

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

Darshan International Grocery, LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0245036

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination by the Retailer Operations Division to impose a six-month disqualification of Darshan International Grocery, LLC (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

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, when it imposed a six-month disqualification against Darshan International Grocery, LLC.

AUTHORITY

7 U.S.C. § 2023 and 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

Darshan International Grocery, LLC was initially authorized to participate in SNAP on December 9, 2019. Between October 8, 2021, and October 28, 2021, the USDA conducted an undercover investigation of Darshan International Grocery, LLC, to ascertain the firm’s compliance with Federal SNAP law. Agency records show that during the investigation Appellant appeared to have violated SNAP regulations by accepting SNAP benefits in exchange for ineligible non-food items on three separate occasions.

In a letter dated December 13, 2021, the Retailer Operations Division charged Appellant with accepting SNAP benefits in exchange for ineligible non-food merchandise, in violation of 7 CFR

§ 278.2(a). The charge letter informed Appellant that the violations warranted a six-month disqualification period from SNAP, as provided in 7 CFR § 278.6(e)(5). The letter further stated that under certain conditions, and in accordance with § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification.

After requesting and being granted an extension of time to reply, Appellant, through counsel, responded to the charge letter on January 14, 2022. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

The Retailer Operations Division issued a determination letter, dated April 7, 2022. This letter informed Appellant that the Retailer Operations Division found that the violations did occur as outlined in the charge letter and that a six-month disqualification would be imposed in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that Appellant was considered for a hardship CMP but was ineligible because there were other authorized stores in the area selling as large a variety of staple foods at comparable prices.

On April 12, 2022, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted, and implementation of the six-month disqualification has been held in abeyance pending completion of this review. In supplemental correspondence emailed on May 16, 2022, Appellant, through counsel, submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In an appeal of an adverse action, an appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. This 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 law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and is promulgated through regulation under Title 7 CFR Part 278. Specifically, 7 CFR § 278.6(a) and (e) establish the authority upon which a six-month disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food.

7 CFR § 271.2 states, in part:

Eligible foods 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, 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....

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. [Emphasis added.]

7 CFR § 278.6(c) states, in part:

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, in part:

FNS shall take action as follows against any firm determined to have violated the Act or regulations...

(5) 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, in part:

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 INVESTIGATION

During an undercover investigation conducted between October 8, 2021, and October 28, 2021, FNS completed four compliance visits at Darshan International Grocery, LLC. A report of the investigation was provided to Appellant as an attachment to the charge letter, dated December 13, 2021. The report included Exhibits A through D and provided full details on the results of each compliance visit. SNAP violations documented during three of the four visits included the exchange of ineligible non-food merchandise for SNAP benefits. The report noted that the following ineligible non-food items were sold in exchange for SNAP benefits: dish liquid, shampoo, soap, antiseptic liquid, hair oil, and air freshener.

In Exhibit D, the investigator did not attempt to purchase ineligible items, but instead asked the clerk if they would exchange SNAP benefits for cash. The clerk refused to exchange SNAP benefits for cash. The charge letter states that the violations that occurred in Exhibits A, B, and C warrant a disqualification period of six months pursuant to 7 CFR § 278.6(e)(5).

APPELLANT'S CONTENTIONS

In its April 12, 2022, administrative review request, and subsequent correspondence dated May 16, 2022, Appellant, through counsel, provided the following summarized contentions, in relevant part:

- Denial of FOIA is a violation of regulations. Appellant has not had an opportunity to evaluate and respond to all the information considered in this case, so this response cannot be considered a “full opportunity,” as provided in 7 CFR § 278.6(b)(1).
- The store has been in business for two years. It has never had a compliance problem and has not committed any violation in connection with the transactions set out in the charge letter. SNAP regulations, at 7 CFR § 278.6(d), require a long compliance history to be considered.
- Store employees receive initial and periodic training on the SNAP rules.
- Disqualifying Appellant would likely cause disruption to SNAP households’ routines despite the presence of other stores.
- FNS’s evidence lacks detailed specifics and corroborating evidence.
- In Exhibit D, the clerk refused to engage in trafficking SNAP benefits.
- The Department lacked sufficient evidence upon which to base a six-month disqualification.
- There is no evidence of intent to violate the SNAP regulations and carelessness or poor supervision by the store’s ownership or management.
- A determination that a certain number of ineligible sales over a certain number of visits is the very definition of arbitrary: a determination based upon individual preference or convenience rather than by the intrinsic nature of the transactions.
- A warning letter is the appropriate sanction.
- In the alternative, a hardship CMP should be issued as the store is in an area with comparatively low numbers of large SNAP retailers, and a higher volume of SNAP participants. The households in the surrounding neighborhood depend on small SNAP retailers like Appellant.
- Appellant is an Asian grocer specializing in Indian and Nepali foods. Surrounding stores have worse inventory and higher prices.

Appellant submitted no evidence in support of these contentions.

The preceding may represent only a summary of Appellant’s contentions presented in this matter. However, in reaching a decision, full consideration was given to all contentions presented, including any not specifically summarized or referenced herein.

ANALYSIS AND FINDINGS

If a store has never been sanctioned and its personnel, due to carelessness or poor supervision, sells common nonfood items for SNAP benefits, then the penalty under SNAP regulations is a six-month disqualification of the store's SNAP authorization.

This review examines the relevant information regarding the Retailer Operations Division's determination. Once the Retailer Operations Division establishes a violation occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that the disqualification should be reversed. If this is not demonstrated, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

In this case, the report of investigation, signed by the investigator under penalty of perjury, documents that the charges of violations are based on the findings of a formal USDA investigation. A complete review of this documentation has yielded no material error or discrepancy. The investigation report appears to be specific and thorough regarding the dates of the violations, the critical facts related thereto, and is supported by documentation that confirms the details of the transactions. The record further indicates that the Retailer Operations Division has documented the transactions in which personnel at the store allegedly exchanged ineligible items for SNAP benefits.

As described below, Appellant has not provided sufficient credible and convincing evidence to overturn the Retailer Operations Division's determination. This review finds, by a preponderance of the evidence, that program violations did occur as charged by the Retailer Operations Division and a six-month disqualification is warranted.

Deprivation of FOIA

Appellant argues that deprivation of a FOIA request and abatement of a determination is a violation of program regulations as it has not had an opportunity to review all the evidence that USDA relied upon in making a determination. As such, Appellant claims that it has not had a full opportunity to respond.

This review finds that there is no evidence Appellant was denied a FOIA request. Additionally, contrary to Appellant's contentions, Appellant is not entitled to receive an abatement of a determination pending any FOIA request. Effective October 26, 2020, changes to 7 CFR § 278.6 and 7 CFR § 279.4 went into effect which allows FNS to take administrative action against a firm, even if the firm has submitted a FOIA request or an appeal for records. Further, program regulations do not provide for formal discovery procedures. FNS has provided Appellant all the information required, as well as every opportunity to respond, under program regulations.

Sufficiency of the Investigative Report

Appellant contends there are inadequacies in the investigative report, including that it lacked specifics and contained no corroborating evidence.

This review finds the investigative report is signed by the investigator under penalty of perjury

and appears to be credible and fully documented. Available evidence shows that the transactions identified in the investigative report occurred at Appellant's store. The record includes photographs of the items purchased at the store by the investigator, photographs of any EBT receipts provided by the store to the investigator, and a donation certification listing the specific items purchased during the investigation and showing the charitable organization the items were donated to, including a signature of receipt by the charitable organization.

Every SNAP transaction that occurred at Appellant's firm appears on agency records along with the store's SNAP authorization number, the date and time of the transaction, the amount of the transaction, and the transaction method. Appellant has offered no compelling evidence showing that these violative transactions did not take place. Accordingly, the violations in Exhibits A, B, and C were sanctionable and warrant the six-month disqualification imposed by the Retailer Operations Division.

Applicable Penalty

Appellant contends that program regulations, at 7 CFR § 278.6(d), require FNS to consider a store's long compliance history to support the store's position that it had no intent to violate regulations. Appellant also argues that given the nature of the violations, a warning letter is the more appropriate sanction rather than a six-month disqualification. Appellant claims the penalty is arbitrary rather than based upon the intrinsic nature of the transactions.

Regarding these contentions, the record shows that the owner signed an application to participate as a retailer in SNAP, as well as subsequent SNAP reauthorization applications. By signing the applications, the owner agreed to accept responsibility on behalf of the firm for compliance with all statutory and regulatory requirements associated with participation in SNAP. The record clearly establishes that the owner agreed to abide by program rules, including taking responsibility for violations committed by any of the firm's employees, whether paid or unpaid, new, full-time or part-time. In this case, Appellant's store sold ineligible items for SNAP benefits on three occasions. Given the number of violations, it is unlikely that the firm's ownership or management exercised care or properly supervised employees in conducting SNAP transactions.

As to the applicable penalty, SNAP regulations, at 7 CFR § 278.6(e), specifically provide that a six-month disqualification is the applicable penalty for the first sanction of a firm when evidence shows that store personnel have committed violations such as the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management. SNAP regulations do not require any threshold be met for the six-month disqualification to apply. This is the minimum penalty in this circumstance, and accounts for the elements of 7 CFR § 278.6(d). Accordingly, the sanction imposed by the Retailer Operations Division in this case fully conforms to SNAP regulations and is consistent with sanctions imposed upon other retail stores that have committed similar first-time violations.

Employee Training

Appellant contends it has properly trained staff in the handling of SNAP transactions.

Based on the clerk's refusal to engage in trafficking in Exhibit D, it is likely that some training related to SNAP had previously taken place. However, the record plainly shows that store

personnel committed program violations by allowing the sale of ineligible items each time the investigator attempted to purchase ineligible items. Based on these actions, it is apparent to this review that employee carelessness or poor supervision was more prevalent at this store than it should have been. Accordingly, as noted above, a six-month disqualification penalty is proper and is entirely in line with SNAP regulations at 7 CFR § 278.6(e)(5).

Hardship Civil Money Penalty (CMP)

Appellant requests a CMP in lieu of disqualification, claiming the store is in an area with comparatively low numbers of large SNAP retailers and a higher volume of SNAP participants. Appellant stated it is an Asian grocer specializing in Indian and Nepali foods. Appellant argued surrounding stores have worse inventory and higher prices.

Regarding this request, regulations at 7 CFR § 278.6(f)(1) do allow, in some circumstances, for a CMP to be imposed in lieu of disqualification when the firm's disqualification would cause hardship to SNAP households. According to this regulation, hardship is defined as "no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices." The Retailer Operations Division had determined that a six-month disqualification of Darshan International Grocery, LLC would not cause a hardship to SNAP households as there were comparable or larger SNAP authorized stores in the area.

SNAP customers are likely to suffer some degree of inconvenience whenever any SNAP authorized retailer is disqualified, as the normal shopping pattern of SNAP customers may be altered. However, potential inconvenience is not the same as hardship, as defined in SNAP regulations.

It is the determination of this review that a disqualification of Darshan International Grocery, LLC, a small grocery store, would not cause hardship to SNAP households because there are other shopping options in the area. According to agency records, there are a number of other authorized retail stores located within a one-mile radius of Darshan International Grocery, LLC, including two superstores, two supermarkets, and three medium grocery stores. While the Retailer Operations Division noted that Appellant offers specialty stock, it also identified a larger store offering similar stock, including specialty stock, less than 0.25 miles from Appellant. There is no evidence that Appellant sells its inventory at unusually low prices in comparison to nearby stores. Given that hardship conditions have not been established, this review agrees with the Retailer Operations Division's determination that a hardship CMP may not be assessed in lieu of disqualification.

Case Law and Past Administrative Reviews

With regard to the case law cited by Appellant, it is beyond the scope and authority of this review to determine the applicability of same. This review is limited to consideration of whether or not the Retailer Operations Division duly adhered to the Food and Nutrition Act of 2008, as amended, and the implementing regulations, and whether or not the action taken is sustainable by a preponderance of the evidence. Therefore, the application of any judicial precedent is better addressed via judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

With regard to the prior Final Agency Decisions cited by Appellant, this administrative review decision is based on the specific circumstances of this case as documented by the materials provided by Appellant and the Retailer Operations Division. This administrative review decision does not establish policy or supersede Federal law or regulations. The determination in this case conforms to SNAP regulations and is consistent with sanctions imposed upon other retailers that have committed similar violations.

CONCLUSION

This review finds, by a preponderance of the evidence, that program violations of 7 CFR § 278.2(a) did occur at Darshan International Grocery, LLC during a USDA investigation. Accordingly, the Retailer Operations Division's determination to impose a six-month disqualification period is sustained.

In accordance with the Food and Nutrition Act and SNAP regulations, the six-month period of disqualification shall become effective 30 days after receipt of this decision. Appellant may submit a new application for SNAP authorization 10 days prior to the expiration of the six-month disqualification period.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. If 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 Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a Complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

AMIE CHURCHILL
Administrative Review Officer

April 11, 2023