

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

**M & M Food Mart,**

**Appellant,**

**v.**

**Case Number: C0202463**

**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 withdraw the authorization of M & M Food Mart (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) for one year.

**ISSUE**

The purpose of this review is to determine whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(k)(3)(i), when it withdrew the authorization of Appellant to participate in SNAP on August 25, 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**

On January 31, 2014, the Retailer Operations Division informed Appellant that its application to participate as an authorized retailer in the SNAP was being withdrawn, in accordance with 7 CFR § 278.1(l)(1)(iv) and 7 CFR §

278.1(k)(3)(vi). In concluding that Appellant should be withdrawn, the Retailer Operations Division relied upon information that owner **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** violated a law relating to sales of alcohol to a minor.

On August 30, 2017, Appellant appealed the Retailer Operations Division decision and requested an administrative review of this action. The appeal was granted.

### **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 law 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 § 278.1(k)(3)(i) and (l)(iv) establishes the authority upon which the application of any firm to participate in the SNAP may be denied because “records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers.”

7 CFR § 278.1(l) states, in part:

*FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons . . . . 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 . . . .*

7 CFR § 278.1(b)(3) states, in part:

*FNS shall deny the application 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: Conviction 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; (B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or (C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses.*

7 CFR § 278.1(k)(3)(i) states:

*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.*

### **APPELLANT’S CONTENTIONS**

Appellant’s responses regarding this matter are essentially that the mistake was a one- time incident that occurred over 12 years ago at a different firm. There have been no subsequent violations. Disqualification would pose a hardship to customers and the firm.

These explanations may represent only a brief summary of Appellant’s contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

### **ANALYSIS AND FINDINGS**

With respect to Appellant’s contentions, SNAP regulations, enunciated at 7 CFR § 278.1(k), 5 U.S.C. § 552 (b)(7)(E) provide for the withdrawal of firms from continued participation in SNAP on the basis of a number of reasons, one of which is lack of business integrity.

The evidence indicates that while that owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C) pled guilty to selling an alcoholic beverage to a minor on July 28, 2005. Therefore, Appellant’s contentions are not a basis for dismissing the Retailer Operations Division’s withdrawal action.

As previously mentioned, 7 CFR § 278.1(l) is specific in its requirement that “FNS shall withdraw the authorization of any firm authorized to participate in the program” if the firm lacks business integrity.

Neither the Food and Nutrition Act of 2008 nor the accompanying regulations cite any cite any number of convictions or degrees of seriousness pertaining to alcohol-related criminal convictions. Convictions related to business integrity are always considered to be most serious. This is reflected in 7 CFR § 278.1(k)(3)(i) which reads:

*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.*

There is no provision in SNAP regulations for reducing an administrative penalty on the basis of an owner's accomplishments, desire to help the community or clean record following a criminal conviction. If the matter violates the provisions of 7 CFR § 278.1(b)(3), as is the case here, withdrawal of authorization is required.

The Retailer Operations Division improperly sanctioned Appellant under § 278.1(b)(3)(iv) for the owner's alcohol-related violation. Withdrawal of a firm's authorization to participate in the SNAP under the provisions of 7 CFR § 278.1(b)(3)(i) is permanent. However, an administrative sanction cannot be increased through the administrative review process. The Retailer Operations Division's determination letter stated Appellant's authorization as a SNAP retailer was withdrawn for one year.

Therefore, the withdrawal of authorization of Appellant as a SNAP retailer is for one year.

### **No Undue Hardship to Appellant**

Appellant maintains that disqualification would pose an extreme hardship to the firm. Economic hardship is a likely consequence whenever a store is withdrawn from participation in SNAP. However, there is no provision in the SNAP regulations for reducing an administrative penalty on the basis of possible economic hardship to the firm resulting from such a penalty. To excuse Appellant from an assessed administrative penalty based on purported economic hardship to the firm would render the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA virtually meaningless.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been withdrawn from the program in the past for similar violations. Therefore, Appellant's contention that it will incur economic hardship due to an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

## **No Undue Hardship to SNAP Participants**

Appellant asserts that withdrawal would be a hardship to SNAP households who rely on the store. Some degree of inconvenience to SNAP benefit users is inherent in the withdrawal from SNAP of any participating food store, since the normal shopping pattern of such SNAP participants may be changed due to the withdrawal. Section 278.6(f)(1) of SNAP regulations provides for Civil Money Penalty (CMP) assessments in lieu of disqualification in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating retail food store in the area to meet their needs. However, the regulations do not provide a similar provision for a store whose authorization is withdrawn for lack of business integrity.

### **CONCLUSION**

Based on the discussion above, the determination by the Retailer Operations Division to withdraw the application of M & M Food Mart to participate as an authorized retailer in SNAP is sustained. In accordance SNAP regulations this withdrawal action shall become effective 30 days after delivery of this letter.

### **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 Appellant desires a judicial review, 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.

**RICH PROULX**  
Administrative Review Officer

October 23, 2017