

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

**Dunagan's Market
Appellant,**

v.

**Retailer Operations Division,
Respondent.**

Case Number: C0236997

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 Retailer Operations Division to impose a permanent withdrawal of authorization of Dunagan's Market, (hereafter Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(l)(1)(iv), § 278.1(b)(3)(i), § 278.1(o), and § 278.1(k)(3), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it withdrew Appellant's authorization to participate as a retailer in SNAP on September 18, 2019.

AUTHORITY

7 U.S.C. § 2023 and the 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

The FNS requires that stores be reauthorized on a set schedule. As part of that routine reauthorization process, the Appellant submitted a reauthorization application dated September 18, 2020. In a letter dated February 8, 2021, Retailer Operations Division charged Appellant with providing false information about being previously disqualified. As provided by Section 12(b)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2021(b)(4)) and Section 278.6(e)(1)(iii) of the SNAP regulations (7 C.F.R. 278.6(e)(1)(iii)), the sanction for providing false information is permanent disqualification.

In a February 11, 2021, telephone conversation with Retailer Operations Division, Appellant replied to the charge letter and stated that she did not know the meaning of the charge letter received. Appellant stated that she did not receive the permanent disqualification determination letter because, due to COVID, their attorney was not giving them any information. Appellant stated that she never knew that they were permanently disqualified and that they could not apply again to accept EBT. They assumed the reauthorization application for Dunagan's Market, was asking about a permanent disqualified corporation, not individuals and since the permanently disqualified store was not a corporation they misunderstood and thought everything was ok.

After considering Appellant's reply and the facts of the case, in a letter dated March 2, 2021, Retailer Operations Division permanently withdrew Appellant's authorization to participate as a retailer in SNAP. The record reflects that Appellant answered "No" to question 13a on the FNS-252-R SNAP application "(Has any officer, owner, partner, member, and or manager ever been denied, withdrawn, disqualified, suspended, or been fined for Supplemental Nutrition Assistance Program (SNAP), WIC, business, alcohol, tobacco, lottery, and or health violations.)" and answered "No" to all six (6) of the statements outlined on the Affidavit signed on September 10, 2020. Retailer Operations Division conducted a review of documentation provided by Appellant and determined that Appellant submitted a SNAP application containing false or misleading information of a substantive matter. The March 2, 2021, determination letter states in part:

"It is our determination that your firm has violated SNAP regulations by providing false information in regard to the Food Stamp Program history on your store application. Therefore, your firm shall be permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP). This is in accordance with Section 278.6(e)(1)(iii) of the SNAP regulations."

In a letter dated March 9, 2021, Appellant appealed the Retailer Operations Division's decision and requested an administrative review of this action. The appeal was granted, and implementation of the permanent withdrawal has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a clear preponderance of the evidence that the administrative actions should be reversed. That means an 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 & Nutrition Act of 2008¹, as amended, 7 U.S.C. § 2018 and Section 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(l)(1) establishes the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to meet established eligibility requirements.

¹ Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246

7 CFR § 278.1(l)(1) reads, in part, “FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.... (iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings...”

7 CFR § 278.1(k) reads, in part, “FNS shall deny the application of any firm if it determines that: (4) The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3); ...”

7 CFR § 278.1(o) reads, in part, “*Applications containing false information.* The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.”

7 CFR § 278.6(e)(1)(iii) reads, in part, “(1) Disqualify a firm permanently if; (iii) It is determined that personnel of the firm knowingly submitted information on the application that contained false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to, ... (F) Ownership of the firm...”

APPELLANT’S CONTENTIONS

In response to the Retailer Operations Division permanent withdrawal letter and in the request for administrative review, the Appellant made the following summarized contentions, in relevant part:

1. We did not knowingly submit false information either it was from miscommunication or a misunderstanding as the business was operated as a corporation not as an individual entity or sole proprietorship. We were under the impression that they are two separate entities and we responded on that basis in our affidavit. It was simply a mistake on our part which we fully acknowledge.
2. We can only request that you consider the case in its entirety and please consider the situation that we are struggling to survive as a business due to the pandemic and any consideration you can give us based upon the facts and circumstances of our case will be greatly appreciated.
3. We acknowledge that we made mistakes and can only ask for another chance, however it was due to a misunderstanding as to whether we are separate entity from the owner and the sole prop. If there are any reasonable accommodations that can be made in our case that you feel warranted, and we would like you to please consider them.
4. We would appreciate your response so that we can calculate and pay any penalties due to our disqualification from the program.

The preceding may represent only a brief summary of Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

With regards to Appellant's contentions, it is important to clarify for the record, that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. That is, the earlier decision was either correct or incorrect at the time it was made. Dunagan's Market, under the ownership of Sukhdev S. Khera and Harminder Kau Khera, is permanently disqualified in accordance with 7 CFR 278.1(o) due to evidence of filing an application containing false or misleading information; specifically, affirming "no" to Statement 13a on the SNAP Application and answering "no" to all six (6) of the statements on the Reauthorization Affidavit. The record reflects that Harminder Kau Khera and Sukhdev S. Khera were the owners of the firm **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, that was permanently disqualified in April 2017.

The record also reflects that ownership indicated that they did not receive the permanent disqualification determination letter from their attorney due to COVID, however the determination letter was delivered to the store on April 20, 2017, before the pandemic. The record also reflects that the attorney filed for an Administrative Review on April 21, 2017 and later a Judicial Review on September 22, 2017, which indicates that they were aware of the store's permanent disqualification.

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. Therefore, there is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. If the matter violates the provisions of 7 CFR § 278.1(b)(3) and §278.1(l), action to permanently deny or permanently withdraw must be taken accordingly. Therefore, the Appellant's request to overturn the permanent withdrawal or to calculate a penalty payment cannot be granted.

CONCLUSION

It is the determination of this review that the Appellant firm does not further the purposes of the program due to its lack of business integrity and reputation as a result of providing false information in regard to the Food Stamp Program history on its reauthorization application. In accordance with 7 CFR § 278.1(o) and 7 CFR § 278.6(e)(1)(iii), permanent withdrawal is the appropriate action in this case.

On the basis of the analysis above, the decision by the Retailer Operations Division to permanently withdraw the authorization of Dunagan's Market to participate as a retailer in SNAP is sustained. In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the permanent withdrawal of Dunagan's Market shall become effective 30 days after receipt of this letter.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

October 14, 2021