

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

Rapids Discount Grocery & More,

Appellant,

v.

Case Number: C0210705

Retailer Operations Division,

Respondent.

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 a finding that the initial decision to permanently deny the application of Rapids Discount Grocery & More (hereinafter “Rapids Discount”) to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3) and 7 CFR § 278.1(k)(3), in its administration of the SNAP, when it permanently denied the authorization of Rapids Discount on June 25, 2018.

AUTHORITY

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.”

CASE CHRONOLOGY

The record reflects that on May 20, 2018, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), store owner, signed an application for authorization to participate in the SNAP. The Appellant submitted an FNS-252, “SNAP Application for Retail Stores”, to FNS for Rapids Discount to participate as an authorized retailer in the SNAP. The Appellant was subsequently advised in a letter dated June 25, 2018 of the Retailer Operations Division’s decision to permanently deny the application of the Appellant to participate as an authorized retailer in the SNAP. The Determination Letter stated the following:

“Federal regulations at 7 § CFR 278.1(k)(3) and 7 CFR § 278.1(b)(3) require FNS to deny the authorization of any firm it determines lacks the necessary business integrity and reputation, as specified at 7 CFR § 278.1(b)(3), to further the purposes of the SNAP. Specifically, firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers or managers shall be denied authorization permanently.

Based on information in the record, FNS has determined that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), owner of Rapids Discount Grocery & More, lacks the necessary business integrity to further the purposes of the SNAP. Therefore, as stipulated in 7 CFR § 278.1(k)(3) and 7 CFR § 278.1(b)(3) of the SNAP regulations, your application to participate in SNAP is permanently denied.”

In a letter postmarked June 27, 2018, the Appellant appealed the Retailer Operations Division’s assessment and requested an administrative review of this action. FNS granted the Appellant’s request for administrative review by letter dated July 13, 2018.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That means the 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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, at 7 U.S.C. § 2018 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 218, 7 CFR § 271.2, § 278.1(b)(3), § 278.1(k)(3), and § 278.1(k)(4) establish the authority upon which a retail food store’s or wholesale food concern’s authorization to participate in the SNAP may be denied on the basis of a lack of business integrity. There also exist FNS policy memoranda and clarification letters which further clarify the basis for such decision.

7 CFR § 271.2 states, inter alia:

Retail Food Store means: . . . Public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics; public or private nonprofit group living arrangements; public or private nonprofit shelters for battered women and children; public or private nonprofit establishments, approved by an appropriate State or local agency, that feed homeless persons; or a restaurant that contracts with an appropriate State agency to provide meals at concessional (low or reduced) prices to homeless SNAP households . . .

7 CFR § 278.1(b)(3) states, inter alia:

FNS shall deny the authorization of any firm from participation in the program for a period of time specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows:

- (i) Conviction of or civil judgment against the owners, officers or managers of the firm for:
 - (A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
 - (B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims or obstruction of justice; or
 - (C) Violation of Federal, State, and/or local consumer protection laws relating to alcohol, tobacco, firearms, controlled substances and/or gaming licenses.

7 CFR § 278.1(k)(3) states, inter alia:

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 time:

- (i) Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of the owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently.

Additionally, in interpretation of the regulations, relevant policy provides, inter alia, that:

The following situations warrant denial of authorization:

- Criminal conviction records reflecting on the honesty or integrity of the owners, officers, managers, or other personnel of the applicant firm.
- Judicial determinations in civil litigation adversely reflecting on the integrity of the owners, officers, managers, or other personnel of the applicant firm.
- Any other evidence reflecting on the business integrity or reputation of the applicant firm.

APPELLANT'S CONTENTIONS

In the written request for review postmarked June 27, 2018, the Appellant provided information in which it was argued that:

- The Appellant is well known in the community as a professional business person.

- The Appellant's criminal record contains no major convictions since some 15 years ago when it was 17 and 18 years old. Convictions include 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Later convictions include 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The Appellant believes that nothing on its criminal or civil judgments show that it is a risk to accept SNAP benefits.
- The Retailer Operations Division's decision is a misunderstanding and a quick judgment of the Appellant's character. The Appellant's past record and the minimal charges imposed should have no influence on its business and what the community needs to live life.
- The Appellant requests that FNS reconsider its decision to permanently deny its application to participate in the SNAP.
- A permanent SNAP denial will impose a hardship on many of the people in the surrounding community who are on a fixed income or receive SNAP benefits. The store offers discounts on an array of groceries and the SNAP is needed at the store.
- A permanent SNAP denial will impose a financial hardship on Rapids Discount.

The preceding may represent only a brief summary of the Appellant's contentions in this matter. Please be assured, however, that 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

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the initial determination of the Retailer Operations Division, and as such is limited to consideration of the relevant facts and circumstances at the time of the decision. The authorization of a store to participate in the SNAP must be in accord with the Act and the Regulations, as amended; those requirements of law cannot be waived.

The SNAP regulations enunciated at 7 CFR § 278.1(b)(3) provide for the permanent denial of an applicant firm to participate as a SNAP retailer based on a number of reasons and for various timeframes. The statute and regulations specifically address the factors which constitute a lack of business integrity. These considerations are eligibility concerns; a firm either meets all the requirements stipulated in law and regulations or it does not. The regulations at 7 CFR § 278.1(b)(3)(i)(B) state: "FNS shall deny the authorization of any firm from participation in the program for a period of time specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows: (i) Conviction of or civil judgment against the owners, officers or managers of the firm for: . . . (B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice".

With regard to the Appellant's contentions, 7 CFR § 278.1(b)(3)(i)(B) is specific in its requirement that "FNS shall deny the authorization of any firm from participation in the program . . . based on consideration of information regarding the business integrity and reputation of the firm as follows . . . Conviction of or civil judgment against the owners, officers, or managers of the firm for . . . Commission of embezzlement, theft, forgery, bribery, falsification or destruction

of records, making false statements, receiving stolen property, making false claims or obstruction of justice”.

The record of evidence documents that there were criminal convictions of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), owner of Rapids Discount. This is supported by 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

As previously mentioned, 7 CFR § 278.1(b)(3) is specific in its requirement that “FNS shall deny the authorization of any firm from participation in the program . . . based on . . . conviction of or civil judgment against the owners, officers or managers of the firm for . . . theft” Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any number of convictions or degrees of seriousness pertaining to theft-related criminal convictions. While other convictions may bring more severe criminal penalties, for purposes of SNAP authorization, convictions related to business integrity are always considered to be most serious. This is reflected in 7 CFR § 278.1(k)(3)(i) which reads, that “Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently.”

There is no agency discretion in the matter of what sanction is to be imposed when a criminal conviction related to business integrity is involved. In the same manner, neither the Food and Nutrition Act of 2008, as amended, nor SNAP regulations, provide the agency with discretion for dismissal of any action or for mitigating the impact of those actions on the basis of the Appellant’s argument that the minimal charges imposed against it in the past should have no influence on its business and what the community needs to live life. If the matter violates the provisions of 7 CFR § 278.1(b)(3), as is the case here, action to deny must be taken accordingly.

With regard to the Appellant’s argument that its criminal record contains no major convictions since some 15 years ago when it was 17 and 18 years old, the business integrity provisions of the SNAP regulations became effective on June 1, 1999. This means that actions to deny or withdraw authorization on the basis of these business integrity criteria may only be made after that date, on the basis of violations committed after that date. Violations, criminal and/or civil judgments, or findings made prior to June 1, 1999 shall not be used as a basis for business integrity withdrawals or denials of retailers in the SNAP. The Appellant was convicted of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant’s violations were committed after June 1, 1999 and as such, the business integrity provisions of the SNAP regulations are germane to this case.

The Appellant argues that a permanent SNAP denial will impose a hardship on many of the people in the surrounding community who are on a fixed income or receive SNAP benefits. The store offers discounts on an array of groceries and the SNAP is needed at the store. In addition, a permanent SNAP denial will impose a financial hardship on Rapids Discount. However, such contentions cannot constitute grounds for reversing the denial decision in the present case. There are no provisions in the Food and Nutrition Act, SNAP regulations or agency policy allowing hardship to retail store owners, SNAP customers, etc. as considerations in determining eligibility for participation in the SNAP.

Therefore, based on the court record assessed by the Retailer Operations Division, it is determined that in accordance with SNAP regulations specified in 7 CFR § 278.1(b)(3)(i)(B), the firm has failed to maintain the necessary business integrity to further the purposes of the program and is therefore denied from participation in the SNAP. The denial action shall be permanent in accordance with 7 CFR § 278.1(k)(3)(i) of the SNAP regulations. As such, the imposition of a permanent SNAP denial action on Rapids Discount by the Retailer Operations Division is affirmed as the appropriate sanction for the program violations outlined in the subject case.

CONCLUSION

On the basis of the discussion above, it is the decision of the USDA that the initial decision to permanently deny the application of Rapids Discount Grocery & More to participate in the SNAP is sustained. Denial of a firm's authorization to participate as an authorized retailer in the SNAP under the provisions of 7 CFR § 278.1(b)(3)(i)(B) and § 278.1(k)(3)(i) is permanent.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to 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, 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.

LORIE L. CONNEEN
Administrative Review Officer

October 12, 2018