

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

Army Trail Mobil Inc.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0202663

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that the decision to deny the application of Army Trail Mobil Inc. to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(1) in its administration of the SNAP, when it denied the application of Army Trail Mobil Inc. to participate in the SNAP on August 29, 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

In a letter dated August 29, 2017, the Retailer Operations Division informed the Appellant that the application of Army Trail Mobil Inc. to participate as an authorized retailer in the SNAP was being denied because it did not offer for sale on a continuous basis a variety of staple foods in the “Dairy” and the “Meats, Poultry, Fish” staple food categories as required under Criterion ‘A’ of 7 CFR § 278.1(b)(1)(ii) of the SNAP regulations. Criterion ‘A’ requires, in part, that

there be at least three different types of foods in each of the four staple food categories. During a store visit on August 23, 2017, it was observed that the store offered for sale only two types of foods in the “Dairy” staple food category (ice cream and milk) and only one type of food in the “Meats, Poultry, Fish” staple food category (meat jerky).

In addition, FNS determined that Army Trail Mobil Inc. did not have more than 50 percent of its total gross retail sales in staple food sales as required under Criterion ‘B’ of § 278.1(b)(1)(iii).

As the firm failed to meet either eligibility criterion for approval, the Appellant was informed that the firm could not submit a new application to participate in the SNAP for a period of six months as provided in § 278.1(k)(2). This denial action was based on observations made during the August 23, 2017 store visit as well as information provided on the firm’s retailer application.

In a letter postmarked September 6, 2017, the 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, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the 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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. 2018 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(k)(2) establishes the authority upon which the application of any firm to participate in the SNAP may be denied if it fails to meet established eligibility requirements.

7 CFR § 278.1(k)(2) reads, 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.”

7 CFR § 278.1(b)(1)(i) relays specific program requirements for retail food store participation, which reads, in part, “An establishment . . . shall . . . effectuate the purposes of the program if it . . . meets one of the following criteria: Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods . . . including perishable foods in at least two of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment . . . in staple foods (Criterion B).”

APPELLANT'S CONTENTIONS

In the written request for review, the Appellant provided information in which it was argued that:

- At the time of the store visit, Army Trail Mobil Inc. did not have all of the staple foods in stock required to meet the eligibility requirements to participate in the SNAP under Criterion A as the store had recently opened and the demand for many of the required staple foods is not yet there;
- A lot of the staple foods that were stocked at Army Trail Mobil Inc. had expired on the shelf because customers were not purchasing them;
- The Appellant will stock Army Trail Mobil Inc. with all of the staple foods required to participate in the SNAP under Criterion A once FNS has approved the store for SNAP participation; and
- A SNAP authorization denial will hurt the Appellant's business due to the financial hardship it will impose on Army Trail Mobil Inc.

The Appellant contends that at the time of the store visit, Army Trail Mobil Inc. did not have all of the staple foods in stock required to meet the eligibility requirements to participate in the SNAP under Criterion A as the store had recently opened and the demand for many of the required staple foods is not yet there. A lot of the staple foods that were stocked at Army Trail Mobil Inc. had expired on the shelf because customers were not purchasing them. The Appellant will stock Army Trail Mobil Inc. with all of the staple foods required to participate in the SNAP under Criterion A once FNS has approved the store for SNAP participation. Regarding the Appellant's contentions, it is important at this point to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division, and that it is limited to what circumstances existed at the time of the denial action by the Retailer Operations Division. It is not the authority of this review to afford additional time during which a store may begin to comply with program requirements for becoming authorized to participate in the SNAP.

At the time of the denial action, the contracted Reviewer indicated that Army Trail Mobil Inc. did not offer for sale on a continuous basis a variety of staple foods in the "Dairy" (the store stocked ice cream and milk only) and the "Meats, Poultry, Fish" (the store stocked meat jerky only) staple food categories. 7 CFR § 278.1(b)(1)(ii) of the SNAP regulations states that ... "In order to qualify for SNAP authorization under Criterion A, firms shall ... offer for sale and normally display in a public area, qualifying staple food items on a continuous basis, evidenced by having, on any given day of operation, no fewer than three different varieties of food items in each of the four staple food categories". This means that retail stores must have qualifying staple food items displayed in a public area on a continuous basis at the time of the store visit in order to qualify for SNAP authorization under Criterion A. The Appellant did not provide FNS with any vendor invoices/receipts, dated prior to the store visit date, that validate that Army Trail Mobil Inc. normally stocks at least three different varieties of food items from the "Dairy" and

the “Meats, Poultry, Fish” staple food categories and, therefore, the store met the SNAP eligibility requirements under Criterion A at the time of the store visit.

7 CFR § 278.1(k)(2) of the SNAP regulations is specific in its requirement that “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.” Therefore, based on the evidence in this case, Army Trail Mobil Inc. did not meet the eligibility requirements to participate in the SNAP under Criterion A at the time that the Retailer Operations Division made its denial action.

In the event of a firm’s failure to meet the requirements of eligibility under Criterion A, FNS policy requires that the firm’s eligibility be also evaluated under Criterion B. In order to qualify for authorization under Criterion B, more than 50 percent of a retail store’s total annual retail sales must come from sales of staple foods. The Appellant’s SNAP application reflects that 40 percent of its annual retail sales come from the sale of staple foods. Therefore, by the Appellant’s own admission, it does not meet the eligibility requirements under Criterion B.

The Appellant contends that a SNAP authorization denial will hurt his business due to the financial hardship it will impose on Army Trail Mobil Inc. It is recognized that some degree of economic hardship is a likely consequence whenever a store is temporarily denied authorization to participate in the SNAP. However, consideration must be made of the interests of the program and fairness and equity, not only to competing stores but also to those other retailers who comply fully with program regulations and meet the requirements for authorization in the SNAP on a continuous basis. In addition, we must be fair to those other retailers who have been similarly denied SNAP authorization in the past for similar violations. Therefore, the Appellant’s contention that the firm may incur economic hardship based on the denial of Army Trail Mobil Inc. to participate in the SNAP does not provide any valid basis for dismissing or moderating the decision imposed.

CONCLUSION

Based on a review of the case documentation and the discussion above, the initial decision by the Retailer Operations Division to deny the application of Army Trail Mobil Inc. to participate in the SNAP for a period of six months, effective August 29, 2017, is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (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, 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.

LORIE L. CONNEEN
Administrative Review Officer

January 12, 2018