

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

BP Gas & Foods,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0218150

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 Retailer Operations Division properly withdrew the authorization of BP Gas & Foods (Appellant) 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 Regulations (CFR) Part 278 in its administration of the SNAP, when it withdrew the authorization of BP Gas & Foods as a SNAP retail store.

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

FNS regulations require that SNAP retail stores be reauthorized on a set schedule. As part of this process, store owners must complete a reauthorization application and an onsite visit by an FNS contractor is then conducted to determine the Appellant’s continued eligibility to participate as a SNAP retailer.

The record shows that the Appellant applied for reauthorization in an application that was signed on November 8, 2018. In a letter dated May 2, 2019, the Retailer Operations Division withdrew the Appellant’s authorization to participate as a retailer in the SNAP because the firm failed to respond to a request for information or documentation related to the firm. Specifically, the

Withdrawal Letter states that “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 a request”. On March 29, 2019, the Retailer Operations Division sent a letter requesting information needed to complete the reauthorization process and did not receive the information requested by the deadline provided. As a result, the Retailer Operations Division informed the Appellant that its authorization to participate as an authorized retailer in the SNAP was being withdrawn.

In a letter postmarked May 16, 2019, the Appellant appealed the Retailer Operations Division’s decision and requested an administrative review of this determination. FNS granted the Appellant’s request for administrative review by letter dated May 28, 2019 and implementation of the withdrawal was held in abeyance pending completion of this review.

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, 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 § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(m) and 278.1(n) establish the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to cooperate in the reauthorization process.

7 CFR § 278.1(m) reads: Refusal to accept correspondence or to respond to inquiries. FNS may withdraw or deny the authorization of any firm which: (2) Fails to respond to inquiries from FNS within a reasonable time.

7 CFR § 278.1(n) reads: 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

In the request for administrative review, the Appellant argued that:

- Most of the time the Appellant stocks the staple food items required to participate in the SNAP.

- However, the store had an item shortage on the day of the store visit.

In support of these contentions, the Appellant submitted ten (10) vendor food purchase receipts (dated in April 2019 and May 2019) for review.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination of the Retailer Operations Division, and as such is limited to consideration of relevant facts and circumstances at the time of the decision. The authorization of a store to participate in the SNAP must be in accord with the Act and the SNAP regulations, as amended; those requirements of law cannot be waived.

In a letter dated May 2, 2019, the Retailer Operations Division withdrew the Appellant's authorization to participate as a retailer in the SNAP because the firm failed to respond to a request for information or documentation related to the firm. In accordance with 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 a request. On March 29, 2019, the Retailer Operations Division sent a letter requesting information needed to complete the reauthorization process and did not receive the information requested by the 10 day deadline provided. The food purchase receipts provided by the Appellant (dated in April 2019 and May 2019) were submitted with the request for administrative review postmarked May 16, 2019. The case file shows the requested information was not provided to FNS by the required 10 day deadline and therefore, constitutes a failure to cooperate on the part of the Appellant. As such, the Retailer Operations Division properly withdrew BP Gas & Foods as an authorized retailer in the SNAP.

CONCLUSION

Based on a review of all of the evidence in this matter, the determination by the Retailer Operations Division to withdraw the authorization of BP Gas & Foods to participate as a retailer in the SNAP is sustained. Because evidence has not been provided that would definitively determine the Appellant's eligibility for continued SNAP participation, it is the determination of this review that the decision to withdraw the firm's authorization due to its failure to cooperate was appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(n).

In accordance with the Food and Nutrition Act of 2008, as amended, and the SNAP regulations, the withdrawal action will become effective 30 days after receipt of this decision. A new application for SNAP participation may be submitted at any time. Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

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, 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.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

July 10, 2019