

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

Hawkeye Meats,

Appellant,

v.

Case Number: C0212322

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 Retailer Operations Division properly withdrew the authorization of Hawkeye Meats to participate in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The purpose of this review is to determine whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(m), in its administration of the SNAP when it withdrew the Appellant's authorization to participate as a retailer in the SNAP on August 23, 2018.

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 was originally authorized to participate as a retailer in the SNAP on September 2, 2011.

From August 10, 2018 through August 14, 2018, the Retailer Operations Division made repeated attempts to conduct a store visit of Hawkeye Meats. In accordance with regulation, each SNAP authorized firm is required to permit store visits to determine whether or not the firm still meets eligibility requirements. Having been unable to conduct a store visit, in a letter dated August 23, 2018, the Retailer Operations Division withdrew the Appellant's authorization to participate as a

retailer in the SNAP. This withdrawal was based on the Retailer Operations Division's inability to conduct a store visit of Hawkeye Meats with reasonable effort.

In a letter postmarked August 31, 2018, the Appellant appealed the Retailer Operations Division's decision and requested an administrative review of this action. FNS granted the Appellant's request for administrative review by letter dated September 10, 2018 and implementation of the withdrawal was held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions 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 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 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(m) establishes the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to participate in the process necessary to determine whether it meets established eligibility requirements.

7 CFR § 278.1(b) relays specific program requirements for retail food store participation, which reads, in part:

An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information on the application. Such information may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies. In addition, they must obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program...

7 CFR § 278.1(m) states:

FNS may withdraw or deny the authorization of any firm which: (1) Refuses to accept correspondence from FNS; (2) Fails to respond to inquiries from FNS within a reasonable time; or (3) Cannot be located by FNS with reasonable effort.

APPELLANT'S CONTENTIONS

In the Appellant's request for administrative review postmarked August 31, 2018, it was argued that:

- The owner was not available to attend the surprise store visit on August 10, 2018 as he was out of town on a family vacation.
- The reviewer informed the owner that she would be conducting a store visit during the week of the owner's return from vacation, August 13-17, 2018.
- The reviewer initially made an appointment to conduct the store visit on August 14, 2018; however, the reviewer called the owner and stated that she would notify him upon her arrival.
- The owner took off from work the week of August 13-17, 2018 to be available for the reviewer's visit but the reviewer never notified the owner of her arrival.
- The owner did not hear anything from the reviewer since August 10, 2018 until he received the letter of withdrawal.
- The owner would never purposefully avoid a store visit.
- The Appellant requests that FNS reconsider its decision to withdraw Hawkeye Meats from participation in the SNAP.
- Hawkeye Meats is the only source of income to support the Appellant's family. A SNAP withdrawal will impose a financial hardship.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

With regard to the Appellant's contentions regarding the store visit, it is important to clarify for the record that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. Thus, this review is limited to consideration of the relevant facts and circumstances as they existed at the time the Retailer Operations Division rendered its decision. It must be made clear that the purpose of this review is not to determine the firm's eligibility for SNAP participation. Rather it is solely to determine whether or not the Appellant could be contacted for a store visit with reasonable effort.

The evidence shows that on August 10, 2018, the store reviewer went to Hawkeye Meats to conduct a store visit. Since no one was present at Hawkeye Meats at the time of the store visit, the reviewer called the contact phone number provided on the Appellant's SNAP application and reached a former store employee who stated that he had not worked at Hawkeye Meats for three years. The former employee provided the reviewer with a different phone number to contact the

owner. The reviewer called the alternate phone number and reached the owner who informed the reviewer that he was currently on vacation. However, the owner agreed to meet the reviewer at Hawkeye Meats on August 14, 2018 for a store visit. On August 14, 2018, the reviewer returned to Hawkeye Meats for the agreed upon store visit but the business was closed. Therefore, the reviewer's second attempt to conduct a store visit of Hawkeye Meats was unsuccessful.

The owner contends that he was out of town during the time period that the store reviewer attempted to conduct the first store visit but agreed (via telephone conversation) to meet the reviewer at Hawkeye Meats on August 14, 2018 for the second store visit attempt. However, the reviewer never notified the owner of her arrival at the business and he did not hear from the reviewer since August 10, 2018 until he received the letter of withdrawal.

Extenuating circumstances certainly may have contributed to the difficulty of the Retailer Operations Division to locate the Appellant. Nevertheless, the Retailer Operations Division failed to locate the Appellant after making a reasonable effort to do so. That such repeated attempts to reach the Appellant for a store visit were unsuccessful - and it appears the owner only learned of the attempts after receiving the withdrawal letter - raises the question of how a new customer would reach the Appellant. This is particularly curious since the Appellant is a delivery route and the hours of operation as stated on the SNAP application are Monday through Saturday from 9:00 am to 9:00 pm.

The Appellant contends that a SNAP withdrawal will impose a financial hardship on Hawkeye Meats. Economic hardship is a likely consequence whenever a store's SNAP authorization is withdrawn. However, there is no provision in the SNAP regulations for reducing an administrative penalty on the basis of possible economic hardship to the firm resulting from such a penalty. To excuse the Appellant from an assessed administrative penalty based on purported economic hardship to the firm would render the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA virtually meaningless.

Moreover, giving special consideration to economic hardship of the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been withdrawn from the program in the past for similar deficiencies. Therefore, the Appellant's contention that it will incur economic hardship based on deficiencies in meeting the store visit requirements does not provide any valid basis for dismissing the withdrawal of the Appellant's authorization.

CONCLUSION

Based on a review of all of the evidence in this matter, the determination by the Retailer Operations Division to withdraw the authorization of Hawkeye Meats to participate as a retailer in the SNAP is sustained. The Appellant is eligible to submit a new application for the subject store at any time. In accordance with the Food and Nutrition Act of 2008, as amended, and its associated regulations, this withdrawal action shall become effective 30 days after delivery of this letter.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (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, FNS is 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.

LORIE L. CONNEEN
Administrative Review Officer

December 14, 2018