

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

**Meat Monsters,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0217192**

**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 withdrew the authorization of Meat Monsters (hereinafter “Appellant”) from participation as a retailer in the Supplemental Nutrition Assistance Program (SNAP). As a result, the firm may not reapply for SNAP authorization for a period of six months from the date of withdrawal.

**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 withdrew the authorization of Meat Monsters.

**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**

In a letter dated April 9, 2019, the Retailer Operations Division informed the Appellant that its authorization to participate as a retailer in SNAP would be withdrawn due to the firm’s failure to meet the definition and requirements of a retail food store as set forth in SNAP regulations at

7 CFR § 271.2, § 278.1(b)(1). This withdrawal decision was based on documentation provided by the Appellant as part of its reauthorization application which identified the firm as a wholesale distributor rather than an eligible retail food store.

On a delivery route questionnaire submitted to the Retailer Operations Division on March 27, 2019, the Appellant indicated that its route drivers were independent contractors, with compensation documented for IRS purposes on 1099 tax forms. Tax records submitted by the Appellant verified that this was the case.

In a delivery route business structure, independent contractors purchase inventory from the wholesale entity and then sell the merchandise to their customers at retail prices. Each independent contractor is considered a retail firm and must be authorized for SNAP authorization individually.

SNAP regulations govern the types of wholesale entities that are permitted to participate in the program. Generally speaking, most wholesale firms are not eligible for SNAP authorization unless they serve a very specific clientele and FNS determines that there is a need for such a wholesale entity in the area. The narrow list of customers that wholesale firms can serve includes authorized drug and alcohol treatment programs, battered women's shelters, and homeless meal providers. A complete list can be found at 7 CFR § 278.1(c). *[See page 4 of this document.]*

Because Meat Monsters did not meet the eligibility criteria for a wholesale food concern in accordance with 7 CFR § 278.1(b)(1)(v) and § 278.1(c), the Retailer Operations Division determined that the firm's authorization must be withdrawn for six months pursuant to regulations at 7 CFR § 278.1(l)(1)(i) and (ii) and § 278.1(k)(2).

In a letter postmarked April 16, 2019, the Appellant requested an administrative review of the Retailer Operations Division's determination. The request was granted and implementation of the withdrawal action has been held in abeyance pending the outcome of this review.

## **STANDARD OF REVIEW**

In an appeal of adverse action, such as the withdrawal of a firm's SNAP authorization, 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(l)(1) and § 278.1(k)(2) establish the authority upon which FNS shall withdraw the SNAP authorization of any firm which fails to meet established eligibility requirements.

7 CFR § 278.1(l)(1) reads, in part:

FNS may withdraw the authorization of any firm authorized to participate in the program for any of the following reasons:

- (i) The firm's continued participation in the program will not further the purposes of the program;
- (ii) The firm fails to meet the specification of paragraph (b), (c), (d), (e), (f), (g), (h), or (i) of this section;
- (iii) The firm fails to meet the requirements for eligibility under Criterion A or B, as specified in paragraph (b)(1)(i) of this section...for the time period specified in paragraph (k)(2) of this section.

7 CFR § 278.1(k)(2) reads, in relevant part:

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

- (1) The firm does not qualify for participation in the program as specified in paragraph (b), (c), (d), (e), (f), (g), (h), or (i) of this section; or
- (2) The firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in paragraph (b)(1)(i) of this section.... Any firm that has been denied authorization on these bases shall not be eligible to submit a new application for authorization in the program for a minimum period of six months from the effective date of the denial.

7 CFR § 271.2 defines a *retail food store* as:

- (1) 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 qualifying staple food items on a continuous basis, evidenced by having no fewer than *[three]*\* different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each qualifying staple variety, including at least one variety of perishable foods in at least *[two]*\* such categories (Criterion A) as set forth in § 278.1(b)(1) of this chapter, or has more than 50 percent of its total gross retail sales in staple foods (Criterion B) as set forth in § 278.1(b)(1) of this chapter as determined by visual inspection, marketing structure, business licenses, accessibility of food items offered for sale, purchase and sales records, counting of stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry as set forth in § 278.1(b)(1) of this chapter...

7 CFR § 271.2 defines a *wholesale food concern* as:

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\* As currently implemented. See SNAP Retailer Policy and Management Division Policy Memorandum 2018-04 for additional information regarding the enhanced retailer standards, which were implemented on January 17, 2018. This memorandum can be found on the FNS public website at <https://www.fns.usda.gov/snap/retailer-eligibility-clarification-of-criterion>.

An establishment which sells eligible food to retail food stores or to meal services for resale to households.

7 CFR § 278.1(b)(1)(i) states, in part:

An establishment...will effectuate the purposes of the program if it sells food for home preparation and consumption and meets one of the following criteria: Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods...including perishable foods in at least *[two]*\* of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment...in staple foods (Criterion B).

7 CFR § 278.1(b)(1)(v) states:

Wholesale food concerns, the primary business of which is the sale of eligible food at wholesale, and which meet the staple food requirements in paragraph (b) of this section, shall normally be considered to have adequate food business for the purposes of the program, provided such concerns meet the criteria specified in paragraph (c) of this section.

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

A wholesale food concern may be authorized to accept [SNAP benefits] only from a specified customer or customers if it meets the requirements of paragraphs (a) and (b) of this section, and FNS determines it is required as a redemption outlet:

- (1) For one or more specified authorized drug addict or alcoholic treatment programs,
- (2) For one or more specified authorized group living arrangements,
- (3) For one or more specified authorized shelters for battered women and children,
- (4) For one or more specified authorized nonprofit cooperative food-purchasing ventures,
- (5) For one or more specified authorized public or private nonprofit homeless meal providers, or
- (6) For one or more specified authorized retail food stores which are without access to an insured financial institution which will redeem their coupons.

No firm may be authorized to accept [SNAP benefits] concurrently as both a retail food store and a wholesale food concern...

## **APPELLANT'S CONTENTIONS**

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

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\* As currently implemented. See SNAP Retailer Policy and Management Division Policy Memorandum 2018-04 for additional information regarding the enhanced retailer standards, which were implemented on January 17, 2018. This memorandum can be found on the FNS public website at <https://www.fns.usda.gov/snap/retailer-eligibility-clarification-of-criterion>.

- The firm has never been a wholesaler or operated as one. The owner’s husband has always been an employee.
- When the company began, the owner modeled it after other similar businesses in the area. The Appellant’s mistake was in using the wrong tax filing status because of the other business models it studied. Due to the owner’s limited knowledge and understanding, and trying to ensure that she filed taxes correctly, she used the 1099 form. She thought that the 1099 was the form needed to show him as being an employee of the company who was also filing taxes.
- After getting the withdrawal letter, and upon further investigation, Appellant realizes that issuing a 1099 was not the correct method to show that he was an employee.
- In order to rectify this issue, the owner has submitted new tax information going back to January 2019 to show that a W-2 has been completed for her husband. The necessary taxes and deductions will be assessed accordingly to ensure that he is correctly listed as an employee with the proper filing status.
- The Appellant is still learning the ins and outs of being in business. It will be adhering to all rules and regulations now that it has a better understanding of the process.
- Over the last five years, the firm has developed a strong customer base, and the business continues to grow. Appellant wants to be able to continue serving its customers and meet their needs by participating in SNAP. SNAP is a major factor in the firm’s success.
- On the reauthorization application, the Appellant owner acknowledges that she answered some of the questions incorrectly because she was following the business model of similar meat companies.
- The firm sells everything on its brochure that a customer would need. An inspector took pictures of all the items inside the cases the firm sells. The inventory was also documented on the Retail Markup Sample Format sheet that was provided in the reauthorization packet. The firm sells individual boxes from within those cases to cater to what the customer’s needs are.

In support of its contentions, the Appellant submitted several documents, including a copy of IRS Form 941 for the first quarter of 2019; South Carolina Department of Revenue Form WH-1605, “Withholding Quarterly Tax Return,” for the first quarter of 2019; South Carolina Department of Employment and Workforce form UCE-120, “Employer Quarterly Wage Report,” for the quarter ending March 31, 2019, showing the owner’s husband as an employee; a copy of the FNS delivery route questionnaire identifying the two questions that were answered incorrectly; and a copy of the firm’s Retail Markup Sample Format, showing the wholesale costs and retail sales prices for several items sold by the firm.

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 submitted, including any not specifically summarized or explicitly referenced in this document.

## **ANALYSIS AND FINDINGS**

The purpose of this review is to either validate or invalidate the April 9, 2019, withdrawal determination made by the Retailer Operations Division. This review is limited to consideration of the relevant facts as they existed at the time the Retailer Operations Division rendered its decision.

After reviewing the evidence in this case, it is clear to this review that up until the time of the agency's withdrawal notification, the Appellant firm was operating as a wholesale entity as described earlier in this document. A wholesale entity is one that uses independent contractors as its route drivers/sales personnel and documents the compensation paid to such persons on IRS 1099 forms. As noted earlier, wholesale firms are not eligible for SNAP participation unless they meet very specific criteria as outlined in 7 CFR § 278.1(c). The Appellant does not meet those criteria.

A review of the Appellant's original SNAP application in 2014 shows that the firm used independent contractors and 1099 forms at that time. As such, the firm's original application should have been denied. Had the firm been properly denied by FNS at that time, the Appellant could have made the appropriate changes to its business model and reapplied for SNAP authorization. However, since the firm continued to operate as a wholesale firm with independent contractors – intentionally or not – up through the time of its reauthorization application, it is appropriate for FNS to now take administrative action against the firm.

By all indications from the evidence provided by the Appellant, the firm's business model change from independent contractors to W-2 employees was not made until after it received the withdrawal notification. For example, the South Carolina Withholding Quarterly Tax Return was signed by the Appellant owner on April 16, 2019 – seven days after the Retailer Operations Division made its withdrawal determination.

It must be made clear that it is not the authority of this review to consider subsequent remedial actions, such as changing a firm's business model, that have been or will be taken so that a store may begin to comply with program requirements. There are no provisions in the SNAP regulations for reversal of a withdrawal determination on the basis of corrective actions implemented subsequent to the finding of a firm's ineligibility. So while corrective action may have been taken, this review is limited to consideration of the facts as they existed at the time of the withdrawal determination. As such, the firm's authorization must be withdrawn for six months in accordance with SNAP regulations at 7 CFR § 278.1(k)(2).

### **Hardship to Appellant**

The Appellant argues that over the last five years, it has developed a strong customer base and wants to be able to continue serving its customers. The Appellant contends that SNAP is a major factor in the firm's success. This contention implies that the firm will experience some level of financial hardship if the firm's SNAP authorization is withdrawn.

Unfortunately, such a contention has no bearing on this matter. A store may only participate in SNAP if it meets all eligibility requirements, including meeting the definition of a retail food store. Economic hardship to a store is not a consideration under the regulations.

### **CONCLUSION**

Based on the analysis above, it is the determination of this review that at the time of the agency's withdrawal determination, the Appellant firm did not meet the definition and requirements of a retail food store as set forth in SNAP regulations. Additionally, the contentions and evidence presented by the Appellant are not sufficient to show that the withdrawal decision should be reversed. Accordingly, the decision by the Retailer Operations Division to withdraw the SNAP authorization of Meat Monsters is sustained.

Pursuant to 7 CFR § 278.1(k)(2), the Appellant shall not be eligible to reapply for participation as a retailer in SNAP for a minimum period of six months from the date of withdrawal. In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the authorization withdrawal of Meat Monsters shall become effective 30 days after receipt of this decision.

### **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

July 22, 2019