

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

**GJV Petroleum Inc.,  
dba Berkley Marathon,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0191456**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA) that GJV Petroleum Inc. (dba Berkley Marathon) (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to sustain a six month disqualification from the SNAP as imposed by the Retailer Operations Division (Retailer Operations).

**ISSUE**

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

**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 USDA conducted an investigation of the compliance of Appellant with federal SNAP laws and regulations during the period of November 4, 2016 through January 11, 2017. The investigative report documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple separate occasions that warrant a six month disqualification period. The items sold are best described in regulatory terms as common nonfood items.

As a result of evidence compiled during this investigation, by letter dated October 4, 2017, Retailer Operations charged Appellant with violating the terms and conditions of the SNAP regulations at 7 CFR § 278.2(a). The misuse of SNAP benefits was noted in Exhibits C, D and E, and warrants a disqualification as a SNAP retail food store for a period of six months. The letter also states that under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification. The record states that the owner did not reply to the Charge letter.

Retailer Operations informed the owner by Determination letter dated October 17, 2017, that the violations cited in the Charge letter occurred at the firm, and that a six month period of disqualification was warranted. The letter also stated that Appellant was not eligible for a hardship CMP since there are other authorized retail food stores in the area selling as large a variety of staple foods at comparable prices.

Appellant, appealed Retailer Operations' determination and requested administrative review by letter dated October 25, 2017. The appeal was granted by letter dated October 31, 2017. This letter properly referenced GJV Petroleum Inc. in the header but referred to a different firm in the first sentence. The owner called this office November 9, 2017, to report the firm named in the first sentence was not his. The acknowledgment letter was not resent since the owner stated the corporate name was correct. The record shows that on December 4, 2017, the owner requested a name change to Berkley Marathon.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action 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 argument 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 § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(5) establish the authority upon which a six month disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states: "Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food."

7 CFR § 278.6(e)(5) states that a firm is to be disqualified 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 or poor supervision by the firm's ownership or management."

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

7 CFR § 278.6(f)(1) provides for civil money penalty assessments in lieu of disqualification in cases where disqualification would cause “hardship” to SNAP benefit households because of the unavailability of a comparable participating food store in the area to meet their shopping needs. It 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 benefit 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**

The investigative report provided to Appellant details the results of each compliance visit, and documents that SNAP violations were recorded during three visits that warrant a six month disqualification. The violations involved the sale of nonfood items including: plastic cutlery, bathroom tissue, and scrub sponges, for SNAP benefits in violation of 7 CFR § 278.2(a).

### **APPELLANT’S CONTENTIONS**

Consideration of all contentions was made whether recapitulated here or not.

- I was not afforded a hearing to discuss this matter.
- I cannot dispute the fact that my employee did carelessly make this mistake.
- The employee who made this mistake was careless and was terminated.
- The company has reestablished a training manual for SNAP and has gone through these procedures with employees and management to insure this careless type of mistake does not repeat.
- Although there are other stores in the vicinity, many of our customers do not have vehicles and walk to our store. These customers would suffer a hardship from suspension of SNAP at our store.

### **ANALYSIS AND FINDINGS**

The purpose of this review is to either validate or to invalidate the determination made by Retailer Operations. This review is limited to what circumstances were at the basis of Retailer Operations’ determination at the time such action was taken. Upon review, the evidence supports that Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations, on multiple occasions as noted in Exhibits C, D, and E which warrant a disqualification period of six months. 7 CFR § 278.6(e)(5) specifies 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 nonfood items due to carelessness or poor supervision by the firm’s ownership or management.” Three

violations are considered evidence of carelessness. Therefore, the violations in this case are not too limited to warrant a disqualification.

Ownership signed the FNS retailer application to become a SNAP authorized retailer, which included a certification and confirmation that ownership would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” By signing this document ownership confirmed that “I am aware that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal or disqualification from Supplemental Nutrition Assistance Program; “It is my responsibility to ensure that the training materials are reviewed by all firm owners and all employees....;” “I accept responsibility on behalf of the firm for violations of the Supplemental Nutrition Assistance Program regulations, including those committed by any of the firm employees.”

Appellant contends that he has provided SNAP training to employees and management. With regard to this contention, this review is limited to what circumstances were at the basis of Retailer Operations’ action at the time such action occurred. It is not the authority of this review to consider what subsequent remedial actions the owner may undertake so that a store might begin to comply with Program requirements. There are no provisions in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective actions implemented subsequent to findings of Program violations. Therefore, Appellant’s contentions that corrective actions such as reestablishing SNAP training, and the termination of an employee, do not provide any valid basis for dismissing the charges or mitigate the penalty imposed.

Administrative review of FNS determinations against SNAP retailers is authorized under Section 14(a)(5) of the Food and Nutrition Act of 2008 (Act). The SNAP rules at 7 CFR Part 279 have been promulgated pursuant to Act. The regulations removed the hearing requirement in 2003, and the agency no longer holds in-person hearings. The final determination uses the process provided for in Section 14(a)(5) of the Act and the SNAP rules at 7 CFR Part 279. If a retailer feels aggrieved by the decision of the Review Officer, the retailer can appeal the decision to federal district court.

### **CIVIL MONEY PENALTY**

Retailer Operations rendered a finding that it was not appropriate to grant Appellant a CMP in lieu of a six month period of disqualification because there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices. While some SNAP recipients may be inconvenienced by the six month disqualification of Appellant, this inconvenience does not rise to the level of hardship. The record lists other authorized stores within a nearby radius of Appellant that offer a comparable variety of staple foods and have comparable prices.

## **CONCLUSION**

The evidence supports that Program violations at issue did occur at Appellant. The investigative record is specific, thorough, and fully documented with regard to the dates of the violations, the specific ineligible merchandise sold in exchange for SNAP benefits, and in all other critically pertinent detail. The record documents that Retailer Operations considered Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1), and properly denied it. Therefore, the six month disqualification of Appellant from participation as an authorized retailer in the SNAP is sustained.

## **RIGHTS AND REMEDIES**

This penalty shall become effective thirty (30) days after receipt of this decision. A new application for participation in the SNAP may be submitted ten (10) days prior to the expiration of the six month period of disqualification. Please contact the Retailer Center at 877-823-4369 with any questions regarding the SNAP application process.

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (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. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction.

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.

M. Viens  
Administrative Review Officer

December 15, 2017