

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

**Valencia Wholesale and Retail,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0237776**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds there is sufficient evidence to support the determination by the Retailer Operations Division (hereinafter Retailer Operations) to permanently deny the application of Valencia Wholesale and Retail (hereinafter Appellant) to participate as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) Part 278, when it permanently denied Appellant's application to participate as a SNAP retailer.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, provide that a food retailer 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**

The record shows Appellant's owners applied to participate as a SNAP retailer by application signed on August 25, 2020. After reviewing Appellant's application, Retailer Operations requested information from Appellant's owners regarding a bribery conviction noted on 16a of its SNAP application. Per the Sentencing Order provided, Appellant's owner, Ruel O. Valencia, pleaded guilty to one count of Bribing an Agent Concerning a Program Receiving Federal Funds on November 15, 2016 (offense ended December 14, 2010), which is a violation of the United States District Court, District of Guam, Title and Section 18 U.S.C. § 666(a)(2). For the conviction, Mr. Valencia was sentenced to one year of probation and ordered to pay an

assessment of \$100.00. Retailer Operations determined Mr. Valencia's criminal conviction constituted a lack of business integrity to further the purposes of the Program in accordance with 7 CFR § 278.1(b)(3)(i). As a result, Appellant's application was permanently denied pursuant to 7 CFR § 278.1(k)(3)(i). By letter dated October 8, 2020, one of Appellant's owners appealed Retailer Operations' decision and requested an administrative review of this determination. The appeal was granted by letter dated October 22, 2020.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence, that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than untrue.

## **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 7 CFR § 278. 7 CFR § 278.1(k) provides the authority upon which FNS shall deny the authorization of any firm applying for SNAP participation if it fails to meet established business integrity criteria.

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

(k) *Denying authorization.* 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:

(i) Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in §278.1(b)(3)(i) shall be denied authorization permanently.

7 CFR 278.1(b)(3)(i) states, in part:

(3) *The business integrity and reputation of the applicant.* FNS shall deny the authorization of any firm from participation in the program for a period as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows:

(i) Conviction of or civil judgment against the owners, officers or managers of the firm for:

- (A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction.
- (B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or
- (C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses.

### **APPELLANT'S CONTENTIONS**

The following represents a summary of Appellant's contentions in this matter. In reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

- Our store used to accept SNAP benefits since May 2009. We missed the due date to renew our reauthorization last December 2018 and that is why we need to re-apply.
- For nine years our store did not have any SNAP violations.
- I had one bribery case. I do not have any other offenses or crimes before or after that case. Please do not assume that all people who committed a crime once will do it again or lack business integrity. I made a wrong decision once; it does not mean that I cannot be an honest person and businessman anymore. I am now a law-abiding citizen and afraid not to follow the law. People like me deserve a second chance and trust from the U.S. government.
- With these trying times our store needs this authorization.

In support of these contentions, the responding owner submitted the following:

- A copy of the Certification of Search Record (COSR) from Superior Court Guam with the civil case clearance.
- A copy of the COSR from District Court of Guam
- Previous SNAP permit
- Reauthorization Notice

### **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 Retailer Operations, and as such it is limited to consideration of the relevant facts and circumstances at the time of the decision. 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 primary issue under consideration is whether Appellant has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of SNAP. USDA holds that the business integrity of a firm is critically important to the effective operation of SNAP. Therefore, the criteria outlined in the regulations focus on the business integrity and reputation of

the owners, officers, and managers of firms seeking SNAP authorization. Prior criminal convictions relating to business integrity reflect on the ability of a firm to effectuate the purposes of SNAP and abide by the rules governing the Program.

A review of the case record shows that Appellant's owner, Ruel O Valencia, was criminally convicted of "Bribing an Agent Concerning a Program Receiving Federal Funds" (offense ended December 14, 2010). This crime is a violation of the United States District Court, District of Guam, Title and Section 18 USC. § 666(a)(2). For the conviction, Mr. Valencia was sentenced to one year of probation and ordered to pay an assessment of \$100.00. This is supported by written documentation received by Retailer Operations, which included a copy of the Sentencing Order dated November 15, 2016, from the United States District Court, District of Guam, Case Number: 1:15-cr-00043-001.

SNAP Regulations at § 278.1(b)(3) provide for the permanent denial of an applicant firm to participate as a SNAP retailer based on several reasons and for various timeframes. The statute and regulations specifically address the factors which constitute a lack of business integrity. These considerations are eligibility concerns; a firm either meets all the requirements stipulated in law and regulations or it does not.

Retailer Operations determined that Appellant's offense of "Bribing an Agent Concerning a Program Receiving Federal Funds" violates the business integrity provisions of the SNAP Regulations at § 278.1(b)(3)(i)(A), which reads, in part: "FNS shall deny the authorization of any firm from participation in the Program for conviction of or civil judgment against the owners, officers, or managers of the firm for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction" (emphasis added). 7 CFR § 278.1(k)(3)(i) states that firms lacking business integrity and reputation as described in 7 CFR § 278.1(b)(3)(i) shall have their SNAP application denied permanently.

It must be noted that Appellant's ownership has not submitted any evidence or documentation to prove that Mr. Valencia's criminal conviction did not occur. In fact, Mr. Valencia has freely acknowledged that it did occur. Without evidence to the contrary, this review has little option but to find in favor of the agency in this matter.

Because the criminal conviction meets the conditions found in 7 CFR § 278.1(b)(3)(i)(A), and because the convictions occurred after June 1, 1999 – which is when the business integrity provisions of the SNAP regulations took effect – Appellant's application must be permanently denied. The regulations do not give FNS any latitude to consider a shorter denial period; neither do the regulations take into consideration whether the convicted individual has fulfilled his probationary obligations or made corrections or improvements in his life. If the matter violates the provisions of 7 CFR § 278.1(b)(3)(i), action to permanently deny an application must be taken accordingly. Therefore, Appellant's request to overturn the permanent denial cannot be granted.

Appellant's owner contends that it used to accept SNAP benefits but missed the due date to renew its reauthorization and had to re-apply. Appellant did not have any SNAP violations for

nine years. A record of participation in 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.

Appellant's owner contends that a permanent SNAP denial will result in a financial hardship. However, this contention 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, as considerations in determining eligibility for SNAP participation when the firm does not meet the business integrity provisions of SNAP.

Therefore, based on the information provided on Appellant's SNAP application and the court record assessed by Retailer Operations, it is determined that in accordance with SNAP Regulations at § 278.1(b)(3)(i)(A), Appellant has failed to maintain the necessary business integrity to further the purposes of the Program and is therefore denied SNAP participation. The denial action shall be permanent in accordance with 7 CFR § 278.1(k)(3)(i). As such, the imposition of a permanent SNAP denial action of Appellant by Retailer Operations is affirmed as the appropriate sanction for the Program violations outlined in the subject case.

## **CONCLUSION**

The documentation in the case record clearly shows that Appellant's owner, Ruel O. Valencia, was criminally convicted on one count of "Bribing an Agent Concerning a Program Receiving Federal Funds". The conviction occurred after June 1, 1999. The criminal offense shows a lack of business integrity and reputation to such a degree that Appellant does not further the purposes of the Program. Accordingly, and based on the analysis above, the decision by Retailer Operations to permanently deny the authorization of Valencia Wholesale and Retail to participate as a SNAP retailer is sustained.

## **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 7 CFR § 279.7. If a judicial review is desired, the Complaint must be filed in the U.S. District Court for the district in which Appellant's owners reside or are engaged in business, or in any court of record of the State having competent jurisdiction. This Complaint, naming the United States as the defendant, 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.

KIM DAMERON  
Administrative Review Officer

August 16, 2021

