

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

Le Paris Bakery,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0258099

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is insufficient evidence to support the determination by the Office of Retailer Operations and Compliance to withdraw the authorization of Le Paris Bakery (hereinafter Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP). Therefore, the determination is reversed.

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) Part 278, when it withdrew the authorization of Appellant to participate as a SNAP retail store.

AUTHORITY

According to 7 U.S.C. § 2023 and the 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

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 provide any additional requested information or documentation needed to determine the Appellant’s continued eligibility to participate as a SNAP retailer. The record shows that Appellant applied for reauthorization in an application dated February 17, 2022.

The Office of Retailer Operations and Compliance requested additional information from the Appellant in a letter dated June 15, 2022, sent via email. Specifically, this letter stated that the firm must indicate the percentages for the four staple food categories after reviewing the definitions of the attached staple food and accessory food lists and that the percentages must total 100 percent.

The June 15, 2022, letter ended by stating that, “For currently Authorized firms, failure to respond within 10 days may result in withdrawal of your authorization to accept SNAP benefits. (SNAP Regulations, 7 CFR 278.1 (j) and (n)).”

In a letter dated August 19, 2022, the Office of Retailer Operations and Compliance informed Appellant that it was being withdrawn from the SNAP due to a failure to cooperate in the reauthorization process under 7 CFR 278.1(n). The letter noted that no response had been received by the deadline provided and that the firm’s SNAP authorization would be withdrawn within 10 calendar days of receipt of the letter. The letter also noted that Appellant could reapply at any time after its withdrawal by completing an online store application.

Appellant submitted the requested information that was received by FNS on September 1, 2022.

By letter postmarked August 28, 2022, Appellant appealed the Office of Retailer Operations and Compliance’s decision and requested an administrative review of this determination. The appeal was granted and implementation of the withdrawal held in abeyance pending completion of this review. The request for administrative review also contained a copy of the requested information. No subsequent correspondence was received from Appellant.

STANDARD OF REVIEW

In appeals of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means 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). Parts 278.1(b)(1)(i)(B), 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(b)(1)(i)(B) reads: A retail food store must meet eligibility determination factors which may be based on, but not limited to, visual inspection, sales records, purchase records, counting of stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry. In determining eligibility, such information may be requested for verification purposes, and failure to provide such documentation may result in denial or withdrawal from the program.

7 CFR § 278.1(n) reads: Periodic reauthorization. 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 may represent a 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:

- The owner admitted to not timely filing the response due to focusing on production and serving customers; and,
- The owner included the completed application.

Appellant submitted a copy of the withdrawal letter and a revised SNAP reauthorization application signed on August 25, 2022, in support of these contentions.

ANALYSIS AND FINDINGS

A review of the evidence does not support the Office of Retailer Operations and Compliance's determination in this case. Accordingly, it is unnecessary to address Appellant's contentions in this matter.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Office of Retailer Operations and Compliance. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

CONCLUSION

After a review of the pertinent documentation, and based on the discussion above, the initial decision by Office of Retailer Operations and Compliance to withdraw the authorization of Appellant to participate as a retailer in SNAP is reversed. The Office of Retailer Operations and Compliance should continue to process the Appellant's SNAP retailer reauthorization application. This decision does not preclude the Office of Retailer Operations and Compliance from asking for additional documentation to assess if the firm currently meets the regulatory criteria to participate in the SNAP.

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.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

September 26, 2022