

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

Mother Finest Convenience Store,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0214577

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is insufficient evidence to support the determination by the Retailer Operations Division to withdraw the authorization of Mother Finest Convenience Store (hereinafter Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP). Therefore, the determination by the Retailer Operations Division is reversed.

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) Part 278, when it withdrew the authorization of Appellant to participate as a SNAP retail store.

AUTHORITY

According to 7 U.S.C. § 2023 and the 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 November 23, 2018, the Retailer Operations Division withdrew Appellant’s authorization to participate as a retailer in SNAP because the firm failed to respond to a request for information or documentation related to the firm. Specifically, the withdrawal letter states that, “We have received your documents in response to our November 11, 2018 letter; however,

the following documents were not received and are required within 10 calendar days of your receipt of this letter: Bill of Sale, Sales Contract, and the business filing for sole proprietorships.”

On November 29, counsel for Appellant spoke with the Retailer Operations Division and informed them that Alabama does not require the registration of a sole proprietary business; therefore, there are no business filings. In addition, the owner does not have a Bill of Sale from his mother, who was the previous owner, due to a fire in the store. The mother is now deceased and there is no way of obtaining a Bill of Sale or Sales Contract.

By letter dated November 28, 2018, Appellant appealed the Retailer Operations Division’s decision and requested an administrative review of this determination. The appeal was granted and implementation of the withdrawal held in abeyance pending completion of this review. No subsequent correspondence was received from Appellant.

STANDARD OF REVIEW

In appeals of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means 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 and Nutrition Act of 2008, as amended, 7 U.S.C. § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(m) and 278.1(n) establish the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to cooperate in the reauthorization process.

7 CFR § 278.1(m) reads: Refusal to accept correspondence or to respond to inquiries. FNS may withdraw or deny the authorization of any firm which: (2) Fails to respond to inquiries from FNS within a reasonable time.

7 CFR § 278.1(n) reads: Periodic reauthorization. At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

APPELLANT’S CONTENTIONS

The following 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:

- The request for documentation included items that do not apply to the owner's situation. Alabama does not require business filings for sole proprietorships. Alabama only requires a Sales Tax License that has already been provided;
- As to the Bill of Sale and the Sales Contract, the current owner acquired the store from his mother and does not recall if she provided a Bill of Sale and does not believe there was a Sales Contract. The store had a major fire in 2011 and any documents were destroyed and his mother is deceased; and,
- Store ownership does not understand why these documents are needed since he has already been authorized as a SNAP retailer and the store had been disqualified for more than six years prior to his authorization.

Appellant submitted a copy of his Sales Tax License and a printout titled "Registration requirements for Alabama business entities" in support of these contentions.

ANALYSIS AND FINDINGS

After a review of all the pertinent documentation, the decision by the Retailer Operations Division to withdraw the SNAP authorization of Appellant is reversed. While a Bill of Sale or a Sales Contract may be requested for inclusion in the record, failure to provide them is not needed for the eligibility determination of a currently authorized SNAP retail store and the store should not have been withdrawn.

CONCLUSION

Based on a review of all of the evidence in this matter, the determination by the Retailer Operations Division to withdraw the authorization of Appellant to participate as a retailer in the SNAP is reversed. The Retailer Operations Division should continue to process Appellant's SNAP retailer reauthorization application to determine eligibility. This decision does not preclude Retailer Operations from asking for additional documentation to assess if the firm currently meets the regulatory criteria to continue participation in the SNAP.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

June 20, 2019