

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

Allied Meats,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0219044

FINAL AGENCY DECISION

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that the Retailer Operations Division (Retailer Operations) properly permanently disqualified Allied Meats (Appellant), from participation as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether Retailer Operations took action consistent with 7 CFR § 278.1(o) and 7 CFR § 278.6(e)(1)(iii), in its administration of the SNAP when it permanently disqualified Appellant from participation as a SNAP retail food store.

AUTHORITY

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer 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

FNS regulations require that stores be reauthorized on a set schedule. The owner completed a reauthorization application dated May 14, 2019. Question 14 on the 252-R states “Was any officer, owner, partner, member, and/or manager convicted of any crime after 06/01/1999? The owner answered no.

Retailer Operations charged the owner by letter dated September 11, 2019, with providing false information on his store application. The owner provided replies on September 17, 2019, and September 18, 2019. By letter dated October 7, 2019, Retailer Operations permanently disqualified Appellant to participate in the SNAP as a retail food store, finding that the firm had violated SNAP regulations by providing false information on the store application in regard to criminal convictions.

The owner requested administrative review by letter dated October 20, 2019. The appeal was granted by letter dated November 26, 2019.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. That means the Appellant has the burden of providing credible, relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in Section 12(b)(4) of the Food and Nutrition Act of 2008, as amended, and 7 U.S.C. § 2021.

7 CFR § 278.1(o) regarding applications containing false information states in part: “The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.”

7 CFR § 278.6(e)(1) states in part: “Disqualify a firm permanently if (iii) it is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program.”

APPELLANT’S CONTENTIONS

All contentions as stated, have been considered in rendering this decision whether listed or not.

- By defending myself I am not trying to make an excuse for providing false information on the application. I’m not suggesting I had a legitimate reason or excuse for leaving out information that goes against SNAP regulations.
- When filling out the application to the best of my memory I think I may have read through the question too fast and assumed that the question was asking if I had any felonies. So, the

answer to that question would still be no. I don't remember for sure, but if at the time I did know it wanted me to include any misdemeanors and I did read the question correctly, in my memory I thought all my misdemeanors or traffic violations were either dropped or were expired or earlier than what mattered for the application.

- I am not trying to make an excuse for the misinformation, and I realize that whether I answered the question wrong as a mistake or not, that it doesn't change the fact that I filled out the application wrong by providing false information. I should have taken the time and checked my background for what I forgot about or what I thought was expired.
- I've been accepting EBT for about six years. Once I was able to accept EBT those customers wanted different food products and the demand in certain areas was unbelievable.
- My business changed completely from selling to only non EBT customers to almost all EBT using customers. I wish I would have been flagged for not answering my application correctly from the beginning. Now due to the nature of the type of customers I sell to, being disqualified from the SNAP would nearly put me out of business.
- I cannot give an excuse that justifies my mistakes I made on the application. All I can do is try to persuade you to not disqualify me because during the last six years I have not received any complaints about the way I have conducted business. My business has an A+ rating with the Better Business Bureau.
- There are about four hundred customers that depend on me for milk, bread, cereal, baby formula, about fifty other food items, and even water. I am responsible to pay back my creditors. My creditors are depending on me to pay back my loans.
- It will create a hardship on the people I love and want to take care of. Disqualifying my business will hurt lots of people in some way but not bring about any accomplishments or positive impact.
- One of the regulations I need to abide by with the SNAP is that I am continuously stocked with all the products I stated that I have on the store application. If I were to stay fully stocked and then become disqualified, I will be stocked with about **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** worth of food. Without being able to accept EBT I would not be able to sell much of that food before it expires.
- I'm asking that I be given a minimum of 30 days notice before my EBT is disconnected to give me time to sell the remaining products.
- I'm sure at least 98% of my customers are on an Indian Reservation in desolate areas where there are no other grocery stores in some cases. A lot of my customers do not have transportation to go to other stores. Other stores are small and will not have certain necessities, or without any notice most of these stores would not be able to supply enough for everyone. Towns like Little Eagle, people need to travel 15 miles just to get gas station food, or about 85 miles to an actual grocery store. There are dozens of areas like this. If I could be given 30 days notice I would be able to let customers know they need to find an alternate way to get groceries.
- I am sorry that I provided false information on the store application.

ANALYSIS AND FINDINGS

This review is to validate or to invalidate the determination by Retailer Operations. As such it is limited to consideration of the relevant facts at the time of the decision. SNAP authorization is an administrative privilege, granted upon proof of eligibility and continued proof of compliance with the governing laws and regulations. If a firm does not conform to the applicable statutes and regulations, the same provide for the firm's removal from the program in accordance with the provisions detailed therein.

Retailer Operations determined that the owner had a record of a number of criminal convictions as outlined in the Charge letter that were in the relevant look back period for the reauthorization process. As noted, the owner did not reveal these criminal convictions as required in response to application question number 14.

On review, the owner does not contest the criminal record. The owner's claims to misread the question, to going too fast with the reauthorization application responses, or other excuses listed herein, do not change the facts that include a record of multiple criminal convictions of the owner, during a series of years in the relevant lookback timeframe. Allied Meats is a delivery route. Several of the convictions listed by Retailer Operations in the record are of a substantive nature such that they could affect the firm's reauthorization. The owner himself concedes that "whether I answered the question wrong as a mistake or not, that it doesn't change the fact that I filled out the application wrong by providing false information."

CONCLUSION

The reason for the permanent disqualification of Appellant is because the owner provided misleading and/or false information of a substantive nature on his reauthorization application to be a SNAP retailer, that could affect the eligibility of the firm for reauthorization. The preponderance of the evidence supports that the owner is in violation of the regulations cited herein. The regulations are clear that a firm can be permanently disqualified if it is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program.

This decision will take effect 30 days after the date of delivery to the firm. Operational questions regarding the decision should be directed to the office that initially took the action to permanently disqualify Appellant; please contact Crushonda Searcy at 404-562-1989.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, and to the regulations at 7 CFR § 279.7 with respect to the applicable right to judicial review of this decision. 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 Appellant's owner resides or is 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

January 2, 2020