

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

B and J Seafood #3,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0242693

FINAL AGENCY DECISION

The United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the decision of the Retailer Operations Division to withdraw the authorization of B and J Seafood #3 (Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR 278.1(n) in its administration of the SNAP when it withdrew the authorization of the Appellant to participate as an authorized SNAP retailer.

AUTHORITY

7 USC § 2023 and the 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In a letter dated December 23, 2020, the Retailer Operations Division informed Appellant that it was being withdrawn from the SNAP due to a failure to cooperate in the reauthorization process under 7 CFR 278.1(n). The letter noted that the Retailer Operations Division had not received information requested in a letter dated December 7, 2020, that was needed to complete the reauthorization process. The letter noted that Appellant could reapply at any time after its withdrawal by completing an online store application.

In a letter dated December 29, 2020, Appellant requested an administrative review of the Retailer Operation Division’s decision to withdraw the firm’s SNAP authorization. The request for

administrative review was granted and implementation of the withdrawal was 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, 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 covered in the Food & Nutrition Act of 2008, as amended, 7 USC § 2018, and SNAP regulations at Title 7 Code of Federal Regulations (CFR) Parts 271 and 278. In particular, SNAP regulations at 7 CFR § 278.1(n) establishes the authority upon which FNS may withdraw an application from a retail food store or wholesale food concern.

7 CFR 278.1(n) states

Periodic reauthorization. At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

APPELLANT'S CONTENTIONS

Appellant made the following summarized contentions in its December 29, 2020, request for administrative review, and subsequent information emailed on February 17, 2021, in relevant part:

- Appellant apologizes for the insufficient information.
- Appellant has been in quarantine three times.
- Appellant requests time to retrieve the information.
- Appellant has hired someone to create the requested spreadsheet.
- Appellant has only kept journals or logs showing sales but now has purchased two registers that will be programmed for specific needs like staple foods.
- Appellant has lost an incredible amount of business

On February 4, 2021, Appellant e-mailed a spreadsheet that was prepared by its accountant. On February 5, 2021, Appellant e-mailed additional documentation including handwritten notes that were the source for the spreadsheet.

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 B and J Seafood #3 provided sufficient information to enable the Retailer Operations Division to make an eligibility determination during reauthorization under 7 CFR 278.1(n). In the December 7, 2020, letter to Appellant, the Retailer Operations Division requested verification of actual retail sales for the week of November 22, 2020 (actual sales receipts) and an overview document that totals actual retail sales for the same one week breaking down sales into six listed categories in order to complete the reauthorization process.

The record shows that Appellant did not respond to this request for information. A review of the case record indicates by a preponderance of the evidence that the Retailer Operations Division properly determined that B and J Seafood #3 did not provide sufficient information to enable it to determine whether the firm is a SNAP eligible retail food store or a SNAP ineligible restaurant.

In support of its administrative review request, Appellant submitted a spreadsheet that contains a summary of sales for one week. However, the actual sales receipts were not provided and are necessary in order to verify the date used to compile the spreadsheet. The December 23, 2020, letter informing Appellant that its authorization will be withdrawn states the following:

In accordance with SNAP regulations, 7 CFR 278.1(n), FNS may withdraw the authorization of any firm which fails to cooperate in the reauthorization process. Failure to cooperate may include non-response to a request for information, failure to submit information timely, or submission of unclear or incomplete information in response to request.

The evidence supports that Appellant did not provide sufficient information in order for the Retailer Operations Division to make an eligibility determination.

Eligibility to Submit New Application

SNAP regulations at 7 CFR § 278.1(k)(2) states, in part, that “any firm that has been denied authorization . . . 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 withdrawal.” Because the Retailer Operations Division did not determine that the firm was ineligible, B and J Seafood #3 may reapply immediately.

CONCLUSION

A review of the entire case record indicates that Appellant was properly withdrawn for failure to cooperate. Based on the analysis above, the decision by the Retailer Operations Division to withdraw the SNAP application of Appellant is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 USC § 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 the 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.

Mary Kate Karagiorgos
ADMINISTRATIVE REVIEW OFFICER

March 1, 2021