

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

Reading Deli Store,

Appellant,

v.

Case Number: C0213153

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to deny the application of Reading Deli Store (hereinafter Appellant) to participate in the Supplemental Nutrition Assistance Program (SNAP) for a period of three years.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(b)(3)(iii) and 278.1(k)(3)(iii), when it denied the application of Appellant to participate in SNAP for a period of three years by letter dated September 17, 2018.

AUTHORITY

According to 7 U.S.C. § 2023 and the 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 September 17, 2018, the Retailer Operations Division informed Appellant that its request to participate as an authorized retailer in SNAP was denied for a period of three years because, “...it is the determination of FNS that sufficient evidence exists that you have been found to be circumventing a period of disqualification ... based on information you submitted to FNS ... in connection with your SNAP application”. Specifically, the Retailer Operations

Division determined that Appellant's application to participate in SNAP is an attempt to circumvent a disqualification on the basis that the applicant's spouse is serving an active SNAP disqualification as the former owner of another firm. SNAP regulations at Section 278.1(b)(3)(iii) require FNS to deny the authorization of any firm from participation in the program for an attempt by the firm to circumvent a period of disqualification. Per SNAP regulations at 278.1(k)(3)(iii), these firms shall be denied for a period of three years from the effective date of denial.

By letter dated September 26, 2018, Appellant appealed the Retailer Operations Division's decision and requested an administrative review of this action. The appeal was granted. Subsequent correspondence dated November 16, 2018, was received from Appellant after the October 26, 2018, deadline for additional information.

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 Part 278.1(b)(3)(iii) and 278.1(k)(3)(iii) establish the authority upon which an application to participate as a SNAP retailer may be denied for a period of three years if FNS determines there is evidence of an attempt by the firm to circumvent a period of disqualification.

7 U.S.C. §2018 Sec. 9 (a)(1) states, inter alia: Regulations issued pursuant to this Act shall provide for the submission of applications for approval by retail food stores and wholesale food concerns which desire to be authorized to accept and redeem benefits under the supplemental nutrition assistance program and for the approval of those applicants whose participation will effectuate the purposes of the supplemental nutrition assistance program. In determining the qualifications of applicants, there shall be considered among such other factors as may be appropriate, the following: (A) the nature and extent of the food business conducted by the applicant; (B) the volume of benefit transactions which may reasonably be expected to be conducted by the applicant food store or wholesale food concern; (C) whether the applicant is located in an area with significantly limited access to food; and (D) the business integrity and reputation of the applicant."

7 CFR §278.1(b)(3)(iii) reads, in part, "(3) . . . 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: . . . (iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty, or fine imposed for violations of the Food and Nutrition Act of 2008 and program regulations . . .”

7 CFR §278.1(k)(3)(iii) states, in part, “FNS shall deny the authorization of any firm if it determines that: . . .(3) 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 for the following period of time: . . . Firms for which evidence exists of an attempt to circumvent a period of disqualification . . . shall be denied for a period of three years from the effective date of denial . . .”

7 CFR § 278.1(k)(6) states, in part, FNS shall deny the application of any firm if it determines that “[t]he firm has been found to be circumventing a period of disqualification through a purported transfer of ownership.”

APPELLANT’S CONTENTIONS

The following may represent a 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:

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stated that the disqualification referenced in the charge letter resulted from an incident at the Edward Supermarket in 1997; and;
- During the investigation, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was told by federal agents that he was not liable for any of the issues because the store was being run by his brother. At the time, the brother was buying 5 U.S.C. § 552 (b)(6) & (b)(7)(C) interest in the store and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had no participation in the store’s day-to-day operations and should not be denied participation in SNAP.

Appellant submitted no evidence or other rationales in support of these contentions.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination of the Retailer Operations Division, and as such it 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 applicant’s sworn affidavit dated September 14, 2018, states that Maximo Uceta is working in the applicant’s store as its administrator. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the former owner of a firm permanently disqualified as a SNAP retailer effective October 15, 1997. The former owner was serving an active SNAP permanent disqualification at the time of the current application and permanent disqualifications do not have an end date as they are permanent. The

relationship between the applicant and the former owner is based on a letter from Citizens Bank identifying them as husband and wife with access to the firm's business account and the applicant and the former owner residing at the same address as evidenced by their 2017 federal tax returns. This relationship is not denied by the applicant. These facts demonstrate that this is an attempt to circumvent a disqualification.

It is important to clarify that the purpose of this review is to evaluate the evidence regarding Appellant's current application to become an authorized retailer in the SNAP. The Food and Nutrition Act of 2008, as amended and SNAP regulations are specific with regard to the business integrity of a SNAP applicant and provide no discretion to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of Reading Deli Store to participate as an authorized retailer in SNAP for a period of three years is sustained. Denial of a firm's application to participate in the SNAP under the provisions of 7 CFR § 278.1(b)(3)(iii) and 278.1(k)(3)(iii) warrants a denial for a period of three years.

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, 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.

ROBERT T. DEEGAN
Administrative Review Officer

March 22, 2019