

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

**Sisi Food and Beverages Llc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0250706**

**FINAL AGENCY DECISION**

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the Retailer Operations Division (Retailer Operations) properly denied the application of Sisi Food and Beverages Llc (Appellant), to participate as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The purpose of this review is to determine whether Retailer Operations took appropriate action, consistent with 7 Code of Federal Regulations (CFR) § 278.1(b)(1), in its administration of SNAP when it denied the authorization of Appellant to participate as a SNAP retail food store.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide, in part, that a food retailer 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's owner signed and submitted an online application for SNAP authorization on October 20, 2021. By letter dated November 12, 2021, Retailer Operations requested additional information regarding inventory to determine Appellant's eligibility to participate in SNAP. This letter states: "The invoices/receipts must be dated 21 calendar days prior to the date of this letter and may not be dated after the date of this letter." The retailer provided receipts. By letter dated November 18, 2021, Retailer Operations denied the application of Appellant to participate as a SNAP retail food store because Appellant did not meet the eligibility criteria for stores as required by SNAP regulations at § 278.1(b)(1). Retailer Operations' letter informed Appellant that it failed to meet Criterion A because it did not carry three stocking units in at least three

varieties of foods in the Bread or Cereal and Dairy Products staple food categories. The letter also states that Appellant failed to meet Criterion B. A business must have more than 50% of its total gross retail sales in staple foods to be eligible for authorization under Criterion B. Appellant's eligibility under the need for access provision was also reviewed by Retailer Operations. Appellant was found not to meet the established criteria.

By email sent December 1, 2021, Appellant's Counsel provided a letter of representation and requested administrative review. The appeal was granted by letter dated December 3, 2021. By letter dated December 22, 2021, Counsel provided 10 inventory receipts and 22 photos of Appellant's inventory.

## STANDARD OF REVIEW

In an appeal of an adverse action, 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 credible, 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 AND REGULATIONS

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2018 and 7 CFR § 278. SNAP Regulations at § 278.1(b)(1) establishes the authority upon which the application of any firm to participate in SNAP may be denied if it fails to meet established eligibility requirements.

7 CFR § 271.2 defines a **Retail food store**, in part, as:

An establishment that sells food for home preparation and consumption normally displayed in a public area, and either offers for sale qualifying staple food items on a continuous basis, evidenced by having no fewer than three different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each qualifying staple food variety, including at least one variety of perishable foods in at least two such categories (Criterion A), or has more than 50% of its total gross retail sales in staple foods (Criterion B) as determined by visual inspection, marketing structure, business licenses, accessibility of food items offered for sale, purchase and sales records, counting of stock keeping units, or other inventory or accounting record keeping methods that are customary or reasonable in the retail food industry as set forth in § 278.1(b)(1) of this chapter.

7 CFR § 271.2 defines **Staple food**, in part, as:

Those food items intended for home preparation and consumption in each of the following four categories: Meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products. Hot foods are not eligible for purchase with SNAP benefits and, therefore, do not qualify as staple foods for the purpose of determining eligibility under

§ 278.1(b)(1) of this chapter. Commercially processed foods and prepared mixtures with multiple ingredients that do not represent a single staple food category shall only be counted in one staple food category. For example, foods such as cold pizza, macaroni and cheese, multi-ingredient soup, or frozen dinners, shall only be counted as one staple food item and will be included in the staple food category of the main ingredient as determined by FNS. **Accessory food items** include foods that are generally considered snack foods or desserts such as, but not limited to, chips, ice cream, crackers, cupcakes, cookies, popcorn, pastries, candy, and other food items that complement or supplement meals, such as, but not limited to, coffee, tea, cocoa, carbonated and uncarbonated drinks, condiments, spices, salt, and sugar. Items shall not be classified as accessory food exclusively based on packaging size, but rather based on the aforementioned definition and as determined by FNS. A food product containing an accessory food item as its main ingredient shall be considered an accessory food item. Accessory food items shall not be considered staple foods for purposes of determining the eligibility of any firm.

7 CFR § 278.1(b)(1)(i)(A) reads, in part:

An establishment shall normally be considered to have food business of a nature and extent that 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 as defined in § 271.2 of this chapter, including perishable foods in at least two of the categories (Criterion A); or have more than 50% of the total gross retail sales of the establishment in staple foods (Criterion B).

7 CFR § 278.1(b)(1)(ii) reads, in part:

In order to qualify under Criterion A<sup>1</sup>, firms shall:

(A) Offer for sale and normally display in a public area, qualifying staple food items on a continuous basis, evidenced by having, on any given day of operation, no fewer than three different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each qualifying staple variety and at least one variety of perishable foods in at least two staple food categories. Documentation to determine if a firm stocks a sufficient amount of required staple foods to offer them for sale on a continuous basis may be required in cases where it is not clear that the firm has made reasonable stocking efforts to meet the stocking requirement.

(B) Offer for sale perishable staple food items in at least two staple food categories. Perishable foods are items which are either frozen staple food items or fresh,

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<sup>1</sup>As currently implemented. See SNAP Retailer Policy and Management Division Policy Memorandum 2018-04 for additional information regarding the enhanced retailer standards, which were implemented on January 17, 2018. This memorandum can be found on the FNS public website at <https://www.fns.usda.gov/snap/retailer-eligibility-clarification-of-criterion>.

unrefrigerated, or refrigerated staple food items that will spoil or suffer significant deterioration in quality within 2-3 weeks; and

(C) Offer a variety of staple foods which means different types of foods such as apples, cabbage, tomatoes, and squash in the fruit or vegetable staple food category, or milk, cheese, butter, and yogurt in the dairy products staple food category. Variety of foods is not to be interpreted as different brands, different nutrient values, different varieties of packaging, or different package sizes. Similar processed food items with varying ingredients such as, but not limited to, sausages, breakfast cereals, milk, sliced breads and cheeses, and similar unprocessed food items such as, but not limited to, different varieties of apples, cabbage, tomatoes, or squash shall not each be considered as more than one staple food variety for the purpose of determining variety. Multiple ingredient food items such as cold pizza, macaroni and cheese, soup, or frozen dinners shall only be counted as one staple food variety each and will normally be included in the staple food category of the main ingredient as determined by FNS.

7 CFR § 278.1(b)(1)(iii) reads, in part:

In order to qualify under Criterion B, firms must have more than 50% of its total gross retail sales in staple food sales. Total gross retail sales must include all retail sales of a firm, including food and non-food merchandise, as well as services such as rental fees, professional fees, and entertainment/sports/games income. However, a fee directly connected to the processing of staple foods, such as raw meat, poultry, or fish by the service provider, may be calculated as staple food sales under Criterion B.

7 CFR § 278.1(b)(6) reads, in part:

**Need for access.** FNS will consider whether the applicant firm is located in an area with significantly limited access to food when the applicant firm fails to meet Criterion A, per paragraph (b)(1)(ii), or Criterion B, per paragraph (b)(1)(iii) of this section, so long as the applicant firm meets all other SNAP authorization requirements. In determining whether an applicant is located in such an area, FNS may consider access factors such as, but not limited to, the distance from the applicant firm to the nearest currently SNAP-authorized firm and transportation options. In determining whether to authorize an applicant despite its failure to meet Criterion A and Criterion B, FNS will also consider factors such as, but not limited to, the extent of the applicant firm's stocking deficiencies in meeting Criterion A and Criterion B and whether the applicant firm furthers the purposes of the Program. Such considerations will be conducted during the application process.

7 CFR § 278.1(k)(2) reads, in part:

FNS shall deny the application of any firm if it determines that the firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in paragraph (b)(1)(i) of this section. Any firm that has been denied authorization on these bases shall not be eligible to submit a new application for

authorization in the program for a minimum period of six months from the effective date of the denial.

### **APPELLANT'S CONTENTIONS**

All contentions and submissions have been considered in rendering this decision whether listed or not.

- An online application to participate as a SNAP-authorized retailer was submitted on October 20, 2021, prior to the purchase closing of Appellant on November 12, 2021.
- Appellant, all grocery inventory, and assets were purchased from the previous owner, who was a SNAP-authorized retailer.
- Appellant opened on November 12, 2021, after its purchase closing earlier that day.
- The invoice receipts, dated November 12, 2021, through November 26, 2021, are illustrative of Appellant's inventory purchased almost immediately after its purchase closing. Inventory purchases continue on an ongoing schedule.
- The photos taken on November 24, 2021, show Appellant's stocked shelves, coolers, and display racks. Appellant stocks a sufficient amount of required staple foods and its existing inventory satisfies SNAP regulations.
- Appellant's owner is happy to provide any additional verifying information that is requested and invites a store visit to verify the information already provided. Becoming an approved SNAP retailer is of the utmost importance to Appellant's owner.

In support of these contentions, the following information was submitted:

- Closing documents (Disclosure, Settlement Statement, Amendments)
- WB-25- Bill of Sale for personal property
- 10 invoice receipts
- 22 store photos

### **ANALYSIS AND FINDINGS**

This review is to validate or to invalidate the determination by Retailer Operations and is limited to consideration of the relevant facts at the time of the decision. The authorization of a store to participate in SNAP must be in accord with the Act and the regulations, as amended; those requirements of law cannot be waived.

SNAP Regulations at § 278.1(b)(1)(ii)(A) provide that in order to meet eligibility requirements under Criterion A, as currently implemented, a firm shall offer for sale and normally display in a public area, no fewer than three different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each qualifying staple variety on any given day of operation, and at least one variety of perishable foods in at least three staple food categories.

Retailer Operations' review of Appellant's food inventory revealed insufficient varieties and stocking units in two of the four regulatory staple food categories – Bread or Cereals and Dairy Products.

A review of the receipts provided by Counsel during administrative review, find that all of the receipts were dated after Appellant opened, which is not within the specified timeframe for consideration of stock. The photos provided were not dated, but Counsel states they were taken on November 24, 2021. The photos are not relevant to the stock at the time of the determination.

The record supports that Appellant did not provide sufficient evidence of varieties and/or stocking units in the Bread or Cereals and Dairy Products staple food categories to meet eligibility under Criterion A. Based on Appellant's application, Retailer Operations determined that it was also ineligible for authorization under Criterion B, per 7 CFR § 278.1 (b)(1)(iii). On its application, Appellant's staple food sales were estimated at 10% of its total retail sales; this percentage is under the regulatory threshold to qualify under Criterion B. Insufficient evidence was provided that Appellant met Criterion B at the time of the denial. Retailer Operations properly accessed Appellant for need for access, as per 7 CFR § 278.1(b)(6), and found that it did not qualify. SNAP authorization is dependent solely upon whether a firm meets the eligibility requirements for participation **at the time of application**. The preponderance of the evidence supports that Appellant did not meet the regulatory requirements of Criterion A or Criterion B at the time the denial determination was rendered.

## CONCLUSION

Based on a review of the evidence, the determination by Retailer Operations to deny the authorization of Appellant to participate as a SNAP retailer is sustained. Appellant did not meet the requirements of a retail food store as set forth in 7 CFR § 278.1(b)(1), at the time the determination was rendered.

In accordance with 7 CFR § 278.1(k)(2), Appellant shall not be eligible to submit a new application for SNAP authorization for a minimum period of 6 months from November 19, 2021, the effective date of Appellant's denial. This review finds that the 6-month denial period has been served and Appellant may submit an application for SNAP authorization at any time.

General questions regarding the application process can be handled by contacting the SNAP Retailer Service Center at 1-877-823-4369 and by visiting the SNAP website at <https://www.fns.usda.gov/snap/apply-to-accept>.

## RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008, and to the regulations at 7 CFR § 279.7, with respect to the applicable right to judicial review of this decision. 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 Appellant's owner resides or is 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 30 days of delivery of this Final Agency 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.

KIM DAMERON  
ADMINISTRATIVE REVIEW OFFICER

July 11, 2022