

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

Chin Family Asia Grocery Store,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0252021

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to support the determination by the Office of Retailer Operations and Compliance to assess a civil money penalty against Chin Family Asia Grocery Store (“Appellant”) in the amount of \$26,250 in lieu of a six-month disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of Code of Federal Regulations (CFR) § 278.6(e)(5) and (f)(1) in its administration of SNAP when it assessed a civil money penalty in the amount of \$26,250 in lieu of a six-month disqualification against Appellant on May 3, 2022.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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

USDA conducted an investigation of Appellant’s compliance with federal SNAP law and regulations during the period of February 14, 2022 through February 17, 2022. The investigation reported that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on three separate occasions. These items sold during these impermissible transactions are best described in regulatory terms as “common ineligible nonfood items.” The investigation revealed that one unidentified female clerk was involved in the impermissible

transactions. As a result of evidence compiled from this investigation, the Office of Retailer Operations and Compliance informed Appellant, in a letter dated March 28, 2022, that the firm was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.2(a). The letter states, in part, that the violations “. . . warrant a disqualification period of six months (Section 278.6(e)(5)). Under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification (Section 278.6(f)(1)).”

Appellant replied to the Office of Retailer Operations and Compliance’s charges in writing. The record reflects that the Office of Retailer Operations and Compliance received and considered the information provided prior to making a determination.

The Office of Retailer Operations and Compliance notified Appellant in a letter dated May 3, 2022 that the firm was being disqualified for six months from participation as an authorized retailer in SNAP. This determination letter also stated that an assessment of a hardship civil money penalty (CMP) was appropriate. Therefore, a civil money penalty in the amount of \$26,250, in lieu of a six-month disqualification, was offered as an option to Appellant.

On May 9, 2022, Appellant appealed the Office of Retailer Operations and Compliance’s decision to impose a six-month disqualification, and requested an administrative review of the action. The appeal was granted and implementation of the sanction has been on hold pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(5) establish the authority upon which a six-month disqualification may be imposed against a retail food store or wholesale food concern.

Section 278.6(e)(5) of the SNAP regulations states, in part, when 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, in part:

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 on the basis of 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) reads, in part:

FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . the firm's disqualification would cause hardship to SNAP 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.

ANALYSIS AND FINDINGS

A review of the evidence does not support the Office of Retailer Operations and Compliance's determination in this case. Accordingly, it is unnecessary to address Appellant's contentions in this matter.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Office of Retailer Operations and Compliance. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

CONCLUSION

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to assess a civil money penalty against Chin Family Asia Grocery Store of \$26,250 in lieu of a six-month period of disqualification from participating as an authorized retailer in SNAP is reversed.

RIGHTS AND REMEDIES

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.

RICH PROULX
ADMINISTRATIVE REVIEW OFFICER

August 29, 2022