

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

Wilmart LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0227840

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support the Retailer Operations Division's permanent denial of the application of Wilmart LLC (hereinafter "Appellant") 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 permanently denied the application of Wilmart LLC.

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 originally applied to participate as a retailer in SNAP on June 10, 2019. On the 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 store owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had been convicted three times of 5 U.S.C. § 552 (b)(6) & (b)(7)(C): in November 2000, August 2003, and October 2009.

On July 24, 2019, the Retailer Operations Division requested from the Appellant additional information and evidence regarding the criminal convictions. In response to this letter, the Appellant owner submitted 14 pages of evidence, including a detailed written explanation of the

three convictions, signed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on July 20, 2016, and printouts from the criminal court of Baltimore, Maryland. While it appears that some documentation from the earliest conviction is missing, the evidence clearly shows that on June 3, 2004, and January 25, 2011, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) pleaded guilty to 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which is a violation of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). For the 2004 conviction, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was sentenced to three years of supervised probation, and for the 2011 conviction, he was sentenced to time served. According to 5 U.S.C. § 552 (b)(6) & (b)(7)(C)' written explanation, the 2000 case – 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – was resolved on April 9, 2001. In that matter, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) pleaded guilty and was sentenced to five years of probation.

After reviewing the Appellant's documentation, the Retailer Operations Division determined that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) criminal history constituted a lack of business integrity in accordance with SNAP regulations at 7 CFR § 278.1(b)(3)(i). As a result, the Appellant's application was permanently denied pursuant to 7 CFR § 278.1(k)(3)(i). A letter of denial, dated October 24, 2019, was delivered to the Appellant on October 25, 2019.

In a letter postmarked October 28, 2019, the Appellant requested an administrative review of the Retailer Operations Division's decision. Due to an unforeseen series of events, the request for administrative review was not received by FNS until March 10, 2020. However, the request was determined to be timely and was therefore 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) provides the authority upon which FNS shall deny the authorization of any firm applying for participation in SNAP if it fails to meet established business integrity criteria.

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 § 271(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:

- Appellant owner requests a chance to continue doing the good that he does in his community. The residents of the area are waiting for the firm to be authorized so that they can purchase food that they need for their families.
- The owner has changed his ways and has become a very prominent individual in the community.
- The owner holds a commercial driver's license that has never been suspended or revoked. He is also a licensed bail bondsman, a licensed lead inspector, and a landlord of several properties that he has owned for approximately 20 years. He deals with the personal information of hundreds of people and has never compromised this information in any way. Additionally, the owner has never been sued, has never committed any type of fraud, and has never taken anything from another individual.
- Appellant owner hopes that his criminal convictions will not stop him from doing the good that he is doing.
- Many people in the area need access for EBT. The firm carries fruit, vegetables, milk, cheese, etc. But without the ability to accept EBT, the store is getting a lot of complaints.
- Despite what he did more than 10 years ago, the Appellant owner has abided by all rules and regulations and has submitted all the proper paperwork for SNAP authorization.
- Appellant owner is very involved in the community and would appreciate an opportunity to continue to be of help. He has done nothing but run a good business since the time of his last conviction.

In support of his contentions, the Appellant owner submitted copies of his business and driver's licenses, a list of his personal assets, and a copy of a petition signed by approximately 150 people. The petition, addressed to "City Hall," indicates that the community would like to bring a convenience store to the neighborhood.

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 herein.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or invalidate the denial determination made by the Retailer Operations Division. The decision made by this review is based on the relevant facts as they existed at the time the Retailer Operations Division rendered its decision. This review is limited to determining whether or not the denial decision was made in accordance with existing SNAP regulations.

The primary issue under consideration is whether or not the Appellant has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of SNAP. 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. Prior criminal convictions relating to business integrity reflect on the ability of a firm to effectuate the purposes of SNAP and abide by the rules governing the program.

A review of the Appellant owner's record from the city of Baltimore clearly shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was criminally convicted of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This crime is a violation of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and happened on three separate occasions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(7)(E), specifically that which is found in 7 CFR § 278.1(b)(3)(i)(A), which reads: "FNS shall deny the authorization of any firm from participation in the program for...conviction of or civil judgment against the owners, officers or managers of the firm for commission of fraud **or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction**" (emphasis added).

Regulations at 7 CFR § 278.1(k)(3)(i) state that firms lacking business integrity and reputation as described in § 278.1(b)(3)(i) shall have their SNAP application denied permanently.

It must be noted that the Appellant has not submitted any evidence or documentation to prove that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) criminal convictions did not occur. In fact, the Appellant has freely acknowledged that they did occur. Without evidence to the contrary, this review has little option but to find in favor of the agency in this matter.

Because the criminal convictions meet the conditions found in 7 CFR § 278.1(b)(3)(i)(A), and because the convictions occurred after June 1, 1999 – which is when the business integrity provisions of the SNAP regulations took effect – the firm's application must be permanently denied. The regulations do not give FNS any latitude to consider a shorter denial period; neither do the regulations take into consideration whether or not the convicted individual has fulfilled his probationary obligations or made corrections or improvements in his life. If the matter violates the

provisions of 7 CFR § 278.1(b)(3)(i), action to permanently deny an application must be taken accordingly. Therefore, the Appellant's request to overturn the permanent denial cannot be granted.

It must be noted that the supplementary documentation provided by the Appellant, including the petition and the copies of licenses and the listing of assets, cannot be considered, as they have no bearing on whether or not the Appellant meets the minimum standards of business integrity as set forth by regulation. Similarly, the Appellant's contentions regarding the owner's desire to serve the community and the community's desire to have a store which accepts SNAP benefits, do not provide a valid basis to reverse the agency's denial determination.

CONCLUSION

The documentation in the case record clearly shows that the Appellant store owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was criminally convicted on three occasions of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Each of these convictions occurred after June 1, 1999. These criminal offenses show a lack of business integrity and reputation to such a degree that the Appellant does not further the purposes of the program. Accordingly, and based on the analysis above, the decision by the Retailer Operations Division to permanently deny the authorization of Wilmart LLC 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. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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 29, 2020