

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

**Fujihara Store,  
Appellant,**

**V.**

**Retailer Operations Division,  
Respondent.**

**Case Number: C0226753**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a six-month disqualification of Fujihara Store (hereinafter Appellant), from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) as initially imposed by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a six-month disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provides 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**

The USDA conducted an investigation of the compliance of Fujihara Store, with Federal SNAP law and regulations from February 15, 2021, through March 29, 2021. In a letter dated May 13, 2021, Retailer Operations Division charged the Appellant firm with accepting SNAP benefits in exchange for merchandise which included common ineligible non-food items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on five (5) out of five (5) compliance visits. The letter further informed the Appellant that the violations warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5).

In correspondence dated May 26, 2021, Appellant replied to the charge letter and generally stated that the claims were fraudulent and inaccurate, and a review of the investigative

transaction report showed multiple discrepancies. The store owner has been operated the store for 20 years and there have been no infractions. The likelihood of having violations four days in a row with three different clerks is preposterous, especially since they do not allow any ineligible items to be purchased with SNAP benefits. Appellant stated that disqualifying the store would cause immense hardship to SNAP households in the community. Appellant requested that the violations against the store be removed due to the fact that there is no evidence proving that ineligible items were purchased, and multiple discrepancies found in the investigative transaction report.

After reviewing the evidence of the case and the Appellant's response, Retailer Operations Division issued a determination letter dated June 2, 2021. The determination letter informed the Appellant it was disqualified from the SNAP for a period of six months in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that Retailer Operations Division considered Appellant's eligibility for a hardship CMP under 7 CFR § 278.6(f)(1). Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six-month disqualification because there was another authorized retail store in the area selling as large a variety of staple foods at comparable prices.

In a letter dated June 12, 2021, Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. The appeal was accepted, and the implementation of the six-month disqualification was held in abeyance pending completion of this review.

## **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means an 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 & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e) establish the authority upon which a period of disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, inter alia: "Coupons may be accepted by an authorized retail food store only from eligible households.... Only in exchange for eligible food"

7 CFR § 271.2 states, inter alia: "Eligible food means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption"

7 CFR § 278.6(a) states, inter alia: "FNS may disqualify any authorized retail food store... if the firm fails to comply with the Food and Nutrition Act of 1977, 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...”

7 CFR § 278.6(e)(5) states, inter alia: “Disqualify the firm for 6 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) states, inter alia: “FNS may impose a civil money penalty as a sanction in lieu of when... the firm’s disqualification would cause hardship to Food Stamp [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.”

### **APPELLANT’S CONTENTIONS**

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

1. After thoroughly reviewing the investigative transaction report I found multiple discrepancies.
2. The description of the clerk on 2/15/21 is inaccurate, I was working that day and I do not fit the description. The department has neither picture of ineligible food items, audio nor video recording that these transactions occurred as described.
3. The written description of the items are vague, and the total amount of the purchase does not equal the amount reported.
4. On 2/17/21 and 2/18/21 the amounts of purchase are identical, yet different items are claimed to have been purchased and this is highly unlikely.
5. There is no evidence of ineligible items purchased. There are no receipts of items purchased, therefore no proof that any ineligible items were purchased.
6. This store has been owned and operated by the same owner for 20 years and there have been no infractions.
7. Disqualifying Fujihara Store from SNAP would cause immense hardship to SNAP households in the community.
8. It is the Appellant’s belief and request that the charge letter be rescinded and that a warning letter be issued.

Appellant, through counsel, provided color photographs of the store and some food items, a copy of the 2018 Profile of SNAP Households in Hawaii. The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

### **ANALYSIS AND FINDINGS**

FNS initially authorized Fujihara Store as a convenience store on February 20, 2002. During an investigation from February 15, 2021, through March 29, 2021, the USDA conducted five (5)

compliance visits at Appellant's store. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated May 13, 2021. The investigation report included Exhibits A through E, which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were committed during five (5) of the five (5) compliance visits. They involved the sale of one (1) 48-count package of Total Home plates, two (2) 25-count pack of Malama forks, one (1) 150-count box of Home Smart storage bags, two (2) 25-count pack of Malama spoons, two (2) 24-count pack of Amscan birthday candles, one (1) 90 count box of Up & Up snack bags and one (1) 24-count pack of Accents plastic spoons. No items were refused during this investigation.

With regard to Appellant's contentions, through counsel, it is important to note that as owner of the store, Appellant is liable for all volatile transactions handled by either paid or unpaid store personnel. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food Stamp Act and the enforcement efforts of the USDA.

It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant's contentions, through counsel, do not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Furthermore, it is important to clarify for the record that the purpose of this review is to determine if the earlier decision of the Retailer Operations Division, to disqualify Appellant from participation in the SNAP for a period of six months, was in fact a correct one. It is not within the scope of this review to consider what subsequent actions Appellant may have taken so that its store may begin to comply with program requirements.

It is important to note that a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. There is no provision in the Act, regulations, or agency policy that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees.

The record reflects that donation sheets (containing the description of all purchased items) show that all items purchased were donated to an area organization and signed for by the

organization's receiver. Items in Exhibit A - D were donated on February 20, 2021, and items purchased in Exhibit E were donated on April 5, 2021. Additionally, EBT receipts were given showing the SNAP amounts charged during each transaction. Exhibit C EBT receipt dated February 18, 2021, and Exhibit D EBT receipt dated February 19, 2021, show the same amount of \$27.17, however the items purchased were slightly different. The selection of different items does not necessarily mean that the purchase price will be different. This is evidenced by the clerk's completion of the SNAP purchase in both Exhibits C and D. The record also contains clear color photographs of the items purchased during Exhibits A through E.

Furthermore, the report clearly recounts activities wherein personnel at Fujihara Store exchanged SNAP benefits for ineligible items. The descriptions of the clerks involved in the transactions are based on the Investigator's perception and may not perfectly match the clerk's actual age, height, and weight.

Based on a review of the evidence in this case, there is no question that program violations did occur. Clerks working at Appellant sold common ineligible items to an FNS investigator on five (5) separate investigative visits. The investigative record is specific and accurate with regard to the dates of the violations, the exchange of SNAP benefits for ineligible items, and in all other critically pertinent detail. As such, the contentions presented do not constitute valid grounds for dismissal of the current charges of violations, or for mitigating the impact of those charges. Based on a review of the evidence in this case, it appears that the SNAP violations at issue did, occur as charged.

### **CIVIL MONEY PENALTY**

Retailer Operations Division considered Appellant's eligibility for a hardship CMP under 7 CFR §278.6(f)(1). The Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six-month disqualification. The record reflects that Appellant is in a rural area and there is a similar authorized retailer within a 3-mile radius of Appellant selling an ample variety of staple food items at better or comparable prices. The record also reflects that SNAP customers were conducting SNAP transactions at both Appellant's store and the comparable store and in some cases on the same days and/or within a short timeframe of less than 10 minutes. This pattern clearly indicates that Appellant's disqualification would not cause a hardship to SNAP customers.

### **CONCLUSION**

The documentation presented by Retailer Operations Division provides through a preponderance of the evidence that the violations as reported occurred at the Appellant firm. 7 CFR § 278.6(e)(5) specifies 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 common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

The violations were determined by Retailer Operations Division to represent the first sanction for the firm and evidence carelessness and poor supervision. Therefore, the imposition of a six-month disqualification, the least severe penalty allowed by regulation, is appropriate.

It is therefore established that the violations as described in the letter of charges did in fact occur at the Appellant firm warranting a disqualification of six months in accordance with 7 CFR § 278.6(e)(5). Based on the discussion herein, the decision to impose a six-month disqualification against Fujihara Store is appropriate and the action is sustained.

In accordance with the Act and regulations, the six-month period of disqualification shall become effective thirty (30) days after receipt of this letter. The Appellant may submit a new application for SNAP participation ten (10) days prior to the expiration of the six-month disqualification period.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right to a 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 you 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 receipt of this Decision.

Under the Freedom of Information Act (FOIA), 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.

Monique Brooks  
ADMINISTRATIVE REVIEW OFFICER

May 2, 2022