

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

Raven Cares, Inc.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0257725

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is insufficient evidence to support the determination by the Retailer Operations Division to deny the application of Raven Cares, Inc. (“Appellant”) to participate as a retailer in the Supplemental Nutrition Assistance Program (SNAP). Accordingly, the Retailer Operations Division’s determination is **reversed**.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it denied the application of Raven Cares, Inc. to participate as an authorized SNAP retailer.

AUTHORITY

7 U.S.C. § 2023 and 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

Appellant, Raven Cares, Inc., submitted an application to participate as a SNAP retailer on June 21, 2022. On the application, Appellant reported that around 70 percent of its gross retail sales were from the sale of staple foods. The application also reported that the firm carried at least three different varieties of foods in each of the four staple food categories, with a minimum depth of stock of three stocking units for each variety. On August 5, 2022, an FNS contractor conducted an onsite store visit to verify the firm’s reported staple food stock.

The store visit contractor's report indicated that Appellant is a rehabilitation or recovery facility that serves meals. Information submitted during the application process likewise indicated that Appellant was a non-profit organization serving persons in recovery from substance abuse.

After reviewing the store visit report and photographs, and re-evaluating Appellant's application, the Retailer Operations Division determined the firm was not eligible for SNAP authorization as a retail food store.

In a letter dated August 9, 2022, the Retailer Operations Division informed Appellant that its SNAP application was denied for a period of six months pursuant to regulation, at 7 CFR § 278.1(k)(2). The letter stated that Appellant did not operate a retail food business within the meaning of SNAP regulations at 7 CFR § 271.2 (definition of Retail Food Store).

On August 18, 2022, Appellant requested an administrative review of the denial determination. The request was granted. In supplemental correspondence emailed on September 20, 2022, Appellant submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In an appeal of an adverse action, the appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This 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 law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and is promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) establishes the authority upon which FNS shall deny the application of any firm applying for SNAP authorization if it fails to meet established eligibility requirements.

7 CFR § 278.1(k) states, in part:

FNS shall deny the application of any firm if it determines that:

(2) The firm does not qualify for participation in the program as specified in paragraph (b), (c), (d), (e), (f), (g), (h) or (i) of this section.

7 CFR § 271.2 defines a retail food store as:

(2) Public or private communal dining facilities and meal delivery services; **private nonprofit drug addict or alcoholic treatment and rehabilitation programs**; publicly operated

community mental health centers which conduct residential programs for drug addicts and/or alcoholics; public or private nonprofit group living arrangements; public or private nonprofit shelters for battered women and children; public or private nonprofit establishments, approved by an appropriate State or local agency, that feed homeless persons; or a restaurant that contracts with an appropriate State agency to provide meals at concessional (low or reduced) prices to homeless SNAP households. [Emphasis added].

7 CFR § 271.2 defines drug addiction or alcoholic treatment and rehabilitation program as:

... any drug addiction or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). Under part B of title XIX of the Public Health Service Act is defined as meeting the criteria which would make it eligible to receive funds, even if it does not actually receive funding under part B of title XIX.

7 CFR § 278.1(e) states, in part:

Drug addict or alcoholic treatment and rehabilitation programs wishing to redeem benefits shall in addition to meeting the requirements of paragraphs (a), (b) and (d)(1) of this section, be under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). Approval to participate is automatically withdrawn once the treatment and rehabilitation program no longer meets the criteria which would make it eligible for funding under part B of Title XIX (in accordance with the definition in Drug addiction or alcoholic treatment and rehabilitation program in § 271.2).

ANALYSIS AND FINDINGS

A review of the evidence does not support the Retailer Operations Division'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 Retailer Operations Division. In addition, this administrative review decision does not establish policy or supersede Federal law or regulations.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of Raven Cares, Inc. to participate as a SNAP authorized retailer is reversed. The

application must be approved if the firm is otherwise eligible for program authorization as a meal service provider.

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.

MICHELLE WATERS
ADMINISTRATIVE REVIEW OFFICER

September 27, 2022