

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

Dulceria Mexico,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0240394

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), that the record supports that Dulceria Mexico (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 or March 4, 2021, through March 24, 2021. The investigative report dated April 21, 2021, 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, and major items. As a result of evidence compiled during the investigation, by letter dated May 10, 2021, Retailer Operations charged Appellant 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 civil money penalty (CMP) in lieu of a disqualification. The record shows that the owners did not reply to the Charge letter.

Retailer Operations informed Appellant by Determination letter dated May 24, 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. One owner requested review of the determination by letter dated June 1, 2021. The review was granted by letter dated July 6, 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 for benefits. The nonfood and major items exchanged by store personnel included: a pinata, foam plates, dish detergent, beer, and laundry detergent.

APPELLANT'S CONTENTIONS

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

- I never received the charge letter that was issued on May 10, 2021. I received the letter that was issued on May 24, 2021, this was the first time that I became aware of the problem. I have acted by re-training my employees, and this will not happen again.
- I am the manager of Tienda Latina. I understand that I rang up items that are not eligible on EBT. My boss has trained me and now I fully understand what is eligible and not eligible for EBT.

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 responding owner submitted no evidence to support that the transactions did not occur at Appellant. His manager submitted a letter dated June 1, 2021, that admits that she "rang up items that are not eligible on EBT." Retailers are informed that it is their responsibility to ensure that store personnel are properly trained regarding the SNAP rules. Regardless of whom the owners of a store may utilize to handle store business, the firm's owners are 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 on multiple occasions, including major items and alcohol. Three violations are considered evidence of carelessness. An employee admitted the violations and that she was trained only after the violations occurred. The violations in this case are not too limited to warrant a disqualification period of six months. 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."

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 as large 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. Therefore, Appellant was 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 owners 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 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 30, 2021