

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

Joe's Corner Store,

Appellant,

v.

Case Number: C0218566

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to permanently disqualify Joe's Corner Store ("Appellant") from participating as an authorized retailer in the Supplemental Nutrition Assistance Program.

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) § 278.6(e)(1), in its administration of Supplemental Nutrition Assistance Program (SNAP) when it permanently disqualified Appellant from participating in SNAP on October 7, 2019.

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 September 11, 2019, the Retailer Operations Division charged Appellant with providing false information on an application for SNAP authorization. This letter of charges states, according to Section 278.6(e)(1) of the SNAP regulations, the sanction for providing false information is permanent disqualification. Specifically, the Retailer Operations Division (ROD) stated the application avowed the following:

- 1) No owners were previously involved in SNAP violations;

- 2) No one working in the firm was employed at a store that was disqualified from SNAP; and,
- 3) No owners are related to an owner that was disqualified from SNAP.

The ROD stated 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the cousin of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and was involved in trafficking that occurred at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) store (Joe's Corner Store) prior to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) permanent disqualification.

Appellant replied to the ROD's charges in writing. The record reflects that the ROD received and considered the information provided prior to making a determination. The ROD determined that Appellant's contentions did not outweigh the evidence that the Appellant provided false information on a SNAP application.

The ROD issued a determination letter dated June 16, 2012. This letter informed Appellant that it was permanently disqualified from participation as an authorized retailer in SNAP in accordance with 7 CFR § 278.6(e)(1)(iii), because Appellant provided false information on an application for SNAP authorization

On October 10, 2019, 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 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(e)(1) establishes the authority upon which a firm may be permanently disqualified from participating in SNAP because the firm's application contains false information of a substantive nature.

7 CFR § 278.6(e)(1) states, in part:

FNS . . . shall [d]isqualify a firm permanently if . . . [i]t is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to . . . ownership of the firm

7 CFR § 278.1(k) states, in part:

FNS shall deny the application of any firm if it determines that . . . The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3)

APPELLANT'S CONTENTIONS

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

- Appellant denies the allegations.
- Appellant requests a Civil Money Penalty.
- The affidavit mentioned in the charge letter was not part of Appellant's application.
- As the USDA already possessed relevant information regarding the disqualification of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the affidavit did not contain information of a substantive nature that could affect the eligibility of Appellant.
- A three-year disqualification is a more appropriate penalty.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

ANALYSIS AND FINDINGS

As to Appellant's denial of violations, this review examines the relevant information regarding the determination. Once the ROD establishes a violation occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that the permanent disqualification should be reversed. If this is not demonstrated, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Application Included False Information

Appellant argued the affidavit mentioned in the charge letter was not part of Appellant's application. Appellant also contends that as the USDA already possessed relevant information regarding the disqualification of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the affidavit did not contain information of a substantive nature that could affect the eligibility of Appellant. In accordance with regulation, each SNAP-authorized firm is required to undergo a periodic reauthorization process to determine whether or not the firm still meets eligibility requirements. This is consistent with 7 CFR § 278.1(a) which states, in part:

Application. Any firm desiring to participate or continue to be authorized in the program shall file an application as prescribed by FNS. Such an application shall contain information which will permit a determination to be made as to whether such an applicant

qualifies, or continues to qualify, for authorization under the provisions of the program....

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and his firm were permanently disqualified on August 7, 2007. The evidence supports that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the cousin of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was involved in in trafficking that occurred at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) store, and provided false answers to questions concerning these topics in an affidavit submitted during the reauthorization process. That this information was discovered during the reauthorization process, rather than at the time of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) initial application, has no bearing on validity of ROD's determination. This information is of a substantial nature and concerns eligibility requirements that could have affected Appellant's authorization. The lesser, three-year penalty for providing false information regarding less significant matters, such as store name or address, is not applicable.

Appellant requests a civil money penalty. A civil money penalty is not available for firms who are permanently disqualified for providing false information of a substantive nature.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to permanently disqualify Joe's Corner Store from participating as an authorized retailer in SNAP is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

RICH PROULX
ADMINISTRATIVE REVIEW OFFICER

January 6, 2020