

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

**7 Brothers Deli & Grill Co,**

**Appellant,**

**v.**

**Case Number: C0249682**

**Retailer Operations Division,**

**Respondent.**

**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 finding that a three year disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against 7 Brothers Deli & Grill Co (hereinafter “7 Brothers Deli & Grill Co” or “Appellant”) by the Retailer Operations Division of FNS.

**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 three year disqualification against 7 Brothers Deli & Grill Co.

**AUTHORITY**

7 U.S.C. 2023 and its 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**

The Department of Agriculture conducted an investigation of the compliance of 7 Brothers Deli & Grill Co with Federal SNAP law and regulations. In a letter dated May 9, 2022, the Retailer Operations Division charged the Appellant with allowing another business, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), to utilize the Appellant’s SNAP authorization (FNS number 5 U.S.C. § 552 (b)(7)(E)) to illegally accept and process EBT SNAP benefits for eligible food items during the period October 22, 2021 through November 2, 2021.

The letter further informed the Appellant that allowing another business to utilize the Appellant’s FNS number to process EBT SNAP benefits for eligible food items was in violation of 7 CFR

§ 278.2 of the SNAP regulations. These violations warrant a disqualification period of three years as provided in 7 CFR § 278.6(e)(3)(ii). The letter also stated that under certain conditions, FNS may impose a hardship civil money penalty (CMP) in lieu of a disqualification as provided in 7 CFR § 278.6(f)(1). The charge letter noted that per SNAP regulations Section 278.6(b), the Appellant has the right to present any information, explanation or evidence regarding the charges and must reply within 10 calendar days of the date of receipt of the charge letter. Per UPS confirmation of delivery, the charge letter was delivered to the store address of record on May 10, 2022.

The record reflects that on May 20, 2022, the Appellant's counsel requested an extension in time for providing a response to the letter of charges. By letter of May 23, 2022, the Retailer Operations Division granted counsel's time extension request to June 17, 2022.

In responses to the Retailer Operations Division of May 18, 2022, May 20, 2022, May 23, 2022, and June 18, 2022, the Appellant, through counsel, responded to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

After considering the Appellant's responses and the evidence of this case, the Retailer Operations Division issued a determination letter dated June 21, 2022. The determination letter informed the Appellant that the firm was disqualified from the SNAP for a period of three years in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a hardship civil money penalty 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 three year disqualification because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked June 30, 2022, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. FNS granted the Appellant's request for administrative review by letter dated July 27, 2022. Upon acceptance of the administrative review request, implementation of the three year disqualification was held in abeyance pending completion of this review.

### **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 law in this matter is found 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)(3) establish the authority upon which a three-year disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, *inter alia*:

*Coupons [i.e., SNAP benefits] may be accepted by an authorized retail food store only from eligible households... and only in exchange for eligible food... An authorized retail food store may not accept coupons from another retail food store, except that public or private nonprofit homeless meal providers may redeem coupons for eligible food through authorized retail food stores. [Emphasis added.]*

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 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.... Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section.*

7 CFR § 278.6(c) states, *inter alia*:

*The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination...*

7 CFR § 278.6(e) states, *inter alia*:

*FNS shall take action as follows against any firm determined to have violated the Act or regulations... The FNS regional office shall:*

*(3) Disqualify the firm for 3 years if it is to be the first sanction for the firm and the evidence shows that:*

*(ii) Any of the situations described in paragraph (e)(2) of this section occurred 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)(2)(v) states, *inter alia*:

*(2) Disqualify the firm for 5 years if it is to be the firm's first sanction, the firm had been previously advised of the possibility that violations were occurring and of possible consequences of violating the regulations, and the evidence shows that:*

*(v) Personnel of the firm knowingly accepted coupons from an unauthorized firm or an individual known not to be legally entitled to possess coupons.*

7 CFR § 278.6(f)(1) states, *inter alia*:

*FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and 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.*

## **SUMMARY OF CHARGES**

During the period October 22, 2021 through November 2, 2021, the Department of Agriculture conducted an investigation of the compliance of 7 Brothers Deli & Grill Co with Federal SNAP law and regulations. During the investigation, an FNS investigator discovered that the Appellant was allowing another business, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), to utilize 7 Brothers Deli & Grill Co's SNAP authorization (FNS number 5 U.S.C. § 552 (b)(7)(E)) to illegally accept and process EBT SNAP benefits for eligible food items on three separate occasions. The record indicates that the owner of 7 Brothers Deli & Grill Co, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), also owns 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

## **APPELLANT'S CONTENTIONS**

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the charge letter and in the administrative review request, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- Both 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 7 Brothers Deli & Grill Co are owned by the same person/owner. He is the sole owner and 100 percent shareholder of both businesses.
- Upon speaking with the two employees in both locations, they indicated that the EBT terminal sometimes does not work and they thought that since both stores have the same owner that 7 Brothers Deli & Grill Co's EBT terminal could be used at 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is located across the street from 7 Brothers Deli & Grill Co.
- The violations were an honest and unintentional mistake.
- The owner was surprised to learn of the SNAP violations that occurred.
- The owner did not give authorization for the SNAP transactions to be conducted at his other store.
- All employees are well trained on the SNAP rules on a monthly basis using videos and materials available on the FNS website. The owner asks employees to read through the SNAP refresher training materials located on-line.
- The Appellant has always been in compliance with the SNAP rules and this is the first time that the firm has been cited for SNAP violations.
- Almost on a daily basis the owner turns away customers requesting to exchange SNAP benefits for cash and he refuses the sale of ineligible nonfood items with SNAP benefits.
- Even the investigation reports show that the Appellant shows efforts to be in compliance with the SNAP rules by refusing to sell an ineligible nonfood item with SNAP benefits.
- Both employees have been terminated.
- The Appellant requests consideration for the issuance of a warning letter or in the alternative, consideration for a hardship civil money penalty in lieu of a three year SNAP disqualification.

- The Appellant requests an immediate hearing to discuss the case.

## ANALYSIS AND FINDINGS

This review is to either validate or to invalidate the determination made by the Retailer Operations Division; it is limited to the facts at the basis of the Retailer Operations Division's determination at the time it was made.

The Appellant contends that both 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 7 Brothers Deli & Grill Co are owned by the same person/owner. Employees in both locations indicated that the EBT terminal sometimes does not work and they thought that since both stores have the same owner that 7 Brothers Deli & Grill Co's EBT terminal could be used at 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is located across the street from 7 Brothers Deli & Grill Co. The violations were an honest and unintentional mistake. The owner did not give authorization for the SNAP transactions to be conducted at his other store.

However, when store ownership signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It also agreed to accept responsibility on behalf of the firm for SNAP violations including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Regardless of who the store owner utilizes to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf.

In addition, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP application. The Appellant's SNAP authorization permit and the *SNAP Training Guide for Retailers* note that authorization from one location may not be used by someone else or at another location which has not gone through the application and authorization process.

During the period October 22, 2021 through November 2, 2021, the Department of Agriculture conducted an investigation of the compliance of 7 Brothers Deli & Grill Co with Federal SNAP law and regulations. During the investigation, an FNS investigator discovered that the Appellant with allowing another business, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), to utilize 7 Brothers Deli & Grill Co's SNAP authorization (FNS number 5 U.S.C. § 552 (b)(7)(E)) to illegally accept and process EBT SNAP benefits for eligible food items on three separate occasions. The record indicates that the owner of 7 Brothers Deli & Grill Co, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), also owns 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The record indicates that there have been two applications submitted for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for SNAP authorization by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the owner of 7 Brothers Deli & Grill Co. However, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was not authorized for SNAP participation during either SNAP authorization application.

The investigation reports noted the following transactions that occurred at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in which 7 Brothers Deli & Grill Co's SNAP authorization number was used to process the transactions:

1. On October 22, 2021, a clerk exchanged \$5.00 in SNAP benefits for a pack of ground coffee and a box of white sugar at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This \$5.00 transaction was processed on POS terminal 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which is assigned to 7 Brothers Deli & Grill Co (FNS number 5 U.S.C. § 552 (b)(7)(E)).
2. On October 28, 2021, a clerk exchanged \$14.00 in SNAP benefits for a box of pancake mix, a bottle of mandarin soda, a bottle of green apple soda, two bags of jalapeno potato chips, and a bottle of corn oil at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This \$14.00 transaction was processed on POS terminal 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which is assigned to 7 Brothers Deli & Grill Co (FNS number 5 U.S.C. § 552 (b)(7)(E)).
3. On November 2, 2021, a clerk exchanged \$25.00 in SNAP benefits for a box of pancake mix, a bottle of hot sauce, a bottle of corn oil, two cans of beans, a box of white sugar, one bag of potato chips, and two bottles of mandarin soda at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This \$25.00 transaction was processed on POS terminal 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which is assigned to 7 Brothers Deli & Grill Co (FNS number 5 U.S.C. § 552 (b)(7)(E)).

The SNAP regulations at 7 CFR § 278.2(a) state, *inter alia*:

*Coupons [i.e., SNAP benefits] may be accepted by an authorized retail food store only from eligible households... and only in exchange for eligible food... An authorized retail food store may not accept coupons from another retail food store, except that public or private nonprofit homeless meal providers may redeem coupons for eligible food through authorized retail food stores. [Emphasis added.]*

The SNAP regulations at 278.6(e)(3)(ii) read as follows (emphasis added):

(3) Disqualify a firm for 3 years if it is to be the first sanction for the firm and the evidence shows that:

(ii) Any of the situation described in paragraph (e)(2) of this section occurred and FNS had not previously advised the firm of the possibility that violation were occurring and of the possible consequences of violating the regulations.

The SNAP regulations at 278.6(e)(2) read in part (emphasis added):

(2) Disqualify the firm for 5 years if it is to be the firm's first sanction, the firm had been previously advised of the possibility that violations were occurring and of possible consequences of violating the regulations, and the evidence shows that:

**(v) Personnel of the firm knowingly accepted coupons from an unauthorized firm or individual known not to be legally entitled to possess coupons.**

The Appellant's SNAP permit shows the name 7 Brothers Deli & Grill Co under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), operating at 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Nothing on the permit allows the Appellant to accept transactions that take place at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a retail food store that is not authorized to participate in the SNAP.

It should be further noted that on the Appellant's SNAP Application, signed on August 28, 2018, the following language is recorded: "Supplemental Nutrition Assistance Program authorization may not be transferred to new owners, partners or corporations. An unauthorized individual firm accepting or redeeming [SNAP] benefits is subject to substantial fines and administrative sanctions." The Appellant owner's signature on the application indicates that he had read, understood, and agreed with the conditions of SNAP participation.

Additionally, the record shows that the Appellant was made aware that 7 Brothers Deli & Grill Co's SNAP permit could only be used at one location. On the permit itself are the following words, in bold capitalized letters: "THIS PERMIT IS VALID ONLY FOR THE OWNER(S)/OFFICER(S) LISTED AND OPERATING AT THE LOCATION ABOVE."

It is clear from the investigator's description of events that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is a separate business from 7 Brothers Deli & Grill Co, complete with separate entrances and are completely different retail food stores. The investigator noted on the investigation reports that the "Authorized store [7 Brothers Deli & Grill Co] was closed each time the investigator went to the store." Even the Appellant confirmed that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 7 Brothers Deli & Grill Co are two separate retail food stores and that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is located across the street from 7 Brothers Deli & Grill Co. Even if the businesses are owned by members of the same family, or even if they were owned by the same person, each location must be authorized individually.

Based on the information that was provided to the Appellant during the application and authorization process, it is the conclusion of this review that it is more likely true than not true that the Appellant was aware that 7 Brothers Deli & Grill Co was not permitted to accept SNAP transactions from an unauthorized store. Further, the language in the SNAP regulations is clear that an unauthorized firm may not accept SNAP benefits, and an authorized firm may not accept SNAP benefits from such a firm. Therefore, it is more likely than not that these violative SNAP transactions were conducted with the knowledge of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), owner of 7 Brothers Deli & Grill Co, warranting a three year disqualification period as charged by the Retailer Operations Division. While the SNAP regulations do not allow for a lesser period of disqualification to be imposed or the imposition of a warning letter in lieu of a three year SNAP disqualification for the violations that occurred at the Appellant, the regulations do allow SNAP retailers to pay a hardship CMP, if eligible, as explained in the Civil Money Penalty section of this Final Agency Decision.

### **Corrective Action**

With regard to the Appellant's contentions with respect to the implementation of corrective actions to ensure that future SNAP violations do not occur, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to



comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **No Prior Violations**

The Appellant is correct that the firm has no previous history of SNAP program violations or warnings. However, a record of participation in the 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.

### **Employee Training on SNAP Usage**

The Appellant contends that all employees are well trained on a monthly basis on the SNAP rules using videos and materials available on the FNS website. The owner asks employees to read through the SNAP refresher training materials located on-line.

Unfortunately, this contention has little relevance to the issue at hand. There is nothing in the SNAP regulations that would permit a lesser period of disqualification or dismissal of the charges based on the firm's training of employees. Therefore, the contention that employees received regular training on the SNAP rules does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Hearing Request**

With regard to the Appellant's request for an immediate hearing, this disqualification is an administrative action and the SNAP regulations do not provide for a hearing, but rather for an administrative review of the action. As noted previously, the Act and regulations provide that any firm aggrieved by an administrative review determination may seek judicial review of the determination in Federal court or a State court of record having competent jurisdiction. In such event, trial de novo proceedings ensure the firm of a full evidentiary hearing on the agency action at issue.

### **CIVIL MONEY PENALTY**

The Appellant requests consideration for a hardship civil money penalty in lieu of a three year SNAP disqualification.

The Retailer Operations Division determined that the Appellant was not eligible for a hardship civil money penalty (CMP) under 7 CFR § 278.6(f)(1). That regulation 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." [Emphasis added]. 5 U.S.C. § 552 (b)(7)(E).



Therefore, based on the evidence, the disqualification of 7 Brothers Deli & Grill Co would not cause a hardship to SNAP recipients in the area, as opposed to a mere inconvenience; therefore, the Retailer Operations Division's decision not to assess a hardship CMP in lieu of a three year disqualification is sustained as appropriate under 7 CFR § 278.6(f)(1).

## **CONCLUSION**

It is therefore established that the violations of 7 CFR § 278.2 as described in the letter of charges did in fact occur at 7 Brothers Deli & Grill Co during a USDA investigation. All transactions cited in the letter of charges were conducted or supervised by a USDA investigator and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record is specific and accurate with regard to the dates of the violations in which the Appellant firm allowed another unauthorized business to utilize the Appellant's FNS number to process EBT SNAP benefits for eligible food items, and in all other critically pertinent details. Therefore, pursuant to 7 CFR § 278.6(a) and (e)(2) and (3) the decision to impose a three year disqualification against the Appellant, 7 Brothers Deli & Grill Co, is sustained.

Further, the decision by the Retailer Operations Division to not impose a civil money penalty in lieu of disqualification is also sustained. It is the determination of this review that SNAP households will not incur hardship due to the Appellant's disqualification because there are other authorized stores in the area selling as large a variety of staple foods at comparable prices.

In accordance with the Act and regulations, the disqualification penalty shall become effective 30 days after receipt of this decision. A new application for SNAP participation may be submitted 10 days prior to the expiration of the three year disqualification period.

## **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 Section 279.7 of the Regulations (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, FNS is 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.

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

May 5, 2023