

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

**Eat Fresh Produce,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0218067**

**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 withdrew the authorization of Eat Fresh Produce (hereinafter “Appellant”) from participation as a 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 withdrew the authorization of Eat Fresh Produce.

**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, Eat Fresh Produce, a fruit and vegetable specialty store, was originally authorized to participate as a retailer in SNAP on April 1, 2009. In accordance with regulation, each SNAP-authorized firm is required to undergo a periodic reauthorization process to determine whether or not the firm still meets eligibility requirements. On October 26, 2018, the Appellant submitted an online reauthorization application to fulfill this requirement.

As part of the process, an FNS contractor attempted to conduct a store visit at the Appellant firm in order to verify the information on the reauthorization application. This store visit attempt occurred on December 11, 2018. When the contractor arrived at the Odenville, Alabama location

where the store supposedly operated, the Appellant firm did not appear to exist. The contractor spoke to a restaurant owner at the same address, and he stated that he was not aware of a firm called Eat Fresh Produce. The contractor then called the store phone number for Eat Fresh Produce and confirmed the store location with the Appellant owner. The owner told the contractor that she sells food out of the back of her truck outside the restaurant, but that her store was only open for business during summer months.

On April 18, 2019, the Retailer Operations Division sent the Appellant a letter indicating that a store visit had been attempted, and requesting that the Appellant contact FNS within 10 days to arrange for another store visit.

On April 29, 2019, the Appellant contacted the Retailer Operations Division by telephone and requested another store visit.

On May 10, 2019, another FNS contractor went to the same address to conduct a store visit, but once again, the location was vacant. No produce stand or truck was visible anywhere. The contractor attempted to reach the Appellant by telephone, but received no response.

In a letter dated May 13, 2019, the Retailer Operations Division informed the Appellant that its authorization to participate as a retailer in SNAP would be withdrawn due to the firm's failure to cooperate in the reauthorization process, as outlined in 7 CFR § 278.1(n). The letter stated that FNS could not reauthorize the firm without a store visit and indicated that the attempted visits could not be completed because the produce stand was not where it was supposed to be.

In a letter postmarked May 14, 2019, the Appellant requested an administrative review of the agency's determination. The request was granted and implementation of the withdrawal has been held in abeyance pending the outcome of this review.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as the withdrawal of a firm's SNAP authorization, 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(n) establishes the authority upon which FNS shall withdraw the SNAP authorization of any firm which fails to cooperate in the reauthorization process.

7 CFR § 278.1(n) reads:

Periodic reauthorization. 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**

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

- Appellant does a very small amount of SNAP business from a little stand on the side of the road.
- Appellant owner knows that the contractor visited the location where she normally sets up to sell and she was not there.
- The firm is listed as a Direct Marketing Farmer and it moves from location to location.
- Appellant thinks that it may need more understanding of what is needed.
- Appellant does not sell a lot but SNAP is a necessary part of its produce sales.

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 submitted, including any not specifically summarized or explicitly referenced in this document.

### **ANALYSIS AND FINDINGS**

The purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. This review is limited to consideration of the relevant facts as they existed at the time the agency rendered its decision. It must also be made clear that the objective of this review is not to determine the firm's eligibility for ongoing SNAP participation. Rather it is solely to determine whether or not the firm failed to cooperate with the reauthorization process, which is the basis for the Retailer Operations Division's withdrawal determination.

It should be stated here that the term "failed to cooperate" in this case simply denotes that the Appellant did not allow the agency an opportunity to conduct a store visit to verify the information on the firm's reauthorization application. It does not imply that the firm was unwilling or reluctant to provide the required information.

As best as this review can determine, the Appellant was unresponsive to the agency's attempts to conduct a required store visit. While the Appellant did contact FNS after receiving the April 18, 2019, letter, it failed to be at the business location during the business hours listed on its reauthorization application. The Appellant was also unresponsive to a phone call made by the contractor during the second attempted store visit. Further, the Appellant has offered no evidence that the agency's withdrawal determination was improper. If FNS cannot verify that a store continues to meet program eligibility requirements, the store cannot remain authorized. Accordingly, this review finds that the Appellant has indeed failed to cooperate with the reauthorization process, and a withdrawal of the firm's SNAP authorization is appropriate.

As to the Appellant's contention that that it may need more understanding of what is necessary for program reauthorization, this review strongly suggests that the firm contact the Retailer

Operations Division for additional information and guidance. The program specialist handling this case is Danielle Chandler. She can be reached at (804) 309-3880.

### **CONCLUSION**

The contentions presented by the Appellant are not sufficient to prove that the withdrawal decision made by the Retailer Operations Division was improper or that it should be reversed. Because the agency has been unable to conduct a store visit to verify the information on the Appellant's reauthorization application, it is the determination of this review that the decision to withdraw the firm's authorization due to its failure to cooperate in the reauthorization process was appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(n). Therefore, the decision to withdraw the SNAP authorization of Eat Fresh Produce is sustained.

In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the authorization withdrawal of Eat Fresh Produce shall become effective 30 days after receipt of this decision. A new application for SNAP participation may be submitted at any time.

### **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 19, 2019