

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

Sweet Treats, LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0217911

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to support the determination by the Retailer Operations Division to deny the application of Sweet Treats, LLC (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The purpose of this review is to determine whether the Retailer Operations Division 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 in SNAP in a letter dated May 9, 2019.

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 May 9, 2019, the Retailer Operations Division denied the application of Appellant to participate as an authorized retailer in SNAP because the firm is not a retail food store as defined by the SNAP regulations. Specifically, the denial letter states that the firm sells only accessory foods. The letter also states the determination is based on information provided in Appellant’s application and the contractor’s store visit report dated May 7, 2019. As the firm

failed to meet the eligibility criteria for approval, Appellant was informed that the firm could not submit a new application to participate in SNAP for a period of six months as provided in Section 9 of the Food and Nutrition Act of 2008, as amended.

In a letter dated May 11, 2019, Appellant appealed the Retailer Operations Division's 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 insufficient 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 meets the definition of an ineligible firm.

7 CFR § 278.1(k)(1) references 7 CFR § 278.1(b)(1)(iv) which reads, in part:

Stores selling only accessory foods, including spices, candy, soft drinks, tea, or coffee . . . bakeries not selling bread . . . firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross retail sales in hot and/or cold prepared foods not intended for home preparation and consumption, shall not qualify for participation as retail food stores This includes firms that primarily sell prepared foods that are consumed on the premises or sold for carryout.

The definition of retail food store at 7 CFR § 271.2 states, in part:

Entities that have more than 50 percent of their total gross retail sales in hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption either for carry-out or on-premises consumption, and require no additional preparation, are not eligible for SNAP participation as retail food stores.

Section 9 of the Food and Nutrition Act of 2008, as amended, states in part:

A retail food store or wholesale food concern that is denied approval to accept and redeem benefits because the store or concern does not meet criteria for approval may not, for at least 6 months, submit a new application to participate in the program.

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially that Appellant sells items other than accessory foods. Appellant provided 12 store pictures and a menu. 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

Although Appellant was denied authorization for selling only accessory foods, a review of the Retailer Operations Division's case file supports Appellant sold items other than accessory foods. Accordingly, it is unnecessary to address Appellant's contentions in this matter. However, there is insufficient information to determine if Appellant is eligible for authorization.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of Sweet Treats, LLC to participate as an authorized SNAP retailer is modified. The six-month waiting period to reapply as an authorized SNAP retailer is waived; Sweet Treats, LLC may reapply immediately.

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

June 24, 2019