

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

**Stop N Shop,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0256962**

**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 Stop N Shop (“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 Stop N Shop.

**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**

Stop N Shop was initially authorized to participate in SNAP on February 19, 2019. Between August 18, 2022, and August 21, 2022, the USDA conducted an undercover investigation of Stop N Shop 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 October 6, 2022, 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.

On October 12, 2022, Appellant, through counsel, submitted a request for an extension to reply to the charges. The Retailer Operations Division granted the extension.

Appellant replied to the Retailer Operations Division's charges in writing on November 15, 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 January 11, 2023. 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 January 11, 2023, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. Although the request was granted, Appellant was inadvertently disqualified. Appellant's authorization was subsequently reinstated, and the six-month disqualification is being held in abeyance pending completion of this review. After receiving an extension of time to provide additional information in support of its position, Appellant, through counsel, submitted additional information on March 15, 2023.

## **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 August 18, 2022, and August 21, 2022, FNS completed four compliance visits at Stop N Shop. A report of the investigation was provided to Appellant as an attachment to the charge letter, dated October 6, 2022. 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: plastic cutlery and sandwich bags.

The report noted that an investigator attempted to exchange SNAP benefits for ineligible non-

food merchandise in Exhibit C, but the attempt was refused by the clerk on duty. In Exhibit D, the clerk allowed the sale of ineligible items but refused the investigator's attempt to exchange SNAP benefits for cash. The charge letter states that the violations that occurred in Exhibits A, B, and D warrant a disqualification period of six months pursuant to 7 CFR § 278.6(e)(5).

### **APPELLANT'S CONTENTIONS**

Appellant, through counsel, submitted a voluminous brief which included a considerable number of contentions targeted to broadly question the validity of the USDA's undercover investigation cases and the processes used to decide these cases. Appellant cites case law and past administrative review decisions in support of its contentions. For purposes of brevity, these broader arguments will not be specifically listed here.

Appellant's contentions regarding this matter are summarized as follows:

- Store employees receive initial and periodic training on the SNAP rules.
- FNS did not warn Appellant that violations of the SNAP rules might be occurring prior to charging the firm.
- Disqualifying Appellant would likely cause disruption to SNAP households' routines despite the presence of other stores.
- The investigative report lacked meaningful and specific detail and corroborating evidence.
- The Department lacked sufficient evidence upon which to base a six-month disqualification.
- There is no evidence of intent to violate the SNAP regulations or evidence of carelessness or poor supervision by the store's ownership or management.
- The violations are too limited to warrant a disqualification. The items involved are minor ineligible items for relatively de minimus amounts of money, indicating that the scope of the violations are de minimus.
- Not all of the store's employees were involved in the violative transactions. The clerk in Exhibit C refused to sell ineligible items. In Exhibit D, the clerk refused to engage in trafficking SNAP benefits.
- 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.
- Though there are several stores within a mile that are authorized, the price, food quality, and service at Appellant are known to the local neighborhood and are superior.

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.

### **Employee Training**

Appellant contends store employees receive initial and periodic training on the SNAP rules.

Appellant did not provide any evidence to support this contention. Based on the actions of the store clerks, 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 on three of the four occasions that the investigator visited the store. 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.

### **Sufficiency of the Investigative Report**

Appellant contends the investigative report lacked meaningful and specific detail and corroborating evidence to support a six-month disqualification.

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 transaction date and time, the transaction amount, 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 D were sanctionable and warrant the six-month disqualification imposed by the Retailer Operations Division.

### **Applicable Penalty**

Appellant contends a warning letter is the appropriate sanction in this case, not a six-month disqualification, because FNS did not warn Appellant that violations may be occurring at its store before charging Appellant with violations. In addition, Appellant stated that there is no evidence of Appellant's intent to violate the SNAP regulations or evidence of carelessness or poor supervision by the store's ownership or management. Further, Appellant argued that not all of the store's employees were involved in the violations. One employee refused to sell ineligible items, and another refused to traffick. Finally, Appellant stated the violations' scope is de minimus and does not warrant a six-month disqualification.

Regarding these contentions, the record shows that the owner signed an application to participate as a retailer in SNAP. By signing the application, 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. Again, 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.

### **Hardship Civil Money Penalty (CMP)**

In the alternative, Appellant stated 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. Appellant argued that a disqualification of the store would likely cause disruptions to SNAP households' routines despite the presence of other stores. Though there are several stores within a mile that are authorized, the price, food quality, and service at Appellant are known to the local neighborhood and are superior.

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 Stop N Shop 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 Stop N Shop, a convenience 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 similarly stocked or larger SNAP authorized retail stores located within a one-mile radius of Stop N Shop, including at least one superstore, two supermarkets, a large grocery store, and a medium grocery store. There is also 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 Stop N Shop 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 14, 2023