

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

FBM Sales Corp,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0232712

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to support the determination by the Office of Retailer Operations and Compliance to withdraw the authorization of FBM Sales Corp. (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(b)(1)(iv), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it withdrew Appellant’s authorization to participate as a retailer in SNAP in a letter dated June 24, 2020.

AUTHORITY

According to 7 U.S.C. § 2023 and its 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

In a letter dated June 24, 2020, the Office of Retailer Operations and Compliance withdrew Appellant’s authorization to participate as a retailer in SNAP because the firm is not a retail food store as defined by the SNAP regulations. Specifically, the withdrawal letter states that Appellant sells only accessory foods, such as spices, candy, soft drinks, tea or coffee. This withdrawal

decision was based on observations during a store visit on June 18, 2020 as well as information provided on the firm's reauthorization application. Appellant was informed that the firm could not submit a new application to participate in SNAP for a period of six months as provided in 7 CFR § 278.1(k)(2).

On July 6, 2020, Appellant appealed the Office of Retailer Operations and Compliance determination and requested an administrative review of this action. The appeal request was granted and implementation of the withdrawal has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that 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 untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 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(k)(2) references 7 CFR § 278.1(b)(1)(iv) which reads, in part:

Ineligible firms under this paragraph include, but are not limited to, stores selling only accessory foods. . . .

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 [t]he firm fails to meet the requirements for eligibility under Criterion A or B, as specified in paragraph (b)(1)(i) of this section . . . for the time period specified in paragraph (k)(2) of this section.

7 CFR § 278.1(k) reads, in part:

FNS shall deny the application of any firm if it determines that [t]he firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in paragraph (b)(1)(i) of this section for a minimum period of six months from the effective date of the denial.

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- Appellant denies that it sells only accessory foods.
- Appellant carries a large variety of staple food items. Appellant submitted five store pictures.

These explanations may represent only a brief summary of Appellant's contentions.

ANALYSIS AND FINDINGS

A review of the Office of Retailer Operations and Compliance's case file indicated the evidence does not support determination. Accordingly, it is unnecessary to address Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration have been given to all contentions presented.

CONCLUSION

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to withdraw the authorization of FBM Sales Corp. to participate as a retailer in SNAP is reversed. Nothing in this decision prevents the Office of Retailer Operations and Compliance from withdrawing the firm or issuing a sanction on a different basis.

RIGHTS AND REMEDIES

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.

RICH PROULX
ADMINISTRATIVE REVIEW OFFICER

August 31, 2020