

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

**Stadium Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0255294**

**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 the Retailer Operations Division's assessment of a \$6,744.00 hardship civil money penalty (CMP) against Stadium Market (hereinafter "Stadium Market" or "Appellant") in lieu of a six month disqualification from the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(5), 7 CFR § 278.6(f)(1), and 7 CFR § 278.6(g) in its administration of the SNAP, when it imposed a hardship CMP of \$6,744.00 in lieu of a six month disqualification against Stadium Market.

**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 Stadium Market with Federal SNAP law and regulations during the period September 13, 2022 through September 19, 2022. In a letter dated October 26, 2022, the Retailer Operations Division charged the Appellant with accepting SNAP benefits in exchange for merchandise which included ineligible nonfood items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on three out of five 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). 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 Appellant at the store address of record on October 27, 2022.

The record reflects that the Appellant did not provide the Retailer Operations Division with a response to the letter of charges within the 10-day required timeframe.

After considering the evidence in the case, the Retailer Operations Division issued a determination letter dated November 16, 2022 informing the Appellant that the violations cited in the charge letter occurred at the firm and that a six month period of disqualification was warranted. The determination letter also stated that the Appellant was eligible for a hardship CMP as Stadium Market is selling a substantial variety of staple food items and the firm's disqualification would cause hardship to SNAP households. Thus, a hardship CMP in the amount of \$6,744.00 was imposed in lieu of the six month SNAP disqualification.

In an email correspondence of November 27, 2022, the Appellant requested an administrative review of the Retailer Operations Division's decision to impose a hardship CMP in lieu of a six month disqualification of Stadium Market from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated December 2, 2022 and implementation of the hardship CMP 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, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e) establish the authority upon which a one year disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2 (a) states, in part: "Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food."

7 CFR § 271.2 states that the definition of “coupon” includes: ... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part: (1) 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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system...”

7 CFR § 278.6(e)(5) states, in part: “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 food stamp 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.”

7 CFR § 278.6(g) states, in part: “Amount of civil money penalties for hardship and transfer of ownership. FNS shall determine the amount of the civil money penalty as follows:

- (1) Determine the firm's average monthly redemptions ... for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.
- (2) Multiply the average monthly redemption figure by 10 percent.
- (3) Multiply the product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section ....”

Notwithstanding the above, there is an agency limit of \$11,000 per violation as the maximum CMP amount.

### **SUMMARY OF THE CHARGES**

During an investigation conducted from September 13, 2022 through September 19, 2022, USDA conducted five compliance visits at Stadium Market. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated October 26, 2022. 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 recorded during three of the five compliance visits and involved the sale of a variety of items best described in regulatory terms as “common nonfood items”. The misuse of SNAP benefits noted in Exhibits C, D, and E warrant a disqualification as a SNAP retail food store for a period of six months. The exchange of these ineligible items for SNAP benefits is in violation of 7 CFR § 278.2(a).

The Retailer Operations Division determined that the assessment of a hardship CMP of \$6,744.00 in lieu of a six month disqualification was the appropriate penalty for these violations as Stadium Market is selling a substantial variety of staple food items and the firm’s disqualification would cause hardship to SNAP households.

### **APPELLANT’S CONTENTIONS**

In the request for administrative review, the Appellant made the following summarized contentions, in relevant part:

- The Appellant has retained legal counsel to assist in this matter. Unbeknownst to the Appellant, counsel failed to provide the Retailer Operations Division with a timely response to the letter of charges.
- The Appellant requests reversal of or a reduction of the imposed hardship civil money penalty sanction.
- The Appellant understands the importance of the SNAP and the value it brings to the community and would never commit any act which would intentionally put the store’s SNAP participation eligibility at risk.
- The Appellant does not believe that the transactions noted in the investigation reports show intentional misuse or abuse of the SNAP.
- Employees are responsible for ringing up and completing all transactions.
- The Appellant trains employees on the SNAP rules and constantly monitors them because the firm understands that training is an ongoing process especially with the level and trust and responsibility given to employees.
- As shown through the Exhibits, there is room for error or misjudgment on the part of new and even veteran employees with any business.
- The Appellant makes it clear to employees that SNAP benefits can only be used to purchase food items. Any employee caught engaging in the misuse of SNAP benefits are subject to immediate termination. This includes intentionally allowing customers to buy items which are not eligible under the SNAP, exchanging SNAP benefits for cash, or any other illicit use of the program.
- The allowance of the purchase of cutlery with SNAP benefits was the result of confusion as the items are food related and could be seen as items of need.
- The clerk in Exhibit E refused the investigator’s request to exchange SNAP benefits for cash.
- To ensure that future SNAP violations do not occur, upon receipt of the charge letter the Appellant spoke with the employees in question and found that they believe that they did not incorrectly use the SNAP. All employees have been retrained on the SNAP rules and the correct usage of SNAP.

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

## **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 does not believe that the transactions noted in the investigation reports show intentional misuse or abuse of the SNAP. Employees are responsible for ringing up and completing all transactions. The Appellant trains employees on the SNAP rules and constantly monitors them because the firm understands that training is an ongoing process especially with the level and trust and responsibility given to employees. As shown through the Exhibits, there is room for error or misjudgment on the part of new and even veteran employees with any business.

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. The acceptance of SNAP benefits for ineligible items is a violation of SNAP rules and regulations.

The FNS investigative report shows that employees working at the Appellant firm accepted SNAP benefits for ineligible nonfood items on three separate occasions during the investigative period indicating an ongoing pattern of SNAP violations as defined by Section 271.2 of the SNAP regulations. The report shows that the nature and scope of the violations under review do violate SNAP regulations, and the transaction amounts cited in the report also match FNS transaction records for the dates in question. Additionally, a review of the report shows no errors or discrepancies.

Investigative personnel stand by their report that the items listed in the investigation report were, in fact, purchased and have documentation on file that confirms the items listed were donated to and signed for by a charitable organization following each transaction. Also supporting the

conclusion that the investigation did take place at the subject store are EBT receipts obtained during the investigation whose transaction amounts correspond exactly to the purchase amounts and times indicated in each of the Exhibits of the investigation report, and clearly bear the name and address of the subject store. Therefore, the evidence supports the conclusion that the Appellant was not misidentified as the offending store and that the SNAP violations as noted occurred.

The Appellant requests reversal of the imposed hardship civil money penalty sanction. However, the acceptance of SNAP benefits for ineligible items is a violation of the SNAP rules and regulations. 7 CFR Section 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 nonfood items due to carelessness or poor supervision by the firm’s ownership or management.” There is no regulatory threshold for the dollar value of the ineligible items purchased or for the timeframe in which they were purchased. While the Appellant is correct that the employee in Exhibit E refused to exchange SNAP benefits for cash, the acceptance of SNAP benefits for ineligible items as noted in Exhibits C, D, and E is a violation of SNAP rules and regulations. The ineligible items sold were obvious nonfood items and would not readily be confused with eligible edible food items. **5 U.S.C. § 552 (b)(7)(E)**. Therefore, the violations in this case are not too limited to warrant a disqualification.

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, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. The Appellant did not provide any evidence that the violations cited in the charge letter did not occur.

### **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.

## CIVIL MONEY PENALTY

The Appellant requests a reduction of the imposed hardship civil money penalty sanction.

The Retailer Operations Division correctly concluded that the Appellant was eligible for a hardship CMP in lieu of a six month SNAP disqualification as Stadium Market is selling a substantial variety of staple food items and the firm's disqualification would cause hardship to SNAP households. Thus, a hardship CMP in the amount of \$6,744.00 was imposed in lieu of the six month SNAP disqualification.

The case record documents that the Retailer Operations Division correctly calculated the amount of the hardship CMP under 7 CFR § 278.6(g). That regulation states that the hardship CMP is to be calculated on a formula which includes the SNAP redemption volume of the store during the twelve months prior to the firm being notified of the violations. **Modifications to the hardship CMP may occur only when there is an error in calculation or the amount exceeds the agency limit.** The Retailer Operations Division correctly determined, using the methodology described in 7 CFR § 278.6(g), that the calculated amount of the hardship CMP was \$6,744.00.

## CONCLUSION

Accordingly, the determination by the Retailer Operations Division to assess a hardship CMP in the amount of \$6,744.00 in lieu of a six month disqualification from participating as an authorized retailer in the SNAP is sustained. Based on the discussion above, the amount of the hardship CMP was properly computed by the Retailer Operations Division. Please note that if the penalty is not paid, the six month SNAP disqualification will be imposed. The Appellant may contact the FNS Financial Management Accounting Division at 1-703-605-0483 to discuss a monthly payment plan, or follow the instructions in the Retailer Operations Division's letter dated November 16, 2022, regarding payment options.

In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter. In the event a six month disqualification is imposed for failure to pay the CMP, or some lesser disqualification period reflecting the unpaid portion of the CMP, the Appellant may reapply for authorization to participate in the SNAP up to 10 days prior to the end of the disqualification period. When eligible, the Appellant may reapply for SNAP authorization using the application instructions contained on the FNS web site. Questions regarding the application process can be answered by the FNS Retailer Service Center at 1-877-823-4369.

## RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (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

February 28, 2023