



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

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STATE SUPERINTENDENT

**FISCAL YEAR 2016
CHILD AND ADULT CARE FOOD PROGRAM
FAMILY DAY CARE HOME SPONSOR MEMORANDUM #12**

TO: Family Day Care Home Sponsors
FROM: Marla J. Moss, Director
Office of School Support Services
DATE: March 18, 2016
SUBJECT: Appeal Procedure - Reminder

This operational memo serves as a reminder that the current appeal procedures for the Child and Adult Care Food Program (CACFP) are posted on the [CACFP website](http://www.michigan.gov/cacfp) (www.michigan.gov/cacfp) under "Resources." For your convenience, the appeal procedures are also attached to this memorandum. Follow appeal procedures if you wish to appeal actions taken by the Michigan Department of Education. Actions that are subject to administrative review are listed in the appeal procedures.

If you have any questions regarding this memorandum, contact the CACFP office at 517-373-7391.

Attachment

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CHILD AND ADULT CARE FOOD PROGRAM APPEAL PROCEDURES

The United States Department of Agriculture's (USDA) Child and Adult Care Food Program (CACFP) regulations, 7CFR 226.6(k), provide institutions, responsible principals, and responsible individuals procedures for appealing actions subject to administrative review taken by the Michigan Department of Education (MDE). In these procedures *days* refers to calendar days unless otherwise specified.

Actions that are subject to administrative review include:

- Denial of an institution's application for participation.
- Denial of an application submitted by a sponsoring organization on behalf of a facility.
- Notice of proposed termination of an institution's agreement.
- Notice of proposed disqualification of a responsible principal or responsible individual.
- Suspension of an institution's participation dealing with suspension for health or safety reasons or submission of a false or fraudulent claim.
- Denial of an institution's application for start-up or expansion payments.
- Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.
- Denial of a request for an advance payment.
- Denial of all or part of the claim for reimbursement, except for late submission under 7CFR 226.10(e).
- Failure of MDE CACFP to forward to USDA Food and Nutrition Service (FNS) an exception requested by the institution for payment of a late claim or a request for an upward adjustment to the claim after the 60 day deadline.
- Demand for the remittance of any overpayment.
- Any other action of MDE CACFP affecting the participation of an institution or the institution's claim for reimbursement.

Actions that are NOT subject to an administrative review include:

- USDA Food and Nutrition Service (FNS) decisions on claim deadline exceptions and requests for upward adjustments to claims.
- Determination of serious deficiency.
- Disqualification and placement on state agency list and National Disqualified List (NDL).
- Termination of a participating institution's agreement including termination of a participating institution's agreement based on the disqualification of the institution by another state agency or FNS.
- Determination that the corrective action was not complete and permanent.
- Decision by MDE or FNS that an institution's corrective action is inadequate to be removed from the NDL.
- Refusal to consider an institution's application to participate when either the institution or one of its principals is on the NDL, or refusal to consider an institution's application to participate submitted by a sponsoring organization on behalf of a facility that is on the NDL.

Family Day Care Home Sponsors only:

- Denial of an institution's application for start-up or expansion payments.
- Denial of an advance payment.
- Recovery of all or part of an advance in excess of the claim for the applicable period.

Abbreviated administrative review. Per 7CFR 226.6(k)(9), MDE must limit the administrative review to a review of written submissions concerning the accuracy of MDE's determination if the application was denied or if MDE proposes to terminate the institution's agreement because:

- (i) The information submitted on the application was false
- (ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list
- (iii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program
- (iv) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity

Combined administrative reviews for responsible principals and responsible individuals (RP/Is).

Per 7CFR 226.6(k)(8), MDE must conduct the administrative review of the proposed disqualification of the RP/Is as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the RP/Is are associated. However, at the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the RP/Is demonstrates that their interests conflict.

Procedure for Filing an Appeal

1. A request for administrative review must be submitted to **MDE CACFP** no later than 15 calendar days after the notice of action (the deadline for a suspension review is 10 calendar days; the deadline for a suspension appeal is 15 calendar days) was received by the institution. If the notice of action is undeliverable, it is considered to be received by the institution, RP/Is, or day care home, five days after being sent to the addressee's last known mailing address. The request for administrative review will be denied if the request is not submitted within the 15-day deadline. The request for the administrative review must be sent to the address below. MDE will forward the original request for administrative review to the Michigan Administrative Hearing System (MAHS). MDE recommends that requests for administrative review be sent certified mail. Be reminded that the request must be received **by MDE** in the CACFP office within the 15-day deadline. The institution is responsible to ensure the appeal is received in the CACFP office within 15 days and appeals delivered to the wrong office will not be considered timely and subject to denial.

**Michigan Department of Education
Office of School Support Services
Child and Adult Care Food Program
P.O. Box 30008
Lansing, MI 48909**

Per CACFP regulations 7 CFR 226.6(k)(5)(vii), you may also contact the MAHS directly at the address below. Copies of any correspondence sent to MAHS must also be sent to MDE CACFP.

**Michigan Administrative Hearing System
Attention: Administrative Law Judge
Ottawa Building, Second Floor
611 West Ottawa Street
Lansing, Michigan 48933**

2. The request for an administrative review must be in writing and must:
 - a. Specify the action or notice being appealed.
 - b. Include the institution's name and MDE CACFP agreement number.
 - c. Explain the disagreement with each finding and/or action taken by MDE CACFP.
 - d. Specifically request either of the following:

- i) **File Review**

(For example: XYZ Child Care hereby requests a File Review)

With a "File Review," an administrative law judge (ALJ), employed by the Michigan Administrative Hearing System (MAHS), reviews the documentation contained in the institution's CACFP file and submitted to him or her by representatives of the MDE CACFP. The ALJ also reviews any written documentation submitted by the institution and RP/Is. The final administrative determination of the ALJ is based solely on written information.

or an

- In-Person Review**

(For example: XYZ Child Care hereby requests an In-Person Review)

With an "In-Person Review," an ALJ, employed by MAHS, schedules a hearing in Lansing, Michigan. At the hearing, the institution's representatives, RP/Is, or other witnesses may testify under oath and present written documentation to the ALJ. Representatives of the MDE CACFP may attend the hearing to present information, respond to testimony, answer questions of the ALJ, and present written documentation. The final administrative determination of the ALJ is based upon the institution's MDE CACFP file, as well as testimony and written documentation submitted to the ALJ.

3. If the institution's written request for review does not specifically request an In-Person Review, the ALJ will conduct a File Review. An In-Person Review is held only when the written request for administrative review includes a request for an In-Person Review.
4. The MDE CACFP will acknowledge receipt of the request for administrative review within 10 calendar days of receipt of the request.
5. Regardless of whether the request for administrative review is a request for a File Review or an In-Person Review, the institution, RP/Is may submit to MAHS written documentation refuting the findings in the notice of action not later than 30 calendar days after the notice of action was received, unless otherwise directed by the ALJ. A copy of any documentation or correspondence submitted to MAHS must be simultaneously provided to the MDE CACFP. Documentation submitted after this deadline, or not submitted in accordance with the direction of the ALJ, will not be considered.
6. The MDE CACFP may submit to MAHS its legal and/or factual justification for its actions or findings not later than 15 calendar days after the institution's deadline for submitting documentation expires.
7. If an In-Person Review is requested, MAHS will schedule a hearing. MAHS shall provide the institution, RP/Is, and the MDE CACFP with at least 10 days advance notice of the time and place of the hearing.

8. If the institution's representative, RP/Is, or their representative fail to appear at a scheduled hearing, they waive the right to a personal appearance before the ALJ, unless the ALJ agrees to reschedule the In-Person Review.
9. Any information on which the MDE CACFP bases its action will be available to the institution and RP/Is upon request for inspection from the date of receipt of the request for administrative review.
10. The institution and RP/Is may retain legal counsel or may be represented by another person. The attorney or representative must file an appearance with the MAHS and with the MDE CACFP no later than 30 calendar days after the institution received notice of the action.
11. The ALJ will make the final administrative determination based solely on information provided by the MDE CACFP, the institution, and RP/Is, and based on federal and state laws, regulations, policies, and procedures governing the MDE CACFP. The ALJ will inform the MDE CACFP, the institution's executive director, chairman of the board of directors, and the RP/Is of the administrative review's outcome within 60 days of the receipt of the request for administrative review. This timeframe is an administrative requirement of the federal regulations and may not be used as a basis for overturning the MDE CACFP's action if a decision is not made within the specified timeframe.
12. The determination of the ALJ is the final administrative determination to be afforded to the institution and the RP/Is.

Program Payments

Participating institutions and facilities may continue to operate in the MDE CACFP during an appeal of Proposed Termination and Proposed Disqualification to terminate unless participation has been suspended. Reimbursement for eligible meals and allowable administrative costs will continue to be paid to the institution provided that records to support the claim are available pending the outcome of the administrative review.