

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

**D & B General Merchandise, Inc,**

**Appellant,**

**v.**

**Case Number: C0211025**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the Retailer Operations Division properly denied the application of D & B General Merchandise, Inc. (hereinafter “Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it denied the retailer application of D & B General Merchandise, Inc.

**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**

The Appellant firm, D & B General Merchandise, Inc., applied to participate as a retailer in SNAP on June 8, 2018. In a letter dated July 12, 2018, the Retailer Operations Division denied the Appellant’s application based on the firm’s failure to pay a monetary fine that was imposed against the Appellant on April 30, 2018. According to the denial letter, the balance owed is **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The letter further stated that the denial decision was made in accordance with Federal regulations at 7 CFR § 278.1(k)(7).

In a letter postmarked July 17, 2018, the Appellant requested an administrative review of the Retailer Operations Division's decision. The request was granted.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as an application denial, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 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 deny the authorization of any firm applying for participation in SNAP if it has failed to pay a monetary fine assessed under 7 CFR § 278.6(m).

7 CFR § 278.1(k)(7) reads:

FNS shall deny the application of any firm if it determines that:

(7) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7, any fines assessed under §§ 278.6(l) or 278.6(m), or a transfer of ownership civil money penalty assessed under § 278.6(f). The FNS officer in charge shall issue a notice to the firm (using any delivery method that provides evidence of delivery) to inform the firm of any authorization denial and advise the firm that it may request review of that determination.

7 CFR § 278.6(m) states:

(m) *Fines for unauthorized third parties that accept [SNAP benefits]*. FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem [SNAP benefits] for any violation of the provisions of the Food and Nutrition Act of 2008 or the program regulations, including violations involving the acceptance of [SNAP benefits]. The fine shall be \$1,000 for each violation plus an amount equal to three times the face value of the illegally accepted [SNAP benefits]. The fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. FNS may withdraw the authorization of any firm that is under the same ownership as an unauthorized firm that has failed to pay such a fine, as specified under [§ 278.1(l)]. FNS may deny authorization to any firm that has failed to pay such a fine, as specified under [§ 278.1(k)].

### **APPELLANT'S CONTENTIONS**

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

- Appellant would like to challenge the determination that it engaged in unauthorized acceptance of SNAP benefits. D & B General Merchandise is an entity that has never accepted SNAP.
- Prior to the establishment of D & B General Merchandise, another entity, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was operating at the same location. That business was owned by Appellant owner's father, who is now deceased. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was still operating after he died, and the Appellant was under the impression that his father was still authorized to accept SNAP benefits.
- When the Appellant decided to start a new entity, D & B General Merchandise and submit a new SNAP application, it stopped accepting SNAP benefits. However, Appellant was notified that it would have to submit another application because it did not provide certain pieces of information.
- As a result, Appellant submitted a second application. But this one was denied, stating that the Appellant had engaged in unauthorized acceptance of SNAP benefits. This news baffled the Appellant.
- To prove his case, the Appellant owner has provided documentation showing that he is the new owner of the business. He has also included all of the documents that were requested earlier by the Retailer Operations Division.

To support its request for review, the Appellant provided the following information:

- Photo ID for Appellant owner's mother, who is a secondary signer on the firm's bank account.
- A signed and notarized affidavit dated August 1, 2018, regarding ownership of the firm.
- Articles of Incorporation for D & B General Merchandise, Inc., with an effective date of November 1, 2017. The document is unsigned.
- An undated Docketing Statement from the Pennsylvania Department of State listing the Appellant owner as the individual responsible for submitting tax reports.
- An Activity License from the City of Philadelphia showing D & B General Merchandise, Inc. as a licensed business effective December 27, 2017.
- A Notice of Registration from the Pennsylvania Department of Revenue, giving D & B General Merchandise, Inc. its account number for tax reporting purposes.
- A Sales Tax License from the Pennsylvania Department of Revenue, with an expiration date of January 31, 2023.
- A lease agreement, dated January 1, 2018, between the Appellant owner and the landlord of the building where the store is located.
- A letter from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in Philadelphia, Pennsylvania, dated August 9, 2018, listing the signers on the account, and showing that the account was opened on January 8, 2018.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a final decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

## ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to either validate or invalidate the Retailer Operations Division's denial of the Appellant's June 8, 2018, SNAP application. This denial was based on the firm's failure to pay an unauthorized acceptance fine that was imposed against the firm on April 30, 2018.

This review acknowledges that the Appellant owner originally submitted a SNAP application for participation as a retailer on January 5, 2018. On multiple occasions over the next few months, the Appellant was asked by the Retailer Operations Division to submit additional information to verify the firm's ownership. The January 5 application was ultimately denied on May 15, 2018, because the Appellant failed to provide all of the necessary information to make an eligibility determination. The Appellant did not request an administrative review of this denial action.

While the January 5 application was being processed, another branch within the Retailer Operations Division was conducting a separate investigation into whether or not the Appellant was allowing illegal SNAP transactions at its store. The record shows that the Retailer Operations Division obtained evidence that D & B General Merchandise, Inc. was using another firm's valid SNAP authorization number to conduct SNAP transactions at its own store even though it was not yet authorized to accept such benefits.

On February 14, 2018, the Food and Nutrition Service sent a cease-and-desist letter to D & B General Merchandise, telling the Appellant that it must immediately stop accepting SNAP benefits while it remained unauthorized. The letter further stated that the acceptance of SNAP benefits by an unauthorized firm is a violation of the Food and Nutrition Act of 2008, as amended, as well as a violation of Federal regulations. The letter stated that unauthorized acceptance of SNAP benefits may result in a fine of \$1,000 for each violation plus an amount equal to three times the face value of the illegally accepted benefits.

Tracking records show that the cease-and-desist letter was delivered to the Appellant firm via UPS courier service on February 16, 2018.

By April 6, 2018, the firm was still not an authorized SNAP retailer, but continued to accept SNAP benefits despite having been warned not to do so. In a letter dated April 9, 2018, the Retailer Operations Division charged the Appellant with unauthorized acceptance of SNAP benefits. The charge letter stated that there were 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the letter, the resulting fine would be 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The charge letter was delivered to the firm on April 10, 2018, but agency records show that the Appellant did not reply to these charges.

After further consideration of the evidence in the case, the Retailer Operations Division issued a determination letter dated April 30, 2018. This letter stated that the firm was found to have improperly accepted SNAP benefits during a time in which the firm was not authorized to accept such benefits. The letter further stated that a fine of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was the appropriate penalty for the violations.

It should be noted that agency records indicate that the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) fine that was listed in the April 9 charge letter was the result of an incorrect calculation. After further review, the Retailer Operations Division determined that there were just 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In accordance with 7 CFR § 278.6(m), the correct amount of the fine is 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The April 30 letter stated that the fine must be paid in full within 30 calendar days of receipt of the determination letter and that failure to pay may result in additional actions against the firm. The letter also stated that the determination would be final unless it submitted a written request for administrative review. The deadline for such a request is 10 calendar days from the date a firm receives a letter of adverse action.

The unauthorized acceptance determination letter was delivered to the Appellant firm via UPS on May 1, 2018. Agency records show that no request for administrative review was made. Additionally, no payments have been made toward the fine.

It is the Appellant's failure to pay the unauthorized acceptance fine that resulted in the July 12, 2018, application denial. The denial is based solely on this reason and does not have anything to do with missing documentation from a previous application.

It is critical to note that any contentions related to the appropriateness of the unauthorized acceptance fine cannot be considered by this review. As noted earlier, the firm had 10 days from May 1, 2018, to request an administrative review of the agency's assessment of a monetary fine against the firm. The time for arguing this issue has now passed and the unauthorized acceptance fine is final.

Additionally, this review cannot consider any arguments or documentation related to the firm's ownership or any contentions related to previous SNAP applications. The only issue this review is authorized to consider is whether or not the July 12, 2018, application denial on the basis of the firm's failure to pay a fine was appropriate and consistent with regulations. Unfortunately, the Appellant has not offered any evidence or any contentions related to this application denial. Every argument and piece of documentation presented by the Appellant pertains to issues that have already been finalized.

The record is clear that the firm was assessed a monetary fine as a result of illegal acceptance of SNAP benefits during a time in which the firm was not authorized to accept SNAP at its firm. The record is also clear that no portion of that monetary fine has been paid. Because the firm is delinquent on its payment of the fine, the denial of the firm's June 8, 2018, SNAP application is appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(k)(7) and § 278.6(m). It should be noted that there is not a specific duration of time associated with this denial decision. Once the CMP has been paid, the firm is free to reapply for SNAP participation.

## CONCLUSION

Based on the analysis above and in accordance with 7 CFR § 278.1(k)(7), it is the determination of this review that the Appellant firm has failed to pay a monetary fine that was assessed against

the firm. The contentions and evidence presented by the Appellant are not sufficient to prove that the denial decision made by the Retailer Operations Division should be reversed. Accordingly, the decision by the Retailer Operations Division to deny the application of D & B General Merchandise, Inc. to participate as a retailer in SNAP is sustained.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt 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.

JON YORGASON  
Administrative Review Officer

August 21, 2018