

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

**Yedeline Deli and Grocery Store,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0225165**

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**FINAL AGENCY DECISION**

It is the decision of the United States Department of Agriculture (USDA) that there is sufficient evidence to support a finding that a six-month disqualification of Yedeline Deli and Grocery Store (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(f)(1) and 7 CFR § 278.6(a) and (e)(5) in its administration of the SNAP, when it imposed a six-month period of disqualification against Appellant.

**AUTHORITY**

7 USC § 2023 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**

The USDA investigated the compliance of Appellant with federal SNAP law and regulations during the period of January 16, 2020, through February 4, 2020. The investigative report documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on three separate occasions. As a result of evidence compiled during this investigation, by letter dated May 21, 2020, the Retailer Operations Division charged ownership with violating the terms and conditions of the SNAP regulations at 7 CFR § 278.2(a) and noted

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the violations warranted a six-month disqualification period. The letter also stated that under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification. Appellant, through counsel, replied to the charge letter on June 1, 2020, and stated that the Investigative Report is does not prove the charges and requested documents under the Freedom of Information Act (FOIA). The FOIA office responded to the request for documents on June 29, 2022. By letter also dated June 29, 2022 , the Retailer Operations Division provide counsel was provided with ten days to provide any additional information in response to the charges. Counsel did not provide anything in addition to its original reply to the charges.

After considering the retailer's reply and the evidence, the Retailer Operations Division notified Appellant in a letter dated July 25, 2022, that the violations cited in the charge letter occurred at the firm and that a six-month period of disqualification was warranted. The letter stated that eligibility for a hardship CMP was not applicable as there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

By letter dated August 24, 2022, Appellant requested an administrative review of the Retailer Operations Division's determination. The appeal was granted and implementation of the disqualification has been 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 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). Sections 278.6(a) and (e)(5) establish the authority upon which a six-month disqualification may be imposed against a retail food store or wholesale food concern.

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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system . . .

Section 278.6(e)(5) of the SNAP regulations states, in part, that a firm is to be disqualified for six months:

[I]f 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. In addition, 7 CFR § 278.6(f)(1) provides for civil money penalty (CMP) assessments in lieu of disqualification in cases where disqualification would cause "hardship" to SNAP households benefit because of the unavailability of a comparable participating food store in the area to meet their shopping needs. It reads:

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 benefit because there is no other authorized retail food store in the area selling as large a variety of staple food items.

### **SUMMARY OF CHARGES**

During an investigation conducted between January 16, 2020, and February 4, 2020, an investigator conducted four compliance visits at Appellant. A report of the investigation dated February 11, 2020, was provided to Appellant as an attachment to the charge letter. The investigation report included Exhibits A through D which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were recorded during three of the compliance visits and involved the sale of dish soap, steel wool pads, AJAX, all-purpose cleaner, trash bags, and aluminum foil. Upon review, the evidence indicates that Appellant established a record of selling non-food items, as defined by Section 271.2 of the regulations, on multiple occasions as noted in Exhibits A, B, and C, furnished with the charge letter.

### **APPELLANT'S CONTENTIONS**

Appellant, through counsel, made the following summarized contentions in its administrative review request dated August 24, 2022, in relevant part:

- The report is vague and ambiguous.
- The report does not identify the cashier, nor does it state the time of day that the violations occurred.
- Appellant refused to exchange cash for SNAP benefits.
- Appellant requests that the charge be dismissed or a CMP in lieu of a disqualification.

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

### **ANALYSIS AND FINDINGS**

The investigation report documents that the charges of violations are based on the findings of a formal investigation. The transactions cited in the letter of charges are thoroughly documented. A complete review of this documentation has yielded no error or discrepancy. The investigation

report is specific and thorough regarding the dates of the violations, the specific facts related thereto, and is supported by documentation that confirms specific details of the transactions. The documentation presented by the Retailer Operations Division provides through a preponderance of the evidence that the violations as reported occurred at the Appellant firm.

7 CFR § 278.6(e)(5) states, as noted above, that FNS shall disqualify a 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 common non-food items due to carelessness or poor supervision by the firm's ownership or management.

### **Investigative Report**

Appellant contends there are inadequacies in the report including not having the names of the employees that committed the violations and not having the time of the transactions. Without evidence to the contrary, the report of the investigation appears to be wholly credible and fully documented. The transactions identified on the investigative report unquestionably occurred at Appellant's store. Appellant has offered no compelling information or supporting documentation which would constitute evidence that any relevant detail on the report is incorrect in any substantial respect. Thus, the contentions that the investigative report did not include certain details do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Refused Cash**

Appellant, through counsel, states that the clerk refused the investigator's attempt at trafficking cash. The Retailer Operations Division did note that the Appellant only exchanged minor non-food items for SNAP benefits and refused to exchange cash during the investigation. The regulations at 7 CFR § 278.6(e)(5) do not allow for a modification or a reduction of a disqualification period on the basis that the violations committed did not include trafficking.

### **Civil Money Penalty**

Appellant, through counsel, requested a CMP in lieu of a six-month disqualification. 7 CFR § 278.6(f)(1) 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." The Retailer Operations Division determined that there are 109 other authorized firms located within a one-mile radius of Appellant. Thus, in its letter dated July 25, 2022, the Retailer Operations Division determined that a hardship CMP would not be appropriate, as there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices. Some degree of inconvenience to SNAP customers is inherent whenever any SNAP authorized retailer is disqualified. For example, the normal shopping pattern of SNAP customers may be temporarily altered during the period of disqualification. The determination of the Retailer Operations Division that the six-month disqualification of Appellant from the SNAP would not create a hardship to customers, as differentiated from

potential inconvenience, is sustained and a civil money penalty in lieu of disqualification is not appropriate in this case.

### **CONCLUSION**

The determination by the Retailer Operations Division to impose a six-month disqualification against Yedeline Deli and Grocery Store from participating as an authorized retailer in SNAP is sustained. In accordance with the Food and Nutrition Act, and the regulations, this penalty shall become effective 30 days after receipt of this letter. A new application for participation in SNAP may be submitted ten days prior to the expiration of the six-month disqualification period.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7CFR § 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 owner resides or is 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 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

March 23, 2023