

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

Madison Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0215980

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 a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Madison Market (hereinafter “Madison Market” or “Appellant”) by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e) in its administration of the SNAP, when it imposed a permanent disqualification against Madison 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 January 6, 2023, the Retailer Operations Division charged the Appellant with providing false or misleading information about a substantive matter in its application for SNAP reauthorization. The charges were based on information uncovered during an investigation of the firm by the USDA and a conversation with the USDA Office of Inspector General on October 24, 2022. As provided by Section 12(b)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2021(b)(4)) and 7 CFR § 278.6(e)(1)(iii) of the SNAP regulations, the sanction for providing false information is permanent disqualification. The charge letter noted that the Appellant had 10 days of receipt of the charge letter to provide any information, explanation, or

evidence regarding these charges. Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on January 9, 2023.

In responses to the Retailer Operations Division of January 11, 2023, January 17, 2023, January 18, 2023, and January 19, 2023, the Appellant, through counsel, responded to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination. In one of the Appellant's responses, counsel noted that he had requested information and documents from FNS with regard to the agency's case against Madison Market pursuant to the Freedom of Information Act (FOIA). However, as of January 20, 2023, there was no record of a FOIA request being submitted to the FNS FOIA office. The Retailer Operations Division informed counsel that a FOIA request or appeal for records shall not delay or prohibit FNS from making a determination regarding disqualification or penalty against a firm per SNAP regulations.

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated January 25, 2023, informing the Appellant that Madison Market was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1)(iii) for providing false information on the Appellant's SNAP reauthorization application.

In a letter postmarked February 2, 2023, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated February 7, 2023. In a letter postmarked February 23, 2023, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the 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 found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018 and § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(e) provides the authority upon which FNS shall permanently disqualify a firm if it 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.

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 § 278.6(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.

APPELLANT'S CONTENTIONS

In the replies to the charge letter, in the request for administrative review, and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The store owner did not provide false statements on the SNAP application. The answers the store owner provided to the Office of Inspector General investigator on October 24, 2022 still hold true.
- The store owner has always been the sole proprietor of the business.
- The owner started Madison Market while her husband owned another business.
- At some time her husband sold his business and Madison Market expanded becoming a restaurant to which the husband operated.
- Madison Market became two entities under the same roof but operated separately.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the store owner's husband, only performs duties such as food prep and supply ordering. He does not use the SNAP machine to process transactions.
- The EBT machine was used in Madison Market and the restaurant has nothing to do with the store.
- Counsel was never aware of any statements that were made by the store owner which were not truthful. All of her responses were honest and truthful and she was never specifically notified as to any specific statements that were not truthful.
- It is the understanding of the Appellant that at the time of the business's alleged improper use of SNAP, the store owner had undergone knee surgery and had hired a clerk to assist her with her duties in the store.
- In filling out the SNAP application forms she indicated "Yes" to all of the questions.
- A SNAP disqualification would impose a hardship on area participating SNAP households as well as a financial hardship on the Appellant.
- The Appellant requests an immediate hearing regarding the imposed charges.

In support of these contentions, the Appellant, through counsel, submitted the following documents for review:

- SNAP authorization permit authorizing 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to accept SNAP benefits at Madison Market as of December 9, 2008;
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Bureau of Workers' Compensation Certificate of Premium Payment issued to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with the same physical address as the subject firm;
- Photo of 5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- Photo of inside of Madison Market;
- Retail Food Establishment License from the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for Madison Market dated March 25, 2009 with an expiration date of March 1, 2010;
- SNAP application affidavit dated August 16, 2022; and
- Affidavit responses.

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 it is limited to consideration of the relevant facts and circumstances at the time of the decision. It is not within the scope of this review to consider actions ownership may take to qualify for participation in the SNAP subsequent to that decision. There is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact or intended corrective actions. The authorization of a store to participate in the SNAP must be in accord with the Act and the regulations, as amended; those requirements of law cannot be waived.

The record reflects that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), on behalf of Madison Market, submitted an electronic application for SNAP authorization on November 17, 2008 and was authorized to accept SNAP benefits at subject firm on December 9, 2008. The original application submitted on November 17, 2009 notes that the owner marked "No" for SNAP application questions 13 & 14:

- 13. 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?
- 14. Has any officer, owner, partner, member, and/or manager been convicted of any crime after June 1, 1999?

Based on an affidavit signed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on August 16, 2022 submitted as part of the reauthorization application, the owner's husband, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), who was an owner of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and was permanently disqualified from the SNAP on July 14, 2004 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was managing Madison Market as early as 2012. The owner answered "Yes" to all of six questions (see below) included in the affidavit therefore, contradicting the original 2008 SNAP application questions 13 and 14.

1. One or more owners or managers of this firm has been involved in prior Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) violations.

2. One or more owners 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.
3. Persons who were owners, managers, or employees of any firm that is or has been disqualified from SNAP or WIC are working in this store (in any capacity).
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 operational interest in this store.
5. Persons who committed an intentional program violation (IPV) as a SNAP or WIC recipient are working in this store (in any capacity).
6. One or more owners or managers of this firm are related by birth or marriage to an owner or manager of a firm that is or has been disqualified from SNAP or WIC.

Counsel submitted a response with the signed reauthorization affidavit requesting that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) be allowed to work the food stamp machine. This request was made because 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the co-owner of JB's Food Mart, had his rights to operate as an authorized retailer restored. However, FNS' records indicate that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was not a co-owner of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) but was employed as a clerk. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

During the reauthorization process of Fiscal Year 2019, the store owner submitted a reauthorization application Form 252-R, *Supplemental Nutrition Assistance Program Reauthorization Application for Stores*, signed on November 26, 2018, noting she was the sole owner of Madison Market. Additionally, she answered "No" to the following questions:

- 14a. 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?
- 14c. Has any officer, owner, partner, member, and/or manager currently or ever been suspended or debarred from conducting business with or participating in any program administered by the Federal government?
- 15a. Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?

Therefore, by answering "Yes" to the six affidavit questions (see above) on August 16, 2022, the store owner contradicted the answers that were provided for questions 14 and 15 on the 252-R submitted on November 26, 2018.

On October 24, 2022, the owner and counsel were interviewed at Madison Market by Office of Inspector General representative(s). The affidavit received by FNS on August 29, 2022 regarding reauthorization was shown. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) confirmed it was her signature on the affidavit and confirmed that she was aware that her husband, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was no longer allowed to participate in the SNAP. She confirmed that her husband sold 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and came to help her at Madison Market. The FNS-252, *Food Stamp Application for Stores*, submitted to FNS on November 24, 2008 was shown to the store owner and she confirmed it was her handwriting and stated that her husband was not at all involved in the business in the beginning. In the beginning of 2012, 5 U.S.C. § 552

(b)(6) & (b)(7)(C) began managing Madison Market. The FNS-252-R was shown to the store owner and she stated that her husband was managing the store at this time. The FNS-252-R dated November 26, 2018 was also presented in which 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was listed as sole owner. She stated she did not remember who submitted the form but that her husband would fill out the form in her presence. The Store Review Consent Form was also presented and the store owner identified the name “5 U.S.C. § 552 (b)(6) & (b)(7)(C)” on the form as her husband, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C) signed the store visit form as “store manager”.

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 Madison Market’s eligibility for 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/or management history of the firm. The Appellant’s contention that Madison Market has become two separate entities (a retail food store and restaurant) under the same roof that operate separately has no bearing on the imposed falsification charges.

Per 7 CFR § 278.6(e)(1)(iii)(F), FNS shall disqualify a firm permanently 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, such as, but not limited to, information related to ownership of the firm.

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).

The Appellant contends that a permanent SNAP disqualification would impose a hardship on area participating SNAP households as well as a financial hardship on the firm. However, such contentions cannot constitute grounds for reversing the permanent 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.

Hearing Request

With regard to the Appellant’s request for an immediate hearing, this disqualification is an administrative action and the SNAP regulations do not provide for a hearing, but rather for an administrative review of the action. As noted previously, the Act and regulations provide that any firm aggrieved by an administrative review determination may seek judicial review of the

determination in Federal court or a State court of record having competent jurisdiction. In such event, trial de novo proceedings ensure the firm of a full evidentiary hearing on the agency action at issue.

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 Madison Market as an authorized SNAP retailer is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. 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 you reside or are 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 thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is 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.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

April 24, 2023