

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

**Wicker Park Food Co-op,**

**Appellant,**

**v.**

**Case Number: C0209357**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to deny the application of Wicker Park Food Co-op (hereinafter Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**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(b)(1), in its administration of the SNAP when it denied the application of Appellant to participate in SNAP in a letter dated May 14, 2018.

**AUTHORITY**

According to 7 U.S.C. § 2023 and the 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 May 14, 2018, the Retailer Operations Division denied the application of Wicker Park Food Co-op to participate as an authorized retailer in SNAP because the firm is not a retail food store as defined by SNAP regulations. The Retailer Operations Division determined the Appellant firm is a web-based business with no food inventory and as such failed to meet the definition of an eligible firm. This denial action was based on information provided on and in

support of the firm's retailer application and during an onsite store visit conducted by an FNS contractor on April 4, 2018.

Appellant was informed that the firm could not submit a new application to participate in SNAP for a period of six months as provided in § 278.1(k)(2). Appellant appealed the Retailer Operations Division decision and requested an administrative review of this action in a request dated May 20, 2018. The appeal was granted. No subsequent correspondence was received from Appellant.

### **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 sufficient 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 Part 278.1(k)(1) and Part 278.1(l)(1) establish the authority upon which the application of any firm to participate in SNAP may be denied if it fails to meet the definition of an eligible firm.

7 CFR § 278.1 (b)(1)(iv) defines ineligible firms, in part, as: Firms that do not meet the eligibility requirements in this section or that do not effectuate the purpose of SNAP shall not be eligible for program participation. New applicant firms that are found to be ineligible will be denied authorization to participate in the program, and authorized retail food stores found to be ineligible will be withdrawn from program participation.

7 CFR § 278.1(k) states that: FNS shall deny the application of any firm if it determines that the firm does not qualify for participation in the program as specified in paragraph (b), (c), (d), (e), (f), (g), (h), or (i) of this section; or (5) The firm's participation in the program will not further the purposes of the program.

Section 9 of the Food and Nutrition Act of 2008, as amended, states in part, that: A retail food store or wholesale food concern that is denied approval to accept and redeem benefits because the store or concern does not meet criteria for approval . . . may not, for at least 6 months, submit a new application to participate in the program.

### **APPELLANT'S CONTENTIONS**

The following may represent a 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:

- Appellant disagrees that the firm does not meet the definition of a retail food business as defined at Part 271.2. CFR Section 271.2 states: "Retail food store means . . . Any nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food." The business qualifies under this provision, and evidence to this effect has been provided; and,
- Please note that FNS had no problem licensing the firm from 2010 to 2016. The license lapsed only because the business did not receive a renewal notice FNS claims to have sent to the business in 2016.

Appellant submitted no evidence or other rationales in support of these contentions.

### **ANALYSIS AND FINDINGS**

The authorization of a firm to participate in SNAP must be in accord with the Act, as amended, and regulations. These requirements of law cannot be waived. Thus, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division, and as such it is limited to consideration of the relevant facts and circumstances that existed at the time of the denial determination. On the day of the denial, the evidence supports that the business is not a retail food store and firms that are not retail food stores are not eligible to participate in SNAP.

Information provided on and in support of the application shows that the firm is a web-based shopping service with orders being taken/paid for on-line and does not carry any food stock in inventory, but instead purchases food items as orders are received and therefore does not meet the definition of a retail food store as specified at 7 CFR §271.2(1) or 7 CFR §278.1(b)(1). SNAP regulations at 7 CFR § 278.1(k)(1) require the denial of applications for SNAP retailer authorization by firms that do not meet the definition of a retail food store.

Regarding Appellant's contentions, FNS regulations do provide for nonprofit cooperative food purchasing ventures to be authorized as SNAP retailers; however, the Appellant firm is not a federally recognized nonprofit entity and therefore does not meet the criteria for authorization. Accordingly, the Retailer Operations Division properly denied Appellant's SNAP retailer application for not meeting the definition of a retail food store. As stated in previous correspondence, FNS records show that the Chicago Food Cooperative was withdrawn as a SNAP retailer on September 27, 2016, for not redeeming SNAP benefits, not for failing to reapply.

Section 9 of the Food and Nutrition Act of 2008, as amended, states in part, "a retail food store or wholesale food concern that is denied approval to accept and redeem benefits because the store or concern does not meet criteria for approval . . . may not, for at least 6 months, submit a new application to participate in the program." There is no agency discretion to impose a

sanction less than six months when a firm does not meet the aforementioned eligibility requirements for authorization.

### **CONCLUSION**

Based on the discussion above, the determination by the Retailer Operations Division to deny the Appellant's application to participate as an authorized SNAP retailer is sustained.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

ROBERT T. DEEGAN  
Administrative Review Officer

August 31, 2018