

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

Ten Star Super Market,

Appellant,

v.

Case Number: C0199369

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 decision by the Retailer Operations Division to withdraw the authorization of Ten Star Super Market (hereinafter “Appellant”) to participate in the Supplemental Nutrition Assistance Program (hereinafter SNAP)..

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(l)(1)(iii), in its administration of SNAP when it made the decision to withdraw the Appellant’s authorization to participate as a retailer in SNAP by letter dated March 29, 2017.

AUTHORITY

7 U.S.C. § 2023 and its 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

The administrative record reveals that Appellant was initially authorized to participate in SNAP as an authorized retailer on November 3, 2011, and that the business is classified as a convenience store. By a letter dated March 29, 2017, the Retailer Operations Division informed Appellant that its authorization to participate as a SNAP retailer was withdrawn in accordance with SNAP regulations at 7 CFR section 278.1(n) because it did not respond to a request for information made by the Retailer Operations Division on January 30, 2017, in connection with the firm’s reauthorization as a SNAP retailer.

By letter dated April 8, 2017, Appellant appealed the Retailer Operations Division 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. Subsequent correspondence dated May 10, 2017, and consisting of Z1 reports for both registers for the months of August 2016 and October 2016 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 actions 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(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 § 278.1(n) Periodic reauthorization reads, “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

In the request for administrative review and in the subsequent correspondence, Appellant has stated as its position in the matter the following:

- The business has been in compliance with the SNAP program for many years. The disqualification seems to have stemmed from the renewal application prepared by the firm’s accountant that incorrectly included the full amount of the check cashing receipts as part of the gross sales;
- Appellant tried to explain those facts and the business was asked to submit an extensive list of items to prove the receipts. Appellant cooperated to the fullest extent to provide cash register receipts and tried to explain that the business doesn’t keep receipts, but records the amounts in the receipts on a daily manual spreadsheet. Also, that even if Appellant had the receipts, they would not verify the type of items sold since the cash register is an old one and employees primarily use the “taxable” and “untaxable” buttons. The daily spreadsheets were provided, but they were also rejected;

- Appellant has been since able to retrieve some of the daily Z-tapes from the register, but they show only totals for that day divided by taxable and untaxable sales. Appellant is willing to provide these tapes anytime; and,
- Inspectors have been to the store twice so the product mix is clear.

Appellant submitted a letter of authorization allowing the firm's accountant to represent the firm; a copy of the March 29, 2017, letter of involuntary withdrawal; a copy of the January 30, 2017, request for information in connection with the firm's reauthorization as a SNAP retailer; and Z1 reports for both registers for the months of August 2016 and October 2016. Appellant submitted no other evidence or rationales in support of these contentions.

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 authorization of a store to participate in the SNAP must be in accord with the Act, as amended, and regulations. A full review of reauthorization materials shows that the Retailer Operations Division, by letter dated January 30, 2017, requested state business sales tax returns for the Appellant business for the two most recent filing quarters (or the six most recent monthly filings) as well as the Z1 reports for the same time period be provided within 10 days of receipt of their request. Appellant provided the requested state sales tax filings, but failed to provide the Z1 reports. The Retailer Operations Division did not withdraw Appellant's SNAP authorization until March 29, 2017, almost two full months after the request for information was made. The March 29, 2017, withdraw letter also provided a last chance for Appellant to avoid the loss of SNAP authorization by providing the requested documents within 10 days of receipt of the letter, but no documentation was submitted. Appellant's request for administrative review dated April 8, 2017, stated that ownership had been able to retrieve some Z1 reports. Appellant did submit Z1 reports for the months of August 2016 and October 2016 via correspondence dated May 10, 2017, as part of submissions for the administrative review thereby showing that the business is able to generate Z1 reports.

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 initial 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. It is not within the scope of this review to consider actions ownership may take to qualify for participation in the SNAP subsequent to that decision, such as providing partial submissions of requested documentation. The authorization or reauthorization 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. Therefore, Appellant's contentions do not provide any valid basis for dismissing or mitigating the adverse action imposed.

CONCLUSION

After a review of the pertinent documentation, and based on the discussion above, the initial decision by the Retailer Operations Division to withdraw the authorization of Appellant to participate as a SNAP retailer is sustained. As stated in the March 29, 2017, letter of withdrawal, Appellant may reapply for authorization as a SNAP retail store at any time. 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 letter.

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

May 19, 2017