

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch
Alexandria, VA 22302**

Magic Money Network LLC d/b/a)	
Quick Pick Drive Thru,)	
)	
Appellant,)	
)	
v.)	Case Number: C0193673
)	
Retailer Operations Division,)	
)	
Respondent.)	
_____)	

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support a finding that the initial decision by the Food and Nutrition Service Retailer Operations Division to deny the application of Magic Money Network LLC d/b/a Quick Pick Drive Thru (hereinafter, "Appellant" and/or "Quick Pick Drive Thru") to participate in the Supplemental Nutrition Assistance Program (SNAP) as an authorized retailer was properly imposed.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(1), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it denied the application of Quick Pick Drive Thru to participate in the SNAP as an authorized retailer via letter dated September 6, 2016.

CASE CHRONOLOGY

In a letter dated September 6, 2016, the Retailer Operations Division informed Appellant that the application of Quick Pick Drive Thru to participate as an authorized retailer in SNAP was being denied because it did not meet the eligibility criteria for stores as enunciated in the Federal regulations at 7 CFR § 278.1(b)(1).

This determination was made as a result of a review of the electronic form FNS-252E *Supplemental Nutrition Assistance Program Application for Stores* initially submitted on June 16, 2016. Via letter received in the office of the Chief of the Administrative Review Branch on September 12, 2016, an administrative review of this action was requested, appealing the Retailer Operations Division' decision. The appeal 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 actions should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

7 U.S.C. § 2023 and its 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.”

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended (the “Act”)¹, 7 USC 2018 and 278 of Title 7 of the Code of Federal Regulations (CFR).² 7 U.S.C. § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(b)(1) establishes the authority upon which the application of any firm to participate in SNAP may be denied if it fails to meet established eligibility requirements.

7 CFR § 278.1(b)(1) reads, in relevant part, *“The nature and extent of the food business conducted by the applicant – (i) Retail food store. (A) An establishment or house-to-house trade route shall normally be considered to have food business of a nature and extent that will effectuate the purposes of the program if it sells food for home preparation and consumption and meets one of the following criteria: Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods as defined in §271.2 of this chapter including perishable foods in at least two of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment ... in staple foods (Criterion B).”* [Emphasis Added]

7 CFR § 278.1(b)(1)(ii) of the SNAP regulations and internal agency directives define *“Continuous Basis”* as *“An eligible store must offer for sale the required variety of food items on any given day of operation.”* [Emphasis Added]

7 CFR § 278.1(k)(2) reads, in part, *“FNS shall deny the application of any firm if it determines that the firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in paragraph (b)(1)(i) of this section . . . for a minimum period of six months from the effective date of the denial.”*

¹ Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246 with subsequent amendment enacted February 7, 2014 through P. L. 113-79

² Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title07/7tab_02.tpl

APPLICATION SUMMARY

The administrative record includes form FNS-252E *Supplemental Nutrition Assistance Program Application for Stores* dated June 16, 2016 which indicates that Quick Pick Drive Thru is selling a variety of staple food products in each of the four (4) staple food groups; stocking fresh, frozen or refrigerated foods in at least two (2) of those categories. The material also indicates that Quick Pick Drive Thru sells other foods such as snack foods, soft drinks, or condiments, and non-foods such as tobacco products, alcohol, and “other” merchandise. The material indicates that Quick Pick Drive Thru estimated annual retail sales of \$33,000.00 attributing 30 percent of those sales to staple foods; 10 percent to other foods; and 60 percent to non-foods.

APPELLANT’S CONTENTIONS

In the request for administrative review letter dated September 8, 2016, Appellant through its owner, [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], requests a review of the determination indicating that Quick Pick Drive Thru has been steadily building inventory since his takeover of the store in August 2016. [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] further indicates that he needs SNAP for his business to succeed in area where nearly 60 percent of residents on government aid. Additionally [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] indicates that it is unheard of for a drive thru convenience store such as Appellant to derive more than 50 percent of its total retail sales from staple food sales. A request for a reexamination of Appellant is requested with indication that Appellant is now “up to standards”.

The preceding may represent only a brief 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.

ANALYSIS AND FINDINGS

The record includes materials from a contracted store visit, conducted on August 8, 2016 under the authority of [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], self-identified as a “cashier”.

Criteria A:

The store visit materials include a general report indicating that Quick Pick Drive Thru is located in an urban commercial area in a free standing building, sized at approximately 900 square feet. The materials indicate that Appellant operates as a “drive thru only store”.

The store visit materials include an inventory sheet reporting very limited staple food stock to include:

- Two (2) units of cheese and between six (6) and 20 units of milk accounting for two (2) varieties in the in the dairy products category;

- Two (2) varieties of fruits/vegetables staple foods including 100 percent fruit juices (real lemon) and between six (6) and 20 units of beans, nuts or soy products;
- Four (4) varieties of bread and cereal staple foods were identified consisting of four (4) units of loaf bread; together with snack cakes, pasta and snacks; and,
- Three (3) varieties of meat, poultry and seafood staple foods consisting of four (4) cans of potted meat, one (1) dozen eggs and meat jerky.

The report also indicates that Quick Pick Drive Thru includes non-food stock consisting of tobacco products; and alcohol. Official photographs that accompany the report affirm the report materials further indicating a limited stock of paper products, and household cleaning supplies.

Although Appellant indicates that inventory has been steadily building at Appellant it is clear from the contracted store visit materials that on the date of the store visit Appellant was deficient in two (2) of the four (4) staple food categories, therefore not meeting the eligibility requirements to “Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods”.

Criteria B:

The June 16, 2016 SNAP Retailer application provided for consideration under the signature of [7] [U.S.C. 2018 (b)(6) & (b)(7)(c)] indicates that Quick Pick Drive Thru derives approximately 30 percent of its estimated \$33,000 total retail sales from the sale of staple foods; 10 percent from the sale of “other” foods such as snack foods, soft drinks, or condiments; and, that 60 percent derives from non-food products or services.

The administrative record indicates that Retailer Operations Division accepted the information as provided by Quick Pick Drive Thru.

On review request Appellant indicates that it is unheard of for a drive thru convenience store, such as Appellant, to derive more than 50 percent of its total retail sales from staple food sales. There is no dispute that that statement is reasonable and likely reflective of the reality for Quick Pick Drive Thru. It is clear from the store visit materials that it would be highly improbable that Quick Pick Drive Thru would derive more than 50 percent of its total retail sales from the sale of staple food products. Therefore, the Retailer Operations Division decision that Quick Pick Drive Thru does not meet the eligibility conditions of criterion B is affirmed.

Business Success:

To Appellant’s contention that SNAP authorization is needed for the success of Appellant operating in an area where nearly 60 percent of residents on government aid. Neither the Act nor the SNAP regulations provide for consideration of the likelihood of a business to succeed based on the area where it operates as an influencing factor in eligibility determination.

CONCLUSION

Based on the discussion above, the initial decision by the Retailer Operations Division to deny the application of Quick Pick Drive Thru to participate in the SNAP is sustained. Therefore, in accordance with 7 CFR § 278.1(k)(2) Quick Pick Drive Thru is ineligible to participate as a SNAP authorized retailer “for a minimum period of six months from the effective date of the denial”, which is six (6) months from the date of the denial letter, September 6, 2016.

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 a judicial review is desired, 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

/S/

October 27, 2016

NANCY BACA-STEPAN
ADMINISTRATIVE REVIEW OFFICER

DATE