

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

Two Brothers Mobile Market,

Appellant,

v.

Case Number: C0213857

Retailer Operations Division,

Respondent.

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 Two Brothers Mobile Market (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance.

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(k)(3)(iii), in its administration of Supplemental Nutrition Assistance Program (SNAP) when it denied the application of Appellant to participate in SNAP on October 16, 2018.

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 October 16, 2018, the Retailer Operations Division informed Appellant that its application to participate as an authorized retailer in the SNAP was denied, in accordance with 7 CFR § 278.1(k)(3)(iii) and(6), because the firm attempted to circumvent a period of disqualification. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**

On October 16, 2018, Appellant, through counsel, appealed the Retailer Operations Division 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)(3)(iii) establishes the authority upon which the application of any firm to participate in SNAP may be withdrawn if it lacks the necessary business integrity to further the purposes of the program through an attempt to circumvent a period of disqualification. There also exist FNS policy memoranda and clarification letters, which further explain the condition necessary in order to deny the application of such firms.

7 CFR § 278.1(b)(3) states, in part:

Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food and Nutrition Act of 2008, as amended and program regulations

7 CFR § 278.1(k)(3)(iii) states, in part, that firms for which:

Evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty, or fine imposed for violations of the Food and Nutrition Act of 2008, as amended, and program regulations shall be denied for a period of three years from the effective date of denial.

7 CFR § 278.1(k)(6) states, in part, FNS shall deny the application of any firm if it determines that:

The firm has been found to be circumventing a period of disqualification through a purported transfer of ownership.

Additionally, in interpretation of the regulations, relevant policy requires withdrawal of authorization in cases where a retailer is attempting to avoid or circumvent disqualification, including the following circumstances:

1. Being authorized at a location different from where the owner was previously disqualified; or,
2. Selling the firm to a spouse or relative.

APPELLANT'S CONTENTIONS

On review, Appellant's responses in this matter are essentially that the owner denies attempting to circumvent a period of disqualification.

In support of its contentions, Appellant provided the following documents:

- Two-page letter to the Retailer Operations Division;
- An affidavit signed by the owner's brother;
- Two pages of car registration information;
- Check to Appellant's brother;
- Paycheck for Appellant's brother;
- Car title document;
- Handwritten bill of sale;
- Two pages of tax documents;
- Letter from Appellant's bank; and,
- Two-page affidavit signed by the owner.

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

A review of the Retailer Operations Division case file indicated the Retailer Operations Division failed to establish that Appellant attempted to circumvent a period of disqualification. Accordingly, it is unnecessary to address Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration have been given to all contentions presented.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of Two Brothers Mobile Market to participate as a retailer in SNAP is reversed. The application must be approved if the firm is otherwise eligible for program authorization under all other applicable provisions and requirements for program participation.

RIGHTS AND REMEDIES

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

December 13, 2018