

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

**Yogi's Quick Shop,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0258062**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is insufficient evidence to support a permanent disqualification of Yogi's Quick Shop (Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). However, the evidence supports a one-year disqualification from SNAP. Accordingly, the Retailer Operations Division's determination is modified.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a), (c) 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**

In a letter dated October 13, 2022, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of February 2022 through July 2022. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant did not reply to the charge letter. After considering the evidence, the Retailer Operations Division issued a determination letter dated October 25, 2022. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to 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 28, 2022, Appellant, through counsel, 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 action 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) 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 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(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, inconsistent redemption data, evidence obtained through a transaction report under an **electronic benefit transfer system**, . . .” (emphasis added)

7 CFR § 278.6(b)(2)(ii) states, inter alia:

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 . . . 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).

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 § 278.6(i) states, inter alia:

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 § 278.2(f) states, in part:

Paying credit accounts. SNAP benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in SNAP for a period of one year.

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... The FNS regional office shall: (4) Disqualify the firm for 1 year if: ...

(ii) The firm has accepted SNAP benefits in payment for items sold to a household on credit.

## **APPELLANT'S CONTENTION**

In Appellant's October 28, 2022, administrative review request, and subsequent information provided on December 2, 2022, Appellant, through counsel stated the following summarized contentions, in relevant part:

- Appellant extended credit to its customers.
- When the customers' SNAP benefits were received, the credit balance would be deducted from the card
- The credit was extended to people who the retailer had built a friendly relationship with and who ran into bad times and were without the ability to meet basic food requirements each month.
- Appellant will stop extending credit in compliance with SNAP guidelines.

In support of its contentions, Appellant submitted some cash register receipts.

The preceding may represent only a brief 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**

A review of the evidence in this case does not support the Retailer Operations Division's determination of permanent disqualification. However, Appellant admitted to accepting SNAP benefits in payment for items sold on credit. Accepting SNAP benefits in payment for items sold on credit is a violations of SNAP regulations and carries a penalty on a one-year disqualification from participating as an authorized retailer. Accordingly, the determination is modified to a one-year disqualification in accordance with 7 CFR § 278.2(f) and § 278.6(e)(4)(ii).

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Retailer Operations Division. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

## **CONCLUSION**

Based on a review of all available information in this case, the permanent disqualification against Yogi's Quick Shop is modified to a one-year disqualification due to Appellant's violations of SNAP regulations pertaining to credit accounts. Appellant has already served four months of the disqualification period. Therefore, the one-year period of disqualification is reduced to eight months.

A new application for participation in SNAP may be submitted ten days prior to the expiration of the disqualification period. In accordance with 7 CFR § 278.1(b)(4), at the time of any new application for participation in SNAP, the firm will be required to submit a collateral bond or

irrevocable letter of credit as a condition for again being authorized to participate in the Program. This bond requirement is due to the firm's disqualification of a period longer than six months.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 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

MARY KATE KARAGIORGOS  
Administrative Review Officer

March 8, 2023