

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

**1 Best Price #1,  
Appellant,**

**V.**

**Retailer Operations Division,  
Respondent.**

**Case Number: C0201658**

**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 a six-month disqualification of 1 Best Price #1 (hereinafter Appellant), from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) as initially 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 in its administration of the SNAP, when it imposed a six-month disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations 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 1 Best Price #1, with Federal SNAP law and regulations from February 22, 2018 through March 28, 2018. In a letter dated July 18, 2018, Retailer Operations Division charged the Appellant firm with accepting SNAP benefits in exchange for merchandise which included common ineligible non-food items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on four (4) out of five (5) compliance visits. The letter further informed the Appellant that the violations warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5).

In correspondence dated July 30, 2018, Appellant through counsel, submitted a Freedom of Information Request (FOIA) for records related to the Appellant's store. The record reflects that in correspondence dated August 29, 2018, Appellant, through counsel, was provided with the requested documentation. Counsel submitted an appeal to the FOIA response and in correspondence dated December 16, 2020, and received on December 18, 2020, counsel was notified that the FOIA appeal has been closed. Appellant, through counsel, was also notified that it had 10 calendar days to submit a response to the July 18, 2018, charge letter.

In correspondence dated December 28, 2020, Appellant, through counsel, responded to the July 18, 2018 charge letter and generally stated that Appellant adamantly denies any intentional violations of SNAP regulations. The store has a policy of compliance with SNAP regulations and as such, if the allegations were accurate then the store's violations warrant a warning letter rather than a six-month disqualification. The information in this matter is not reliable in and of itself as the witness (investigative aide) has neither made a written statement in support of the allegations, nor otherwise affirmed the transactions under penalty of perjury. As such, and from a technical standpoint, there is no direct evidence to support these allegations.

Ignoring the technical issues for a moment, even if the alleged transactions were taken as true, this case does not warrant a six-month disqualification. There is no evidence whatsoever in the record that the alleged sales of common nonfood items were due to carelessness or poor supervision by the store's ownership or management. The mere presence of the alleged violation – even in a certain volume – is not a prima facie case for “carelessness or poor supervision.” In the instant matter, the store's owner maintains a strict set of rules for the operation SNAP regulations and has reviewed the regulations with each of the employees until they demonstrated personal knowledge of the rules. Evidence that such policy and training was in place can be found in the first investigation visit where the store personnel refused the sale of ineligible items on EBT. Furthermore, the store owner has always worked to correct any problematic activity that occurs within the store, clarify any matters which employees indicate they are confused about, and to terminate employees who have violated rules and regulations governing any of the store's business.

Respectfully, the store would ask that a warning letter be issued in lieu of a six-month disqualification. There were minimal ineligible items purchased by the investigator, all of which were reasonable related to food preparation and/or common household products. There's only one full sized grocery store within a mile and across the very busy street of S.R. 54. This is not a reasonable distance for the local SNAP participants to walk. Accordingly, reliance on the small stores like Best Price is necessary for the local participants. My clients therefore request this section consider the issuance of a Hardship Civil Money penalty in lieu of a term disqualification.

After reviewing the evidence of the case and the Appellant's response, through counsel, Retailer Operations Division issued a determination letter dated February 8, 2021. The determination letter informed the Appellant it was disqualified from the SNAP for a period of six months in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that Retailer Operations Division considered Appellant's eligibility for a hardship CMP under

7 CFR § 278.6(f)(1). Retailer Operations Division determined that the Appellant was not eligible for the 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 dated February 19, 2021, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. The appeal was accepted, and the 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, 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 & 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 period of disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, inter alia: "Coupons may be accepted by an authorized retail food store only from eligible households.... Only in exchange for eligible food"

7 CFR § 271.2 states, inter alia: "Eligible food 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, inter alia: "FNS may disqualify any authorized retail food store... if the firm fails to comply with the Food and Nutrition Act of 1977, 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)(5) states, inter alia: "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, inter alia: "FNS may impose a civil money penalty as a sanction in lieu of when... the firm's disqualification would cause hardship to Food Stamp [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."

## **APPELLANT'S CONTENTIONS**

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

1. After careful review of the Department's allegations set forth in the Charge Letter, and a review of the pertinent case law on this issue, the Department lacked sufficient evidence upon which to base a six (6) month disqualification of the Appellants.
2. The Appellants and each of the clerks were trained in EBT and the clerks had to demonstrate adequate knowledge in the rules and processes prior to conducting transactions. All clerks have been trained within the months of the dates of the investigation, and all had demonstrated knowledge and compliance with the program.
3. the Department appears not to have considered the Appellants' history of compliance when determining an appropriate sanction in this case, as is required by 7 C.F.R. §278.6(d).
4. In order for the Department to issue a six (6) Disqualification, it must prove that violation occurred. In the absence of evidence, the Department may not issue a permanent disqualification of the retailer.
5. In the instant case, a disqualification of the retailer would deprive the local participants of a grocer that offers high quality foods at better than market-rate prices. Accordingly, pursuant to 7 CFR 278.6(f), the store should be issued civil money penalty in lieu of a term disqualification.
6. For the foregoing reasons, the Appellants respectfully request that this Division issue a decision to rescind the Charge Letter issued in this matter, and to issue a Warning Letter.

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**

FNS initially authorized 1 Best Price #1 as a convenience store on April 1, 2013. During an investigation from February 22, 2018 through March 28, 2018, the USDA conducted five (5) compliance visits at Appellant's store. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated July 18, 2018. 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 committed during four (4) of the five (5) compliance visits. They involved the sale of four (4) rolls of Windsor Place bathroom tissue, one (1) 1.9 oz tube of Colgate toothpaste, one (1) 1.8 oz tube of Colgate toothpaste, one (1) 20 count pack of 3.2 oz bars of Zest soap, and one (1) 20 count pack of 16 oz Strongholder party cups. The clerk refused the exchange of an undisclosed amount of SNAP benefits for cash in exhibit E.

With regard to Appellant's contentions it is important to note that as owner of the store, Appellant is liable for all volatile transactions handled by either paid or unpaid store personnel. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food Stamp Act and the enforcement efforts of the USDA. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the 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 regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Furthermore, it is important to clarify for the record that the purpose of this review is to determine if the earlier decision of the Retailer Operations Division, to disqualify Appellant from participation in the SNAP for a period of six months, was in fact a correct one. It is not within the scope of this review to consider what subsequent actions Appellant may have taken so that its store may begin to comply with program requirements.

It is important to note that a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. There is no provision in the Act, regulations, or agency policy that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees.

Based on a review of the evidence in this case, there is no question that program violations did occur. A clerk working at Appellant sold common ineligible items to an FNS investigator on four (4) separate investigative visits. The investigative record is specific and accurate with regard to the dates of the violations, the exchange of SNAP benefits for ineligible items, and in all other critically pertinent detail. As such, the contentions presented do not constitute valid grounds for dismissal of the current charges of violations, or for mitigating the impact of those charges. Based on a review of the evidence in this case, it appears that the SNAP violations at issue did, occur as charged.

## **CIVIL MONEY PENALTY**

Retailer Operations Division considered 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 the hardship CMP in lieu of the six-month disqualification because there were at least 14 authorized retailers within a one-mile radius of Appellant including one (1) small grocery store, one (1) medium grocery store, one (1) supermarket, one (1) superstore and 10 other convenience stores and all are selling as large a variety of staple foods at comparable prices.

## **CONCLUSION**

The documentation presented by Retailer Operations Division provides through a preponderance of the evidence that the violations as reported occurred at the Appellant firm. 7 CFR § 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 common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

The violations were determined by Retailer Operations Division to represent the first sanction for the firm and evidence carelessness and poor supervision. Therefore, the imposition of a six-month disqualification, the least severe penalty allowed by regulation, is appropriate.

It is therefore established that the violations as described in the letter of charges did in fact occur at the Appellant firm warranting a disqualification of six months in accordance with 7 CFR § 278.6(e)(5). Based on the discussion herein, the decision to impose a six-month disqualification against 1 Best Price #1 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 participation ten (10) days prior to the expiration of the six-month disqualification period.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to 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.

Under the Freedom of Information Act (FOIA), 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.

Monique Brooks  
ADMINISTRATIVE REVIEW OFFICER

August 31, 2021