

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review
Alexandria, VA 22302**

Bali’s Food Mart,)	
)	
Appellant,)	
)	
v.)	Case Number: C0193497
)	
Retailer Operations Division,)	
)	
Respondent.)	
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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 a finding that the decision to deny the application of Bali’s Food Mart (hereinafter “Bali’s”) to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division (hereinafter “ROD”) of FNS.

ISSUE

The issue accepted for review is whether ROD took appropriate action, consistent with 7 CFR § 278.1(b)(1), in its administration of the SNAP when it denied the application of Bali’s to participate in the SNAP on August 29, 2016.

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

In a letter dated August 29, 2016, ROD informed the Appellants that the application of Bali’s to participate as an authorized retailer in the SNAP was being denied because it did not offer for sale on a continuous basis a variety of staple foods in the “Dairy”, the “Fruits and Vegetables”, and the “Meats, Poultry, Fish” staple food categories as required under Criterion ‘A’ of 7 CFR § 278.1(b)(1)(ii) of the SNAP regulations. Criterion ‘A’ requires, in part, that there be at least three different types of foods in each of the four staple food categories. During a store visit on August 26, 2016, it was observed that the

store offered for sale only one type of food in the “Dairy” staple food category (ice cream), only two types of foods in the “Fruits and Vegetables” staple food category (100% juice and nuts), and only one type of food in the “Meats, Poultry, Fish” staple food category (meat jerky).

In addition, FNS determined that Bali’s did not have more than 50 percent of its total gross retail sales in staple food sales as required under Criterion ‘B’ of § 278.1(b)(1)(iii).

As the firm failed to meet either eligibility criterion for approval, the Appellants were informed that the firm could not submit a new application to participate in the SNAP for a period of six months as provided in § 278.1(k)(2). This denial action was based on observations made during the August 26, 2016 store visit as well as information provided on the firm’s retailer application.

In a letter postmarked September 1, 2016, the Appellants appealed ROD’s decision and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means an Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might 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). Part 278.1(k)(2) establishes the authority upon which the application of any firm to participate in the SNAP may be denied if it fails to meet established eligibility requirements.

7 CFR § 278.1(k)(2) reads, in part, “FNS shall deny the application of any firm if it determines that the firm has failed to meet the eligibility requirements for authorization under Criterion ‘A’ or Criterion ‘B’, as specified in paragraph (b)(1)(i) of this section . . . for a minimum period of six months from the effective date of the denial.”

7 CFR § 278.1(b)(1)(i) relays specific program requirements for retail food store participation, which reads, in part, “An establishment . . . shall . . . effectuate the purposes of the program if it . . . meets one of the following criteria: Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods . . . including perishable foods in at least two of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment . . . in staple foods (Criterion B).”

APPELLANTS' CONTENTIONS

In the written request for review, the Appellants provided information in which it was argued that:

- At the time of the store visit, Bali's did not have all of the staple foods in stock required to meet the requirements for SNAP authorization eligibility under Criterion A as the store had not yet been fully stocked;
- The Appellants have since increased the selection of staple foods offered for sale at the store to include adding such items as fresh fruits and vegetables, refrigerated and frozen dairy products, and a selection of meat products and breads;
- The Appellants believe that Bali's now stocks all of the staple foods required to meet the requirements for SNAP authorization eligibility under Criterion A; and
- In addition, the Appellants believe that staple food sales will comprise more than 50 percent of Bali's' total gross retail sales which will make the store eligible for SNAP authorization under Criterion B.

The Appellants contend that at the time of the store visit, Bali's did not have all of the staple foods in stock required to meet the requirements for SNAP authorization eligibility under Criterion A as the store had not yet been fully stocked. The Appellants have since increased the selection of staple foods offered for sale at the store to include adding such items as fresh fruits and vegetables, refrigerated and frozen dairy products, and a selection of meat products and breads. The Appellants believe that Bali's now stocks all of the staple foods required to meet the requirements for SNAP authorization eligibility under Criterion A. It is important at this point to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division, and that it is limited to what circumstances existed at the time of the denial action by the Retailer Operations Division. It is not the authority of this review to afford additional time during which a store may begin to comply with program requirements for becoming authorized to participate in the SNAP. At the time of the denial action, the contracted Reviewer indicated that Bali's did not offer for sale on a continuous basis a variety of staple foods in the "Dairy" (the store stocked ice cream only), the "Fruits and Vegetables" (the store stocked 100% juice and nuts only), and the "Meats, Poultry, Fish" (the store stocked meat jerky only) staple food categories. 7 CFR § 278.1(b)(1)(ii) of the SNAP regulations states that ... "In order to qualify for SNAP authorization under Criterion A, firms shall ... offer for sale and normally display in a public area, qualifying staple food items on a continuous basis, evidenced by having, on any given day of operation, no fewer than three different varieties of food items in each of the four staple food categories". This means that retail stores must have qualifying staple food items displayed in a public area on a continuous basis at the time of the store visit in order to qualify for SNAP authorization under Criterion A.

The Appellants provided FNS with a total of 26 vendor invoices/receipts for purchases of various staple foods from various food vendors in order to validate that Bali's met the requirements for SNAP authorization approval under Criterion A at the time of the store visit. Two of the submitted invoices did not have a date listed on them; therefore, they could not be considered towards meeting the SNAP authorization requirements under

Criterion A. In addition, 11 of the submitted invoices were dated after the store visit date of August 26, 2016. As such, these invoices cannot be considered towards verifying that Bali's met the SNAP eligibility requirements under Criterion A at the time of the store visit as they were not dated prior to the store visit date. The remaining 13 invoices were dated prior to the store visit date and indicated that the Appellants had purchased the following staple foods from the stated staple food categories: "Dairy" staple food category: ice cream; "Fruits and Vegetables" staple food category: 100% juice and nuts; and the "Meats/Poultry/Fish" staple food category: No foods had been purchased from this staple food category. However, the invoices did not reflect the purchase of any additional/different staple foods from the "Dairy" staple food category as the contracted Reviewer indicated that Bali's had ice cream in stock on the store visit date. In addition, the invoices did not reflect the purchase of any additional/different staple foods from the "Fruits and Vegetables" staple food category as the contracted Reviewer indicated that Bali's had 100% juice and nuts in stock on the store visit date. In addition, the invoices did not reflect the purchase of any staple foods from the "Meats/Poultry/Fish" staple food category.

The Appellants also provided FNS with 14 photos of some of Bali's' staple food stock as evidence that the store now meets the requirements for authorization under Criterion A. However, the photos were not dated. As such, they cannot be considered towards verifying that Bali's had all of the required staple food items in stock at the time of the store visit. As Bali's was still lacking some of the required staple food items, the Retailer Operations Division determined that the store did not offer for sale on a continuous basis a variety of staple foods in the "Dairy", the "Fruits and Vegetables" and the "Meats/Poultry/Fish" staple food categories as required under Criterion A of 7 CFR § 278.1(b)(1)(ii) of the SNAP regulations. As such, the Appellants failed to verify that Bali's had all of the staple foods in stock on the store visit date to qualify it for participation in the SNAP under Criterion A. 7 CFR § 278.1(k)(2) of the SNAP regulations is specific in its requirement that "FNS shall deny the application of any firm if it determines that the firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in paragraph (b)(1)(i) of this section ... for a minimum period of six months from the effective date of the denial." Therefore, the Appellants' contention that they believe that Bali's now stocks all of the staple foods required to meet the requirements for SNAP authorization eligibility under Criterion A does not provide any valid basis for dismissing or mitigating the adverse action imposed.

The Appellants contend that they believe that staple food sales will comprise more than 50 percent of Bali's' total gross retail sales which will make the store eligible for SNAP authorization under Criterion B. In the event of a firm's failure to meet the requirements of eligibility under Criterion A, FNS policy requires that the firm's eligibility be also evaluated under Criterion B. In order to qualify for authorization under Criterion B, more than 50 percent of a retail store's total annual retail sales must come from sales of staple foods. The Appellants' SNAP application reflects that 50 percent of its annual retail sales come from the sale of staple foods. The Appellants did not provide FNS with any documentation that verifies that more than 50 percent of Bali's' total annual retail sales come from staple foods. Therefore, by the Appellants' own admission on the firm's SNAP application, Bali's does not meet the eligibility requirements under Criterion B.

CONCLUSION

Based on a review of the case documentation and the discussion above, the initial decision by the Retailer Operations Division to deny the application of Bali's Food Mart to participate in the SNAP for a period of six months, effective August 29, 2016, is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that 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 you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

/s/
LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

October 25, 2016
DATE