

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

WB Deli Grocery #1,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0222505

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 withdrew the authorization of WB Deli Grocery #1 (hereinafter “Appellant”) from participation as a 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 withdrew the authorization of WB Deli Grocery #1.

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, WB Deli Grocery #1, was originally authorized to participate as a retailer in SNAP on January 5, 2010. In accordance with regulation, each SNAP-authorized firm is required to undergo a reauthorization process at least once every five years to determine whether or not the firm still meets eligibility requirements. **5 U.S.C. § 552 (b)(7)(E).**

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On August 20, 2019, the Retailer Operations Division sent the firm a letter requesting a number of documents to complete the firm’s reauthorization, including the following:

- An affidavit (enclosed with the letter) stating that the current owners are not connected with any previously disqualified persons, and reporting any criminal convictions or license revocations;
- All current business licenses;
- As appropriate, a copy of the partnership or sole proprietorship business filing with the appropriate State agency or a copy of the articles of Incorporation;
- Bill of sale;
- Copy of property deed or warranty deed;
- If appropriate, a copy of the lease in the owner's name;
- A letter from the firm's bank or financial institution identifying the authorized signers for the business on any accounts used by the business;
- Federal personal tax returns for the most recent filing year for all owners; and
- Federal business tax returns for the most recent filing year (if available).

In response to this request, the Appellant submitted all documents except the notarized affidavit, and the bill of sale. Additionally, the letter from the bank only identified 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as *an* authorized signer on the business checking account. It did not specify if 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was the *only* person authorized on the account or if there were other authorized persons as well. This distinction is necessary to ensure that there are no unreported owners of the firm. With regard to the first bullet point, above, it is noted that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) claimed to have not received the affidavit that FNS said was enclosed with the August 20 letter, so she drafted her own letter in an attempt to explain the elements described in the bullet point.

After reviewing the documentation submitted by the Appellant, the Retailer Operations Division determined that some of the required documents were missing. Accordingly, in a letter dated August 28, 2019, the Retailer Operations Division informed the Appellant that its SNAP authorization would be withdrawn because it failed to cooperate in the reauthorization process. The withdrawal letter further explained that the term "failure to cooperate" included "non-response to a request for information, failure to submit information timely, or submission of unclear or incomplete information in response to a request." In this case, the Appellant was informed that the information it submitted was unclear or incomplete. The letter stated that the withdrawal determination was based on regulations found at 7 CFR § 278.1(n).

In a letter postmarked September 3, 2019, the Appellant requested an administrative review of the Retailer Operations Division's determination. The request was granted and implementation of the withdrawal has been held in abeyance pending the outcome of this review.

STANDARD OF REVIEW

In an appeal of adverse action, such as the withdrawal of a firm's SNAP authorization, 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(n) establishes the authority upon which FNS shall withdraw the SNAP authorization of any firm that fails to cooperate in the reauthorization process.

7 CFR § 278.1(j) reads, in part:

Authorization. ...All firms will be authorized in the program for a period of 5 years. The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with this part.

7 CFR § 278.1(n) reads:

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.

7 CFR § 278.1(b) reads, in part:

Determination of authorization. An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information on the application. Such information may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies. In addition, they must obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program...

APPELLANT'S CONTENTIONS

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

- Appellant submitted the requested information on August 26, 2019, and FNS should have received it on August 27, 2019. All of the documentation requested was included in the package, not only in a timely manner, but neat and understandable as requested.
- This is why the Appellant disagrees with the withdrawal determination. The Appellant has no grounds to think that the withdrawal decision was due to its own error.

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 submitted, including any not specifically summarized or explicitly 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 also be made clear that the objective 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 failed to cooperate with the reauthorization process, which is the basis for the Retailer Operations Division's withdrawal determination.

It should also be noted that the term "failed to cooperate" simply denotes that the Appellant did not submit the required information or that the information provided was unclear. It does not imply that the firm was unwilling or reluctant to provide the requested information.

The record is clear that the Appellant did respond to the August 20, 2019, letter, and provided a large amount of documentation. However, the evidence shows that the firm did not submit an affidavit (which must be notarized) or a copy of the bill of sale to help confirm ownership of the store. With regard to the affidavit, the Appellant owner has claimed that she did not receive a copy of the affidavit, so she wrote a letter instead. This review cannot establish with any degree of certainty that the affidavit was included with the August 20 letter from the Retailer Operations Division. What is certain, however, is that the Appellant did not submit an affidavit as required. This review also finds that the letter from the Appellant's bank was unclear. It does not establish whether 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the only authorized signer on the business checking account, and thus, store ownership remains uncertain.

Because the Appellant did not provide all documents as requested and because at least one document was unclear, this review finds that the agency's decision to withdraw the firm's SNAP authorization for failure to cooperate with the reauthorization process was appropriate and was taken in accordance with SNAP regulations at 7 CFR § 278.1(n).

Important Note: It should be made clear that there is not a minimum duration of time associated with this withdrawal action. The firm may reapply for SNAP authorization at any time. Because decisions made in administrative review do not take effect until 30 days after receipt of the Final Agency Decision, it seems possible to this review that the Appellant could provide the missing or unclear documentation to the Retailer Operations Division before the withdrawal is imposed, and thus potentially avoid the withdrawal altogether. This review strongly encourages the Appellant to contact the program specialist in this matter with any questions regarding the missing documentation or with any concerns pertaining to the reapplication process.

CONCLUSION

On the basis of the analysis above, the decision by the Retailer Operations Division to withdraw the authorization of WB Deli Grocery #1 to participate as a retailer in SNAP due to failure to cooperate in the reauthorization process is sustained. In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the withdrawal of WB Deli Grocery #1 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

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

February 10, 2020