

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

The Truck Stop #1,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0231866

FINAL AGENCY DECISION

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the Retailer Operations Division's decision to deny the application of The Truck Stop #1 (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 7 CFR § 278.1(k)(5) and § 278.1(h) in its administration of the SNAP when it denied the application of The Truck Stop #1 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

In a letter dated June 9, 2020, the Retailer Operations Division informed ownership that the application of The Truck Stop #1 to participate as an authorized retailer in SNAP was denied in accordance with section 278.1(h). The Retailer Operations Division determined that delivery route services are not required in the Los Angeles County given that there are over 5,000 retailers located in the county that are authorized to accept SNAP benefits.

By letter dated June 15, ownership appealed the Retailer Operations Division's decision and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That 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 not true.

CONTROLLING LAW

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 USC § 2018), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) provides the authority upon which FNS shall deny the authorization of any firm applying for participation in SNAP if it fails to meet established eligibility criteria.

7 CFR §278.1(h) reads, in relevant part:

House-to-house trade routes. FNS shall, in consultation with the Department's Office of Inspector General, determine those locations where the operation of trade routes damages the program's integrity. FNS may limit the authorization of house-to-house trade routes to those trade routes whose services are required by participating households in such areas in order to obtain food. The FNS Officer in Charge, in deciding whether households in such areas require a trade route's services, shall consider the volume of food business the trade route does and the availability of alternate sources of comparable food... .

7 CFR § 271.2 defines a retail food store, in part, as:

An establishment or house-to-house trade route that sells food for home preparation and consumption normally displayed in a public area, and either offers for sale qualifying staple food items on a continuous basis, evidenced by having no fewer than [three*] different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each qualifying staple variety, including at least one variety of perishable foods in at least [two*] such categories (Criterion A) as set forth in § 278.1(b)(1) of this chapter, or has more than 50 percent of its total gross retail sales in staple foods (Criterion B) as set forth in § 278.1(b)(1) of this chapter as determined by visual inspection, marketing structure, business licenses, accessibility of food items offered for sale, purchase and sales records, counting of

* As currently implemented. See SNAP Retailer Policy and Management Division Policy Memorandum 2018-04 for additional information regarding the enhanced retailer standards, which were implemented on January 17, 2018. This memorandum can be found on the FNS public website at <https://www.fns.usda.gov/snap/retailer-eligibility-clarification-of-criterion>.

stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry as set forth in § 278.1(b)(1) ...

7 CFR § 271.2 defines staple food, in part, as:

... those food items intended for home preparation and consumption in each of the following four categories: Meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products... Hot foods are not eligible for purchase with SNAP benefits and, therefore, do not qualify as staple foods for the purpose of determining eligibility under § 278.1(b)(1) of this chapter. Commercially processed foods and prepared mixtures with multiple ingredients that do not represent a single staple food category shall only be counted in one staple food category. For example, foods such as cold pizza, macaroni and cheese, multi-ingredient soup, or frozen dinners, shall only be counted as one staple food item and will be included in the staple food category of the main ingredient as determined by FNS. Accessory food items include foods that are generally considered snack foods or desserts such as, but not limited to, chips, ice cream, crackers, cupcakes, cookies, popcorn, pastries, and candy, and other food items that complement or supplement meals, such as, but not limited to, coffee, tea, cocoa, carbonated and uncarbonated drinks, condiments, spices, salt, and sugar. Items shall not be classified as accessory food exclusively based on packaging size but rather based on the aforementioned definition and as determined by FNS. A food product containing an accessory food item as its main ingredient shall be considered an accessory food item. Accessory food items shall not be considered staple foods for purposes of determining the eligibility of any firm.

7 CFR § 278.1(b)(1)(i)(A) reads, in part,

An establishment...will effectuate the purposes of the program if it sells food for home preparation and consumption and meets one of the following criteria: Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods...including perishable foods in at least [two*] of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment...in staple foods (Criterion B).

7 CFR § 278.1(k)(2) states, in part:

Any firm that has been denied authorization on these bases shall not be eligible to submit a new application for authorization in the program for a minimum period of six months from the effective date of the denial.

APPELLANT'S CONTENTIONS

Appellant made the following summarized contention in its administrative review request dated June 15, 2020, and subsequent information submitted by e-mail on July 30, 2020, in relevant part:

- Since 2006 Appellant has provided Los Angeles County with affordable and accessible healthy meals.
- Last year Appellant began a subscription program for its customers.
- The subscription program is \$199 per month and subscribers may eat at any location, any time, and as often as they like.
- It costs less than \$7.00 per day for three healthy prepared hot meals.
- The current success of the program combined with the overwhelming requests from SNAP users has prompted Appellant to request reconsideration.
- Appellant has achieved a 99% resubscription rate.
- Appellant receives daily requests to accept SNAP from its customers.

In support of Appellant’s contentions, Appellant provided a brochure of its monthly meal plan and a twelve page plan description.

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced.

ANALYSIS AND FINDINGS

The purpose of this review is to validate or to invalidate the decision of the Retailer Operations Division. Thus, it is limited to consideration of the relevant facts at the time the Retailer Operations Division rendered its decision. The authorization 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.

Appellant self-identified as a delivery route on its application for authorization, the FNS -252 Supplemental Nutrition Assistance Program Application for Stores, that it submitted on May 18, 2020. In the administrative review request, Appellant does not deny that it is a delivery route and the evidence supports that Appellant is in fact a delivery route. 7 CFR §278.1(h) stipulates that “FNS shall, in consultation with the Department’s Office of Inspector General, determine those locations where the operation of trade routes damages the program’s integrity. FNS may limit the authorization of house-to-house trade routes to those trade routes whose services are required by participating households in such areas in order to obtain food”. The Retailer Operations Division determined that there are over 5,000 retailers in Los Angeles County that are authorized to accept SNAP benefits from participating households. Therefore, in accordance with section 278.1(h), the Retailer Operations Division determined that trade route services are not required in the County.

Appellant provided information regarding its meal plan and indicated how satisfied customers are with its service. The purpose of this review is not to make a determination on the quality of food items offered by Appellant or its customer service but rather to determine if the Retailer Operations Division acted in accordance with the regulations when it determined that Appellant’s delivery route services were not necessary in Los Angeles County. A review of the evidence supports that the Retailer Operations Division appropriately denied Appellant’s application for authorization.

It is also important to note that the SNAP regulations at 7 CFR §278.1(b)(1)(iv) states, in part “firms that have more than 50 percent of their total gross sales in foods **cooked or heated on-site** by the retailer **before or after purchase**; and **hot and/or cold prepared foods** not intended for home preparation or consumption, including prepared foods that are consumed on the premises or sold for carryout, **shall not qualify** for participation as retail food stores. [Emphasis added.] The information provided by the owner on the application for indicates that the sale of hot prepared food is 55% of total gross retail sales and the sale of cold foods prepared on site comprise 40% of its total retail sales. Thus, even if Appellant was not a delivery route, it would not be eligible for SNAP authorization due to the fact that more than 50% of its total gross sales involve the sale of hot and prepared food items.

CONCLUSION

The Retailer Operations Division’s decision to deny the SNAP application of The Truck Stop #1 is sustained. Please call 877-823-4369 with general questions regarding the application process and consult the USDA website for more retailer information.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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 Appellant’s 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

August 11, 2020