

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

Zanotto's Family Market #1,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0230904

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 Office of Retailer Operations and Compliance to withdraw the authorization of Zanotto's Family Market #1 (hereinafter Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) Part 278, when it withdrew the authorization of Appellant to participate as a SNAP retail store.

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

The record shows that the Office of Retailer Operations and Compliance notified Appellant by letter dated March 12, 2020, that the Appellant firm was due for reauthorization as a SNAP retail store. This letter included a reauthorization application that was pre-printed with store information to be reviewed and corrected as necessary. The form also contained several questions to be answered and instructions on reporting any changes in address or ownership. The letter further stated that failure to return the completed reauthorization application with any needed documents within 30 days may result in withdrawal of the firm's SNAP authorization.

The reauthorization application was not returned and the Appellant firm was notified in a letter dated May 12, 2020, that the firm's SNAP authorization would be withdrawn within 10 calendar days of its receipt of the letter. The letter also stated the withdrawal determination was based on SNAP regulations found at 7 CFR § 278.1(n) and that a new SNAP retailer application could be submitted at any time after the withdrawal.

By letter dated May 27, 2020, Appellant appealed the Office of Retailer Operations and Compliance's decision and requested an administrative review of this determination. The appeal was granted and implementation of the withdrawal held in abeyance pending completion of this review. No subsequent correspondence was received from Appellant.

STANDARD OF REVIEW

In appeals of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means 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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Parts 278.1(b)(1)(i)(B), 278.1(m), and 278.1(n) establish the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to cooperate in the reauthorization process.

7 CFR 278.1(b)(1)(i)(B) reads: A retail food store must meet eligibility determination factors which may be based on, but not limited to, visual inspection, sales records, purchase records, counting of stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry. In determining eligibility, such information may be requested for verification purposes, and failure to provide such documentation may result in denial or withdrawal from the program.

7 CFR § 278.1(b)(1)(iv) reads: Ineligible firms under this paragraph include, but are not limited to, stores selling only accessory foods, including spices, candy, soft drinks, tea, or coffee; ice cream vendors selling solely ice cream; and specialty doughnut shops or bakeries not selling bread. In addition, firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross sales in foods cooked or heated on-site by the retailer before or after purchase; and hot and/or cold prepared foods not intended for home preparation and consumption, including prepared foods that are consumed on the premises or sold for carryout, shall not qualify for participation as retail food stores under Criterion A or B.

7 CFR § 278.1(m) reads: Refusal to accept correspondence or to respond to inquiries. FNS may withdraw or deny the authorization of any firm which: (2) Fails to respond to inquiries from FNS within a reasonable time.

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.

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 requests reinstatement in SNAP. The form was submitted, but according to the FNS letter, it was late. The firm was at the beginning of the pandemic and it was crazy trying to supply customers with needed products taking-up most of the time and things are just now getting back to some semblance of normalcy; and,
- Appellant requests some leniency regarding the timing of the renewal application getting to FNS. The firm is in an area with elderly people who depend on it and without SNAP, the firm will not be able to meet their needs. The firm has also never had any violations of SNAP rules.

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

ANALYSIS AND FINDINGS

With regards to Appellant's contentions listed above, it is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination of the Office of Retailer Operations and Compliance, and as such it is limited to consideration of the relevant facts and circumstances that existed at the time of the 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 Office of Retailer Operations and Compliance's withdrawal determination.

The authorization of a store to participate in the SNAP must be in accord with the Act and the Regulations, as amended; those requirements of law cannot be waived. SNAP regulations at 7 CFR § 278.1(n) state that, "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." Failure to cooperate may include non-response to a request for information, failure to submit information timely, or submission of unclear or incomplete information in response to a request.

As previously stated in this decision, Appellant failed to return the completed reauthorization application and any needed documents within the prescribed period and consequently the

Appellant firm's SNAP retailer authorization was withdrawn. It is further noted that as of this date, the Appellant firm's reauthorization application has not been received by FNS.

CONCLUSION

Based on a review of all of the evidence in this matter, the determination by the Office of Retailer Operations and Compliance to withdraw the authorization of Appellant to participate as a retailer in the SNAP is sustained. Because evidence has not been provided that would definitively determine the Appellant's eligibility for continued SNAP participation, it is the determination of this review that the decision to withdraw the firm's authorization due to its failure to cooperate was appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(n).

In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the withdrawal action will become effective 30 days after receipt of this decision. A new application for SNAP participation may be submitted at any time. Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

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

July 21, 2020