

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

L & F Mini Mart, Inc,

Appellant,

v.

Case Number: C0215373

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to withdraw the authorization of L & F Mini Mart, Inc. (L & F Mini Mart or Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) for a period of three years.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3) and 7 CFR § 278.1(l)(1)(iv) in its administration of the SNAP when it withdrew the authorization of the Appellant to participate as an authorized SNAP retailer for a period of three years.

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

In a letter dated December 19, 2018, the Retailer Operations Division informed Appellant that its application to participate as an authorized retailer in the SNAP was being withdrawn, in accordance with 7 CFR § 278.1(b)(3) and 7 CFR § 278.1(l)(1)(iv) because the firm attempted to circumvent a period of disqualification. Specifically, the Retailer Operations Division stated that “[a]n ineligible person who has been permanently disqualified from participating in SNAP is identified as having a financial and operational interest in this firm.”

The Retailer Operations Division determined that Appellant's owner is married to a previously permanently disqualified owner who has a financial and operational interest in L & F Mini Mart.

On January 29, 2019, Appellant, through its accountant, appealed the Retailer Operations Division decision and requested an administrative review of this action. The appeal was granted.

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 statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2018 and 278 of Title 7 of the Code of Federal Regulations (CFR).

7 CFR § 278.1(b)(3) 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 as follows . . . (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(l) states, in part: "FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons . . . (iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings"

7 CFR § 278.1(k)(3) states, in part, "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... (iii) Firms for which evidence exists of an attempt to circumvent a period of disqualification . . . shall be denied for a period of three years from the effective date of denial;

APPELLANT'S CONTENTIONS

In the administrative review request postmarked January 29, 2019, Appellant provided the following summarized contentions, in relevant part:

- The listed owner is 100% owner of L & F Mini Mart.

- 5 USC § 552 (b)(6) & (b)(7)(C) has no ownership over this business.

In support of its contention, Appellant provided a copy of the annual report listing the owner as the president, treasurer, secretary and director, which was filed on January 28, 2019.

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

Owners or officers of a previously disqualified store whose sanction has not been satisfied are not eligible to apply for SNAP authorization as the owner, officer or manager of another store. It is common for disqualified store owners to attempt to remain financially or operationally interested in a firm by selling a store to a relative or having a relative apply for authorization at a new location different from where he/she was authorized. This practice is known as "circumvention" and is not allowed under SNAP regulations. The December 19, 2018, determination letter states that the withdrawal was based on an ineligible person who has been permanently disqualified from participating in SNAP having a financial and operational interest in this firm. This determination was based on the family relationship between the listed owner and her husband, 5 USC § 552 (b)(6) & (b)(7)(C), a permanently disqualified owner.

The mere fact that there is a relationship with a permanently disqualified owner is not conclusive evidence of an attempt at circumvention. The Retailer Operations Division must consider additional evidence and circumstances beyond whether or not the owner is related to a permanently disqualified owner.

During the reauthorization process a store visit was conducted on October 10, 2018. 5 USC § 552 (b)(6) & (b)(7)(C) indicated that he was the manager of the store. The Department of Licensing and Regulatory Affairs Online Filing System annual report for L & F Mini Mart filed in 2018 lists 5 USC § 552 (b)(6) & (b)(7)(C) as both the Treasurer and the Secretary of the firm. In addition, the State of Michigan Motor Fuels Retail Outlet License for L& F Mini Mart Inc. was issued to 5 USC § 552 (b)(6) & (b)(7)(C) on July 16, 2018. The record indicates that the couple resides at the same location and file taxes jointly. Therefore, by a preponderance of evidence, 5 USC § 552 (b)(6) & (b)(7)(C) has both a financial and operational interest in this firm which is effectively circumventing his previous permanent SNAP disqualification imposed in 2004.

Appellant submitted its annual report filed on January 28, 2019, which indicates that 5 USC § 552 (b)(6) & (b)(7)(C) has been removed as having any active roles in the company. However, this was likely done in response to the disqualification letter and is not sufficient evidence to reverse the determination.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to withdraw the authorization of L & F Mini Mart to participate as a retailer in SNAP is sustained. Under the provisions of 7 CFR § 278.1(k)(3)(iii), withdrawal of a firm's authorization to participate as a retailer in SNAP is for three years. In accordance with the Food and Nutrition Act of 2008, as amended, and the associated regulations, this withdrawal action shall become effective 30 days after delivery of this letter.

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

June 11, 2019