

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

**The Store,**

**Appellant,**

**v.**

**Case Number: C0207978**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the decision of the Retailer Operations Division to withdraw the authorization of The Store (Appellant or The Store) 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 7 CFR 278.1(n) in its administration of the SNAP when it withdrew the authorization of the Appellant to participate as an authorized SNAP retailer.

**AUTHORITY**

7 USC § 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**

The Store, was originally authorized to participate as a retailer in SNAP on September 30, 2013. In accordance with regulation, each SNAP-authorized firm is required to undergo a periodic reauthorization process to determine whether or not the firm still meets eligibility requirements.

Appellant submitted the FNS-252-R, *Supplemental Nutrition Assistance Program Reauthorization Application for Stores* on January 26, 2018. On February 6, 2018, the Retailer Operations Division sent the firm a letter requesting documentation of certain eligibility criteria. On February 14, 2018, the Retailer Operations Division sent another letter to Appellant

requesting its Federal business tax return for the most recent filing year. Appellant did not provide the requested documentation.

In a letter dated March 26, 2018, the Retailer Operations Division informed the Appellant that its SNAP authorization was being withdrawn because it failed to cooperate in the reauthorization process. The letter stated that the Retailer Operations Division had sent the firm a letter requesting information that was needed to complete the reauthorization, but the firm had not submitted the requested information. The letter stated that the withdrawal determination was based on regulations found at 7 CFR § 278.1(n).

In a letter postmarked April 5, 2018, Appellant requested an administrative review of the withdrawal determination. The request 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, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 USC § 2018, and SNAP regulations at Title 7 Code of Federal Regulations (CFR) Parts 271 and 278. In particular, SNAP regulations at 7 CFR § 278.1(n) establishes the authority upon which FNS may withdraw an application from a retail food store or wholesale food concern.

7 CFR 278.1(n) states ...

**Periodic reauthorization.** 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**

Appellant made the following summarized contentions in its April 5, 2018, administrative review request, and subsequent information postmarked May 11, 2018, in relevant part:

- Appellant had an inspection and the photographs will show that it is a true Mom and Pop store that provides a service to the poorest of the poor.
- The county's unemployment rate is 24% which is much higher than the national average.
- Appellant is located 100 miles from any larger cities and most locals cannot afford to travel to get their staple food items.

- Appellant is not scamming the system in any way.
- Appellant is trying to get by with very little.
- Appellant runs a small business in a rural township.
- The margins are slim without grocery.
- If Appellant doesn't make it in the summer, it cannot afford electricity in the winter.

In support of its contentions, Appellant submitted three pages of documentation to show that it is working with State of Michigan Treasury to get current on its tax filing including documentation that it filed its 2013 taxes.

The preceding may represent only a brief summary of the 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**

It is important to clarify for the record that the purpose of this review is to either validate or invalidate the earlier 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. It must be made clear that the purpose of this review is not to determine the firm's eligibility for SNAP participation. Rather it is solely to determine whether or not the firm cooperated with the reauthorization process.

7 CFR § 278.1(n) stipulates that 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 this process will result in withdrawal of the firm's approval to participate in the program. The record reflects that on February 14, 2018, in an effort to reauthorize the Appellant firm, the Retailer Operations Division requested from Appellant its federal business tax return for the most recent filing year. This information/documentation has not been provided. With Appellants administrative review request, Appellant provided documentation concerning its 2013 business filing but this is not the most recent filing year.

Because Appellant did not provide the documentation as requested, it is the determination of this review that the decision to withdraw the firm's authorization was appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(n). Additionally, because there is not a required duration period for withdrawals made in accordance with 7 CFR § 278.1(n), a new application for SNAP participation may be submitted at any time.

The contentions and evidence presented by the Appellant are not sufficient to prove that the withdrawal decision made by the Retailer Operations Division was inaccurate or that it should be reversed.

## **Economic Hardship**

There is no provision in the SNAP regulations that would allow a firm that has not complied with the reauthorization process to be authorized for the SNAP on the basis of possible economic hardship to either the owner personally or the firm. To allow an otherwise ineligible firm to be authorized for the SNAP based on a purported economic hardship would render virtually meaningless the eligibility provisions of the Food and Nutrition Act of 2008.

## **Hardship to SNAP Community**

Appellant states that it is located 100 miles from any larger cities and most locals cannot afford to travel to get their staple food items. Regarding this contention, there is nothing in the Food and Nutrition Act of 2008 or in SNAP regulations that would allow a firm that has not complied with the reauthorization process to be authorized for the SNAP due to a purported community hardship.

## **CONCLUSION**

On the basis of the analysis above, the decision by the Retailer Operations Division to withdraw the authorization of The Store to participate as a retailer in SNAP is sustained. In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the withdrawal shall become effective 30 days after receipt of this decision. A new application for SNAP participation may be submitted at any time.

## **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 USC § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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 the owner resides or is 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, 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.

Mary Kate Karagiorgos  
Administrative Review Officer

June 28, 2018