

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

**Stonebridge of Gurnee, LLC,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0228149**

**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 Office of Retailer Operations and Compliance to deny the application of Stonebridge of Gurnee, LLC (“Appellant”) to participate as an authorized meal service provider in the Supplemental Nutrition Assistance Program.

**ISSUE**

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(b)(1), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it denied the application of Appellant to participate as an authorized SNAP retailer on March 13, 2020.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its 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 March 13, 2020, the Office of Retailer Operations and Compliance denied the application of Appellant to participate as an authorized meal service provider in SNAP. This denial action was based on information provided on the firm’s retailer application.

The Office of Retailer Operations and Compliance determined that the firm did not meet eligibility under 7 CFR § 273.1(b)(7)(vi) of the SNAP regulations. The denial letter stated firms that provide residents with a majority of their meals are considered institutions, and institutions are not eligible for authorization. This determination letter also stated that the Office of Retailer Operations and Compliance considered Appellant's eligibility under Section 9(i) of the Food and Nutrition Act of 2008. However, the letter stated Sections 9(i)(1) and 9(i)(2) did not apply to Appellant's facility.

On March 20, 2020, Appellant appealed the Office of Retailer Operations and Compliance decision and requested an administrative review of this action. The appeal was granted.

### **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 § 278.1(k)(1) establishes the authority upon which the application of any firm to participate in SNAP may be denied if it fails to meet established eligibility requirements.

7 CFR § 278.1(k)(1) states, in part:

FNS shall deny the application of any firm if it determines that the firm does not qualify for participation in the program as specified in paragraph ... (b) ... (d) ... of this section.

7 CFR § 278.1(b) states, in part:

Ineligible firms. Firms that do not meet the eligibility requirements in this section or that do not effectuate the purpose of SNAP shall not be eligible for program participation.

7 CFR § 278.1(d) states:

Meal services. A meal delivery service or communal dining facility desiring to prepare and serve meals to households eligible to use coupons for those meals in addition to meeting the requirements of paragraphs (a) and (b) of this section, must establish that:

- (1) It is recognized as a tax exempt organization by the Internal Revenue Service; or
- (2) It is a senior citizens' center or apartment building occupied primarily by elderly persons and SSI recipients, and their spouses; or

- (3) It is a restaurant operating under a contract with a State or local agency to prepare and serve (or deliver) low-cost meals to homeless persons, elderly persons and SSI recipients (and in the case of meal delivery services, to elderly persons or handicapped persons) and their spouses. Such a facility must have more than 50 percent of its total sales in food. The contracts of restaurants must specify the approximate prices which will be charged.

### **APPELLANT'S CONTENTIONS**

Appellant's responses regarding this matter are essentially as follows:

- Appellant is an eligible meal service provider.
- Appellant cannot be denied under 7 CFR § 273.1(b)(7)(vi).
- The 2018 Farm Bill precludes Appellant from being denied.
- Another firm was approved as a meal service provider.

In support of its contentions, Appellant provided the following documents:

- A two-page denial letter dated March 13, 2020;
- An email from Appellant's attorney to FNS staff dated January 24, 2019;
- Four pages of Appellant's meal services application;
- A 41-page resident lease agreement;
- An additional 12 pages of documents related to the resident application at Appellant;
- A one-page letter from Appellant's bank;
- A Supportive Living Program interim certificate issued by the State of Illinois;
- Appellant's proof of filing of its Articles of Organization;
- A letter signed by Appellant's Executive Director;
- A letter from FNS staff to Appellant's attorney dated March 1, 2020;
- An approval letter for another firm to be a meal service provider.
- An email from Appellant's attorney to the FNS administrator dated December 23, 2019;
- A letter from FNS requesting additional information dated January 3, 2020;
- A seven-page blank meal services application; and,
- Ten pages of additional email communications between Appellant's attorney and FNS staff.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

### **ANALYSIS AND FINDINGS**

Appellant contends that it is an eligible meal service provider which cannot be denied under 7 CFR § 273.1(b)(7)(vi). Appellant also contends that the 2018 Farm Bill precludes it from being denied.

As stated in the denial letter, FNS concluded that under 7 CFR § 273.1(b)(7)(vi), firms that provide residents a majority of their meals (over 50 percent of three meals daily) are generally considered institutions and are, therefore, ineligible for authorization under 278.1(b)(1)(iv), 278.1(d), and 278.1(k)(1). Appellant meets this definition of institution as Illinois State law requires meal service providers such as Appellant's to provide residents three meals per day (or two meals per day and a breakfast bar).

Appellant is correct that the Agriculture Improvement Act of 2018 (the Farm Bill) created Section 9(i) of the Food and Nutrition Act of 2008 (the FNA), which requires USDA to review currently authorized facilities referred to in Section 3(k)(3) of the FNA. The Farm Bill also created a limitation clause at Section 9(i)(2) of the FNA, which restricts FNS' actions regarding any facility described in Section 9(i)(1). However, FNS concluded Sections 9(i)(1) and 9(i)(2) do not apply to Appellant's facility.

Lastly, Appellant stated that a nearby competitor with the same business model has been approved as an authorized meal service provider. This administrative review is limited solely to those circumstances concerning Appellant's eligibility. Therefore, the firm's contention regarding the other firm cannot be used to reverse the decision of the Office of Retailer Operations and Compliance.

## **CONCLUSION**

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to deny the application of Stonebridge of Gurnee, LLC to participate as an authorized SNAP meal services provider is sustained.

## **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 Appellant desires a judicial review, 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.

RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

October 13, 2020