

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

Elarab Fuels LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0247448

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is not sufficient evidence to support a finding that the permanent disqualification of Elarab Fuels LLC (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division. The Trafficking Civil Money Penalty imposed in lieu of the permanent disqualification is reversed.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 USC § 2021 and the implementing regulations at 7 CFR § 279.1 provide that “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 the compliance of Appellant with federal SNAP law and regulations during the period from August 10, 2021, through August 11, 2021. The investigation report documents that personnel at Appellant exchanged cash for SNAP benefits. As a result of evidence compiled from the investigation, the Retailer Operations Division informed Appellant, in a letter dated September 7, 2021, that it was charged with violating the terms and conditions of the SNAP regulations. Appellant, through counsel, replied to the charge letter on October 7, 2021, and requested a civil money penalty.

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The Retailer Operations Division notified Appellant by letter dated November 30, 2021, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and § 278.6(e)(1) for trafficking violations. This determination letter further stated that Appellant was eligible for a trafficking CMP of \$59,000 in lieu of the permanent disqualification.

Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review by letter dated December 10, 2021. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a 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 § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 USC § 2021(b)(3)(B) states, in part:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 271.2 defines trafficking, in part, as:

(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR § 278.6(e)(1) reads, in part:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

ANALYSIS AND FINDINGS

A review of the evidence indicates that the case record contains insufficient evidence to support a permanent disqualification for trafficking as defined under 7 CFR § 271.2.

CONCLUSION

The Retailer Operations Division's determination to impose a CMP of \$59,000 in lieu of a permanent disqualification against Appellant 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

MARY KATE KARAGIORGOS
Administrative Review Officer

May 10, 2022