

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

Your Market,

Appellant,

v.

Case Number: C0257716

Retailer Operations Division,

Respondent.

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 reverse the determination by FNS's Retailer Operations Division to withdraw the authorization of Your Market (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 Your 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

The Appellant firm, Your Market, was originally authorized to participate as a retailer in SNAP on April 10, 2017. 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. Part of the reauthorization includes an unannounced onsite store inspection. On June 15, 2022, a contractor representing FNS attempted to conduct the necessary store visit. However, the clerk on duty refused to give consent for the inspection.

On July 29, 2022, the Retailer Operations Division sent the firm a letter which indicated that a store visit was attempted, but was refused. The letter requested a written statement from the firm

within 10 days to confirm its continued interest in participating in SNAP. The letter further stated that non-response to the letter would indicate that the firm was no longer interested in SNAP and may result in withdrawal from the Program.

After 10 days, the firm had not responded to the July 29 letter. In a letter dated August 11, 2022, the Retailer Operations Division informed the Appellant that its SNAP authorization would be withdrawn in accordance with regulations at 7 CFR § 278.1(n) because the firm failed to cooperate in the reauthorization process.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 written statement from the July 29 letter.

In a letter postmarked August 22, 2022, the Appellant requested an administrative review of the Retailer Operations Division's determination. Included in the request was a written statement which indicated that the firm was still interested in participating in SNAP. The Appellant's request for review 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.

ANALYSIS AND FINDINGS

The Appellant has provided new information which establishes that the store is cooperating in the reauthorization process. Accordingly, it is unnecessary to list or address the 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 both the Appellant and the Retailer Operation Division. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

CONCLUSION

Based on a review of all available information in this case, the determination by the Retailer Operations Division to withdraw the SNAP authorization of Your Market 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

September 19, 2022