

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

Safy Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0233878

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is insufficient evidence to support the determination of the Retailer Operations Division to permanently deny the application of Safy Market (“Appellant”) to participate as an authorized retailer 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 Code of Federal Regulations (CFR) Part 278, when it permanently denied the application of Safy Market to participate as an authorized SNAP retailer.

AUTHORITY

7 U.S.C. § 2023 and 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 a letter dated August 3, 2020, the Retailer Operations Division informed Safy Market that its application to participate as a retailer in SNAP would be denied, in accordance with 7 CFR §278.1(k)(4) and §278.1(o), for filing a SNAP application that contains false or misleading information about a substantive matter. The letter further stated that in accordance with 7 CFR § 278.6(e)(1)(iii), the denial would be permanent.

The denial action was based on information provided on the firm’s application, as well as other related documents submitted by the Appellant, which indicated that Appellant had never been previously disqualified from SNAP. In fact, on October 31, 2016, Appellant had been

disqualified from SNAP for a 3-year period for accepting SNAP benefits at a location that was not authorized to do so.

In a letter postmarked August 12, 2020, Appellant requested an administrative review of the Retailer Operation Division's permanent denial of its SNAP application. The request for review was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as permanent denial of an application, the appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means the 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 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 is promulgated through regulation under Title 7 CFR Part 278. Specifically, 7 CFR § 278.1(k) establishes the authority upon which FNS shall deny the authorization of any firm applying for participation in SNAP for filing an application that contains false or misleading information about a substantive matter.

7 CFR § 278.1(k) states, in part:

FNS shall deny the application of any firm if it determines that:

(4) The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3)

7 CFR § 278.1(o) states, in part:

Applications containing false information. The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in §278.6, and may subject the firm and persons responsible to civil or criminal action.

7 CFR §278.6(e) states, in part:

FNS shall take action as follows against any firm determined to have violated the Act or regulations.... The FNS regional office shall:

(1) Disqualify a firm permanently if...

(iii) It is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to:

(A) Eligibility requirements under § 278.1(b), (c), (d), (e), (f), (g) and (h)...

(F) Ownership of the firm...

- (H) SNAP history, business practices, business ethics, WIC disqualification or authorization status, when the store did (or will) open for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location; or
- (I) Any other information of a substantive nature that could affect the eligibility of a firm.

APPELLANT'S CONTENTIONS

Appellant, through counsel, submitted the following summarized contentions for administrative review, in relevant part:

- Appellant specializes in halal meat; there is an insufficient amount of other authorized retail food stores in the area selling as large a variety of halal meats and associated foods at comparable prices.
- Permanent disqualification will result in hardship to SNAP recipients.
- The application was completed and filed by the store president whose first language is not English, and who does not read or write English well. The oversight is not representative of an intent to submit knowingly false or misleading information, nor is there any suggestion of a pattern of false or misleading behavior but was due to a misunderstanding.
- The application was submitted following the expiration of a disqualification period and due wholly to the applicant's insufficient reading comprehension of the English language.
- In fact, as part of the application, the store obtained a bond in response to USDA notification of inability to process its application because a person listed as an owner or officer was previously sanctioned.
- Given the bond request and response, the store owner mistakenly believed that the USDA was acknowledging the prior disqualification and that no further disclosure was required.
- Submission of the bond directly on the issue of the prior sanction provides clear evidence of the intent to disclose the prior disqualification.

Appellant also submitted the following evidence in support of these contentions:

- An affidavit from the store owner and president.
- A copy of the January 28, 2020, letter from FNS requesting a bond or letter of credit due to the previous sanction at the store location.
- A copy of the irrevocable bond acquired by the store, with FNS listed as beneficiary, with an effective date of January 3, 2020.

The preceding may represent only a summary of Appellant's contentions and evidence presented in this matter. However, in reaching a final decision, full attention was given to all contentions and evidence presented, including any not specifically summarized or referenced here.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or invalidate the permanent denial determination of the Retailer Operations Division. Thus, this review is limited to consideration of the relevant

facts and circumstances as they existed at the time the Retailer Operations Division rendered its decision.

Program regulations, at 7 CFR §278.6(e)(1)(iii), state that permanent denial is warranted if “it is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program...” [Emphasis added.]

In this case, Appellant applied for authorization after fully serving a period of disqualification. Appellant actually attempted to complete the application process on several occasions, with the Retailer Operations Division asking for additional information each time. On one such occasion, Appellant was asked for a bond or letter of credit in light of a previous sanction at the store location. Appellant acquired and submitted the bond. While that attempt at authorization failed because the Retailer Operations Division again requested more information which Appellant did not timely submit, Appellant’s submission of the bond was an acknowledgement of the previous disqualification.

And so, when submitting the latest SNAP application, Appellant was inevitably aware that FNS knew of the previous disqualification. Appellant could not have thought, much less known, that the incorrect information submitted on the application regarding a previous disqualification would affect the firm’s eligibility for SNAP authorization given FNS’s evident awareness of the disqualification. Rather, the incorrect responses on the application appear to have been mistaken, rather than knowingly submitted, particularly given Appellant’s limited English proficiency.

Further, SNAP regulations do not prohibit an owner of a previously disqualified store from becoming an owner, officer, or manager of another authorized store unless the owner was permanently disqualified from SNAP, as long as any period of disqualification has been fully served. Given Appellant had fully served the previous disqualification period prior to the most recent application, the incorrect responses on the application would not have been of a substantive nature that could affect the eligibility of the firm for authorization, as required under 7 CFR §278.6(e)(1)(iii), to impose a permanent denial.

CONCLUSION

Based on the analysis above, the determination by the Retailer Operations Division to permanently deny the application of Safy Market to participate as a retailer in SNAP is reversed. The application must be approved if the firm is otherwise eligible for program authorization under all other applicable provisions and requirements of SNAP program regulations.

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.

MICHELLE WATERS
ADMINISTRATIVE REVIEW OFFICER

December 21, 2020