



Department of Health

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DOH-CACFP: Number 218 (12/22) - Revised (12/22)
Supersedes Number 153 (10/12)

TO: All CACFP Sponsoring Organizations

FROM: Danielle Quigley, MS, RD, CDN
Director, Bureau of Child and Adult Care Food Programs

Danielle Quigley, MS, RD, CDN

SUBJECT: Appealing an Adverse Action by CACFP

I. Purpose and Scope

Child and Adult Care Food Program (CACFP) Sponsoring Organizations have the right to appeal actions taken by CACFP which adversely affect their participation in the program or payment of their claims for reimbursement. An adverse action is a decision made by CACFP that is unfavorable to the organization, such as rejecting a claim for reimbursement or proposing to terminate the organization from the program. The purpose of this memo is to provide CACFP Sponsors with information about what adverse actions can be appealed, what type of appeals are available, and what steps must be taken to file an appeal.

II. Procedure for Appealing

CACFP will notify the Sponsor and all responsible individuals in writing when an action is being taken or is proposed to be taken which adversely affects their participation in the program or payment of a claim for reimbursement. A Sponsor or individual who disagrees with the action taken and wants to appeal that action must submit a written request to the State CACFP Director. The letter must be received by CACFP within 15 calendar days of the Sponsor receiving the original notice of action from CACFP.

- A. The appeal must include the following:
1. The name and address of the Sponsor
 2. The CACFP action the Sponsor is appealing
 3. The reason(s) the Sponsor disagrees with the action
 4. The relief the Sponsor is seeking from CACFP
 5. The type of review the Sponsor is seeking (see Section III)
 6. The name, title and signature of an individual legally authorized to represent the Sponsor.

- B. This letter must be sent to:
State Director, CACFP
NYSDOH-DON
Riverview Center
150 Broadway, Suite 600
Albany, NY 12204-2719

Any information on which CACFP's action was based will be available to the Sponsor for inspection after CACFP receives the appeal.

III. Options for Appeals

The Sponsor and/or individuals may oppose the adverse action either by:

- A. Requesting a review of written documentation by an independent and impartial review official, or
- B. Requesting an in-person hearing with the Department of Health and an independent and impartial review official. This must be clearly stated or only written submissions will be reviewed.

A hearing cannot be requested if:

- 1. The Sponsor or one of its principals is ineligible to participate in any publicly-funded program due to a violation of program requirements
- 2. The Sponsor or one of its principals was convicted of an activity that indicates a lack of business integrity

In these instances, sponsors and individuals may only request a review of the records.

IV. Next Steps

CACFP will acknowledge the receipt of a Sponsor's or individual's appeal within 10 days of receipt of the appeal letter. This confirmation will be in writing and a copy will be sent to the NYS DOH Bureau of Adjudication notifying them of the appeal. The Sponsor has the right to represent itself or be represented by legal counsel or another person during the appeal process.

- A. If a review of documents is chosen, CACFP will notify the Sponsor of the date the documents must be received by the DOH Bureau of Adjudication. This will be within 30 days of the date the Sponsor received the original notice of action from CACFP.
- B. If a hearing is requested, CACFP will notify the Sponsor that the DOH Bureau of Adjudication will contact them to schedule the hearing. The Sponsor will receive written notice of the hearing date, time, and location at least 10 calendar days before the hearing is scheduled.
- C. A review official will conduct the hearing. A CACFP staff person, represented by DOH legal counsel, will be present at the hearing to answer questions by the review official and to respond to testimony of the Sponsor. If the Sponsor does not appear at the

hearing, they give up their right to a hearing unless the review official agrees to reschedule the hearing.

The review official will make a determination on the adverse action within 60 days of the date on which the State receives the Sponsor's appeal. The determination will be communicated in writing to the Sponsor, named individuals, and CACFP.

V. General Information

- A. CACFP's action remains in effect during the appeal process.
- B. Sponsors may continue to participate in CACFP and receive reimbursement for eligible meals served while they appeal an adverse action unless the action is based on an imminent threat to the health and safety of participants or the submission of a false or fraudulent claim for reimbursement. If the adverse action indicates that your organization's CACFP payments have been suspended, you should also refer to the CACFP Policy Memo DOH-CACFP 219 (12/22) "Appealing a Suspension from CACFP".
- C. CACFP is not required to offer an appeal to a Sponsor for an action taken on the basis of a Federal audit determination or decisions made by USDA on requests for exceptions to claims submission deadlines or on requests for upward adjustments to claims.
- D. Decisions rendered by USDA cannot be appealed.

If you have any questions about the Sponsor's right to appeal an adverse action by CACFP, please refer to 7 CFR 226.6 (k) or contact CACFP at 1-800-942-3858 or 518-402-7400 or cacfp@health.ny.gov.