

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

**Maryland Liquor Inc,**

**Appellant,**

**v.**

**Case Number: C0203812**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to deny the application of Maryland Liquor Inc (hereinafter Appellant) to participate in the Supplemental Nutrition Assistance Program (SNAP) for a period of one year.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(b)(3)(ii) and 278.1(k)(3)(ii), when it denied the application of Appellant to participate in SNAP for a period of one year on October 18, 2017.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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 October 18, 2017, the Retailer Operations Division informed Appellant that its request to participate as an authorized retailer in SNAP was denied for a period of one year. Specifically, the letter from the Retailer Operations Division to Appellant stated the following, in relevant part:

“Federal regulations at 7 CFR 278.1(k)(3) require FNS to deny the authorization of any firm it determines lacks the necessary business integrity and reputation, as specified at 7 CFR 278.1(b)(3)(ii), to further the purposes of SNAP. Specifically, firms for which Administrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which a firm is removed from such a program, or the firm is not removed from the program but FNS determines a pattern exists (3 or more instances) evidencing a lack of business integrity on the part of the owners, officers or managers of the firm, shall be denied authorization for a period of one year. Based on information in the record, FNS has determined that . . . , [the] owner of Maryland Liquor Inc., lacks the necessary business integrity to further the purposes of SNAP. Therefore, as stipulated in 7 CFR 278.1(k)(3) and 7 CFR 278.1(b)(3)(ii) of the SNAP regulations, your application to participate in SNAP is denied for a period of one year.”

By letter dated October 30, 2017, Appellant, through counsel, appealed the Retailer Operations Division’s assessment and requested an administrative review of this action. The appeal was granted. This request also included a Freedom of Information Act (FOIA) request that the Agency responded to by correspondence dated November 28, 2017, that was received by counsel on November 29, 2017. Subsequent correspondence dated December 19, 2017, and January 11, 2018, was received from Appellant.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

### **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.1(b)(3)(ii) and 278.1(k)(3)(ii) establish the authority upon which an application to participate as a SNAP retailer may be denied for a for a period of one year if FNS determines a pattern exists (three or more instances) evidencing a lack of business integrity on the part of the owners, officers, or managers of the firm.

7 U.S.C. §2018 Sec. 9 (a)(1) states, inter alia: Regulations issued pursuant to this Act shall provide for the submission of applications for approval by retail food stores and wholesale food concerns which desire to be authorized to accept and redeem benefits under the supplemental nutrition assistance program and for the approval of those applicants whose participation will effectuate the purposes of the supplemental nutrition assistance program. In determining the qualifications of applicants, there shall be considered among such other factors as may be appropriate, the following: (A) the nature and extent of the food business conducted by the

applicant; (B) the volume of benefit transactions which may reasonably be expected to be conducted by the applicant food store or wholesale food concern; (C) whether the applicant is located in an area with significantly limited access to food; and (D) **the business integrity and reputation of the applicant.**” [Emphasis added].

7 CFR §278.1(b)(3)(ii) 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: . . . (ii) Administrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which a firm is removed from such a program, or the firm is not removed from the program but **FNS determines a pattern exists (3 or more instances) evidencing a lack of business integrity on the part of the owners, officers or managers of the firm . . .**” [Emphasis added].

7 CFR §278.1(k)(3)(ii) states, in part, that, “Firms which have been officially removed from other Federal, State or local government programs through administrative action shall be denied for a period equivalent to the period of removal from any such programs; or, if the firm is not removed from the program, but **FNS determines a pattern (3 or more instances) exists evidencing a lack of business integrity on the part of the owners, officers or managers of the firm, such firm shall be denied for a one year period effective from the date of denial . . .**” [Emphasis added].

### APPELLANT’S CONTENTIONS

In the request for administrative review and in the subsequent correspondence, Appellant has stated as its position in the matter the following:

- It appears the one year disqualification arises due to a WIC suspension for a period of three years based on the pertinent SNAP regulations at 278.1(k)(3) and 278.1(b)(3)(ii). Appellant submits that the three year disqualification period assessed by WIC is sufficient disqualification and the imposition of an additional year by FNS is not authorized under either regulation;
- FNS records show that the store owner did not apply until after the three year suspension was completed. A plain reading of both regulations does not give FNS the right to tack on another disqualification period if the WIC State Agency already removed the retailer from the Program. 278.1(k)(3)(ii) allows a tacking on disqualification “if the firm is not removed from the program.” Since the retailer was removed by WIC for three years, FNS lacks the authority to determine whether a pattern of three or more instances is evidence of a lack of business integrity. The same language is found in 278.1(3)(ii). Therefore, FNS should not be able to tack on an additional disqualification beyond the WIC disqualification; and,
- There was no attempt by the store owner to hide the WIC suspension and he applied as a SNAP retailer upon completion of the disqualification period. Appellant requests the additional disqualification period be reversed.

Appellant submitted copies of the referenced parts of SNAP regulations, a copy of the store owner's SNAP retailer application, and a copy of the FNS rejection letter dated August 29, 2014, telling the owner that he cannot reapply until on or after May 6, 2017, when the SNAP disqualification period ended for another store he owned in support of these contentions.

The preceding may represent a 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**

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination of the Retailer Operations Division. This review is limited to a consideration of the relevant facts and circumstances that were at the basis of the Retailer Operation Division action at the time such action was made. The authorization of a store to participate in the SNAP must be in accord with the Act and the regulations, as amended; those requirements of law cannot be waived.

On October 18, 2017, the Retailer Operations Division denied Appellant's application to participate as a SNAP retailer for a period of one year under SNAP regulations at 278.1(b)(3)(ii) and 278.1(k)(3)(ii) as a result of repeated WIC Program violations that it determined evidence a lack of business integrity on the part of the owners, officers, or managers of the firm.

Appellant contends that since one of the three year WIC reciprocal disqualification was served as of May 16, 2017, the store owner is eligible to apply for authorization at another location without penalty. Appellant also states that based on its interpretation of 278.1(k)(3)(ii) and since the store owner was already removed from WIC/SNAP, FNS does not have the authority to tack an additional one year application denial on top of the three year disqualification.

SNAP regulations at 278.1(b)(3)(ii) and 278.1(k)(3)(ii) apply to the denial of authorization for firms that have applied for authorization as SNAP retailers based on the business integrity of the firm's owners, officers, or managers. In this case, the record shows that the firm's owner had three separate firms disqualified from the WIC program for three year periods due to serious program violations. Each of these firms subsequently received three year reciprocal disqualifications from the SNAP program and it is noted that only one of the three year disqualification periods has expired. Under SNAP regulations, the fact that the owner has had three or more firms removed from government programs evidences a pattern showing a lack of business integrity that requires any application for firms under his ownership be denied for a period of one year. The determination by the Retailer Operations Division to deny the application of Maryland Liquor Inc to participate in the SNAP for a period of one year is due to a lack of business integrity for the three previous disqualifications and is not dependent on whether the owner was still serving the disqualification periods for the three firms at the time of submitting his application for Maryland Liquor Inc.

The matter under review is the denial of a new application for a new firm and the three WIC disqualifications at three separate firms were correctly considered by the Retailer Operations Division when assessing the business integrity of the firm's owner and his application as the owner of Maryland Liquor Inc.

### **CONCLUSION**

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of Maryland Liquor Inc to participate as an authorized retailer in SNAP for a period of one year is sustained. Denial of a firm's application to participate in the SNAP under the provisions of 7 CFR § 278.1(b)(3)(ii) and 278.1(k)(3)(ii) warrants a denial for a period of one year.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint 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. This complaint, naming the United States as the defendant, 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.

ROBERT T. DEEGAN  
Administrative Review Officer

February 9, 2018