

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

Shop Right Meat Market, Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0238972

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support the determination by the Retailer Operations Division to impose permanent disqualification against Shop Right Meat Market (hereinafter “Shop Right Meat Market” or “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is to determine whether the Retailer Operations Division took appropriate action consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Shop Right Meat Market.

AUTHORITY

7 U.S.C. § 2023 and its 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

In a letter dated December 22, 2020, the Retailer Operations Division charged the Appellant with providing false or misleading information about a substantive matter in its application for SNAP reauthorization. The Retailer Operations Division determined that the Appellant falsified the SNAP reauthorization application by answering “No” to questions listed under 13 on the FNS 252-R application. The Retailer Operations Division determined that the Appellant should have answered “Yes” to 13a and 13c questions as the manager and signer on the financial business account of the Appellant firm was permanently disqualified from the SNAP at a different location

in 1994. Furthermore, the charge letter noted that as part of the reauthorization, the Appellant submitted a signed affidavit with the following responses:

- “No” to Question 1 (“One or more owners or managers of this firm has been involved in prior Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC) violations.”),
- “No” to Question 3 (“Persons who were owners, managers, or employees of any kind that is or has been disqualified from SNAP or WIC are working in this store (in any capacity).”); and
- “No” to Question 4 (“Persons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operations interest in this store.”).

The charge letter also noted that 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, the sanction for providing false information is permanent SNAP disqualification.

The record reflects that on December 30, 2020, the Appellant’s counsel requested an extension in time for providing a response to the letter of charges. By letter of December 31, 2020, the Retailer Operations Division granted counsel’s time extension request to February 3, 2021.

Appellant, through counsel, replied to the Retailer Operations Division’s charges in writing on December 30, 2020, and again on February 3, 2021. The record reflects that the Retailer Operations Division received and evaluated the information prior to making a determination in the case.

After considering the Appellant’s reply and the evidence in the case, the Retailer Operations Division issued a determination letter dated September 9, 2021, informing the Appellant, through counsel, of the permanent disqualification from participation in the SNAP in accordance with 7 CFR 278.6(e)(1)(iii) by filing an application containing false or misleading information that affects the eligibility of the firm for continued authorization in the program.

In a letter dated September 15, 2021, the Appellant, through counsel, appealed the Retailer Operations Division’s determination by requesting an administrative review. The request was granted, and the implementation of the sanction was put on hold pending completion of this review. In a letter received by FNS on October 22, 2021, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 & REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and promulgated through regulation under Title 7 CFR Part 278. In particular,

7 CFR § 278.1(k) and (o) provide the authority upon which FNS shall deny/withdraw the authorization of any firm that knowingly submits an application containing false or misleading information.

7 U.S.C. § 2021(b)(4) states, in part:

...[A] disqualification under subsection (a) shall be...for a reasonable period of time to be determined by the Secretary, including permanent disqualification, on the knowing submission of an application for the approval or reauthorization to accept and redeem coupons that contains false information about a substantive matter that was a part of the application.

7 CFR § 278.1(o) reads:

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) states, in part:

Disqualify a firm permanently if: ... (iii) It is determined that personnel of the firm **knowingly submitted** information on the application that contains **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 ... (H) SNAP history, business practices, business ethics, WIC disqualification or authorization status, when the store did (or will) open for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location; or (I) Any other information of a substantive nature that could affect the eligibility of a firm. [Emphasis added.]

APPELLANT'S CONTENTIONS

The following represents only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions submitted, including any not specifically summarized or listed here.

The Appellant, through counsel, made the following contentions in its request for administrative review, summarized by the review officer for purposes of concision and relevance:

- Appellant stated that the charge letter indicated that the reauthorization application affidavit answered Questions 1, 3, and 4 as "No".
- Appellant indicates that the charge letter did not mention that the Appellant disclosed that the store manager had been disqualified; however, the Appellant thought that just the store was disqualified, not the store manager, and stated: "The firm under his name was disqualified from the program but he was not".
- Appellant asked the accountant to complete the reauthorization form and affidavit on or before December 2020.

- The affidavit is poorly worded and redundant.
- Appellant contends that the issue of law is whether the Respondent provided false and misleading information and if the Department improperly withdrew the SNAP application.
- Appellant contends that the answers to the affidavit are correct because of the abysmally worded affidavit and that it was a clerical oversight.
- The permanently disqualified store manager does not have financial involvement in the company.
- Eliminating access to the Appellant, one of the only convenience stores within a mile radius, would severely limit the variety of nutritional, healthy food options for SNAP households in the area.
- Appellant contends that the manager was terminated from employment at the store after the Department disclosed the 1994 disqualification of the manager.
- Appellant indicates they have never been warned for violating SNAP.

ANALYSIS AND FINDINGS

This review examines the relevant information regarding the Retailer Operation Division's determination. Once the Retailer Operations Division establishes a violation occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that the disqualification should be reversed. If this is not demonstrated, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination. All facts associated with this decision and any additional facts provided by the Appellant were taken into consideration during this review.

The record reflects that the Appellant was initially authorized for participation in the SNAP on January 27, 2012. Appellant submitted an application for reauthorization in SNAP in 2016 and again in 2020. Each of the reauthorization applications answered "No" to Question 13a, which reads as follows: "Has any officer, owner, partner, member, and/or manager ever been denied, withdrawn, disqualified, suspended, or been fined for SNAP, WIC, business, alcohol, tobacco, lottery, and/or health violations?". The Retailer Operations Division determined that the store owner falsified the SNAP reauthorization application when the Appellant answered "No" to Question 13a on both occasions.

At the request of FNS, the Appellant submitted a signed affidavit during the 2020 reauthorization with the following responses: "No" to Question 1 ("One or more owners or managers of this firm has been involved in prior Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC) violations."); "No" to Question 3 ("Persons who were owners, managers, or employees of any kind that is or has been disqualified from SNAP or WIC are working in this store (in any capacity)."); and "No" to Question 4 ("Persons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operations interest in this store."). The questions on the affidavit signed by the owner clearly ask whether a manager of the store has been involved in SNAP violations or has been disqualified from SNAP, including if the owner or manager has ever been permanently disqualified from SNAP who may have financial or operational interests in the store.

The record does show that the affidavit signed by the Appellant in 2020 did answer "Yes" to

question 2, and in doing so acknowledged that “One or more owner or managers of this firm has had ownership in or was a manager of a business that is or has been disqualified from SNAP or WIC.”. With that knowledge the answer to question 13a should have been “Yes” on both the 2016 and 2020 reauthorization applications. Questions 1, 3 and 4 on the affidavit submitted as part of the 2020 reauthorization should have also been answered “Yes”. The Appellant knew of the disqualification, yet falsely chose not to disclose that information on multiple occasions.

Further research and documentation show that as of 2015, the official Florida Secretary of State website indicates that the owner of record listed with FNS is correct, but also includes the name of the permanently disqualified manager as an owner. During the 2016 reauthorization and later during the 2020 reauthorization, there was no mention of the second owner on the application form. As noted previously, the Appellant answered “No” to Question 13a on both reauthorization applications.

Additional research indicates that the permanently disqualified manager was also listed as a signer on the business bank account as of December 23, 2011. It is known that the permanently disqualified individual was working in the store on multiple occasions when FNS conducted store visits, including the reauthorization store visit on May 31, 2016, when the permanently disqualified individual signed the store visit consent form indicating the title of “Manager”. Supplementary documentation provided by the Retailer Operations Division also shows that the permanently disqualified manager has owned the property which the Appellant store is located at since 1995.

The issue in this case is whether a preponderance of the evidence indicates that the Appellant knowingly provided false or misleading information of a substantive nature that could affect the eligibility for participation in the SNAP. The Appellant has the ultimate responsibility to guarantee the accuracy and honesty of all information submitted to FNS. From the information provided by the store owner as part of the SNAP reauthorization process, the Appellant withheld from FNS critical eligibility information, specifically information regarding the ownership and management of the firm since the initial application and subsequently on additional reauthorization applications.

There is no agency discretion in the matter of what sanction is to be imposed when a SNAP application that contained false information of a substantive nature regarding SNAP eligibility is involved. Neither the Food and Nutrition Act of 2008, as amended, nor the SNAP regulations, provide the agency with discretion for dismissal of any action or for mitigating the impact of those actions on the basis of an owner’s honesty on the SNAP application. The submission of false and/or misleading information of a substantive nature that could affect the eligibility of the firm requires that the firm be permanently disqualified in accordance with regulations at 7 CFR § 278.6(e)(1)(iii) and § 278.1(o).

The fact that the store owner provided false information by checking “No” to question 13a on the reauthorization application not once, but twice, as well as checking “No” to questions 1, 3, and 4 on the affidavit is grounds for permanent disqualification based on 7 CFR § 278.6(e), which states in part:

... FNS shall take action as follows against any firm determined to have violated the Act or regulations (1) Disqualify a firm permanently if: ... (iii) It is determined that personnel of

the firm **knowingly submitted** information on the application that contains **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 ...; or (I) Any other information of a substantive nature that could affect the eligibility of a firm. [Emphasis added.]

The Appellant contends that a permanent SNAP disqualification would impose a hardship on area customers. However, such contentions cannot constitute grounds for reversing the disqualification decision in the present case. There are no provisions in the Food and Nutrition Act, SNAP regulations or agency policy allowing hardship to retail store owners, SNAP customers, etc. as considerations in determining eligibility for participation in the SNAP when the firm does not meet the business integrity provisions of the SNAP.

With regard to the Appellant's contention that the store manager was terminated upon being notified by the Department of the manager's 1994 permanent SNAP disqualification, 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. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

The Appellant contends that there were not any prior warnings from FNS. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. Furthermore, by signing the reauthorization application (Form FNS-252-R) the owner acknowledged the "Penalty Warning Statement" printed directly above the signature line. The Penalty Warning Statement in part states: "The Food and Nutrition Service can deny or withdraw your approval to accept Supplemental Nutrition Assistance Program benefits if you provide false information...".

CONCLUSION

It is the determination of this review that the owner provided misleading and/or false information of a substantive nature on the SNAP reauthorization application that could affect the eligibility of the firm for reauthorization. The preponderance of the evidence supports that the owner is in violation of the regulations cited herein. The regulations at 7 CFR § 278.6(e)(1)(iii) are clear that a firm can be permanently disqualified if it is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program. Therefore, the determination by the Retailer Operations Division to permanently disqualify the Appellant as an authorized SNAP retailer is sustained.

In accordance with the Food and Nutrition Act of 2008, as amended, and the SNAP regulations, the permanent disqualification shall become effective 30 days after receipt of this letter.

RIGHTS AND REMEDIES

Rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and to Section 279.7 of the SNAP regulations (7 CFR § 279.7). 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 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 thirty (30) days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

Jamie Slack
Administrative Review Officer

June 23, 2022