

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

Ron's Seafood #1,

Appellant,

v.

Case Number: C0213440

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 withdraw the authorization of Ron's Seafood #1 (hereinafter Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

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) Part 278, when it withdrew the authorization of Appellant to participate as a SNAP retail store.

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 October 2, 2018, the Retailer Operations Division withdrew Appellant's authorization to participate as a retailer in SNAP because the firm failed to respond to a request for information or documentation related to the firm. Specifically, the withdrawal letter states that, "In accordance with SNAP Regulations, 7 CFR 278.1(n), FNS may withdraw the authorization of any firm which fails to cooperate in the reauthorization process. Failure to cooperate may include non-response to a request for information, failure to submit information

timely, or submission of unclear or incomplete information in response to a request.” On September 20, 2018, the Retailer Operations Division sent a letter requesting information needed to complete the reauthorization process and did not receive the information requested by the deadline provided. As a result, the SNAP authorization for the firm was automatically withdrawn.

By letter dated October 4, 2018, Appellant appealed the Retailer Operations Division’s decision and requested an administrative review of this determination. The appeal was granted and implementation of the withdrawal held in abeyance pending completion of this review. No subsequent correspondence was received from Appellant.

STANDARD OF REVIEW

In appeals of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(m) and 278.1(n) establish the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to cooperate in the reauthorization process.

7 CFR § 278.1(m) reads: Refusal to accept correspondence or to respond to inquiries. FNS may withdraw or deny the authorization of any firm which: (2) Fails to respond to inquiries from FNS within a reasonable time.

7 CFR § 278.1(n) reads: 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 approval to participate in the program.

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:

- The store owner had spoken with the Retailer Operations Division and received an additional 10 days to respond since his spouse who keeps the firm's books was out of town for the week;
- The owners live in a town where almost 90 percent of residents lost their homes in the devastating flood of August 2016. The owners not only lost their home, but also their business for a few months. Some residents have not returned while others have not completed rebuilding and cannot cook at home which has decreased the firm's uncooked sales this year;
- The owners feel the firm may have to come under Criterion A in order to qualify until the residents return and will stock staple foods in each category listed; and,
- The owners have operated the seafood market since 1979 and have never had one violation or warning. The firm's devoted SNAP regular customers would miss not being able to purchase seafood and a withdrawal would also drastically affect the business. Therefore, the owners are requesting the withdrawal be delayed until they can meet Criterion A in a few weeks and Criterion B in the near future.

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

ANALYSIS AND FINDINGS

With regards to Appellant's contentions listed above, 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.

Regarding Appellant's contentions, records show that in a phone conversation on September 27, 2018, the Retailer Operations Division Program Specialist told the store owner that he would be sending a withdrawal letter that would give the owners another 10 days to respond. If no response had been received, then the firm would be automatically withdrawn as a SNAP retailer. The owner asked that the letter not be sent until October 1, 2018, and the Program Specialist agreed and did not send the withdrawal letter until October 2, 2018. No information was received within 10 days and the firm was automatically withdrawn. The case file shows the requested information was never received by FNS and therefore constitutes a failure to cooperate on the part of the Appellant.

CONCLUSION

Based on a review of all of the evidence in this matter, the determination by the Retailer Operations Division to withdraw the authorization of Appellant to participate as a retailer in the SNAP is sustained. Because evidence has not been provided that would definitively determine the Appellant's eligibility for continued SNAP participation, it is the determination of this review

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

In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the withdrawal action will become effective 30 days after receipt of this decision. A new application for SNAP participation may be submitted at any time. Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

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

April 12, 2019