

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

Top Food Mart Inc,

Appellant,

v.

Case Number: C0210322

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that Top Food Mart Inc. (hereinafter Appellant) was properly permanently denied authorization to participate in the Supplemental Nutrition Assistance Program (SNAP), by the Retail Operations Branch.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3)(i) and §278.1(k)(3)(i), in its administration of the SNAP when it permanently denied the application of Appellant to participate as an authorized SNAP retailer on June 15, 2018.

AUTHORITY

7 U.S.C. § 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 record reflects that on April 22, 2018, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, signed as owner, an application for authorization to participate in the SNAP. The record also reflects that Retailer Operations Division requested additional information pertaining to Appellant’s SNAP application in documentation dated November 13, 2017, April 5, 2018 and again in correspondence dated May 1, 2018. Appellant was subsequently advised in a letter dated June 15, 2018, of the Retailer Operations Division’s decision to permanently deny the application of Appellant to participate as an authorized retailer in SNAP. The determination letter stated the following:

“In accordance with 7 CFR 278.1(o), FNS shall deny the authorization of any firm, as specified in 7 CFR 278.1(k), or disqualify permanently any firm, as specified in 7 CFR 278.6(e), if FNS determines that the firm has filed an application that contains false or misleading information about a substantive matter. As FNS has determined that Top Food Mart Inc. has provided false or misleading information about a substantive matter in its application for SNAP authorization, the application for the firm’s authorization at the location above is permanently denied.

5 U.S.C. § 552 (b)(6) & (b)(7)(C), owner of Top Food Mart Inc., failed to disclose her relationship to Permanently Disqualified owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and submitted tax records that misrepresented their martial relationship.”

In a letter dated June 25, 2018, Appellant 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, 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, 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 & Nutrition Act of 2008, as amended, at 7 USC § 2018 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 USC § 2018, 7 CFR § 271.2, § 278.1(b)(3) and § 278.1(k)(3) establishes the authority upon which a retail food store or wholesale food concern may be denied authorization to participate in the SNAP on the basis of a lack of business integrity.

7 CFR § 278.1(b)(3) relays specific program requirements for retail food store participation, which reads, in part, “FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm....”

7 CFR § 278.1(k)(3) relays specific program requirements for retail food store participation, which reads, in part, “The firm has been found to lack the necessary business integrity and reputation to further the purpose of the program.”

7 CFR § 278.1(k)(4) relays specific program requirements for retail food store participation, which reads, in part, “The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3)...”

7 CFR § 278.6(e)(1) relays specific program requirements for retail food store participation, which reads, in part, “FNS shall take action as follows against any firm determined to have violated the Act or regulations.” “...The FNS regional office shall”...”disqualify a firm permanently if”...”personnel of the firm have trafficked as defined in § 271.2.”

7 CFR § 278.6(e)(1)(iii) relays specific program requirements for retail food store participation, which reads, in part, “It is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program,...”

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. There is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. If the matter violates the provisions of § 278.1(b)(3) and § 278.1(1), action to deny or withdraw must be taken accordingly.

APPELLANT’S CONTENTIONS

In response to the Retailer Operations Division denial letter and in the request for administrative review, Appellant has stated as its position in the matter the following:

1. The letter that I had previously sent clearly stated that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** is my husband and is in no way involved in Top Food Mart since he has his own business to run in South Miami. I am attaching that same letter that was previously sent with the application that clearly stated my relationship with **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
2. The fact that my husband is permanently disqualified was not known to either me or my husband. This is because at the time that my husband had the issue was years ago and a mistake committed by an employee was brought to the attention of my husband was corrected with FNS at the time.
3. Due to the fact that the tax records submitted can never be falsified since they are direct transcripts that I requested from the IRS of the tax returns and W2 of both my husband and I.

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

With regards to Appellant’s contentions, the record reflects that ownership provided Retailer Operations Division with a copy of its 2016 Federal Income Tax return which indicates that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** filed with a status of single however the 2016 tax transcripts received directly from the IRS indicates that the name(s) shown on the return were **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**

and 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is an indication that the tax records provided by Appellant do not match the tax records on file with the IRS and are therefore falsified. Additionally, Appellant answered “no” to question (6) on the signed Affidavit which states, “One or more owners or managers of this firm are related by birth or marriage to an owner or manager of a firm that is or has been disqualified from SNAP or WIC. Appellant’s husband, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was previously permanently disqualified from SNAP.

It is important to note that the Appellant has the ultimate responsibility to guarantee the accuracy and honesty of all information submitted to FNS. Section 278.1(k) of the SNAP Regulations clearly and specifically provide that “FNS shall deny the application of any firms if it determines that: (4) The firm has filed an application that contains false or misleading information about a substantive matter...” As such Appellant’s contentions do not constitute a valid bases for reversing the Retailer Operation’s decision to permanently deny Appellant’s SNAP application.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to permanently deny the application of Top Food Mart Inc. to participate as an authorized SNAP retailer is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to 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 you reside or are 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 (FOIA), 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.

Monique Brooks
Administrative Review Officer

September 24, 2018