

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

**Dimyana And Marina Deli And Grocery  
Inc.,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0251248**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to deny the application of Dimyana And Marina Deli And Grocery Inc. (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance.

**ISSUE**

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(k)(3)(iii), in its administration of Supplemental Nutrition Assistance Program (SNAP) when it denied the application of Appellant to participate in SNAP on December 13, 2021.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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**

In a letter dated December 13, 2021, the Office of Retailer Operations and Compliance informed Appellant that its application to participate as an authorized retailer in the SNAP was denied, in accordance with 7 CFR § 278.1(k)(3)(iii) and (6), because the firm attempted to circumvent a period of disqualification. The Office of Retailer Operations and Compliance determined that Appellant’s application to participate in SNAP is an attempt to circumvent a disqualification. On December 13, 2021, Appellant appealed the Office of Retailer Operations and Compliance decision and requested an administrative review of this action. The appeal was granted.

## STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

## CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k)(3)(iii) establishes the authority upon which the application of any firm to participate in SNAP may be withdrawn if it lacks the necessary business integrity to further the purposes of the program through an attempt to circumvent a period of disqualification. There also exist FNS policy memoranda and clarification letters, which further explain the condition necessary in order to deny the application of such firms.

7 CFR § 278.1(b)(3) states, in part:

Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food and Nutrition Act of 2008, as amended and program regulations . . . .

7 CFR § 278.1(k)(3)(iii) states, in part, that firms for which:

Evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty, or fine imposed for violations of the Food and Nutrition Act of 2008, as amended, and program regulations shall be denied for a period of three years from the effective date of denial.

7 CFR § 278.1(k)(6) states, in part, FNS shall deny the application of any firm if it determines that:

The firm has been found to be circumventing a period of disqualification through a purported transfer of ownership.

Additionally, in interpretation of the regulations, relevant policy requires withdrawal of authorization in cases where a retailer is attempting to avoid or circumvent disqualification, including the following circumstances:

1. Being authorized at a location different from where the owner was previously disqualified; or,
2. Selling the firm to a spouse or relative.

## **APPELLANT'S CONTENTIONS**

Appellant's responses regarding this matter are essentially as follows:

- Appellant cannot avoid a disqualification that did not exist.
- The transfer of the store was legally effectuated.
- There is no meaningful connection between Appellant and the previously disqualified firm.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

## **ANALYSIS AND FINDINGS**

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**

## **CONCLUSION**

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to deny the application of Dimyana And Marina Deli And Grocery Inc. to participate as a retailer in SNAP is sustained. Withdrawal of a firm's authorization under the provisions of 7 CFR § 278.1(b)(3)(iii) to participate as a retailer in SNAP is for three years.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the Freedom of Information Act, we are 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.

RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

February 22, 2022