



**DOH-CACFP:** Number 219 (12/22) - Revised (12/22)  
Supersedes Number 154 (10/12)

**TO:** All CACFP Sponsoring Organizations

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

**SUBJECT:** Appealing a Suspension from CACFP

## I. Purpose and Scope

Child and Adult Care Food Program (CACFP) Sponsoring Organizations have the right to appeal the suspension of their participation in CACFP, including the suspension of payments. The purpose of this memo is to provide CACFP Sponsors with information about what situations can result in a suspension of payments and what steps must be taken to appeal a suspension.

## II. Basis for Suspension from CACFP

A Sponsor's participation in CACFP can be suspended if they: a) submit a false or fraudulent claim for reimbursement or b) pose an imminent threat to the health or safety of program participants or the public.

- A. CACFP cannot pay a claim, or any part of a claim, that it knows to be false. In addition, CACFP must name a sponsor seriously deficient if they have knowingly filed a false or fraudulent claim for reimbursement. As part of that adverse action, CACFP has the option to suspend an organization from program participation, including the payment of claims, until the serious deficiency is resolved.

When CACFP suspends a Sponsor for filing a false or fraudulent claim, the organization has the opportunity to appeal the suspension before it takes effect. If this is unsuccessful, they will also have the opportunity to appeal the suspension resulting from the filing of a false or fraudulent claim through the regular appeal process.

- B. CACFP must immediately suspend a Sponsor from program participation when they have been cited by a State, local health or licensing official for violations that pose an imminent threat to health or safety. In addition, CACFP must propose to terminate the Sponsor's participation in the program because of the health or safety threat.

The Sponsor is not allowed to participate in CACFP or receive payment for claims until the proposal to terminate the Sponsor from CACFP participation is resolved.

### III. Procedure for Appealing a Suspension for Filing a False or Fraudulent Claim

- A. When CACFP suspends a Sponsor from participation in CACFP for filing a false or fraudulent claim, the organization and all responsible principals and individuals will be notified in writing. This document, called a suspension notice, will indicate that CACFP intends to suspend program participation, including the payment of claims, and will name the organization seriously deficient for filing a false or fraudulent claim. This notice will specify the date on which the suspension will take effect. It will offer the Sponsor an opportunity for an expedited appeal of the suspension of payments. This notice will also give the Sponsor the opportunity to offer corrective action to address the serious deficiency.
- B. If a Sponsor chooses to appeal the suspension, they must file a written request with CACFP. That letter must be postmarked within 10 calendar days of receipt of the original notice of action from CACFP. The letter must be sent to the CACFP State Director.
- C. The appeal request must include the following:
  1. The name and address of the Sponsor
  2. Notice that the Sponsor is appealing the suspension of program participation
  3. The reason(s) the Sponsor disagrees with the suspension
  4. The name, title and signature of an individual legally authorized to represent the Sponsor.
  5. This letter must be sent to:  
State Director, CACFP  
NYSDOH-DON  
Riverview Center  
150 Broadway Suite 600  
Albany, NY 12204-2719
  6. The Sponsor has the right to submit documents supporting their point of view. These written documents must be received within 10 days of the receipt of the suspension notice from CACFP.
  7. CACFP will acknowledge the receipt of a Sponsor's request for an expedited appeal of the suspension within 10 days of receipt of the suspension review request. A copy will be sent to the NYS DOH Bureau of Adjudication. This confirmation will be made in writing.
  8. The DOH Bureau of Adjudication will assign an independent and impartial review official to the case.
  9. Any information on which CACFP's suspension was based will be available to the Sponsor for inspection from the date that CACFP receives the request for a suspension appeal.

10. A review official will review CACFP and appellant documents and render a decision on the appropriateness of the suspension of the Sponsor from CACFP participation, within 10 calendar days of the request for an expedited appeal. This review is of written documents only; neither CACFP nor the Sponsor have the option of appearing in person.
11. The determination will be communicated, in writing, to the Sponsor, responsible principals and individuals, and CACFP.
12. If a Sponsor wins their abbreviated appeal of the suspension, they will not be suspended from CACFP participation. Claims for reimbursement of eligible meals served and allowable administrative costs will be paid during the serious deficiency process.
13. If the Sponsor loses the abbreviated appeal of this suspension, they will be suspended from CACFP participation effective on the date of the suspension decision. All program payments will be withheld pending resolution of the suspension and/or serious deficiency. The Sponsor still has the right to appeal the suspension through CACFP's regular appeal process. The Policy Memo DOH-CACFP Number 218 (12/22) "Appealing an Adverse Action by CACFP" should be referenced for information about the type of appeals that are available, and what steps must be taken to file an appeal.
14. Whether or not the Sponsor wins the suspension appeal, they are offered the opportunity to submit corrective action to address their serious deficiency. If their corrective action plan is accepted, the serious deficiency is considered addressed, the suspension is cancelled, and they continue to participate in CACFP.
15. If their corrective action is not accepted, they are sent a notice of intent to terminate and the regular appeal process commences. The Policy Memo DOH-CACFP Number 218 (12/22) "Appealing an Adverse Action by CACFP" should be referenced for information about the type of appeals that are available, and what steps must be taken to file an appeal.

#### **IV. Procedure for Appealing a Suspension for Imminent Threat to Health and Safety**

- A. When CACFP suspends a Sponsor from participation because their operation poses an imminent threat to health and safety, the Organization and all responsible principals and individuals will be notified in writing. This document, called a suspension notice, will indicate that CACFP intends to immediately suspend program participation, including the payment of claims, because of the Sponsor's imminent threat to health and safety. Because of the seriousness of this finding, the Sponsor will be proposed for termination from CACFP at the same time.
- B. The Sponsor is not offered the opportunity to appeal the proposed suspension nor are they offered the opportunity to propose corrective action to address the health and safety violations. The Sponsor does have the right to appeal the suspension and CACFP's proposal to terminate their participation in the program. The Policy Memo DOH-CACFP Number 218 (12/22) "Appealing an Adverse Action by CACFP" should be referenced for information about the type of appeals that are available, and what steps must be taken to file an appeal.

- C. If a Sponsor wins their appeal of the proposed termination from CACFP, their suspension ends on the date of the appeal decision. They are not terminated from CACFP and they may claim eligible meals and administrative costs for the period of the suspension.
- D. If the Sponsor loses their appeal of the proposed termination, their agreement with CACFP is terminated and the Sponsor and all responsible parties are placed on the National Disqualified List (NDL). In this case, payment will not be made for meals and/or administrative costs during the period of suspension.

## **V. General Information**

If you have any questions about your Sponsor's right to appeal a suspension of CACFP participation, please refer to 7 CFR 226.6 or contact CACFP at 1-800-942-3858 or 518-402-7400 or [cacfp@health.ny.gov](mailto:cacfp@health.ny.gov).