

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

4 Star Grocery,

Appellant,

v.

Case Number: C0214616

Retailer Operations Division,

Respondent.

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 the Retailer Operations Division's decision to permanently withdraw the authorization of 4 Star Grocery (hereinafter "Appellant") from participation as a 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 permanently withdrew the authorization of 4 Star Grocery.

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 December 13, 2018, the Retailer Operations Division informed the Appellant that its authorization to participate as a retailer in SNAP would be permanently withdrawn due to its failure to maintain the necessary business integrity to further the purposes of the program. Specifically, the letter stated that Appellant owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was convicted of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the letter, the conviction took place 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The withdrawal letter further stated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) also admitted to state investigators that he had trafficked in SNAP benefits. The criminal docket in the case indicated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was sentenced to 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The agency's withdrawal letter further stated that the permanent withdrawal action was taken in accordance with SNAP regulations at 7 CFR § 278.1(b)(3)(i)(A), § 278.1(k)(3)(i), and § 278.1(l).

It should be noted that the agency's letter stated that the withdrawal action was being taken against 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, agency records show that earlier in 2018, the firm had moved across the street to 5 U.S.C. § 552 (b)(6) & (b)(7)(C). On July 20, 2018, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) submitted a new SNAP application for the new store location. On the new application, the store was now referred to as 4 Star Grocery. Effective September 25, 2018, the SNAP authorization for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was withdrawn by FNS due to the change of address. Accordingly, the withdrawal action under consideration in this case is for 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the location that was authorized for SNAP at the time of the agency's withdrawal decision.

In a letter postmarked December 27, 2018, the Appellant requested an administrative review of the Retailer Operations Division's decision. The request was granted and implementation of the permanent withdrawal has been held in abeyance pending the outcome of this review.

STANDARD OF REVIEW

In an appeal of adverse action, such as an authorization withdrawal, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(l) and (k) provide the authority upon which FNS shall withdraw the SNAP authorization of any firm if it fails to meet established business integrity criteria.

7 CFR § 278.1(l)(1) 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 firm shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings.

7 CFR § 278.1(k)(3) reads:

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:

(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 § 271(b)(3) states, in relevant 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 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:

(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 Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- Appellant owner acknowledges that he was arrested, but was not convicted and has no felony on his record.
- Appellant owner argues that the court gave him an ARD program, which he has done. Appellant refers FNS to his probation officer for additional information.

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

ANALYSIS AND FINDINGS

The primary issue under consideration is whether or not the Appellant has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of the Supplemental Nutrition Assistance Program. The 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. 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 Appellant owner's criminal docket from 5 U.S.C. § 552 (b)(6) & (b)(7)(C), clearly shows that the Appellant was convicted of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As best as this review can determine, the violations occurred 5 U.S.C. § 552 (b)(6) & (b)(7)(C), while the conviction and sentencing 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The docket also shows that the probation to which 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was sentenced is what is known as ARD Probation. Exclusive to the state of Pennsylvania, ARD, or Accelerated Rehabilitation Diversion, is a program available to certain first-time offenders which allows them to avoid a criminal record, jail time, or large fines. Upon successful completion of the program, an offender's charges are dismissed and there will be no criminal record. In some cases, even the arrest itself can be expunged. The program often involves county probation, community service, and the paying of court costs.

In the case of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), he was required by the court to 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted earlier, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It must be noted that the Appellant has not submitted any evidence or documentation to prove that at the time the Retailer Operations Division made its withdrawal determination, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had completed the ARD program. Without such evidence, this review has little option but to conclude that the Appellant owner still has a criminal record related to 5 U.S.C. § 552 (b)(6) & (b)(7)(C). And because the criminal conviction occurred after June 1, 1999 – which is when the business integrity provisions of the SNAP regulations took effect – the firm must be permanently withdrawn. This is in accordance with Sections 278.1(b), (k), and (l) of the SNAP regulations.

It may be worth noting that even if 5 U.S.C. § 552 (b)(6) & (b)(7)(C) successfully completes the ARD program, it is highly unlikely that he or any stores under his ownership would be found to have sufficient business integrity for SNAP authorization, as he allegedly admitted to state investigators that he trafficked in SNAP benefits. A serious violation of this nature will almost certainly preclude him from SNAP authorization in the future.

The regulations have clearly set out the position of USDA with regard to the business integrity of participating retailers. If the matter violates the provisions of 7 CFR § 278.1(b)(3), action to withdraw a firm's SNAP authorization must be taken accordingly. Because the conviction in this case fits within the parameters of § 278.1(b)(3)(i), it is the finding of this review that permanent withdrawal is appropriate and was applied in accordance with regulation at § 278.1(k)(3)(i) and § 278.1(l).

CONCLUSION

The documentation in the case record clearly shows that the Appellant store owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was criminally convicted of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is USDA's position that these criminal offenses shows a lack of business integrity and reputation to such a degree that the Appellant does not further the purposes of the program. Accordingly, and based on the analysis above, the decision by the Retailer Operations Division to permanently withdraw the authorization of 4 Star Grocery from participation as a retailer in SNAP is sustained.

In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the authorization withdrawal of 4 Star Grocery shall become effective 30 days after receipt of this decision.

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 in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON
Administrative Review Officer

June 11, 2019