

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

The Right Choice,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0262223

FINAL AGENCY DECISION

The United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to support the decision of the Retailer Operations Division to withdraw the authorization of The Right Choice (Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether or not 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 withdrew the authorization of Appellant to participate in SNAP.

AUTHORITY

7 USC § 2023 and the 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

Another store owned by one of Appellant’s owner was permanently disqualified from SNAP on April 10, 2019. This firm was then sold to another owner and Appellant’s owner was assessed a Transfer of Ownership Civil Money Penalty (TOCMP) in the amount of \$61,680.00. Appellant requested a payment plan and was provided with a schedule of payments by FNS Financial Management on May 10, 2022.

The Retailer Operations Division determined that Appellant failed to make the required payments according to the payment agreement. After considering the available evidence, the Retailer Operations Division informed Appellant by letter dated December 14, 2022, that the

authorization of The Right Choice to participate in the SNAP was withdrawn because the firm did pay in full a transfer of ownership civil money penalty according to CFR § 278.1(l)(1)(v).

In a December 23, 2022, e-mail, ownership appealed the Retailer Operations Division's decision and requested an administrative review. The appeal was granted and implementation of the withdrawal has been held in abeyance pending completion of this 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 statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). In particular, 7 CFR § 278.1(l)(1) and § 278.1(k)(2) establish the authority upon which FNS shall withdraw the SNAP authorization of any firm which fails to meet established eligibility requirements.

7 CFR § 278.1(l)(1)(v) reads, in relevant part: FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.:

The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7, any fines assessed under §§ 278.6(l) or 278.6(m), or a transfer of ownership civil money penalty assessed under § 278.6(f). The FNS officer in charge shall issue a notice to the firm (using any delivery method that provides evidence of delivery) to inform the firm of any authorization denial and advise the firm that it may request review of that determination.

ANALYSIS AND FINDINGS

A review of the evidence does not support the Retailer Operation Division's determination in this case. Accordingly, it is unnecessary to 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 Operations Division. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to withdraw Appellant as an authorized retailer in SNAP is reversed.

RIGHTS AND REMEDIES

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.

Mary Kate Karagiorgos
ADMINISTRATIVE REVIEW OFFICER

April 12, 2023