

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

**Tinker’s Summer Kitchen,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0254716**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is insufficient evidence to support the determination by FNS’s Retailer Operations Division to withdraw the authorization of Tinker’s Summer Kitchen (hereinafter “Appellant”) from participation as a retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it withdrew the SNAP authorization of Tinker’s Summer Kitchen.

**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**

The Appellant firm, Tinker’s Summer Kitchen, was originally authorized to participate as a retailer in SNAP on July 26, 2017. The record shows that the firm is a seasonal fruit and vegetable business, open during the months of July, August, September, and October each year.

In accordance with regulation, each SNAP-authorized firm is required to undergo a periodic reauthorization process to determine whether the firm still meets eligibility requirements. It appears that as part of this process, the Retailer Operations Division sent the firm a notification, dated April 14, 2022, which stated that the firm had not redeemed any SNAP benefits at the store

for at least two months. According to the notification, if the firm wished to remain authorized, it simply had to sign and return a short letter indicating that it wanted to continue redeeming SNAP benefits. The deadline for returning the letter was 10 days from receipt of the notification.

In a letter dated April 29, 2022, the Retailer Operations Division informed the Appellant that its SNAP authorization would be withdrawn in accordance with regulations at 7 CFR § 278.1(n) because the firm failed to cooperate in the reauthorization process. Specifically, the withdrawal letter stated that the firm had failed to submit the requested information from the April 14 notification within the allotted timeframe.

In a letter postmarked May 3, 2022, the Appellant requested an administrative review of the Retailer Operations Division's determination. The request was granted and implementation of the withdrawal has been held in abeyance pending the outcome of this review.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as the withdrawal of a firm's SNAP authorization, 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 AND REGULATIONS**

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(n) establishes the authority upon which FNS shall withdraw the SNAP authorization of any firm that fails to cooperate in the reauthorization process.

7 CFR § 278.1(j) reads, in part:

*Authorization.* ...All firms will be authorized in the program for a period of 5 years. The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with this part.

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 Appellant made the following contentions in its request for administrative review, summarized in relevant part:

- Appellant already submitted its reauthorization paper as requested by FNS. The information was sent via “snail mail” and the Appellant hoped it had been received in a timely manner.
- Appellant is open for business from July through October, selling fresh produce. Many households are glad that they can use their EBT cards to make their purchases.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all evidence and contentions submitted, including any not specifically summarized or explicitly referenced herein.

## **ANALYSIS AND FINDINGS**

After reviewing the agency's case record, this review finds that the Appellant did submit the required reauthorization information as requested by FNS and finds that the information was received by FNS prior to its withdrawal determination. As such, this review finds that the Appellant is cooperating with the reauthorization process and a withdrawal of the firm's SNAP authorization is unwarranted.

Because this finding is based on the underlying data of the case rather than any particular contentions submitted by the Appellant, a detailed analysis of the Appellant's contentions is unnecessary.

## **CONCLUSION**

This review finds that the Appellant was cooperating with the reauthorization process prior to the agency's decision to withdraw the firm's SNAP authorization. Accordingly, the withdrawal decision is reversed. The Retailer Operations Division shall continue to process the firm's reauthorization application.

## **RELEASE OF INFORMATION**

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.

JON YORGASON  
Administrative Review Officer

May 18, 2022