

February 25, 2022

Priya Morioka
Youth Leadership Academy dba Gar Gaar Family Services
651 Taft St NE
Minneapolis, MN 55413-2814

Re: Youth Leadership Academy dba Gar Gaar Family Services Appeal of Denial of Application for the Child and Adult Care Food Program (CACFP)

BACKGROUND

Youth Leadership Academy dba Gar Gaar Family Services (GGFS) applied to be a sponsor for individual direct providers participating in the United States Department of Agriculture's (USDA) Child and Adult Care Food Program (CACFP) in November of 2021. The program is administered in the state of Minnesota by the Minnesota Department of Education – Nutrition Program Services Division (MDE-NPS), otherwise known as the Minnesota Department of Education – Food and Nutrition Service (MDE-FNS); hereafter referred to as MDE-FNS.

On December 14, 2021, MDE-FNS issued a decision denying GGFS's application to be a CACFP sponsoring organization. On December 29, 2021, GGFS timely appealed MDE-FNS's denial of that application and waived a hearing. Both parties were given until January 13, 2022 to submit documents supporting their position.

MDE's final determination follows.

DOCUMENTS REVIEWED

MDE's Appeal Panel considered the following documents submitted or referenced by MDE-FNS and GGFS:

1. Federal Regulations: 7 C.F.R. Part 226
2. MDE-FNS Documentation:
 - a. Child and Adult Care Food Program Appeal Procedure
 - b. CACFP Internal Appeal Procedure Updated November 2021
 - c. December 14, 2021 GGFS Application Denial Letter
 - d. GGFS Application Findings Document
 - e. January 4, 2022 Appeal Acknowledgement letter Gar Gaar Family

3. GGFS documentation:
 - a. December 29, 2019 [sic] Notice of Appeal and Request for Production
 - b. January 10, 2022 Gar Gaar Family Services Argument on Appeal
 - c. GGFS Affidavit Exhibits Combined - A-UU - 22.01.10
 - d. Ex. VV_Guidance Memorandum - Federal and State Plans - with attachments
 - e. 22.01.12 Financial Statement Reconciliation [sic] through 11.30.21
 - f. Corrective Action Plan
 - g. January 12, 2022 Support Letter for GGFS

FINDINGS OF FACT

1. Responsibility for correctly implementing CACFP programs is given to state agencies. MDE-FNS is the division in the responsible state agency designated to implement CACFP programming.
2. Public or private non-profit organizations may sponsor “facilities” or “sites” in the CACFP. *See* 7 C.F.R. §§ 226.15, 226.16. Institutions, including sponsoring organizations (“sponsors”), sign agreements with the relevant state agency and are responsible for overseeing program operations. *See generally* 7 C.F.R. §§ 226.6(b), 226.15, 226.16. Sponsors receive federal reimbursement from the state agency to cover administrative and operating costs of preparing and serving meals to eligible children and adults. 7 C.F.R. § 226.4(a). Sponsors are subject to detailed regulatory requirements regarding operations and are assessed against three core performance standards: financial viability and financial management, administrative capability, and program accountability. 7 C.F.R. § 226.6(c)(3)(ii)(C) (cross-referencing standards).
3. Federal regulations require a new sponsor to demonstrate in its application that it is capable of operating in conformance with the three performance standards: financial viability and financial management, administrative capability, and program accountability. 7 CFR § 226.6(b)(1)(xviii).
4. Under the rubric established by MDE-FNS, a potential sponsor’s application, management plan, and budget documents are evaluated to determine whether the information is sufficient to document that the potential sponsor is financially viable, is administratively capable of operating the CACFP Program in accordance with federal regulations, and has internal controls in effect to ensure accountability.
 - a. Performance Standard 1 – An organization applying for CACFP for the first time or expanding to be a multi-site sponsor must be financially viable as demonstrated by the information provided in the management plan and budget. (7 CFR § 226.6(b)(1)(xviii)(A)) The applicant organization must:
 - Identify sufficient need for providing CACFP to multiple sites.
 - Have acceptable recruitment practices and not recruit sites from other existing sponsoring organization.
 - Demonstrate a sound financial history via audits, financial statements, etc.

- Have sufficient funding sources to operate and administer CACFP as well as other programs within the organization, even during periods of temporary interruption of CACFP reimbursements.
- Have adequate funding sources other than CACFP to pay debts, start-up costs or when fiscal claims have been assessed against the organization.
- Accurately estimate the total cost of operating and administering a food service program.
- Correctly determine the amount of CACFP reimbursement to be received on a monthly basis.
- Include only necessary, reasonable, allowable, and documented costs in the CACFP budget.

Methods that MDE-FNS may use to evaluate a sound financial status in order to assess the risk of making the federal award include evaluation of:

- Positive net assets and cash flows, within unrestricted funding sources.
 - Financial stability including restricted and unrestricted funding sources that are available to support CACFP and other organizational operations. This includes staffing, debts and fiscal claims against the organization.
 - Financial audits that show declining trends in net assets may result in a determination that the organization does not meet the financial viability performance standard.
 - Financial ratios such as debt ratio and current ratio (current assets/current liabilities).
- b. Performance Standard 2 – An organization newly applying for CACFP must be administratively capable as demonstrated by the information provided in the management plan, including appropriate and effective management practices (7 CFR § 226.6(b)(1)(xviii)(B)). The organization must have written procedures that assign CACFP responsibilities (job descriptions), and written policies that ensure compliance with civil rights.
- c. Performance Standard 3 – An organization newly applying for CACFP must be accountable and have adequate management systems in place, as demonstrated by the information provided in the management plan, to ensure program accountability including fiscal accountability and other CACFP operational requirements (7 CFR § 226.6(b)(1)(xviii)(C)). To ensure adequate management systems, the organization must have in place:
- An independent governing board of directors consisting of a chairperson and members who are not related to one another or the director (family or business relationships). For-profit organizations are not required to have a board.
 - Demonstrated fiscal accountability with a written financial system including management controls that account for all funds received and dispersed, expenses incurred, claims processing, and can help prevent and detect improper financial activities by employees.
 - Recordkeeping systems to account for and retain program records such as meal service operations that meet meal pattern requirements and submission of accurate claims for reimbursement.

- Documentation of CACFP staff training, monitoring, corrective action, and serious deficiency processes.
 - Meal service operations that comply with CACFP requirements and civil rights requirements.
 - Food services that comply with applicable State and local health sanitation requirements.
 - A system to maintain complete and appropriate CACFP administration and operation records on file.
- d. MDE-FNS notifies an organization in writing of the approval or denial of a CACFP application within 30 calendar days of obtaining the complete application and related documents including, for multi-site sponsors or sponsors of legally separate sites, a complete management plan and detailed budget (7 CFR § 226.6(b)(3)). A complete application is defined as having adequate information for MDE to determine whether or not all performance standards are met. Whenever possible, MDE will provide assistance to organizations that have submitted an incomplete application by requesting additional documents. When an organization is approved, an electronic notice from the Cyber-Linked Interactive Child Nutrition System (CLICS) system will be sent automatically.
5. On November 29, 2021, GGFS submitted a complete application to be a CACFP sponsor.
6. On December 14, 2021, MDE-FNS denied GGFS's application to be a CACFP sponsor. The decision stated the application was being denied for failure to demonstrate financial viability, failure to demonstrate administrative capability, and failure to demonstrate program accountability. Further, MDE-FNS noted that GGFS failed to provide a budget, failed to document that at-risk afterschool care centers met program eligibility requirements, and failed to demonstrate identification of unserved facilities or participants. The decision also stated the MDE-FNS was issuing a determination of serious deficiency against GGFS for submission of false information.¹
7. Specifically, the MDE-FNS decision noted:
- In reviewing the financial management of the Summer Food Service Program (SFSP) during the 2021-22 SFSP year, MDE found unallowable expenses were paid with federal funds, the following are examples of false information:
 - GGFS paid \$939,960.00 on 9/10/2021 to vendor "The Produce" for prior service. This vendor was not licensed to distribute food by the Minnesota Department of Agriculture until 9/22/2021.
 - GGFS could not provide an invoice for Hooyo's Café for \$360,000 paid on 8/31/2021.

¹ GGFS has not appealed the determination of serious deficiency. A determination of serious deficiency is not appealable per 7 C.F.R. 226.6(k)(3)(ii).

- Samo Trading was paid \$339,411.18 despite not being licensed with the Minnesota Department of Agriculture and invoice description does not provide detail of costs.
- Bako Trading LLC paid \$565,514.78 on 9/29/2021 with description of “food costs.” Bako Trading and Afro Produce have the exact same statement template layout, invoice layout and offer 3% discount. Bako Trading did not register as a business with the Minnesota Secretary of State until 7/26/2021.
- DMD Logistics was paid \$50,000 on 9/9/2021 for consulting. There is no contract to pay this business for consulting.
- Afro Producer, LLC was paid \$650,024.90 on 8/26/2021, Afro Produce is not licensed to provide food with the Minnesota Department of Agriculture. Both invoices provided as back-up show Afro Produce spelled differently and there is no contract to show payment agreement.
- Africa Groceries is not a business nor do they have a food license and was paid \$38,126.16 in July 2021.
- The bank statements show multiple “Miscellaneous Debits” of hundreds of thousands of dollars. Example \$650,019.90 on 08/26/2021.
- Income Statement shows only the Summer Food Service Program and does not provide additional information on additional revenue. Income statement shows a donation of \$2,500 and an annual rent of \$938,234.70 when a full year of the lease is not up.
- GGFS pays for the payroll service, ADP, yet paid site staff at “Brooklyn Center 2” site with cashier’s checks in the amount of \$463,768.00.
 - No payroll taxes were documented to be paid to the federal, state or Social Security taxes of these payroll payments.
 - These should be GGFS staff if keeping operational control, therefore payroll taxes should be paid.
 - The income statement shows payroll taxes to be much lower than expected. Expected payroll taxes are approximately \$210,000 for the amount of payroll recognized. Expenditure taxes are approximately \$30,000.
 - These expenses do not match nor can they be allowed on the budget submitted with the CACFP application.
- The Minnesota Secretary of State lists Mohamed Sharif Maruf as the registered agent for Youth Leadership Academy dba Gar Gaar Family Services. Mohamed is not listed on the principal identification form.

- Youth Leadership Academy dba Gar Gaar Family Services has not identified an unmet need in the community.
- Sites submitted to MDE as proposed sites were already operating under existing sponsors. MDE has also received complaints that GGFS is recruiting sites from other sponsors.
- Submitted and proposed sites do not meet the definition of an At-risk afterschool care center:
 - A public or private nonprofit organization that is participating or is eligible to participate in the CACFP as an institution or as a sponsored facility and that provides nonresidential child care to children after school through an approved afterschool care program located in an eligible area.
 - Be organized, primarily to provide care for children after school or on the weekends, holidays or school vacations during the regular school year.
 - Provide organized, regularly scheduled activities (i.e., in a structured and supervised environment).
- Youth Leadership has not demonstrated capability for evaluating sites:
 - Verifying correct addresses and site eligibility prior to submitting site ID request forms
 - Meeting local, county, state environmental health department requirements
 - Meeting applicable local, county and state fire and building safety requirements. Cities may require additional licenses/permits, i.e., Peddler's license or Transient Merchant License and may have restrictions related to local/city business ordinances for zoning, building codes, traffic, parking, occupancy, etc.
- Three county health departments (Hennepin, Anoka and Olmsted) have denied issuing food and beverage licenses to Youth Leadership/Gar Gaar after observing distribution of bulk food to families, lack of NSF equipment and food service facilities. Additionally, sanitarians have observed that site operations differed from sponsor's description of how they were operating.
- All At-Risk Afterschool Care Centers must be able and approved to serve child nutrition program meals onsite in a congregate manner.
 - Over the past 3 months, over 100 site ID requests have been submitted to MDE and many have been withdrawn or changed.
 - Of all sites submitted to MDE, only 4 sites were initially identified as operating and meeting enough eligibility requirements to receive a pre-approval visit. All 4 sites that received a pre-approval visit are ineligible sites.
 - MDE monitor site visits demonstrated inadequate evaluation of site.

- Weekly spreadsheet of proposed sites includes ineligible locations (residential) and proposed operating during school hours, which are not allowable.
 - Spreadsheet of sites provides inconsistent information compared to information provided on the vended meal contracts in the CLICS site applications.
 - Youth Leadership had not been able to demonstrate that it has internal controls and other management procedures in place to ensure that the program will be operated in accordance with the requirements of the 7 CFR 226.
 - MDE staff observed bags of food packed for distribution at three locations. Food offered did not meet the CACFP meal pattern for snack and supper. Site staff were unable to demonstrate during visit how food items met the meal pattern.
8. Denial of a new application for participation as a CACFP sponsor is eligible for administrative review. 7 C.F.R. § 226.6(k)(2)(i).
 9. On December 29, 2021, GGFS timely sought administrative review by the Appeal Panel of MDE-FNS's December 14, 2021 decision denying its application to be a CACFP sponsor. As permitted by the federal regulations, GGFS waived a hearing in connection with the administrative review. Under MDE's CACFP procedures, administrative reviews are conducted by a three-person Appeal Panel.
 10. The federal regulations governing CACFP administrative reviews require that any written documentation a party wishes to be considered "must be submitted to the administrative review official not later than 30 days after receipt of the notice of action." 7 C.F.R. § 226.6(k)(5)(v). The panel thus considered any written documentation that was submitted by January 13, 2022. MDE-FNS and GGFS submitted information on or before that date.
 11. GGFS submitted a 41-page "Argument on Appeal" (Argument) with over 1,000 pages of attachments (Attachments), a 24-page corrective action plan purporting to have corrected all serious deficiencies as of 12/31/2021,² a financial statement, a 394-page state and federal CACFP guidance summary, and a letter of support³ from two Minnesota state representatives.
 12. In its Argument, GGFS stated: "Gar Gaar denies all of the reasons and findings cited in support in MDE's denial of Gar Gaar's application as both unsupported as a matter of fact as well as failing to state any legally cognizable cause of action under the CACFP or any other related statute or regulation."
 13. In its Argument, GGFS acknowledged that it submitted and proposed sites that do not meet the definition of an At-risk afterschool care center:

² MDE-FNS did not assign GGFS a corrective action plan.

³ The letter of support does not address GGFS's failure to demonstrate financial viability, failure to demonstrate administrative capability, or failure to demonstrate program accountability.

Gar Gaar began inputting potential Sites into the CLiCS system in anticipation of operating Sites and providing timely reimbursement as soon as Site IDs were obtained. Therefore, Gar Gaar input many Sites into CLiCS that weren't yet operational and with which Gar Gaar was working to become operational. Gar Gaar made frequent updates in CLiCS during this time.

14. In its Argument, GGFS acknowledged sending payments of hundreds of thousands of dollars memorialized as Miscellaneous Debit: "Gar Gaar has used these payment methods in cases where its bank either froze or held disbursements owed to Gar Gaar's providers and vendors." GGFS included with its Attachments some emails with MDE-FNS staff who requested invoices and receipts for the amounts labeled Miscellaneous Debit. GGFS's reply to MDE-FNS staff indicated the payments "were to make cashiers checks for payments and payroll." GGFS did not provide invoices or receipts for the payments labeled Miscellaneous Debit that were questioned by MDE-FNS, which totaled \$2,040,957.40.
15. In its Argument, GGFS asserted that its "main office occupancy costs are only \$72,000." In its Attachments, GGFS included budget line items for office space of \$53,892 and \$408,000. In addition, the Attachments included a transaction detail by account for the period July 31, 2021 to November 24, 2021 stating that rent paid for approximately four months totaled \$88,525.40. A profit and loss statement from January to November 2021 also stated that rent paid for the year is \$88,525.40.
16. In its Argument, GGFS stated that one of the cashier's checks for Miscellaneous Debt, in the amount of \$463,768, was used in the following manner: a vendor was paid \$360,000, "Brooklyn Center 2" site was paid \$70,188 for payroll, and "GGFS-Rochester" site was paid \$33,500 for payroll. The stated amounts do not total \$463,768, nor did GGFS provide invoices or receipts verifying the use of this money.
17. GGFS did not address the issue of Mohamed Sharif Maruf being listed as the registered agent for Youth Leadership Academy dba Gar Gaar Family Services by the Minnesota Secretary of State.
18. In its Argument, GGFS asserted that there is unmet need in the community and provided letters in its Attachments from four agencies alleging unmet need.
19. In its Argument, GGFS denied recruiting sites from other sponsors, but acknowledged submitting sites that were already operating with another sponsor, stating "such application was denied or rescinded pursuant to applicable statute."
20. On pages 12 to 38 of its Argument, GGFS revisited a previous appeal decision, in which the Appeal Panel affirmed the MDE-FNS denial of applications for two CACFP At-Risk sites.⁴ GGFS's appeal in that matter has already been decided. The current appeal is not the appropriate forum for an appeal of that decision.

⁴ Re: GGFS Appeal of Denial of Application for CACFP At-Risk Sites, December 15, 2021.

21. In its Argument, GGFS admitted “having used filler and placeholder descriptions, IDs, and addresses in MDE’s CLiCS system at the onset of Gar Gaar’s Sponsorship.” GGFS asserted that it has implemented policies to ensure that accurate addresses are provided and updates are handled appropriately, but did not provide any documentation to support that assertion. Regarding the MDE-FNS concern that three county health departments have denied food and beverage licenses, GGFS stated in its Argument that it “will work with any denied Site to reapply and provide the adequate improvements or documentation to attain licensure” and that it “will disallow any claims for reimbursement from Sites that do not have adequate documentation of state health licensure.”
22. In its Argument, GGFS asserted that “its Management Plan and Employment Handbook as Exhibits EE and FF to demonstrate the sufficiency and compliance of its internal controls.” In its Attachments, GGFS included MDE’s Management Plan for Multi-Site Sponsors with notations specific to GGFS, a series of job descriptions, an Employee Handbook, a copy of its bylaws, and a copy of its agreement with Eide Bailly to provide an audit. On December 2, 2021, GGFS signed a contract with Eide Bailly to audit its financial statements and its “compliance over federal award programs for the period ended December 31, 2021.”
23. Regarding the MDE-FNS concern that food offered for distribution at three locations did not meet the CACFP meal pattern for snack and supper and that site staff were unable to demonstrate during visit how food items met the meal pattern, GGFS stated in its Argument that there was insufficient detail for it to properly respond, but noted that it has not submitted any claims for CACFP meals.
24. In its Attachments, GGFS provided invoices, documentation from multiple businesses, licenses, vendor contracts, business licenses, menus, meal counts, letters of support, emails, technical assistance, sample contracts, a previous denial for the CACFP At-Risk program, GGFS appeal of that denial, MDE-FNS’s summary of appeal, GGFS’s rebuttal, and the decision affirming the denial.

CONCLUSIONS OF LAW

1. The United States Department of Agriculture (USDA) administers the Child and Adult Care Food Program (CACFP) pursuant to federal regulations at 7 C.F.R. Part 226.
2. The federal regulations set forth required sponsor performance standards, e.g., 7 C.F.R. § 226.6(c)(3)(ii)(C) (cross-referencing standards), and require MDE to establish application review procedures “to determine the eligibility of new institutions.” 7 C.F.R. § 266.6(b).
3. MDE-FNS has the authority to deny sponsor applications when the sponsor does not meet program eligibility requirements. Granting sponsor applications when the sponsor does not demonstrate the capacity to meet standards would run counter to MDE-FNS’s oversight obligations.
4. The documentation submitted to the panel by MDE-FNS and GGFS supports the MDE-FNS decision denying GGFS’s application to be a CACFP sponsoring organization for failure to demonstrate financial viability and financial management and failure to demonstrate program accountability.

5. However, the record is unclear as to whether GGFS's Management Plan and Employee Handbook were considered by MDE-FNS when it made the determination that GGFS does not meet program eligibility requirements of 7 C.F.R. § 226.6(b)(1)(xviii) (B), the demonstration of administrative capability.

FINAL DETERMINATION

Based on the information reviewed, the Appeal Panel affirms MDE-FNS's December 14, 2021 decision on the grounds that GGFS failed to demonstrate financial viability and failed to demonstrate program accountability. MDE-FNS may not approve sponsors that do not demonstrate they are financially viable and do not have internal controls in effect to ensure program accountability.

In accordance with 7 C.F.R. § 226.6(k)(5)(x), the determination by the Appeal Panel is the final administrative determination regarding the organization and the responsible individuals.

Sincerely,

A handwritten signature in black ink that reads "Dr. Stephanie S. Burrage". The signature is written in a cursive, flowing style.

Dr. Stephanie Burrage, Appeal Panel Chair
Mary Weigel, Appeal Panel Member
Sage Van Voorhis, Appeal Panel Member

cc: Monica Herrera, MDE-FNS Director