 2020 through June 9, 2020 because of the coronavirus/Covid-19 pandemic. H.T. returned to Alberigo's care on June 10, 2020. Alberigo claimed meals for the child on her April and May 2020 claim forms when the child was not in her care. She additionally claimed meals for the child June 1, 2020 through June 9, 2020 when the child was not in her care.

(Exhibits A, B; Kirkman Testimony).

Gracy Kirkman, program specialist for CFYS, issued a serious deficiency notice to Alberigo on September 11, 2020. The notice informed Alberigo that CFYS concluded she submitted false claims for reimbursement in violation of 7 C.F.R. 226.16(1)(2)(ii). Regarding CFYS's findings, the letter stated:

A random parent audit for July shows that several of your daycare children were claimed for meals and days that they didn't attend and several children had dropped your care. You are required to drop children from the computer when they leave your care. Meals have been removed and the amount needed to be repaid is \$756.36. This amount will be removed from your August claim after you turn in your new Registration. The August claim is on hold until we get a

current Registration. If the Registration is not turned [in], you will be required to pay back \$756.36.

(Exhibit C).

The notice further laid out two requisite corrective actions:

1. All new enrollments before September 30, 2020. Have the parents fill out 2 of them. One for this year 2019-2020 and one for the new year 2020-2021.
2. You will also need to have the parents fill out signature pages daily. The parents will be required to write in the time the child arrives and leaves, circle the meals served for the day, and signature from each parent daily. This will start October 1, 2020 daily for 2 months. Form is attached. You will be required to turn them in weekly in our drop box outside of our office or you can email them every Friday to [cacfp@polkcountyiowa.gov](mailto:cacfp@polkcountyiowa.gov). These will be verified weekly to make sure you entering correct times and meals.

Drop off days will be:

- October 2, 2020
- October 9, 2020
- October 16, 2020
- October 23, 2020
- October 30, 2020
- November 6, 2020
- November 13, 2020
- November 27, 2020
- and November 30, 2020

(Exhibit C).

The notice additionally instructed Alberigo to complete an attached corrective action plan and submit to CFYS no later than September 30, 2020, with the following warning:

If you do not submit the corrective action plan by September 30, 2020, or if your plan does not fully and permanently correct the serious deficiencies, or if you voluntarily terminate your CACFP agreement after receiving this letter, we will propose to:

- terminate your agreement to participate in the CACFP for cause, and
- disqualify you from future CACFP participation.

...

If disqualified, your name will be placed on the National Disqualified List (NDL) and you will not [be] able to participate in CACFP as a home provider or serve as a principal in any CACFP institution or facility.

You will remain on the NDL until USDA's Food and Nutrition Service, in consultation with the Iowa CACFP State Agency, determines that the serious

deficiencies have been corrected, or until seven years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the NDL until the debt has been repaid.

(Exhibit C).

CFYS did not receive the completed copy of Alberigo's corrective action plan or the requisite enrollment forms by the September 30, 2020. CFYS provided notice to Alberigo on October 1, 2020 that it intended to terminate her agreement to participated in CACFP for cause and disqualify her from future CACFP for failure to submit the completed corrective action plan and enrollment forms by the deadline. The letter reiterated the serious deficiency finding from the September 11, 2020 serious deficiency notice. (Kirkman Testimony; Exhibit D).

Alberigo appealed CFYS's action. On appeal, she acknowledged claiming meals for children who were not in her care. She testified that the families gave her permission to claim the children when not in her care so that she could collect additional reimbursement from the CACFP. Alberigo additionally claimed she placed the completed corrective action plan and requisite enrollment forms in the mail before September 30, 2020. (Appeal Request; Alberigo Testimony).

### 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.<sup>1</sup>

Program funding for day care homes is made available to the Department of Education 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.<sup>2</sup> 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.<sup>3</sup>

As part of the sponsoring organization's requirements, it must review each facility, including day care homes, at least three times per year. As part of the review process, the sponsoring organization must examine the meal counts recorded by the facility and, using enrollment and attendance records, determine the number of participants in care during each meal service and attempt to reconcile those numbers to the numbers of breakfasts, lunches, dinners, and/or snacks recorded in the facility's meal count for the day.<sup>4</sup> CFYS, as a sponsoring organization, is

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

<sup>2</sup> See 7 C.F.R. § 226.4(e).

<sup>3</sup> 7 C.F.R. § 226.13(a)-(c).

<sup>4</sup> 7 C.F.R. § 226.16(d)(4).

required to train and monitor sponsored facilities, including day care homes. Failure to do so constitutes a serious deficiency for the sponsoring organization and can result in denial of a renewal application.<sup>5</sup>

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.<sup>6</sup> Serious deficiencies for day care homes include submission of false claims for reimbursement and failure to keep required records.<sup>7</sup> If the day care home corrects the serious deficiency within the allotted time and to the sponsoring organization's satisfaction, the sponsoring organization may temporarily defer its determination of serious deficiency. If the day care home does not take timely corrective action to fully and permanently correct the serious deficiency cited, the sponsoring organization must issue a notice proposing to terminate the day care home's agreement for cause.<sup>8</sup> If the proposed termination is upheld, the sponsoring organization must immediately terminate the day care home's agreement and disqualify the day care home.<sup>9</sup>

In this case, Alberigo acknowledged she submitted false claims to CFYS in order to receive more reimbursement than she was entitled to receive. As such, the undersigned administrative law judge must conclude CFYS correctly determined a serious deficiency existed based upon the submission of false claims for reimbursement. To correct the serious deficiency, Alberigo was required to submit a completed corrective action plan and enrollment forms to CFYS no later than September 30, 2020. While Alberigo asserted she mailed these documents before the stated deadline, there is no evidence in the record to support her claim. CFYS did not receive the completed corrective action plan or the enrollment forms. As such, the undersigned administrative law judge concludes Alberigo failed to fully and permanently correct the serious deficiency. Under these circumstances, CFYS, as the sponsoring organization, is required to terminate the participation agreement for cause.

A national disqualified list is maintained by the USDA of institutions and day care homes disqualified from participation in the program.<sup>10</sup> 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.<sup>11</sup> Alberigo's day care home must be included on the national disqualified list pursuant to this decision.

## ORDER

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

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<sup>5</sup> See 7 C.F.R. §§ 226.6(c)(2)(ii)(F), 226.6(c)(2)(iii)(C).

<sup>6</sup> 7 C.F.R. § 226.16(I).

<sup>7</sup> 7 C.F.R. § 226.16(I)(2)(ii), (v).

<sup>8</sup> 7 C.F.R. § 226.16(I)(3)(iii).

<sup>9</sup> 7 C.F.R. § 226.16(I)(3)(v).

<sup>10</sup> 7 C.F.R. § 226.2.

<sup>11</sup> 7 C.F.R. § 226.16(I)(3)(v).

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Dated this 16<sup>th</sup> day of December, 2020.



Kristine M. Dreckman  
Administrative Law Judge

It is so ordered.

December 16, 2020

Date



Ann Lebo, Director  
Iowa Department of Education

cc: Kimberly Alberigo (via mail and email)  
Suzanne Secor-Parker (via email)  
Gracy Kirkman (via email)  
Cheryl Smith (via email)  
Thomas Mayes (via email)