

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

Allied Food Service Inc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0204476

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to support the determination by the Retailer Operations Division to involuntarily withdraw the authorization of Allied Food Service Inc. (hereafter Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(1) and § 278.1(l), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it withdrew Appellant's authorization to participate as a retailer in SNAP on November 6, 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

Appellant submitted a reauthorization SNAP application dated October 19, 2017. In a letter dated October 23, 2017, Retailer Operations Division required additional verification and requested Appellant's total gross sales, with percentages of wholesale vs. retail sales; and separate bookkeeping records for wholesale vs retail sales for July, August and September 2017.

Appellant provided all of the requested documentation to include its wholesale and retail license. In correspondence dated November 6, 2017, Retailer Operations Division notified Appellant that it was withdrawn from the SNAP. The letter stated, in relevant part:

“It is the determination of FNS that your business does not operate a retail food business within the meaning of the SNAP regulations at Part 271.2 (definition of Retail Food Store). This determination is based on information provided either on your reauthorization application and/or information obtained from a visit to your Store on September 21, 2017. Your firm is primarily a Wholesale food establishment. Co-located wholesale/retail firms with more than 50% of gross sales in wholesales are ineligible to participate in SNAP, unless the firm has a substantial retail business and is a legitimate retail food establishment. Your firm is not a legitimate retail food establishment because: 1) 93% of your gross sales are in wholesale; 2) the invoice register for July, August, and September that you submitted average only 7% of gross retail sales, 3) floor plan and business operations are not structured for retail sales, and 4) there is not a parking area for retail sales (parking area is very close to loading docks).”

In correspondence dated November 17, 2017, Appellant appealed Retailer Operations Division’s decision and requested an administrative review of this action. The appeal was granted and implementation of the withdrawal has been held in abeyance pending completion of this review.

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 and Nutrition Act of 2008, as amended, 7 U.S.C. § 2018 and Section 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1 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(b) reads, in relevant part, “Determination of authorization. An applicant shall provide sufficient data and information on the nature and scope of the firm’s business for FNS to determine whether the applicant’s participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information on the application. Such information may include, but is not limited to, State and local business licenses, social security cards, drivers’ licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoices records and business-related tax records...”

7 CFR § 278.1(b)(1)(vi) reads, in relevant part, “Co-located wholesale food concerns. No co-located wholesale/retail food concern with 50 percent or less of its total sales in retail food sales may be authorized to redeem food stamps unless it meets the criteria applicable to all retail firms and:

(A) It is a legitimate retail food outlet. Indicators which may establish to FNS that a firm is a legitimate retail food outlet include, but are not limited to, the following:

- (1) The firm’s marketing structure; as may be determined by factors such as, but not limited to: (i) A retail business license; (ii) The existence of sales tax records documenting retail food sales; and/or separate bookkeeping records; and
- (2) The way the firm holds itself out to the public as evidenced by factors such as, but not limited to: (i) The layout of the retail sales space; (ii) The use of retail advertisements; (iii) The posting of retail prices; (iv) Offering specials to attract retail customers; (v) Hours of operation for retail business; (vi) Parking area for retail customers; and

(B) It has total annual retail food sales of at least \$250,000; or

(C) It is a legitimate retail outlet but fails to meet the requirements in paragraph (b)(1)(iv)(B) of this section, and not authorizing such a firm would cause hardship to food stamp households...”

7 CFR § 278.1(l)(1) reads, in relevant part, “FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons...(iii) The firm fails to meet the requirements for eligibility under Criterion A or B, as specified in paragraph (b)(1)(i) of this section; or, for co-located wholesale/retail firms, the firm fails to meet the requirements of paragraph (b)(1)(vi) of this section, for the time period specified in paragraph (k)(2) of this section;”

7 CFR § 278.1(k)(2) reads, in relevant part, “FNS shall deny the application of any firm if it determines that:...(2) The firm has failed to meet the eligibility requirement for authorization...Any firm that has been denied authorization on these bases shall not be eligible to submit a new application for authorization I the program for a minimum period of six months from the effective date of the denial;”

APPELLANT’S CONTENTIONS

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

- If the point is that only seven percent of Allied’s gross sales are retail and 93 percent are wholesale, this fact does not automatically disqualify Allied from SNAP per 278.1(b)(1)(vi).
- It is unclear what is meant by “floor plan and business operations are not structured for retail sales.”
- We cannot and do not contest the location of the parking area; however, Allied is already in the process of exploring changes to its parking lot and expects to have changes in place in the next three or four months.
- Allied Food Service Inc. provides a valuable service to SNAP eligible customers in the northern part of Floyd County. Those customers will experience a hardship if Allied’s SNAP eligibility is withdrawn.

- Allied Food's retail entrance leads into a sales area that contains a four-door freezer, a two-door freezer, a one-door cooler and a counter where order are filled and paid for.

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

In this case, the primary issue for consideration is whether or not Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(1) and § 278.1(l), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it involuntarily withdrew Appellant's authorization to participate as a retailer in SNAP.

After a thorough review of the record, all materials provided during the reauthorization process, and the requirements outlined in the SNAP regulations, it is determined that the Appellant's eligibility falls within the criteria stipulated by the SNAP regulations regarding co-located wholesale/retail concerns.

CONCLUSION

Based on the discussion herein, the determination by Retailer Operations Division to involuntarily withdraw the authorization of Allied Food Service Inc. to participate as a retailer in SNAP is reversed.

Please note that this decision does not preclude the Retailer Operations Division from seeking now, or in the future, to determine the continued eligibility of Allied Food Service Inc. to participate in the SNAP as an authorized retailer.

RELEASE OF INFORMATION

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

Monique Brooks
Administrative Review Officer

February 22, 2018