

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

B.O Party Store,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0217211

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 the Retailer Operations Division's decision to permanently deny the application of B.O Party Store to participate in the Supplemental Nutrition Assistance Program (SNAP).

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 permanently denied the application of B.O Party Store.

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

On December 21, 2018, the Retailer Operations Division received an online application from B.O Party Store to participate in the SNAP as an authorized retail store. In response to question 16 of the application, the Appellant answered "yes" to the question "Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?" The Appellant stated on the application that "I was in a vehicle with other passengers and unaware of narcotics that was inside of the vehicle." In response to a request for additional information on a previous conviction, the Appellant submitted an amended copy of the application that was received by the Retailer Operations Division on March 29, 2019. The Appellant stated that "I was a previous gun register holder – my license was suspended & I was not aware of."

The Appellant also provided the Retailer Operations Division with copies of court documents that the store owner was sentenced on April 25, 2013 to a nine-month probation because of the owner's conviction of attempting to carry a concealed weapon in violation of § 750.227 of the Michigan Penal Code.

As a result of this information, in a letter dated April 10, 2019, the Retailer Operations Division informed the Appellant that the application of B.O Party Store to participate in the SNAP was permanently denied under 7 CFR § 278.1(k)(3)(i) because the Appellant did not have the necessary business integrity under 7 CFR § 278.1(b)(3)(i).

In a letter postmarked April 18, 2019, the Appellant requested an administrative review of the Retailer Operation Division's decision to permanently deny the application of B.O Party Store. 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 action 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 AND REGULATIONS

The controlling law in this matter is covered in the Food & 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) establishes the authority upon which the FNS shall deny the authorization of any firm authorized to participate in the program.

7 CFR § 278.1(b)(3)(i) states:

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 ...

(i) Conviction of or civil judgment against the owners, officers or managers of the firm for ... (C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, **firearms**, controlled substances, and/or gaming licenses... [Emphasis added.]

7 CFR § 278.1(k)(3)(i) states:

Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) **shall be denied authorization permanently** [Emphasis added]

APPELLANT'S CONTENTIONS

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

- The Appellant is requesting a redetermination of the permanent denial decision.
- The Appellant store owner had a license to carry a concealed weapon and was not aware that the license had been revoked due to an unpaid financial obligation to his ex-wife.
- The store is located in a predominantly low income neighborhood surrounded by gas stations and liquor stores that accept SNAP and its authorization would provide SNAP recipients with a clean place to shop that provides proper nutrients such as fresh fruits, bread and milk.
- The store will not be able to thrive efficiently without accepting SNAP benefits.

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 case record documents that, in 2013, the Appellant store owner was convicted of attempting to carry a concealed weapon in violation of § 750.227 of the Michigan Penal Code. This review finds that the violation of the aforementioned state statute falls within the scope of a business integrity violation as contemplated by 7 CFR § 278.1(b)(3)(i) which states, 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 ...
(i) **Conviction of or civil judgment against the owners**, officers or managers of the firm for: (C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, **firearms**, controlled substances, and/or gaming licenses....
[Emphasis added.]

Further, the period of time is mandated by 7 CFR § 278.1(k)(3)(i) which states, in part:

Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) **shall be denied authorization permanently** [Emphasis added.]

Scope of Business Integrity Regulations

The USDA holds that the business integrity and reputation of a firm is critically important to the effective operation of the SNAP. Therefore, the criteria outlined in the regulations focuses on the business integrity and reputation of the owners, officers and management of firms seeking

authorization in the SNAP. Prior convictions relating to business integrity, reflects on the ability of a firm to effectuate the purposes of, and abide by the rules governing, the program.

On this matter, the agency regulations **grant no discretion** to the Retailer Operations Division or to the administrative review officer. Under the strict language of the regulations, the fact that a convicted party has successfully fulfilled the terms of any sentencing, fines or adjudication for a business integrity conviction under 7 CFR § 278.1(b)(3)(i) or that such person may not have known he was committing a criminal violation does not mean that the Appellant can now be authorized as a SNAP retailer. Under the circumstances of this case, the Federal SNAP regulation at 7 CFR § 278.1(k)(3)(i) grants no exceptions to a permanent denial for a business integrity conviction under 7 CFR § 278.1(b)(3)(i).

CONCLUSION

The case record documents by a preponderance of the evidence that the store owner pleaded guilty to § 750.227 of the Michigan Penal Code. Based on the analysis above, the decision by the Retailer Operations Division to permanently deny the application of B.O Party Store to participate in the SNAP is sustained.

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, FNS is 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

June 3, 2019