

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review
Alexandria, VA 22302**

A To Z Food Mart LLC,)	
)	
Appellant,)	
)	
v.)	Case Number: C0182024
)	
Retailer Operations Division,)	
)	
Respondent.)	
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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 finding that a six month disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against A To Z Food Mart LLC (hereinafter “Food Mart”) by the Retailer Operations Division (hereinafter “ROD”).

ISSUE

The issue accepted for review is whether ROD took appropriate action, consistent with 7 CFR § 278.6(e)(5) in its administration of the SNAP when it imposed a six month period of disqualification against Food Mart on March 10, 2016.

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

The Department of Agriculture conducted an investigation of the compliance of Food Mart with SNAP law and regulations during the period October 16, 2015 through December 22, 2015. The investigation reported that personnel at Food Mart accepted SNAP benefits in exchange for ineligible merchandise on four separate occasions. Of items sold during the violative transactions, not less than 33 24 were ineligible and included a variety of items best described in regulatory terms as “common nonfood

items”. Identification information developed during the investigation indicates that these violative transactions were handled by an unidentified female clerk.

As a result of evidence compiled from this investigation, the Retailer Operations Division informed the Appellant, in a letter dated February 18, 2016, that he was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.2(a).

In a written correspondence dated February 25, 2016, the Appellant replied to the charges therein indicating that the violative SNAP transactions were committed by a new store employee who has limited English reading and writing skills and who inadvertently allowed ineligible items to be purchased with SNAP benefits without the firm’s knowledge, consent, or approval.

In a letter postmarked March 21, 2016, the Appellant appealed the Retailer Operations Division’s assessment and requested an administrative review of this action. The appeal was granted and implementation of the sanction has been 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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6 establishes the authority upon which a period of disqualification may be imposed against an authorized retail food store or wholesale food concern in the event that it has failed to comply with the Food and Nutrition Act of 2008, as amended. 7 CFR § 278.6(e)(5) applies to the specific period of disqualification under review. **7 USC 2018 (b)(7)(e)**.

7 CFR § 278.6(e)(5) reads, “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.”

APPELLANT'S CONTENTIONS

On review, the Appellant's contentions in the matter are essentially the following:

- The SNAP violations were committed by a new store employee who has limited English reading and writing skills and who inadvertently allowed ineligible items to be purchased with SNAP benefits without the firm's knowledge, consent, or approval;
- The responsible employee had a difficulty understanding the difference between ineligible and eligible items;
- Prior to receiving the Charge Letter from FNS, Food Mart had never been cited for any SNAP violations;
- To ensure that SNAP violations do not occur in the future, the Appellant will re-train all store employees on the SNAP rules and regulations and which items can and cannot be purchased with SNAP benefits;
- A six month SNAP disqualification will impose a financial hardship on the Appellant as the store financially supports his family; and
- The Appellant is requesting that FNS reconsider its decision to disqualify Food Mart from the SNAP for six months and allow the store to continue to participate in the SNAP.

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

The Appellant contends that the SNAP violations were committed by a new store employee who has limited English reading and writing skills and who inadvertently allowed ineligible items to be purchased with SNAP benefits without the firm's knowledge, consent, or approval. The responsible employee had a difficulty understanding the difference between ineligible and eligible items. This contention cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. As owner of the store, the Appellant is liable for all violative transactions that occur at Food Mart. Regardless of whom the ownership of a store may utilize to handle store business (i.e., regardless of whether a store owner, store manager, store clerk, friend, or family member was involved in the violative transactions), ownership is accountable for the proper handling of SNAP benefit transactions. Prior to becoming authorized to participate in the SNAP on November 12, 2014, the Appellant completed and submitted a SNAP Application for Retail Stores. The SNAP Application contained a section indicating that the person(s) signing the Application understood and agreed to ensure that store employees follow the SNAP rules and regulations and that the person(s) accepts responsibility for any SNAP violations that may occur at the store that were committed by any of the store's employees---paid, unpaid, new, temporary, full-time, part-time, etc. The SNAP Application also included a section that contained a statement which acknowledged that the person(s) signing the Application was aware that violations of Program rules could result in fines, legal sanctions, withdrawal, or

disqualification of the store. In addition, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP Application. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. In this case, the individual who committed the SNAP violations was not specifically identified during the investigation. A six month disqualification is the appropriate sanction for violations which result from employees not being fully aware of the SNAP rules, the carelessness of employees, or due to inadequate supervision by the store owner. As 7 CFR § 278.6(e)(5) of the SNAP regulations states, “Disqualify the firm for six months if ... the evidence shows that personnel of the firm have committed violations ... due to the carelessness or poor supervision by the firm’s ownership or management”. The Appellant’s implied contention that the SNAP violations were committed by a new store employee who had limited English skills and that he did not consent to, know of, or approve of the responsible employee selling ineligible items with SNAP benefits cannot be accepted as a valid basis for diminishing the penalty. 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 and Nutrition Act and the enforcement efforts of the USDA.

The Appellant contends that prior to receiving the Charge Letter from FNS, Food Mart had never been cited for any SNAP violations. 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 Appellant contends that in order to ensure that SNAP violations do not occur in the future, he will re-train all store employees on the SNAP rules and regulations and which items can and cannot be purchased with SNAP benefits. It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. 7 USC 2018 (b)(7)(e). Therefore, the Appellant’s contention that he has taken corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

The Appellant contends that a six month SNAP disqualification will impose a financial hardship on him as the store financially supports his family. 7 USC 2018 (b)(7)(e). 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 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, the 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.

The Appellant is requesting that FNS reconsider its decision to disqualify Food Mart from the SNAP for six months and allow the store to continue to participate in the SNAP. However, 7 CFR § 278.6(e)(5) of the SNAP regulations is specific in 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 nonfood items due to carelessness by employees or poor supervision by the firm's ownership or management". As such, the Retailer Operations Division's decision to impose a six month SNAP disqualification for Food Mart is appropriate for the SNAP violations that occurred during the investigation period.

Consideration was also given to whether it might be appropriate to impose a civil money penalty in this case in lieu of a period of disqualification. Such a finding is appropriate only if a store sells a substantial variety of staple food items and its disqualification would create a hardship to nutrition assistance program 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. In this regard, it is recognized that some degree of inconvenience to SNAP beneficiaries is inherent in the disqualification from the SNAP of any participating food store as the normal shopping pattern of such beneficiaries may be temporarily altered during the period of disqualification.

In this case, however, the Retailer Operations Division has rendered a finding pursuant to 7 CFR § 278.6(f) that it would not be appropriate to impose a civil money penalty in lieu of a period of disqualification because of its determination that Food Mart is not the only authorized retail food store in the area "selling as large a variety of staple food items at comparable prices." As the disqualification of the subject store would not create a hardship to customers, as differentiated from potential inconvenience, the finding that a civil money penalty in lieu of disqualification is not appropriate in this case is sustained.

Based on a review of the evidence in this case, it appears that the program violations at issue did, in fact, occur as charged. As noted previously, the charges of violations are based on the findings of a formal USDA investigation. All transactions cited in the letter of charges were conducted 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 is specific and accurate with regard to the dates of the violations, the specific ineligible merchandise sold in exchange for SNAP benefits, and in all other critically pertinent detail.

CONCLUSION

Based on the discussion above, the decision to impose a disqualification against A To Z Food Mart LLC for a period of six months is sustained.

In accordance with the Food and Nutrition Act of 2008 and the regulations thereunder, this period of disqualification shall become effective thirty (30) days after receipt of this letter. A new application for participation may be submitted by the firm ten (10) days prior to the expiration of this six month period.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (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), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

February 9, 2017
DATE