



*FNS has determined that sufficient evidence exists that you have been found to be circumventing a period of disqualification through a purported transfer of ownership. The information was based on information that you submitted to FNS and/or lack of corroborating documentation to support a bona fide transfer of ownership in connection with your SNAP application.*

In a letter postmarked September 19, 2016, ownership appealed the Retailer Operations Division's decision to deny the August 3, 2016, application, and requested an administrative review of this action. The appeal was granted, and implementation of the sanction was held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That means the 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 USC § 2018 and 278 of Title 7 of the Code of Federal Regulations (CFR).

7 CFR § 278.1(b)(3) reads, in part, "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 . . . (iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations."

7 CFR § 278.1(k)(3) states, in part, "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 . . . (iii) Firms for which evidence exists of an attempt to circumvent a period of disqualification, . . . and program regulations shall be denied for a period of three years from the effective date of denial; (iv) Firms for which evidence exists of prior Food Stamp violations by owners, officers, or managers of the firm for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;"

7 CFR § 278.1(k) states, in part, "FNS shall deny the application of any firm if it determines that" . . . (6) "The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership."

## **APPELLANT'S CONTENTIONS**

In its September 19, 2016, letter and September 26, 2016, telephone conversation, Appellant explains that it does not understand why its application was denied and how it circumvented a period of disqualification.

The preceding may represent only a brief summary of Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced.

## **ANALYSIS AND FINDINGS**

It is common for disqualified store owners to attempt to remain financially or operationally interested in a firm by selling the store to a relative or applying for authorization at a location different from where he/she was authorized. This practice is known as "circumvention" and is not allowed under SNAP regulations. 7 USC 2018 (b)(7)(e) Additional evidence and circumstances must be taken into consideration beyond whether or not the Appellant firm owner is related to a permanently disqualified owner.

There is reference to the fact the Appellant purchased the store from a relative in the case record. However, there is no documentation in the file to support that the Retailer Operations Division explored the relationship between the current owner and the previous owner or that the previous owner will benefit financially from the new store owner's SNAP authorization. Thus, there is no evidence to support the Retailer Operations Division's determination that Appellant circumvented a period of disqualification through a purported transfer of ownership as described in 7 CFR § 278.1(b)(3)(iii).

A review of the record shows that the Retailer Operations Division does have documentation related to the business integrity of Appellant, yet it is not related to circumvention as stated in the denial determination. However, it is important to clarify for the record that the purpose of this review is to either validate or invalidate the Retailer Operations Division's earlier determination that Appellant circumvented a period of disqualification. Thus, this review is limited to consideration of the relevant facts and circumstances related to this decision and no other possible denial determinations.

## **CONCLUSION**

The Retailer Operations Division's determination to deny the SNAP application of Paps Deli for a period of three years is reversed. Appellant may submit a new application to participate in the SNAP. This decision does not preclude the Retailer Operations Division from asking for additional documentation or making an assessment in order to determine the eligibility of Appellant to participate as an authorized retailer with any future applications.

## **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 USC 2023) and to Section 279.7 of the Regulations (7 CFR §279.7) with respect to applicable rights to a judicial review of this determination. 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's owner resides or is 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 such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

/S/

MARY KATE KARAGIORGOS  
ADMINISTRATIVE REVIEW OFFICER

October 21, 2016  
DATE