

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

Ali's One Stop Mini Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0202142

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that Ali's One Stop Mini Mart (hereinafter Appellant) was properly permanently denied authorization, for a period of one-year, to participate in the Supplemental Nutrition Assistance Program (SNAP), by the Retail Operations Branch.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3) and §278.1(k)(3), in its administration of the SNAP when it permanently denied the application of Appellant to participate as an authorized SNAP retailer on August 10, 2017.

AUTHORITY

7 U.S.C. § 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

The record reflects that on June 28, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) signed as owner, an application for authorization to participate in the SNAP. In a letter dated July 25, 2017,

Retailer Operations Division requested additional information pertaining to Appellant's answer to Question 14a of the SNAP application. Appellant was subsequently advised in a letter dated August 10, 2017, of the Retailer Operations Division's decision to deny the application of Appellant, for a period of one-year, to participate as an authorized retailer in SNAP. The determination letter stated the following:

“The information provided on your SNAP application and court documents provided shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) owner of Ali's One Stop Mini Mart, was convicted for such offense “Knowing transfer of Firearm to a Convicted Felon”,... Therefore, in accordance with Section 278.1(b)(3)(iv) and Section 278.1(k)(3)(i) of the SNAP Regulations, FNS shall denied for a period of one year from the effective date of denial, 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 any other offense indicating a lack of business integrity or business honesty of owners, officers or managers of the firm that seriously and directly affects the present responsibility of a person.”

In a letter postmarked August 16, 2017, Appellant 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, an appellant bears the burden of proving by a preponderance of the evidence that the administrative actions should be reversed. That means 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

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008¹, as amended, at 7 USC § 2018 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 USC § 2018, 7 CFR § 271.2, § 278.1(b)(3) and § 278.1(k)(3) establishes the authority upon which a retail food store or wholesale food concern may be denied authorization to participate in the SNAP on the basis of a lack of business integrity.

7 CFR § 278.1(b)(3)(vi) relays specific program requirements for retail food store participation, which reads, 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: ... (vi) Commission of any other offense indicating a lack of business

¹ Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246

integrity or business honesty of owners, officers, or managers of the firm that seriously and directly affects the present responsibility of a person.”

7 CFR § 278.1(k)(3)(vi) relays specific program requirements for retail food store participation, which reads, in part, “Firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm as specified in § 278.1(b)(3)(vi) shall be denied for a period of one year from the effective date of denial;”

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. There is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. If the matter violates the provisions of Section 278.1(b)(3) and Section 278.1(1), action to deny or withdraw must be taken accordingly.

APPELLANT’S CONTENTIONS

In response to the Retailer Operations Division denial letter and in the request for administrative review, Appellant has stated as its position in the matter the following:

- My past experiences with the SNAP program and the many years of being in business management have put in a position to be able to responsibly and honorable use the benefits of the program.
- I ask that the denial period be shortened to six months.

The preceding may represent only a brief summary of Appellant’s contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

With regards to Appellant’s contentions, the record reflects that ownership provided Retailer Operations Division with court records which indicated that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** was convicted under 18 USC Section 922(d) Knowing Transfer of Firearm to a Convicted Felon in the State of Washington.

Though the denial letter dated August 10, 2017, incorrectly cited Section 278.1(b)(3)(iv) and Section 278.1(k)(3)(i) of the SNAP regulations, the proper regulatory citation should have been Section 278.1(b)(3)(vi) and Section 278.1(k)(3)(vi). It is important to note that this typographical error does not in any way mitigate or alleviate the underlying factors presented during this review.

With regard to Appellant's contentions, there is no agency discretion in the matter of what sanction is to be imposed when a criminal conviction related to business integrity is involved. In the same manner, neither the Food and Nutrition Act of 2008, as amended, nor SNAP regulations, provide the agency with discretion for dismissal of any action or for mitigating the impact of those actions on the basis of an owner's honesty on the SNAP application; favorable references, or a clean record following a criminal conviction. If the matter violates the provisions of 7 CFR § 278.1(b)(3), as is the case here, action to deny must be taken accordingly.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of Ali's One Stop Mini Mart to participate as an authorized SNAP retailer, for a period of one-year, is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks
Administrative Review Officer

October 25, 2017