

IOWA DEPARTMENT OF EDUCATION
(Cite as 30 D.o.E App. Dec. 088)

In re Termination from CACFP

AMBER FRY,

Appellant,

v.

WEST CENTRAL COMMUNITY ACTION,

Appellee.

DE Admin. Doc. 5141

Case No. 21DOECACFP2001

DECISION

STATEMENT OF THE CASE

Amber Fry (Fry) 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 July 13, 2021, via videoconference before Administrative Law Judge Alla Mintzer Zaprudsky, designated hearing officer for Ann Lebo, Director of the Iowa Department of Education. Appellant Amber Fry appeared self-represented and presented testimony. Appellee West Central Community Action (“WCCA” or “the sponsoring organization”) was represented by Executive Director, Wendy Muller, and CACFP Specialist, Beka Paul (Paul), who presented testimony. Also present on behalf of WCCA were Brittany Schoof, CSBG and CACFP Director, Keith Brook, Fiscal Officer, and Mary Lueth, CACFP Nutrition Representative. Robin Holz, Lead Consultant for Center Based Programs of the Bureau of Nutrition and Health Services division of the Iowa Department of Education (DOE), and Jaclyn Graves, Home Consultant from DOE for WCCA, were also present. Fry submitted a position statement, which was filed on July 6, 2021, that was admitted into evidence. WCCA submitted a summary plus exhibits marked A through L that were admitted into the record.

FINDINGS OF FACT

Amber Fry runs a daycare home in Council Bluffs, Iowa. Her day care home participates in the Child and Adult Care Food Program (CACFP) through an agreement with the sponsoring organization, WCCA. Fry’s start date for participation in CACFP with WCCA was on April 10, 2018. 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.

On May 5, 2021, WCCA conducted a random parent survey with the parents of CACFP enrolled children in Fry's child care home. (Paul Testimony). On May 17, 2021, Paul contacted the parent of C. M. for a confirmation of attendance at Fry's child care home for the month of April 2021 because the parent survey had not been returned timely. (Paul Testimony). C. M.'s parent responded with a text to Paul stating that C. M. had not been attending Fry's child care home since December 30, 2020. (Exh. B). C. M.'s mother told Paul that she and her husband had contracted COVID-19 in January, so the family was quarantined in January of 2021. C. M. began attending a preschool in Nebraska in February of 2021 and did not return to Fry's child care home in January, February, March, April, or May of 2021 either as a full time or drop in attendee. (Exh. B). C. M.'s mother also verified that she did not sign a January 2021 enrollment form that had her signature. (Exhs. B and D).

On March 5, 2021, Lueth conducted an unannounced virtual review of Fry's child care home. (Exh. C). On that day, Lueth noted that she observed C. M. The WCCA Claimed Foods & Attendance Form shows that C. M. was present and ate breakfast, AM snack, lunch, and PM snack. (Exh. C). The Five Day Attendance Report showed that C. M. was present on February, 22, 23, 24, 25, and 26 and had all of the corresponding meals for those days. (Exh. C). Fry signed the WCCA Review Details Report that C. M. was one of the children observed during this review. (Exh. C).

On May 18, 2021, Lueth and Paul conducted an announced virtual PM snack review with Fry. When Lueth asked what children were in attendance, Fry informed them that C. M. was no longer attending her child care home as of May 14, 2021. (Exh. C). Lueth and Paul also noted that while Fry had pre-marked her son as eating a PM snack, he did not arrive for the snack by the time that the two of them had finished the review. (Exh. C). The child care provider has a five minute window beyond the scheduled time during which they can still be reimbursed for the snack. (Testimony of Paul).

Paul along with a team of other WCCA staff reviewed Fry's documentation and made the following findings:

1. Discrepancies were found on claims submitted every weekday in the months of January 2021, February 2021, March 2021 and April 2021 with respect to C. M.
2. A signed Child Enrollment Form dated January 20, 2021 for C. M., which was submitted on January 21, 2021, was confirmed to not have been signed by the parent.
3. On March 5, 2021, Lueth completed an unannounced virtual review and Fry stated that C. M. was in attendance. C. M.'s parents confirmed that C. M. was attending a preschool elsewhere.
4. On May 18, 2021, Paul and Lueth conducted a virtual PM snack review and Fry informed them that C. M.'s last day was May 14, 2021. Prior to the announced review, Fry had documented in KidKare, computer software for CACFP providers to enter information, that C. M. was in attendance on May 17 and 18 and had participated in the meals. (Exh. F and Paul Testimony).

Wendy Muller issued a serious deficiency notice to Fry on May 21, 2021. The notice informed Fry that WCCA concluded she submitted false claims for reimbursement in violation of 7 C.F.R.

226.16(1)(2)(ii) and other circumstances of non-performance under the Sponsor-Provider Agreement existed in violation of 7 C.F.R. 226.16(1)(2)(ix).¹ Regarding WCCA's findings, the letter stated:

Because of these findings, the amount of \$396.13 will be deducted from your April and May claim reimbursements.

(Exhibit F).

The notice further laid out a number of requisite corrective actions:

With respect to Child Enrollment Forms:

1. Must submit new Child Enrollment Forms for all children currently in care by June 4, 2021.
2. Must be original and submitted via postal mail.
3. Must be printed and signed by parents with blue ink.
4. Electronic signatures and electronic Child Enrollment Forms will not be accepted.

West Central Community will cross check child attendance with meal participation records. **Effective upon receipt of this notice.**

1. Provider will be required to submit parent sign In/Out sheets with each claims submission. The sign In/Out sheets will be part of the required "unit of records".
2. The parent, not the provider, will list the arrival and departure times for each child each day and document the meals served to each child. Incomplete sign In/Out sheets will result in no credit for meals claimed in question.
3. Provider must continue to include the sign In/Out forms with each claims mailing until notified by West Central Community Action they are no longer needed. (Exh. F). (Emphasis in original).

The notice additionally instructed Fry to complete an attached corrective action plan and submit to WCCA no later than June 4, 2021, with the following warning:

If you do not submit the corrective action plan by June 4, 2021, 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.

...

¹ See Exh. F, Sections A and B (highlighted).

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.

(Exh. F).

WCCA received Fry's Correction Action form on May 27, 2021. (Exh. G). The form filled out by Fry states that "[t]his Corrective Action Plan must be sent when you have fully and permanently corrected the finding but not later than the DUE DATE OF: June 4, 2021 by 4:00 pm." (Exh. G). (Emphasis in original). On the form, Fry wrote that she had started the Corrective Action change on May 24, 2021, and that she is the individual responsible for each of the Corrective Action steps. (Exh. G). In her response to the statement "[t]his is how my Plan will correct the Seriously Deficiency findings," Fry wrote, "I will take the time to change people."

After receiving Fry's Corrective Action Plan, WCCA found that Fry submitted records that showed a child's parents had marked the children leaving at 4:00 p.m., but that Fry had recorded that they left at 5:00 p.m. (Exh. H). The same is true for a parent who marked 4:30 p.m., but Fry marked it as 5:00 p.m. (Exh. H). Fry also did not provide complete sign in/out records for her own child. (Exh. H).

When WCCA received and processed Fry's May 2021 claim on June 1, 2021, they noticed that Fry had not removed C. M. from her in/out records or her meal participation records. (Exh. I). He was counted present for eleven days and for all of the meals on those days. (Exh. I). Additionally, WCCA noted that Fry continued to pre-record child in/out times and meal participation even after submitting her Corrective Action Plan. (Exh. J).

On June 10, 2021, WCCA sent Fry a letter concerning her Serious Deficiency Notice in which Mueller stated that they had determined that Fry had not fully and permanently corrected the serious deficiencies stated in the Notice. (Exh. L). The letter reiterated the issues that had original led to the Serious Deficiency finding as well as continuing problems. (Exh. L). As a result, WCCA proposed that effective June 28, 2021, the following would occur:

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

Fry appealed WCCA's action. On appeal, she acknowledged that C. M. had stopped attending her day care, but contends that it occurred in February and not in January of 2021. (App. Exh./Position Statement). Fry testified that she believed the names of the children on her list did not matter. (Fry Testimony). She believed that it was the number of children receiving meals that was important and not the actual attendees that mattered. (Fry Testimony). Fry testified that she

actually had more children enrolled than she claimed. (Fry Testimony). She did not change the names of the children on her roll because she did not want to redo paperwork as some of the children were moving. (App. Exh./Position Statement). According to Fry, many of the parents do not like to sign paperwork. (App. Exh./Position Statement). With respect to the enrollment form that C. M.'s mother told Paul she did not sign, Fry stated that she had called and asked the parent whether she could sign the form since the parents were out because of COVID-19 and the forms were due. (App. Exh./Position Statement).

Fry did not disagree that her son may have come late the day that WCCA was observing her PM snack time, but she stated that the half hour provided for the snack should not be a limitation on whether she is reimbursed. Her son had the snack and was able to eat it while the other children were at the table. (App. Exh./Position Statement). With respect to sign in/out times, Fry stated that she does not believe that keeping the exact times is important, as she is not paid by the hour. (App. Exh./Position Statement).

Fry also testified that she finds it easier to mark children in during the morning. (Fry Testimony). She has a lot going on in her life, and it is difficult to get some of the paperwork done. (Fry Testimony). Fry testified that she serves good food and has a clean house. (Fry Testimony). Documentation should not be the reason that she is terminated. (Fry Testimony). In her position statement, Fry stated that she does not believe that she needs to give the exact times that the children are in her care and that it is enough to provide the business hours. (App. Exh./Position Statement).

CONCLUSIONS OF LAW

CACFP is established by the Agricultural Risk Protection Act, Public Law 106-224. 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.²

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.³ WCCA, 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, WCCA must conduct reasonable edit checks on the day care homes' meal claims. WCCA receives payment for the meals served based on daily meal counts taken in the day care home.⁴

As part of the sponsoring organization's requirements, it must review each facility, including day care homes, at least three times per year.⁵ As part of the review process, the sponsoring organization must examine the meal counts recorded by the facility and, using enrollment and

² 42 U.S.C. § 1766(a)(1)(A)(ii); 7 C.F.R. § 226.1.

³ See 7 C.F.R. § 226.4(e).

⁴ 7 C.F.R. § 226.13(a)-(c).

⁵ 7 C.F.R. § 226.16(d)(4)(iii).

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.⁶ WCCA, as a sponsoring organization, is 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.⁷

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.⁸ Serious deficiencies for day care homes include submission of false claims for reimbursement and any other circumstances related to non-performance under the sponsoring organization-day care home agreement, as specified by the sponsoring organization or the State agency.⁹ 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.¹⁰ 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.¹¹ If the proposed termination is upheld, the sponsoring organization must immediately terminate the day care home's agreement and disqualify the day care home.¹²

In this case, Fry acknowledged she submitted claims for C. M. when he was no longer enrolled with her home daycare and that she had stated that C. M. was in attendance when he was not. She also acknowledged that she had signed C.M.'s Child Enrollment Form dated January 20, 2021. As such, the undersigned administrative law judge must conclude WCCA correctly determined a serious deficiency existed based upon the submission of false claims for reimbursement and for non-performance under the Sponsor-Provider Agreement. To correct the serious deficiency, Fry was required to submit a completed corrective action plan and child enrollment forms to WCCA no later than June 4, 2021. On May 27, 2021, WCCA received the Correction Action form, parent sign in/out sheets, and a letter addressing her reasoning for claiming a child not in attendance as well as how she obtained the signature from the parent in quarantine. This information was dated and signed May 24, 2021. Fry's approach to correcting the serious deficiency was not clear and minimal. The in/out forms, which she submitted with the corrective action plan, continued to show discrepancies between the times that the parents entered on the forms, and those submitted by Fry. Fry also failed to complete sign in/out for her own child during the period of May 26 and June 2, 2021. In the May 2021 claim for reimbursement, which was submitted on June 1, 2021, Fry did not remove C. M. from eleven day of either the in/out records or the meal participation records. Fry also requested reimbursement for the PM snack that the staff of WCCA noted her child did not attend. Additionally, Fry continued to pre-record child in/out time and meal participation times up to

⁶ 7 C.F.R. § 226.16(d)(4).

⁷ See 7 C.F.R. §§ 226.6(c)(2)(ii)(F), 226.6(c)(2)(iii)(C).

⁸ 7 C.F.R. § 226.16(l).

⁹ 7 C.F.R. §226.16(l)(2)(ii), (v).

¹⁰ 7 C.F.R. §226.16(l)(3)(ii).

¹¹ 7 C.F.R. § 226.16(l)(3)(iii).

¹² 7 C.F.R. § 226.16(l)(3)(v).

June 10, 2021. During hearing, Fry demonstrated a lack of understanding or a disinterest in maintaining accurate records. As such, the undersigned administrative law judge concludes Fry failed to fully and permanently correct the serious deficiency. Under these circumstances, WCCA, 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.¹³ 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.¹⁴ Fry'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 Amber Fry and West Central Community Action is hereby terminated. The day care home shall be placed on the national disqualified list.

Dated this 10th day of August, 2021.



Alla R. Mintzer
Administrative Law Judge

It is so ordered.

August 10, 2021



Date

Ann Lebo, Director
Iowa Department of Education

cc: Amber Fry (via certified mail and email)
Wendy Mueller (via certified mail and email)
Keith Brunk (via email)
Brittany Schoof (via email)
Beka Paul (via email)
Mary Lueth (via email)
Cheryl Smith (via email)

¹³ 7 C.F.R. § 226.2.

¹⁴ 7 C.F.R. § 226.16(l)(3)(v).