

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch  
Alexandria, VA 22302**

**Do Stop Grocery #01,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0202960**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a one-year withdrawal of authorization of Do Stop Grocery #01, (hereafter Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(l)(1), § 278.1(b)(3), and § 278.1(k)(3), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it withdrew Appellant's authorization to participate as a retailer in SNAP on September 15, 2017.

**AUTHORITY**

7 U.S.C. § 2023 and the 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 a recent SNAP application, ownership answered yes to question 14 and 14a "(Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999)?" The record shows that in correspondence dated August 4, 2017, Retailer Operations Division received documentation showing that the firm's owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was

convicted of two counts of Sexual Abuse in the first degree, one count of rape in the third degree and was ordered to register on the sex offender registry. In a letter dated September 15, 2017, the Retailer Operations Division imposed a one-year withdrawal of Appellant's authorization to participate as a retailer in SNAP. The Determination letter stated, in relevant part:

*“Based upon information recently obtained, your authorization to participate as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP) is involuntarily withdrawn for one year.”*

In a letter dated September 22, 2017, Appellant appealed the Retailer Operations Division's decision and requested an administrative review of this action. The appeal was granted and implementation of the one-year withdrawal has been held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving by a clear 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, 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 Section 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(l)(1) establishes the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to meet established eligibility requirements.

7 CFR § 278.1(l)(1) reads, in part, “FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.... (iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings:...”

7 CFR § 278.1(b)(3) reads, 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:... (vi) Commission of any other offense indicating a lack of business integrity or business honesty of owners, officers or managers of the firm that seriously and directly affects the present responsibility of a person.”

7 CFR § 278.1(k) reads, in part, “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: ... (vi) Firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm as specified in § 278.1(b)(3)(vi) shall be denied for a period of one year from the effective date of denial; ”

### **APPELLANT’S CONTENTIONS**

In response to the Retailer Operations Division withdrawal letter and in the request for administrative review, the Appellant made the following summarized contentions, in relevant part:

1. When we submitted the new application, we were assured that even though we had approval for one site already, it did not mean that we would automatically be approved for the new site. We were told that one store would not affect the other.
2. We received a withdrawal letter based on the application of another store.
3. There have been no violations or any issues with our acceptance of EBT. The owner has finished his parole and he is a responsible and hardworking business owner. While he does own Do Stop, he does not physically work there.
4. Please take into consideration how long we have already been established and how much this service is needed in this area.

Appellant provided a copy of the firm’s card type summary with a date range of September 23, 2017 to October 22, 2017. No other documentation was provided. The preceding may represent only a brief summary of 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**

With regards to Appellant’s contentions, it is important to clarify for the record, that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. That is, the earlier decision was either correct or incorrect at the time it was made. More importantly, regulations are specific with regard to the business integrity of a firm’s owners, officers or managers. This review is limited to what circumstances were at the basis of the Retailer Operations Division’s action.

Additionally, a firm’s length of time in business or participation in the SNAP cannot constitute grounds for reversing the withdrawal decision in the present case. There are no provisions in the Act or Regulations that reverses or reduces a sanction based upon a firms length of time in business in determining eligibility for participation in the SNAP when violations occur that result in the failure to maintain business integrity to further the purposes of the program. Therefore,

Appellant's contentions do not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Moreover, Appellant provided court documentation which verified ownership conviction. The SNAP regulations are specific and in accordance with § 278.1(l)(1)(iv), § 278.1(b)(3)(vi) and § 278.1(k)(3)(vi) of the SNAP regulations, firms that have been found to lack the necessary business integrity and reputation to further the purpose of the program shall be denied authorization in the program.

### **CONCLUSION**

Based on the discussion herein, the determination by the Retailer Operations Division to withdraw the authorization of Do Stop Grocery #01, to participate as a retailer in SNAP for one-year is sustained.

Pursuant to 7 CFR § 278.1(k)(3) of the SNAP regulations, Appellant shall not be eligible to submit a new application for Do Stop Grocery #01, for a minimum period of one-year from the effective date of withdrawal. In accordance with the Food and Nutrition Act of 2008, as amended, and its associated regulations, this withdrawal action shall become effective 30 days after delivery of this decision.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks  
Administrative Review Officer

November 29, 2017