

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

FOOD 4 LESS LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0265796

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination by the Retailer Operations Division to withdraw the authorization of FOOD 4 LESS LLC (“Appellant”) to participate as a retailer in the Supplemental Nutrition Assistance Program (SNAP).

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 withdrew the authorization of Appellant to participate as a 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 SUMMARY

In a letter dated January 24, 2023, the Retailer Operations Division informed Appellant that it was being withdrawn from the SNAP due to a failure to cooperate in the continued authorization process under 7 CFR 278.1(j) and (n). The letter noted that the Retailer Operations Division had not received information requested in a previous letter, dated December 2, 2022, which was needed to complete the reauthorization process. The letter noted that the withdrawal would be effective within 10 calendar days of receipt of the letter but that the withdrawal of the firm would

not adversely impact any future application. The letter also stated that Appellant may reapply at any time after the withdrawal by submitting an online store application.

On February 7, 2023, Appellant requested an administrative review of the withdrawal determination. Appellant's request was granted.

STANDARD OF REVIEW

In an appeal of an 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 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

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(m) establishes the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to meet established eligibility requirements.

7 CFR § 278.1(b) relays specific program requirements for retail food store participation, which reads, in part:

An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information on the application. Such information may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business-related tax filings with appropriate agencies. In addition, they must obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program...

7 CFR § 278.1(m) states:

FNS may withdraw or deny the authorization of any firm which: (1) Refuses to accept correspondence from FNS; (2) Fails to respond to inquiries from FNS within a reasonable time; or (3) Cannot be located by FNS with reasonable effort.

7 CFR § 278.1(n) states:

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 reauthorization process will result in the withdrawal of the firm's approval to participate in the program.

APPELLANT'S CONTENTIONS

Although Appellant presented no argument in the request for administrative review, Appellant has submitted the following documents in support of the request:

- U.S. income tax return for S Corp for tax year 2021.
- Profit and loss statement.
- Sales and use tax quarterly return, 4th quarter.
- Eleven invoices.
- Compliance program booklet.
- An explanation that the end of day sales report could not be provided because the machine that stored the information was destroyed due to a robbery.
- Police report concerning the robbery.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination of the Retailer Operations Division, and as such is limited to consideration of relevant facts and circumstances at the time of the decision.

On December 2, 2022, the Retailer Operations Division sent Appellant a proof of inventory letter stating that on the day of the store visit, milk and butter were found, and to submit receipts for dairy other than milk and butter. The letter stated that the invoices and receipts must be dated no more than 21 calendar days prior to the date of the store visit and may not be dated on, or after, the store visit. The store visit occurred on August 22, 2022.

Additionally, in an attempt to verify the firm's reported staple food sales percentages, the Retailer Operations Division asked Appellant to provide verification of total gross retail sales for the last one-year period such as state sales and use tax records, income tax records, or other records verifying total gross retail sales income; end-of-day sales summary reports electronically generated by the firm's cash register system, such as Z-tapes, to verify one representative week of actual retail sales; an overview document (e.g., an Excel spreadsheet) that demonstrates total actual retail sales for one representative week which breaks down actual retail sales into staple foods, accessory foods, hot prepared and heated foods, cold foods prepared on site, charges for food heating services, and nonfood items; end of day sales summary reports and overview document for the week of November 14-21, 2022; and sales and U.S. tax records for the past 12 months. Appellant was given 10 calendar days to produce both requests.

The December 2, 2022, letter informed Appellant that the documents must be submitted within 10 days of receipt of the letter and that failure to respond within 10 days may result in withdrawal of the authorization to accept SNAP benefits. The Retailer Operations Division did not receive the documentation requested from the Appellant by the deadline provided. Consequently, Appellant's authorization to participate as a SNAP retailer was withdrawn.

SNAP regulations at §278.1(b) are clear. An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. SNAP regulations at §278.1(m) state that FNS may withdraw the authorization for refusal to accept correspondence or to respond to inquiries. Finally, §278.1(n) makes it clear that failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

The authorization of a store to participate in the SNAP must be in accord with the Act and the regulations. Furthermore, those requirements of law cannot be waived. The store was withdrawn under 7 CFR § 278.1(n) for failure to cooperate when the Retailer Operations Division requested, as noted above, specific documentation and the Appellant did not submit the information within the required timeframe thereby rendering the Agency unable to adequately ascertain the Appellant's SNAP eligibility.

In the request for review, Appellant has submitted some responsive documents. However, of the eleven receipts that were provided, only one receipt was within the required time period stated in the letter. A review of that invoice failed to show the purchase of a dairy product staple food other than milk and butter.

CONCLUSION

Based on a review of all of the evidence in this matter, the determination by the Retailer Operations Division to withdraw the authorization of FOOD 4 LESS LLC to participate as a retailer in the SNAP is sustained. Because evidence has not been provided that would definitively determine the Appellant's eligibility for continued SNAP participation, it is the determination of this review that the decision to withdraw the firm's authorization due to its failure to cooperate was appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(n).

In accordance with the Food and Nutrition Act of 2008, as amended, and the SNAP regulations, the withdrawal action will become effective 30 days after receipt of this decision. However, there is no waiting period for submitting a new application for authorization that is associated with the particular basis for which the store was withdrawn. Therefore, the Appellant may file a new application for SNAP participation at any time subsequent to receipt of this correspondence. Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

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. 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.

DAVID SHIVELY
ADMINISTRATIVE REVIEW OFFICER

March 15, 2023