

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

Amz Enterprise Inc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0225831

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 finding that a six month disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Amz Enterprise Inc (hereinafter “Amz Enterprise Inc” or “Appellant”) by the Retailer Operations Division of FNS.

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 period of disqualification against Amz Enterprise Inc.

AUTHORITY

7 U.S.C. § 2023 and its 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

The Department of Agriculture conducted an investigation of the compliance of Amz Enterprise Inc with Federal SNAP law and regulations during the period February 13, 2020 through February 20, 2020. In a letter dated March 25, 2020, the Retailer Operations Division charged the Appellant with accepting SNAP benefits in exchange for merchandise which included ineligible nonfood items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on three out of five compliance visits. The letter further informed the Appellant that the violations warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5). The letter

also stated that under certain conditions, FNS may impose a hardship civil money penalty (CMP) in lieu of a disqualification as provided in 7 CFR § 278.6(f)(1).

In responses to the Retailer Operations Division of April 6, 2020 and April 7, 2020, the Appellant replied to the charges therein stating that since being authorized to participate in the SNAP, the Appellant has strictly followed all guidelines of the program and has conducted training for all employees. The Appellant has ample signs posted throughout the store that employees can always read for a refresher. The clerk, who is a 12 year experienced cashier who has complied with the rules during his entire tenure, mistakenly charged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for non-food items on February 13, 2020 and most likely February 20, 2020. He refused to exchange SNAP benefits for cash and did not charge the investigator sales tax. The clerk indicated that he made a mistake as the gas station was very busy with customers and the transactions in question had numerous other items. It was a momentary lapse of inattention and being on his cell phone. The owner assures that the clerk will not repeat this mistake again. The second cashier made a mistake on February 14, 2020 which the owner quickly corrected by conducting internal training. When the clerk's training was completed and he returned to duty, he refused to sell soap and other ineligible items with SNAP benefits on February 18, 2020 and February 19, 2020. The Appellant has City of Chicago instructions and price tags on all items but due to the nature of the business location, customers remove these tags in hope of getting lower prices and more items. The owner is working with staff to ensure these mistakes do not happen in the future by reminding customers not to misuse their benefits. There will always be a select few who try to purchase ineligible items with SNAP benefits or request to traffick benefits.

After considering the Appellant's responses and the evidence of this case, the Retailer Operations Division issued a determination letter dated May 20, 2020. The determination letter informed the Appellant that the firm 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 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 May 29, 2020, the Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. In a letter postmarked June 2, 2020, the Appellant submitted additional information in support of the request for administrative review. FNS granted the Appellant's request for administrative review by letter dated June 10, 2020. 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, 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, 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 statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulations 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, inter alia:

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, inter alia:

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, inter alia:

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, inter alia:

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.

7 CFR § 278.6(f)(1) states, inter alia:

FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . the firm's disqualification would cause hardship to Food Stamp [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 February 13, 2020 through February 20, 2020, USDA conducted five compliance visits at Amz Enterprise Inc. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated March 25, 2020. 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 three of the five compliance visits and involved the sale of a variety of items best described in regulatory terms as “common nonfood items”. The misuse of SNAP benefits noted in Exhibits A, B, and E warrant a disqualification as a SNAP retail food store for a period of six months. The exchange of these ineligible items for SNAP benefits is in violation of 7 CFR § 278.2(a).

APPELLANT’S CONTENTIONS

The following represents a brief summary of the Appellant’s contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the charge letter, in the administrative review request, and in subsequent correspondence, the Appellant stated the following summarized contentions, in relevant part:

- The clerk working on February 13, 2020 and February 20, 2020, a twelve-year experienced cashier who has complied with the rules during his entire tenure, mistakenly charged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for non-food items. As evidenced by training received on SNAP rules, the clerk refused to exchange SNAP benefits for cash and did not charge the investigator sales tax. The clerk indicated that he made a mistake as the gas station was very busy with customers and the transactions in question had numerous other items. It was a momentary lapse of inattention and being on his cell phone. The second cashier made a mistake on February 14, 2020 which the owner quickly corrected by conducting internal training. When the clerk’s training was completed and he returned to duty, he refused to sell soap and other ineligible items with SNAP benefits on February 18, 2020 and February 19, 2020. The owner was not aware of the violations due to the hours of operation—the store is open 24 hours per day, 7 days per week. The Appellant has City of Chicago instructions and price tags on all items but due to the nature of the business location, customers remove these tags in hope of getting lower prices and more items. There will always be a select few who try to purchase ineligible items with SNAP benefits or request to traffick benefits.
- Since being authorized to participate in the SNAP, the Appellant has strictly followed all guidelines of the program and has conducted training for all employees. The Appellant has ample signs posted throughout the store that employees can always read for a refresher. There are signs posted throughout the business reminding customers about the SNAP rules. The owner had the business effectively following the SNAP rules by having zero complaints against the owner or the business.
- With the Appellant’s strict training program, it corrected the cashier actions. The owner assures that the clerks will not repeat these mistakes again. The owner is working with staff to ensure these mistakes do not happen in the future by reminding customers not to misuse their benefits. The Appellant has also implemented stricter guidelines.

- The Appellant store was vandalized on June 1, 2020 during the protests and it was damaged so badly that the owner had to close the store due to looting, to include the ATM machine. Not only did the business lose 100% of its inventory, the entire premises was smashed and destroyed. Since June 1, 2020, there have been repeated attempts to break into the store. Currently, the business is non-functional.
- The unprecedented present situation with COVID-19 and the protests has imposed a financial hardship on the Appellant and it may take months or even a year to fully recover. A SNAP disqualification will be potentially fatal to the business.
- The global impact of COVID-19 has also imposed a hardship on the local neighborhood, especially those who depend on the subject firm. The Appellant is located south of the 290 Expressway which is across an eight-lane Expressway with railroad tracks. The locals cannot simply cross the Expressway for various reasons, including different gangs in the area and murders of locals. The Appellant's customers do not have good access to transportation to travel to other retail stores for food and rely on the Appellant firm for their food needs.

In support of its contentions, the Appellant submitted four (4) photos of the inside of the Appellant store.

ANALYSIS AND FINDINGS

SNAP Violations

This review is to either validate or to invalidate the determination made by the Retailer Operations Divisions; it is limited to the facts at the basis of the Retailer Operations Division's determination at the time it was made. Upon review, the evidence supports that the Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations, on three out of five occasions, or during 60% of the visits conducted at the store. **5 U.S.C. § 552 (b)(7)(E)**. Therefore, the violations in this case are not too limited to warrant a disqualification. The Exhibits furnished with the charge letter warrant a disqualification period of six months.

The owner requests that a SNAP disqualification not be imposed. The owner contends that he does not deny that SNAP violations occurred at the Appellant store. However, they were unintentional mistakes made by store clerks. Additional training has been given to all employees.

Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any minimum dollar amount of SNAP benefits for transactions involving the sale of ineligible items to be defined as violative. No mention of minimum cost or types of ineligibles is cited in Section 278.6(e)(5) of the SNAP regulations, which states that FNS shall disqualify a store 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 in exchange for SNAP benefits due to carelessness by store employees or poor supervision by the firm's ownership or management.

While the Appellant contends that he provided SNAP training to store employees, no evidence was submitted validating that SNAP training has been given to employees. The Appellant contends that he was unaware of the SNAP violations. However, regardless of who the store owner utilizes to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in the program 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.

While the store clerk noted in Exhibit D refused to allow the purchase of ineligible non-food items with SNAP benefits and the store clerk in Exhibit E refused to exchange SNAP benefits for cash, the Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations, on three out of five occasions. The SNAP regulations stipulate 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 common nonfood items due to carelessness and poor supervision by the firm's ownership or management.

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, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. The Appellant did not provide any evidence that the violations cited in the charge letter did not occur. In fact, the owner does not deny that the SNAP violations occurred at the Appellant firm during the on-site investigation by FNS.

No Prior Violations

The owner contends that since being authorized to participate in the SNAP, the Appellant has strictly followed all guidelines of the program and has conducted training for all employees. The Appellant has ample signs posted throughout the store that employees can always read for a refresher. There are signs posted throughout the business reminding customers about the SNAP rules. The owner had the business effectively following the SNAP rules by having zero complaints against the owner or the business.

However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

Financial Hardship

The Appellant contends that the unprecedented present situation with COVID-19 and the protests has imposed a financial hardship on the Appellant and it may take months or even a year to fully recover. A SNAP disqualification will be potentially fatal to the business.

While FNS is sympathetic to the effects of COVID-19 and looting of the store, there is no provision in the SNAP regulations or internal agency policy directives for 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 allow store ownership from being excused 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, the Appellant's contention that the firm may 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 imposed.

CIVIL MONEY PENALTY

With regards to the Appellant's contentions that a SNAP disqualification will impose hardship on the many customers who rely on the Appellant firm and SNAP, the Retailer Operations Division determined that the Appellant was not eligible for a hardship civil money penalty (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." [Emphasis added]. **5 U.S.C. § 552 (b)(7)(E).**

Based on the evidence, the disqualification of Amz Enterprise Inc would not cause a hardship to SNAP recipients in the area, as opposed to a mere inconvenience; therefore, the Retailer Operations Division's 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 therefore established that the violations as described in the letter of charges did in fact occur at Amz Enterprise 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 nonfood 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 Amz Enterprise Inc, the Appellant firm, is appropriate and the action is sustained.

In accordance with the Food and Nutrition Act of 2008 and the regulations there under, the six month period of disqualification shall become effective thirty (30) days after receipt of this letter. A new application for participation may be submitted by the firm ten (10) days prior to the expiration of this six month period.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to 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, FNS is 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.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

July 23, 2020