

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

Midwest Meats of Iowa,

Appellant,

v.

Case Number: C0227283

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent withdrawal of authorization of Midwest Meats of Iowa, (hereafter Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(l)(1)(iv), § 278.1(b)(3)(i), and § 278.1(k)(3), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it withdrew Appellant’s authorization to participate as a retailer in SNAP on February 11, 2020.

AUTHORITY

7 U.S.C. § 2023 and the 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 FNS requires that stores be reauthorized on a set schedule. As part of that routine reauthorization process, the Appellant submitted a reauthorization application dated January 15, 2020. In a letter dated February 11, 2020, Retailer Operations Division permanently withdrew Appellant’s authorization to participate as a retailer in SNAP. The record reflects that Appellant answered “No” to question 14 “(Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?)” on the SNAP application. Retailer Operations Division conducted a search of available state government criminal debases which yielded positive results showing that owner Allen Charles Bachman had been convicted under Iowa

Section 718.6(1) - False reports to or communications with public safety entities which states in part:

1. *“A person who reports or causes to be reported false information to a fire department, a law enforcement authority, or other public safety entity, knowing that the information is false, or who reports the alleged occurrence of a criminal act knowing the act did not occur, commits a simple misdemeanor, unless the alleged criminal act reported is a serious or aggravated misdemeanor or felony, in which case the person commits a serious misdemeanor.”*

The February 11, 2020, determination letter states in part:

“The Food and Nutrition Service (FNS) has determined that Allen C Bachman of Midwest Meats of Iowa lacks the necessary business integrity to further the purpose of SNAP. Based on the owners conviction of False Report to Law Enforcement Authority your firm will be permanently withdrawn under 7 CFR 278.1(b)(3)(i)(B).”

In a letter postmarked February 22, 2020, Appellant appealed the Retailer Operations Division’s decision and requested an administrative review of this action. The appeal was granted and implementation of the permanent withdrawal has been held in abeyance pending completion of this review.

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, would 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 & Nutrition Act of 2008¹, as amended, 7 U.S.C. § 2018 and Section 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(l)(1) establishes the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to meet established eligibility requirements.

7 CFR § 278.1(l)(1) reads, in part, “FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.... (iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings:...”

¹ Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246

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

7 CFR § 278.1(b)(3) reads, in part, “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: (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;...”

APPELLANT’S CONTENTIONS

In response to the Retailer Operations Division permanent withdrawal letter and in the request for administrative review, the Appellant made the following summarized contentions, in relevant part:

1. The lady I spoke to stated that I did not complete the form correctly, meaning that I failed to state that I indeed was convicted of a false police report to law enforcement. I must have missed this information on the form or didn’t realize it was meaning a misdemeanor charge, instead I must of thought the form stated felony charges.
2. I completed the form five years ago and did not receive any information nor calls in the meantime stating that I completed the information incorrectly.
3. These charges occurred in 2003 and 2012 which since then I have not been convicted of any charges and have a clean record.
4. I’m not understanding why my past record is impacting my current business which has nothing to do with my meat company.

Appellant did not provide any additional information in support of its position. The preceding may represent only a brief 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

With regards to Appellant’s contentions it is important to clarify for the record, that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. That is, the earlier decision was either correct or incorrect at the time it was made. Midwest Meats of Iowa, under the ownership of Allen C. Bachman, is permanently disqualified in accordance with 7 CFR 278.1(b)(3)(i)(B) due to evidence of ownership providing a false report to law enforcement in the State of Iowa, being found guilty and convicted of a serious misdemeanor along with a fine.

The record reflects that Appellant answered “No” to question number 14 on the Retailer SNAP Application (“Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?”) however, Retailer Operations Division conducted a search of available state government criminal databases which yielded positive results showing that owner Allen Charles Bachman had been convicted under Iowa Section 718.6(1) - False reports to or communications with public safety entities.

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. Therefore, there is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. If the matter violates the provisions of 7 CFR § 278.1(b)(3) and §278.1(l), action to permanently deny or permanently withdraw must be taken accordingly. Therefore, the Appellant’s contentions cannot be accepted as grounds to overturn the permanent withdrawal or to reduce the period of disqualification.

CONCLUSION

It is the determination of this review that the Appellant firm does not further the purposes of the program due to its lack of business integrity and reputation as a result of a serious misdemeanor charge of provide a false report to law enforcement. In accordance with 7 CFR § 278.1(b)(3)(i)(B) and 7 CFR § 278.1(k)(3)(i), permanent withdrawal is the appropriate action in this case. On the basis of the analysis above, the decision by the Retailer Operations Division to permanently withdraw the authorization of Midwest Meats of Iowa to participate as a retailer in SNAP is sustained.

In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the permanent withdrawal of Midwest Meats of Iowa shall become effective 30 days after receipt of this letter.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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), 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.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

May 12, 2020