

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

Captain’s Market Seafood,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0231350

FINAL AGENCY DECISION

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the decision of the Retailer Operations Division to deny the application of Captain’s Market Seafood to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). As a result, the Appellant may not reapply for six (6) months from June 9, 2020, the effective date of the denial.

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 denied the application of the Appellant to participate as a SNAP retailer.

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

On January 19, 2020, the Appellant submitted an application for participation in the SNAP. The application identified the firm as a farmer’s market that sold 100 percent staple foods in all of the four (4) staple food categories. However, this information was incorrect. Through supporting documents provided by the Appellant, the Retailer Operations Division determined that the firm did not meet the definition of a retail food store under 7 CFR 271.2 and 278.1(b)(1) as it was primarily acting as a wholesaler supplying food to food cart vendors and other wholesale customers that purchase food in bulk. Therefore, the firm’s application was denied in a letter dated June 8, 2020. The letter informed the Appellant that it could not submit a new application

to participate in SNAP for a period of six (6) months from the effective date of the denial as provided by SNAP regulations at 7 CFR § 278.1(k)(2).

In a letter postmarked June 11, 2020, the Appellant requested an administrative review of the Retailer Operation Division's denial of its SNAP application. 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 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 found in the Food and 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) provides the authority upon which FNS shall withdraw or deny the authorization of any firm if it fails to meet SNAP eligibility criteria.

7 CFR § 278.1(k)(1) reads, in relevant part:

(k) Denying authorization. FNS shall deny the application of any firm if it determines that:

(1) The firm does not qualify for participation in the program as specified in paragraph (b), (c), (d), (e), (f), (g), (h) or (i) of this section

7 CFR § 271.2 defines a Retail food store as, in relevant part:

(1) An establishment or house-to-house trade route that sells food **for home preparation and consumption normally displayed in a public area** [Emphasis added.]

7 CFR § 278.1(b)(1) states, in part:

(i) Retail food store. (A) An establishment or house-to-house trade route shall normally be considered to have food business of a nature and extent that will effectuate the purposes of the program **if it sells food for home preparation and consumption**

(v) Wholesale food concerns. Wholesale food concerns, the primary business of which is the sale of eligible food at wholesale, and which meet the staple food requirements in paragraph (b) of this section, shall normally be considered to have adequate food business for the purposes of the program, **provided such concerns meet the criteria specified in paragraph (c) of this section.** [Emphasis added.]

7 CFR § 278.1(c) states:

Wholesalers. A wholesale food concern **may be authorized** to accept coupons **only** from a specified customer or customers **if it meets the requirements of paragraphs (a) and (b) of this section**, and **FNS determines it is required as a redemption outlet**:

- (1) For one or more specified authorized **drug addict or alcoholic treatment programs**,
- (2) For one or more specified authorized **group living arrangements**,
- (3) For one or more specified authorized **shelters for battered women and children**,
- (4) For one or more specified authorized **nonprofit cooperative food-purchasing ventures**,
- (5) For one or more specified authorized **public or private nonprofit homeless meal providers**, or
- (6) For one or more specified authorized retail food stores which are without access to an insured financial institution which will redeem their coupons. [Emphasis added.]

7 CFR § 278.1(k)(2) reads, in relevant part:

... Any firm that has been denied authorization on these bases shall not be eligible to submit a new authorization for authorization in the program for a minimum period of six months from the effective date of the denial.

APPELLANT'S CONTENTIONS

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

- The firm was previously authorized as a delivery route dating back to 2014-2015 but was withdrawn for non-redemption of SNAP benefits.
- The Appellant offers food services that are no different from any other small or large grocer. The Appellant buys wholesale, sells retail, and delivers.
- Even food carts, farmers markets, flea markets, food vendors have an option to receive SNAP as they meet the definition of a retail food store.

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

A review of the entire case record indicates by a preponderance of the evidence that the Retailer Operations Division properly determined that Captain's Market Seafood does not operate as a retail food store **as that term is defined by FNS**. In a letter dated May 20, 2020, the Retailer Operations Division informed the Appellant that it needed a detailed email explaining how Captain's Market Seafood conducted its business. Specifically, the letter requested detailed information on what the firm was selling, how and where it was selling food, and how it was advertising its business.

In response, the Appellant faxed a statement to the Retailer Operations Division on June 8, 2020 which stated, in part, that:

Captain's Seafood Market ... caters to Commercial Business, and Retail individual consumers. Much as a middle man. Some of my customers are food cart vendors that cannot leave their stands when they run out of products. And others call me in advance for parties and individual consumption to supply them with products that they are unable to obtain in bulk to break down into smaller portions to save money. My business license does not allow me to maintain any products on the premises. My bulk customers call me in advance to price a product in which I deal with numerous wholesalers.

The Retailer Operations Division determined that this response indicated the firm is generally not operating as a house-to-house trade route providing food for home preparation and consumption. Instead, the firm is primarily acting as a wholesaler that does not qualify for authorization under 7 CFR § 278.1(c). Such firms do not meet the definition of a retail food store under 7 CFR 271.2 and 278.1(b)(1) and cannot be authorized for the SNAP. A preponderance of the evidence supports the denial decision of the Retailer Operations Division.

CONCLUSION

Based on the analysis above, the decision by the Retailer Operations Division to deny the SNAP application of Captain's Market Seafood is **sustained**. In accordance with 7 CFR § 278.1(k)(2), the Appellant shall not be eligible to submit a new application for SNAP authorization until six (6) months after June 9, 2020, the effective date of the denial decision. However, if the business model remains the same and you reapply, your application may be denied again for the same reason.

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. Please note that the judicial filing timeframe is specified in the Act, and this office cannot grant an extension.

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

September 8, 2020