

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

Babylon Discount Food,

Appellant,

v.

Case Number: C0207604

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a one-year withdrawal of authorization of Babylon Discount Food, (hereafter Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(l)(1), § 278.1(b)(3), and § 278.1(k)(3), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it withdrew Appellant's authorization to participate as a retailer in SNAP on April 10, 2018.

AUTHORITY

7 U.S.C. § 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

The record reflects that FNS was notified by the Illinois Department of Human Services in correspondence dated March 3, 2017, August 11, 2017 and February 28, 2018, that Appellant was sanctioned by the Illinois WIC Program for violations of the Illinois WIC Program Rules and Regulations. In each instance FNS was informed that Appellant was placed on probationary status for a period of one year and assessed an administrative fine. In a letter dated April 10, 2018, the Retailer Operations Division imposed a one-year withdrawal of Appellant's authorization to participate as a retailer in SNAP. The Determination letter stated, in relevant part:

“...your authorization to participate as a retailer in the Supplemental Nutrition Assistance Program (SNAP) is withdrawn for 1 year... Section 278.1(l)(iv) of the SNAP regulations provides that FNS shall withdraw the authorization of any firm that fails to maintain the necessary business integrity to further the purposes of the program, as specified in 278.1(b)(3)(ii) of the SNAP regulations. Babylon Discount Food has been fined and placed on probation by the Illinois Department of Human Services three times between march 2017 and February 2018:”

In a letter dated April 19, 2018, Appellant appealed the Retailer Operations Division’s decision and requested an administrative review of this action. The appeal was granted and implementation of the one-year withdrawal has been 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 clear 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, would 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 Section 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(l)(1) establishes the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to meet established eligibility requirements.

7 CFR § 278.1(l)(1) reads, in part, “FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.... (iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings:...”

7 CFR § 278.1(k) reads, in part, “FNS shall deny the application of any firm if it determines that: (3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization in the program for the following period of time: ...(ii) Firms which have been officially removed from other Federal, State or local government programs through administrative action shall be denied for a period equivalent to the period of removal from any such programs; or, if the firm is not removed from the program, but FNS determines a pattern (3 or more instances) exists evidencing a lack of business integrity on the part of the owners, officers, or managers of the firm, such firm shall be denied for a one year period effective from the date of denial;”

7 CFR § 278.1(b)(3)(C) reads, in part, “FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows:... (ii) Administrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which a firm is removed from such a program, or the firm is not removed from the program but ***FNS determines a pattern exists (3 or more instances) evidencing a lack of business integrity*** on the part of the owners, officers or managers of the firm;...” [Emphasis added]

APPELLANT’S CONTENTIONS

In response to the Retailer Operations Division withdrawal letter and in the request for administrative review, the Appellant made the following summarized contentions, in relevant part:

1. The department has escalated the “minor” Illinois violations to the level of a “lack of business integrity”, which would unlawfully escalate minor state violations to the level of a Federal predicate to rescind my client’s privileges under the program for one year.
2. The totality of the offenses cited by the Department fail to rise to the level of conduct which rise to the undefined level of “a lack of business integrity” noted in the code. My client addressed and corrected the minor infractions cited by Illinois in the prior citations. No basis remains to invoke the proposed predatory sanction of a one year suspension of privileges as a double enhanced penalty for the same conduct alleged in the state administrative sanction, which were fully addressed.

The preceding may represent only a brief summary of 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

With regards to Appellant’s contentions, it is important 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. That is, the earlier decision was either correct or incorrect at the time it was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that a store may now begin to comply with program requirements. This review is limited to what circumstances were at the basis of the Retailer Operations Division’s action.

The record reflects that Appellant had three separate instances of violations and a one year probationary period issued, in each instance, by the Illinois Department of Human Services for WIC program violations with effective dates of March 31, 2017, September 30, 2017 and March 31, 2018. This clearly indicates that Appellant has a pattern of violating the WIC program while still on probation from previous violations. SNAP regulations specifically state “FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business

integrity and reputation of the firm as follows: ... (C)(ii) Administrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which a firm is removed from such a program, ***or the firm is not removed from the program but FNS determines a pattern exists (3 or more instances) evidencing a lack of business integrity on the part of the owners, officers or managers of the firm;...***” [Emphasis added]

CONCLUSION

Based on the discussion herein, the determination by the Retailer Operations Division to withdraw the authorization of Babylon Discount Food to participate as a retailer in SNAP for one year is sustained.

Pursuant to 7 CFR § 278.1(k)(3) of the SNAP regulations, Appellant shall not be eligible to submit a new application for Babylon Discount Food, for a minimum period of one year from the effective date of withdrawal. In accordance with the Food and Nutrition Act of 2008, as amended, and its associated regulations, this withdrawal action shall become effective 30 days upon delivery of this decision.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks
Administrative Review Officer

August 28, 2018