

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

**Ruth Meiers Hospitality House,**

**Appellant,**

**v.**

**Case Number: C0212734**

**Retailer Operations Division,**

**Respondent.**

**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 Ruth Meiers Hospitality House (hereafter Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 Code of Federal Regulations (CFR) Part 278, when it withdrew Appellant's authorization to participate as a retailer in SNAP on August 30, 2018.

**AUTHORITY**

7 U.S.C. § 2023 and the 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**

In correspondence dated November 9, 2017, Retailer Operations Division notified Appellant of complaints placed against **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The letter stated "those complaints included accusations that you were receiving SNAP-EBT benefits for services other than for meals served daily. Some of the complaints appeared to be validated by the receipts that were forwarded to us by the SNAP recipients that participated in, and took advantage of your services." Retailer Operations Division explored options in resolving the reported issues with Appellant.

Retailer Operations Division issued a letter dated August 30, 2018, withdrawing Appellant's authorization to participate as a retailer in SNAP. The letter stated "this withdrawal was based on the following: Your firm is accepting SNAP benefits for services other than food. The misuse of SNAP benefits violates Section 278.2(a) of the SNAP regulations. All SNAP Authorized Homeless Meal Providers are required to operate within the guidelines of 7 CFR part 271.2, 272.9, and 278.1(r). The acceptance of SNAP benefits in exchange for anything other than eligible food/meals is a violation of FNS regulations and subject to withdrawal for six (6) months for failing to operate within these guidelines."

As the firm failed to operate within the guidelines of FNS regulations, Appellant was informed that its SNAP authorization for the location listed would be withdrawn. The determination letter stated, "SNAP regulations at 7 CFR Part 279 also gives you rights to an administrative review of this decision to withdraw your store. A request for a review of this determination must be submitted in writing ...it must be postmarked by midnight of the 10<sup>th</sup> calendar day following your firm's receipt of this notice in order to be considered timely."

In correspondence dated September 10, 2018, Appellant appealed Retailer Operations Division's 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 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, 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 Section 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(l)(1) 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 § 271.2 reads, in part, "*Homeless meal provider means:* (1) A public or private nonprofit establishment (e.g., soup kitchens, temporary shelters) that feeds homeless persons; or (2) A restaurant which contracts with an appropriate State agency to offer meals at concessional (low or reduced) prices to homeless persons."

7 CFR § 273.11(h) reads, in part, "*Homeless SNAP households.* Homeless SNAP households shall be permitted to use their SNAP benefits to purchase prepared meals from homeless meal providers authorized by FNS under § 278.1(h)."

7 CFR § 278.1(r) reads, in part, "*Public and Private Nonprofit Homeless Meal Providers.* FNS shall authorize as retail food stores, those public and private nonprofit homeless meal providers

which apply and qualify authorization to accept SNAP benefits from homeless SNAP recipients. Such meal providers must be public or private nonprofit organizations...must serve meals that include food purchased by the provider, must meet the requirements of paragraphs (a) and (b) of this section, and must be approved by an appropriate State or local agency pursuant to § 272.9. Public and private nonprofit homeless meal providers shall be responsible for obtaining approval from an appropriate State or local agency and shall provide written documentation of such approval to FNS prior to approval of the meal provider's application for authorization. (If such approval is subsequently withdrawn, FNS authorization shall be withdrawn). Public and private nonprofit homeless meal providers serving meals which consist wholly of donated foods shall not be eligible for authorization."

7 CFR § 278.2 reads, in part, "Participation of retail food stores. (a) *Use of coupons*. Coupons may be accepted by an authorized retail food store only from eligible households or households' authorized representative, and only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is returned as change in a transaction in which coupons were accepted in payment for eligible food under paragraph (d) of this section. Coupons may not be accepted in payment of interest on loans or for any other nonfood use... (b) *Equal treatment for coupon customers*. Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store except that tax shall not be charged on eligible foods purchased with coupons... However, public or private nonprofit homeless meal providers may only request *voluntary* use of SNAP benefits from homeless SNAP recipients and may not request such household using SNAP benefits to pay more than the average cost of the food *purchased* by the public or private nonprofit homeless meal provider contained in a meal served to the patrons of the meal service..."

7 CFR § 274.7(g)(4) reads, in part, "*Homeless households*. (i) Homeless SNAP households may use their Program benefits to purchase prepared meals from authorized homeless meal providers. (ii) Eligible homeless households may use Program benefits to purchase meals from restaurants authorized by FNS for such purpose."

### APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

1. On September 1, 2018, we received the notice that our authorization would be suspended for a period of 6 months on a complaint received on March 16, 2018. We were never made aware of this complaint or how it was verified. I would like an opportunity to understand the complaint, who submitted this, what is the complaint, how was it validated etc., and be given a chance to make needed corrections with our procedure and training
2. At no time have we allowed the use of SNAP benefits for anything other than meals for those in our Transitional Living Program. Additionally, we immediately ceased the limit on what residents were allowed to pay and now encourage them to pay what they believe is fair.

Appellant provided a “Ruth Meiers SNAP Acceptance Policy & Procedure Staff Training form signed by 12 staff members for training that was completed on September 25, 2018. 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 indicates that the state of North Dakota forwarded various receipts received from other social services in Bismarck that appeared to show that Appellant accepted SNAP for services other than for meals served daily. Retailer Operations contacted Appellant regarding the accusations and explained that the complaints appeared validated as the receipts were forwarded to FNS by SNAP recipients that participated in, and took advantage of the services. In correspondence dated November 8, 2017, Retailer Operations Division issued Appellant an official warning letter with an attachment requesting compliance of operating a Homeless Meal Provider within the regulations. On December 11, 2017, Appellant signed the statement of understanding/compliant which states, “5 U.S.C. § 552 (b)(6) & (b)(7)(C) have read the official warning letter, compilation of federal regulations, and examples of procedures. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) understanding my/are responsibility in serving meals and accepting SNAP-EBT benefits from SNAP recipients.” In correspondence received on March 16, 2018, FNS was notified that EBT benefits were being used, at Appellants, for services other than meals provided. The complaint indicated that SNAP benefits could be used for rent (services) because meals are provided to SNAP recipients. This activity is in violation of § 278.2 of the SNAP regulations.

With regard to Appellant’s contentions, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations Division’ action. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that a store may begin to comply with program requirements.

There are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of alleged or planned after-the-fact corrective actions implemented subsequent to investigative findings of program violations. Therefore, Appellant’s contention that corrective action took place or that further training is planned does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

## **CONCLUSION**

Based on the discussion herein, the determination by Retailer Operations Division to withdraw the authorization of Ruth Meiers Hospitality House to participate as a retailer in SNAP is sustained.

Pursuant to 7 CFR § 278.1(k)(2) of the SNAP regulations, Appellant shall not be eligible to submit a new application for Ruth Meiers Hospitality House, for a minimum period of six months from the effective date of withdrawal. 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 decision. A new application for SNAP participation may be submitted 10 days prior to the expiration of the six-month withdrawal period.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks  
Administrative Review Officer

December 4, 2018