

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

Tex Mex Food Store,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0265398

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is insufficient evidence to support the determination by FNS's Retailer Operations Division to deny the application of Tex Mex Food Store (hereinafter "Appellant") to participate as a retailer in the Supplemental Nutrition Assistance Program (SNAP). As a result, the Retailer Operations Division shall continue to process the firm's application.

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 SNAP application of Tex Mex Food Store.

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

On January 20, 2023, Appellant received a letter from the Retailer Operations Division stating that Appellant has an unpaid Transfer of Ownership CMP for A-madco Food Store, located at 7440 Long Point Rd, Houston, Texas. In a letter dated November 17, 2022, Appellant was notified of this debt obligation in the amount of \$22,000.00 and as of January 20, 2023, that amount remained unpaid. Consequently, Appellant's current application was denied.

In an e-mail dated January 26, 2023, Appellant requested an administrative review of the Retailer Operations Division's determination. The request was granted.

STANDARD OF REVIEW

In an appeal of an adverse action, 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 found 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(l) establishes the authority upon which FNS shall withdraw authorization of any firm if it fails to meet established requirements.

7 CFR § 278.6(f)(2) states, in part:

(f) Criteria for civil money penalties for hardship and transfer of ownership.

(2) In the event any retail food store or wholesale food concern which has been disqualified is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or other legal entity who sells or otherwise transfers ownership of the retail food store or wholesale food concern shall be subjected to and liable for a civil money penalty in an amount to reflect that portion of the disqualification period that has not expired, to be calculated using the method found at § 278.6(g). If the retail food store or wholesale food concern has been permanently disqualified, the civil money penalty shall be double the penalty for a ten-year disqualification period. The disqualification shall continue in effect at the disqualified location for the person or other legal entity who transfers ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this paragraph.

7 CFR § 278.1(l)(v) states,

(l) Withdrawing authorization.

(1) FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.

(v) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7 or any fines assessed under §§ 278.6(l) or 278.6(m) or a transfer of ownership civil money penalty assessed under § 278.6(f);

ANALYSIS AND FINDINGS

A review of the evidence in this case does not support the Retailer Operations Division's denial determination. The record for A-madco Food Store indicates that Appellant paid the CMP in full on January 27, 2023. Accordingly, it is unnecessary to list or address 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 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 deny the SNAP application of Tex Mex Food Store is reversed. As a result, the Retailer Operations Division shall continue to process the firm's 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.

DAVID A. SHIVELY
ADMINISTRATIVE REVIEW OFFICER

February 17, 2023