

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

**Hwy X-press Mini Mart,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0224686**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that Hwy X-press Mini Mart (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain the hardship civil money penalty (CMP), in lieu of a six month disqualification of Appellant from the SNAP as a retail food store, as imposed by the Office of Retailer Operations and Compliance (Retailer Operations).

**ISSUE**

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

**AUTHORITY**

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

**CASE CHRONOLOGY**

The USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period of February 29, 2021 through March 30, 2021. The investigative report dated April 12, 2021, documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple occasions. The items sold on various dates are best described as common nonfood items.

As a result of evidence compiled during the investigation, by letter dated June 16, 2021, Retailer Operations charged the owner with violating the terms and conditions of the SNAP regulations.

Misuse of SNAP benefits was noted in Exhibits B, G, and H, that warrants a disqualification as a SNAP retail food store for a period of six months. The letter also states that under certain conditions FNS may impose a civil money penalty (CMP) in lieu of a disqualification. The record shows the owners did reply to the Charge letter.

Retailer Operations informed Appellant by Determination letter dated July 29, 2021, that the violations cited in the Charge letter occurred at the firm, and that Appellant's disqualification would cause hardship for SNAP households. In accordance with 7 CFR Part 278.6(f)(1) of the SNAP regulations, Retailer Operations imposed a hardship CMP in the amount of \$13,176.00 in lieu of a six month period of disqualification.

The owners requested review of the determination by letter dated August 2, 2021. The administrative review was granted by letter dated August 17, 2021.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, 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, credible evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument 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)(5) establish the authority upon which a six month disqualification may be imposed against a retail food store.

7 CFR § 278.2(a) states: "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 § 278.6(e)(5) of the SNAP regulations states that a firm is to be disqualified 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 nonfood items due to carelessness or poor supervision by the firm's ownership or management."

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."

7 CFR § 278.6(f)(1) provides for civil money penalty assessments in lieu of disqualification in cases where disqualification would cause hardship to SNAP benefit households because of the unavailability of a comparable participating food store in the area to meet their shopping needs.

It states: "FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm's disqualification would cause hardship to SNAP benefit 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 THE CHARGES**

A report of the investigation was provided to the Appellant as Exhibits with the Charge letter. The investigative report provides details on the results of each compliance visit. The investigative report documents that SNAP violations were recorded during multiple store visits that warrant a six month disqualification. The SNAP violations of 7 CFR § 278.2(a) involved the sale of nonfood items including: plates, hand wipes, chop sticks, and spoons.

### **APPELLANT'S CONTENTIONS**

All contentions as stated, were considered whether recapitulated here or not.

- I cannot afford to pay this amount. Is there anything you can do to waive or reduce the penalty amount? My store is located in a rural area and it is very hard to find good employees. With Covid-19 happening, it is even harder. I hired this guy who has no cashier experience or any work experience. I did train him and explain to him the EBT/Snap regulations and rules. He was still new and learning everything he could.
- At the same time that I hired him, I also bought a brand new POS cash register system. There were a lot of different department keys, buttons, and screens to learn and click. He wasn't too familiar with the system and tried his best to understand it. He did not intentionally sell non-food items on EBT. It was an accident. He put the items into the wrong department key. I did not know he was doing this. I found out when your investigator came and I receive the letter of violations. After receiving the letter, I spoke to all the cashiers to make sure they understood which buttons to press and this doesn't happen again.
- I have been in business for almost 9 years. We have always followed the strict rules and regulations of the EBT/Snap program. I have never had an incident like this before. My store has always been in good standing and followed all rules and guidelines. We are just normal everyday people trying to make a living. We work hard everyday, 7 days a week, 18-20 hours a day. We do it to service the community, as we are the only store around. My store has gone through a really difficult time. Covid has really affected my business. Half of my employees quit. Finding new employees have been really difficult. We had to hire people with no work experience, education, or cashiering experience. The convenience store business is also very low margin. We are only making a few cents off of every item. Being in Hawaii, everything is expensive. The cost of supplies and electricity is very expensive here. After paying all my expenses, there is not much left to pay myself.
- I am kindly asking for your help in waiving or reducing the penalty amount. It is not fair that my store has to pay \$13,176.00 for a mistake made by an employee that no longer works at my store. \$13,176 is a lot of money and taking it from my store would really hurt my business.
- I have a lot of aging equipment and can really use that money to upgrade my store to better serve the community. I would really like to keep my EBT/Snap program. It is essential to my business and the community.

- Around that time, I bought a new POS Cash register system. Some of the products have not been put into the system yet. It cannot be scanned. So the clerks have to manually key them in. The clerks accidentally put them into the EBT department instead of the NON EBT department. Also the clerks that made those mistakes were new employees. They were still new and learning the POS Cash register system. I have already spoken to all my employees to make sure this doesn't happen again. They will double check to make sure all items are in the correct department.
- It was just this situation with the new register and new employees. I ask that you please not take away the EBT/SNAP program from my store. My store serves 3 towns. There is no other store out here. A majority of my customers have EBT/SNAP. They come to my store for fruits, vegetables, milk, eggs, bread, frozen food, and many more. There is an apartment complex and senior housing less than half a mile from my store. Many seniors can't drive and walk to my store to purchase groceries with EBT/SNAP.

### **ANALYSIS AND FINDINGS**

This review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations' determination at the time it was made. Upon review, the evidence supports that Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations, on multiple occasions. Regardless of who the store owner utilizes to handle store business, the owner is accountable for the proper handling of SNAP benefit transactions.

The regulations establish that an authorized food store may be disqualified from participating in SNAP 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 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." Three violations are considered evidence of carelessness. Therefore, the violations in this case are not too limited to warrant a six month disqualification.

### **CIVIL MONEY PENALTY**

Retailer Operations rendered a finding that it was appropriate to impose a hardship CMP in lieu of a six month period of disqualification on Appellant because Appellant appears to be selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to SNAP households. A hardship CMP in the amount of \$13,176.00 was imposed. Failure to pay the CMP in full will result in Appellant's disqualification as a SNAP authorized retail food store for a period of six (6) months.

### **CONCLUSION**

A preponderance of the evidence supports that the program violations charged did occur at Appellant. The USDA investigative record is specific, thorough, and fully documented with

regard to the dates of the violations, the specific ineligible merchandise sold in exchange for SNAP benefits, and in all other pertinent detail.

The record documents that Retailer Operations properly considered Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) and Section 278.6(g). Retailer Operations granted a properly computed hardship CMP in lieu of the six month disqualification of Appellant from participation as an authorized retailer in the SNAP. This determination is sustained.

Please review the July 29, 2021, Determination letter for payment information. Please take action as described in that letter to submit your payment. If you chose not to, or you are unable to pay the hardship CMP for the total amount of \$13,176.00 Appellant will be disqualified for a period of six (6) months. The owners should promptly contact Dorinda George Lyght at (312) 835-0974, if they chose to have the six (6) month period of disqualification imposed rather than pay the total amount of the CMP.

### **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023), and to the regulations at 7 CFR § 279.7 with respect to the owner's right to judicial review of this decision. 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 owners 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 delivery 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.

M. Viens  
ADMINISTRATIVE REVIEW OFFICER

October 14, 2021