

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

Mountain View Grocery, Gas and Liquor,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0217337

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support the Retailer Operations Division's decision to deny the application of Mountain View Grocery, Gas and Liquor 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 Code of Federal Regulations (CFR) Part 278, when it denied the application of Mountain View Grocery, Gas and Liquor for a period of one year.

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

On February 18, 2019, the Retailer Operations Division received an online application from Mountain View Grocery, Gas and Liquor to participate in the SNAP as an authorized retail store. In response to question 16 of the application, the Appellant store answered "yes" to the question "Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?" The Appellant stated on the application that "Co-Owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was convicted in 2011 of misconduct with a minor in the second degree. He was released on good behavior serving 16 months of a 24 month sentence."

The Retailer Operations Division subsequently confirmed through court documents that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, an owner of the Appellant store, was convicted in 2011 of Attempted AS 11.41.436(a)(1): Sex Abuse Minor 2- Penetrate, Vic 13-15, a Class C Felony.

In a letter dated April 10, 2019, the Retailer Operations Division informed the Appellant its application to participate in the SNAP had been denied for a lack of business integrity for a period of one year under the authority of 7 CFR § 278.1(b)(3)(vi) of the SNAP regulations.

In a letter postmarked April 22, 2019, the Appellant requested an administrative review of the Retailer Operation Division's decision to deny the application of Mountain View Grocery, Gas and Liquor for a period of one year. The request for administrative review was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action 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 AND REGULATIONS

The controlling law in this matter is covered in the Food & 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(k) establishes the authority upon which the FNS shall deny the authorization of any firm authorized to participate in the program.

7 CFR § 278.1(b)(3)(i)(B) states:

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 ...

(vi) Commission of any other offense indicating a lack of business integrity or business honesty of owners, officers or managers of the firm that seriously and directly affects the present responsibility of a person.

7 CFR § 278.1(k)(3) states:

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

(vi) Firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm as

specified in § 278.1(b)(3)(vi) shall be denied for a period of one year from the effective date of denial

APPELLANT'S CONTENTIONS

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

- The store owner has done more than his due time and has been harshly punished.
- The store owner does not agree that the circumstances of the case warrant a decision that there is a lack of business integrity.
- The small town in which the store is located doesn't have any places for people to go and the community will suffer a hardship if the store is not authorized for the SNAP.

The preceding may represent only a brief summary of the 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

The case record documents that an owner of the Appellant store was convicted under Alaska law of Attempted AS 11.41.436(a)(1): Sex Abuse Minor 2- Penetrate, Vic 13-15, a Class C Felony. This review finds that the felony violation of the aforementioned state statute falls within the scope of a business integrity violation as contemplated by 7 CFR § 278.1(b)(3)(vi) which states, 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 ...

(vi) Commission of any other offense indicating a lack of business integrity or business honesty of owners, officers or managers of the firm that seriously and directly affects the present responsibility of a person. [Emphasis added.]

Further, the period of time is mandated by 7 CFR § 278.1(k)(3)(vi) which states, in part:

(vi) Firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm as specified in § 278.1(b)(3)(vi) **shall be denied for a period of one year** from the effective date of denial [Emphasis added.]

Scope of Business Integrity Regulations

The Retailer Operations Division does not dispute that the Appellant store owner has served his sentence related to his conviction in 2011. However, the USDA holds that the business integrity

and reputation of a firm is critically important to the effective operation of the SNAP. Therefore, the criteria outlined in the regulations focuses on the business integrity and reputation of the owners, officers and management of firms seeking authorization in the SNAP. Prior convictions relating to business integrity, reflects on the ability of a firm to effectuate the purposes of, and abide by the rules governing, the program.

On this matter, the agency regulations **grant no discretion** to the Retailer Operations Division or to the administrative review officer. Under the strict language of the regulations, the fact that a convicted party has successfully fulfilled the terms of any sentencing, fines or adjudication for a business integrity conviction under 7 CFR § 278.1(b)(3)(vi) or that such person may have not since that time committed any violations does not mean that the Appellant can now be authorized as a SNAP retailer. Under the circumstances of this case, the Federal SNAP regulation at 7 CFR § 278.1(k)(3)(vi) grants no exceptions to a one-year for a business integrity conviction under 7 CFR § 278.1(b)(3)(vi).

CONCLUSION

The case record documents by a preponderance of the evidence that a store owner was convicted under Alaska law of Attempted AS 11.41.436(a)(1): Sex Abuse Minor 2- Penetrate, Vic 13-15, a Class C Felony. Based on the analysis above, the decision by the Retailer Operations Division to deny the application of Mountain View Grocery, Gas and Liqour to participate in the SNAP for a period of one year is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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, FNS is 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.

RONALD C. GWINN
Administrative Review Officer

June 24, 2019