

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

Neighborhood Food Mart,

Appellant,

v.

Case Number: C0195563

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 permanently disqualify Neighborhood Food Mart (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program.

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)(4), in its administration of Supplemental Nutrition Assistance Program (SNAP) when it permanently disqualified Appellant from participating in SNAP on October 31, 2016.

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

In a letter dated October 31, 2016, the Retailer Operations Division permanently disqualified the firm from participating as an authorized retailer in SNAP, in accordance with 7 CFR § 278.1(k)(4) and 7 CFR § 278.6(e)(1)(iii), because evidence existed that the application contained false information about a substantive matter.

On November 9, 2016, 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)(4) establishes the authority upon which a firm may be denied from participating in SNAP because the firm's application contains false information of a substantive nature.

7 CFR § 278.1(k) states, in part:

FNS shall deny the application of any firm if it determines that . . . The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3)

7 CFR § 278.6(e) states, in part:

FNS . . . shall [d]isqualify a firm permanently if . . . [i]t is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to . . . ownership of the firm

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- Disqualification poses a hardship to customers;
- Disqualification poses a hardship to the firm; and,
- Appellant's wife is not involved with 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

Application Included False Information

The evidence indicates that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was permanently disqualified on December 11, 2006 while a co-owner of Marathon Food Mart. The Retailer Operations Division provided a variety of evidence in support of its determination that Appellant falsified information as part of its application. Most significantly, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) failed to disclose his previous permanent disqualification in a signed affidavit dated August 25, 2016. When asked if "[o]ne or more owners or managers of this firm has been involved in prior . . . SNAP . . . violations," he answered no. He also answered no when asked if "[o]ne or more owners or managers of this firm has had ownership in or was a manager of a business that is or has been disqualified from SNAP or WIC." He answered no when asked if "[p]ersons who were owners, managers, or employees of any firm that is or has been disqualified from SNAP or WIC are working in this store (in any capacity)." He also answered no when asked if "[p]ersons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store."

5 U.S.C. § 552 (b)(6) & (b)(7)(C) failed to disclose his permanent disqualification in his application dated July 14, 2016 when asked similar questions. Regardless of whether Appellant's wife would be involved with or financially benefit from the firm's activities, there is sufficient evidence to support 5 U.S.C. § 552 (b)(6) & (b)(7)(C) falsified information of a substantial nature about a substantial matter in his application.

No Undue Hardship to SNAP Participants

Appellant asserts that disqualification would be a hardship to SNAP households who rely on the store. Some degree of inconvenience to SNAP benefit users is inherent in the disqualification from SNAP of any participating food store, since the normal shopping pattern of such SNAP participants may be changed due to the disqualification. 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, this regulation also sets forth the following specific exception: "A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification." Because the matter at hand involves a permanent disqualification, this CMP provision is not applicable.

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 permanently denied 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 disqualified 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.

As previously mentioned, 7 CFR § 278.6(e) is specific in its requirement that:

FNS . . . shall [d]isqualify a firm permanently if . . . [i]t is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to . . . ownership of the firm

There is no agency discretion in the matter of what sanction is to be imposed when a false statement of a substantive nature is involved.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to permanently disqualify Neighborhood Food Mart from participating as an authorized retailer in SNAP is sustained.

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

November 29, 2017