

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

Ahmed Meat and Grocery,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0218822

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that Ahmed Meat and Grocery (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain the hardship civil money penalty (CMP) in lieu of a six month disqualification of Appellant from the SNAP as a retail food store as imposed by the Retailer Operations Division (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), 7 CFR § 278.6(e)(5), and 7 CFR § 278.6(f)(1) in its administration of the SNAP, when it imposed a CMP in lieu of a six month disqualification period 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 11, 2019 through October 23, 2019. The investigative report documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple separate occasions that warrant a six month disqualification period. The items sold are best described as common nonfood items.

As a result of evidence compiled during this investigation, by letter dated December 3, 2019, Retailer Operations charged the owner with violating the terms and conditions of the SNAP

regulations. Misuse of SNAP benefits was noted in Exhibits B, C, D, and E, 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 owner replied to the Charge letter by email dated December 26, 2019. Retailer Operations informed the owner by Determination letter dated February 27, 2020, that the violations cited in the Charge letter occurred at the firm and that Appellant's disqualification would cause hardship for SNAP households. Therefore, in accordance with 7 CFR Part 278.6(f)(1) of the SNAP regulations, Retailer Operation's imposed a hardship CMP in the amount of \$4,992.00 in lieu of a six month period of disqualification.

The owner appealed the determination by letter dated March 12, 2020. The administrative review was granted by letter dated March 19, 2020.

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 credible, relevant evidence which 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 five store visits, four of which warrant a six month disqualification. The violations of 7 CFR § 278.2(a) involved the repeated sale of nonfood items for SNAP benefits including: massage oil, essential oil, olive hair oil, jasmine hair oil, skin cleanser, shampoo, soap, hair color, incense sticks, and natural hair oil.

APPELLANT’S CONTENTIONS

Consideration of all contentions was made whether recapitulated here or not.

- This is a small grocery store that I started almost two years back with 99% of food items.
- My new part time Cashier missed to remove the non-edible items when charging the link card. It was an honest mistake and steps have been taken to correct such mistakes in future.
- I accept that this was my responsibility to train him for few more days before letting him make the transactions. I request you to forgive our first mistake. I as the owner take full responsibility of avoiding such mistakes in future.
- We are still not a profitable business as this store is hardly 2 years old.
- I will be unable to pay the fine as I am hardly making profit to sustain this business.
- I hope you will give us a chance to correct our honest mistake .
- I have installed the latest POS Clover System and tried to automate the processing system but apparently didn’t pay enough attention to avoid human errors. I am discussing the provision of skipping/blocking the non-food items when using a link card. One option would be to deduct the amount of non-food items from the Bill when a SNAP transaction is selected, the cashier can request for a separate mode of payment for Non-food items.
- I take full responsibility for my employee’s mistake which shouldn’t have happened.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or to invalidate the earlier determination made by Retailer Operations, and is limited to the facts at the basis of Retailer Operations’ determination at the time such action was taken. 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 Exhibits B, C, D and E furnished with the Charge letter warrant a disqualification period of six months.

There are no provisions in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of claims that repeated sales of ineligible items were mistakes made an employee. The acceptance of SNAP benefits for ineligible items is a violation of the SNAP rules and regulations. 7 CFR Section 278.6(e)(5) specifies 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.

Regardless of who the store owner utilizes to handle store business, the owner is accountable for the proper handling of SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in SNAP 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. The regulations stipulate “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 as the sale of common nonfood items due to carelessness and poor supervision by the firm’s ownership or management.”

There are no provisions in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective actions implemented subsequent to findings of program violations. Therefore, the owner’s contention that he has made efforts to fix the system does not provide any valid basis for dismissing the charges or mitigate the penalty imposed.

CIVIL MONEY PENALTY

Retailer Operations rendered a finding that it was appropriate to impose a hardship CMP in lieu of a six month period of disqualification on Appellant. It assessed a CMP because Appellant is selling a substantial variety of staple food items, and the firm’s disqualification would cause hardship to SNAP households. A hardship CMP in the amount of \$4,992.00 was imposed. Review was made of Retailer Operations’ calculation of the CMP, and the amount is deemed to have been correctly stated.

CONCLUSION

Based on a review of the evidence, the record by a preponderance of the evidence supports that the program violations charged did occur at Appellant. The USDA investigative record is specific, thorough, and fully documented 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.

The record documents that Retailer Operations properly considered Appellant’s eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) and Section 278.6(g). Retailer

Operations granted a hardship CMP in lieu of the six month disqualification of Appellant from participation as an authorized retailer in the SNAP. This determination is sustained.

Please review the February 27, 2020, Determination letter with the enclosed Bill for Collection for payment information previously provided to you by Retailer Operations. Please take action as described. If you chose not to, or you are unable to pay the hardship CMP for the total amount of \$4,992.00, Appellant will be disqualified for a period of six months. The owner should promptly contact Richard O'Toole at (609) 259-5118, if he chooses to have the six month period of disqualification imposed rather than pay the total amount of the CMP.

RIGHTS AND REMEDIES

Your 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 your right to 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 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 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

April 14, 2020