

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

**Alyamani Grocery,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0236242**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is insufficient evidence to support the permanent disqualification of Alyamani Grocery (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). However, there is sufficient evidence to impose a six-month disqualification of Appellant from SNAP. The determination is therefore modified.

**ISSUE**

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

**AUTHORITY**

7 USC § 2021 and the 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**

USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period from December 2, 2020, through December 9, 2020. The investigation report documents that personnel at Alyamani Grocery exchanged cash for merchandise purchased with SNAP benefits. Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food is trafficking as defined under 7 CFR §271.2. It was also reported that during the course of the investigation the Appellant firm violated SNAP rules by allowing ineligible non-food items to be purchased with SNAP benefits on three separate occasions.

As a result of evidence compiled from the investigation, the Retailer Operations Division informed Appellant, in a letter dated January 19, 2021, that it was charged with violating the terms and conditions of the SNAP regulations. Appellant replied to the charges on February 1, 2021. Appellant, through counsel, denied the violations and explained that the report was fabricated.

By letter dated February 18, 2021, the Retailer Operations Division informed Appellant that it was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and § 278.6(e)(1) for trafficking violations. This determination letter further stated that Appellant was not eligible for a trafficking CMP because it failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

Appellant appealed the Retailer Operations Division's determination and requested an administrative review by letter dated February 24, 2021. The appeal was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would 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 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 USC § 2021(b)(3)(B) states, in part:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 271.2 states, in part, that, 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 § 271.2 defines trafficking, in part, as:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.
  
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

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...

7 CFR § 278.6(e)(1) reads, in part:

- (1) FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.
  
- (5) 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.

### **INVESTIGATION DETAILS**

Two investigators conducted five compliance visits at Appellant from December 2, 2020, through December 9, 2020. The investigative report dated December 24, 2020, was provided to Appellant as an attachment to the charge letter, and included Exhibits A through E which provide details on the results of each compliance visit. The investigation reported that personnel exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cash for two cases of Red Bull that was purchased with 5 U.S.C. § 552 (b)(6) & (b)(7)(C) SNAP benefits (Exhibit D and E) on two occasions. Transactions of this nature are referred to in the regulations as “trafficking”.

The investigative report also documents that Appellant sold ineligible non-food items in exchange for SNAP benefits during three of the compliance visits (Exhibits A, B, and C). These transactions involved the sale of common ineligible items including cleaning pads, dishwashing liquid, zipper snack bags, kitchen bags, aluminum foil, and baking sheets.

### **APPELLANT’S CONTENTIONS**

In its February 24, 2021, administrative review request, and subsequent correspondence submitted on April 5, 2021, Appellant provided the following summarized contentions, in relevant part:

- Appellant continues to vehemently deny the allegation that the firm engaged in trafficking due to an allegedly improper sale of Red Bull.
- The narrative created is fictitious and exists solely in an alternate reality.
- The undercover operative was using government funds to entrap the retailer.
- It was not Congress' intent to disqualify a small retailer on the basis of an offense created by the government itself and based solely on the affidavit of its contractor.
- There was never any action to warn Appellant that possible SNAP violations were taking place as required by 7 CFR 278.6(e).
- Appellant's training manual is the firm's written statement of policy regarding SNAP regulations.
- The compliance program was in effect prior to the violations.
- The training manual warned of immediate dismissal if there were any violations and any intentional violations result in additional training.
- Ownership was not aware of, did not approve, and did not benefit from the violations.
- Businesses are suffering due to COVID and disqualifying the market will cause additional hardship.

In support of its contentions, Appellant submitted the Appellant's SNAP Compliance Guidelines; Alyamani Grocery Training Guide; Alyamani Grocery SNAP Training Session Log; Employee Statements of Training; and a statement from the owner.

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

## **ANALYSIS AND FINDINGS**

The purpose of this review is to either validate or to invalidate the decision of Retailer Operations. This review is limited to the facts at the basis of the Retailer Operations Division's determination at the time it was made. A review of the case record, indicates that the investigation report contains insufficient evidence to support a permanent disqualification for trafficking as defined under 7 CFR § 271.2 (5) , as “ ... Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.” However, the evidence in the record supports that Appellant sold nonfood items on multiple store visits in exchange for SNAP benefits. 7 CFR §278.6(e)(5) states that FNS shall disqualify a 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 common nonfood items due to carelessness and poor supervision by the firm's ownership or management. The imposition of a six-month disqualification is appropriate.

Because the permanent disqualification determination is reversed, the Appellant's contentions related to this permanent disqualification action are moot and need not be addressed. This decision is not precedent setting as it is based on the specific circumstances of this case as documented by the materials in the record. In addition, this final agency decision does not establish policy, or supersede Federal law and regulations.

## **CIVIL MONEY PENALTY**

7 CFR § 278.6(f)(1) 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 available evidence shows that there are many stores located within a one-mile radius of Appellant that likely 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. Thus, a hardship CMP would not be appropriate.

## **CONCLUSION**

The record does not support by a preponderance of the evidence, that the exchanges by store personnel of cash for items purchased with SNAP benefits, meet the definition of trafficking. The evidence does support that SNAP violations did occur at Appellant as described in the Exhibits A, B, and C, that involved the sale of nonfood items in exchange for SNAP benefits. These violations warrant a six month disqualification of Appellant from the SNAP. Alyamani Grocery shall be credited for any “time served” between the original effective date of the permanent disqualification and the new effective date for the six-month penalty.

## **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023), and to 7 CFR § 279.7 of the regulations with respect to applicable rights 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 where Appellant’s 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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

June 16, 2021