

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review  
Alexandria, VA 22302**

**Aashna Asian Mart,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0201967**

**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 the decision to deny the application of Aashna Asian Mart to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(1), in its administration of the SNAP when it denied the application of Aashna Asian Mart to participate in the SNAP on August 1, 2017.

**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 August 1, 2017, the Retailer Operations Division informed the Appellant that the application of Aashna Asian Mart to participate as an

authorized retailer in the SNAP was being denied because it did not offer for sale on a continuous basis a variety of staple foods in the “Dairy” and the “Meats, Poultry, Fish” staple food categories as required under Criterion ‘A’ of 7 CFR § 278.1(b)(1)(ii) of the SNAP regulations. Criterion ‘A’ requires, in part, that there be at least three different types of foods in each of the four staple food categories. During a store visit on July 31, 2017, it was observed that the store offered for sale only two types of foods in the “Dairy” staple food category (butter and cheese) and only two types of foods in the “Meats, Poultry, Fish” staple food category (poultry and fin fish).

In addition, FNS determined that Aashna Asian Mart did not have more than 50 percent of its total gross retail sales in staple food sales as required under Criterion ‘B’ of § 278.1(b)(1)(iii).

As the firm failed to meet either eligibility criterion for approval, the Appellant was informed that the firm could not submit a new application to participate in the SNAP for a period of six months as provided in § 278.1(k)(2). This denial action was based on observations made during the July 31, 2017 store visit as well as information provided on the firm’s retailer application.

In a letter postmarked August 3, 2017, the Appellant, through counsel, appealed the Retailer Operations Division’s decision 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 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, might 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 U.S.C. 2018 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(k)(2) establishes the authority upon which the application of any firm to participate in the SNAP may be denied if it fails to meet established eligibility requirements.

7 CFR § 278.1(k)(2) reads, in part, “FNS shall deny the application of any firm if it determines that the firm has failed to meet the eligibility requirements for authorization under Criterion ‘A’ or Criterion ‘B’, as specified in paragraph

(b)(1)(i) of this section . . . for a minimum period of six months from the effective date of the denial.”

7 CFR § 278.1(b)(1)(i) relays specific program requirements for retail food store participation, which reads, in part, “An establishment . . . shall . . . effectuate the purposes of the program if it . . . meets one of the following criteria: Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods . . . including perishable foods in at least two of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment . . . in staple foods (Criterion B).”

### **APPELLANT’S CONTENTIONS**

In the written request for review and in a subsequent correspondence dated September 8, 2017, the Appellant, through counsel, provided information in which it was argued that:

- The Appellant made a mistake when completing the SNAP Application;
- In actuality, approximately 62 percent of Aashna Asian Mart’s total gross retail sales are in staple food sales and, therefore, the store qualifies for SNAP authorization eligibility under Criterion B; and
- The vendor receipts/invoices in July 2017 and August 2017 and the summarized staple food purchase chart validate that approximately 62 percent of Aashna Asian Mart’s total gross sales are in staple food sales; therefore, the store qualifies for participation in the SNAP under Criterion B.

With regard to the Appellant’s contentions, it is important at this point to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division, and that it is limited to what circumstances existed at the time of the denial action by the Retailer Operations Division. It is not the authority of this review to afford additional time during which a store may begin to comply with program requirements for becoming authorized to participate in the SNAP. At the time of the denial action, the contracted Reviewer indicated that Aashna Asian Mart did not offer for sale on a continuous basis a variety of staple foods in the “Dairy” (the store stocked butter and cheese only) and the “Meats, Poultry, Fish” (the store stocked poultry and fin fish only) staple food categories. 7 CFR § 278.1(b)(1)(ii) of the SNAP regulations states that . . . “In order to qualify for SNAP authorization under Criterion A, firms shall . . . offer for sale and normally display in a public area, qualifying staple food items on a continuous basis, evidenced by having, on any given day of operation, no fewer than three different varieties of food items in each of the four staple food categories”. This means that retail stores must have qualifying staple food items displayed in a public area on a continuous basis at

the time of the store visit in order to qualify for SNAP authorization under Criterion A.

The Appellant provided the Administrative Review Officer (ARO) with a total of thirteen (13) vendor invoices/receipts for purchases of staple foods from various vendors. The ARO carefully reviewed these invoices in order to validate whether Aashna Asian Mart met the requirements for SNAP authorization approval under Criterion A at the time of the store visit. However, six (6) of the thirteen (13) submitted invoices were dated **after** the store visit date of July 31, 2017. As such, these invoices cannot be considered towards verifying that Aashna Asian Mart met the SNAP eligibility requirements under Criterion A at the time of the store visit as they were not dated prior to the store visit date. The remaining seven (7) invoices were dated prior to the store visit date (i.e., the invoices were dated between July 2, 2017 and July 31, 2017). These invoices indicated that only chicken/poultry from the “Meats, Poultry, Fish” staple food category had been purchased for Aashna Asian Mart prior to the store visit. However, poultry was in stock on the store visit date. Therefore, these invoices did not include the purchase of any **additional** staple foods from the “Dairy” and the “Meats, Poultry, Fish” staple food categories. As such, these invoices do not validate that Aashna Asian Mart met the SNAP eligibility requirements under Criterion A at the time of the store visit. Since Aashna Asian Mart was still lacking some of the required staple food items, FNS determined that the store did not offer for sale on a continuous basis a variety of staple foods in the “Dairy” and the “Meats, Poultry, Fish” staple food categories as required under Criterion A of 7 CFR § 278.1(b)(1)(ii) of the SNAP regulations. The Appellant failed to verify that Aashna Asian Mart had all of the staple foods in stock on the store visit date to qualify it for participation in the SNAP under Criterion A. 7 CFR § 278.1(k)(2) of the SNAP regulations is specific in its requirement that “FNS shall deny the application of any firm if it determines that the firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in paragraph (b)(1)(i) of this section ... for a minimum period of six months from the effective date of the denial.” Therefore, based on the evidence in this case, Aashna Asian Mart did not meet the eligibility requirements to participate in the SNAP under Criterion A at the time that the Retailer Operations Division made its denial action.

The Appellant contends that he made a mistake when completing the SNAP Application. In actuality, approximately 62 percent of Aashna Asian Mart’s total gross retail sales are in staple food sales and, therefore, the store qualifies for SNAP authorization eligibility under Criterion B. In the event of a firm’s failure to meet the requirements of eligibility under Criterion A, FNS policy requires that the firm’s eligibility be also evaluated under Criterion B. In order to qualify for authorization under Criterion B, more than 50 percent of a retail store’s total annual gross retail sales must come from sales of staple foods. The Appellant’s original SNAP application reflects that 40 percent of its annual retail sales come from the sale of staple foods. However, when requesting an administrative review of the subject case, the Appellant stated that he made a mistake when completing

the SNAP application in that staple foods comprise approximately 62 percent of Aashna Asian Mart's total gross retail sales. However, despite listing such a percentage, the report summarizing the FNS contractor's July 31, 2017 visit to Aashna Asian Mart, along with accompanying photographs and sketch of the store's interior, reflects that the subject store does not carry sufficient items in two of the four staple food categories and that staple food sales represented less than 50 percent of the firm's total gross retail sales. It is also important to note that the Appellant indicated on the firm's SNAP application that Aashna Asian Mart does not stock at least three different items in two of the four staple food categories (i.e., the "Dairy" and the "Meats, Poultry, Fish" staple food categories).

The contracted Reviewer also noted that Aashna Asian Mart stocks a moderate volume of items considered ineligible items under the SNAP regulations to include such items as lottery tickets, household cleaning supplies, health and beauty aids, kitchen pots/pans, housewares, etc. Per the SNAP regulations, these items are ineligible to be purchased with SNAP benefits.

A thorough review of the pictures taken during the July 31, 2017 store visit also indicates that 20 to 25 percent of Aashna Asian Mart's staple food stock consists of "accessory foods" such as non-carbonated drinks, a large variety of seasonings, a large variety of spices, condiments, hot sauce, mustard oil, etc. In addition, the thirteen (13) vendor invoices/receipts provided by the Appellant also indicate that a large portion of the items purchased for Aashna Asian Mart were accessory food items—to include a large variety of both spices and seasonings. Per 7 CFR § 271.2, accessory food items including, but not limited to, coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices shall not be considered staple foods for the purpose of determining SNAP eligibility of any firm.

The Appellant provided the ARO with a total of thirteen (13) vendor invoices/receipts which documented the purchase of a variety of items from various vendors, including staple foods. These invoices were dated in July 2017 and August 2017. The Appellant also provided the ARO with a summarized staple food purchase chart. The invoices and the staple food purchase chart were provided to the ARO in an attempt to validate the Appellant's claim that approximately 62 percent of Aashna Asian Mart's total gross retail sales are in staple food sales and, therefore, the store qualifies for participation in the SNAP under Criterion B. While the Appellant claims that the vendor invoices and the staple food purchase chart indicate that approximately 62 percent of the store's total gross retail sales are from staple food sales, in actuality, the vendor invoices and staple food purchase chart only indicate what percentage of the total items purchased for Aashna Asian Mart were from the purchase of staple foods. The vendor invoices do not provide any information/documentation regarding what percentage of Aashna Asian Mart's total gross retail sales are from staple food sales (i.e., not from the purchase of staple food sales). As was indicated

previously, in order for a retail food store to qualify for authorization in the SNAP under Criterion B, more than 50 percent of a retail store's total annual retail sales must come from sales of staple foods. In order for the Appellant to validate that Aashna Asian Mart meets the SNAP eligibility requirements under Criterion B, the Appellant must provide FNS with the proper evidence/documentation, such as copies of all purchase invoices and sales receipts or other accounting records, which would reveal that more than 50 percent of the store's total gross retail sales are in eligible staple food sales. Therefore, based on the evidence in this case which indicates that staple food sales represented less than 50 percent of the firm's total gross retail sales, Aashna Asian Mart did not meet the eligibility requirements to participate in the SNAP under Criterion B at the time that the Retailer Operations Division made its denial action.

## **CONCLUSION**

Based on a review of the case documentation and the discussion above, the initial decision by the Retailer Operations Division to deny the application of Aashna Asian Mart to participate in the SNAP for a period of six months, effective August 1, 2017, 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, 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.

LORIE L. CONNEEN  
Administrative Review Officer

December 18, 2017