

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

**Al Madina Deli & Grocery Inc,**

**Appellant,**

**v.**

**Case Number: C0203515**

**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 one-year 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, when it imposed a one-year disqualification against Al Madina Deli & Grocery Inc.

**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 Al Madina Deli & Grocery Inc. with Federal SNAP law and regulations in July 2018. In a letter dated August 9, 2018, 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 three (3) out of four (4) compliance visits. The letter further informed the Appellant that the chargeable violations warranted a disqualification period of six

(6) 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. The charge letter was delivered to the store via UPS on August 10, 2018.

A store owner responded to the charge letter in an e-mail dated August 14, 2018. The store owner stated that he was the clerk who conducted the violations. According to the store owner, the investigator stated that he wanted to buy the ineligible items for his girlfriend. The store owner exchanged the ineligible items for SNAP benefits because his own wife was seriously ill and he felt empathy. The store owner apologized for the violations and asked for forgiveness.

The Retailer Operations Division issued a new charge letter dated August 23, 2018. The new charge letter increased the disqualification period to a year because of an owner's involvement in the violations. The Appellant was informed it could respond to the new charge letter within ten (10) calendar days following delivery of the charge letter. The charge letter was delivered to the store via UPS on August 24, 2018. The Retailer Operations Division discussed the new charge letter in a telephone call with an owner on August 25, 2018. However, the Appellant made no further contentions.

After considering the evidence in the case, the Retailer Operations Division issued a determination letter dated August 29, 2018. The determination letter informed the Appellant it was disqualified from the SNAP for a period of one year 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 one-year disqualification because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices. The determination letter was delivered on August 30, 2018.

In a letter postmarked September 4, 2018, 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 one-year 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 ... and 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) states, in part:

FNS **shall** take action as follows against any firm determined to have violated the Act or regulations ... (4) **Disqualify the firm for 1 year** if: (i) It is to be the **first sanction** for the firm and the **ownership or management personnel of the firm have committed violations such as the sale of common nonfood items** in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations. [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 July 2018, the USDA conducted four (4) compliance visits at Al Madina Deli & Grocery Inc. A report of the investigation was provided to the Appellant as

an attachment to the charge letter. The investigation report included Exhibits A through D which provide full details on the results of each compliance visit.

The investigation report documents that SNAP violations were recorded during three (3) of the four (4) compliance visits. The chargeable violations involved the sale of seven (7) ineligible non-food items in exchange for SNAP benefits in violation of 7 CFR § 278.2(a). These ineligible items consisted of two (2) Samsung S6 phone cases; a roll of Bounty paper towels, a bottle of Palmolive dish liquid; a BIC lighter; a can of Home Select spray home fragrance; and a bottle of Lucky Super Soft hand soap as documented by Exhibits B, C, and D and photographs in the case record. These transactions were all conducted by the same clerk. This clerk also refused to exchange SNAP benefits for cash in Exhibit D.

### **APPELLANT'S CONTENTIONS**

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

- The store owner made a mistake out of empathy and acknowledges the error.
- The owner has learned his lesson and this will never happen again.
- The owner would like to know if a collateral bond as mentioned in the disqualification letter is an option instead of a one-year disqualification.
- The business will suffer if it is disqualified from the SNAP for a year.

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**

#### **Investigation Report**

The investigation report documents that 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. The investigation report documents by a preponderance of the evidence that personnel at the store exchanged ineligible items for SNAP benefits.

## **Violations Warrant a One-year Disqualification**

The SNAP regulation at 7 CFR § 278.6(e)(4) states, in part that “FNS shall take action as follows against any firm determined to have violated the Act or regulations . . . Disqualify the firm for 1 year if: (i) It is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations.” The facts of this case fit within the violations described at 7 CFR § 278.6(e)(4)(i). Therefore, the Retailer Operations Division correctly determined that the violations warranted a one-year disqualification.

## **Collateral Bond**

The Appellant asks about the availability of a collateral bond in lieu of the one-year disqualification. The collateral bond or irrevocable letter of credit mentioned in the disqualification letter applies only after the one-year disqualification has been served and the store reapplies for the SNAP. It is not available in lieu of a one-year disqualification.

## **Hardship to Owner**

The Appellant contends that a one-year disqualification will create a hardship for the owner and the store as it relies on the SNAP for its business. 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 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.

## **HARDSHIP 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 one-year disqualification of Al Madina Deli & Grocery Inc., a convenience store, would not cause a hardship to SNAP households as there are 124 SNAP authorized firms located within a one-mile

radius of Al Madina Deli & Grocery Inc. including eight (8) supermarkets and five (5) superstores. Based on this evidence, a one-year disqualification of Al Madina Deli & Grocery Inc. 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 one-year 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 Al Madina Deli & Grocery Inc. warranting a disqualification of a year in accordance with 7 CFR § 278.6(e)(4)(i). That regulation states that FNS **shall** “disqualify the firm for 1 year if ... it is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a shopping basket ....” Therefore, the decision to impose a one-year disqualification, against Al Madina Deli & Grocery Inc., Appellant, is appropriate and the action is sustained.

In accordance with the Act and regulations, the one-year 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 one-year 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 5, 2018