

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

**Cb Trucking,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0224023**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support a finding that the initial decision by the Retailer Operations Division (hereinafter Retailer Operations) to permanently deny the application of Cb Trucking (hereinafter Appellant) to participate as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed.

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) Part 278.1(b)(3) and 7 CFR § 278.1(k), in its administration of SNAP, when it permanently denied the authorization of Appellant to participate as a SNAP retail food store.

**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 FNS.”

**CASE CHRONOLOGY**

The record shows that the owner submitted a store application for SNAP authorization of Appellant on October 3, 2019. By letter dated October 3, 2019, Retailer Operations advised the owner of its decision to permanently deny Appellant’s application to participate in SNAP pursuant to 7 CFR § 278.1(b)(3) and (k)(3). By letter dated October 7, 2019, the owner requested administrative review of this action. The request was granted by letter dated November 25, 2019.

## STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means 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 matter asserted is more likely to be true than not true.

## CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended, at 7 USC § 2018 and in 7 CFR § 278. 7 USC § 2018, 7 CFR § 271.2, § 278.1(b)(3), and § 278.1(k)(3) establish the authority upon which a retail food store's or wholesale food concern's authorization to participate in SNAP may be denied on the basis of a lack of business integrity.

7 CFR § 271.2 states, in part, Retail food store means: (1) An establishment or house-to-house trade route that sells food for home preparation and consumption normally displayed in a public area, and either offers for sale qualifying staple food items on a continuous basis, evidenced by having no fewer than three different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each qualifying staple food variety, including at least one variety of perishable foods in at least two such categories (Criterion A)...or has more than 50 percent of its total gross retail sales in staple foods (Criterion B)...Entities that have more than 50 percent of their total gross sales in hot and/or cold prepared foods not intended for home preparation and consumption, are not eligible for SNAP participation as retail food stores...

7 CFR § 278.1(a) states, in part, FNS shall approve or deny the application within 45 days of receipt of a completed application. A completed application means that all information (other than an on-site visit) that FNS deems necessary in order to make a determination on the firm's application has been received.

7 CFR § 278.1(b)(3)(k) 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: (A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; (B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims or obstruction of justice; or (C) Violation of Federal, State and/or local consumer protection laws relating to alcohol, tobacco, firearms, controlled substances and/or gaming licenses.

7 CFR § 278.1(k) reads: 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: (i) Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of the owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently.

### **APPELLANT'S CONTENTIONS**

In the written request for review the owner contends:

- I urge you to take a second look at my documents as well as my character evidence in hopes that you can determine my eligibility to participate in this program.
- I realize that I made a mistake when I was 19, but I haven't been in trouble since then.
- I'm an active Deacon, a Mason, and I also coach youth basketball.
- I have 11 children and I'm trying to support them and be a good example for them.

In support of his contentions, the owner provided a copy of his Certificate of Ordination, a copy of his Initiation into the Masons, and a photo of him with his youth basketball team.

### **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 Retailer Operations; as such, it is limited to consideration of the relevant facts at the time of the decision. The authorization of a store to participate in SNAP must be in accord with the Act and the regulations, as amended; those requirements of law cannot be waived.

SNAP regulations at 7 CFR § 278.1(b) and (k) provide for the denial of an applicant firm to participate as a SNAP retailer based on a number of reasons and for various timeframes. The statute and regulations specifically address the factors which constitute a lack of business integrity. These considerations are eligibility concerns; a firm either meets all the requirements stipulated in law and regulations or it does not. The regulations at 7 CFR 278.1(b)(3) state: *The business integrity and reputation of the applicant.* 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 relating to alcohol, tobacco, firearms, controlled substances and/or gaming licenses.

On review, the owner's contentions in this matter are essentially that he made a mistake when he was younger, is now involved with the church, the Masons, coaching youth basketball, and trying to be a good example to his children and support them. He asks for reconsideration.

While the owner's character evidence submitted is duly acknowledged, the business integrity provisions of the SNAP regulations do not provide the agency with discretion for reducing the proposed authorization denial period, dismissing any action, or mitigating the impact of those actions on the basis of the seriousness of the violations, a lack of knowledge of the law, or other

circumstances under which they occurred. If the matter violates the provisions of §278.1(b)(3), action to deny must be taken accordingly.

The case record shows that the owner indicated on its SNAP retailer application that he was convicted of a crime after June 1, 1999, for the possession of marijuana with the intent to distribute. Retailer Operations reviewed the application and court records submitted, and properly determined that the firm lacks the necessary business integrity and reputation to further the purposes of the program. As outlined in 7 CFR § 278.1(k)(3)(i), such firms shall be denied authorization in the program for the following period of time: (i) 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.

### **CONCLUSION**

Based on a review of the evidence, the determination by Retailer Operations to permanently deny the application of Appellant to participate as a SNAP retailer is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to 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 Appellant's owner resides or is 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 30 days of delivery of this Decision.

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.

KIM DAMERON  
ADMINISTRATIVE REVIEW OFFICER

May 12, 2020