

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

Altoona General Store, LLC,

Appellant,

v.

Case Number: C0211242

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), has decided that there is sufficient evidence to support a finding that the Retailer Operations Division (Retailer Operations) properly denied the application of Altoona General Store, LLC (Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The purpose of this review is to determine whether Retailer Operations took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(l)(1)(iii), in its administration of SNAP when it denied Appellant's retailer application to participate as a SNAP retail food store.

AUTHORITY

7 U.S.C. § 2023 and its 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

In a letter dated July 10, 2018, Retailer Operations denied the Appellant's application to participate as an authorized retailer in SNAP. This denial action was based on observations made during a store visit on June 29, 2018, as well as information provided on the firm's application submitted by the Appellant.

Retailer Operations determined that the firm was primarily a restaurant because more than 50 percent of its gross sales came from the sale of hot and/or cold prepared foods not intended for home preparation and consumption.

As a result of being found ineligible for SNAP participation, Appellant's SNAP application was denied for a period of six months pursuant to regulation at 7 CFR § 278.1(k)(2).

In a letter postmarked July 19, 2018, Appellant requested an administrative review of Retailer Operations' decision. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as an application denial, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing 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

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k)(1) establishes the authority upon which the application of any firm to participate in SNAP may be denied if it meets the definition of an ineligible firm.

7 CFR § 278.1(k)(1) references 7 CFR § 278.1(b)(1)(iv) which reads, in part:

Firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross retail sales in hot and/or cold prepared foods not intended for home preparation and consumption, shall not qualify for participation as retail food stores. . . . This includes firms that primarily sell prepared foods that are consumed on the premises or sold for carryout.

The definition of retail food store at 7 CFR § 271.2 states, in part:

Entities that have more than 50 percent of their total gross retail sales in hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption either for carry-out or on-premises consumption, and require no additional preparation, are not eligible for SNAP participation as retail food stores.

Section 9 of the Food and Nutrition Act of 2008, as amended, states in part:

A retail food store or wholesale food concern that is denied approval to accept and redeem benefits because the store or concern does not meet criteria for approval . . . may not, for at least six months, submit a new application to participate in the program.

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- The business is located in a low income and low access area.

- The business is the only retailer within the town limits and surrounding communities that offers for sale fresh meats and produce varieties.
- The business fails to qualify under Criterion B, because it is unable to accept SNAP benefits.

The preceding may represent only a brief summary of Appellant's contentions presented in this matter. However, in reaching a final decision, full consideration was given to all contentions presented, including any not specifically summarized or explicitly referenced in this document.

ANALYSIS AND FINDINGS

The case record documents that in reaching a denial decision, Retailer Operations also considered information obtained during a June 29, 2018 store visit conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. Through the store visit report and photographs, Retailer Operations determined that the firm likely has the majority of its gross retail sales in hot and cold prepared food not intended for home preparation and consumption. The store photos show Appellant has a dedicated food operation with three people working on food prep in the food preparation area, a large kitchen, and two tables and one booth for customers to sit on. Outside signage is Grocery & Grill, but it appears that the grill operation represents more of the business.

Social Media

On social media Altoona General Store, LLC markets itself as a restaurant. Facebook comments are 98% restaurant-related, advertising breakfast and sandwich items.

Hardship to SNAP Households

Appellant contends that the store is located in Etowah County, Alabama - a low income and low access area. Appellant further contends it is the only available location within the town limits of Altoona, Alabama and within the surrounding communities, that offers fresh meats and produce varieties for sale. Appellant argues that the majority of its sales are from prepared foods is directly related to its inability to provide access to SNAP families. Unfortunately, these contentions do not provide a valid basis for reversal of Retailer Operations' denial determination. A store may only accept SNAP benefits if it currently meets the minimum eligibility criteria for authorization.

After reviewing the contractor's store visit report and photographs, contentions submitted by Appellant, and application where owner self-reports 62% of sales are cold prepared and hot food, it is the determination of this review that Appellant is primarily a restaurant and thus does not meet the definition of a retail food store for purposes of SNAP authorization.

7 CFR § 278.1(k) states, 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.” There is no agency discretion to impose a sanction of less than six months when a firm does not meet the eligibility requirements for authorization.

Summary

The authorization of a store to participate in SNAP must be in accord with the Food and Nutrition Act and regulations, as amended. Those requirements of law cannot be waived. This review is limited to consideration of the circumstances at the time of the denial action by Retailer Operations. On the day of the store visit, the evidence supported that the store is primarily a restaurant, and firms that are primarily restaurants are not eligible to participate in SNAP.

The store is set up primarily to sell hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption or for carry-out, and require no additional preparation. Although food items in Appellant’s store may be available for sale, it is more likely true than not true that the majority of foods in the store are actually sold prepared and/or hot and ready-to-eat. According to 7 CFR § 278.1(b)(1) of the SNAP regulations, such a store is considered a restaurant and is not eligible for SNAP participation as a retail food store. Therefore, Appellant’s store does not qualify as a retail food store for purposes of SNAP participation.

CONCLUSION

Based on the analysis above, the decision by Retailer Operations to deny the SNAP application of Altoona General Store, LLC is sustained. The regulations clearly state the criteria that a store must meet in order to be authorized for the SNAP. There are no exceptions to these requirements. In accordance with 7 CFR § 278.1(k)(2), Appellant shall not be eligible to submit a new application for SNAP authorization until six months after July 10, 2018, which is the effective date of the denial decision.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and 7 CFR § 279.7. 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 owner(s) resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

Kim Dameron
Administrative Review Officer

November 28, 2018