

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

Bristol Food Mart Inc,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0220041

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that Bristol Food Mart Inc. (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain a six month disqualification of Appellant from the SNAP as imposed by the Office of Retailer Operations and Compliance (Retailer Operations).

ISSUE

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

AUTHORITY

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

The USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period of October 8, 2019, through November 20, 2019. The investigative report dated November 21, 2019, documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple separate occasions. The items sold on multiple dates are best described as common nonfood items.

As a result of evidence compiled during the investigation, by letter dated February 19, 2020, Retailer Operations charged the owner with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits was noted in Exhibits A, C, and D, that 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.

Retailer Operations informed the owner by Determination letter dated March 31, 2020, that the violations cited in the Charge letter occurred at the firm, and that a six month period of disqualification was warranted. This letter stated that the owner did not reply to the Charge letter. The letter also stated that eligibility for a hardship CMP was not applicable as there are other authorized retail food stores in the area selling as large a variety of staple foods at comparable prices.

Counsel requested review of the determination by letter dated April 13, 2020. The administrative review was granted by letter dated April 16, 2020.

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, credible evidence that 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.

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) of the SNAP regulations 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 states: “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

A report of the investigation was provided to the Appellant as Exhibits with the Charge letter. The investigative report provides details on the results of each compliance visit. The investigative report documents that SNAP violations were recorded during multiple store visits that warrant a six month disqualification. The SNAP violations of 7 CFR § 278.2(a) involved the sale of nonfood items for benefits such as: sandwich bags, plastic cups, plastic cutlery, toilet tissue, and aluminum foil.

APPELLANT’S CONTENTIONS

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

- The store has participated in the SNAP program since 1996 and this is the first allegation of violation of the program.
- Based upon the limited description of the employees mentioned in the investigation, my client was able to identify the two employees involved. He indicates that one of the employees had recently lost her father and was still emotionally upset at the time of the investigation.
- The other employee indicated that her mistakes were due the pressure of the busy store and her desire to assist the customers in their purchases quickly.
- The owner reiterated to these employees the importance of following the rules and of handling SNAP purchases properly.
- My client will provide re-education on the rules of the program and will provide them with further training to ensure that similar incidents will not occur in the future.
- My client will strive to ensure full compliance with all of the SNAP regulations.
- My client requests that his firm not be disqualified for a six month period and that the USDA consider a civil money penalty.
- My client did timely respond as requested, therefore, we are requesting that you consider the original material provided on March 2nd not disqualify my client from participating in the program.

- This office represents the legal interests of Bristol Food Mart, Inc. relative to letters it received dated February 19th and March 31st respectively. I have responded to both on behalf of my client, however, USDA states in the March 31st letter that it did not receive my initial letter which was sent via certified mail and signed for by USDA.

ANALYSIS AND FINDINGS

This review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations' determination at the time it was made. The record confirms that counsel did provide a timely response to the Charge letter. 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. The Exhibits furnished with the Charge letter warrant a disqualification period of six months. The regulations at 7 CFR § 278.6(e)(5) specify 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.

The charges of violations are based on the findings of a formal USDA investigation. The documentation confirms that the transactions were conducted at Appellant. Counsel submitted no evidence to support that the transactions did not occur at Appellant. Rather, the response admits that mistakes were made. The owner is responsible for personnel who conduct SNAP transactions at Appellant. Retailers are informed upon authorization that it is their responsibility to ensure that all personnel are properly trained regarding the SNAP, as well as the penalties for violating the rules. The preponderance of the evidence supports that Appellant sold nonfood items on multiple store visits in exchange for SNAP benefits, a program violation that warrants a six month disqualification.

CIVIL MONEY PENALTY

Retailer Operations rendered a finding that it was not appropriate to impose a CMP in lieu of a six month period of disqualification from SNAP. The record documents that there are other authorized stores within a nearby radius of Appellant that stock a variety of comparable staple foods at comparable prices. The evidence does not support that it will cause hardship for SNAP recipients if Appellant is disqualified. Therefore, Appellant is not eligible for a hardship CMP.

CONCLUSION

The preponderance of the evidence in the record supports that the program violations charged did occur at Appellant. The record documents that Retailer Operations considered Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the regulations,

and properly denied it. Therefore, the six month disqualification of Appellant from participation as an authorized retail food store in the SNAP is sustained. This penalty shall become effective thirty (30) days after delivery of this decision.

A new application for participation in the SNAP may be submitted ten days prior to the expiration of the six month period of disqualification. Please contact the Retailer Center at 877-823-4369 with general questions regarding the SNAP application process. Please contact Aqueelah McGee at (609) 259-5007 if you have operations questions about this matter.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023), and to the regulations at 7 CFR § 279.7 with respect to the owner's right to judicial review of this decision. 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. If any Complaint is filed, it must be filed within thirty (30) days of delivery 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

May 13, 2020