

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
25 DHR 00255

Balanced Nutrition Inc Petitioner,  v.  NC Department of Health and Human Services, Division of Public Health, Child & Adult Care Food Program Community Nutrition Services Section Respondent.	<b>FINAL DECISION</b>
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This contested case was heard by Michael C. Byrne, Administrative Law Judge, on February 13, 2025, at the Office of Administrative Hearings in Raleigh, North Carolina.

**APPEARANCES**

For Petitioner: Allison Joelle Harvill  
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**ISSUE**

Whether Respondent properly issued disallowances for Petitioner in the amount of \$101,142.05 as described in the letter dated January 7, 2025.

**BURDEN OF PROOF**

After consideration of the arguments of the parties and the governing law, the Tribunal concludes that this case does not involve the imposition of a “fine or civil penalty” by Respondent against Petitioner, but rather recoupment of Federal funds. Accordingly, the burden of proof was on Petitioner pursuant to N.C.G.S. 150B-25.1.

**STATUTES, RULES, AND REGULATIONS**

42 U.S.C. § 1766  
7 C.F.R. Part 226  
N.C.G.S. 130A-361  
10A N.C.A.C. 43J.0101  
FNS Instruction 796-2, Rev. 4

**WITNESSES**

For Petitioner:

Yolanda Hill

**For Respondent:**

Cassandra Ward

Janet Phelps

Angela Williams-Crets

Edith Toral

Cheryl Baron

## EXHIBITS

Petitioner introduced Petitioner's Exhibits 2-8, 10, 12, 14, 17, 19, 20-21, 25-26, 28-29, 32-33, 35, 37 and 42. Petitioner's exhibits 1, 9, 11, 13, 15-16, 18, 23-24, 27, 30-31, 34, 36 and 38-43 were either not introduced or not admitted into evidence. Those exhibits are as follows:

1. Permanent Agreement Institutions
2. Screenshot dates of all Compliance Reviews
3. Budget for Sponsoring Organization of Day Care Homes
4. Letter dated July 11, 2020 regarding Annual Application Update Packet
5. Fiscal Year 2022 Sponsoring Organization Budget for Balanced Nutrition, Inc.
6. Specific Prior Written Approval Request Form dated April 18, 2023 (for son of the CFO)
7. Budget Approval Page for Sponsoring Organization of Unaffiliated Centers, dated March 17, 2023.
8. Email dated March 2024, 2023 regarding request to revise budget of Sponsoring Organization of Unaffiliated Centers
9. Letter dated September 8, 2023 regarding extension of Record Renewal deadline
10. Proposed Budget for Sponsoring Organization of Unaffiliated Centers for Program Year October 1, 2023 – September 30, 2024.
11. Email dated September 19, 2023 from Cassandra Williams to CACFP regarding media inquiries.
12. Unexecuted Permanent Agreement
13. USDA Memo regarding Review Frequency
14. Email dated February 29, 2024 regarding time to make corrections to Record Renewal 2023-2024.
15. Notification letters dated March 1, 2024, March 18, 2024 and April 1, 2024 regarding scheduled CACFP Compliance Review
16. Email dated April 3, 2024 regarding Balanced Nutrition, Inc.'s termination from the CACFP

17. Letter dated April 2, 2024 regarding Balanced Nutrition, Inc.'s intent to terminate its agreement with the State of North Carolina as a Sponsoring Organization in the CACFP
18. Email dated April 2, 2024 regarding the return of Balanced Nutrition, Inc.'s Record Renewal 2023-2024
19. Email dated April 11, 2024 listing the months to be reviewed during the compliance review
20. Screenshot of text message thread between members of the CACFP compliance review team
21. Email dated April 19, 2024 regarding public records requests
22. Letter dated July 24, 2024 regarding Notice of Serious Deficiency
23. Disallowance forms dated July 24, 2024 for the test months of January 2024, February 2024 and March 2024.
24. Letter dated July 24, 2024 regarding a review of findings during the 2023-2024 compliance review
25. Disallowance form dated July 24, 2024 and related documentation relating to the test the month of January 2024
26. Disallowance form dated July 24, 2024 and related documentation relating to the test the test month of January 2024
27. Disallowance forms dated July 3, 2024 for the test months of January 2024, February 2024 and March 2024.
28. Letter dated July 25, 2024 regarding the State agency's review of findings during the 2023-2024 CACFP review
29. Letter dated July 26, 2024 summarizing the disallowances resulting from 2023-2024 compliance review
30. Letter from Envisage Law dated August 7, 2024 Requesting an Informal Conference
31. Unsigned and undated Specific Prior Written Approval Request Form
32. Letter dated January 7, 2025 regarding updated disallowances following the Informal Conference
33. Email dated July 31, 2025 and attached spreadsheet containing the breakdown of the

disallowance amounts and appurtenant information.

34. Email dated February 3, 2025 and attached document citing the legal authority for the disallowances contained in the January 7, 2025 letter
  35. Payroll and time sheets for January 2024
  36. Disallowance form dated July 24, 2024 and related documentation
  37. Payroll and time sheets for December 2023
  38. Payroll and time sheets for March 2024
  39. Provider Payments resulting from January – April claims
  40. Payroll for February 2024
  41. Email dated October 26, 2023 regarding upcoming review schedule
  42. Letter dated April 22, 2024 from B. Tyler Brooks
  43. Email dated April 18, 2024 informing CACFP staff not to respond to media requests
- Respondent introduced Respondent's Exhibits 1 through 41. Those exhibits are as follows:
1. Balanced Nutrition's Permanent Agreement to participate in the CACFP
  2. Balanced Nutrition's Response Letter dated April 16, 2024
  3. Correspondence dated April 18, 2024 from Cassandra Williams (Ward) to Yolanda Hill
  4. Balanced Nutrition's Response Letter dated April 23, 2024
  5. Compliance Review Letter dated July 26, 2024
  6. Letter from Envisage Law dated August 7, 2024 Requesting an Informal Conference
  7. Informal Conference Summary Letter dated January 7, 2025.
  8. Spreadsheets with summary of disallowances
  9. Standard Review Questions: Institution (Sponsoring Organization of Homes)
  10. Standard Review Questions: Institution (Sponsoring Organization of Centers)
  11. Disallowance for Sponsoring Organization (January 2024)

12. Cost Disallowance for Sponsoring Organization (February 2024)
13. Cost Disallowance for Sponsoring Organization (March 2024)
14. Cost Disallowance for ABG Provider Services CC II (January 2024)
15. Cost Disallowance for ABG Provider Services CC II (February 2024)
16. Cost Disallowance for ABG Provider Services CC II (March 2024)
17. Meal Disallowance for ABG Provider Services CC II (January 2024)
18. Meal Disallowance for Sharon Harris (January 2024)
19. Meal Disallowance for Sharon Harris (February 2024)
20. Meal Disallowance for Sharon Harris (March 2024)
21. Meal Disallowance for Rosa Reddrick (January 2024)
22. Meal Disallowance for Kim Eaton (January 2024)
23. Cost Disallowance for Apple Tree Wee School, Inc. (January 2024)
24. Meal Disallowance for Apple Tree Wee School, Inc. (January 2024)
25. Cost Disallowance for Apple Tree Wee School, Inc. (February 2024)
26. Meal Disallowance for Apple Tree Wee School, Inc. (February 2024)
27. Cost Disallowance for Apple Tree Wee School, Inc. (March 2024)
28. Meal Disallowance for Apple Tree Wee School, Inc. (March 2024)
29. Meal Disallowance for Jamie Johnson (January 2024)
30. Meal Disallowance for Robrita McKoy (January 2024)
31. Meal Disallowance for Robrita McKoy (February 2024)
32. Meal Disallowance for Robrita McKoy (March 2024)
33. Meal Disallowance for First Class Preparatory School (January 2024)
34. Cost Disallowance for First Class Preparatory School (January 2024)

35. Cost Disallowance for First Class Preparatory School (February 2024)
36. Meal Disallowance for Foundation Builders Academy (January 2024)
37. Cost Disallowance for Foundation Builders Academy (January 2024)
38. Cost Disallowance for Foundation Builders Academy (February 2024)
39. Cost Disallowance for Foundation Builders Academy (March 2024)
40. Meal Disallowances for Gingerbread Learning Center (February 2023, March 2023, June 2023, July 2023, August 2023, September 2023, October 2023 and February 2024.
41. Legal Authority for Disallowances

Pursuant to the Court’s Order to Seal, entered on February 6, 2025, the exhibits filed in this proceeding are sealed, as they may include private and confidential information which may involve the disclosure of confidential, personnel, medical or otherwise sensitive information requiring security against unrestricted disclosure or use.

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, including documents admitted into evidence, the Tribunal makes the following **FINDINGS OF FACT**. In making the findings of fact, the Tribunal has weighed all the admissible evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witnesses may have, the opportunity of the witnesses to see, hear, know, or remember the facts or occurrences about which the witnesses testified, whether the testimony of the witnesses is reasonable, and whether the testimony is consistent with all other believable evidence in this contested case.

### **FINDINGS OF FACT**

1. This case arises within the context of the Federally funded Child and Adult Care Food Program (“CACFP”). The CACFP seeks to ensure that eligible children and adults receive nutritious meals while in attendance at non-residential care institutions, such as childcare centers, adult day care centers, and at-risk afterschool care centers. To advance its mission, the CACFP provides monetary reimbursement to approved institutions for qualifying meals served to eligible children or adults.
2. Respondent, the North Carolina Department of Health and Human Services, Division of Child and Family Well-Being, is the State agency that administers the CACFP in North Carolina ( “Respondent” or “the State agency”).
3. Respondent is responsible for protecting the integrity of the CACFP by ensuring that each participating institution complies with all of the relevant rules and regulations governing the CACFP.

4. Respondent presented five witnesses: Cassandra Ward, Janet Phelps, Angela Williams-Crets, Edith Toral and Cheryl Baron.
5. Ward has been involved in the CACFP for twenty-two (22) years, beginning her employment in 2003. During that time, she has served as a CACFP consultant, as the CACFP Program Supervisor for the State of North Carolina and in her current position of CACFP Program Manager II, where, among other duties, she oversees the compliance of institutions in North Carolina who participate in the CACFP. She has held her current position for approximately four (4) years. Except as otherwise indicated below, this witness was credible.
6. Phelps has served as a consultant with Respondent for twenty-one (21) years. She has conducted compliance reviews and issued disallowances throughout her lengthy career with Respondent. Phelps participated in Respondent's compliance review of Petitioner and testified that she followed State agency policies and procedures throughout the process and that the administrative review and the resulting disallowances were completed in accordance with the Federal regulations governing the CACFP. She conducted Petitioner's review in the same manner that she has throughout her twenty-one (21) years as a consultant. Except as otherwise indicated below, this witness was credible.
7. A standard review tool comprised of hundreds of questions is used during every Sponsoring Organization compliance review in North Carolina, including Petitioner's. Resp. Exs. 9 and 10 (Phelps testimony).
8. Williams-Crets has worked with Respondent for twelve (12) years as a Program Nutrition Assistant. Williams-Crets participated in Respondent's compliance review of Petitioner and testified that she followed State agency policies and procedures throughout the process and that the administrative review and the resulting disallowances were completed in accordance with the Federal regulations governing the CACFP. Except as otherwise indicated below, this witness was credible.
9. Toral has worked with Respondent for ten (10) months as a Finance and Business Compliance Analyst. Toral participated in Respondent's compliance review of Petitioner and testified that she followed State agency policies and procedures throughout the process and that the administrative review and the resulting disallowances were completed in accordance with the Federal regulations governing the CACFP. Except as otherwise indicated below, this witness was credible.
10. Baron has worked with Respondent for nearly seven (7) years as an Administrative Officer. Baron testified that she conducts quality reviews, in which she is a second party reviewer during compliance reviews in cases that are potentially high risk based on an error rate over twenty percent (20%). Baron reviews the documentation from the compliance review to ensure that any disallowances have sufficient documentation to support the validity of the disallowances. Except as otherwise indicated below, this witness was credible.
11. Petitioner, Balanced Nutrition, Inc., is a non-profit childcare center that participates as an institution (Sponsoring Organization) in the CACFP (#9460). (Hereinafter referred to as

“Petitioner”)

12. Ms. Yolanda Hill serves as the Chief Financial Officer (CFO) for Petitioner. Except as otherwise indicated below, this witness was credible.
13. Sponsoring Organizations, such as Petitioner, have financial and administrative responsibility over the sponsored facilities, specifically the childcare centers, day care centers, and at-risk afterschool care centers that provide meals to eligible children and adults. Sponsoring Organizations also file claims for reimbursement on behalf of the sponsored facilities.
14. Petitioner's current Permanent CACFP Agreement became effective on September 6, 2019 and was in effect during all relevant times of Petitioner's appeal. Resp. Ex. 1. Pursuant to the terms of the Agreement, Petitioner agreed to the following, among other things:
  - a) Comply with the terms of the Agreement and all applicable Federal and State laws and regulations governing the CACFP;
  - b) Allow the State agency to make announced or unannounced reviews of its CACFP operations;
  - c) Accept final financial and administrative responsibility for management of the Program;
  - c) Allow the Respondent and other State or Federal officials to make announced or unannounced reviews of its CACFP operations during normal hours of child or adult care operations or at any other reasonable time as deemed necessary by the reviewing official;
  - d) Maintain all program records, reports and other documents pertaining to the CACFP at the Institution and participating facility(ies), including claims for reimbursement and supporting documentation and records pertaining to the Institution's budget.
  - e) Upon request, make all records pertaining to the Program available for administrative review by the Respondent at a reasonable time and place; and
  - f) Failure to make records available within the specified time frame(s) could result in denial of a claim for reimbursement.
15. In North Carolina, in order for a Sponsoring Organization to file a claim, the Sponsoring Organization must have an approved budget with the State agency. The purpose of the budget is to (1) inform the State agency of the Sponsoring Organization's revenue sources and (2) explain to the State agency how the Sponsoring Organization plans to spend their CACFP reimbursement funds. The budget contains line items, some of which require supporting documentation. Once submitted, the State agency will either approve the budget or ask for additional documentation (Ward testimony).
16. Federal regulations require that the Sponsoring Organization must request and obtain Specific Prio Written Approval (SPWA) for certain specific line items in the proposed budget. For SPWA, the State agency must have documentation from the Sponsoring Organization explaining why SPWA is necessary for a line item. One item that requires

SPWA is a less than arm's length transaction. One example of a less than arms length transaction is "familiarity." In other words, a relationship which one party to the transaction is able to control or substantially influence the actions of others such as an immediate family member of a key employee of the institution (Ward testimony).

17. If a Sponsoring Organization claims reimbursement for an item that is not included in the approved budget, that claim must be disallowed. However, budgets may be amended at any time to include additional line items and supporting documentation.
18. Sponsoring Organizations participating in the CACFP submit claims for reimbursement to Respondent, State agency, and are required by Federal regulation to keep all documentation proving or supporting each claim for reimbursement. Once a Sponsoring Organization submits a claim for reimbursement, Respondent will then issue the funds claimed by the Sponsoring Organization. If, however, during a compliance review it is determined that the funds received were (1) unallowable pursuant to the Federal Regulations or (2) not supported by documentation, the State agency must issue disallowances in order to recover the improperly paid Federal funds (Ward testimony).
19. Disallowances are not civil fines or penalties because the State agency is recouping Federal funds that were claimed by, and provided to, the Sponsoring Organization for the sole purpose of using those funds for the Federally regulated CACFP. The Sponsoring Organization has the financial responsibility to ensure that each claim is accurate and allowable before it files a claim (Ward testimony).
20. On March 1, 2024, Respondent sent Petitioner an initial notice that it was scheduled for a routine compliance review for the week of April 15-19, 2024. Resp. Ex. 2, pp. 4-8. That letter provided a list of documents Petitioner was required to provide Respondent and warned that a failure to provide the requested documentation may lead to disallowances of reimbursement and/or other adverse consequences. On March 18, 2024, Petitioner resent the notice to Yolanda Hill, Owner/CFO of Balanced Nutrition, Inc. Resp. Ex. 2, pp 9-11.
21. This audit was an announced review of Petitioner, as a Sponsoring Organization, and was intended to assess Petitioner's CACFP operations and management. Such administrative reviews are a routine requirement for all Sponsoring Organizations who choose to participate in the CACFP to ensure the Sponsoring Organization's compliance with the regulations. Randomly selected "test months" are used as representative samples for this review.
22. Respondent has a responsibility to ensure that all Sponsoring Organizations participating in the CACFP are following the Federal regulations. The compliance review serves as the way in which Respondent is able to verify – based on the documentation provided by the reviewed Sponsoring Organization (Petitioner) and documentation provided by sponsored facilities like day care centers – whether the Sponsoring Organization is complying with the rules and regulations (Ward testimony).
23. Sponsoring Organizations like Petitioner are typically reviewed at least once every three years. However, due to the implementation of a new software system which was rolled out

- in late 2023 and extended into early 2024, the State agency created a State-wide policy in which a Sponsoring Organization with significant findings would be placed on the following year's review schedule. This is to ensure that the past violations have been corrected (Ward testimony).
24. In addition to Petitioner, in 2023-2024, thirteen (13) other institutions were placed on the following year's review schedule. The State agency may conduct a compliance review at any time as long as it is announced to the Sponsoring Organization prior to the time of the review (Ward testimony).
  25. Respondent initially intended to review Petitioner's records from January 2024 – the initial “test month” of the audit. However, during a routine review of Petitioner's Unaffiliated Centers and Day Care Homes, it was determined that some of the facilities supervised by Petitioner had an error rate over twenty percent (20%). Due to this high error rate, and in accordance with Respondent's policy, Petitioner's compliance review was extended from January 2024 to also include the months of February 2024 and March 2024. This expansion was to ensure that the high error rate was not systemic. In addition, Respondent requested documentation for various claims made in 2023. This stemmed from an investigation into whether Petitioner submitted claims for one of Petitioner's sponsored facilities -- Gingerbread Learning Center -- during months in which Gingerbread Learning Center was not participating in the CACFP.
  26. On April 15, 2024, as the review team of Janet Phelps, Angela Williams-Crets and Edith Toral was in transit to the review site, Respondent was informed that Petitioner declined to meet with the review team without the presence of counsel. Resp. Ex. 2. Per a letter dated April 16, 2024, Respondent provided Petitioner a second opportunity to participate in the review by agreeing to reschedule the review for April 17, 2024. Resp. Ex. 2. The review team arrived on site and was greeted by Yolanda Hill. Ms. Hill again informed the review staff that she would not participate in the review without her attorney present. Respondent agreed to reschedule Petitioner's review a third time on April 22, 2024. Resp. Ex. 3. Only partial records were provided by Petitioner.
  27. In her twenty-two (22) years working for Respondent in the CACFP, Ward was unaware of any prior compliance review in which the Sponsoring Organization's attorney was present. Phelps testified similarly. Neither testified that having an attorney present violated any State rule or Federal regulation, and neither testified to the type of unprofessional interactions between Respondent's personnel (below) that, per Ms. Hill, prompted that action.
  28. Per a letter dated April 23, 2024, Respondent scheduled a final on-site review for May 6, 2024. Resp. Ex. 4. The letter noted that this was the fourth attempt by Respondent to complete the Federally required compliance review, with attempts made by Respondent on April 15, 2024, April 17, 2024 and April 22, 2024. On April 23, 2024, Petitioner was able to make copies of some requested documents; however, Petitioner did not provide all of the requested documents.
  29. Respondent requested additional documents during the on-site review on April 23, 2024

and again in the weeks following the review. While Respondent accepted and reviewed all documentation provided by Petitioner, as of the date of the hearing, Petitioner had still failed to provide all of the documentation requested by Respondent because Petitioner failed to provide any supporting documentation for the claims that were filed on behalf of Gingerbread Learning Center (Phelps testimony).

30. Moreover, despite numerous attempts by Respondent to schedule an in-person exit conference (which allows Respondent to explain to Petitioner the specific reasons for findings or disallowances resulting from the review, answer any questions Petitioner may have about the disallowances, and allows Respondent to provide technical assistance to Petitioner) Petitioner failed to respond.
31. Following the May 6, 2024 review, Respondent reviewed the documentation provided by Petitioner. Per standard practice, Respondent compared the documentation provided with Petitioner's approved budget to ensure the costs claimed were allowable costs. In addition, per standard practice, Respondent compared the documents with past claims for reimbursement filed by Petitioner and paid by the State agency. Petitioner received Federal funds for costs that it submitted to the State agency for payment and contended were associated with the CACFP properly payable pursuant to 7 C.F.R. § 226. However, upon review of Petitioner's supporting documentation, Respondent was unable to verify certain of the costs submitted by Petitioner. As a result, per standard practice, Respondent issued cost disallowances involving unverified costs claimed and received by Petitioner.
32. Per standard practice, Phelps attempted to reconcile the costs claimed by Petitioner with the approved budget as well as all of the supporting documentation that was provided by Petitioner during and after the compliance review. Phelps was unable to do so, which led to Respondent issuing cost disallowances as described in the letters dated July 26, 2024, Resp. Ex. 5, and January 7, 2025, Resp. Ex. 7.
33. Respondent's routine practice for administering compliance reviews is to compare the administrative and operating costs claimed by a Sponsoring Organization with the administrative and operating costs that the State agency is able to verify based on the documentation provided by the Sponsoring Organization during the review. Ward explained that administrative costs are typically costs from the Sponsoring Organization whereas Operating Costs are costs from the sponsored facilities.
34. In addition, Respondent's standard practice is to compare the items that are included in a Sponsoring Organization's cost reimbursement to the specific items that the Sponsoring Organization included in its approved budget with the State agency. This requirement is based upon and consistent with the Federal regulations governing the CACFP.
35. Per standard practice (Phelps testimony and generally), when reviewing the administrative and operating costs claimed by Petitioner, she reviewed the following in an attempt to reconcile them with Petitioner's claims and what has been approved in Petitioner's budget:
  - a) Monthly record of hours worked;
  - b) Compensation Policy and Procedures (which shows the amount listed in the management plan in which Petitioner told Respondent that they would pay its

- employees);
  - c) Specific Prior Written Approval;
  - d) Budget for Day Care Homes and Budget for Unaffiliated Centers;
  - e) Pay-check stubs;
  - f) Monthly record of hours worked; and
  - g) Invoices and receipts that support other administrative expenses
36. After reviewing all of this documentation, pursuant to the Federal regulations, Respondent issued disallowances for administrative and operating costs. The largest disallowance amounts stemmed from the disallowance of the salaries of Yolanda Hill and Kimberly Cephas. These disallowances (Phelps testimony) stemmed from a variety of issues:
- 1. Kimberly Cephas is a relative of Yolanda Hill, but there was not a Specific Prior Written Approval form approved by Respondent on file;
  - 2. Kimberly Cephas was only listed on the Day Care Homes Budget whereas Yolanda Hill was only listed on the Unaffiliated Centers Budget, meaning that they could only claim for the type of center in which they were listed on the approved budget; and
  - 3. Petitioner failed to provide any time sheets for the months of January, February and March, 2024. Per regulation, in order to claim reimbursement for salaries, there must be documentation of complete time sheets, paycheck stubs, and be consistent with the salaries listed in the budget.
37. Respondent's routine practice for administering compliance reviews is also to compare the meals claimed by a Sponsoring Organization with the supporting documentation such as menus, attendance records and point of service meal counts, that the State agency is able to verify based on the documentation provided by the Sponsoring Organization.
38. Respondent's routine practice during a compliance review is to request the reviewed Sponsoring Organization to provide a roster of those individuals participating in the CACFP, meal counts for meals actually served to the participants, menus of the food served to the participants, and financial documentation supporting claims made by the Sponsoring Organization for reimbursement of funds.
39. Per standard practice (Phelps testimony), when reviewing the meal counts claimed by a Sponsoring Organization, Phelps reviewed the following:
- a) Income eligibility application (to ensure they are correctly classified and on file for every child who received free or reduced priced meals);
  - b) Enrollment forms (to ensure there is an enrollment form on file for every child enrolled);
  - c) Meal counts (to ensure meal counts claimed for a center were correct and documented by the meal count records);
  - d) Menus (to ensure that the Federally mandated meal pattern requirements were met);
  - e) Attendance records; and
  - f) Office error report (which shows what the Sponsoring Organization claimed for a center and anything that they may have disallowed prior to filing the claim)

40. After reviewing all of this documentation, pursuant to the Federal regulations, Respondent issued cost disallowances for, among other things, missing or incomplete documentation of enrollment, inability to verify the free, reduced price, and paid classifications, and missing meal component(s).
41. Williams-Crets and Toral conducted their review and calculated the disallowances in the same manner as Phelps. They also found discrepancies and unsupported claims submitted by Petitioner, and as a result the Respondent issued disallowances accordingly.
42. Toral's findings relating to Gingerbread Learning Center also led to disallowances issued by Respondent. Toral testified that these disallowances were issued for a variety of reasons. First, Petitioner failed to provide any menus for the requested months. Second, Petitioner failed to provide any documentation of meal counts for meals served to the participants during the requested months. Finally, Petitioner failed to provide any documentation of enrollment of participants receiving meals at Gingerbread Learning Center during the requested months.
43. Final review of the documents provided to Respondent by Petitioner during the compliance review revealed that the costs claimed by Petitioner exceeded the costs that Respondent was able to verify for the requested test months. Cheryl Baron, Respondent's quality control reviewer, also reviewed the disallowances and ensured their accuracy.
44. As a result of the review, Respondent sent a letter on July 26, 2024 explaining that the compliance review resulted in disallowances totaling \$132,118.86. Resp. Ex. 5. Specific disallowance forms were also provided in this communication. Id.
45. Petitioner requested an Informal Conference to discuss the disallowances. Resp. Ex. 6. Petitioner and Respondent met for an Informal Conference on September 16, 2024. Petitioner brought additional documentation to the Informal Conference and Respondent agreed to review the documents and adjust the disallowance amount if appropriate.
46. As a result of the re-review, Cost Disallowance Forms were issued for Administrative and Operating costs. Resp. Ex. 7. As before, Janet Phelps, Angela Williams-Crets and Edith Toral personally reviewed the documentation provided by Petitioner and determined, based on the Federal regulations, which costs were allowable and compared them with the costs claimed by Petitioner. The cost disallowance total represents the difference between the costs claimed by Petitioner and the costs that could be verified as allowable costs by Ms. Phelps, Ms. Williams-Crets and Ms. Toral.
47. Baron performed a quality review on the disallowances issued by Phelps, Williams-Crets, and Toral. As part of her quality review of these disallowances, Baron created a spreadsheet to confirm the disallowances were accurate. Resp. Ex. 8. Baron's spreadsheet also listed the disallowances contained in the July 26, 2024 letter as well as the revised disallowances that were created after reviewing the additional documentation provided by Petitioner during the Informal Conference, and provided an explanation for the updated amount. Baron testified that Phelps, Williams-Crets and Toral conducted their review in the same manner as the hundreds of cases that she has previously reviewed. Baron further

testified that she conducted Petitioner's review in the same manner as the hundreds of cases that she has previously reviewed.

48. After Respondent had an opportunity to re-review all of the documentation provided and the associated disallowances, Respondent properly issued revised disallowances in the amount of \$101,142.05 as described in a letter dated January 7, 2025. Resp. Ex. 7. Ms. Baron explained that the decreased disallowance amount in the January 7, 2025 letter as compared to those listed in the July 26, 2024 letter was a result of a combination of calculation errors in the July 26, 2024 disallowances and analysis of the documentation provided by Petitioner during the Informal Conference. Respondent corrected the mathematical error, but did not change any of the underlying audit findings. Also, based on new documents provided by Petitioner for the first time at the reconsideration review hearing, Respondent changed one audit finding in Petitioner's favor, in the amount of \$699.61. Upon re-review, proper calculation of the disallowances rendered an approximately \$30,000 decrease in the disallowances. Resp. Exs. 7 and 8.
49. The \$101,142.05 disallowance is a small portion of the Federal CACFP funds received by Petitioner. Petitioner received approximately \$1,000,000 in Federal CACFP funds in Fiscal Year 2024 and received over \$2,000,000 in Federal CACFP funds in Fiscal Year 2023.
50. Yolanda Hill testified to her belief that Respondent had unfairly targeted Balanced Nutrition for audit in 2024.
51. Hill's misgivings about Respondent were not unreasonable. During the FFY 2023 compliance review, the lead review consultant, Bonner, sent a group text to other CACFP coworkers claiming Hill had lied about being married to Lt. Governor Mark Robinson and lied about her son being on the budget (P. Ex. 20). Phelps, who was lead consultant for the FFY 2024 Review, was included on this text message thread, and testified that she believed Hill had lied to Bonner. Hill testified that Bonner later apologized during a meeting with Hill for sending the text. Hill was represented by her attorney, Tyler Brooks, who was present during the meeting at which Ms. Bonner issued her apology.
52. That Bonner's conduct was grossly inappropriate and unprofessional, especially given the tone of the text messages involved, is self-evident. "Unacceptable personal conduct includes, in its definition, 'conduct unbecoming a state employee that is **detrimental to State service**'." Kelly v. N.C. Dep't of Env't & Natural Res., 192 N.C. App. 129, 138, 664 S.E.2d 625, 632, (2008); 25 N.C. Admin. Code 1J.0614(i)(5) (2008) (emphasis supplied). Bonner's conduct, which reasonably caused apprehension on Hill's part about the fairness of Respondent's review, is clearly found, both factually and as a matter of law, to be detrimental to State service – public officers and officials, when exercising their authority, must conduct themselves with a modicum of professionalism.
53. However, Bonner was one person involved in the review process. Overall, the evidence demonstrated that Respondent followed applicable State agency policies and procedures, and Federal regulations, in connection with the 2024 audit of Petitioner. In short, though Bonner's conduct was inappropriate and unprofessional, it is found as a fact that her

conduct did not unfairly taint or influence the review process.

54. Hill had difficulty understanding Respondent's audit findings, including the specific reasons underlying the disallowances, and argued that this amounted to a due process violation.
55. However, the evidence from Respondent's representatives, along with the exhibits introduced into evidence by Respondent, rebutted this suggestion. The evidence showed that Respondent provided Petitioner with a full and fair explanation of the initial disallowances on July 26, 2024, Resp. Ex. 5, as well as the revised final disallowances on January 7, 2025, Resp. Ex. 7. Also, to the extent Petitioner remained confused at the conclusion of the process, Petitioner's refusal to participate in the exit process is noted.
56. Specifically, each of those letters explained the audit findings and disallowance amounts, and each attached multiple pages of supporting documentation supporting the audit findings. Additionally, on September 16, 2024, Respondent participated in an in-person Informal Conference with Petitioner and her counsel, in which Petitioner was able to ask questions to gain clarity about each of the initial disallowances dated July 26, 2024. Resp. Exs. 6 and 7. Finally, Respondent also prepared and provided a detailed spreadsheet to Petitioner, further explaining the audit findings and disallowed amounts. Resp. Ex. 8.
57. Moreover, the agency attempted several times to schedule an exit conference with Petitioner, in which she could have raised questions about these concerns. See, e.g., Resp. Ex. 5. However, Petitioner refused to respond to Respondent's offers to schedule an exit conference.

**BASED UPON** the foregoing Findings of Fact, the Tribunal makes the following:

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case. N.C.G.S. 150B, Article 3; N.C.G.S. 135-48.24.
2. All parties have been correctly designated and there is no question of misjoinder or nonjoinder.
3. All parties received Notice of Hearing in accordance with N.C.G.S. 150B-23(b).
4. To the extent the Findings of Fact contain Conclusions of Law, and vice versa, they should be considered without regard to their given labels. Charlotte v. Heath, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946). The Tribunal need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).
5. In deciding this case, the Tribunal has, in accordance with N.C.G.S. 150B-34(a), given

“due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency.”

6. The burden of proof generally rests on the petitioner challenging an agency decision. N.C.G.S. 150B-25.1 The Petitioner bears the burden of proof by a greater weight or preponderance of the evidence of showing that the agency has substantially prejudiced its rights as well as whether the agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. *Id.*, see also N.C.G.S. 150B-23.
7. In accordance with Painter v. Wake County Bd of Ed., 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be generally presumed in appropriate cases that “public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law.”
8. That was not the case – good faith and in accordance with the spirit of the law - with Bonner’s conduct described above, which, the Tribunal reiterates, was grossly inappropriate and unprofessional. However, Petitioner failed to meet its burden to show that this conduct tainted or prejudiced the review itself, in which multiple persons participated.
9. The Child and Adult Care Food Program is authorized by 42 U.S.C. § 1766 and regulated by the United States Department of Agriculture pursuant to 7 C.F.R. Part 226.
10. Respondent administers the CACFP in North Carolina pursuant to N.C.G.S. § 130A-361 and 10A N.C.A.C. 43J.0101, which incorporates by reference 7 C.F.R. Part 226.
11. The CACFP is a heavily regulated process, as is axiomatically known to anyone choosing to participate in it. As the Tribunal observed in another case concerning this program:

This case, perhaps more than any the Tribunal has decided, emphasizes the legal maxim that “men must turn square corners when they deal with the Government.” See Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, 384, 92 L. Ed. 10, 68 S. Ct. 1 (1947) (denying crop insurance benefits to farmer who failed to comply with technical requirement of Federal crop insurance program, despite substantial compliance with substantive provisions of program); Rock Island, A. & L.R. Co. v. United States, 254 U.S. 141, 143, 65 L. Ed. 188, 41 S. Ct. 55 (1920) (holding failure to comply with ‘purely formal conditions’ fatal to petitioner’s claim for tax refund).

Katherine Harrelson Marilyn Rankin Chair Women's Foundation of North Carolina v. NC Department of Health and Human Services, Nutrition Services, Child & Adult Care Food Program, 24 DHR 02177 (August 9, 2024).

12. As also observed in Harrelson, Petitioner, though at all times appearing to act in good faith,

has seen its participation in a heavily regulated program go awry due to failure to fully comply with regulations, almost completely Federally promulgated, and that are almost tailor-made for bureaucratic nit-picking.<sup>1</sup> Nonetheless, these are the regulations of the program in which Petitioner voluntarily made the decision to participate, and the regulations under which Petitioner agreed, under contract (the Permanent Agreement), to be bound.

13. 7 C.F.R. § 226.2 provides that “Institution” means a sponsoring organization, childcare center, at-risk afterschool care center, outside-school-hours care center, emergency shelter or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations. Petitioner Balanced Nutrition, Inc. is a “Sponsoring Organization” pursuant to an agreement with Respondent and is subject to the requirements of 7 C.F.R. Part 226, which governs institutions participating in the CACFP.
14. 7 C.F.R. § 226.6(b)(4) states that “The State agency must require each institution that has been approved for participation in the Program to enter into a permanent agreement governing the rights and responsibilities of each party.” Petitioner’s current CACFP Agreement became effective on September 6, 2019 and was in effect during all relevant times of Petitioner’s appeal.
15. 7 C.F.R. § 226.10(d) states that “all records to support the claim shall be retained for a period of three years after the date of final submission of the final claim for the fiscal year to which they pertain, except if audit findings have not been resolved, the records shall be retained beyond the end of the three year period as long as may be required for the resolution of the issues raised by the audit. 7 C.F.R. § 226.10(d) also states that all accounts and records pertaining to the Program shall be made available, upon request, to representatives of the State Agency, of the USDA, and of the U.S. Government Accountability Office for audit or review, at a reasonable time and place.”
16. 7 C.F.R. § 226.14(a) states that State agencies shall disallow any portion of a claim for reimbursement and recover any payment to an institution not properly payable under this part. This includes an institution’s failure to comply with the recordkeeping requirements contained in the regulations.
17. 7 C.F.R. § 226.15(e) states that “each institution shall establish procedures to collect and maintain all program records required ...by the State Agency.” Specifically, “copies of invoices, receipts, or other records required by the State Agency to document administrative and operating costs.” 7 C.F.R. § 226.15(e)(6). Pursuant to this section, “failure to maintain such records SHALL be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for COSTS associated with such records.” (emphasis added)

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<sup>1</sup> Though not, it must be observed, as much here as in Harrelson, where Respondent faulted Petitioner for, among other issues, regarding displaying a poster in its facilities – not for failing to display the poster, but because the poster was allegedly the “wrong color”.

18. Specifically, 7 C.F.R. § 226.15(e)(4) requires institutions to maintain daily records indicating the number of participants in attendance and the number of meals, by type, (breakfast, lunch, supper, and supplements) served to participants.
19. 7 C.F.R § 226.10(c) requires institutions to certify that the claim is correct and that records are available to support the claim.
20. Section VIII(A) of the FNS Instruction 796-2, Rev. 4 (Financial Management Guide) states that “institutions are responsible for accounting for costs correctly and for maintaining records and sufficient supporting documentation to demonstrate that the costs claimed have been incurred, are allocable to the Program, and comply with State agency financial management requirements...Costs that are not properly documented and recorded...are unallowable.” While not a rule or regulation and not recognized as such, this was a statement of Respondent’s expectations for the institutions subject to those rules
21. Section VII(G) of the Financial Management Guide further explains that “unallowable costs cannot be charged to the Program or claimed for reimbursement (and) Institutions must fund unallowable costs from non-program sources. While not a rule or regulation and not recognized as such, this was a statement of Respondent’s expectations for the institutions subject to those rules
22. 7 C.F.R. § 226.7 states that “the State Agency MUST review institution budgets and MUST limit allowable administrative claims by each sponsoring organization to the administrative costs approved in its budget.” (emphasis added)
23. Part 2 of the USDA Handbook entitled “Guidance for Management Plans and Budgets – A Child and Adult Food Program Handbook” instructs that “once the initial budget has been approved, the institution is expected to adhere to it or to submit appropriate amendments to the State agency for approval should the need arise. The institution’s actual expenditures will be submitted to the State agency for review and approval with the institution’s monthly claim for reimbursement.” While not a rule or regulation and not recognized as such, this was a statement of Respondent’s expectations for the institutions subject to those rules.
24. Part 2(A)(5) of the USDA Handbook entitled “Guidance for Management Plans and Budgets – A Child and Adult Food Program Handbook” further explains that “costs that are not approved in the CACFP budget or a budget amendment” are considered “unallowable costs” that may not be charged to the CACFP or claimed for reimbursements. While not a rule or regulation and not recognized as such, this was a statement of Respondent’s expectations for the institutions subject to those rules.
25. In addition, section VIII I 23(c)(2) of the Financial Management Guide explains that time and attendance reports for all labor costs (salaries, wages and benefits) charged to the Program for hourly or salaried employees for part-time, full-time or piece-work. These reports must identify the total time actually worked by the employee, not just the time spent on Program activities. (a) At a minimum, these reports must include: (i) Start time; (ii) End time; and (iii) Absences. (b) The report must be prepared timely and coincide with

the employee's pay period. (i) For employees with fixed start and end times, the time and attendance report must be prepared daily for all periods of absences beyond normal meal and break periods. (ii) For employees with variable start and end times, the time and attendance report must be prepared daily. Unless required by the institution, employees with established start and end times are not required to complete daily sign-in and sign-out sheets. At the discretion of the State agency, daily sign-in and sign-out sheets may be required for employees with variable start and end times, unless prohibited by a negotiated labor-management agreement between the institution and its employees. While not a rule or regulation and not recognized as such, this was a statement of Respondent's expectations for the institutions subject to those rules.

26. Section VIII(C) of the Financial Management Guide warns that certain situations require special consideration when determining whether the amounts and types of expenses are reasonable Program costs. Special consideration is needed whenever a transaction lacks independence (for example, less than arm's length transactions), because the integrity of the transaction could be compromised. In cases requiring special consideration, specific prior written approval is always required. The State agency may impose limits on the amount and frequency of costs charged to the Program when special considerations exist. The State agency may also establish additional cases, not inconsistent with this Instruction, that require special consideration. While not a rule or regulation and not recognized as such, this was a statement of Respondent's expectations for the institutions subject to those rules.
27. Specific Prior Written Approval (SPWA) is explained in Section VIII(F) of the Financial Management Guide. That section explains that the phrase "specific prior written approval" is used in this Instruction to identify costs that are not allowed unless the State agency has provided the institution with specific written approval of both the cost and the amount of the cost that can be charged to the Program before the cost is incurred. Specific prior written approval by the State agency 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. Approval of a budget line item does not constitute adequate specific prior written approval for these costs. The institution must specifically identify and request approval of these costs during the annual budget approval process or submit a separate request outside of the annual budget approval process. Whether submitted during the budget approval process or at another time during the year, the State agency must approve or deny these specific requests in writing. The approval of the budget is not an automatic approval of items that require specific prior written approval, unless these items are specifically identified in the budget itself. While not a rule or regulation and not recognized as such, this was a statement of Respondent's expectations for the institutions subject to those rules.
28. Finally, Exhibit A of the Financial Management Guide defines a less than arm's length transaction as a transaction under which one party to the transaction is able to control or substantially influence the actions of other(s). This section provides the example of an immediate family member of a key employee as someone requiring SPWA due to the relationship creating a less than arms-length transaction. While not a rule or regulation

and not recognized as such, this was a statement of Respondent's expectations for the institutions subject to those rules.

29. Respondent properly disallowed portions of the salaries of Yolanda Hill and Kimberly Cephas because:
  1. Kimberly Cephas is a relative of Yolanda Hill, but there was not a Specific Prior Written Approval form approved by Respondent on file;
  2. Kimberly Cephas was only listed on the Day Care Homes Budget whereas Yolanda Hill was listed only on the Unaffiliated Centers Budget, meaning that they could only claim for the type of center in which they were listed on the approved budget; and
  3. Petitioner failed to provide any time sheets for the months of January, February and March 2024. Per regulation, in order to claim reimbursement for salaries, there must be documentation of complete time sheets, paycheck stubs, and be consistent with the salaries listed in the budget.
30. Respondent properly disallowed other Administrative and Operating Costs due to, among other things, missing documentation, illegible receipts, unsigned time sheets, and claiming for costs that are unallowable pursuant to the CACFP regulations and guidelines.
31. 7 C.F.R. § 226.2 explains that an enrolled child means a child whose parent or guardian has submitted to an institution a signed document which indicates that the child is enrolled for childcare. In addition, for the purposes of calculations made by sponsoring organizations of family day care homes in accordance with §§ 226.13(d)(3)(ii) and 226.13(d)(3)(iii), "enrolled child" (or "child in attendance") means a child whose parent or guardian has submitted a signed document which indicates that the child is enrolled for child care; who is present in the day care home for the purpose of child care; and who has eaten at least one meal during the claiming period. For at-risk afterschool care centers, outside-school-hours care centers, or emergency shelters, the term "enrolled child" or "enrolled participant" does not apply.
32. CFR § 226.6(b)(1)(i) explains that Centers must submit current information on the number of enrolled participants who are eligible for free, reduced-price and paid meals.
33. Section VI of the Financial Management Guide states that all participating institutions must operate a nonprofit food service principally for the benefit of enrolled participants and maintain records documenting the operation of that food service. Nonprofit food service includes all food service operations conducted by the institution principally for the benefit of enrolled participants, from which all of the Program reimbursement funds are used solely for the operation or improvement of that food service. Food service account activity must be monitored to determine nonprofit food service status for institutions. Independent centers, sponsors of day care homes and sponsors of centers must meet this requirement. While day care homes are exempt from maintaining a nonprofit food service, sponsors of centers need to ensure their centers maintain a non-profit food service. State agencies are required to conduct reviews of participating institutions to ensure these

requirements are met. While not a rule or regulation and not recognized as such, this was a statement of Respondent's expectations for the institutions subject to those rules.

34. 7 CFR § 226.17(b)(8) states that child care centers shall collect and maintain documentation of the enrollment of each child, including information used to determine eligibility for free and reduced price meals in accordance with § 226.23(e)(1). In addition, Head Start participants need only have a Head Start statement of income eligibility, or a statement of Head Start enrollment from an authorized Head Start representative, to be eligible for free meal benefits under the CACFP. Such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care
35. 7 CFR § 226.18 states that each day care home must maintain on file documentation of each child's enrollment and must maintain daily records of the number of children in attendance and the number of meals, by type, served to enrolled children. Such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.
36. Based on the missing or incomplete documentation of enrollment, inability to verify the free, reduced price, and paid classifications, and missing meal component(s), Petitioner failed to submit accurate claims for reimbursement to the Respondent.
37. Petitioner failed to meet its burden of proof that Respondent improperly or illegally disallowed the claims for Gingerbread Learning Center because Petitioner failed to provide any menus for the requested months, failed to provide any documentation of meal counts for meals served to the participants during the requested months, and failed to provide any documentation of enrollment of participants receiving meals at Gingerbread Learning Center during the requested months.
38. Petitioner failed to meet its burden of proof to show that Respondent deprived Petitioner of property, substantially prejudiced Petitioner's rights, and committed one or more of the acts prohibited by N.C.G.S. 150B-23.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law, the Tribunal makes the following:

#### **FINAL DECISION**

Petitioner failed to meet its burden of proof to show that the agency's action was in violation of N.C.G.S. 150B-23. The disallowances are **AFFIRMED**.

**NOTICE OF APPEAL**

This is a Final Decision issued under the authority of N.C.G.S 150B-34. Under the provisions of N.C.G.S. 150B-45, any party wishing to appeal this Final Decision must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the Final Decision was filed.

The appealing party must file the Petition for Judicial Review within 30 days after being served with a written copy of this Final Decision. This Final Decision was served on the parties as indicated by the attached Certificate of Service pursuant to 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C.G.S. 1A-1, Article 2.

N.C.G.S. 150B-46 describes the contents of the Petition for Judicial Review and requires service of that Petition on all parties. Under N.C.G.S. 150B-47, the Office of Administrative Hearings is required to file the Official Record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. The appealing party must send a copy of the Petition for Judicial Review to the Office of Administrative Hearings at the time the appeal is filed.

**SO ORDERED.**

This the 24th day of March, 2025.

A handwritten signature in blue ink that reads "Michael C. Byrne". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

Michael C. Byrne  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 N.C. Admin. Code 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which will subsequently place the foregoing document into an official depository of the United States Postal Service.

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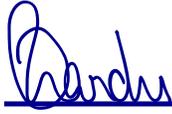
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This the 24th day of March, 2025.



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