

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

**Hazel Food Mart #1,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0246560**

**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 Hazel Food Mart #1 (Appellant) was properly permanently denied authorization to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(k)(4), § 278.1(o), § 278.6(e)(1)(iii) and in its administration of SNAP, when it permanently denied the application of the Appellant to participate as an authorized retailer in the SNAP.

**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 November 24, 2020, the Retailer Operations Division informed the Appellant that its application to participate as an authorized retailer in the SNAP was being permanently denied, in accordance with 7 CFR § 278.1(k)(4) and 278.1(o) of the SNAP regulations, because the Appellant fails to maintain the necessary business integrity to further the purposes of the program. Specifically, the owner knowingly submitted a SNAP application that contained false information of a substantive nature regarding his eligibility to participate in SNAP. The Retailer Operations Division determined that the store owner falsified the SNAP authorization application when he answered “No” to question #6 on the high risk affidavit which states “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”. The Retailer Operations Division determined that the Appellant should have answered “Yes” to this question as the owner is related to 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an owner of a firm, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), that was permanently disqualified from the SNAP in September 2010.

The charge letter noted that in accordance with 7 CFR § 278.1(o), FNS shall deny or withdraw the authorization of any firm, as specified in 7 CFR § 278.1(k), or disqualify permanently any firm, as specified in 7 CFR § 278.6(e), if FNS determines that the firm has filed an application that contains false or misleading information about a substantive matter. The Retailer Operations Division determined that under 7 CFR § 278.1(k)(4), the Appellant filed an application that contains false or misleading information about a substantive matter. Therefore, in accordance with Section 278.6(e)(1)(iii) of the SNAP regulations, the Retailer Operations Decision informed the Appellant that the authorization of Hazel Food Mart #1 was permanently denied from SNAP participation because the Appellant provided false or misleading information about a substantive matter in its application for SNAP reauthorization.

Per United States Postal Service (UPS) confirmation of delivery, the November 24, 2020 determination letter was received at the store address of record on December 9, 2020. The Appellant, through counsel, submitted a request for administrative review on December 18, 2020 which was received in Alexandria, Virginia on December 23, 2020. However, the Administrative Review Branch of FNS did not receive the original administrative review request. The Appellant, through counsel, submitted another request for administrative review postmarked April 16, 2021. In a letter dated May 26, 2021, FNS informed the Appellant that its request for administrative review was untimely; therefore, the review could not be granted. By letter dated August 13, 2021, the Appellant, through counsel, provided FNS with a UPS confirmation of a timely request for administrative review dated December 18, 2020. FNS subsequently granted the Appellant’s request for administrative review by letter dated August 27, 2021. In an email correspondence of September 16, 2021, the Appellant 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 § 278.1(k) and (o) provide the authority upon which FNS shall deny/withdraw the authorization of any firm that knowingly submits an application containing false or misleading information.

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 § 278.1(k)(4) states, in relevant part:

*Denying authorization.* FNS shall deny the application of any firm if it determines that:

(4) The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3).

7 CFR § 278.1(o) reads:

*Applications containing false information.* The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.

7 CFR § 278.6(e)(1)(iii) states, in relevant part:

FNS shall take action as follows against any firm determined to have violated the Act or regulations.... The FNS regional office shall:

(1) 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:

(H) SNAP history, business practices, business ethics, WIC disqualification or authorization status, when the store did (or will) open for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location...

### **APPELLANT'S CONTENTIONS**

In the requests for administrative review and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- Prior to August 2019, the Appellant was authorized to participate in the SNAP. In approximately August of 2019, a request for renewal of the SNAP program participation documents was requested by FNS but the Appellant was unable to gather the requested

documentation within the 10 day required timeframe. As such, the Appellant was withdrawn from the SNAP and was told that the firm had to reapply for SNAP participation.

- The owner did not knowingly submit any false information on the SNAP application.
- It is believed that the only misstatement could have been in reference to the relationship between the owner and third-party 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- Allegedly, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had a retailer SNAP violation for a completely separate and different business than the store the owner owns and operates.
- The owner was unaware that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had been disqualified from the SNAP when he completed the SNAP application.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is not involved in the ownership or operation of the Appellant or associated with the owner's operations.
- If there was any incorrect or inaccurate information submitted with the SNAP application documents it was not knowingly or intentionally submitted and should not be a disqualifying mistake.
- A denial of the Appellant to participate in the SNAP would impose a hardship on the surrounding community members that can only walk to the store and do not have transportation.
- A denial of the Appellant to participate in the SNAP would impose a financial hardship on the firm.
- Based upon the history of this store and the alleged issue and the summary of the alleged issue on the application, the Appellant requests that the permanent SNAP denial be reversed and the firm's SNAP application be approved to better serve its customers and the community.

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

- SNAP application affidavit originally signed by store owner on August 21, 2019 changing the answer from "No" to "Yes" for question #6 (change of answer noted by store owner's accountant on December 18, 2020); and
- UPS confirmation of delivery to Alexandria, Virginia on December 23, 2020.

### **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, such as revising the answers provided on the SNAP authorization application and/or the signed/notarized affidavit. 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 the owner of Hazel Food Mart #1 submitted an application for SNAP authorization which included a signed and notarized affidavit, dated August 21, 2019, as part of the SNAP authorization process. The Retailer Operations Division determined that the store owner

falsified the SNAP authorization application high risk affidavit when he answered “No” to statement #6 of the signed affidavit, which read as follows:

- 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.

The Retailer Operations Division determined that the Appellant should have answered “Yes” to statement #6 of the signed/notarized affidavit as the owner of the Appellant firm, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is related to 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an owner of a firm, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), that was permanently disqualified from the SNAP in September 2010.

The issue in this case is whether a preponderance of the evidence indicates that the Appellant knowingly provided false information of a substantive nature that could affect Hazel Food Mart #1’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 authorization process, it is clear to this review that the Appellant knowingly withheld from FNS critical eligibility information. 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 information of a substantive nature that could affect the eligibility of the firm requires that the application be permanently denied in accordance with regulations at 7 CFR § 278.1(k)(4), § 278.1(o), and § 278.6(e)(1)(iii).

The Appellant contends that it does not have a history of any prior SNAP violations. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

The Appellant contends that a permanent SNAP denial would impose a hardship on area customers as well as impose a financial hardship on the Appellant firm. However, such contentions 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 a preponderance of the evidence, it is the determination of this review that the firm knowingly submitted an application containing false information of a substantive nature that could affect the eligibility of the firm. Therefore, the decision to permanently deny the application of Hazel Food Mart #1 to participate as an authorized retailer in the SNAP 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

October 21, 2021