

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

Shajalal Supermarket & Halal Meat Inc.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0220975

FINAL AGENCY DECISION

It is the final decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is no basis to modify or dismiss the **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** civil money penalty imposed against Shajalal Supermarket & Halal Meat Inc. (hereinafter “Appellant”) by FNS’s Retailer Operations Division for violations in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it imposed a civil money penalty against Shajalal Supermarket & Halal Meat Inc.

AUTHORITY

7 U.S.C. § 2023 and its 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

FNS records show that the Appellant firm, Shajalal Supermarket & Halal Meat Inc., was initially authorized for SNAP participation as a large grocery store on September 24, 2010. Between September 24, 2019, and October 8, 2019, FNS conducted an undercover investigation at the firm to ascertain its compliance with Federal SNAP laws and regulations. The investigation report documented that personnel at Shajalal Supermarket & Halal Meat Inc. accepted SNAP benefits in exchange for ineligible items on three separate occasions. According to the report, the Appellant firm sold trash bags, hand soap, laundry detergent, paper towels, and liquid cleaner in exchange for SNAP benefits, which benefits may only be used for the purchase of eligible food.

In a letter dated October 1, 2020, the Retailer Operations Division charged the Appellant with violating SNAP regulations at 7 CFR § 278.2(a). The charge letter stated that the acceptance of SNAP benefits in exchange for ineligible nonfood merchandise warranted a disqualification from SNAP for a period of six months pursuant to 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.

In a letter dated October 24, 2020, the Appellant responded to the charges, acknowledging that violations occurred and stating that they were likely caused because the employees did not pay enough attention at the cash register. The Appellant further stated that it regretted the violations and had taken serious actions to ensure that such violations never happened again.

After considering the Appellant's response and further evaluating the evidence in the case, the Retailer Operations Division determined that violations did occur as outlined in the letter of charges and that the violations warranted disqualification from SNAP for a period of six months. However, rather than impose a six-month disqualification against the firm, the Retailer Operations Division determined that the firm was eligible for a civil money penalty in lieu of disqualification because it was selling a substantial variety of staple food items and a disqualification would cause hardship to SNAP households.

The Agency's determination letter, dated December 16, 2020, notified the Appellant of the decision to impose a CMP for 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and stated that the firm must either the penalty in full or establish an installment plan within 15 calendar days of receipt of the letter.

In a letter postmarked December 23, 2020, the Appellant appealed the agency's determination by requesting an administrative review. The request was granted and the case was assigned to an administrative review officer. Implementation of the monetary sanction has been held in abeyance pending completion of this review. On July 12, 2021, the case was reassigned to administrative review officer Jon Yorgason.

STANDARD OF REVIEW

In an appeal of adverse action, such as the imposition of a civil money penalty, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a), (e)(5), and (f)(1) establish the authority upon which a six-month disqualification or hardship civil money penalty 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.... FNS may, in lieu of a disqualification, subject a firm to a civil money penalty of up to an amount specified in § 3.91(b)(3)(i) of this title for each violation if FNS determines that a disqualification would cause hardship to participating households.

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...The FNS regional office shall:

(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.

7 CFR § 278.6(g) outlines the steps for calculating the CMP amount:

- (1) Determine the firm's average monthly redemptions of [SNAP benefits] for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.
- (2) Multiply the average monthly redemption figure by 10 percent.
- (3) Multiply the product arrived at in paragraph (g) (2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section. The civil money penalty may not exceed an amount specified in § 3.91(b) (3) (i) of this title for each violation.

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review:

- Appellant is pleased that FNS assessed a civil money penalty in lieu of a six-month disqualification, but contends that the penalty amount is too much. Appellants requests "one more consideration" to waive the CMP.
- Appellant has learned its lesson and is taking this breach very seriously. The Appellant is extremely regretful and has taken action to ensure that such violations never happen again.
- The Appellant store has six employees whose families are dependent on their employment. Appellant requests the opportunity to serve its customers and its community honestly.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced in this document.

ANALYSIS AND FINDINGS

The Appellant has quite clearly acknowledged that violations occurred. Because the violations themselves are not in dispute, it is the determination of this review that program violations did occur as charged by the Retailer Operations Division and, in accordance with SNAP regulations,

a penalty is warranted. The balance of this review will address the CMP as well as the Appellant's remaining contentions.

Remedial Actions Taken

The Appellant contends that it has learned its lesson and is taking the issue very seriously. The Appellant further states that it is extremely regretful and has taken action to ensure that such violations never happen again.

Regarding this contention, SNAP regulations do not permit remorse or regret to be the basis for a modification of a penalty or a dismissal of the charges. In this case, the violations meet, in every respect, the regulatory and agency criteria for a six-month disqualification as noted in 7 CFR § 278.6(e)(5) or a CMP as noted in § 278.6(f)(1). As such, the penalty stands.

Further, it must be noted that this review is limited to the facts that existed at the time the violations were committed. This review has no authority 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 on the basis of alleged or planned corrective actions implemented after the discovery of program violations.

Hardship to Appellant

The Appellant argues that a monetary penalty of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is too much, and contends that the firm has six employees whose families depend on their employment. This contention implies that payment of the CMP would pose a financial hardship to the firm, potentially impacting its employees in a negative way.

With regard to this contention, SNAP regulations do not permit this review to dismiss or modify a penalty on the basis of possible economic hardship to either the ownership personally or to the firm itself. To allow an exemption from penalties based on a purported financial hardship to the firm or its ownership would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program requirements, but also to those retailers who have been penalized for similar violations.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the Appellant is eligible for a civil money penalty in lieu of a six-month disqualification because the firm is selling a substantial variety of staple food items and the firm's disqualification would cause hardship to SNAP households. Specifically, it was determined that there were no other stores in the area selling similar cultural foods, and as such, SNAP households would likely experience some level of hardship if Shajalal Supermarket & Halal Meat Inc. were to be disqualified for a period of time.

After reviewing all evidence in this case, this review agrees with the agency's conclusion regarding hardship to SNAP households and agrees that a CMP is appropriate.

Regulations at 7 CFR § 278.6(g) outline the steps for calculating the CMP amount. The CMP is based on the store's SNAP redemptions during the 12 months immediately prior to the firm being charged with program violations. Modifications to the CMP by the administrative review officer may occur only when there is an error in calculation that disadvantages the Appellant or when the CMP exceeds the statutory limit. This review has no authority to modify a CMP amount for any other reason. The calculation of the CMP in this case is as follows:

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

In this case, the calculated CMP of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is less than the agency sanction limit of 5 U.S.C. § 552 (b)(7)(E). The total penalty is the lesser of these two amounts. Based on the information above, it is the determination of this review that the proper CMP amount in this case should have been 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

A review of agency records shows that the Retailer Operations Division did not calculate the CMP properly. Regulations at 7 CFR § 278.6(g) state that when calculating a firm's average monthly redemptions for a 12-month period, the agency must begin with the month immediately preceding the month in which the firm was charged with violations. In this case, the firm was charged with program violations in a letter dated October 1, 2020. As such, the 12-month calculation should have begun with the month of September 2020, as noted in the table above. However, the Retailer Operations Division incorrectly started its calculation with the month of August 2020. As a result, the agency calculated a total CMP amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which is less than what the CMP should have been. Despite this calculation error by the Retailer Operations Division, this office has no authority to increase the penalty amount during an administrative review. As such, the CMP for 5 U.S.C. § 552 (b)(6) & (b)(7)(C), as listed on the December 16, 2020 determination letter, will stand.

CONCLUSION

Based on a review of all available information in this case, this administrative review finds through a preponderance of the evidence that program violations of 7 CFR § 278.2(a) did occur at Shajalal Supermarket & Halal Meat Inc. during a USDA investigation. All transactions cited in the letter of charges were either conducted or supervised by a USDA investigator and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record appears to be specific and accurate with regard to the dates of the violations, including the exchange of SNAP benefits for ineligible, nonfood merchandise, and in all other critically pertinent details. Furthermore, the contentions provided by the Appellant do not persuade this review to dismiss or modify the penalty in any way. Therefore, pursuant to 7 CFR § 278.6(a), (e)(5), (f)(1) and (g), the decision to impose a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) civil money penalty in lieu of a six-month disqualification against the Appellant, Shajalal Supermarket & Halal Meat Inc., is sustained.

In accordance with the Act and regulations, this penalty shall become effective 30 days after receipt of this decision. To pay the civil money penalty or to establish an installment plan, the Appellant must contact FNS's Financial Management Accounting Division at (703) 605-0483. It should be noted that if the Appellant does not pay the CMP as required, the firm will be disqualified from SNAP for a period of six months. In such an instance, a new application for SNAP participation may not be submitted until 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 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.

JON YORGASON
Administrative Review Officer

January 6, 2022