

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

**Abdur Sami Deli Grocery and Halal Meat
Inc.,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0194858

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 Abdur Sami Deli Grocery and Halal Meat Inc. (hereinafter referred to as Abdur Sami Deli Grocery or “Appellant.”)

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 Abdur Sami Deli Grocery with Federal SNAP law and regulations from July 2017 through September 2017. In a letter dated November 14, 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 four (4) 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 Appellant was informed it could respond to the charges within ten (10) calendar days following delivery of the charge letter.

In response to the charge letter, the Appellant faxed a letter on November 21, 2017. The faxed letter stated, in part, that the violations were unintentional mistakes of newly hired employees. The Appellant stated that it had taken corrective action by implementing a more effective policy and educating its employees.

After reviewing the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated November 30, 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 December 11, 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 that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the “Food and Nutrition Act of 2008, as amended, for the purchase of 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 from July 2017 through September 2017, the USDA conducted five (5) compliance visits at Abdur Sami Deli Grocery. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated November 14, 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 four (4) of the five (5) compliance visits. The chargeable violations involved the sale of the following ineligible items in exchange for SNAP benefits in violation of 7 CFR § 278.2(a):

- A black umbrella;
- Two (2) rolls of Scott 1000 sheets bathroom tissue;
- A box of SOS steel wool pads;
- 12.6 fluid ounces of Dermassage dishwashing liquid;
- A package of Good Manner tissues.

The above violations were conducted by two (2) different clerks. One of these clerks refused to exchange ineligible items for SNAP benefits in Exhibit D. The other clerk refused to exchange SNAP benefits for cash in Exhibit E.

APPELLANT'S CONTENTIONS

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

- The partial irregularity that occurred was an act of newly hired employees. One of these employee's fully abided by store policy in Exhibit D. Another employee refused to provide cash in exchange for SNAP benefits in Exhibit E, but did provide ineligible non-food items. These were honest mistakes of not having enough knowledge about the SNAP or having forgot about the SNAP regulations.
- A six-month disqualification will be a harsh penalty with grave difficulties for the store owner.
- The store has implemented a more effective policy in selling to SNAP customers and all employees are being educated regarding SNAP rules.
- The Appellant requests a CMP instead of disqualifying the store.

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

Violations Warrant a Six-Month Disqualification

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.

FNS considers the sale of a total of three (3) inexpensive non-food items over one, two or three transactions to equate to carelessness and the lack of thorough supervision on the part of ownership or management. The investigation report documents that the chargeable violations in this case consisted of six (6) inexpensive non-food items exchanged for SNAP benefits over four (4) transactions; therefore, the Retailer Operations Division correctly determined that the violations warranted a six-month disqualification. A clerk refused to exchange ineligible items for SNAP benefits in Exhibit D and another clerk refused to exchange cash for SNAP benefits in Exhibit E; however, this does not ameliorate or mitigate the penalty for exchanging non-food items for SNAP benefits.

The Appellant states that any sales of ineligible items would have been unintentional and the result of honest mistakes. Regarding this contention, neither SNAP law nor regulations require an element of intent on the part of the violator where ineligible items are exchanged for SNAP benefits. Therefore, whether or not the clerks in this case intended to violate SNAP regulations is not relevant.

Owner Accountability

The Appellant admits that the violations were conducted by new store employees who did not fully understand the SNAP regulations or had forgotten them. Regarding this contention, the store owner signed the SNAP application for Abdur Sami Deli Grocery on February 11, 2015 and acknowledged that he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification

include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations including accepting SNAP benefits in exchange for ineligible non-food items.

In addition, an authorization packet was sent to the firm when it was first authorized and contained training materials which gave guidance on SNAP rules and regulations. SNAP authorized firms are responsible for reviewing the training materials, providing training for its employees, and generally familiarizing themselves with all SNAP rules and regulations pertaining to retailers. It is therefore no excuse that the store's new employees were not trained or were otherwise unfamiliar with the SNAP rules and regulations. 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 of 2008 and the enforcement efforts of the USDA.

Hardship to Business and Store Owner

The Appellant contends that the temporary disqualification will create "grave difficulties" for the store and its owner. With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP. However, there is no provision in the SNAP statutes or regulations for a waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to either the owner personally or the firm resulting from the imposition of such penalty. To allow stores to be excused from assessed administrative penalties based on a purported economic hardship would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Corrective Action

The Appellant states that the store has implemented a more effective policy regarding SNAP and is educating its employees regarding SNAP rules and regulations. This contention does not provide any grounds for relief. There is no provision in the SNAP statute or regulations for a waiver or reduction of an administrative penalty assessment on the basis of alleged corrective actions implemented subsequent to investigative findings of program violations. Therefore, any remedial or corrective actions taken so that a store may begin to comply with SNAP regulations do not provide a valid basis for dismissing the charges, or for mitigating the penalty imposed.

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 case record documents that the Retailer Operations Division determined that a six- month disqualification of Abdur Sami Deli Grocery, a small grocery store, would not cause a hardship to SNAP households as there are 126 comparable or larger SNAP authorized stores located within a one-mile radius of Abdur Sami Deli Grocery. These SNAP authorized stores include seven (7) supermarkets and eleven (11) superstores.

Based on this evidence, a six-month disqualification of Abdur Sami Deli Grocery 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 established that the violations as described in the letter of charges did in fact occur at Abdur Sami Deli Grocery and Halal Meat Inc. 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 Abdur Sami Deli Grocery and Halal Meat Inc., 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

February 9, 2018