

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

**Caravan Deli and Kabob,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0241157**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that Caravan Deli and Kabob (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain the hardship civil money penalty (CMP) as imposed by the Retailer Operations Division (Retailer Operations, in lieu of a one-year disqualification of Appellant as a SNAP authorized retail food store.

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), 7 CFR § 278.6(e)(4), and 7 CFR § 278.6(f)(1) in its administration of the SNAP, when it imposed a CMP in lieu of a one-year 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 March 25, 2021, through April 1, 2021. The investigative report dated April 8, 2021, documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple separate occasions that warrant a six-month disqualification period. The items sold are best described as major nonfood items. As a result of evidence compiled during this investigation, by letter dated April 13, 2021, Retailer Operations charged the owner with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits were noted in Exhibits A, B, and C, that warrants a disqualification as a SNAP retail food store for a period of six months. The letter also states that under certain conditions FNS may impose a

CMP in lieu of a disqualification. The owner replied to the Charge letter April 26, 2021, and admitted his involvement in the violations. Retailer Operations rescinded the Charge letter, and issued a new Charge letter dated April 27, 2021, for a disqualification period of one year per Section 278.6(e)(4) of the regulations, due to owner involvement in the violations. The owner did not reply to this Charge letter.

Retailer Operations informed the owner by Determination letter dated May 18, 2021, that the violations cited in the Charge letter occurred at the firm and that Appellant's disqualification would cause hardship for SNAP households. Therefore, in accordance with 7 CFR Part 278.6(f)(1) of the SNAP regulations, Retailer Operation's imposed a hardship civil money penalty (CMP) in the amount of \$3,696.00, in lieu of a one-year period of disqualification.

The owner appealed the determination by letter dated May 27, 2021. The administrative review was granted by letter dated July 1, 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 evidence which 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: "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(e)(4) states: "Disqualify the firm for one year if it is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amount normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations."

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(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(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, and documents that SNAP violations were recorded during three store visits that warrant a disqualification period of one year due to the owner’s admission of participation in the violations. The violations involved the sale of major nonfood items and other ineligible nonfood items by the owner and a store personnel in exchange for SNAP benefits.

### **APPELLANT’S CONTENTIONS**

Consideration of all contentions has been made whether recapitulated here or not.

- I would like to explain and respond to the violation letter received. At that time, we had a part time cashier who made that mistake who is no longer with us.
- For the other violation I accept it, I did not have any experience and was unaware of the policy. I will not do it again and I would appreciate any help I can get from you.
- I understand this purchase was made in error and I take full responsibility however my business will suffer as a result. Would it be possible to eliminate this fine, lower the fine, or set up the lowest payment amount possible.

### **ANALYSIS AND FINDINGS**

The purpose of this review is to either validate or to invalidate the earlier determination and is limited to the facts at the basis of Retailer Operations’ determination at the time such action was taken. The Exhibits furnished with the Charge letter warrant a disqualification period of six months. The owner admitted involvement in the sale of major nonfood items, and a new Charge letter was issued to reflect the penalty for owner-involvement in violations, that warrants a disqualification period of one year.

Retailer Operations determined that the assessment of a hardship CMP of \$3,696.00 in lieu of a one-year period of disqualification is the appropriate penalty for the violations, in accordance.

with Section 278.6(f)(1) of the regulations.

Upon review, the evidence supports that Appellant established a record of selling major nonfood items in exchange for SNAP benefits, on multiple occasions. The owner admitted the violations, and his involvement, and accepted responsibility.

### **CIVIL MONEY PENALTY**

Retailer Operations rendered a finding that it was appropriate to impose a hardship CMP in lieu of a one-year period of disqualification on Appellant. It assessed a CMP because Appellant's disqualification would cause hardship to SNAP households. A hardship CMP in the amount of \$3,696.00 was imposed. Review was made of the calculation of the CMP, and the amount is deemed to have been correctly computed per the applicable regulations.

### **CONCLUSION**

Based on a review of the record, the preponderance of the evidence supports that the program violations charged did occur at Appellant. The USDA investigative report documents the dates of the violations, and the specific ineligible merchandise sold in exchange for SNAP benefits... The regulations stipulate "Disqualify the firm for one year if it is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amount normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations."

The record documents that Retailer Operations properly considered Appellant's eligibility for a hardship CMP and granted it in the amount stated herein, in lieu of the one-year disqualification of Appellant from participation as an authorized retailer in the SNAP. This determination is sustained. This penalty shall become effective thirty (30) days after delivery of this decision.

The owner should review the May 18, 2021, Determination letter, previously provided by Retailer Operations, with the enclosed Bill for Collection, Standard Form 1114, and other payment information attached. The owner should act as described. For billing inquiries, please contact the USDA, FNS, Retailer Repayment Team, Financial Management, Accounting Division (703) 605-0483 or [fn-retailerrepayment@usda.gov](mailto:fn-retailerrepayment@usda.gov). For FNS staff to access Appellant's account, the owner must provide the Account Number listed on the provided Bill for Collection. If the owner chooses not to or is unable to pay the hardship CMP for the total amount specified, Appellant will be disqualified for a period of one year.

### **RIGHTS AND REMEDIES**

Your 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 your right to 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 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 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.

M. Viens  
ADMINISTRATIVE REVIEW OFFICER

July 27, 2021