

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

**Rudii Bee's Grill,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0253060**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination of the Retailer Operations Division to deny the application of Rudii Bee's Grill (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). As a result, the firm may not reapply for SNAP authorization for a period of six months from the date of denial.

**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 Rudii Bee's Grill 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 submitted an application to become a SNAP authorized retailer on December 29, 2021. Subsequently, an FNS contractor conducted a store visit on February 15, 2022, to further assess the firm’s eligibility for authorization. In a letter dated March 4, 2022, the Retailer Operations Division denied the Appellant’s application based on information provided on the SNAP authorization application, the store visit, and other information available during the application process. The denial letter stated that the firm was determined to be primarily a restaurant, because more than 50 percent of its total gross retail sales was from “heated foods”

and/or “prepared foods.” Firms determined to be restaurants are ineligible to participate in SNAP except in certain States approved for the special restaurant programs serving elderly, disabled, and homeless populations. Appellant was also informed that the firm could not submit a new application for SNAP authorization for a period of six months from the date of denial, in accordance with SNAP regulations at 7 CFR § 278.1 (k)(2).

In a March 9, 2022, letter, Appellant requested an administrative review of the Retailer Operation Division’s denial of its SNAP application. The request for review was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, such as an application denial, 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 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 is promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1 (k) provides FNS the authority to deny the authorization of any firm applying for participation in SNAP if it fails to meet established eligibility requirements.

7 CFR § 278.1(k)(1) states, in part:

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

(1) 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 § 278.1(b)(1)(i) states, in part:

An establishment...will effectuate the purposes of the program if it sells food for home preparation and consumption and meets one of the following criteria: Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods...including perishable foods in at least [two] of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment...in staple foods (Criterion B)

7 CFR § 278.1(b)(1)(iv) states, in part:

Ineligible firms under this paragraph include, but are not limited to, stores selling only accessory foods, including spices, candy, soft drinks, tea, or coffee; ice cream vendors

selling solely ice cream; and specialty doughnut shops or bakeries not selling bread. **In addition, firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross retail sales in hot and/or cold prepared foods not intended for home preparation and consumption, shall not qualify for participation as retail food stores under Criterion A or B. This includes firms that primarily sell prepared foods that are consumed on the premises or sold for carryout.** [Emphasis added.]

7 CFR § 271.2 defines a retail food store and states, in part:

Entities that have more than 50 percent of their total gross retail sales in: Food cooked or heated on-site by the retailer before or after purchase; and hot and/or cold prepared foods not intended for home preparation and consumption, including prepared foods that are consumed on the premises or sold for carry-out are not eligible for SNAP participation as retail food stores under § 278.1(b) (1) of this chapter.

Section 9 of the Food and Nutrition Act of 2008, as amended, states, in part:

A retail food store or wholesale food concern that is denied approval to accept and redeem benefits because the store or concern does not meet criteria for approval . . . may not, for at least 6 months, submit a new application to participate in the program.

### **APPELLANT'S CONTENTIONS**

Appellant's contentions regarding this matter are summarized as follows:

- My application was denied because they "claim" I'm a restaurant with more than 50% of my sales in prepared or cooked food, which is not true. We are a Grill & More, meaning we do cook a small amount of food, but we have a large selection of non-perishable items, produce, vegetables, etc. that we sell to the local community.
- I am not understanding how this decision was made when no one viewed my sales report to know exactly what I sell.
- As far as the walk through, I'm not set up as a restaurant and I don't have a menu. However, I do have a large amount of items visible pertaining to what we sell.
- I feel this information is very inaccurate and made on personal decisions.
- I was given an extremely hard time during the entire application process, including during the store visit where I was falsely accused of adding items. When I said I would play the cameras, he said never mind. I still have that on video.
- I was already led to believe that my application would be denied based on how I was treated.
- Before I took an alternative option, I first wanted to do an appeal to see what my next step would be to be given a fair chance and treated fairly.

- During the application process, I received a call from a supervisor who explained to me that I made an error on my application. I unknowingly put that 70% of the food I sold was prepared, which was an accident.
- I believe that was a misunderstanding based on the wording of the application. I had a couple of errors on my application that I was not informed of. I'm not understanding this part.

Appellant did not submit any additional evidence in support of these contentions on administrative review.

The preceding may represent only a summary of Appellant's contentions presented in this matter. However, in reaching a final decision, full attention was given to all contentions presented, including any not specifically summarized here.

### **ANALYSIS AND FINDINGS**

The purpose of this review is to either validate or invalidate the Retailer Operations Division's denial determination. Thus, this review is limited to consideration of the relevant facts and circumstances as they existed at the time the Retailer Operations Division rendered its decision.

It should be noted that on December 15, 2016, FNS published a final rule entitled "Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)," at 81 Federal Register 90675, that impacted the eligibility of firms that sell heated or prepared foods. If more than 50 percent of a firm's sales come from the sale of heated or prepared foods, the firm is considered a restaurant under SNAP regulations, and therefore is ineligible for authorization. The final rule clarified that any foods cooked or heated on-site by the retailer before or after purchase, and any hot or cold prepared food not intended for home preparation or consumption, including foods consumed on the premises or sold for carryout, count toward the 50 percent threshold. This portion of the rule was implemented by FNS on October 16, 2017.

After reviewing the SNAP application and store visit report and photographs, as well as evaluating the contentions submitted by Appellant, this review finds the Retailer Operations Division properly determined that Appellant firm is primarily a restaurant and thus does not meet the definition of retail food store for purposes of SNAP authorization.

#### **Restaurant Determination**

On the SNAP authorization application, Appellant reported that 50 percent of the firm's total retail sales were in the sale of cold foods prepared on site and 20 percent were in the sale of hot foods. After receiving the denial letter, Appellant spoke with a Team Lead in the Retailer Operations Division on March 9, 2022. In that telephone call, Appellant claimed that it had made a mistake on the application and was not provided an opportunity to correct it.

The Retailer Operations Division made its determination based upon information reported by the store on the application, that more than 50 percent of its total retail sales were in cold prepared and hot foods, as well as store visit photographs and other available information.

Store visit photographs provide ample evidence to suggest Appellant is primarily a restaurant, in accordance with its self-reported sales figures on the application. For example, the store front window and a large sign on the street say, “Where cooking is near and dear to our hearts.” Inside the entrance is a small room that contains a checkout window, some chairs, and one five-shelf metal storage rack with limited food items for sale. This is the area accessible to the store’s customers. The small room has a door that opens to the employee accessible area. This area contains the cash register behind the checkout window, the storage coolers and freezers, and a large kitchen with prep areas, stovetop burners, and deep fryers. Near the cash register, there is a small storage shelf holding some staple items and two coolers with single-serve beverages, eggs, cheese, milk, fruits and vegetables and bulk meats likely for use in prepared foods given their size. The store visit contractor also took a photograph of the restaurant menu, which included wings, fish and shrimp, burgers, Philly cheesesteaks, breakfast items, grilled cheese, chicken tenders, nachos, baked potatoes, and side items such as fries, fried okra, salads, mozzarella sticks, and more.

The Retailer Operations Division also viewed Appellant’s online presence to see if the store primarily advertised as a restaurant to the public and found the store listed on Google as a restaurant, with links to Grubhub and customer reviews that commended the hot prepared foods sold. Likewise, the firm was listed as a restaurant on its self-created FaceBook page, which advertises lunch specials, a Tuesday meal deal, and cooked foods for order with Grubhub and Doordash.

This review agrees with the Retailer Operations Division’s determination given the information available when it made its denial decision. At the same time, Appellant had another opportunity to present evidence in support of its case on administrative review. Although Appellant claimed to have made a mistake on the SNAP authorization application, Appellant provided no evidence during administrative review to show that the percentage of hot and prepared food sales was lower than was reported on the application. Accordingly, this review finds that Appellant firm is primarily a restaurant and thus does not meet the definition of retail food store for purposes of SNAP authorization.

### **Unfair Treatment**

Appellant contends that the Retailer Operations Division and the store visit contractor treated Appellant unfairly and that Appellant was given an extremely hard time during the entire application process. While Appellant did not make any explicit claims that its civil rights were violated during administrative review, the Retailer Operations Division’s noted that in a March 8, 2022, telephone call that the store owner said she thought the program specialist handling her case may be racist.

With regard to Appellant’s concerns regarding discrimination, in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights

activity in any program or activity conducted or funded by USDA. Stores that are investigated by FNS are not selected based on owner information. Racial and ethnic information are not collected as part of the SNAP application process.

If the Appellant believes that it has been discriminated against by FNS, it may file a program complaint of discrimination by completing the USDA Discrimination Complaint Form, (AD-3027) found online at: <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint>, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form by telephone, call (866) 632-9992. The Appellant may submit its completed form or letter to USDA by:

1. Mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410;
2. Fax: (202) 690-7442; or
3. Email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

### **CONCLUSION**

Based on the analysis above, the determination by the Retailer Operations Division to deny the application of Rudii Bee's Grill to participate as a retailer in SNAP is sustained. The business does not operate as a retail food business within the meaning of the SNAP regulations at Part 271.2 (definition of a retail food store) and is ineligible for SNAP authorization under 7 CFR § 278.1(b)(1)(iv). Additionally, the contentions presented by Appellant are not sufficient to show that the denial decision should be reversed. Appellant is ineligible to reapply for SNAP authorization for a minimum period of six months from, March 7, 2022, the effective date of the denial.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. If 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a Complaint is filed, it must be filed within 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.

MICHELLE WATERS  
ADMINISTRATIVE REVIEW OFFICER

May 2, 2022