

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

**Jack s Liquor 76,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0257301**

**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 the permanent disqualification of Jack s Liquor 76 (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a) 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 24, 2022, through September 9, 2022. The investigation report documents that personnel at Appellant exchanged cash for SNAP benefits during one of the visits. The store employees also sold ineligible non-food items in exchange for SNAP benefits. The buying or selling of SNAP benefits for cash or consideration other than eligible food is trafficking as defined under 7 CFR §271.2.

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As a result of evidence compiled from the investigation, the Retailer Operations Division informed Appellant, in a letter dated September 27, 2022, that it was charged with violating the terms and conditions of the SNAP regulations. On October 10, 2022, Appellant replied to the charge letter and explained that the transactions were conducted by an employee, all the employees were trained, and a disqualification will have an adverse impact on the surrounding community.

After considering the retailer's reply and the evidence, the Retailer Operations Division notified Appellant in a letter dated October 12, 2022, 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 not eligible for a trafficking CMP because it failed to timely submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated October 17, 2022, Appellant appealed the Retailer Operations Division's determination and requested an administrative review. 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 states, in part, that, 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:

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,...

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 § 271.2(1) defines trafficking, in part, as:

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(i) states, in part:

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.

7 CFR § 278.6(b)(2) states, in part:

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). **This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).** [Emphasis added.]

(iii) **If a firm fails to request consideration for a civil money penalty** in lieu of a permanent disqualification for trafficking **and submit documentation and evidence** of its eligibility **within the 10 days** specified in § 278.6(b)(1), **the firm shall not be eligible** for such a penalty. [Emphasis added.]

## **INVESTIGATION DETAILS**

An investigator conducted six compliance visits at Jack s Liquor 76 from August 24, 2022, through September 9, 2022. The investigation report dated September 19, 2022, was provided to the Appellant as an attachment to the charge letter and included Exhibits A through F which provide details on the results of each compliance visit. The investigation reported that personnel exchanged \$10.00 in cash for \$15.00 in SNAP benefits on one occasion (Exhibit D). Transactions of this nature are referred to in the regulations as “trafficking”. During four of the visits, Appellant also exchanged ineligible non-food items, including plastic spoons, plastic spoons, toilet paper, foam cups, aluminum foil, for SNAP benefits.

## **APPELLANT’S CONTENTIONS**

In its October 17, 2022, administrative review request, Appellant provided the following summarized contentions, in relevant part:

- The employee that conducted the violations is a longtime employee and takes full responsibility.
- Appellant holds employee meetings regularly and discusses the consequences of violating the regulations.
- A permanent disqualification will hurt the business tremendously.
- Appellant is in a farming community and mostly serves migrant workers and low-income SNAP recipients.
- A disqualification will create an inconvenience to customers, including senior citizens, who normally walk to Appellant.
- Appellant apologizes for the worker and requests that the determination be reversed.

In supports of its contentions, Appellant provided SNAP Training documentation for employees.

## **ANALYSIS AND FINDINGS**

The investigation report, which was provided as an attachment to the charge letter, is specific and details each occasion during which violations occurred, their dates, the amount of cash provided in exchange for SNAP benefits, and the descriptions and any comments of the clerk involved. A full review of the case record shows that the charges of violations are based on the findings of a formal USDA investigation. The transactions cited in the letter of charges were conducted by an investigator and are thoroughly documented. The evidence in the record includes EBT receipts which substantiate the amounts of the trafficking transactions cited in the investigative report and photos of the items purchased. A complete review of this documentation has yielded no error or discrepancy.

A review of the evidence presented by the Retailer Operations Division establishes by a preponderance of the evidence that the violations as reported occurred at Appellant. The evidence indicates that the violation described in Exhibit D of the investigation report meet the definition of trafficking. The documentation presented by the Retailer Operations Division establishes by a preponderance of the evidence that the violations as reported occurred at

Appellant. Trafficking in SNAP benefits is an extremely serious violation and both 7 USC §2021(b)(3)(B) and 7 CFR §278.6(e)(1)(i) state that a first-time violation warrants a permanent disqualification.

### **Household Hardship**

Counsel stated that a permanent hardship presents a hardship to the surrounding community. Where there is a hardship to SNAP households, FNS may impose a hardship CMP on a firm in lieu of a disqualification where there is a lack of authorized stores in the area. However, 7 CFR § 278.6(f)(1) clearly states that “a civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a permanent disqualification.” Because the Retailer Operations Division has acted to permanently disqualify Appellant’s firm, a hardship CMP in lieu of disqualification cannot be granted.

### **Ownership Involvement**

The owner explains that the transactions were conducted by a longtime employee who takes full responsibility. Regardless of whom the ownership of a store may utilize to handle store business, the ownership is accountable for the proper training of staff and the monitoring and 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 and Nutrition Act of 2008 and the enforcement efforts of the USDA. Ownership signed the FNS reauthorization application for SNAP retailers on May 14, 2018, which included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits for cash and as payment for ineligible items, a violation of the SNAP rules and regulations. 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.

### **Appellant Hardship**

Appellant contends that a permanent disqualification would be a tremendous hardship to the business. However, there is no provision in the SNAP regulations for a waiver or reduction of an administrative penalty assessment based on possible economic hardship to the firm resulting from imposition of such penalty. To excuse ownership 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 and the enforcement efforts of the USDA.

Moreover, giving special consideration to a firm’s economic hardship 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 contention that the firm will

incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposition.

### **Civil Money Penalty**

Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states that “if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility **within the 10 days** specified in § 278.6(b)(1), the firm **shall not be eligible** for such a penalty.” [Emphasis added.]

With its administrative review request, Appellant explained that the owner conducted weekly meetings and submitted documentation with dates and signature of training of two employees. In the charge letter, the Retailer Operations Division informed Appellant that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. Appellant did not submit sufficient information in support of its training program within the required time frame.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations Division’s action. Moreover, the timeframe for providing this documentation cannot be extended. Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations.

In conclusion, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

### **CONCLUSION**

Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states that “if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility **within the 10 days** specified in § 278.6(b)(1), the firm **shall not be eligible** for such a penalty.” [Emphasis added.]

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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 the Appellant’s owners

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, 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

April 20, 2023