

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

**Erv's Meat Market,**

**Appellant,**

**v.**

**Case Number: C0213104**

**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 there is sufficient evidence to support a finding that the decision by the Retailer Operations Division (Retailer Operations) to deny, for a period of one year from the effective date of denial, the application of Erv's Meat Market (Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action consistent with 7 CFR § 278.1(b)(3) and 7 CFR § 278.1(k)(3) in its administration of the SNAP when it denied the application of Appellant to participate in the SNAP as an authorized retail food store.

**AUTHORITY**

7 USC § 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**

Retailer Operations received a SNAP application from Appellant. The owner answered affirmatively to question 16 and provided additional documentation. By letter dated September 18, 2018, Retailer Operations informed the owner that the application of Appellant to participate as a SNAP authorized retailer was denied for a period of one year as stipulated in 7 CFR § 278.1(k)(3) and 7 CFR § 278.1(b)(3) of the SNAP regulations. Retailer Operations determined that the owner lacks the necessary business integrity to further the purposes of the SNAP.

The owner requested administrative review of the denial by a letter dated September 27, 2018. The appeal was granted by letter dated October 4, 2018. The owner provided additional information by letter dated October 24, 2018.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. That means the 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 argument asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). 7 USC § 2018, 7 CFR § 278.1(b)(3) and 7 CFR § 278.1(k)(3) establish the authority upon which a retail food store's authorization to participate in the SNAP may be denied on the basis of a lack of business integrity.

7 CFR § 278.1(b)(3) states: "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: (iv): 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) states: "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**

All contentions, whether recapitulated here or not, have been considered.

- I believe I am being denied due to my conviction and sentencing in 2009.
- I am not a sexual predator or a violent offender. The inmate was not a juvenile and I was convicted as a sexual offender.
- Prior to this incident I was a model citizen and I have been ever since.
- I feel I am being punished again for a crime I have already been convicted of.
- I understand as a business owner and representative of the federal government if approved for the SNAP I must be forthright and law abiding.

The owner furnished documentation from the probation office, office of the district attorney, the notification of sentence, and two payment receipts.

### **ANALYSIS AND FINDINGS**

The purpose of this review is to validate or to invalidate the determination by Retailer Operations; as such it is limited to consideration of the relevant facts at the time of the decision. The authorization 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.

Based on Appellant's application and submission of additional documentation, Retailer Operations determined that Appellant should be denied for a period of one year under 7 CFR § 278.1(b)(3)(vi) due to the owner's conviction as documented in the record. The statute under which the owner was convicted demonstrates that the owner was in a position of authority over an individual who could not reasonably consent when the crime was committed. Given that the owner was in a position of authority and abused it, Retailer Operations determined that the act for which he was convicted informs the business honesty and integrity of the owner.

### **CONCLUSION**

After review of all the documentation in the record, the decision by Retailer Operations to deny the application of Appellant to participate in the SNAP as an authorized retailer food store is sustained. Per 7 CFR § 278.1(k)(3), Appellant may not reapply for SNAP authorization for a period of one year from the effective date of the denial. Please call 877-823-4369 with general questions regarding the application process or consult the USDA website for more retailer information.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 USC § 2023) and to the regulations at 7 CFR § 279.7 with respect to the applicable rights to judicial review of this decision. If 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's owner resides or 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 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.

M. Viens  
Administrative Review Officer

November 9, 2018