

**BRIGHT FROM THE START:  
GEORGIA DEPARTMENT OF EARLY CARE AND LEARNING  
APPEAL PROCEDURES  
CHILD AND ADULT CARE FOOD PROGRAM**

(Effective Date: October 11, 2012)

The appeal procedures are issued pursuant to 7 Code of Federal Regulations (CFR) Section 226.6(k) and Official Code of Georgia Annotated (O.C.G.A.) Section 50-13-1 *et seq.*

In accordance with 226.6(k)(4), appeal procedures are issued: (i) annually to all institutions; (ii) to an institution and to each responsible principal and responsible individual when the State agency takes any action subject to an administrative review as described in paragraph (k)(2) of this section; and (iii) at any other time upon request.

**PURPOSE**

The purpose of the appeal procedures is to provide institutions the opportunity to appeal adverse actions pursuant to the Georgia Administrative Procedure Act.

**DEFINITIONS**

"Administrative law judge" means the independent and impartial review official that is employed or appointed by the Office of State Administrative Hearings.

"Actions subject to an administrative review" means:

- denial of new or renewing institution's application for participation in the program;
- denial of an application submitted by a sponsoring organization on behalf of a facility;
- a notice of proposed termination of an institution's agreement;
- a notice of proposed disqualification of a responsible principal or responsible individual;
- proposed disqualification of the participation of an institution or facility;
- the suspension of an institution's participation;
- denial of an institution's application for start-up or expansion payments;
- denial of a request for an advance payment;
- the recovery of advances;
- denial of all or a part of a claim for reimbursement (except for late submission under 7 CFR Section 226.10(e));
- denial of claim deadline exceptions and requests for upward adjustments to a claim request by an institution;
- demand for remittance of an overpayment; and

- any other action of the state agency affecting the participation of an institution in the program or the institution's claim for reimbursement (including, but not limited to denial of an institution's Program budget or any portion of the Program budget, Bright from the Start's determination of an unallowable program cost, etc.).

"Actions not subject to an administrative review" means:

- a decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim;
- a determination that an institution is seriously deficient;
- a determination by Bright from the Start that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency;
- Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the Georgia Disqualified List and the National Disqualified List (NDL), Bright from the Start's refusal to consider its application to participate when either the institution or one of its principals has been placed on the NDL or Bright from the Start's refusal to consider an application submitted by a sponsoring organization on behalf of a sponsored facility that has been placed on the 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;
- A determination, by either Bright from the Start or by United States Department of Agriculture Food and Nutrition Services (FNS), that the corrective action taken by an institution or a responsible principal or individual is not adequate to warrant the removal of the institution or the responsible principal or individual from the NDL; and
- Bright from the Start's refusal to consider an institution's application when either the institution or one of its principals has been placed on the NDL, or Bright from the Start's refusal to consider an institution's submission of an application on behalf of a facility when either the facility or one of its principals is listed on the NDL.

"Appellant" means the institution requesting an appeal of the state agency's adverse action.

"Institution" means a sponsoring organization, a child care center, outside-school-hours care center or adult day care center which enters into an agreement with the state agency for participation in the program.

"Office of State Administrative Hearings" (OSAH) means the executive state agency responsible for the administration of the Georgia Administrative Procedure Act. OSAH is not accountable to the management of the CACFP or the state agency.

"Program" means the Child and Adult Care Food Program (CACFP).

"State agency" means Bright from the Start: Georgia Department of Early Care and Learning. (Bright

from the Start).

"USDA" means the United States Department of Agriculture.

### **POLICY**

The Georgia Administrative Procedure Act, O.C.G.A. Section 50-13-1 et seq., governs the appeal procedures for institutions.

Notices of adverse action shall be issued by the state agency in writing and shall state the type of action, the cause for the action, and if applicable, the financial effects. Notices shall also describe the institution's right to appeal the action and these procedures. Notices shall be addressed to the institution's executive director, chairman of the board, principals and responsible individuals.

Institutions that appeal an adverse action must request either a review of the record or a hearing. This request must be in writing and received by the agency within fifteen (15) days following the day of receipt of the agency's notice of adverse action. The state agency must acknowledge the receipt of the request for an administrative review within ten (10) days of its receipt of the request. The request must identify the name, address and telephone number of the Appellant's attorney, if the Appellant has one at the time of the appeal request, and the specific adverse action(s) the Appellant wishes to appeal and the reason(s) why the state's decision should be overturned. Once received, Bright from the Start will then transmit the request to OSAH for handling along with all pertinent written documentation that led to the action. Bright from the Start will provide the Appellant with a copy of the documents it transmits to OSAH requesting a hearing on the Appellant's behalf. With respect to the type of appeal being requested:

- If an institution requests a review of the record, it is responsible for submitting all of the requisite written documentation to Bright from the Start within the specified deadline. Thereafter, Bright from the Start will forward this documentation to OSAH.
- If an institution requests a hearing, any information on which Bright from the Start based the adverse action shall be made available upon request to the Appellant for inspection. OSAH will give adequate notice to the parties of the place, date, time and procedures of the hearing in accordance with the federal regulations (7 CFR 226.6(k)(5)(iv) through (x)). All hearings will be held in Atlanta, Georgia, at OSAH pursuant to the Rules and Regulations of the State of Georgia, Chapter 616-1-1, Rules of the Office of State Administrative Hearings.

Decisions of the Administrative Law Judge will be rendered in a timely manner, in accordance with the federal regulations (7 CFR 226.6(k)(5)(i)).

The adverse action shall remain in effect while the appeal process is ongoing. During this timeframe, the Appellant may continue to submit claims for reimbursement under the CACFP until the Administrative Law Judge issues a Final Decision; provided, however, that claims may not be submitted for payment by an institution in any situation in which the underlying adverse action is based on a serious health and safety violation, an imminent threat to the health and safety or welfare of the participants, or fraud (7 CFR 226.6(c)(5)). In all other instances, institutions shall be reimbursed for any meals served that are supported by appropriate documentation.

The Administrative Law Judge will issue a Final Decision that either party may seek a judicial review of by filing a petition with either the Fulton County Superior Court or the superior court of the county of residence of

the Appellant. As of the date on which a Final Decision is issued by an Administrative Law Judge affirming a determination by the state agency to terminate an institution from the CACFP, Bright from the Start will no longer pay any claims for reimbursement unless it is otherwise ordered to do so.

## **PROCEDURES**

All appeal requests of adverse actions must be submitted in writing to the Chief Legal Officer, Bright from the Start, 2 Martin Luther King Jr. Drive SE, 754 East Tower, Atlanta, GA 30334 . Such written requests must be received by the agency within fifteen (15) days following the day of receipt of the agency's notice of adverse action. The state agency must acknowledge the receipt of the request for an administrative review within 10 days of its receipt of the request. The request must identify the specific adverse action(s) the Appellant wishes to appeal, the reason(s) why the state's decision should be overturned, and the name, address and telephone number of the Appellant's attorney, if one has been retained at the time of the appeal request. An Appellant must request either a review of the record or a hearing. Bright from the Start will forward the appeal request to OSAH and provide the Appellant with a copy of the transmittal.

1. Hearing: An Appellant may request a hearing that may be attended in person. At its own expense, an Appellant may retain counsel to provide legal representation at the hearing, which will be scheduled by OSAH. Advance notice to the parties will be given by OSAH of the place, date, time and procedures of the hearing in accordance with the federal regulations 7 CFR 226.6(k)(5)(iv) through (x). Hearings will be held in Atlanta, Georgia, at OSAH pursuant to the Rules and Regulations of the State of Georgia, Chapter 616-1-1, Rules of the Office of State Administrative Hearings.
2. Review of the Record. Any information on which the State agency's action was based must be available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.

Combined Hearings for Responsible Principals and Responsible Individuals. OSAH will conduct the hearing of the proposed disqualification of the responsible principals and responsible individuals as part of the hearing of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the Administrative Law Judge's discretion, separate administrative reviews may be held if the institution does not request a hearing or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

Opposition. The institution and the responsible principals and responsible individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 days after receipt of the notice of action.

Within 60 days of the Bright from the Start's receipt of the request for an administrative review, the Administrative Law Judge shall inform Bright from the Start, the institution's executive director, chairman of the board of directors, and the responsible principals and responsible individuals, of the final decision. Please Note: This timeframe is an administrative requirement for Bright from the Start and may not be used as a basis for overturning the State agency's action if a decision is not made within the specified timeframe.

The determination made by the administrative law judge official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals. The Administrative Law Judge will issue the Final Decision in writing to the Appellant and Bright from the Start and will contain findings of fact and conclusions of law. This Final Decision will be based solely on the documentation and evidence

presented by the parties in accordance with federal regulations 7 CFR 226.6(k)(5)(iv) through (x).

Should the Appellant wish to appeal the Final Decision issued by the Administrative Law Judge, a petition for judicial review must be filed with either the Superior Court of Fulton County or the Superior Court of the county of the Appellant's residence within thirty (30) calendar days after the Final Decision has been served.

Overpayment Demand. During the period of the administrative review, Bright from the Start is prohibited from taking action to collect or offset the overpayment. However, Bright from the Start shall assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns Bright from the Start's action.

Recovery of Advances. During the administrative review, Bright from the Start will continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

Program Payments. Unless participation has been suspended, Bright from the Start will continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the serious deficiency(ies) is corrected or the institution's agreement is terminated, including the period of any administrative review.

Bright from the Start shall maintain records of all administrative reviews and their disposition. If you have any questions concerning this policy, please direct them to the Chief Legal Officer.

Revised, September 12, 2014