

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

Main Street Deli & Grocery,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0244284

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that FNS’s Retailer Operations Division properly permanently denied the application of Main Street Deli & Grocery (hereinafter “Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it permanently denied the retailer application of Main Street Deli & Grocery.

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

The Appellant firm, Main Street Deli & Grocery, submitted its initial application to participate as a retailer in SNAP on August 30, 2020. This new application was required due to a change in ownership at the store that occurred in 2014 but had not been previously reported as required. According to documentation provided by the Appellant, the change in ownership from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) occurred on February 6, 2014. Since 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had not been previously associated as an owner at this location, a new SNAP application was required.

On September 8, 2020, FNS's Retailer Operations Division requested additional ownership information from the Appellant because Main Street Deli & Grocery is at the same location where a previous store, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), had been permanently disqualified from SNAP in 2011. The Retailer Operations Division requested a number of documents from the Appellant to verify current ownership and to prove that permanently disqualified persons were not involved in the operation of Main Street Deli & Grocery in any way. Requested documents included a notarized affidavit; business licenses; state business filings; articles of incorporation; bill of sale; property lease, bank account information; business and personal tax returns, etc.

In response to this request, the Appellant submitted most of the required documentation, but the Retailer Operations Division determined that some items were either missing or insufficient. Accordingly, on October 7, 2020, a new letter was sent to the Appellant asking for additional information. Records show that after receipt of the October 7 letter, the Appellant and the Retailer Operations Division had a number of telephone conversations which appeared to focus, in part, on the inadequacy of a letter from the firm's bank. According to the agency, the bank's letter did not properly specify who was authorized as a signer on the business account.

Ultimately, the deadline for providing clarifying information passed and on October 23, 2020, the application was withdrawn by FNS due to the Appellant's failure to provide sufficient information to make an eligibility determination.

On December 15, 2020, the Appellant started the process over by submitting a new SNAP application. It is the denial of this second application which is the issue under review. Once again, the Retailer Operations Division requested a large number of documents to verify firm ownership and to ensure that permanently disqualified persons were not involved in the business.

After reviewing the evidence provided by the Appellant during the second application process, the Retailer Operations Division concluded that the Appellant was untruthful in its claim that the previously disqualified 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was not affiliated with the store. This conclusion was based on several documents provided by the Appellant. For example, the Appellant submitted a notarized affidavit dated January 6, 2021 in which the Appellant marked "No" to each of the following statements:

- Persons who were owners, managers, or employees of any firm that is or has been disqualified from SNAP or WIC are working in this store (in any capacity).
- Persons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store.
- One or more owners or managers of this firm are related by birth or marriage to an owner or manager of a firm that is or has been disqualified from SNAP or WIC.

The Retailer Operations Division determined that the Appellant's "No" response to each of the above statements was false. For instance, a letter from the Appellant dated January 14, 2021 indicates that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is not only a part-time employee at the store,

but is responsible for ordering inventory. Further, a Wells Fargo bank document, dated March 14, 2014 lists 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as one of two authorized signers on the business account. This document also lists her position/title as “owner.” Finally, it appears that the Appellant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is 5 U.S.C. § 552 (b)(6) & (b)(7)(C)’s daughter, and agency records as well as documentation provided by the Appellant show that both 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) live at the same address. Agency records further show that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is leasing the business and that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the landlord. According to the Retailer Operations Division, these pieces of evidence suggest that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) remains involved in the store to a considerable degree, and has a financial or operational interest in the business.

In a letter dated February 12, 2021, the Retailer Operations Division informed the Appellant that its SNAP application was permanently denied because the firm knowingly submitted a SNAP application that contained false information of a substantive nature. The letter stated that the action was taken in accordance with regulations at 7 CFR § 278.1(k)(4), § 278.1(o), and § 278.6(e)(1)(iii).

In a letter postmarked February 19, 2021, the Appellant requested an administrative review of the Retailer Operations Division’s decision. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as an application denial, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 matter asserted is more likely true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018 and § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) and (o) provide the authority upon which FNS shall deny the authorization of any firm that knowingly submits an application containing false or misleading information.

7 U.S.C. § 2021(b)(4) states, in part:

...[A] disqualification under subsection (a) shall be...for a reasonable period of time to be determined by the Secretary, including permanent disqualification, on the knowing submission of an application for the approval or reauthorization to accept and redeem coupons that contains false information about a substantive matter that was a part of the application.

7 CFR § 278.1(o) reads:

Applications containing false information. The filing of any application containing false or misleading information may result in the denial of approval for participation in the

program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.

7 CFR § 278.1(k) reads, in relevant part:

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

(4) 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).

7 CFR § 278.6(e) states, in relevant part:

FNS shall take action as follows against any firm determined to have violated the Act or regulations.... The FNS regional office shall:

(1) Disqualify a firm permanently if:

(iii) It 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:

(F) Ownership of the firm...

(H) SNAP history, business practices, business ethics... when the store did (or will) open for business under the current ownership...or

(I) Any other information of a substantive nature that could affect the eligibility of a firm.

APPELLANT'S CONTENTIONS

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

- Appellant requests reconsideration of FNS's denial determination because it did not provide false information.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) does not have any active role in the business, whether behind the counter or in other activities. The store owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), conducts all activities.
- The Appellant may have 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as a signer on the bank account, but this is for emergency purposes only, and she never signs any checks. If FNS does not want her on the account, the Appellant can remove her.
- The EBT machine is very important to this neighborhood business. The store will not survive without it. The coronavirus pandemic is already hurting the business very much. The Appellant does not want to have to sell the store.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a final decision, full attention was given to all contentions and evidence presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or invalidate the determination of the Retailer Operations Division. This review is limited to consideration of the relevant facts as they existed at the time the agency rendered its decision.

After reviewing all available information in this case, this review finds in favor of the Retailer Operations Division. The key issue in this case is whether or not the Appellant knowingly provided false information as part of its December 15, 2020, SNAP application. After submitting its application, the Appellant provided a notarized affidavit dated January 6, 2021, which was signed by store owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C). FNS's purpose in requiring the affidavit was twofold: to determine 1) whether or not any of the present owners or managers were owners or managers of any other store that had been previously disqualified from SNAP; and 2) whether or not any persons who were disqualified from SNAP as a retailer or as a participant are involved in or affiliated with the store in any way.

The affidavit contains the following six statements:

1. One or more owners or managers of this firm has been involved in prior Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Nutrition Program for Women, Infants, and children (WIC) violations
2. One or more owners or managers of this firm has had ownership in or was a manager of a business that is or has been disqualified from SNAP or WIC.
3. Persons who were owners, managers, or employees of any firm that is or has been disqualified from SNAP or WIC are working in this store (in any capacity).
4. Persons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store.
5. Persons who committed an intentional program violation (IPV) as a SNAP or WIC recipient are working in this store (in any capacity).
6. One or more owners or managers of this firm are related by birth or marriage to an owner or manager of a firm that is or has been disqualified from SNAP or WIC.

Next to each statement, the affiant is instructed to mark "Yes" or "No." The affiant who signs the affidavit acknowledges that if FNS becomes aware that anyone involved in a previous SNAP or WIC program violation is associated with the business in any manner, FNS may institute action to permanently deny or disqualify all owners for falsification of a SNAP application.

In the present case, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) signed the affidavit after marking "No" to all six questions above. However, it is clear to this review that a "no" answer is a false response on three of the statements, specifically Nos. 3, 4, and 6. The record clearly shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a previously permanently disqualified store owner, is working in the store on at least a part-time basis. Evidence further shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has access to the firm's bank account, which strongly suggests that she has a financial or ownership interest in the store. The record also clearly indicates that not only is 5 U.S.C. § 552 (b)(6) & (b)(7)(C) related by birth to 5 U.S.C. § 552 (b)(6) & (b)(7)(C), but as of the date of the

SNAP application, both appeared to live at the same address. This is confirmed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s photo identification and tax documentation as well as by records already in FNS's possession from the time when 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was an authorized SNAP retailer. And the fact that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the landlord in this situation suggests that she has a much stronger connection to the current business than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is letting on.

While not specifically mentioned by the Retailer Operations Division, one additional piece of documentation discovered by this review adds weight to the agency's decision: the firm's business license from the Borough of Keansburg, dated January 17, 2020. This license lists the owner of the business as "5 U.S.C. § 552 (b)(6) & (b)(7)(C)." As far as this review can determine, the only "5 U.S.C. § 552 (b)(6) & (b)(7)(C)" in this case is 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Perhaps 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was simply an error by the municipal clerk who signed the license, but this review finds that to be unlikely. Instead, it is further evidence that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is much more than a part-time employee with no active role in the business, as the Appellant has claimed.

The Appellant has previously acknowledged that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) works in the store on a part-time basis and concedes that she is listed as an authorized signer on the bank account, but claims that this is for emergency purposes only, and that she never signs any checks. The Appellant further states that if FNS does not want her on the bank account, she can be removed.

However, the time for removing 5 U.S.C. § 552 (b)(6) & (b)(7)(C) from store affiliation has passed. Because of her prior permanent disqualification from SNAP, she should not have been materially associated with 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s store in any way if the Appellant wanted to be authorized as a SNAP retailer. The Appellant cannot claim on an affidavit that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is not involved in the store in any capacity while simultaneously arguing that her store involvement is on a part-time basis or that her status as an authorized signer on the bank account is for emergency purposes only. Either the notarized affidavit is accurate or it is not. In this case, the preponderance of the evidence suggests that 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s interest in the store is much more inclusive than the Appellant originally asserted and shows that at least three of the Appellant's answers on the affidavit were false, as they misrepresented actual circumstances related to store personnel and, potentially, store ownership. In accordance with SNAP regulations, such falsification is a substantive issue that could affect the eligibility of the firm and warrants permanent denial in accordance with regulations at 7 CFR § 278.1(o), (k)(4), and § 278.6(e)(1)(iii).

As to the Appellant's contention that SNAP authorization is very important to the business and its claim that the store will not survive without it, such contentions have no bearing in this matter. A firm may only participate in SNAP if it meets eligibility requirements and complies with regulations regarding the submission of truthful and accurate information.

CONCLUSION

Based on a preponderance of the evidence, it is the determination of this review that the Appellant firm knowingly filed a SNAP application containing false or misleading information of a substantive nature. In accordance with 7 CFR § 278.1(o), (k)(4), and § 278.6(e)(1)(iii), the decision by the Retailer Operations Division to permanently deny the application of Main Street Deli & Grocery, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

JON YORGASON
Administrative Review Officer

April 8, 2021