

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

Martinez Meats,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0204290

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the Retailer Operations Division properly denied the application of Martinez Meats to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). As a result, the firm may not reapply for SNAP authorization for a period of one year from the date of denial.

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 denied the retailer application of Martinez Meats.

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, Martinez Meats, originally applied to participate as a retailer in SNAP on July 21, 2017. According to the application, the store was opened for business under the current ownership on July 13, 2017.

On the Appellant's SNAP application, Question #14 asks, "Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?" The Appellant marked "yes," and explained that 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In a letter dated September 13, 2017, the Retailer Operations Division requested additional information from the Appellant in regard to the criminal convictions. The letter requested copies of all court documents and asked for information as to whether fines were assessed and paid and if any licenses were suspended as a result of the convictions.

In response to this letter, the Appellant owner provided the Retailer Operations Division with the requested documentation. This appears to have been received by the agency on October 4, 2017.

After reviewing the Appellant's documentation and consulting with FNS's policy division, the Retailer Operations Division determined that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) constituted a lack of business integrity in accordance with SNAP regulations at 7 CFR § 278.1(b)(3)(vi). As a result, the Appellant's application was denied for one year pursuant to 7 CFR § 278.1(k)(3)(vi). A letter of denial was sent to the Appellant on October 25, 2017, and was received on November 2, 2017.

In a letter postmarked November 6, 2017, the Appellant requested an administrative review of the Retailer Operations Division's decision to deny the firm's SNAP application. 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 to be 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 promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) establishes the authority upon which FNS shall deny the authorization of any firm applying for participation in SNAP if it fails to meet established eligibility requirements.

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

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

(3) 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:

(vi) Firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm as specified in § 278.1(b)(3)(vi) shall be denied for a period of one year from the effective date of denial.

7 CFR § 278.1(b)(3) states, in relevant part:

*(3) **The business integrity and reputation of the applicant.** 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:*

(vi) Commission of any other offense indicating a lack of business integrity or business honesty of owners, officers or managers of the firm that seriously and directly affects the present responsibility of a person.

APPELLANT'S CONTENTIONS

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

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- Appellant hopes that FNS will take this information into consideration and lift the one-year denial and reconsider the firm for SNAP participation.

In support of these contentions, the Appellant provided a copy of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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

ANALYSIS AND FINDINGS

Business Integrity

It is important to clarify for the record that the purpose of this review is to either validate or invalidate the earlier determination made by the Retailer Operations Division. Thus, the decision made by the administrative review officer will be based on the relevant facts and circumstances as they existed at the time the Retailer Operations Division rendered its decision. This review is limited to determining whether or not the denial decision was made in accordance with existing regulation.

The primary issue under consideration is whether or not the Appellant firm has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of the Supplemental Nutrition Assistance Program.

The USDA holds that the business integrity of a firm is critically important to the effective operation of SNAP. Therefore, the criteria outlined in the regulations focus on the business integrity and reputation of the owners, officers, and managers of firms seeking SNAP authorization or reauthorization. Prior criminal convictions reflect on the ability of a firm to effectuate the purposes of SNAP and abide by the rules governing the program.

As noted earlier, Question #14 of the SNAP application asks, “Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?” The Appellant in this case marked “yes,” and stated, 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

In accordance with 7 CFR § 278.1(b)(3)(vi), FNS policy officials have determined that such a violation “seriously and directly affects the present responsibility” of the owner. This review has no authority to reinterpret the regulation in any other way. As such, the decision to deny the application for one year must be upheld.

The Appellant has argued that 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

The regulations have clearly set out the position of USDA with regard to the business integrity of participating retailers. If the matter violates the provisions of 7 CFR § 278.1(b)(3), action to deny an application must be taken accordingly. Therefore, the Appellant’s request to overturn the one-year denial cannot be granted.

CONCLUSION

The documentation in the case record clearly shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the analysis above and considering the critical importance of a firm’s business integrity in SNAP, it is the determination of this review that the authorization of the Appellant firm would not further the purposes of the program. Therefore, the decision by the Retailer Operations Division to deny the authorization of Martinez Meats to participate as a retailer in SNAP is sustained.

In accordance with 7 CFR § 278.1(k)(3)(vi), the Appellant firm shall not be eligible to reapply for SNAP participation for a minimum period of one year from November 1, 2017, which is the effective date of the denial.

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.

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

January 16, 2018