

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

Steves Cash Grocery LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0231416

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support that a six-month disqualification from the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

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 Steves Cash Grocery LLC.

AUTHORITY

7 U.S.C. § 2023 and its implementing regulation at 7 CFR § 279.1 provides 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 conducted an investigation of the compliance of Steves Cash Grocery LLC with Federal SNAP law and regulations in September 2020. In a letter dated February 1, 2021, the Retailer Operations Division charged the Appellant store with accepting SNAP benefits in exchange for merchandise which included ineligible non-food items in violation of 7 CFR § 278.2(a). These SNAP violations occurred during three (3) out of five (5) compliance visits. The letter further informed the Appellant that the chargeable violations warranted a six-month disqualification period as provided in 7 CFR § 278.6(e)(5). The Appellant was informed it could respond to the charges within ten (10) calendar days following delivery of the charge letter. The charge letter was delivered to the Appellant on February 4, 2021 as documented by a UPS delivery notification in the case record.

A store owner replied to the charge letter during a telephone call with the Retailer Operations Division on February 9, 2021. The store owner stated that she did not know how the violations happened and that the store cameras didn't go back that far. The owner stated that procedures had been put in place to prevent this from happening in the future. She asked about SNAP training and the program specialist referred her to the FNS website on that topic.

After considering the Appellant's contentions and the evidence in the case, the Retailer Operations Division issued a determination letter dated April 1, 2021. The determination letter informed the Appellant it was disqualified from the SNAP for a six-month period in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a hardship CMP under 7 CFR § 278.6(f)(1). The Retailer Operations Division determined that the Appellant was not eligible for a hardship CMP in lieu of the six-month disqualification because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked April 19, 2021, the Appellant requested an administrative review of the Retailer Operations Division's determination. The request for review was granted. Upon acceptance of the administrative review request, implementation of the six-month disqualification was held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might 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 covered in the Food & 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) and (e) establish the authority upon which a disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, in part:

Coupons may be accepted by an authorized retail food store only from eligible households ... and only in exchange for eligible food.

7 CFR § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the "Food and Nutrition Act of 2008, as amended, for the purchase of 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....

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 non-food items** due to carelessness or poor supervision by the firm's ownership or management. [Emphasis added.]

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'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**. [Emphasis added.]

SUMMARY OF THE CHARGES

During an investigation in September 2020, the USDA conducted five (5) compliance visits at Steves Cash Grocery LLC. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated February 1, 2021. The investigation report included Exhibits A through E which provide full details on the results of each compliance visit.

The investigation report documents that SNAP violations were recorded during three (3) of the five (5) compliance visits as documented by Exhibits C, D and E. The chargeable violations in Exhibits C, D, and E involved the total sale of seven (7) common ineligible non-food items in exchange for SNAP benefits.

The violations were conducted by two (2) different clerks. One of these clerks refused to exchange cash for SNAP benefits in Exhibit E. A third clerk refused to exchange ineligible non-food items for SNAP benefits in Exhibit A. However, these refusals do not negate or mitigate the chargeable violations documented in Exhibits C, D and E.

APPELLANT'S CONTENTIONS

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

- The firm, its owner(s) and employees are innocent of intent to commit the alleged violations that were reported against the business. Store personnel have no recollection of the accusations presented against the store.
- The employee who is accused of agreeing to sell non-food items for SNAP benefits has often paid out of her own pocket when a customer does not have funds for non-food items or will make up the difference for people to meet their bill.
- The descriptions of the clerks in the investigation report are not accurate.
- The store has been in business for eleven (11) years and this is the first alleged SNAP violation.
- The sales that the business will lose during a six-month disqualification will be substantial. The punishment does not fit the violation.
- The business is one block from a large apartment complex that provides subsidized housing. Many of the store's customers have mobility issues and cannot make the 2-mile roundtrip to the other grocery store in Dayton, Washington. These people rely on the Appellant store for basic food items on a daily basis, plus this is the only business open after 10:00 PM.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

Investigation Report

The Appellant states that no one has a recollection of the violations alleged against the store. Regarding this contention, the investigation report documents that the charges of violations are based on the findings of a formal USDA investigation. The transactions cited in the letter of charges are thoroughly documented. A complete review of this documentation has yielded no known error or discrepancy. The investigation report is specific and thorough with regard to the dates of the violations, the specific facts related thereto, and is supported by documentation in the case record that confirms specific details of the transactions. The investigation report documents by a preponderance of the evidence that personnel at the store exchanged ineligible items for SNAP benefits.

The Appellant also claims that the descriptions in the investigation report do not match the description of store personnel. However, the Appellant's claim does not offer sufficient evidence to disregard the overall findings of the investigation report. In addition, an investigator's estimate of age, height, weight, ethnicity, etc. is a subjective observation made in order to distinguish between the different clerks involved in the transactions. Such subjective

observations often vary by the observer. This does not however invalidate the facts of the case as documented by the investigation report and other evidence in the case record.

Owner Accountability

Store owners are at all times accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. In addition, a store owner signed the SNAP authorization application for Steves Cash Grocery LLC on May 27, 2013. Another store owner signed the SNAP reauthorization application for the firm on April 12, 2018. Both applications included a signed certification that the owner(s) would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations including accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible non-food items.

Violations Warrant a Six-Month Disqualification

The Appellant states that this is the firm’s first alleged SNAP violation and that the punishment does not fit the violation. Regarding these contentions, the SNAP regulations at 7 CFR § 278.6(e)(5) states, in part, that “FNS **shall take action as follows** against any firm determined to have violated the Act or regulations ... **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 non-food items** due to **carelessness or poor supervision** by the firm’s ownership or management.” [Emphasis added.]

The Appellant also contends that there was no intent to commit a violation in the alleged transactions. However, please note that the violation of selling SNAP ineligible items as described at 7 CFR § 278.6(e)(5) does not require an element of intent on the part of the violator. Therefore, whether or not store personnel intended to conduct any violations is not relevant.

The investigation report documents that the number of chargeable violations over multiple transactions in this case equate to carelessness or poor supervision by ownership. Therefore, the Retailer Operations Division correctly determined that the violations warranted a six-month disqualification, the least severe penalty allowed by regulation under these circumstances. This review does not have the authority to waive or reduce the regulatory six-month disqualification in this case.

Hardship to the Store

The Appellant states that a six-month disqualification will create a financial hardship for the owner, the store and the store employees. With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP. However, there is no provision in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to either the owner, the firm or its employees resulting from the imposition of such penalty. To

allow stores to be excused from assessed administrative penalties based on a purported economic hardship would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

HARDSHIP CIVIL MONEY PENALTY

The Retailer Operations Division determined that the Appellant was not eligible for a hardship CMP under 7 CFR § 278.6(f)(1). That regulation 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.” [Emphasis added.]

The case record documents that the Retailer Operations Division determined that a six-month disqualification of Steves Cash Grocery LLC, a convenience store, would not cause a hardship to SNAP households as there are other comparable or larger SNAP authorized stores in the area. Within a one-mile radius of Steves Cash Grocery LLC there are two (2) other competitor convenience stores and a supermarket. The supermarket carries a greater depth and selection of staple foods at comparable or likely lower prices. In addition, there is no evidence that Steves Cash Grocery LLC carries any international or specialty foods that cannot be obtained at these competitor stores.

Based on the analysis above, a six-month disqualification of Steves Cash Grocery LLC would not cause a hardship to SNAP recipients in the area, as opposed to a mere inconvenience; therefore, the Retailer Operations Division decision not to assess a hardship CMP in lieu of a six-month disqualification is **sustained** as appropriate under 7 CFR § 278.6(f)(1).

CONCLUSION

It is established that the violations as described in the letter of charges did in fact occur at Steves Cash Grocery LLC warranting a disqualification of six (6) months in accordance with 7 CFR § 278.6(e)(5). That regulation states that FNS **shall** “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 non-food items due to carelessness or poor supervision by the firm’s ownership or management.” Therefore, the decision to impose a six-month disqualification, **the least severe penalty** allowed by regulation, against Steves Cash Grocery LLC, Appellant, is appropriate and the action is **sustained**.

In accordance with the Act and regulations, the six-month period of disqualification shall become effective thirty (30) days after receipt of this letter. The Appellant may submit a new application for SNAP authorization ten (10) days prior to the expiration of the six-month disqualification period.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that 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 you 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 receipt of this Decision. Please note that the judicial filing timeframe is specified in the Act, and this office cannot grant an extension.

Under the Freedom of Information Act, FNS is 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.

RONALD C. GWINN
Administrative Review Officer

September 3, 2021