

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

**Amanda's Country Corner, Llc,**

**Appellant,**

**v.**

**Case Number: C0215244**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the decision of the Retailer Operations Division to deny the application of Amanda's Country Corner, Llc to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). As a result, the Appellant may not reapply for six months from the effective date of the denial decision.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it denied the application of the Appellant to participate as an authorized SNAP retailer.

**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**

The Appellant applied to participate in the SNAP as an authorized retailer in an application dated October 17, 2018. In a letter dated December 10, 2018, the Retailer Operations Division informed the Appellant that the firm was a SNAP ineligible restaurant because more than 50 percent of its total gross retail sales are from heated foods and/or prepared foods. Therefore, the firm's application was denied. The letter also informed the Appellant that it could not submit a

new application to participate in SNAP for a period of six months from the effective date of the denial as provided by SNAP regulations at 7 CFR § 278.1(k)(2).

In a letter postmarked December 20, 2018, the Appellant requested an administrative review of the Retailer Operation Division's denial of its SNAP application. The request for administrative review 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, might 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 law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) provides the authority upon which FNS shall deny the authorization of any firm applying for participation in SNAP if it fails to meet established eligibility criteria.

7 CFR § 278.1(k) reads, in relevant part:

FNS shall deny the application of any firm if it determines that: (1) The firm does not qualify for participation in the program as specified in paragraph (b), (c), (d), (e), (f), (g), (h) or (i) of this section ....

7 CFR § 278.1(b)(1)(iv) states, in part:

**Ineligible firms.** Firms that do not meet the eligibility requirements in this section or that do not effectuate the purpose of SNAP shall not be eligible for program participation ... **firms that are considered to be restaurants**, that is, firms that **have more than 50 percent of their total gross sales in foods cooked or heated on-site by the retailer before or after purchase; and hot and/or cold prepared foods** not intended for home preparation or consumption, including prepared foods that are consumed on the premises or sold for carryout, shall not qualify for participation as retail food stores under Criterion A or B. This includes firms that primarily sell prepared foods that are consumed on the premises or sold for carryout .... [Emphasis added.]

7 CFR § 271.2, states, in part:

Entities that have more than 50 percent of their total gross retail sales in: Food cooked or heated on-site by the retailer **before or after purchase**; and **hot and/or cold prepared** foods not intended for home preparation and consumption, including prepared foods that are consumed on

the premises or sold for carry-out are not eligible for SNAP participation as retail food stores under § 278.1(b)(1) of this chapter. Establishments that include separate businesses that operate under one roof and share the following commonalities: Ownership, sale of similar foods, and shared inventory, are considered to be a single firm when determining eligibility to participate in SNAP as retail food stores. [Emphasis added.]

7 CFR § 278.1(k)(2) reads, in relevant part:

... Any firm that has been denied authorization on these bases shall not be eligible to submit a new application for authorization in the program for a minimum period of six months from the effective date of the denial.

### **Regulatory Change**

Foods heated after sale were at one time considered to be SNAP eligible. However, due to a recent change in Federal regulations, foods heated after sale are now considered to be SNAP ineligible in the same manner as foods sold hot at the point of sale. On December 15, 2016, FNS published a final rule entitled “Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)” at 81 Federal Register 90675. This final rule added the language to existing regulations clarifying that foods heated or cooked after sale would be considered in determining whether a firm is a SNAP ineligible restaurant. This portion of the rule was implemented by FNS on October 16, 2017.

### **APPELLANT’S CONTENTIONS**

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

- The firm is in a small town of 200 people with just one SNAP authorized retailer. Other SNAP authorized stores are located 20 or more miles away.
- Currently, the business is primarily being operated as a kitchen, but only because it doesn’t yet have the approval to accept EBT. Once approved for the SNAP, the business will apply for WIC authorization.
- If the firm prepared food for “grab and go” items it would waste more food than is sold without having SNAP approval. After income starts coming in, the store will be able to expand its business.
- The store has kept perishables in a freezer and that is why there was not much merchandise on the shelves except for non-perishable items. Store pictures have been provided for the administrative review.
- The business will suffer if it is not authorized for the SNAP and may have to close.

The preceding may represent only a brief summary of the 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**

The central issue in this case is whether Amanda's Country Corner, Llc is a SNAP ineligible restaurant under 7 CFR § 278.1(b)(1)(iv). In reaching its decision to deny the firm's application, the Retailer Operations Division relied upon the firm's application and the store visit report. A review of the entire case record indicates by a preponderance of the evidence that the Retailer Operations Division properly determined that Amanda's Country Corner, Llc does not qualify for the SNAP as it is primarily a SNAP ineligible restaurant.

### **Estimated Sales Figures in Application**

The Appellant's application dated October 17, 2018 estimated the firm's staple food sales at only ten (10) percent of its annual gross retail sales with accessory food sales at 33.3 percent and non-food sales at 3.33 percent. The application estimated that 53.3 percent of the firm's annual gross sales are in hot, heated, or cold prepared food not intended for home preparation and consumption. There is nothing in the case record which would indicate that this percentage of hot, heated and cold prepared food sales to gross retail sales is inaccurate. Based on the face of the application, the firm would be considered a SNAP ineligible restaurant as defined at 7 CFR § 271.2 and 7 CFR § 278.1(b)(1)(iv).

### **Store Visit Report**

The case record documents that in reaching a denial decision, the Retailer Operations Division also considered information obtained during a December 3, 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, the Retailer Operations Division determined that the firm, more likely than not, has the majority of its gross retail sales in hot, heated and cold prepared food not intended for home preparation and consumption. This is consistent with the estimated sales that the Appellant reported in its application.

Although the firm sells some staple food and accessory food items, the store photos document that Amanda's Country Corner, Llc presents itself primarily as a dine-in restaurant with menus offering hot, heated and cold prepared food. These menu items include breakfast, pizza, burgers, sandwiches, hot dogs, kids' meals, prepared salads, hoagies and various side dishes and appetizers. The store visit photos show that the firm has a dining area with tables and chairs, and a kitchen. The store visit report and photographs further support that the firm is primarily a SNAP ineligible restaurant as that term is defined by regulations.

SNAP regulations at 7 CFR § 278.1(b)(1)(iv) states, in part “firms that have more than 50 percent of their total gross sales in foods **cooked or heated on-site** by the retailer **before or after purchase**; and **hot and/or cold prepared foods** not intended for home preparation or consumption, including prepared foods that are consumed on the premises or sold for carryout, **shall not qualify** for participation as retail food stores. [Emphasis added.]

### **Basis of Determination**

The Appellant states that the firm plans to add additional staple food items if approved for the SNAP. First, it should be noted that a firm must be eligible for the SNAP **before** it is authorized. In addition, a firm that is determined to a restaurant cannot be eligible for the SNAP unless it is located in a State that operates a SNAP Restaurant Meals Program for the homeless, disabled or elderly under 7 CFR 278.1(d)(3). The State of West Virginia does not operate such a program.

It is also important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time of the store visit which forms the basis of the Retailer Operations Division’s action. The Appellant’s plans to adjust or otherwise change its business model are not relevant to this case. The Appellant instead may reapply six (6) months from the effective date of the denial and any new business model will be taken into consideration at that time.

### **Hardship to Firm**

The Appellant contends that the denial of its SNAP application will create a hardship for the business as it needs SNAP authorization to survive. With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a firm’s SNAP application is denied. However, there is no provision in the SNAP regulations that would allow an otherwise ineligible firm to be authorized for the SNAP on the basis of possible economic hardship to either the ownership personally or the business. To allow an otherwise ineligible firm to be authorized for the SNAP based on a purported economic hardship would render virtually meaningless the eligibility provisions of the Food and Nutrition Act of 2008.

### **CONCLUSION**

Based on the analysis above, the decision by the Retailer Operations Division to deny the SNAP application of Amanda’s Country Corner, Llc is sustained. The regulations clearly state the criteria that a firm 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), the Appellant shall not be eligible to submit a new application for SNAP authorization until six months after December 10, 2018, the effective date of the denial decision.

## **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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, 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.

RONALD C. GWINN  
Administrative Review Officer

March 21, 2019