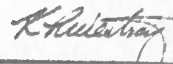


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



JUL 18 2013

AMERICA'S SECOND HARVEST OF :
COASTAL GEORGIA, :
Petitioner, :
v. : Docket No.:
DEPARTMENT OF EARLY CARE AND : OSAH-DECAL-CAFP-01344110-25-Teate
LEARNING, BRIGHT FROM THE START, :
Respondent. : Reference No.: 03231


Kevin Westray, Legal Assistant

FINAL DECISION

I. Introduction

The Department of Early Care and Learning ("DECAL") requested a 3-Year Review of America's Second Harvests of Coastal Georgia's ("ASHCG") participation in the Child and Adult Care Food Program ("CACFP") managed by DECAL's Bright From the Start ("BFTS") division. The Review findings require ASHCG to reimburse its food service account in the amount of \$38,269.00. Challenging five of eight findings, ASHCG requested a desk review and submitted supporting documentation to DECAL prior to its referral to the Office of State Administrative Hearings (OSAH) for review.

The disputed findings are:

- Finding #3 (Q24b,c,d,e FC24/14): Record Keeping practices are not accurate / Using Fund for Unallowable Costs;
- Finding #4 (Q24a, 25 FC22/14): Failure to maintain all required records/forms/documents for the program/ Using funds for Unallowable Costs;
- Finding #5 (Q23, FC45/14): Shared costs were not prorated appropriately so that CACFP is charged only for the portion used. / Using Funds for Unallowable Costs;
- Finding #6 (Q20, FC11): Missing receipts; and
- Finding #7 (Q22, FC14): Funds Used for Unallowable Costs

For reasons indicated, DECAL's Review findings and its determination that ASHCG must reimburse ASHCG's CACFP account in the amount of \$38,269.00 is AFFIRMED.

II. Findings of Fact

1. On May 15 through May 17, 2013, M.H. Miles Co. ("MH Miles"), as a contractor for DECAL, conducted a 3-Year Review ("Review") of ASHCG's participation in CACFP. In

conducting the Review, MH Miles examined records for March 2013 and determined eight findings requiring corrective action. (Respondent Exhibit 1).

2. Upon completion of the Review, MH Miles discussed the findings with Iris McCraw-Holmes who is ASHCG's CACFP Program Contact. The Review resulted in a total of \$38,269 being owed back to ASHCG's CACFP food service account (\$37,639 for disallowed labor costs and \$630 for disallowed insurance costs). Ms. McCraw-Holmes was given appeal procedures and ASHCG submitted the current appeal on May 31, 2013 to Marissa Hamm, DECAL Nutrition Services Division Program Manager. (DECAL's Brief).

Findings related to labor cost¹

3. ASHCG does not maintain time and attendance reports or time distribution reports for its salaried employees. ASHCG's general payroll system "designates" certain employees as 100% dedicated to CACFP. Daily attendance records for these employees are not maintained. All hourly employees use a swipe card system to track their attendance. Once time and attendance are recorded electronically for hourly employees, ASHCG's Human Resources department submits the information for payroll processing.

4. There is no supervisory check for either salaried or hourly employees to ensure that the time claimed was actually worked on CACFP related projects. Although ASHCG did submit an internally generated budget monitoring sheet to MH Miles during the review, FNS Instructions clearly state that budget estimates are not a substitute for time distribution reports.²

5. Inasmuch as ASHCG failed to provide or complete Time and Attendance reports and Time Distribution reports for all labor costs charged to the CACFP for the month of March 2013 as required by FNS Instruction 796-2 Rev. 3, MH Miles determined that all labor costs charged to the CACFP for the month of March 2013 were disallowed and due back to ASHCG's CACFP account in the amount of \$37,639.00.

Finding related to insurance cost

6. In November 2012, ASHCG submitted a revision to its 2012-2013 CACFP budget to add a monthly cost of \$620 for commercial insurance premiums. However, the budget

¹ Findings 3, 4, 5 and 6 all involve using funds for unallowable labor costs that require reimbursement into ASHCG's CACFP account.

² ASHCG claims in its appeal letter that time and attendance and time distribution forms were not covered in training. See page 2 of Exhibit 3. On Day 1 of mandatory CACFP training, all participants are given a CACFP Record Keeping Guidance Booklet. Exhibit 5. Pages 61 and 62 of that booklet show examples of time and attendance and time distribution reports. *Id.* On Day 2 of mandatory CACFP training, slides are presented and activities conducted. Exhibit 6. Slides on pages 9 through 11 cover labor costs and the requirements of maintaining time and attendance and time distribution reports. *Id.* On Day 2 of training, participants are given a packet called "Required CACFP Records and Documents." Exhibit 7. A time distribution report is included in this packet. A representative from ASHCG has completed required annual training each year and, most recently, program contact Chris Collins completed two day CACFP training on April 11 and 12, 2013. Exhibit 8.

was not approved as of March, 2013, the month of the Review. ASHCG did not provide the necessary documents, a policy binder and a statement on cost allocation showing the entire \$630 was properly attributable to CACFP, to DECAL until May 23, 2013. ASHCG did not receive prior written approval before using CACFP funds for the insurance premiums. Because the commercial insurance was not on ASHCG's approved budget, MH Miles issued a finding of funds used for unallowable costs. As a result of this finding, ASHCG owes \$630 back to its CACFP food service account.

ASHCG's response to disputed findings

7. ASHCG acknowledges that it does not require employees with established start and end times to complete sign in and sign out sheets on a daily basis. To not maintain such a record, ASHCG relied on FNS VIII 123 (c) (2) iii that states: "unless required by the institution, employees with established start and end times are not required to complete daily sign in and sign out sheets." ASHCG's general payroll system for all employees has notations that designate salaried employees that are 100% dedicated to its CACFP program. (Respondent Exhibit 3).

8. Time records of absences of all employees are also maintained on forms used generally for all ASHCG employees. For those designated as 100% dedicated to its CACFP program, there is simply a notation that they are so dedicated with general job descriptions indicating that 100% of their time is dedicated to CACFP. ASHCG opines that its records on its own forms satisfied CACFP record keeping requirements even though it will utilize forms suggested by FNS and CACFP in the future. (Respondent Exhibit 3).

9. ASHCG also acknowledges that it is unable to document time allocation for employees less than 100% dedicated to CACFP. Accordingly, it proposed that Findings 3 through 7 be "record-keeping findings without financial reimbursement for the funding" except for \$8,366.35 for employees who were less than 100% dedicated to CACFP and for whom no time allocation documents were maintained. (Respondent Exhibit 3).

10. Although ASHCG further opines that time and attendance and time distribution forms were not covered in training, training procedure refutes that opinion. On Day 1 of mandatory CACFP training, all participants are given a CACFP Record Keeping Guidance Booklet. Exhibit 5. Pages 61 and 62 of that booklet show examples of time and attendance and time distribution reports. *Id.* On Day 2 of mandatory CACFP training, slides are presented and activities conducted. Exhibit 6. Slides on pages 9 through 11 cover labor costs and the requirements of maintaining time and attendance and time distribution reports. *Id.* On Day 2 of training, participants are given a packet called "Required CACFP Records and Documents." Exhibit 7. A time distribution report is included in this packet. A representative from ASHCG has completed required annual training each year and, most recently, program contact Chris Collins completed two day CACFP training on April 11 and 12, 2013.

11. At the completion of the Review, the findings of the Review were discussed with ASHCG's CACFP Program Contact Iris McCraw-Holmes, and Ms. McCraw-Holmes was given appeal procedures. On May 31, 2013, ASHCG submitted a request for an appeal of the Review findings via email to DECAL Nutrition Services Division Program Manager Marissa Hamm. The appeal request included documents attached to the appeal letter as Attachments A – E. The appeal letter and attachments are Exhibit 3 to this brief.

Inquiry to USDA responses regarding ASHCG's proposal

12. DECAL recognizes that the findings regarding labor costs do not indicate fraud or inappropriate use of funds on behalf of ASHCG and does not dispute that more than 54,000 meals were served. Because of this, DECAL contacted USDA to find out if DECAL had any discretion in requiring the full amount of labor costs be repaid to ASHCG's food service account. See email chain between Marissa Hamm, DECAL Program Manager, and Kelley Raekesha, Senior Program Specialist, USDA, attached hereto as Exhibit 9. In her response to Ms. Hamm's request for guidance, Ms. Raekesha, a Senior Program Specialist with USDA CACFP stated:

When it comes to time and attendance the guidance is very specific. In this specific situation, the sponsor was not maintaining time sheets for their employees, and in addition, the sponsor was not reviewing or verifying the time worked for each employee prior to them being paid...

There are no exceptions to the requirement of maintaining time and attendance records; therefore, it is not permissible for the SA [DECAL] to waive the unallowable costs for this sponsor.

III. Conclusions of Law

CACFP Administration and AUPs

1. DECAL is the State agency that administers the CACFP for the United States Department of Agriculture. 7 C.F.R. § 226; O.C.G.A. § 20-1A-1, *et seq.* Each State agency must maintain an acceptable financial management system, adhere to financial management standards and otherwise carry out financial policies in accordance with 7 C.F.R. part 3015, 7 C.F.R. part 3016 and 7 C.F.R. part 3019. *Id.*, § 226.7(b). Findings incident to AUPs are subject to corrective action. 7 C.F.R. § 226.6 (c); O.C.G.A. § 20-1A-5; Bright From the Start, Georgia Department of Early Care and Learning, Policy No. CACFP / 00-9.

Institution Findings #3, 4, 5, and 6: Using Funds for Unallowable Labor Costs

2. Although CACFP participants may use CACFP funds to pay for labor costs, the Food and Nutrition Service ("FNS") of the U.S. Department of Agriculture ("USDA") maintains regulations on what documentation needs to be maintained by CACFP participants in order to receive reimbursement for labor costs. FNS Instruction 796-2

Revision 3 Section VIII (I) (23). In order to receive CACFP funds to pay for labor costs, CACFP participants must maintain (1) time and attendance records as required by FNS Instruction 796-2 Revision 3 Section VIII (I) (23) (c) (2), and (2) time distribution reports as required by FNS Instruction 796-2 Revision 3 Section VIII (I) (23) (c) (3). *Id.*

3. Time and attendance reports for labor costs must include, at a minimum, the employee's start time, end time and absences. FNS Instruction 796-2 Revision 3 Section VIII(I)(23)(c)(2)(a). Further, time and attendance reports must be completed daily. FNS Instruction 796-2 Revision 3 Section VIII(I)(23)(c)(2)(b). While "employees with established start and end time are not required to complete daily sign in and sign out sheets" per FNS Instruction 796-2 Revision 3 Section VIII(I)(23)(c)(2)(b)(iv), *time and attendance reports* must still be maintained.

4. Inasmuch as not all employees of CACFP participants spend 100% of their time on CACFP tasks, time distribution reports are required to establish the portion of costs that may be claimed as CACFP labor. FNS Instruction 796-2 Revision 3 Section VIII (I) (23) (c) (3). Whether related to CACFP or not, time and distribution reports must be completed by all full-time and part-time employees to account for all activity for which the employee is compensated. FNS Instruction 796-2 Revision 3 Section VIII (I) (23) (c) (3) (a). "The reports must reflect an after-the-fact determination of the actual activity of each employee." FNS Instruction 796-2 Revision 3 Section VIII (I) (23) (c) (3) (d). Budget estimates are not an acceptable substitute for time distribution reports. FNS Instruction 796-2 Revision 3 Section VIII (I) (23) (c) (3) (f). Because neither time and attendance nor time distribution reports were maintained by ASHCG, MH Miles was unable to determine if any of the labor costs claimed by ASHCG in March, 2013 were properly attributed to CACFP. Accordingly, MH Miles appropriately reported all labor costs for that month (\$37,639) were found to be unallowable costs and are due back to ASHCG's CACFP food service account.

Institution Finding #7: Funds Used for Unallowable Costs.

5. In every instance where an insurance premium is an allowable cost, CACFP participants must get specific prior written approval from BFTS before using CACFP funds for insurance premiums. FNS Instruction 796-2 Revision 3 Section VIII (21) (a) (1) (a)-(d). Prior specific written approval is required "because these costs are not customarily incurred in the routine operation of the CACFP but can sometimes be necessary and reasonable for proper and effective Program operations." See FNS Instruction 796-2 Revision 3 Section VIII (F). ASHCG did not acquire prior written approval.

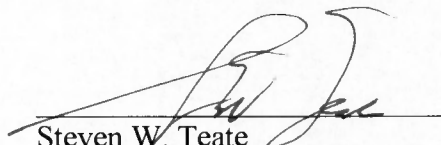
Burdens of Proof

6. While DECAL had an initial burden of proof to establish that its adverse action was consistent with its statutory and regulatory authorizations, ASHCG had the burden regarding any affirmative defenses raised. Ga. R. & Regs. 616-1-2-.07 (1) (a). DECAL met its burden and ASHCG has failed to indicate legal cause for exception to the adverse action taken.

IV. Decision

Inasmuch as ASHCG did not maintain time and attendance and time distribution reports as required for March, 2013, \$37,639 is owed back to ASHCG's CACFP food service account. Further, inasmuch as ASHCG did not receive prior written approval from DECAL before using \$630.00 for insurance costs, the sum of \$630.00 is also owed back to ASHCG's CACFP food service account. Accordingly, DECAL's findings that \$38,269.00 is owed by ASHCG to its CACFP food service account is **AFFIRMED**.

SO ORDERED, this 18th day of July 2013.


Steven W. Teate
Administrative Law Judge