

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

London Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0224931

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 (hereinafter Retailer Operations) to withdraw the authorization of London Market (hereinafter Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) Part 278, when it withdrew the authorization of Appellant.

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

FNS requires stores be reauthorized on a set schedule. The record shows that Retailer Operations sent Appellant a letter dated November 7, 2019, as part of the reauthorization process, with an enclosed FNS-252-R, SNAP Reauthorization Application for Stores. Retailer Operations requested Appellant review the information on the pre-printed form, correct as necessary, sign and date, and return it to FNS. Retailer Operations requested that any new business licenses or documentation of ownership changes also be submitted, if any. The letter informed Appellant that failure to submit the documentation within 30 days may result in its

withdrawal of authorization to accept SNAP benefits. The record reflects that Appellant never responded to this letter.

On December 10, 2018, Retailer Operations sent Appellant a letter withdrawing its authorization for failure to cooperate as the firm did not provide any of the documentation requested. FNS informed Appellant that a retail food store will be required to undergo a periodic reauthorization determination by updating any and all of the information on the firm's application form and/or by allowing representatives of FNS to obtain this information during a store visit. In accordance with SNAP Regulations, 7 CFR § 278.1(n), FNS may withdraw the authorization of any firm which fails to cooperate in the reauthorization process. Failure to cooperate may include non-response to a request for information, failure to submit information timely, or submission of unclear or incomplete information in response to a request.

By letter dated December 17, 2018, Appellant requested an administrative review of Retailer Operations' decision to withdraw the firm's SNAP authorization. The request for administrative review was granted and implementation of the withdrawal has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means 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 7 CFR § 278. In particular, 7 CFR § 278.1(n) establishes the authority upon which FNS shall withdraw the SNAP authorization of any firm that fails to cooperate in the reauthorization process.

7 CFR § 278.1(a) states in relevant part: "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 application qualifies, or continues to qualify, for authorization, under the provisions of the program. FNS may require that a retail food store or wholesale food concern be visited to confirm eligibility for program participation prior to such store or concern being authorized or reauthorized in the program. Required visits shall be conducted by an authorized employee of the Department..."

7 CFR § 278.1(b) states in relevant 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. 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 in relevant part: “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.”

7 CFR § 278.1(n) states in relevant part: “At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm’s application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm’s approval to participate in the program.”

APPELLANT’S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- I received a letter stating that FNS has determined to withdraw my firm due to the fact that the information or documentation requested was not received. I did not receive a letter requesting information.
- Please let me know what required documents are needed to continue SNAP. I will submit them as soon as possible.

The preceding may represent only a brief summary of Appellant’s contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

ANALYSIS AND FINDINGS

Along with the administrative review request, Appellant provided a copy of Retailer Operations’ Determination letter, dated December 10, 2019, and highlighted the reference of the November 7, 2019 letter.

To date, Appellant has not provided an application for SNAP reauthorization. Therefore, a preponderance of the evidence indicates that the withdrawal decision is appropriate.

CONCLUSION

Based on the analysis above, the decision by Retailer Operations to withdraw SNAP authorization of Appellant is sustained. The regulations clearly state that a firm must cooperate in the periodic reauthorization process. There is no exception to this requirement. However, this decision does not impact the firm’s ability to reapply for SNAP authorization at any time. Appellant may file a new application for participation in SNAP at any time subsequent to receipt

of this correspondence. Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and 7 CFR § 279.7 address 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 Appellant's owner resides, 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 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.

KIM DAMERON
ADMINISTRATIVE REVIEW OFFICER

February 6, 2020