

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

Bonoful Grocery & Halal Meat Inc,

Appellant,

v.

Case Number: C0198763

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a six-month disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Bonoful Grocery & Halal Meat Inc. (hereinafter “Appellant”) by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it imposed a six-month disqualification against Bonoful Grocery & Halal Meat 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

FNS records show that the Appellant firm, Bonoful Grocery & Halal Meat Inc., was initially authorized for SNAP participation as a medium grocery store on September 18, 2009. Between January 3, 2018, and March 14, 2018, FNS conducted an undercover investigation at the firm to ascertain its compliance with Federal SNAP laws and regulations. The investigative report documented that personnel at Bonoful Grocery & Halal Meat Inc. accepted SNAP benefits in exchange for ineligible merchandise on four separate occasions. According to the report, the Appellant firm sold toilet paper, soap, laundry detergent, body lotion, petroleum jelly, and liquid

bleach in exchange for SNAP benefits, which benefits may only be used to purchase eligible foods.

In a letter dated April 23, 2018, the Retailer Operations Division charged the Appellant with violating the terms and conditions of the SNAP regulations at 7 CFR § 278.2(a). The charge letter states that the violation of accepting SNAP benefits in exchange for ineligible nonfood items warrants a disqualification from SNAP for a period of six months pursuant to 7 CFR § 278.6(e)(5). The letter further states that under certain conditions and in accordance with 7 CFR § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification.

In a faxed letter dated May 2, 2018, the Appellant replied to the charges, stating that the irregular transactions were caused by a newly hired employee with limited English language proficiency. The Appellant claimed that it was committed to USDA regulations and requested a pardon for “the unintentional mistakes and the violation of the regulations.” The Appellant further stated that SNAP sales constituted one-third of the total sales at the store and a disqualification would lead to “grave difficulties” for the firm. In support of its reply, the Appellant submitted a copy of the agency’s investigation report and a copy of IRS Form 1099-K, “Payment Card and Third Party Network Transactions,” for the year 2017.

After considering the Appellant’s response and further evaluating the evidence in the case, the Retailer Operations Division issued a determination letter dated May 8, 2018. This letter informed the Appellant that it was the determination of the Retailer Operations Division that the violations did occur as outlined in the letter of charges and that a six-month disqualification penalty would be imposed in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that consideration for a hardship CMP was given, but that the Appellant was not eligible for a CMP because there were other authorized stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked May 14, 2018, the Appellant appealed the Retailer Operations Division’s determination by requesting an administrative review. The request was granted and implementation of the sanction has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 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, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food.

7 CFR § 271.2 states, in part:

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, 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.... **Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction;** for [a] period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. [Emphasis added.]

7 CFR § 278.6(c) states, in part:

The 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(e) states, in part:

FNS shall take action as follows against any firm determined to have violated the Act or regulations...The FNS regional office shall:

(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.

7 CFR § 278.6(f)(1) states, in part:

FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and 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.

INVESTIGATION DETAILS

During an undercover investigation conducted between January 3, 2018, and March 14, 2018, the Food and Nutrition Service completed five compliance visits at Bonoful Grocery & Halal Meat Inc. The agency record indicates that a report of the investigation was provided to the Appellant as an attachment to the April 23, 2018, charge letter. The investigation report includes Exhibits A through E, and provides full details on the results of each compliance visit. SNAP violations were documented during four of the five visits, specifically the exchange of ineligible nonfood merchandise for SNAP benefits. The report states that the following nonfood items were purchased by an investigator using SNAP benefits:

- One 4-ounce bar of soap (*Dove* brand), Exhibit B
- One 1,000-sheet roll of toilet paper (*Scott* brand), Exhibit B
- One 32-ounce box of laundry detergent (*Tide* brand), Exhibit C
- One 400-millileter bottle of body lotion (*Nivea* brand), Exhibit C
- One 3.75-ounce bar of soap (*Irish Spring* brand), Exhibit D
- One 100-millileter container of petroleum jelly (*Vaseline* brand), Exhibit D
- One 30-fluid-ounce bottle of liquid bleach (*Clorox* brand), Exhibit E
- One 20-ounce box of laundry detergent (*Tide* brand), Exhibit E
- One 13.5-fluid-ounce bottle of hand soap (*Lucky Super Soft* brand), Exhibit E

The report indicates that in Exhibit A, the clerk on duty refused to allow a purchase of soap and toilet paper with SNAP benefits. The clerk in Exhibit A was different than the clerk in Exhibits B, C, D, and E. In Exhibits D and E, the investigator attempted to obtain 5 U.S.C. § 552 (b)(7)(E) cash in exchange for SNAP benefits, but these requests were refused. According to the report, the same cashier conducted all four violative transactions.

The charge letter states that the violations that occurred in Exhibits B, C, D, and E warrant a disqualification period of six months pursuant to 7 CFR § 278.6(e)(5).

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The Appellant is fully committed to abide by the USDA regulations.
- After receiving the agency's determination letter, the Appellant found the cash register receipts for each of the transactions in question. The receipts show that all items purchased were eligible sales. The employee also confirms that all sales were for eligible food. The transaction receipts and the employee's statement indicate that there were no irregularities. Thus, the firm should not be disqualified from accepting SNAP benefits.
- Appellant strongly disagrees with the disqualification determination.

In support of its contentions, the Appellant submitted copies of the cash register receipts for each of the allegedly violative transactions.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

It is noted that in its initial response to the April 23, 2018, charge letter, the Appellant appeared to acknowledge that program violations occurred. The violations, it claimed, were caused by a newly hired employee with English language deficiencies. The Appellant requested a pardon for the "unintentional mistakes and the violation of the regulations."

However, in its request for administrative review, the Appellant has reversed course and now claims that program violations did not occur. This change in perspective apparently came about after the Appellant located copies of the cash register receipts for the transactions in question. The Appellant contends that the receipts show that all items purchased were "eligible charges." The Appellant also claims that the employee identified in the investigation report was questioned, and he confirmed that "all sales were qualified." To support these contentions, the Appellant provided copies of the cash register receipts for the transactions that occurred in Exhibits B, C, D, and E.

With regard to these new contentions, it should be noted that **5 U.S.C. § 552 (b)(7)(E)**. Unfortunately, the receipts do not support the Appellant's assertions of innocence. While the receipts are occasionally itemized – identifying food items such as Bumble Bee tuna fish, Oreo cookies, and Sunkist soda – many other items are simply listed as "Grocery" and offer no additional explanation.

For example, the record shows that in Exhibit D, the investigator purchased the following SNAP-eligible food items: a box of Kellogg's Apple Jacks cereal, a bottle of Ameen honey, a box of Eastern tea bags, and a package of IFAD instant noodles. However, the cash register receipt for this transaction identifies only the Ameen honey by name. The remaining food items are simply listed as "Grocery." Along with these food items, two nonfood items were also purchased in Exhibit D: a bar of Irish Spring soap and a container of Vaseline petroleum jelly. These are also listed on the receipt as "Grocery." **5 U.S.C. § 552 (b)(7)(E)**.

Based on this evidence as well as the detailed description of the investigation as found in the investigator's report, it is the finding of this review that the Retailer Operations Division has sufficiently and plainly demonstrated that SNAP violations very likely occurred at Bonoful Grocery & Halal Meat Inc. as alleged. Conversely, the evidence and explanations presented by the Appellant do not compel this review to consider reversing the disqualification determination.

Hardship to Appellant

In its response to the charge letter, the Appellant stated that a disqualification would result in "grave difficulties" for the firm. With regard to this claim, it is recognized that some degree of financial or economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there are no provisions in the SNAP regulations for waiver or

reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the 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 requirements, 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 financial hardship as a result of a six-month disqualification from SNAP does not provide a valid basis for dismissing the charges or for reducing the penalty imposed.

Civil Money Penalty

Although not requested by the Appellant, this review evaluated the Appellant's eligibility for a hardship civil money penalty (CMP) in lieu of a six-month disqualification. Regulations at 7 CFR § 278.6(f)(1) permit a CMP in lieu of disqualification when the firm's disqualification would cause hardship to SNAP households. According to this regulation, hardship to SNAP households is defined as "no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices."

It is the determination of this review that a disqualification of Bonoful Grocery & Halal Meat Inc., a medium grocery store, would not cause hardship to SNAP households because there are many other shopping options in the area. According to agency records, there are at least 25 comparable or larger SNAP-authorized retail stores located within a one-mile radius of Bonoful Grocery & Halal Meat Inc., including stores that specialize in halal meats.

It is recognized that some degree of inconvenience for SNAP households is likely whenever a SNAP-authorized store is disqualified and households are forced to use their SNAP benefits elsewhere. However, in accordance with regulation cited above, hardship exists only when there are no other authorized stores in the area selling as large a variety of staple foods at comparable prices. Because such conditions do not exist in this case, a hardship civil money penalty in lieu of disqualification is not an option.

CONCLUSION

Based on an analysis of all information in this case, this review finds through a preponderance of the evidence that program violations of 7 CFR § 278.2(a) did occur at Bonoful Grocery & Halal Meat Inc. during a USDA investigation. All transactions cited in the letter of charges were either conducted or supervised by a USDA investigator and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record appears to be specific and accurate with regard to the dates of the violations, including the exchange of SNAP benefits for ineligible, nonfood

merchandise, and in all other critically pertinent details. Pursuant to 7 CFR § 278.6(a) and (e)(5), the decision to impose a six-month disqualification against the Appellant, Bonoful Grocery & Halal Meat Inc., is sustained.

In accordance with the Act and regulations, the disqualification penalty shall become effective 30 days after receipt of this decision. A new application for SNAP participation may be submitted 10 days prior to the expiration of the six-month disqualification period.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON
Administrative Review Officer

October 19, 2018