

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

**Ajay Beri Corporation,  
DBA Subway #42059,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0202028**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the decision by the Retailer Operations Division (Retailer Operations) to permanently withdraw the authorization of Ajay Beri Corporation, DBA Subway #42059, (Appellant) to participate in the Supplemental Nutrition Assistance Program (SNAP), Restaurant Meal Program. The decision was properly imposed.

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.1(b)(3), 7 CFR § 278.1(k)(3), and § 278.1(l)(1)(iv) in its administration of the SNAP when it permanently withdrew the authorization of Appellant.

**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**

By letter dated August 3, 2017, Retailer Operations informed ownership that the authorization of Appellant to participate as a SNAP authorized retailer in the Restaurant Meal Program, was permanently withdrawn in accordance with Section 7 CFR § 278.1(b)(3) of the SNAP regulations.

By letter dated August 10, 2017, ownership, via counsel, appealed Retailer Operations' decision and requested administrative review. The appeal was granted by letter dated August 17, 2017. Counsel provided additional information by email dated August 29, 2017.

### **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 AND REGULATIONS**

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). Section 278.1(l) establishes the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to meet established eligibility requirements.

7 CFR § 278.1(l)(1) *Withdrawing authorization* states: "FNS shall 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 periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings."

7 CFR § 278.1(b) 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:...(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..."

7 CFR § 278.1(k)(3) states: "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 7 CFR § 278.1(b)(3)(i) shall be denied authorization permanently."

## SUMMARY OF THE SANCTION

Retailer Operations advised Appellant that its SNAP authorization was permanently withdrawn based on the authority granted in Section 278.1(b)(3) of the regulations. The record contains court documents that show that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and Ajay Beri Corporation pled guilty November 1, 2016 to California Count 63 tax evasion as a felony for unlawfully filing false or fraudulent sales tax returns with the intent to defeat or evade the reporting, assessment, or payment of a tax or an amount due required by law to be made, to wit: an unreported tax liability 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or more in a 12- consecutive month period, in violation of Revenue and Tax Code sections 7152, subdivision (a) and 7153.5, a felony. Said plea was filed with the Orange County Superior Court to resolve case number 16CF1378, *People vs. Ajay Beri, et. al.*

The regulations set out the position of the agency with regard to consideration of criminal convictions that reflect on the business integrity of firms. FNS will withdraw from participation any retail food store it determines does not effectuate the purpose of the SNAP. Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of the owners, officers, or managers as stipulated in §278.1(k)(3)(i) shall be withdrawn permanently.

## APPELLANT'S CONTENTIONS

- Your records refer to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as Ajay Beri Corporation. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is no longer a Subway franchisee. He is not a member of Ajay Beri Corporation.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the sole member of this entity. See franchise agreement provided.
- Ajay Beri Corporation does not own or operate Subway #42059. This is operated by Beri Ventures, LLC, see Exhibit 2. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the owner and CEO of this entity.
- The information for the correct entity was sent recently to the USDA to update the current information.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) took the count of tax evasion.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the franchisee of this store, not 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has no effect on the business integrity or honesty and the location is not in violation of 7 CFR 278.1.

## ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the decision of Retailer Operations, and as such it is limited to consideration of the relevant facts and circumstances at the time of the decision. The regulations cited here provide the foundation for the withdrawal action. It must be impressed upon Appellant that SNAP

authorization is an administratively-granted privilege subject to the terms and conditions for participation detailed in the Act and the regulations. SNAP authorization is dependent solely upon whether a firm meets the eligibility requirements for participation as detailed in the regulations, and subsequently abides by the statute and implementing regulations. FNS has the discretion from Congress to determine upon what basis a firm will be evaluated to determine whether or not such a firm may accept SNAP benefits. Thus, if a firm does not conform to the applicable statutes and regulations, the same provide for the firm's withdrawal from program participation in accordance with the provisions detailed therein.

Appellant was authorized July 14, 2008. Authorization records show that Appellant was owned 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The record supports that no change in ownership of Appellant was made with Retailer Operations. The contention that the correct information was recently sent to the agency supports that any change of ownership information of Appellant going back several years, was not provided timely to the agency as required.

The record of evidence documents that there was a criminal conviction of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Corporation. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was the CEO, Secretary, and Officer of Ajay Beri Corporation at the time it pled guilty to a criminal act November 1, 2016. This is supported by the State of California Corporate filing C2404532 dated April 22, 2016, also in the record. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was CEO of Ajay Beri Corporation that operated restaurants at the time of the violation, and was convicted of filing false sales tax returns regarding sales tax receipts at those restaurants. Because 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was CEO of the corporation that pled guilty, the conviction satisfies the regulatory provisions of Section 278.1(b)(3)(i)(B). A conviction against a closely-held corporation reflects on the business integrity

of the people running the corporation, in this case, the CEO, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, Retailer Operations acted in accord with the regulations when it permanently withdrew Appellant's SNAP authorization.

The fact that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) formed a new corporation, Beri Ventures, LLC does not wipe away the conviction of Ajay Beri Corporation as documented by the evidence in the record. As such, based on the record of criminal conviction that reflects on the business integrity of the owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), it is appropriate to permanently withdraw Appellant's authorization under 7 CFR § 278.1(1)(1)(iv), (k)(3)(i), and (b)(3)(i)(B).

## CONCLUSION

After review of all of the pertinent documentation, and based on the discussion herein, the decision by Retailer Operations to permanently withdraw the authorization of Appellant to participate as a retail food store in the SNAP Restaurant Meal Program is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and to Section § 279.7 of the Regulations (7 CFR § 279.7) with respect to applicable rights 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 the Appellant's owners 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

M. Viens  
Administrative Review Officer

October 13, 2017