

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

Amazing Meat Market Inc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0217096

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a one-year disqualification against Amazing Meat Market Inc. (Amazing Meat Market or Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

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.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(5) in its administration of the SNAP, when it assessed a one year 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

In a letter dated April 23, 2019, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of August 2018 through January 2019. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant replied to the charges by phone on April 25, 2019, and by letter dated April 26, 2019. Appellant denied trafficking and explained that the transactions were the result of Appellant extending credit to SNAP households and allowing repayment to be made with SNAP benefits. After considering the evidence and the retailer's reply, the Retailer Operations Division issued a determination letter dated May 21, 2019. The determination letter informed Appellant that the firm was being disqualified for one year from participation as an authorized retailer in SNAP for maintaining credit accounts. The determination letter also stated that Appellant was not eligible for a CMP 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 May 28, 2019, ownership appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and Section 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(5) establish the authority upon which a one-year disqualification may be imposed against a retail food store or wholesale food concern.

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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system"

7 CFR § 278.6(b) states, in part, "[a]ny firm considered for disqualification or imposition of a civil money penalty under paragraph (a) of this section or a fine as specified under paragraph (l) or (m) of this section shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification or imposition of a civil money penalty or fine. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification or imposition of a civil money penalty. The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter.

The firm's response shall set forth a statement of evidence, information, or explanation concerning the specified violations or acts. The firm shall make its response, if any, to the officer in charge of the FNS field office which has responsibility for the project area in which the firm is located. In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the charge letter shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section."

7 CFR § 278.6(c) states, in part, "[t]he letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination."

7 CFR § 278.6(d) states, in part, "The FNS regional office making a disqualification or penalty determination shall consider: (1) The nature and scope of the violations committed by personnel of the firm, (2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and (3) Any other evidence that shows the firm's intent to violate the regulations."

Section 278.6(e)(5)(ii) of the SNAP regulations states, in part, that a firm is to be disqualified for one year if "[t]he firm has accepted SNAP benefits in payment for items sold to a household on credit."

7 CFR § 278.2(f) states, "Paying credit accounts. SNAP benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in SNAP for a period of one year."

APPELLANT'S CONTENTIONS

In its May 28, 2019, administrative review request, and subsequent correspondence postmarked June 26, 2019, Appellant provided the following summarized contentions:

- The SNAP was created to help people that were unable to buy food for themselves.
- Appellant let some senior citizens have food on credit.
- These seniors did not have money to pay for the food so Appellant kept a tab open for them when they needed something.
- Appellant did not know it was a violation.
- The store is 90% owned and operated through the SNAP.
- Appellant will be forced to sell the business that has been in the family for 30 years.
- The owner has been working in the store since 2004 and has one employee that is also family.
- The small market sells fresh meat, bananas, apples, oranges, bacon, hot dogs, butter, cheese, sausages, smoked meat, frozen vegetables, fries, corn, fresh tomatoes, fresh bell peppers, milk, flour, syrup, macaroni, spices, canned vegetables, rice, oil, cereal, and all kinds of food.
- Appellant knows it is eligible for a CMP.
- The others stores do not provide the community with healthy options.

In support of its contentions, Appellant submitted 56 color photographs of its food inventory.

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

It is important to clarify for the record that the purpose of this review is to determine if the earlier decision of the Retailer Operations Division was proper and in compliance with pertinent laws, and regulations, and to either validate or to invalidate the earlier determination. This review is limited to what circumstances were at the basis of the Retailer Operations Division sanction action at the time the determination was made.

Appellant informed the Retailer Operations Division that it provided food to SNAP customers and allowed customers to make repayment with SNAP benefits. The Retailer Operations Division determined that the information and evidence provided by ownership demonstrated that the acceptance of SNAP benefits as payment on credit accounts adequately explained the transaction activity contained in the April 23, 2019, charge letter and attachments. Sections 278.2(f) and 278.6(e)(4) of the SNAP regulations state that FNS shall disqualify a store for one year if it is to be the first sanction for the firm and the evidence shows that personnel of the firm accepted SNAP benefits in payment for any eligible food sold to a household on credit. Although there are provisions in the SNAP regulations that provide for alternatives to disqualification, the Retailer Operations Division determined that Appellant did not qualify for an alternative penalty.

Unaware that Credit was a Violation

With regard Appellant's contention that it was unaware that the acceptance of SNAP benefits as payment on credit accounts was in violation of the regulations, it is noted that the owner signed the FNS-252, SNAP application for store authorization as well as periodic reauthorization applications certifying thereby that the owner read, understood, and agreed with the conditions noted therein which includes the following statement: "I accept responsibility on behalf of the firm for violations...including:

- Trading cash for SNAP benefits (trafficking);
- Accepting SNAP benefits as payment for ineligible items;
- Accepting SNAP benefits as payment on credit accounts or loans;
- Knowingly accepting SNAP benefit payments from people not authorized to use them; and
- Participation can be denied or withdrawn if my firm violates any laws or regulations issued by Federal, State or local agencies...."

Also, at the time of authorization the retailer was given a training guide that clearly explains that credit is not allowed. The training guide is also available online <https://www.fns.usda.gov/snap/retailer/training> .

From the SNAP Training Guide for Retailers (page 9):

SNAP customers must pay for their purchases at the time of sale. **You must not accept SNAP benefits as payments of credit accounts.** You may not hold customers' SNAP EBT cards or card account information at your store for future use.

Thus, ownership was provided with resources through which a thorough knowledge of Program rules and requirements could be readily obtained.

Economic Hardship

Appellant states that it will be forced to sell the business if it is disqualified. It is recognized that economic hardship is a likely consequence whenever a store is disqualified from participation in 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 the firm resulting from imposition of such penalty.

To excuse ownership from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant's contention that the firm will incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposition.

Civil Money Penalty

Appellant requests that a civil money penalty be imposed in lieu of a one year SNAP disqualification. The Retailer Operations Division considered whether it might be appropriate to impose a civil money penalty in this case in lieu of a period of disqualification prior to issuing the determination letter.

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." Hardship to SNAP households, as opposed to inconvenience, is seen to be likely if no comparable SNAP authorized firms are located within a one-mile radius of Appellant.

There are 34 other SNAP authorized stores, including a large grocery, located within a one-mile radius of Appellant. Thus, in its letter dated May 21, 2019, the Retailer Operations Division

determined that a hardship CMP would not be appropriate, as there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices. Some degree of inconvenience to SNAP customers is inherent whenever any SNAP authorized retailer is disqualified. For example, the normal shopping pattern of SNAP customers may be temporarily altered during the period of disqualification. Nevertheless, the determination of the Retailer Operations Division that the one year disqualification of Amazing Meat Market from the SNAP would not create a hardship to customers, as differentiated from potential inconvenience, is sustained and a civil money penalty in lieu of disqualification is not appropriate in this case.

CONCLUSION

The determination by the Retailer Operations Division to impose a disqualification of one year against Amazing Meat Market from participating as an authorized retailer in SNAP is sustained. In accordance with the Food and Nutrition Act, and the regulations, this penalty shall become effective 30 days after receipt of this letter. A new application for participation in SNAP may be submitted ten days prior to the expiration of the one-year disqualification period

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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 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 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.

MARY KATE KARAGIORGOS
Administrative Review Officer

September 12, 2019