

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review  
Alexandria, VA 22302**

Low Down’s,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>Case Number: C0188180</b>
	)	
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 there is sufficient evidence to support a finding that the initial decision by the Retailer Operations Division (hereinafter “ROD”) to permanently deny the application of Low Down’s to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed.

**ISSUE**

The issue accepted for review is whether ROD took appropriate action, consistent with 7 CFR § 278.1(b)(3)(i)(A) and § 278.1(k)(3)(i), in its administration of the SNAP when it permanently denied the authorization of Low Down’s on January 27, 2016.

**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.”

**STATEMENT OF THE CASE**

The record reflects that on November 11, 2015, 7 U.S.C. 2018 (b)(6) & (b)(7)(c), signed as Owner of Low Down’s an application for authorization to participate in the SNAP. The Appellant was subsequently advised in a letter dated January 27, 2016 of the Department’s decision to deny the firm’s authorization to participate in the SNAP. The regulatory basis given for the denial were 7 CFR § 278.1(b)(3)(i)(A), § 278.1(b)(3)(i)(C), and § 278.1(k)(3)(i). In a letter received by FNS on February 8, 2016, the Appellant requested an administrative review of this action. The request was granted.

## STANDARD OF REVIEW

In appeals of adverse actions, an Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That means an Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might 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, at 7 U.S.C. § 2018 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 218, 7 CFR § 271.2, § 278.1(b)(3) and § 278.1(k)(3) establish the authority upon which a retail food store's or wholesale food concern's authorization to participate in the SNAP may be denied on the basis of a lack of business integrity. 7 USC 2018 (b)(7)(e).

7 CFR § 271.2 states, *inter alia*:

*Retail Food Store* means: An establishment or house-to-house trade route that sells food for home preparation and consumption normally displayed in a public area, and either offers for sale, on a continuous basis, a variety of foods in sufficient quantities in each of the four categories of staple foods including perishable foods in at least two such categories (Criterion A) . . . or has more than 50 percent of its total gross retail sales in staple foods (Criterion B) . . . Entities 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, and require no additional preparation, are not eligible for SNAP participation as retail food stores . . .

7 CFR § 278.1(b)(3) states, *inter alia*:

FNS shall consider all of the following:

- (i) Conviction of or civil judgment against the owners, officers or managers of the firm for:
  - (A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
  - (B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims or obstruction of justice; or
  - (C) Violation of Federal, State, and/or local consumer protection laws relating to alcohol, tobacco, firearms, controlled substances and/or gaming licenses.

7 CFR § 278.1(k)(3) states, *inter alia*:

FNS shall deny the application of any firm if it determines that 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 time:

- (i) Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of the owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently.

Additionally, in interpretation of the regulations, relevant policy provides, *inter alia*, that:

The following situations warrant denial of authorization:

- Criminal conviction records reflecting on the honesty or integrity of the owners, officers, managers, or other personnel of the applicant firm.
- Judicial determinations in civil litigation adversely reflecting on the integrity of the owners, officers, managers, or other personnel of the applicant firm.
- Any other evidence reflecting on the business integrity or reputation of the applicant firm.

### SUMMARY OF THE CHARGES

The owner of Low Down's, [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], signed an application to participate in the SNAP on November 11, 2015. The record reflects that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], was charged with felony drug possession and distribution where he was found guilty by the Jefferson County court, in violation of Code Section 2925.11 and 2925.03. Specifically, the Appellant was indicted on February 7, 2001 (March 17, 2001---Judgment Entry of Sentence) and convicted of a felony which was obtaining, possessing, or using a controlled substance (cocaine). In addition, the Appellant was indicted on February 5, 2003 (March 10, 2003---Judgment Entry of Sentence) and convicted of a felony which was obtaining, possessing, or using a schedule II controlled substance (crack cocaine).

Also, the Appellant was indicted on February 7, 2007 (March 28, 2007---Judgment Entry of Sentence) and convicted of a felony which was knowingly preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing marijuana (Schedule I controlled substance). As noted in the foregoing, the SNAP regulations at 7 CFR § 278.1(b)(3)(i) provide that certain convictions, reflecting a lack of business integrity, warrant denial of a firm's application to participate in the SNAP.

In a letter dated January 27, 2016, the Retailer Operations Division informed the Appellant that the application of Low Down's to participate as an authorized retailer in the SNAP was denied upon determination that the Appellant lacks the necessary business integrity to further the purposes of the SNAP and, in accordance with 7 CFR § 278.1(b)(3)(i)(A), § 278.1(b)(3)(i)(C), and § 278.1(k)(3)(i), its application to participate was permanently denied.

It is important to note that when the Retailer Operations Division sent the January 27, 2016 Denial Letter to the Appellant, it noted that the Appellant had been charged and found guilty by the Jefferson County court of two counts of drug possession under Ohio Revised Code 2925.11. ROD indicated that the drug possession convictions are a violation of 7 CFR § 278.1(b)(3)(i)(C) of the SNAP regulations. However, upon further investigation by the Administrative Review Officer, it was determined that the two drug possession convictions and the accompanying regulatory citation 7 CFR § 278.1(b)(3)(i)(C) are not relevant to the subject case and do not warrant a SNAP authorization denial. However, the Appellant's drug distribution conviction (under Ohio Revised Code 2925.03) is in violation of the SNAP business integrity rules under 7 CFR § 278.1(b)(3)(i)(A) and, therefore, warrants a permanent SNAP authorization denial.

### **APPELLANT'S CONTENTIONS**

In his written request for review, the Appellant provided information in which it was argued that he has served his time for the crimes he committed; therefore, it is not fair that he is not being given a chance to participate in the SNAP.

The preceding may represent only a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

With regards to the Appellant's contention, 7 CFR § 278.1(b)(3)(i)(A) is specific in its requirement that "FNS shall deny the authorization of any firm from participation in the program . . . based on consideration of information regarding the business integrity and reputation of the firm as follows . . . Conviction of or civil judgment against the owners, officers, or managers of the firm for . . . Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction". The Appellant indicated on the firm's SNAP Retailer Application that he (i.e., owner of Low Down's) had been convicted of a crime after June 1, 1999 (i.e., indicted on February 7, 2007 and Judgment Entry of Sentence on March 28, 2007) which included the conviction of a felony for knowingly preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing marijuana (a Schedule I controlled substance). Furthermore, 7 CFR § 278.1(k)(3)(i) establishes the authority upon which the application of any firm to participate in the SNAP may be denied because "records of criminal conviction or civil judgment exist that reflect on the business integrity of the owners, officers, or managers as stipulated in § 278.1(b)(3)(i)". It further states that such denials "shall be denied authorization permanently". The Appellant indicated on the firm's SNAP Retailer Application that he is the owner of Low Down's and that he had been convicted of distributing marijuana in 2007. The business integrity provisions of the SNAP regulations do not provide the agency with discretion for reducing the proposed authorization denial period, dismissing any action, or mitigating the impact of those actions on the basis of the seriousness of the violations, a lack of knowledge of the law, or other circumstances under which they occurred. If the

matter violates the provisions of Section 278.1(b)(3), action to deny must be taken accordingly.

### **CONCLUSION**

On the basis of the discussion above, it is the decision of the USDA that the initial decision to deny the application of Low Down's to participate in the SNAP is sustained. Denial of a firm's authorization to participate as an authorized retailer in the SNAP under the provisions of 7 CFR § 278.1(b)(3)(i)(A) and § 278.1(k)(3)(i) is permanent.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to 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 you reside or are 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

/S/

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

December 20, 2016  
DATE