

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

Harikrupa Corner Store,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0202621

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that Harikrupa Corner Store (hereinafter Appellant) was properly denied authorization, for a period of three years, to participate in the Supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program (hereinafter SNAP), by the Retail Operations Branch.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3)(iii) and § 278.1(k)(3)(iii), in its administration of the SNAP when it rendered a three year denial of the application of Appellant to participate as an authorized SNAP retailer on September 1, 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

The record reflects that on June 20, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) signed as owner, an application for authorization to participate in the SNAP. Appellant was subsequently advised in a letter dated September 1, 2017, of the Retailer Operation's decision to deny the application of Appellant, for a period of three years, to participate as an authorized retailer in SNAP. The determination was based on the following information: FNS has determined that sufficient evidence exists that you have been found to be circumventing a period of disqualification through a purported transfer of ownership. This decision was made based on information you submitted to FNS and/or lack of corroborating documentation to support a bona fide transfer of ownership in connection with your SNAP application. Based upon documentation provided, it has been determined that you have familial and financial relationship with the previous permanent disqualified owner.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the mother of the previous permanent disqualified owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) who is listed as a member of the 5 U.S.C. § 552 (b)(6) & (b)(7)(C), lender, who also has a security interest in the business therefore; in accordance with section 278.1(b)(3)(iii) your firm's authorization shall be denied for a period of three years. As defined in 7 CFR § 271.2, trafficking include the selling of benefits for cash. SNAP regulations at 7 CFR § 278.6(e)(1) state that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. Your application dated August 31, 2017, constitutes an attempt to avoid or circumvent the permanent disqualification of your daughter.

In a letter dated September 7, 2017, and received in our office on September 11, 2017, Appellant appealed the Retailer Operations Division's decision and requested an administrative review of this action. The appeal was granted.

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 at 7 USC § 2018 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 USC § 2018, § 278.1(b)(3) and § 278.1(k)(3) establishes the authority upon which a retail food store or wholesale food concern may be denied authorization to participate in the SNAP on the basis of a lack of business integrity.

7 CFR § 278.1(b)(3) relays specific program requirements for retail food store participation, which 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.... (iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations;”

7 CFR § 278.1(k)(3) relays specific program requirements for retail food store participation, which reads, in part, “The firm has been found to lack the necessary business integrity and reputation to further the purpose of the program. Such firms shall be denied authorization in the program for the following period of time:... (iii) Firms for which evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty, or fine imposed for violations of the Food Stamp Act of 1977, as amended, and program regulations shall be denied for a period of three years from the effective date of denial;...”

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. There is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. If the matter violates the provisions of § 278.1(b)(3) and § 278.1(1), action to deny or withdraw must be taken accordingly.

APPELLANT’S CONTENTIONS

The Appellant made the following summarized contentions in its response to the denial letter and its request for administrative review, in relevant part:

- Documentation related to the check that was provided as rent was required. The check I provided did not show the account number because it was printed online. I followed up with my bank and they provided me with a clear copy showing the account information for the check.

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 regard to Appellant’s contention, the case record documents that Retailer Operations Division followed proper procedures in obtaining the additional documentation needed to determine whether the firm meets the necessary business integrity requirements. The bill of sale, effective April 24, 2017 and sales agreement for June 6, 2017 show a familial and financial relationship between the previous permanently disqualified owner and the current owner.

Therefore, Appellant’s contention does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

It is important to clarify that the purpose of this review is to evaluate the evidence regarding Appellant's current application to become an authorized retailer in the SNAP. The Food and Nutrition Act of 2008, as amended and SNAP regulations are specific with regard to the business integrity of a SNAP applicant and provide no discretion to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation.

CONCLUSION

Based on the discussion herein, the determination by Retailer Operations Division to deny the application of Harikrupa Corner Store to participate as an authorized SNAP retailer, for a period of three years, is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 1977, 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 21, 2017