

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review  
Alexandria, VA 22302**

**Ania Market, Corp,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0189838**

**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 Ania Market, Corp. (hereinafter “Ania Market”) 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 Ania Market on February 21, 2017.

**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 Ania Market with Federal SNAP law and regulations during the period May 16, 2016 through August 29, 2016. In a letter dated February 2, 2017, 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 six 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 Appellant did not reply to the charges that were outlined in the February 2, 2017 Charge Letter. After reviewing the evidence in this case, the Retailer Operations Division issued a Determination Letter dated February 21, 2017. The Determination Letter informed the Appellant that she 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 (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 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 March 1, 2017, the Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. 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 May 16, 2016 through August 29, 2016, USDA conducted six compliance visits at Ania Market. A report of the investigation was provided to the Appellant as an attachment to the Charge Letter dated February 2, 2017. The investigation report included Exhibits A through F which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were recorded during three of the six compliance visits and involved the sale of a variety of items best described in regulatory terms as “common nonfood items”. The exchange of these ineligible items for SNAP benefits is in violation of 7 CFR § 278.2(a).

## **APPELLANT’S CONTENTIONS**

On review, the Appellant’s contentions are essentially the following:

- The Appellant denies that store employees exchanged ineligible items for SNAP benefits during the investigation period;
- The store employees have been trained on the SNAP rules and are aware of what items can and cannot be purchased with SNAP benefits; and
- The Appellant is requesting that FNS reconsider its decision to disqualify Ania Market from the SNAP for six months.

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

## **ANALYSIS AND FINDINGS**

A review of the case record shows 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 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 documentation presented by the Retailer Operations Division establishes by a preponderance of the evidence that the violations as reported occurred at the subject store.

## **Denial of Charges**

The Appellant contends that store employees did not exchange ineligible items for SNAP benefits during the investigation period. The store employees have been trained on the SNAP rules and are aware of what items can and cannot be purchased with SNAP benefits. However, the Appellant provides no evidence to support these contentions.

The charges of violations are based on 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. In comparison, the Appellant's claim is unsubstantiated and does not offer sufficient evidence to disregard the findings of the investigation report. Therefore, the Appellant's contentions do not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

## **Request to Reconsider SNAP Disqualification**

The Appellant is requesting that FNS reconsider its decision to disqualify Ania Market from the SNAP for six months. However, 7 CFR § 278.6(e)(5) of the SNAP regulations is specific in 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 by employees or poor supervision by the firm's ownership or management". As such, the Retailer Operations Division's decision to impose a six month SNAP disqualification for Ania Market is appropriate for the SNAP violations that occurred during the investigation period.

## **CIVIL MONEY PENALTY**

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]. Please note that internal FNS policy memoranda clarifies the

regulation by defining “in the area” to mean within a one- mile radius for an urban store such as Ania Market. The location of Ania Market is classified as a primarily urban area by 2010 Federal Census data.

The case record documents that the Retailer Operations Division determined that the six month disqualification of Ania Market would not cause a hardship to SNAP households as there are other comparable or larger SNAP authorized stores located within a one-mile radius of the Appellant firm. Ania Market is classified by FNS as a convenience store. Agency mapping systems document that there are 65 comparable or larger SNAP authorized stores within a one-mile radius of the Appellant store. These authorized SNAP stores include convenience stores, small grocery stores, medium grocery stores, large grocery stores, super stores, and supermarkets.

Based on the evidence, the disqualification of Ania Market 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 Ania Market, Corp. 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 Ania Market, Corp., the Appellant, 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, 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.

LORIE L. CONNEEN  
Administrative Review Officer

December 12, 2017