

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

2-GO STORE,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0225670

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds that there is sufficient evidence that a Transfer of Ownership Civil Money Penalty (TOCMP) was properly levied in the amount of \$22,000 by the Retailer Operations Division (Retailer Operation) against the former owners of 2-GO STORE (Appellant) for selling and/or transferring a retail food store that was disqualified from the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(f)(2)-(4) and 7 CFR § 278.6(g), in its administration of SNAP when it levied a TOCMP against Appellant's former owners by letter dated February 3, 2020.

AUTHORITY

According to 7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, 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 FNS.

CASE CHRONOLOGY

In a letter received by the former owners on February 28, 2019, Appellant was notified that it was permanently disqualified from participation as an authorized SNAP retail food store. The case record documents former owners sold Appellant to a new owner on October 2, 2019, as evidenced by the following: Bill of Sale, Affidavit, Property Lease, Financial Institution Letter,

and Business License. In Retailer Operations' letter dated February 3, 2020, former owners were assessed a lump sum TOCMP in the amount of \$23,000 in accordance with 7 CFR § 278.6(f)(2) for the sale or transfer of ownership of Appellant during a period of disqualification.

By letter dated February 10, 2020, Appellant appealed Retailer Operations' assessment and requested an administrative review of this action. The appeal was granted by letter dated February 18, 2020, and implementation of the TOCMP has been held in abeyance pending completion of this review. Appellant submitted additional correspondence in support of its case dated March 2, 2020.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means 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 matter asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 USC § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(f)(2) establishes the authority upon which a CMP may be imposed against a disqualified retail food store in the event that it has been sold or the ownership is otherwise transferred.

7 CFR § 278.6(f)(2) reads, in part: In the event any retail food store which has been disqualified is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or other legal entity who sells or otherwise transfers ownership of the retail food store shall be subjected to and liable for a CMP.

7 CFR § 278.6(g) provides for the amount of CMP for hardship and transfer of ownership and reads: FNS shall determine the amount of the CMP as follows:

- (1) Determine the firm's average monthly redemptions . . . for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.
- (2) Multiple the average monthly redemption figure by 10%.
- (3) Multiply the [average monthly redemption times 10%] by the number of months for which the firm would have been disqualified . . .

Notwithstanding the above, there is an agency limit of \$11,000.00 per violation as the maximum TOCMP amount.

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- I sold my firm because I was in a huge amount of debt.
- I have declared retirement, closed my account, and will not be able to afford to pay off the huge amount. I have no other way of income.
- It is my sincere request that you please review my bill. I will be extremely thankful if you can help me out.

In support of these contentions, Appellant submitted copies of the following:

- Confirmation of Bank of America account closure
- Medicare Health Insurance card
- Quest Diagnostics Incorporated lab report dated 10/10/2019
- Medicare prescription card
- 2 Benzer Pharmacy receipts dated 11/28/2017
- Social Security Administration (SSA) January 2019 Publication, Thinking of retiring?
- SSA Estimated benefits, dated May 2, 2019
- SSA application correspondence, dated August 15, 2019
- SSA Notice of Award, dated August 25, 2019
- SSA Benefits Statement, dated October 22, 2019
- SSA Notice of Change in Benefits, dated November 4, 2019
- 940 Unemployment Tax Return and Payment Voucher, 2019

The preceding may represent only a brief summary of Appellant's contentions presented. However, in reaching a decision, full consideration has been given to all contentions presented, including any not specifically listed here.

ANALYSIS AND FINDINGS

The record shows that in a letter dated February 27, 2019, and received by Appellant's owners on February 28, 2019, Retailer Operations informed Appellant's owners that Appellant was being permanently disqualified as a SNAP retail food store. The letter ordered Appellant to cease accepting SNAP benefits, and from that time forward Appellant was subject to the provisions of 7 CFR § 278.6(f). The pertinent part of the letter stated, "In the event that you sell or transfer ownership of your store subsequent to your disqualification, you will be subject to and liable for a CMP."

The retail food store at Appellant's former address is now owned and operated by another entity. The fact that there is a new owner at the same location also supports that this is a legitimate sale or transfer or business subject to a TOCMP under 7 CFR § 278.6(f)(2).

While FNS is sympathetic to the former store owners' circumstances with regard to financial hardship, neither the Food and Nutrition Act of 2008 nor the implementing regulations allow for factoring in individual circumstances when determining whether a TOCMP is warranted because of the sale of a business.

CONCLUSION

Based on a review of the evidence, Appellant was, indeed, sold following its disqualification from SNAP on February 28, 2019. Therefore, in accordance with 7 CFR § 278.6(f)(2), Retailer Operations' determination to levy a TOCMP in the amount of \$22,000 against Appellant's former owners for selling Appellant during a period of disqualification from SNAP is sustained. Using the methodology described in 7 CFR § 278.6(g), Retailer Operations properly computed the CMP amount.

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 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 Appellant's former owners reside, are 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. Please note that the judicial filing timeframe is mandated in 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.

Kim Dameron
Administrative Review Officer

October 28, 2020