

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

Wasco Market,

Appellant,

v.

Case Number: C0216119

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the Retailer Operations Division properly permanently denied the application of Wasco Market to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of SNAP when it denied the retailer application of Wasco Market.

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 Appellant firm, Wasco Market, originally applied to participate as a retailer in SNAP on October 2, 2018. According to the application, the store was opened for business under the current ownership on October 1, 2018.

On the Appellant’s SNAP application, Question #16 asks, “Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?” The Appellant marked “yes,” and explained that on June 12, 2015, one of the store’s owners, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), pled guilty to 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant also indicated that in July 2002, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In a letter dated November 13, 2018, the Retailer Operations Division requested additional information from the Appellant regarding 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The letter requested copies of all court filings along with the outcome of the case.

In response to this request, the Appellant submitted a letter dated November 19, 2018, along with 21 pages of documentation related to the court case. The documentation shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

After reviewing the Appellant's documentation and consulting with FNS's policy division, the Retailer Operations Division determined that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) criminal conviction constituted a lack of business integrity in accordance with SNAP regulations at 7 CFR § 278.1(b)(3)(i), specifically paragraph (A). As a result, the Appellant's SNAP application was permanently denied in accordance with 7 CFR § 278.1(k)(3)(i). A letter of denial was sent to the Appellant on February 26, 2019.

In a letter postmarked March 4, 2018, the Appellant requested an administrative review of the Retailer Operations Division's decision. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as an application denial, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

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

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

FNS shall deny the application of any firm if it determines that:

(3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization in the program for the following period of time:

(i) Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently.

7 CFR § 278.1(b)(3) states, in relevant part:

(3) The business integrity and reputation of the applicant. 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 as follows:

- (i) Conviction of or civil judgment against the owners, officers or managers of the firm for:
- (A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
 - (B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or
 - (C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses.

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The presiding judge in the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) criminal case saw the incident for what it was – a mistake 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant is not diminishing the two convictions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), but fails to see how they qualify as violations under the regulations.
- Appellant owners previously owned and successfully operated the same store for 27 years from December 1986 to February 2013 and were an authorized SNAP retailer during that time despite 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The fact that the Appellant can state that it has been in business for over 27 years is a tribute to its “business integrity.”
- Records will show that there were no reports of fraud, theft, or trafficking of SNAP benefits or any other violations affecting the integrity of the business.
- Appellant owners had retired in 2013 and sold the store, but after five years, the new owners were unable to fulfill their contractual obligations and the Appellant was forced to take it back.
- Appellant takes pride in operating a small grocery store located in a rural community. Wasco Market is the only store in Sherman County that offers fresh meat and produce along with a full line of dairy products and other staple foods. Additionally, the State of Oregon has granted the firm licenses to sell alcohol and tobacco products. The firm works hard to maintain a wide variety of grocery items so that those customers shopping locally can buy what they need.
- The Appellant hopes to be authorized so that local customers do not have to travel 30 miles just to buy food. They are the ones most affected by this decision.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) acknowledges 5 U.S.C. § 552 (b)(6) & (b)(7)(C) mistake and has been punished for it through the court system. Denial of the firm’s SNAP application is just another form of punishment that affects all those living in the community who rely on SNAP benefits.
- Living in a rural area of Oregon, owning the store is more about providing services to the community rather than achieving any financial success.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has been cutting meat for almost 50 years, and so the firm is able to offer fresh meat and produce. This is important to customers looking for

complete meal options for their families. Appellant cannot think of a better way to “further the purposes of SNAP.”

In support of its contentions, the Appellant submitted a petition signed by more than 100 customers of the firm. The petition states: “As customers of the Wasco Market, we support the owners...in their application to participate as an authorized provider of SNAP benefits.”

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

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or invalidate the February 26, 2018, denial determination made by the Retailer Operations Division. This review is limited to the relevant facts as they existed at the time of the decision and whether or not the decision was made in accordance with existing regulation.

The primary issue under consideration is whether or not the Appellant firm has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of the Supplemental Nutrition Assistance Program.

The USDA holds that the business integrity of a firm is critically important to the effective operation of SNAP. Therefore, the criteria outlined in the regulations focus on the business integrity and reputation of the owners, officers, and managers of firms seeking SNAP authorization or reauthorization. Prior criminal convictions reflect on the ability of a firm to effectuate the purposes of SNAP and abide by the rules governing the program.

As noted earlier, Question #16 of the SNAP application asks, “Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?” The Appellant in this case marked “yes,” and stated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

A review of the Appellant owner’s offender record provided by the Appellant clearly shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C). FNS policy officials consider such violations to be legally equivalent to “...a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction” (see 7 CFR § 278.1(b)(3)(i)(A)). This review has no authority to reinterpret the regulation in any other way. As such, it is the finding of this review that the denial action was taken in accordance with existing regulation and the decision to permanently deny the Appellant’s SNAP application must be upheld. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant has indicated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Unfortunately, the severity of the crime has no bearing on this case. The regulation does not differentiate between felonies or misdemeanors, and is silent regarding an offender’s sentencing. The agency must only determine that the crime in question is part of the business integrity regulations, which means it is serious enough to render the owner unfit for SNAP participation. Therefore, any contentions related to the

severity of the crime do not provide a valid basis for reversing the Retailer Operations Division's denial determination.

Additionally, the fact that the Appellant was previously authorized to accept SNAP benefits has no bearing on this matter. A firm may only participate in SNAP if it currently meets all program eligibility requirements. Similarly, the petition submitted by the Appellant and the firm's contentions related to potential hardship to SNAP customers are not valid reasons for reversing the denial decision. Hardship to customers is not a consideration in withdrawal actions where a firm's business integrity is in doubt.

The regulations have clearly set out the position of USDA with regard to the business integrity of participating retailers. If the matter in question violates the provisions of 7 CFR § 278.1(b)(3), action to deny an application must be taken accordingly. Therefore, the Appellant's request to overturn the application denial cannot be granted.

CONCLUSION

The documentation in this case record clearly shows that the Appellant store owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the analysis above and considering the critical importance of a firm's business integrity in SNAP, it is the determination of this review that the authorization of Wasco Market would not further the purposes of the program. Therefore, the decision by the Retailer Operations Division to permanently deny the authorization of Wasco Market to participate as a retailer in SNAP is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON
Administrative Review Officer

April 25, 2019