

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

Orting Food Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0248617

FINAL AGENCY DECISION

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to withdraw the authorization of Orting Food Mart (Orting Food Mart or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) for a period of three years.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1 (l)(1)(iv), 7 CFR § 278.1 (b)(3)(ii), and 7 CFR § 278.1(k)(3) in its administration of the SNAP when it withdrew the authorization of the Appellant to participate as an authorized SNAP retailer for a period of three years.

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

As part of a routine reauthorization process, the owner of Orting Food Mart submitted an online reauthorization form FNS-252-R, entitled Supplemental Nutrition Assistance Program (SNAP) Reauthorization Application for Stores, on January 21, 2021. Appellant answered “Yes” to Question 13a on the FNS-252-R. Question 13a asks the following:

Has any officer, owner, partner, member, and/or manager ever been denied, withdrawn, disqualified, suspend or been fined for Supplemental Nutrition Assistance Program, WIC, business, alcohol, tobacco lottery and/or health violations?”

In response to the FNS-252-R instructions to provide further information, Appellant indicated that the store's lottery license was suspended because of an error in the processing of a winning ticket by one of the employees. Appellant explained that the employee was fired, the owner appealed the suspension, and the issue was settled for a three-year suspension.

The Retailer Operations Division obtained records confirming that on August 7, 2020, the State of Washington Lottery Commission revoked Orting Food Mart's lottery license for a period of three years for wrongdoing. In a letter dated August 11, 2021, the Retailer Operations Division informed Appellant that the application of Orting Food Mart to participate as an authorized retailer in SNAP was being withdrawn. The letter states that the authorization of Orting Food Mart to participate in the SNAP will be withdrawn for a period of three years under 7 CFR § 278.1(b)(3)(ii) and 7 CFR 278.1(l)(1)(iv).

In a letter dated November 15, 2021, ownership appealed the Retailer Operations Division's determination and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a clear 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 covered in the Food & Nutrition Act of 2008, as amended, 7 USC § 2018, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(l) establishes the authority upon which the FNS shall withdraw the authorization of any firm authorized to participate in the program.

7 CFR § 278.1(b)(3)(i)(B) states, 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:

(ii) Administrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which a firm is removed from such a program, or the firm is not removed from the program but FNS determines a pattern exists (3 or more instances) evidencing a lack of business integrity on the part of the owners, officers or managers of the firm;

7 CFR § 278.1(k)(3)(ii) states, in part:

FNS shall deny the application 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 in the program for the following period of time: [. . .] (ii) Firms which have been officially removed from other Federal, State or local government programs through administrative action **shall be denied for a period equivalent to the period of removal from any such programs;...(emphasis added)**

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

FNS may withdraw the authorization of any firm authorized to participate in the program for any of the following reasons:

(iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for period of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings.

APPELLANT'S CONTENTIONS

Appellant made the following summarized contentions in its administrative review request dated November 15, 2021, in relevant part:

- The lottery license was suspended due to a worker's irresponsibility and the employee is no longer working for Appellant.
- The owner and employees have never committed any SNAP violations.
- The business is suffering and every sale is important.
- COVID has negatively impacted the business.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced.

ANALYSIS AND FINDINGS

The case record documents that on August 7, 2020, Orting Food Mart lottery license was revoked for a period of three years by the State of Washington Lottery Commission. 7 CFR § 278.1(b)(3)(i)(B) is specific in its requirement that "FNS shall deny the authorization of any firm from participation in the program . . . based on . . . [a]dministrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which a firm is removed from such a program" The regulation at 7 CFR § 278.1(k)(3)(ii) states that "[f]irms which have been officially removed from other Federal, State or local government programs through administrative action shall be denied for a period equivalent to the period of removal from any such programs..." Since Appellant's lottery license was revoked for a period for three

years, the appropriate determination is to withdraw Appellant's SNAP authorization for a period of three years.

Appellant Hardship

Appellant explains that the business is suffering due to COVID and a recent fire. It is recognized that economic hardship is a likely consequence whenever a store is withdrawn from participation in SNAP. However, there is no provision in the SNAP regulations for a waiver or reduction of an administrative penalty assessment based on possible economic hardship to the firm resulting from imposition of such penalty. To excuse ownership from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant's contention that the firm will incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposition.

CONCLUSION

Based on the analysis above, the decision by the Retailer Operations Division to withdraw the authorization of Orting Food Mart to participate as a SNAP retailer for a period of three years is sustained. In accordance with SNAP regulations, this withdrawal action shall become effective 30 days after delivery of this letter.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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's owner resides or is 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, 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

January 27, 2022