

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

98 Cent Soto Discount Store,

Appellant,

v.

Case Number: C0197181

Retailer Operations Division,

Respondent.

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 from 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 98 Cent Soto Discount Store.

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 98 Cent Soto Discount Store with Federal SNAP law and regulations in January and February 2017. In a letter dated August 21, 2017, 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 on five (5) out of five (5) compliance visits.

The letter further informed the Appellant that the chargeable violations warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5).

The charge letter stated the Appellant had 10 days after receipt of the letter to respond. The charge letter was delivered to the store on August 22, 2017 as confirmed by a UPS delivery notice in the casefile. The Appellant failed to respond within this time period and the Retailer Operations Division did not receive a response before issuing its determination letter.

After reviewing all the evidence in the case, the Retailer Operations Division issued a determination letter dated September 11, 2017. 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 the Retailer Operations Division considered the Appellant's eligibility for a hardship civil money penalty (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 other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked September 18, 2017, 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... 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....

7 CFR § 278.6(e)(5) states, in part:

*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.

SUMMARY OF THE CHARGES

During an investigation conducted in January and February 2017, the USDA conducted five (5) compliance visits at 98 Cent Soto Discount Store. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated August 21, 2017. 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 all five (5) compliance visits. The chargeable violations occurred during four (4) compliance visits (Exhibits B through E) and involved the sale of the following ineligible items in exchange for SNAP benefits in violation of 7 CFR § 278.2(a):

- 3-pack *Cleaning King* scrubbers
- 12.6 fluid oz. bottle *Ajax* dish liquid
- 450 ml *Downy* fabric softener
- 350 gram bar *Dove* soap
- 14 fluid oz. bottle *XtraCare* hand soap

- *Imperial* household glove
- 135 gram bar *Dove* soap
- 8 fluid oz. bottle hand sanitizer
- 16 bag *Goodsense* freezer bags
- 5 bag *Tuff Bros* lawn and leaf bags

The clerk in Exhibit E refused to exchange cash for SNAP benefits.

APPELLANT'S CONTENTIONS

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

- The descriptions of the clerks contained in the investigation report do not match any employees at the store during the time period of the investigation. None of the store's employees would have accepted SNAP benefits for general merchandise. The investigator must have visited the wrong location.
- The store has been in operation for 25 years and has never had any issues concerning the SNAP program.
- The store is the only one in the community providing discounts on food and merchandize. The community enjoys these services.

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

Reliability of the Investigation Report

The Appellant states that the description of the clerks in the investigation report do not match any of the employees working at the store during January and February 2017. In addition, the Appellant states that the store employees would never accept SNAP benefits for general merchandise. However, the Appellant provides no evidence to support these contentions. It should be noted that the general descriptions in the investigation report are somewhat subjective in nature and may involve features that are relative with respect to the observer's point of view. In short, different observers may describe the same individual somewhat differently.

The Appellant states that the investigation must have been conducted at a different store, but offers no evidence to support this contention. In comparison, all of the transactions described in the investigation report match actual redemptions that were conducted at the Appellant store.

This proves that the investigation was conducted at 98 Cent Soto Discount Store and not at another store.

In conclusion, the charges of violations are based on the findings of a formal USDA investigation. The transactions cited in the letter of charges were conducted under the direction of a USDA investigator and 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 that confirms specific details of the transactions. In comparison, the Appellant's claim is unsubstantiated and does not offer sufficient evidence to disregard the findings of the investigation report. Therefore, the Appellant's contentions do not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

No Prior Violations

The Appellant states that the store has been in operation for 25 years and has never had any issues concerning the SNAP program. However, a record of participation in the 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.

The SNAP regulation at 7 CFR § 278.6(e)(5) states, in part

*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.]

Therefore, a six-month disqualification is the appropriate penalty for the violations committed by the Appellant firm.

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."

The Appellant contends that 98 Cent Soto Discount Store is the only one in the community providing discounts on food and merchandize and that the community enjoys these services.

The case record documents that the Retailer Operations Division determined that a six-month disqualification of 98 Cent Soto Discount Store, a convenience store, would not cause a hardship to SNAP households as there are 58 other SNAP authorized stores within a one-mile radius. There is also a superstore located on the same block as the Appellant store. Based on this

evidence, a six-month disqualification of 98 Cent Soto Discount Store 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 therefore established that the violations as described in the letter of charges did in fact occur at 98 Cent Soto Discount Store warranting a disqualification of six 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 98 Cent Soto Discount Store, 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.

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.

RONALD C. GWINN
Administrative Review Officer

November 7, 2017