

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

Shaye & Kids Tasty Treats LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0265138

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the Retailer Operations Division properly denied the application of Shaye & Kids Tasty Treats LLC, Inc. (hereinafter “Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). As a result, the firm may not reapply for SNAP authorization for a period of six months from the date of denial.

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 in its administration of SNAP when it denied the retailer application of Shaye & Kids Tasty Treats LLC, Inc.

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 SUMMARY

On December 12, 2022, the Appellant submitted an application to become a SNAP authorized retailer. On the application, Appellant applied as a specialty store, specifying that it is a bakery. Subsequently, an FNS contractor conducted a store visit on December 29, 2022, to further assess the firm’s eligibility for authorization. In a letter dated January 12, 2022, the Retailer Operations Division denied the Appellant’s application based on information provided on the SNAP authorization application, as well as the store visit. The denial letter stated that the firm was determined to be a bakery that does not sell bread. Appellant was also informed that the firm

could not submit a new application for SNAP authorization for a period of six months from the date of denial, in accordance with SNAP regulations at 7 CFR § 278.1 (k)(2).

On January 17, 2022, Appellant requested an administrative review of the Retailer Operation Division's denial of its SNAP application. The request for review was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as an application denial, 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 contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and is promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1 (k) provides FNS the authority to deny the authorization of any firm applying for participation in SNAP if it fails to meet established eligibility requirements.

7 CFR § 278.1(b)(1)(iv) reads, in part:

Firms that do not meet the eligibility requirements in this section or that do not effectuate the purpose of SNAP shall not be eligible for program participation. New applicant firms that are found to be ineligible will be denied authorization to participate in the program Ineligible firms under this paragraph include, but are not limited to . . . bakeries not selling bread.

7 CFR § 278.1(k)(1) reads, in part:

FNS shall deny the application of any firm if it determines that:

- (1) The firm does not qualify for participation in the program as specified in paragraph (b), (c), (d), (e), (f), (g), (h) or (i) of this section

Section 9 of the Food and Nutrition Act of 2008, as amended, states in part:

A retail food store or wholesale food concern that is denied approval to accept and redeem benefits because the store or concern does not meet criteria for approval . . . may not, for at least 6 months, submit a new application to participate in the program.

APPELLANT'S CONTENTIONS

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

- The store is a full bakery that makes and sells bread, and sells butter, cereal, cake batter, cake boxes, milk, and eggs. During the store visit, the items were on the store's shelves.
- The store is also a variety store for the community that already shopped in the store before the Appellant submitted an application to participate in the SNAP program.
- The Appellant requests reconsideration of the SNAP authorization denial determination.

The preceding may represent only a brief summary of Appellant's contentions presented in this matter. However, in reaching a final decision, this review gave full attention to all contentions submitted, including any not specifically summarized or explicitly referenced in this document.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or invalidate the Retailer Operations Division's denial determination. Thus, this review is limited to consideration of the relevant facts and circumstances as they existed at the time the Retailer Operations Division rendered its decision.

When Appellant submitted its SNAP application, it applied as a bakery. In administrative review, Appellant likewise contends that it is a full bakery that makes and sells bread along with other SNAP eligible food items.

In order for a bakery to be eligible for SNAP authorization, it must sell bread. In this case, although Appellant claims to make and sell bread, there was no evidence of this in the store visit inspection report or photographs. At the time of the store visit, not a single loaf of bread was present either on the sales floor or in the kitchen area. The store visit contractor photographed the store menu, which consisted solely of a variety of cupcakes and other dessert items. There were no bread items on the menu and there was no shelving area that looked like it would be used for displaying bread on the sales floor. Store signage showed pictures of only cakes, cupcakes, and pastry.

Appellant also claims to offer for sale other food items, such as butter, cereal, cake batter, cake boxes, milk, and eggs. None of these were on the sales floor either, though a few of these items were in the kitchen area. However, the items in the kitchen area appeared to be for use in making prepared cakes and other desserts, or for employee consumption. For example, there was an opened, partially consumed box of cereal, a small half-used bag of flour, a half bottle of salad dressing, opened packages of cookies and a few other items in a cooler. In the kitchen area there were a few boxes of cake mix, as well as a few boxes of brownie mix, on one shelf together with an assortment of accessory food items. None of these are on display for sale to customers. There was likewise no evidence that Appellant's kitchen area contained the ingredients, in sufficient quantities, to make bread for sale. There was little, or no, flour, yeast, milk, eggs, sugar, in Appellant's kitchen area. The evidence shows that the Appellant firm is primarily a bakery that

does not sell bread and thus does not meet the definition of retail food store for purposes of SNAP authorization.

After reviewing the SNAP application, store visit photos, as well as evaluating the contentions submitted by Appellant, this review finds the Retailer Operations Division properly determined that Appellant firm is primarily a bakery that does not sell bread and thus does not meet the definition of retail food store for purposes of SNAP authorization.

CONCLUSION

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to deny the application of Shaye & Kids Tasty Treats LLC to participate as an authorized SNAP retailer is sustained. Appellant is ineligible to submit a new application for SNAP authorization for a period of six months from the effective date of the denial, January 17, 2023.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 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.

ELIZABETH ALLEN
Administrative Review Officer

April 3, 2023