

Section 8000

Denials, Terminations and Appeals

Table of Contents

8100 Denials

8200 Terminations

8210 Contracting Entity

8220 Provider

8300 Appeals

8310 Contracting Entity

8311 Actions Subject to Appeal

8312 Appeal Process

8320 Provider

8321 Actions Subject to Appeal

8322 Appeal Process

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Denials, Terminations and Appeals

8100 Denials

TDA will deny an application and may terminate the Permanent Agreement if it is determined at any time that an applicant or contracting entity (CE):

- Is ineligible to participate in the CACFP.
- Submitted false information to TDA, including but not limited to, a determination that the CE has concealed a conviction for any activity that occurred during the 7 years preceding their application and that indicates a lack of business integrity. A lack of business integrity includes, but is not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity.
- Failed to return an advance payment that exceeds the amount earned for serving approved meals, a disallowed start-up/expansion payment, or an unearned reimbursement.
- Failed to maintain required records.
- Claimed reimbursement for meals that did not meet meal pattern requirements.
- Claimed reimbursement from multiple programs for the same meal served to the same child or claimed a child more than once per individual meal in the CACFP (concurrent participation).
- Claimed reimbursement for meals that were not served to participating children.
- Has an outstanding or unresolved single audit.
- Failed to comply with procurement standards or contract requirements.
- Is unable to properly operate the CACFP.
- Has defrauded the CACFP.
- Failed to complete a corrective action, as detailed in a corrective action plan.
- Permitted a member of the organization's governing body, an agent, a consultant, or an employee who has been convicted of a fraudulent activity, to engage in any activity related to the administration of the CACFP.
- Has been determined to be seriously deficient in the ability to comply with requirements in the CACFP and placed on the National Disqualified List (NDL).
- Has been determined to be seriously deficient in the ability to comply with requirements in any other Child Nutrition Program (CNP) and been disqualified from or excluded from participation in that Program.
- Sponsors the participation of a provider who was terminated for cause or declared seriously deficient and placed on the National Disqualified List.
- Failed to submit a complete and correct application within the specified time.
- Failed to meet basic eligibility requirements.

- Did not disburse payment to providers according to the CE's management plan, and in compliance with requirements.
- Failed to submit a balanced and reasonable budget.
- Failed to operate the CACFP in conformance with the requirements specified in the application, including fiscal accountability demonstrated through compliance with financial management standards contained in FNS Instruction 796-2, *Financial Management – Child and Adult Care Food Program*.
- Used a food service management company/vendor that is in violation of health codes.
- Failed to properly train or monitor providers.
- Failed to perform financial and administrative responsibilities.
- Engaged in any other action affecting the CE's ability to administer the CACFP in accordance with requirements as stated in this handbook and the Permanent Agreement.

If an organization's application is denied, TDA will notify the organization, in writing, of the specific reason for denial. The organization has the right to appeal the denial of its application. See Item 8311 for other actions subject to appeal.

NOTE: If an organization's application is denied, it may reapply at any time.

8200 Terminations

8210 Contracting Entity

The Permanent Agreement may be terminated in whole or in part. A termination "in part" applies to situations where a CE participates in more than one CNP and withdraws from or is determined to be ineligible for at least one but not all of the programs.

If a CE is determined to be ineligible to participate in a CNP as a result of serious deficiency in the ability to comply with requirements, its Permanent Agreement must be terminated "in whole." Meaning participation in all child nutrition programs would be terminated, if applicable.

TDA must terminate a CE's Permanent Agreement if the CE:

- Ceases to be eligible for the CACFP (i.e. loses tax exempt status);
- Is disqualified from the CACFP in another State or by USDA FNS;
- Is disqualified from the CACFP by TDA;
- Is disqualified or excluded from participation in another CNP by TDA, another State or USDA FNS; or
- Any other action affecting the CE's ability to administer the Program in accordance with the Program Agreement.

Failure to Renew

Although CEs enter into a Permanent Agreement with TDA to operate the CACFP, they must still submit specific information annually to renew participation. If a CE notifies TDA in writing that it does not intend to renew its participation in the CACFP its Permanent Agreement will be amended (if the CE participates in more than one component of the CACFP or another CNP) or terminated by mutual consent, as appropriate.

However, a CE will be placed in the serious deficiency process if it begins the renewal process and fails to:

- Submit all required documentation or information;
- Correct submitted information or submit additional information as requested by TDA; or
- Notify TDA that its failure to complete the renewal process is because it has decided to withdraw from the CACFP and/or terminate its Permanent Agreement.

Termination by Mutual Consent

TDA and a CE may mutually consent to terminate the Permanent Agreement at any time.

Termination by mutual consent generally occurs as a result of the CE's decision to withdraw from the CACFP and can occur at any time during the program year, including at the time of renewal.

Termination by mutual consent will also occur when the organization's EIN, or other documentation establishing the organization's legal identity has changed.

NOTE: Termination by mutual consent is not an adverse action. Therefore, a CE cannot appeal this termination.

8220 Provider

Providers who have been terminated for cause, disqualified from participation in the CACFP, or excluded from participation in the Summer Food Service Program are ineligible to participate in the CACFP. USDA maintains the National Disqualified List and TDA maintain the Texas Excluded Summer Food Service Program List (TEXSL).

The *Provider Application – Day Care Homes and Permanent Agreement Between Sponsor and Day Care Home Provider(s)* (H1542), define the relationship between the CE and a provider. If one of a CE's providers is seriously deficient in his or her ability to comply with CACFP requirements, the CE is responsible for placing the provider in the Serious Deficiency Process.

NOTE: Refer to Section 10000 for procedures related to the Serious Deficiency Process for Providers.

8300 Appeals

A CE may only request an appeal of certain adverse actions. An adverse action is an action that denies or reduces CACFP benefits to the CE. The lists below detail which actions can and which actions cannot be appealed.

8310 Contracting Entity

8311 Actions Subject to Appeal

A CE has the right to appeal:

- Denial of a new or renewal application.
- Denial of a provider's application.
- Proposed termination and proposed disqualification.
- Suspension of participation (due to imminent threat to health or safety or submission of false or fraudulent claims).
- Denial of advances.
- Recovery of advances (demand from TDA for repayment of advances not covered by claims submitted or due to non-claiming for the month(s) of the advance(s)).
- Denial of all or part of a claim, except the denial due to late submission.
- TDA's denial to submit the CE's request for a good cause exception to the United States Department of Agriculture (USDA) for consideration of payment.
- Overpayment demand.
- Other actions taken by TDA, which affect the CE's participation or claim for reimbursement.

A CE may not appeal:

- USDA denial of a claim.
- Determination of serious deficiency.
- Determination that corrective action is inadequate.
- Disqualification and placement on the NDL.
- Termination of a participating organization's Permanent Agreement as a result of the Serious Deficiency Process, including termination based on the disqualification of that organization by another State agency or USDA.
- Denial of removal from the NDL.
- TDA's refusal to consider the application of an organization when the organization or one of its principals is on the NDL.

- TDA's refusal to consider the application submitted on behalf of a provider when the provider is on the NDL.
- Termination by mutual consent.

8312 Appeal Process

Requests for an appeal must be received by TDA within 15 days of receipt of notification of an adverse action. The appeal must:

- Be in writing;
- State the basis for the appeal of the adverse action; and
- Include a legible copy of the adverse action letter.

If you wish to have an in-person hearing, you must request a hearing at the time you file your written appeal. If you do not include a written hearing request in your appeal, you waive the right to a hearing and the appeal will be decided upon review of the documents in the record, unless the Administrative Review Official (ARO) determines that the failure to make a timely request was due to circumstances beyond the control of the appellant.

TDA has the discretion to refer a request for a hearing to the State Office of Administrative Hearings (SOAH) for resolution. Should you wish to have your hearing held by the State Office of Administrative Hearings (SOAH), you must make that request at the time of your written appeal.

Your appeal must be mailed or faxed to:

**FOOD AND NUTRITION APPEALS
TEXAS DEPARTMENT OF AGRICULTURE
LEGAL DIVISION
ATTN: DOCKET CLERK
PO BOX 12847
AUSTIN TEXAS 78711
FAX (800) 909-8530**

You may hand-deliver or submit your appeal via overnight/special delivery service to the following street address:

**TEXAS DEPARTMENT OF AGRICULTURE
LEGAL DIVISION
1700 NORTH CONGRESS, 11TH FLOOR
AUSTIN TEXAS 78701**

The rules regarding the appeal procedures for CACFP are found in Title 4 of the Texas Administrative Code Sections 1.1000 – 1.1004.

NOTE: Documentation a CE wants to have considered for the appeal must be submitted within 30 days of receipt of an adverse action. The CE can submit the document with the request for an appeal, or separately.

CEs that wish to confirm receipt of their appeal request may contact the Legal Division at (512) 463-4075.

EXCEPTION: CEs that want to appeal an adverse action that was based on the findings of a federal audit or review, must submit a written request to USDA at:

**ADMINISTRATIVE REVIEW DIVISION
USDA – FNS RM. 523
3101 PARK CENTER
ALEXANDRIA, VIRGINIA 22031**

The USDA Administrative Review Division must receive the request for an appeal within 15 days after the CE's receipt of notification of adverse action. CEs must include a copy of the adverse action notification received from USDA, or from TDA, acting on behalf of or as directed by USDA, as applicable.

8320 Provider

8321 Actions Subject to Appeal

Providers have the right to appeal any actions taken which adversely affects their participation in the CACFP or claims for reimbursement, including:

- Denial of the *Provider Application – Day Care Homes, and Permanent Agreement Between Sponsor and Day Care Home Provider(s)* (H1542).
- Full or partial denial of a provider's claim for meals.
- Denial of a resident child's eligibility to participate in the CACFP.
- Denial of Tier I reimbursement status.
- Notice of Proposed Termination and Disqualification, which is part of the Serious Deficiency Process.
- Termination of the provider's participation (does not apply to termination by mutual consent or as a result of the serious deficiency process).

8322 Appeal Process

A CE must establish one uniform appeal procedure for all providers under its sponsorship, and supply the procedures to a provider when it:

- Signs an application and agreement with the provider, and yearly after that.
- Takes an action which adversely affects the provider's participation in the CACFP or claims for reimbursement.
- Any other time, upon request.

NOTE: An adverse action is any action that denies or reduces program benefits to the provider.

The CE's appeal procedures must:

- Provide the name and address of the independent and impartial appeals official to whom the provider must send a written request for an appeal.
- Inform the provider that a request for an appeal must be received by the appeals official within 15 days of receipt of a notification of adverse action.
- Specify that the provider may request a review of the written documentation only or request an in-person hearing (this may be via telephone).
- State that the appeals official will acknowledge receipt of the provider's request for an appeal within 10 days of receipt.
- Inform the provider that the appeals official will notify the provider and CE of the hearing date a minimum of 10 calendar days prior to the hearing if the provider requested an in-person hearing.
- Inform the provider that written documentation they want considered must be received by the appeals official within 30 days of receiving the notification of adverse action.
- Advise the provider that they may retain legal counsel or representation.
- Inform the provider that failure to appear for a scheduled hearing (either in-person or via telephone) will result in a decision being based solely on written submission, and the provider waives their right to a hearing. (**NOTE:** The appeals official may reschedule at their discretion).

- Inform the provider that the appeals official will rule on the action within 30 days of receiving the request and will provide the provider and CE written notification of the decision.
- Inform the provider that the appeals official's decision is the final administrative determination to be afforded to the provider.

Each adverse action notification must be sent by United States Postal Service (USPS) certified mail, return receipt requested*, and a second copy of the notification by regular mail, for example, standard USPS first-class mail. CEs must advise the provider of the above appeal procedures in each notification that contains an adverse action.

* CEs may submit an alternate procedure for documenting the date that a provider is notified of his/her right to appeal. Approval must be received from TDA prior to using an alternate procedure.

The procedure must clearly demonstrate how the CE will:

- Document that the notification was sent.
- Confirm that the provider received the notification.

Once a provider is notified of an adverse action, the CE must allow the provider to review the materials upon which its action was based. If the provider requests a written review or an in-person hearing, the CE must send the provider a copy of the documentation it submits to the appeals official. However; if the provider requests this information prior to requesting a written review or in-person hearing the CE must give the provider a copy.

The appeals official must allow the CE and the provider or the provider's designated representative to attend the hearing to provide testimony, rebut the testimony of others, and answer questions posed by the appeals official.

When ruling on an appeal, the appeals official must:

- Determine whether the actions taken by the CE followed Federal and state requirements;
- Consider the testimony provided by the CE's representative and that of the provider or the provider's designated representative (if in-person/telephone hearing);and
- Consider the written documentation received by the CE and provider.

The appeals official may not:

- Interpret the intent or expand the meaning of the Federal regulations and state rules and policies;

- Validate the serious deficiency determination (if the provider has been determined seriously deficient);
- Verify whether corrective actions submitted by the provider fully and permanently corrects the non-compliances; or
- Establish a settlement of demands for overpayments.

CEs should provide their appeals official copies of all handbooks, materials and guidance provided by TDA, and offer training to the appeals official or invite the appeals official to training provided to staff and/or providers to assist in familiarizing the appeals official with the CACFP requirements.

Within 30 days of receiving a provider's request for appeal, the appeals official must rule on the appeal and notify the CE and the provider of the final ruling.

The CE's actions remain effective throughout the appeal process. However, the provider can continue to participate while appealing a termination, unless the termination was based on an imminent threat to the health or safety of a child or children in care, or the public health or safety. If a provider continues to participate while appealing a termination and the CE's action is upheld, the provider will not be reimbursed for any meals that they serve during the appeal process.

If the CE's action is reversed it must submit an adjusted claim to TDA within 15 calendar days of notification of the reversal. The provider must be reimbursed within five workdays of the CE receiving payment.

If the CE's action is overturned and an adjusted claim is not required, the CE must pay the provider any reimbursement to which he/she is entitled within five calendar days of the notification of reversal.

If the CE's action is upheld, the effective date of termination is the date in the CE's original notification.