

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

Quick Stop,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0266928

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to deny the application of Quick Stop (hereinafter Appellant) to participate in the Supplemental Nutrition Assistance Program (SNAP) for a period of three years.

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(b)(3)(iii) and 278.1(k)(3)(iii), when it denied the application of Appellant to participate in SNAP for a period of three years by letter dated February 3, 2023.

AUTHORITY

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, “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 February 3, 2023, the Office of Retailer Operations and Compliance informed Appellant that its request to participate as an authorized retailer in SNAP was denied for a period of three years because, “...sufficient evidence exists that you have been found to be circumventing a period of disqualification through a purported transfer of ownership. This decision was made based on information you submitted to FNS and/or lack of corroborating documentation to support a bona fide transfer of ownership in connection with your SNAP application.” Specifically, FNS found that the transfer of Quick Stop, owned by the permanently disqualified owner, to the permanently disqualified owner’s spouse, was an attempt to

circumvent the June 30, 2014, permanent disqualification. SNAP regulations at Section 278.1(b)(3)(iii) require FNS to deny the authorization of any firm from participation in the program for an attempt by the firm to circumvent a period of disqualification. Per SNAP regulations at 278.1(k)(3)(iii), these firms shall be denied for a period of three years from the effective date of denial.

By letter dated February 11, 2023, Appellant appealed the Office of Retailer Operations and Compliance's decision and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

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 Part 278.1(b)(3)(iii) and 278.1(k)(3)(iii) establish the authority upon which an application to participate as a SNAP retailer may be denied for a period of three years if FNS determines there is evidence of an attempt by the firm to circumvent a period of disqualification.

7 U.S.C. §2018 Sec. 9 (a)(1) states, inter alia: Regulations issued pursuant to this Act shall provide for the submission of applications for approval by retail food stores and wholesale food concerns which desire to be authorized to accept and redeem benefits under the supplemental nutrition assistance program and for the approval of those applicants whose participation will effectuate the purposes of the supplemental nutrition assistance program. In determining the qualifications of applicants, there shall be considered among such other factors as may be appropriate, the following: (A) the nature and extent of the food business conducted by the applicant; (B) the volume of benefit transactions which may reasonably be expected to be conducted by the applicant food store or wholesale food concern; (C) whether the applicant is located in an area with significantly limited access to food; and (D) the business integrity and reputation of the applicant.”

7 CFR §278.1(b)(3)(iii) reads, in part, “(3) . . . FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows: . . . (iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty, or fine imposed for violations of the Food and Nutrition Act of 2008 and program regulations . . .”

7 CFR §278.1(k)(3)(iii) states, in part, “FNS shall deny the authorization of any firm if it

determines that: . . . (3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization for the following period of time: . . . Firms for which evidence exists of an attempt to circumvent a period of disqualification . . . shall be denied for a period of three years from the effective date of denial . . .”

7 CFR § 278.1(k)(6) states, in part, FNS shall deny the application of any firm if it determines that “[t]he firm has been found to be circumventing a period of disqualification through a purported transfer of ownership.”

APPELLANT’S CONTENTIONS

The following may represent a summary of Appellant’s contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

- Appellant denies any motive to circumvent the prior disqualification. The transfer was an attempt to save the store from going out of business.
- Husband was not at fault for previous incident but rather was the fault of an employee.
- Since COVID-19, business is at an all-time low and most customers to store are lower-income who use EBT but when they find out that store no longer accepts EBT, they take their business elsewhere.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to evaluate the evidence regarding Appellant’s current application to become an authorized retailer in the SNAP and as such it is limited to consideration of the relevant facts and circumstances at the time of the decision. The Food and Nutrition Act of 2008, as amended and SNAP regulations are specific with regard to the business integrity of a SNAP applicant and provide no discretion to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. 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 SNAP regulations at 7 CFR § 278.1(b)(3)(iii) states that “FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows: . . . (iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food and Nutrition Act of 2008 and program regulations”. Based on 7 CFR § 278.1(b)(3)(iii) and 7 CFR § 278.1(k)(3)(iii), an attempt to circumvent a period of disqualification is considered to be a lack of business integrity. The authorization denial period as specified in 7 CFR § 278.1(k)(3)(iii) is three years. Owners or officers of a previously disqualified store whose sanction has not been satisfied are not eligible to apply for SNAP authorization as the owner, officer or manager of another store. It is common for disqualified store owners to attempt to remain financially or

operationally interested in a firm by selling a store to a relative or having a relative apply for authorization at a new location different from where he/she was authorized. This practice is known as “circumvention” and is not allowed under the SNAP regulations.

The February 3, 2023, Determination Letter states that the authorization denial was based on information the Appellant submitted to FNS and/or lack of corroborating documentation to support a bona fide transfer of ownership in connection with the SNAP application. The Retailer Operations Division determined that sufficient evidence exists that the firm is circumventing a period of disqualification through a purported transfer of ownership. This determination was based on the family relationship between the permanently disqualified owner of Quick Stop, and the transfer of Quick Stop to a firm owned by the permanently disqualified owner’s spouse.

The mere fact that there is a relationship with a permanently disqualified owner is not conclusive evidence of an attempt at circumvention. The Retailer Operations Division must consider additional evidence and circumstances beyond whether or not the owner is related to a permanently disqualified owner.

The applicant’s sworn affidavit dated August 17, 2022, and attached letter, states that her husband was an owner of a firm that had been disqualified from SNAP, is currently working at the same applicant store location, and is related to the applicant by marriage. On June 30, 2014, FNS permanently disqualified a firm owned by the applicant’s spouse, located at the same location of the current firm. The former owner was serving an active SNAP permanent disqualification at the time of the current application.

Additionally, the applicant was not truthful in her affidavit when she stated that the prior disqualified owner is not financially involved or has other operational interests in the store. According to the submitted lease, the permanently disqualified owner signed as an additional personal surety for the lease between the firm of the permanently disqualified owner’s spouse and the owner of the commercial building. Consequently, the permanently disqualified owner does maintain a financial and/or operational interest in the applicant store. These facts and evidence demonstrate that the former owner is involved with the applicant store, is married to the current owner of the applicant store and is financially benefitting from with the applicant store. This evidence establishes an attempt to circumvent a period of disqualification.

Appellant contends that her husband was not at fault for the previous violation. The record from that matter indicates that a request for administrative review was made but was dismissed as moot because the Appellant failed to submit any supporting evidence. Consequently, that issue is final and may not be reconsidered in this matter. The Appellant also states that the transfer was done in an attempt to save the store from going out of business. However, such contention cannot constitute grounds for reversing the denial 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.

CONCLUSION

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to deny the application of Quick Stop to participate as an authorized retailer in SNAP for a period of three years is sustained. Denial of a firm's application to participate in the SNAP under the provisions of 7 CFR § 278.1(b)(3)(iii) and 278.1(k)(3)(iii) warrants a denial for a period of three years.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (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 24, 2023