

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

Chevron Food Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0253111

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 Chevron Food Mart (“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 Chevron Food Mart.

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

Chevron Food Mart was initially authorized to participate in SNAP on October 4, 2011. Between April 7, 2022, and April 16, 2022, the USDA conducted an undercover investigation of Chevron Food Mart 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 June 7, 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. The record shows that Appellant did not respond to the charge letter.

After further evaluating the evidence in the case, the Retailer Operations Division issued a determination letter, dated July 5, 2022. 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 July 13, 2022, Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted, and implementation of the six-month disqualification has been held in abeyance pending completion of this review.

On October 18, 2023, the administrative review was reassigned to review officer Amie Churchill.

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 April 7, 2022, and April 16, 2022, FNS completed four compliance visits at Chevron Food Mart. A report of the investigation was provided to Appellant as an attachment to the charge letter, dated June 7, 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: dish liquid, trash bags, disposable plates, paper towels, detergent, fabric conditioner, and soap.

The report noted that an investigator did not attempt to purchase any ineligible items in Exhibit A. In Exhibit D, the clerk allowed the purchase of ineligible items but refused to exchange SNAP benefits for cash. The charge letter states that the violations that occurred in Exhibits B, C, and D warrant a disqualification period of six months pursuant to 7 CFR § 278.6(e)(5).

APPELLANT'S CONTENTIONS

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

- Appellant requests reconsideration of the disqualification determination.
- The violations were unintentional and an honest mistake.
- Appellant has fired one of the employees involved.
- Though Appellant had trained its employees, one made mistakes with SNAP and other business issues. These mistakes may be due to a medical issue.
- Appellant has hired a new employee to work with this employee.
- Appellant will conduct proper training for the store's employees, and Appellant's owner will supervise the employee's actions.
- It is difficult to find good help.

In support of these contentions, Appellant provided a statement from an employee claiming responsibility for the violative transactions and two photographs of Appellant's owner retrieving items from the trash.

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.

In response to the charge letter and on administrative review, Appellant did not offer any evidence or alternative theories to counter the agency's investigative report. In fact, Appellant, concedes that the violations occurred, claiming they were a mistake. Because the violations themselves do

not appear to be in dispute, 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. The balance of this review will address Appellant's remaining contentions.

Appellant's Responsibilities / Employee Training

Appellant stated the violations were unintentional and were honest mistakes made by clerks who had received training on SNAP program rules and regulations. One of the store employees involved in the violations made mistakes with SNAP and other business issues. Appellant further stated it is difficult to find good help. To support its contentions, Appellant provided a statement from a store employee accepting responsibility for the violations and two photographs of the owner retrieving items from the trash.

With regard to Appellant's contention that the violations were mistakes made by employees, the Appellant 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. Regardless of which clerks are operating the cash register at a given time and regardless of whom firm ownership authorizes to handle store business, the ownership of the firm is ultimately responsible for the proper monitoring and handling of SNAP benefit transactions.

Based on the clerk's refusal to engage in trafficking in Exhibit D, 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 in each of the three visits in which the investigator attempted to purchase ineligible items. Repeatedly entrusting an unsupervised, inexperienced and/or untrained clerk(s) to handle SNAP benefits is reasonably viewed as careless or the exercise of poor supervision. Accordingly, the Retailer Operations Division attributed the violations to "carelessness, or poor supervision by the firm's ownership or management," pursuant to 7 CFR § 278.6(e)(5) of the SNAP regulations, which results in a disqualification of six months. This penalty is only permitted if the firm has not been previously sanctioned. This is consistent with Appellant's contention that it committed violations in error. Therefore, a six-month disqualification for the violations committed, the minimum penalty allowed by regulations, is the appropriate sanction in this case. This penalty is also consistent with sanctions imposed upon other retailers that have committed similar violations.

Remedial Actions Taken

Appellant contends that remedial actions have been or will be taken to ensure that future violations do not occur, including firing one of the employees involved in the violations, hiring a new employee, and providing proper training for the store employees.

It should be noted that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. This review is limited to the circumstances that existed at the time the violations were committed. It is not the authority of this review to consider

any subsequent remedial actions that may have been taken, or that will take place, so that a store may enhance or begin to comply with program requirements. In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty based on alleged or planned corrective actions implemented after findings of program violations.

Therefore, Appellant's contention that corrective action has been taken or will take place does not provide a valid basis for dismissing the charges or for reducing the penalty imposed.

Hardship Civil Money Penalty (CMP)

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 Chevron Food Mart 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 Chevron Food Mart, a convenience store, would not cause hardship to SNAP households because there are other shopping options in the area. The Retailer Operations Division determined that there are a number of similarly stocked or larger SNAP authorized retail stores located within a one-mile radius of Chevron Food Mart, including a superstore, a medium grocery store, and two additional convenience stores. 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.

CONCLUSION

This review finds, by a preponderance of the evidence, that program violations of 7 CFR § 278.2(a) did occur at Chevron Food Mart 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 delivery 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 decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court

for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of delivery of this decision. The judicial filing deadline is stipulated by statute; FNS has no authority to 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

November 14, 2023