

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

Beachhaven Food Corp.,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0234543

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), that the record supports that Beachhaven Food Corp. (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain a six-month disqualification of Appellant from the SNAP, as imposed by the Office of Retailer Operations and Compliance (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action in its administration of the SNAP, consistent with 7 CFR § 278.6(f)(1), 7 CFR § 278.6(a), and 7 CFR § 278.6(e), when it imposed a six-month period of disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

The USDA investigated of the compliance of Appellant with federal SNAP law and regulations during the period of September 8, 2020, through September 23, 2020. The investigative report dated October 21, 2020, documented those personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple dates. The items sold are best described as common nonfood items. As a result of evidence compiled during the investigation, by letter dated November 20, 2020, Retailer Operations charged Appellant with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits were noted in Exhibits A, B, C and E, that warrants a disqualification of Appellant as a SNAP retail food store for a period of six months. The letter also states that under certain conditions FNS may impose a civil money penalty (CMP) in lieu of a disqualification. The representative provided a response to the Charge letter December 30, 2020.

Retailer Operations informed Appellant by Determination letter dated May 20, 2021, that the violations cited in the Charge letter occurred at the firm, and that a six-month period of disqualification was warranted. The letter also stated that eligibility for a hardship CMP was not applicable as there are other authorized retail food stores in the area selling as large a variety of staple foods at comparable prices. The representative requested review of the determination by letter dated May 26, 2021. The review was granted by letter dated June 22, 2021.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant, credible evidence, that a reasonable mind, considering the record, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(5) establish the authority upon which a six-month disqualification may be imposed against a retail food store.

7 CFR § 278.2(a) states: “SNAP benefits may be accepted by an authorized retail food store only from eligible households or the households’ authorized representative, and only in exchange for eligible food.”

7 CFR § 278.6(a) states: “FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation based on evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.”

7 CFR § 278.6(e)(5) of the SNAP regulations states that a firm is to be disqualified for six months “if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm’s ownership or management.”

7 CFR § 278.6(f)(1) provides for civil money penalty assessments in lieu of disqualification in cases where disqualification would cause hardship to SNAP benefit households because of the unavailability of a comparable participating food store in the area to meet their shopping needs. It states: “FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm’s disqualification would cause hardship to SNAP benefit households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices.”

SUMMARY OF THE CHARGES

A report of the investigation was provided to the Appellant as Exhibits with the Charge letter. The investigative report provides details on the results of each compliance visit. The investigative report documents that SNAP violations were recorded during multiple store visits, that warrant a six-month disqualification. The SNAP violations of 7 CFR § 278.2(a) involved the sale by store personnel of nonfood items, including major items, for benefits. The nonfood items exchanged by store personnel for SNAP benefits included: a phone charging cord, paper towels, glue, ChapStick, and tobacco pods.

APPELLANT'S CONTENTIONS

Consideration was made of all contentions as presented, whether recapitulated here or not.

- My client did not commit any trafficking or any intentional wrongdoing in the entire life of his business. We explained the situation to the case officer, and we requested an alternative option since this is first event and my client's business.
- My client believes that USDA is unfairly treating his firm. The owner of the above firm always in compliance with the rules, but unfortunately, he cannot be in presence 24 hours in the store. And his employees constantly leave and quit working form [sic] with weeks and as a result he rehires new helpers...
- My client trains his workers and educates them regularly. The reported submitted by the USDA shows many of the transactions were complying, and particularly the trafficking was refused at my client's store.
- The retailer has put efforts to avoid such violation by training his employees. Your report came late, the surveillance cameras in my client's store are self-erasing, and we have no way to verify what the cashier has done. As a result, my client cannot confirm if these transactions during the investigated period were made.
- On September 5, 2020, the owner hired a newly immigrant from the middle east. The owner due emergency in the family, he asked this person to cover up for him during his absence and the owner could not much time to train this person. My client believes that this was the clerk who interacted and served the USDA contractor during the four visits.
- The helper stated he got confused on some of the items and sometimes he does not recognize whether they are edible or not, but it was not intentional. The confusion happens because of the lack of knowledge and due unfamiliarity to some of the product. The employee did not intentionally mean to commit any wrongdoing.
- In order to address these issues and any other, the owner has taken the following steps that may prevent any such mistake in the future: Hired new employee with prior experience in food market and have extensive training; Implemented a new point of sale system that categorizes items that can be paid with SNAP and does not allow for the purchase of non SNAP items be charged to SNAP account; He trained his helper and he and his clerk watched he instructions and videos to prevent any further mistakes with EBT benefits.

ANALYSIS AND FINDINGS

This review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations' determination at the time it was.

made. The documentation under review supports that the violative transactions were conducted at Appellant by store personnel, on different dates. The owner submitted no evidence to support that the transactions did not occur at Appellant. Retailers are informed that it is their responsibility to ensure that store personnel are properly trained regarding the SNAP rules. Regardless of whom the owner of a store may utilize to handle store business, the firm's owner is accountable for the proper training of personnel, and the effective monitoring and handling of SNAP benefit transactions.

Upon review, the evidence supports that Appellant's store personnel established a record of selling nonfood items as defined by Section 271.2 of the regulations, on multiple occasions. The regulations at 7 CFR § 278.6(e)(5) specify that FNS shall "disqualify the firm for six months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as, but not limited to, the sale of nonfood items due to carelessness or poor supervision by the firm's ownership or management." The violations in this matter are considered evidence of carelessness, poor supervision and inadequate training. The retailer response admits the owner did not have much time to train the clerk. The preponderance of evidence under review supports that Appellant's personnel sold nonfood items on multiple store visits in exchange for SNAP benefits, a program violation that warrants a six-month disqualification.

CIVIL MONEY PENALTY

Retailer Operations rendered a finding that it was not appropriate to impose a CMP in lieu of a six-month period of disqualification from SNAP. The record documents that there are other authorized stores within a nearby radius of Appellant that stock a variety of comparable staple foods at comparable prices. Retailer Operations concluded that the evidence does not support that it will cause hardship for SNAP recipients if Appellant is disqualified as stipulated by the regulations. Therefore, Appellant was properly deemed not eligible for a hardship CMP.

CONCLUSION

The preponderance of the evidence in the record supports that the program violations charged did occur at Appellant. The record documents that Retailer Operations properly evaluated Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the regulations. On review, it is decided that Retailer Operations properly denied a CMP. Therefore, the six-month disqualification of Appellant from participation as an authorized retail food store in the SNAP is sustained. This penalty shall become effective thirty (30) days after delivery of this decision.

A new application for participation in the SNAP may be submitted ten days prior to the expiration of the six-month period of disqualification. Please contact the Retailer Center at 877-823-4369 with general questions regarding the SNAP application process.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023), and to the regulations at 7 CFR § 279.7 with respect to the owner's right to judicial review of this decision. 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 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 delivery 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

July 13, 2021