

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

ABC Discount Store,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0216624

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that ABC Discount Store (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain a six month disqualification of Appellant from the SNAP as imposed by the Office of Retailer Operations and Compliance (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action in its administration of the SNAP, consistent with 7 CFR § 278.6(f)(1), 7 CFR § 278.6(a), and 7 CFR § 278.6(e), when it imposed a six month period of disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that 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 the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

The USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period of October 7, 2019 through February 20, 2020. The investigative report dated March 13, 2020, documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple separate occasions. The items sold on multiple dates are best described as common nonfood items.

As a result of evidence compiled during the investigation, by letter dated April 10, 2020, Retailer Operations charged the owner with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits was noted in Exhibits D, E, and F, that warrants a disqualification as a SNAP retail food store for a period of six months. The letter also states that under certain conditions FNS may impose a civil money penalty (CMP) in lieu of a disqualification. The record shows the owner did reply to the Charge letter.

Retailer Operations informed Appellant by Determination letter dated June 8, 2020, that the violations cited in the Charge letter occurred at the firm, and that a six month period of disqualification was warranted. The letter also stated that eligibility for a hardship CMP was not applicable as there are other authorized retail food stores in the area selling as large a variety of staple foods at comparable prices.

The owner requested review of the determination by letter dated June 15, 2020. The administrative review was granted by letter dated June 23, 2020. The owner provided additional information.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means the 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 argument asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

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). Sections 278.6(a) and (e)(5) establish the authority upon which a six month disqualification may be imposed against a retail food store.

7 CFR § 278.2(a) states: “Coupons may be accepted by an authorized retail food store only from eligible households or the households’ authorized representative, and only in exchange for eligible food.”

7 CFR § 278.6(e)(5) of the SNAP regulations states that a firm is to be disqualified 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.”

7 CFR § 278.6(a) states: “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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.”

7 CFR § 278.6(f)(1) provides for civil money penalty assessments in lieu of disqualification in cases where disqualification would cause hardship to SNAP benefit households because of the unavailability of a comparable participating food store in the area to meet their shopping needs. It states: “FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm’s disqualification would cause hardship to SNAP benefit 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

A report of the investigation was provided to the Appellant as Exhibits with the Charge letter. The investigative report provides details on the results of each compliance visit. The investigative report documents that SNAP violations were recorded during multiple store visits that warrant a six month disqualification. The SNAP violations of 7 CFR § 278.2(a) involved the sale of nonfood items for benefits for plastic cutlery, foam bowls, paper plates, and freezer bags, by different clerks.

APPELLANT’S CONTENTIONS

All contentions as presented, were considered, whether recapitulated here or not.

- The incidents that happened was truly a mistake and accident.
- I decided to do a very extensive training program explaining exactly what and what not can be purchased using the EBT card. My employees now understands exactly what he can ring up and WHAT HE CAN’T. I am so sorry this incident happened. But please do not disqualify us from the program. We need those customers that come in with ebt cards to help us in our business.
- This is a family owned business and I work very hard to put food in the table for my family. I understand that the employee made a mistake was not not knowledgeable about what he can sell. I again want to reiterate. I sat them down after work hours and had very detailed meeting and a walk threw in the store and explained to them what they can sell and what they cannot! I told them it was very very important and this shall not never happen again. I told them please be very careful and sell ONLY FOOD ITEMS.
- It will cause my business to loose money that I can’t afford to loose. My employees have very clear guidelines now. I am so upset and sorry this happened please take my plea in to consideration. THIS WILL NOT HAPPEN AGAIN.
- I am sending proof of what I sent. I am truly sorry and upset this happened. It will not happen again.
- I posted the EBT checklist picture. I taped behind the register and had employees sign it. I have enclosed a copy of the EBT check list.

The owner provided some photos, including a posting of what the EBT can and can not be used for, a photo of the check list that employees signed, and some medical information.

ANALYSIS AND FINDINGS

This review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations' determination at the time it was made. Upon review, the evidence supports that Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations, on multiple occasions. The regulations at 7 CFR § 278.6(e)(5) specify 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 nonfood items due to carelessness or poor supervision by the firm's ownership or management." Three violations are considered evidence of carelessness. Therefore, the violations in this case are not too limited to warrant a disqualification period of six months.

The charges of violations are based on the findings of a formal USDA investigation. The documentation confirms that the transactions were conducted at Appellant. The owner submitted no evidence to support that the transactions did not occur at Appellant. Rather, the response admits that mistakes were made. There is no statute or regulation that would allow the waiver or modification of the sanction based on corrective actions taken after-the-fact, such as training employees on SNAP regulations.

Upon authorization, all retailers are advised of the rules and regulations of the SNAP, as well as the penalties for violating the rules. Retailers are informed upon authorization that it is their responsibility to ensure that all personnel are properly trained regarding the SNAP. The owner is responsible for personnel who conduct SNAP transactions at Appellant. The preponderance of evidence under review supports that Appellant's clerks sold nonfood items on multiple store visits in exchange for SNAP benefits, a program violation that warrants a six month disqualification.

CIVIL MONEY PENALTY

Retailer Operations rendered a finding that it was not appropriate to impose a CMP in lieu of a six month period of disqualification from SNAP. The record documents that there are other authorized stores within a nearby radius of Appellant that stock a variety of comparable staple foods at comparable prices. The evidence does not support that it will cause hardship for SNAP recipients if Appellant is disqualified. Therefore, Appellant is not eligible for a hardship CMP.

CONCLUSION

The preponderance of the evidence in the record supports that the program violations charged did occur at Appellant. The record documents that Retailer Operations considered Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the regulations, and properly denied it. Therefore, the six month disqualification of Appellant from participation as an authorized retail food store in the SNAP is sustained. This penalty shall become effective thirty (30) days after delivery of this decision.

A new application for participation in the SNAP may be submitted ten days prior to the expiration of the six month period of disqualification. Please contact the Retailer Center at 877-823-4369 with general questions regarding the SNAP application process. Please contact Richard O'Toole at (312) 485-4946 if you have operations questions about this matter.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023), and to the regulations at 7 CFR § 279.7 with respect to the owner's right to judicial review of this decision. 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 the owner resides or is 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 delivery 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

July 17, 2020