

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

Ernest Grocery Store,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0228543

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to deny the application of Ernest Grocery Store (hereinafter Appellant) to participate in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278, when it denied the application of Appellant to participate in SNAP on March 11, 2020.

AUTHORITY

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, “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

Appellant submitted an online application to participate as a SNAP retail food store on February 6, 2020, and answered “yes” to question 15a on the application, “Has any officer, owner, partner, member and/or manager ever been denied, withdrawn, disqualified, suspended, or been fined for Supplemental Nutrition Assistance Program (SNAP), WIC, business, alcohol, tobacco, lottery and/or health violations?” Appellant explained in block 15b on the application that, “I was suspended for 12 months last year and am eligible as of February 5th of this year....”

After reviewing the record, the Office of Retailer Operations and Compliance determined that the Appellant had failed to pay in full a prior fiscal claim assessed against the firm and therefore

was in violation of SNAP regulations at 7 CFR § 278.1(k)(7). As a result, Appellant's SNAP application was denied by a letter issued on March 11, 2020, that was received by Appellant on March 16, 2020.

By letter postmarked March 24, 2020, Appellant appealed the Office of Retailer Operations and Compliance's decision and requested an administrative review of this determination. The appeal was granted. No subsequent correspondence was received from Appellant.

STANDARD OF REVIEW

In appeals of 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 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 law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 USC § 2018), and implemented through regulation under Title 7 CFR § 278. In particular, 7 CFR § 278.1(k)(7) establishes the authority upon which a retail food store's application to participate in the SNAP may be denied for failure to pay in full any fiscal claim.

7 CFR § 278.1(k)(7): FNS shall deny the application of any firm if it determines that: 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 [now Office of Retailer Operations and Compliance] 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.

APPELLANT'S CONTENTIONS

The following may represent a 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:

- The owner has been in business for about 30 years and recently reapplied to be a SNAP retailer after being disqualified for 12 months. The owner was denied participation based on a tax debt that he was notified of in October 2018. This was a property tax debt that was accumulated when the business fell in hard times. The original debt was over \$22,000 and the owner had a payment plan that had the balance down to \$9,000. Payments had stopped when the business was in the process of being disqualified and fell on hard times again; and,
- Not being able to participate in SNAP is detrimental to the business given the neighborhood and location. The last 12 months have been hard and being able to

participate in SNAP is make or break for the business. The owner prides himself on being able to provide the best service he can to this community and requests reconsideration of this decision and another chance to continue serving the community.

Appellant submitted no evidence or other rationales in support of these contentions.

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 the Office of Retailer Operations and Compliance. This review is limited to a consideration of the relevant facts and circumstances that were at the basis of their action at the time such action was made. The application of a store to participate in the SNAP must be in accord with the Act and the regulations, as amended; those requirements of law cannot be waived. The sole issue under review is whether the Office of Retailer Operations and Compliance took appropriate action when it denied the application of Appellant to participate in the SNAP. Any contentions pertaining to the original fiscal claim assessment are not subject to review.

The case record documents that the Appellant firm was assessed a fiscal claim in the amount of \$30,000 in a prior judicial settlement with FNS and that a balance in the amount of \$9,000 remains unpaid. Appellant was reminded of this unpaid balance by a letter dated October 17, 2018. In the request for administrative review, Appellant incorrectly describes this outstanding debt as being a property tax debt, but agrees on the amount of the outstanding balance. Appellant also states that it had fallen on hard times as the explanation for the debt not being paid in full. A review of FNS records shows that the hard times referenced by Appellant were periods in which the SNAP retailer authorization for the firm had been suspended due to violations of SNAP regulations. Appellant's claim that not being able to participate in SNAP would be detrimental to the neighborhood is without basis as FNS records show nine comparably sized or larger SNAP retail stores located within a 0.51 miles radius of the Appellant firm that includes two supermarkets, a medium grocery store, and six small grocery stores. The closest small grocery store is located approximately one block from Appellant's location.

Based on the discussion above, Appellant's contentions do not provide any valid basis for reversing the penalty imposed.

CONCLUSION

As previously discussed, the case record documentation, as well as the owner's statement, support the fact that the owner failed to pay in full on a fiscal claim. SNAP regulations at Section 278.1(k)(7) specify that the application for any firm shall be denied if a firm has failed to pay in full any fiscal claim assessed against the firm. Accordingly, the determination by the Office of Retailer Operations and Compliance to deny Appellant's application to participate as a SNAP retailer is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint 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. This complaint, naming the United States as the defendant, must be filed within thirty (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.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

May 11, 2020