

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch**

Brizuelas Bakery,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0247451

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that the Retailer Operations Division properly withdrew the authorization of Brizuelas Bakery (hereinafter “Brizuelas Bakery” or “Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Regulations (CFR) Part 278 in its administration of the SNAP, when it withdrew the authorization of Brizuelas Bakery as a SNAP retail store.

AUTHORITY

7 U.S.C. 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

FNS regulations require that SNAP retail stores be reauthorized on a set schedule. As part of this process, store owners must complete a reauthorization application and an onsite visit by an FNS contractor is then conducted to determine the Appellant’s continued eligibility to participate as a SNAP retailer.

The record shows that the Appellant applied for reauthorization in an application that was signed on October 19, 2020. In a letter dated May 3, 2021, the Retailer Operations Division informed

the Appellant that it was being withdrawn from the SNAP due to a failure to cooperate in the continued authorization process under 7 CFR 278.1(n). The letter noted that the Retailer Operations Division had not received information requested in a previous letter, dated December 11, 2020, which was needed to complete the reauthorization process. The December 11, 2020 letter notified the Appellant that the requested documents must be submitted within 20 days of receipt of that letter. The Appellant was notified that if no response was received, the Retailer Operations Division would consider the application to accept SNAP withdrawn and that a new application may be required. The Retailer Operations Division did not receive the information requested from the Appellant by the 20 day deadline provided and therefore, sent the May 3, 2021 letter of withdrawal to the Appellant.

In a letter postmarked May 18, 2021, the Appellant requested an administrative review of the Retailer Operation Division's decision to withdraw the firm's SNAP authorization. FNS granted the Appellant's request for administrative review by letter dated July 12, 2021 and implementation of the withdrawal was held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(m) and 278.1(n) establish the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to cooperate in the reauthorization process.

7 CFR § 278.1(a) states in relevant part: "Any firm desiring to participate or continue to be authorized in the program shall file an application as prescribed by FNS. Such an application shall contain information which will permit a determination to be made as to whether such an application qualifies, or continues to qualify, for authorization, under the provisions of the program. FNS may require that a retail food store or wholesale food concern be visited to confirm eligibility for program participation prior to such store or concern being authorized or reauthorized in the program. Required visits shall be conducted by an authorized employee of the Department..."

7 CFR § 278.1(b) states in relevant part: "An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. ...Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program."

7 CFR § 278.1(j) states in relevant part: “Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be valid only for the time period for which the firm is authorized to accept and redeem SNAP benefits . . . The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with this part.”

7 CFR § 278.1(m) states in relevant part: “FNS may withdraw or deny the authorization of any firm which: (1) Refuses to accept correspondence from FNS; (2) Fails to respond to inquiries from FNS within a reasonable time; or (3) Cannot be located by FNS with reasonable effort.”

7 CFR § 278.1(n) states in relevant part: “At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm’s application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm’s approval to participate in the program.”

APPELLANT’S CONTENTIONS

The following represents a brief summary of the Appellant’s contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the administrative review request, the Appellant stated the following summarized contentions, in relevant part:

- The Appellant requests reconsideration of the authorization withdrawal decision and another opportunity to comply with the request for information.
- The owners answered the December 11, 2020 letter and receipts along with copies of the requested documentation were sent to the Retailer Operations Division.
- The owners do not have the postal receipt to prove that they responded to the December 11, 2020 letter.
- In January 2021, the business suffered a huge loss when a vehicle smashed through the store. A lot of items were damaged and disposed of and the owners are still trying to get back on their feet.
- A SNAP disqualification will impose a financial hardship on the firm.

In support of these contentions, the Appellant submitted a copy of the May 3, 2021 withdrawal letter.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination of the Retailer Operations Division, and as such is limited to consideration of relevant facts and circumstances at the time of the decision.

FNS regulations require that SNAP retail stores be reauthorized on a set schedule. As part of this process, store owners must complete a reauthorization application and an onsite visit by an FNS contractor is then conducted to determine the Appellant's continued eligibility to participate as a SNAP retailer.

The record shows that the Appellant applied for reauthorization in an application that was signed on October 19, 2020. In a letter dated December 11, 2020, the Retailer Operations Division informed the Appellant that it was in the process of reviewing the firm's authorization to participate in the SNAP and that a determination to continue to participate could not be made at that time. The Retailer Operations Division requested the following additional documents from the Appellant in order to confirm if the firm meets eligibility requirements for SNAP authorization:

- You are at a location that requires additional verification of current ownership. All items listed below must be submitted to FNS within 20 days.
- All current business licenses (liquor license, food license, vendor license or any other similar license to do business) in the name of your firm at the store location.
- If you are leasing the property where your business is located, please provide a copy of the lease in your name. If applicable, please also provide the master lease for any sub-leases or any lease assignments.

To demonstrate your store's eligibility under Criterion A, please provide invoices/receipts to verify that your store carries at least three stocking units of three different varieties of foods in the staple food categories checked below:

- Bread/Cereal (bread, cereal, pasta, rice, flour, etc.)
- Dairy Products (milk, cheese, butter, yogurt, etc.)
- Fruits/Vegetables (fresh, canned, frozen, 100% juices, etc.)
- Meat/Poultry/Fish (fresh, canned, and frozen; examples: fresh meat, lunch meats, hot dogs, bacon, eggs, tuna, sausage, fish sticks, etc.)

If you had a store visit, invoices/receipts submitted must be dated no more than 21 calendar days prior to the date of any store visit, and may not be dated on or after the date of the store visit. Invoices/receipts dated 21 calendar days prior to the date of this letter may be submitted **only** if you **did not** have a store visit. No invoices/receipts dated after the date of this letter will be accepted.

Additional information is required to confirm if your firm meets eligibility requirements for SNAP authorization. Please submit the following documentation to demonstrate that the sales you reported on your application are accurate. This information is used to verify your firm's staple food sales as a percentage of your total gross retail sales:

- Verification of actual retail sales for 1 representative week (actual sales receipts).
- An overview document (e.g., an Excel spreadsheet) that you create which totals actual retail sales for 1 representative week, and breaks these actual retail sales down into the following categories: 1) Staple Foods, 2) Accessory Foods, 3) Hot Prepared and Heated

Foods, 4) Cold Foods Prepared on Site, 5) Charges for Food Heating Services, and 6) Nonfood items. If a food is both an Accessory Food and a Hot Prepared/Heated Food or both an Accessory Food and a Cold Food Prepared on Site, please count it in the "Hot Prepared and Heated Foods" or "Cold Foods Prepared on Site" categories respectively, and do not count it in the "Accessory Foods" category.

The December 11, 2020 letter noted that the required documents must be submitted in order for the Appellant to remain authorized to accept SNAP and that they must be submitted within 20 days of receipt of the letter. The Appellant was notified that if no response was received, the Retailer Operations Division would consider the application to accept SNAP withdrawn and that a new application may be required. The Retailer Operations Division did not receive the information requested from the Appellant by the 20 day deadline provided.

The SNAP regulations at §278.1(b) are clear that an applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. The SNAP regulations at §278.1(m) state that FNS may withdraw the authorization for refusal to accept correspondence or to respond to inquiries. Finally, §278.1(n) makes it clear that failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program. The authorization of a store to participate in the SNAP must be in accord with the Act and the regulations, as amended; those requirements of law cannot be waived.

The record indicates that the Retailer Operations Division properly withdrew the Appellant from participation as an authorized retailer in the SNAP under 7 CFR § 278.1(n) for failure to cooperate when the Retailer Operations Division requested, as noted above, specific documentation and the Appellant failed to submit the information within 20 days of receipt of the December 11, 2020 letter thereby rendering the Agency unable to adequately ascertain the Appellant's SNAP eligibility.

With regard to the Appellant's contentions that a SNAP withdrawal will impose a financial hardship on the firm, there is no provision in the SNAP regulations for reducing an administrative penalty on the basis of possible economic hardship to the firm resulting from such a penalty. To excuse the Appellant from an assessed administrative penalty based on purported economic hardship to the firm would render the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA virtually meaningless.

Moreover, giving special consideration to economic hardship of the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been withdrawn from the program in the past for similar deficiencies. Therefore, the Appellant's contention that it will incur economic hardship based on deficiencies in cooperating with the SNAP reauthorization process does not provide any valid basis for dismissing the withdrawal of the Appellant's authorization.

CONCLUSION

Based on a review of all of the evidence in this matter, the determination by the Retailer Operations Division to withdraw the authorization of Brizuelas Bakery to participate as a retailer

in the SNAP is sustained. Because evidence has not been provided that would definitively determine the Appellant's eligibility for continued SNAP participation, it is the determination of this review that the decision to withdraw the firm's authorization due to its failure to cooperate was appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(n).

In accordance with the Food and Nutrition Act of 2008, as amended, and the SNAP regulations, the withdrawal action will become effective 30 days after receipt of this decision. **However, there is no waiting period for submitting a new application for authorization that is associated with the particular basis for which the store was withdrawn. Therefore, the Appellant may file a new application for SNAP participation at any time subsequent to receipt of this correspondence.** Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

August 18, 2021