

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

Imagine Multi Services,

Appellant,

v.

Case Number: C0204088

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 the Retailer Operations Division properly denied the application of Imagine Multi Services to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). As a result, the firm may not reapply for SNAP authorization for a period of one year from the date of denial.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it denied the retailer application of Imagine Multi Services.

AUTHORITY

7 USC § 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 Appellant firm, Martinez Meats, originally applied to participate as a retailer in SNAP on July 21, 2017. According to the application, the store was opened for business under the current ownership on July 13, 2017.

Based on the FNS contracted store visit conducted on August 31, 2016, Appellant carried too few items in dairy staple food category and did not carry perishables in at least two staple food categories. The Retailer Operations Division sent Appellant a proof of inventory letter dated September 20, 2016, to determine if Imagine normally stocks three varieties of food in the dairy

staple food category as well as perishables in two food categories. Appellant did not reply to the Retailer Operations Division's request for documentation. The Retailer Operations Division determined that Imagine failed to meet Criterion A. Appellant did not offer for sale a variety of foods in sufficient quantities on a continuous basis because it carried too few items in the dairy staple food category. The Retailer Operations Division also determined that the firm failed to meet Criterion B because staple food sales comprised less than 50 percent of its total gross retail sales.

As the firm failed to meet either eligibility criterion for approval, ownership was informed that the firm could not submit a new application to participate as a SNAP retailer for a period of six months as provided in § 278.1(k)(2).

In a letter postmarked October 11, 2016, ownership appealed the Retailer Operations Division's decision and requested an administrative review of this action. In support of its review request Appellant provided, among other documents, two receipts from Family Discount Grocery Store for Lily Butter and bread. In order to verify these handwritten receipts, the owner of Family Discount Grocery was contacted. However, the owner indicated that not only does he not issue handwritten receipts but he does not carry Lily butter. The documentation submitted to support the dairy items by Appellant was falsified. Since there was not documentation to support that Appellant normally carried three varieties of food in each of the staple food categories on a continuous basis, the Retailer Operations Division's denial determination was sustained.

Imagine Multi Services reapplied for SNAP authorization on

The Retailer Operations Division determined that Appellant lacked the necessary business integrity to further the purposes of SNAP. the firm submitted false or manufactured invoices/receipts in an attempt to prove that the store stocked the required inventory for SNAP authorization purposes. In accordance with 7CFR Section 278.1 (b)(3)(vi) and 278.1(k)(3)(vi) FNS shall deny 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 firms for a period of one year from the effective date of denial.

A letter of denial was sent to the Appellant on October 23, 2017. In a letter postmarked November 6, 2017, Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to deny the firm's SNAP application. The request was granted. On December 12, 2017, Appellant requested documents under the Freedom of Information Act (FOIA). FNS responded to the FOIA request on February 27, 2017. Counsel then provided its contentions on March 22, 2018.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a clear 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 found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) establishes the authority upon which FNS shall deny the authorization of any firm applying for participation in SNAP if it fails to meet established eligibility requirements.

7 CFR § 278.1(k) reads, in relevant part:

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.

7 CFR § 278.1(b)(3) states, in relevant part:

(3) **The business integrity and reputation of the applicant.** 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:

(vi) 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.

APPELLANT'S CONTENTIONS

Appellant made the following summarized contentions in its December 13, 2017, administrative review request, in relevant part:

- The invoices submitted that are believed to be false were not submitted with the current application.
- The retailer responded with receipts from several stores.
- The Department determined that the firm did not meet Criterion A or Criterion B for qualification as a SNAP retailer and issued a denial letter October 6, 2016.
- The Final Agency Decision issued on January 5, 2017, upheld the prior denial.

- The prior documents are subject to res judicata as the matter should have been addressed in the prior administrative decision if it was to be addressed at all.
- The department chose to do nothing with the prior proceeding.
- When a legal issue was addressed in a prior legal proceeding the decision thereon becomes binding.
- FNS is attempting to create an 18 month denial of authorization from facts arising during the original matter.
- The store has sufficient inventory.

With no pending issues pertaining to the accuracy of the document submitted with the application and no issue with inventory, there is no basis to deny the application.

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

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to either validate or invalidate the earlier determination made by the Retailer Operations Division. Thus, the decision made by the administrative review officer will be based on the relevant facts and circumstances as they existed at the time the Retailer Operations Division rendered its decision. This review is limited to determining whether or not the denial decision was made in accordance with existing regulation.

The primary issue under consideration is whether or not the Appellant firm has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of the Supplemental Nutrition Assistance Program.

Counsel provides that the prior documents are subject to res judicata as the matter should have been addressed in the prior administrative decision if it was to be addressed at all. Counsel argues that the falsified information was submitted with Appellant's initial SNAP application and that matter was finalized in the previous administrative review request. The retailer did not submit falsified information with its original application. It was after the Retailer Operations Division determined that Appellant did not meet the eligibility criteria. Appellant submitted the falsified documents during the administrative review process. That review was limited to determining whether or not the denial decision was in accordance with regulation. The review determined that the denial decision was correct and that Appellant did not normally carry sufficient varieties of food in the dairy staple food category.

The USDA holds that the business integrity of a firm is critically important to the effective operation of SNAP. Therefore, the criteria outlined in the regulations focus on the business integrity and reputation of the owners, officers, and managers of firms seeking SNAP authorization or reauthorization.

The regulations have clearly set out the position of USDA with regard to the business integrity of participating retailers. If the matter violates the provisions of 7 CFR § 278.1(b)(3), action to deny an application must be taken accordingly. Therefore, the Appellant's request to overturn the one-year denial cannot be granted.

CONCLUSION

The documentation in the case record clearly shows that the Appellant store owner was criminally convicted of a weapons violation on June 14, 2010. Based on the analysis above and considering the critical importance of a firm's business integrity in SNAP, it is the determination of this review that the authorization of the Appellant firm would not further the purposes of the program. Therefore, the decision by the Retailer Operations Division to deny the authorization of Imagine Multi Services to participate as a retailer in SNAP is sustained.

In accordance with 7 CFR § 278.1(k)(3)(vi), the Appellant firm shall not be eligible to reapply for SNAP participation for a minimum period of one year from November 1, 2017, which is the effective date of the denial.

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, 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.

Mary Kate Karagiorgos
Administrative Review Officer

April 5, 2018