

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

New Way Food Market, Inc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0218029

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 New Way Food Market, Inc. (“Appellant”) to participate 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(n), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it withdrew Appellant’s authorization to participate as a retailer in SNAP on May 9, 2019.

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 April 3, 2019, the Retailer Operations Division requested additional information from Appellant. In accordance with regulation, each SNAP-authorized firm is required to undergo a periodic reauthorization process to determine whether or not the firm still meets eligibility requirements.

Having not received a response from Appellant, in a letter dated May 9, 2019, the Retailer Operations Division withdrew Appellant's authorization to participate as a retailer in SNAP. This withdrawal was based on failure to provide sufficient information to determine the firm's eligibility for continued authorization. The Retailer Operations Division determined that the firm failed to respond to its inquiry in a reasonable period of time.

On May 17, 2019, Appellant appealed the Retailer Operations Division decision and requested an administrative review of this action. The appeal was granted and implementation of the withdrawal has been held in abeyance pending completion of this review.

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(m) 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(b) relays specific program requirements for retail food store participation, which reads, in part:

An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information on the application. Such information may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies. In addition, they must obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program...

7 CFR § 278.1(m) states:

FNS may withdraw or deny the authorization of any firm which: (1) Refuses to accept correspondence from FNS; (2) Fails to respond to inquiries from FNS within a reasonable time; or (3) Cannot be located by FNS with reasonable effort.

7 CFR § 278.1(n) states:

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 reauthorization process will result in the withdrawal of the firm's approval to participate in the program.

APPELLANT'S CONTENTIONS

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

- Appellant has contacted the appropriate parties to gather the requested documents.
- Loss of SNAP authorization will cause a financial hardship to Appellant.
- Appellant has trained its staff in the proper handling of SNAP benefits.
- Appellant has established and implemented an effective compliance policy and program.

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

It is important to clarify for the record that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. Thus, this review is limited to consideration of the relevant facts and circumstances as they existed at the time the Retailer Operations Division rendered its decision. Regarding Appellant's contentions regarding staff training and its compliance policy and program, it must be made clear that the purpose of this review is not to determine the firm's eligibility for SNAP participation. Rather it is solely to determine whether or not the firm cooperated with the reauthorization process.

Appellant contends that contacted the appropriate parties to gather the requested documents. As best as this review can determine, the Appellant cooperated as much as its documentation would allow. Appellant provided the Retailer Operations Division with a variety of documents in response to an earlier request for information dated March 18, 2019. For the remainder of the records requested in the Retailer Operations Division's letters of March 18, 2019 and April 3, 2019, Appellant has clearly acknowledged that it does not possess these records. Because the Appellant did not provide the documentation as requested, it is the determination of this review

that the decision to withdraw the firm's authorization was appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(n).

It should be noted that in this case, the term "failed to cooperate" simply denotes that the Appellant did not submit sufficient information to enable to the Retailer Operations Division to make an eligibility determination. It does not imply that the firm was unwilling or reluctant to provide the required information.

As to the Appellant's claim that a withdrawal of the firm's SNAP authorization would negatively impact the firm, this contention has no relevance to this case as a firm may only participate in SNAP if it meet basic eligibility criteria as outlined in 7 CFR § 278.1(b)(1). In this case, the firm's ongoing eligibility has yet to be determined.

Although Appellant's request for review stated it was requesting documents under FOIA, no such request was submitted.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to withdraw the authorization of New Way Food Market, Inc. to participate as an authorized SNAP retailer is sustained. Appellant is eligible to submit a new application for the subject store at any time. In accordance with the Food and Nutrition Act of 2008, as amended, and its associated 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

June 24, 2019