

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

Big Boy Market,

Appellant,

v.

Case Number: C0240549

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds there is insufficient evidence to support the determination by the Retailer Operations Division (Retailer Operations) to permanently deny the application of Big Boy Market (Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action in its administration of the SNAP, consistent with 7 CFR Sections 278.1(k)(4), 278.1(o), and 278.6(e)(1)(iii) of the regulations, when it imposed a permanent denial against Appellant.

AUTHORITY

7 U.S.C. § 2023, and the 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 the FNS.

CASE CHRONOLOGY

By letter dated November 6, 2020, Retailer Operations informed Appellant that its application to participate as a retailer in SNAP was denied in accordance with 7 CFR §278.1(k)(4) and §278.1(o), for filing a SNAP application that contains false or misleading information about a substantive matter. The letter further stated that in accordance with 7 CFR § 278.6(e)(1)(iii), the denial was permanent. The owner requested review of the determination by letter dated November 13, 2020. The review was granted by letter dated December 2, 2020.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant, credible 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 AND REGULATIONS

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and is promulgated through regulation under Title 7 CFR Part 278.

7 CFR § 278.1(k) establishes the authority upon which FNS shall deny the application of any firm. 7 CFR § 278.1(k)(4) states FNS shall deny the application of any firm if it determines that: “The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the period specified in § 278.6(e)(1) or § 278.6(e)(3).”

7 CFR § 278.1(o) states in part: “The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.”

7 CFR § 278.6(e) states in part: FNS shall take action against any firm determined to have violated the Act or regulations. (1) Disqualify a firm permanently if: (iii) It is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to: (A) Eligibility requirements under § 278.1(b), (c), (d), (e), (f), (g) and (h); (F) Ownership of the firm; (H) SNAP history, business practices, business ethics, WIC disqualification or authorization status, when the store did (or will) open for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location; or (I) Any other information of a substantive nature that could affect the eligibility of a firm.

APPELLANT’S CONTENTIONS

Consideration was made of all contentions as presented, whether recapitulated here or not.

- In all fairness, why should 5 U.S.C. § 552 (b)(6) & (b)(7)(C) be penalized for an incident that might have happened when he was a minor and the person involved is not even a part

of his household and has no ownership interest in this business. It is important to note that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was a minor and is not even aware of any such incident. He did not provide any wrong information to you intentionally or knowingly.

- I disagree with the decision of the department to summarily deny approval of my FNS application. The reason mentioned is that I did not disclose about the disqualification of my elder sister 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in May 2002 from SNAP over 18 years ago.
- My elder sister is not a part of my household. She is married with last name now 5 U.S.C. § 552 (b)(6) & (b)(7)(C). She moved to New York, has her own home and has been living there with her husband and her own family for over 20 years. My sister does not live with me, she is not a part of my household. She is in New York where she lives with her husband.
- I was not even aware of and in fact have nothing to do with her alleged disqualification from SNAP. I just asked about it and she does not remember this because even if it happened, it was over 18 years ago. She is not engaged in any type of grocery or food business. She works in accounting field.
- I was born on May 28, 1987. I was barely 14 or 15 years old when this alleged disqualification happened in May 2002. I have no knowledge of this disqualification and was not even aware of any such incident. I have no connection or control over her past when I was still a minor.
- I am my own person independent of my sister and her family. I opened my own small grocery business with my own small capital in 2018. I am 100% sole stockowner of my company NYM Investments 2018, Inc. d/b/a Big Boy Market.
- My sister has no control or stock ownership or financial interest in Big Boy Market. She has no say and has nothing to do with my business.
- This action will force me to close down my business due to the loss of customers caused inability of my store to accept customer EBT.
- I earnestly believe that I should not be punished and penalized for other person's alleged disqualification over which I had no control while I was still a minor.

ANALYSIS AND FINDINGS

This review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations' determination at the time it was made. Retailer Operations determined that the owner provided false information on the application affidavit. The record shows that the owner indicated "No" to question six on the affidavit. This question asks if one or more owners or managers of the firm are related by birth or marriage to an owner or manager of a firm that is, or has been disqualified from SNAP or WIC.

The record confirms that the owner was born May 28, 1987. Therefore, at the time of his sister's permanent disqualification as a SNAP retailer in May 2002, the owner was a teenager. It is credible that his elder sister, as asserted, did not share her disqualification status with her younger brother. While it is possible that over the years the owner may have learned of his sister's permanent disqualification, the evidence does not more support that conclusion than the

alternative. As long as any period of disqualification has been fully served, the SNAP regulations do not prohibit an owner of a previously disqualified store from becoming an owner, officer, or manager of another authorized store unless the owner was permanently disqualified from SNAP. On review, the preponderance of the evidence does not support that the owner knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program.

CONCLUSION

There is insufficient evidence in the record to support that the owner knowingly submitted misleading and/or false information of a substantive nature on his SNAP retailer application that could affect the eligibility of the firm for authorization. There is no evidence to support that the owner was personally involved in the SNAP violations that led to his sister's permanent disqualification as a SNAP retailer in 2002.

On review, it is found likely that the owner was not aware of his sister's permanent disqualification status, and that he answered the affidavit truthfully based on his knowledge. The permanent denial determination is reversed.

Retailer Operations should continue to process Appellant's SNAP application to determine if the firm is otherwise eligible for program authorization under all other applicable SNAP regulations.

RIGHTS AND REMEDIES

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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

February 26, 2021