

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

Corner Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0219923

FINAL AGENCY DECISION

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that Retailer Operations Division (hereinafter Retailer Operations) properly withdrew the authorization of Corner Market (hereinafter Appellant), to participate as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether Retailer Operations took action, consistent with Title 7 of the Code of Federal Regulations (CFR), Part 278, when it withdrew 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

FNS regulations require stores be reauthorized on a set schedule. The record shows that Appellant's store manager submitted an online reauthorization application. FNS-contracted personnel conducted an onsite store visit to ascertain Appellant's continued eligibility to participate in SNAP on November 12, 2018. In order to complete the reauthorization process, Retailer Operations requested additional ownership information and proof of dairy inventory by

letters dated May 7, 2019. The letters informed Appellant that failure to submit documentation within 20 days of receiving the letters may result in withdrawal of authorization to accept SNAP benefits. The record reflects that Appellant never responded to this letter.

By letter dated June 13, 2019, Retailer Operations sent Appellant a letter withdrawing its authorization to participate as a retail food store in SNAP for failure to cooperate, as the firm did not provide any of the documentation requested. The letter informed Appellant that a retail food store will be required to undergo a periodic reauthorization determination by updating any and all of the information on the firm's application form and/or by allowing representatives of FNS to obtain this information during a store visit. 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. The letter also stated that the withdrawal of your firm will not adversely impact any application you may wish to submit in the future, and you may reapply at any time after your withdrawal by submitting an online store application.

By letter dated June 27, 2019, Appellant requested administrative review with supporting documentation. The appeal was granted by letter dated August 13, 2019.

STANDARD OF REVIEW

In appeals of an adverse actions, 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 credible, relevant 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 found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and promulgated through regulation under 7 CFR § 278. In particular, 7 CFR § 278.1(n) establishes the authority upon which FNS shall withdraw the SNAP authorization of any firm that fails to cooperate in the reauthorization process.

7 CFR § 278.1(a) states in relevant part: "Any firm desiring to participate or continue to be authorized in the program shall file an application as prescribed by FNS. Such an application shall contain information which will permit a determination to be made as to whether such an application qualifies, or continues to qualify, for authorization, under the provisions of the program. FNS may require that a retail food store be visited to confirm eligibility for program participation prior to such store being authorized or reauthorized in the program. Required visits shall be conducted by an authorized employee of the Department..."

7 CFR § 278.1(b) states in relevant part: “An applicant shall provide sufficient data and information on the nature and scope of the firm’s business for FNS to determine whether the applicant’s participation will further the purposes of the program. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program.”

7 CFR § 278.1(b)(1)(ii) provides that in order for a retail store to qualify for authorization under Criterion A, firms shall: “(A) Offer for sale and normally display in a public area, qualifying staple food items on a continuous basis, evidenced by having, on any given day of operation, no fewer than seven 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 variety and at least one variety of perishable foods in at least three staple food categories. Documentation to determine if a firm stocks a sufficient amount of required staple foods to offer them for sale on a continuous basis may be required in cases where it is not clear that the firm has made reasonable stocking efforts to meet the stocking requirement.” 7 CFR § 278.1(b)(1)(ii)(A) of the SNAP regulations as currently implemented define continuous basis as offering for sale 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 variety on any given day of operation.

7 CFR § 278.1(m) states in relevant part: “FNS may withdraw or deny the authorization of any firm which: (1) Refuses to accept correspondence from FNS; (2) Fails to respond to inquiries from FNS within a reasonable time; or (3) Cannot be located by FNS with reasonable effort.”

7 CFR § 278.1(n) states in relevant part: “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

All contentions as stated, have been considered in rendering this decision whether listed or not:

- A copy of invoices for butter and margarine is attached.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the owner and his information has previously been submitted to you. Additional owners are 5 U.S.C. § 552 (b)(6) & (b)(7)(C) whose name was given during the store visit by an employee by his nickname, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Another additional owner is 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The following was provided in support of its contentions: social security numbers, addresses, phone numbers, and copies of driver’s licenses for the two additional owners, and a copy of Retailer Operations’ request for information.

ANALYSIS AND FINDINGS

This review is to validate the determination by Retailer Operations and 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.

The onsite review of Appellant's food inventory revealed insufficient varieties and stocking units in the dairy staple food category. The SNAP regulations at § 278.1(b)(1)(ii)(A) under Criterion A as currently implemented, require a firm shall offer for sale and normally display in a public area, 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 variety on any given day of operation, and at least one variety of perishable foods in at least three staple food categories. Retailer Operations gave Appellant the opportunity to provide receipts to prove that it met the dairy requirement, but no response was received.

In the request for administrative review, the store manager provided four invoices that showed margarine and butter purchases circled, as proof of dairy inventory. Upon review, the date was not within the required 21 calendar days prior to the store visit and therefore cannot be considered.

During a store visit, FNS-contracted personnel are required to obtain the name of the store owner to verify ownership. The record shows that when store personnel were asked for the name of the store owner, they were given the name 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a name not listed on the SNAP account for this store. In its request for additional ownership information, Retailer Operations asked Appellant to provide a clear, readable copy of the social security card and valid government issued photo identification if an individual needs to be added to the application as an owner, and to provide a statement if the name given was a nickname of the current owner. No response was received.

In its request for administrative review, the store manager confirmed the store owner listed on the store's reauthorization application as one owner and provided two additional names to be added as owners. The store manager provided the social security numbers of the two additional owners and copies of their driver's licenses. Copies of the two owners' social security cards were not provided. Partial submissions may not be processed.

Therefore, a preponderance of the evidence indicates that the withdrawal decision is appropriate.

CONCLUSION

Based on a review of the evidence, the determination by Retailer Operations to withdraw the authorization of Appellant to participate as a SNAP retailer is sustained. The regulations clearly state that a firm must cooperate in the periodic reauthorization process. There is no exception to this requirement. However, this decision does not impact the firm's ability to reapply for SNAP

authorization at any time. Appellant may file a new application for participation in SNAP at any time subsequent to receipt of this correspondence.

General questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369 and by consulting the USDA website. Operational questions regarding the withdrawal should be directed to the office that initially took the action to withdraw Appellant; please contact Lesley Bobb at (972) 454-1857 or lesley.bobb@usda.gov.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and 7 CFR § 279.7 address your right to a judicial review of this decision. 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, 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 receipt of this Decision. The judicial filing timeframe is specified in the Act, and this office is unable to grant an extension.

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

April 30, 2020