

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

**Jalao Deli,**

**Appellant,**

**v.**

**Case Number: C0198870**

**Retailer Operations Division,**

**Respondent.**

**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 Retailer Operations Division to deny the application of Jalao Deli (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(b)(1), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it denied the application of Appellant to participate in SNAP in a letter dated March 9, 2017.

**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**

In a letter dated March 9, 2017, the Retailer Operations Division denied the application of Appellant to participate as an authorized retailer in SNAP because the firm is not a retail food store as defined by the SNAP regulations. Specifically, the denial letter states that firms that have more than 50 percent of their total gross sales in hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption either for carryout or on-premises consumption and requires no additional preparation, are not eligible to participate as retail food stores. The letter states the firm is primarily a restaurant based on information provided Appellant’s application and the contractor’s store visit report dated January 19, 2017. As the firm failed to meet the

eligibility criteria for approval, 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 Section 9 of the Food and Nutrition Act of 2008, as amended.

In a letter dated March 21, 2017, Appellant appealed the Retailer Operations Division decision and requested an administrative review of this action. The appeal was granted.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving by a clear preponderance of the evidence that the administrative action 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 argument 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(k)(1) establishes the authority upon which the application of any firm to participate in SNAP may be denied if it meets the definition of an ineligible firm.

7 CFR § 278.1(k)(1) references 7 CFR § 278.1(b)(1)(iv) which reads, in part:

Firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross retail sales in hot and/or cold prepared foods not intended for home preparation and consumption, shall not qualify for participation as retail food stores ... . This includes firms that primarily sell prepared foods that are consumed on the premises or sold for carryout.

The definition of retail food store at 7 CFR § 271.2 states, in part:

Entities that have more than 50 percent of their total gross retail sales in hot and/or cold prepared, ready-to- eat foods that are intended for immediate consumption either for carry-out or on-premises consumption, and require no additional preparation, are not eligible for SNAP participation as retail food stores.

Section 9 of the Food and Nutrition Act of 2008, as amended, states in part:

A retail food store or wholesale food concern that is denied approval to accept and redeem benefits because the store or concern does not meet criteria for approval ... may not, for at least 6 months, submit a new application to participate in the program.

## **APPELLANT'S CONTENTIONS**

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

- Appellant is not a restaurant;
- The previous owner was SNAP authorized;
- SNAP participants are requesting that the store be authorized;
- Lack of authorization is resulting in lower sales; and,
- The firm sells a variety of staple foods.

The preceding may represent only a brief summary of Appellant's contentions.

## **ANALYSIS AND FINDINGS**

A review of the ROD case file supported Appellant was a retail food store. In addition, the store visit documentation indicates that the store carried sufficient qualifying staple foods on a continuous basis to meet Criterion A. 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**

A review of the evidence in this case supports that it is more likely true than not true that Appellant is a retail store. The determination by the Retailer Operations Division to deny the application of Jalao Deli to participate as an authorized SNAP retailer is reversed. The application must be approved if the firm is otherwise eligible for program authorization under all other applicable provisions and requirements of program regulations and 7 U.S.C. 2018 (b)(7)(e).

## **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

April 13, 2017