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

Cazadores Bottle Shop,

Appellant,

v.

Case Number: C0209895

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a six month disqualification against Cazadores Bottle Shop (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), § 278.6(e)(5 and 6), and § 278.6(f)(1) in its administration of the SNAP when it imposed a six month period of disqualification against Appellant on January 31, 2019.

AUTHORITY

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, "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

USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period July 2, 2018, through October 18, 2018. The investigation determined that personnel at the Appellant firm accepted SNAP benefits in exchange ineligible merchandise on four separate occasions. All four transactions were deemed clearly violative and warrant a six month disqualification period. The items sold are best described in regulatory terms as common nonfood items such as sandwich bags, plastic spoons, plastic bowls, plastic cups, and toilet tissue. The investigative report indicates that these violative transactions were

handled by three clerks. The investigative report also notes that the firm refused to exchange SNAP benefits for cash on one occasion (Exhibit D).

As a result of evidence compiled from this investigation, the Retailer Operations Division informed Appellant, in a letter dated December 4, 2018, that the firm was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.2(a). The letter states, in part, that the violations ". . . warrant a disqualification period of six months (Section 278.6(e)(5)). The letter also states that under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification (Section 278.6(f)(1))."

Store ownership responded to the charges in undated correspondence faxed on January 10, 2019, that apologized for part-time and inexperienced employees negligently making the mistake of accepting SNAP benefits for ineligible items and requested leniency. After giving consideration to the evidence, the Retailer Operations Division notified Appellant in a letter dated January 31, 2019, that it determined that violations had occurred at the firm, and that a six month period of disqualification from participating as an authorized firm in SNAP was warranted. This determination letter also states that Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the SNAP regulations was considered. However, the letter stated ". . . you are not eligible for the CMP because there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices."

By letter dated February 11, 2019, Appellant appealed the Retailer Operations Division's decision and requested an administrative review of this action. The appeal was granted and implementation of the sanction has been held in abeyance pending completion of this review. Counsel also submitted a Freedom of Information Act (FOIA) request dated March 12, 2019. The agency responded to this request by correspondence received by counsel on April 18, 2019. Subsequent correspondence dated May 17, 2019, was also received.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant 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 untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Section 278. In particular, 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 § 271.2 states that: 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 § 278.2(a) states that: Coupons [SNAP benefits] may be accepted by an authorized retail food store only from eligible households, and only in exchange for eligible food. Further, the citation specifies that coupons may not be accepted in exchange for cash, in payment of interest on loans, or for any other nonfood use.

7 CFR § 278.6(a) states that: 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 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(f)(1) states that, "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. FNS may disqualify a store which meets the criteria for a CMP if the store had previously been assigned a sanction. A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

APPELLANT'S CONTENTIONS

The following may represent a summary of Appellant's contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

In ownership's response to the charges:

- Ownership investigated and determined some of the firm's part-time and inexperienced employees have negligently made the mistake;
- The owner apologizes for the occurrences as he was traveling the last several months due to family matters and hadn't been fully able to attend to business matters; and,
- The owner has taken steps to remedy and prevent future incidents. Specifically, an EBT guide for employees has been created and is affixed next to the cash registers, periodic training is being provided to employees, and new POS terminals will be installed the next fiscal year that will automatically identify EBT items.

Appellant submitted no evidence or other rationales in support of these contentions.

In the subsequent responses by counsel for Appellant:

- Appellant summarized the violative transactions and stated that it is important to note that the clerk in the fourth investigation refused to refused to traffick;

- Appellant submitted information related to the firm's location, ownership, size, and inventory as well as demographic information based on the FNS report for California's 19th Congressional District; (please see note at the end of this Section)
- The implementing regulations of 7 USC § 2021 are set forth in 7 CFR § 278.6, which states, in pertinent part, that FNS shall consider the following when making a disqualification or penalty determination: "(1) the nature and scope of the violations committed by personnel of the firm, (2) any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and (3) any other evidence that shows the firm's intent to violate the regulations." 7 CFR § 278.6(d). The regulations provide further guidelines for the disqualification of a retailer, which states, in pertinent part, that FNS shall "[d]isqualify 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(e)(5). However, FNS is to "[s]end the firm a warning letter if violations are too limited to warrant a disqualification". 7 CFR § 278.6(e)(7);
- Ownership adamantly denies any intentional violation of SNAP regulations. Unequivocally, the Store has a strict compliance policy and has never previously been accused of SNAP violations. The violations were honest mistakes, made without any malice, by two clerks who were confused as to which specific items were eligible verse ineligible items. These clerks were inexperienced and one was employed part-time. These minimal violations occurred during a three month period and immediately upon becoming aware of said violations, all Store personnel were re-trained as to the proper SNAP regulations and procedures. The Store trains their personnel on proper SNAP procedures and policies – attached herewith is a copy of the SNAP Pocket Guidelines which is hung in the Store for the clerks, and a copy of the SNAP training walkthrough guidelines which are given to new employees and must be completed prior to the commencement of their employment;
- Prior to the charges at hand, the Store has had a history of compliance with SNAP regulations. Given the duration of the Appellants' participation in SNAP as an authorized retailer, such compliance history fairly portrays that the Store typically has the appropriate training, oversight and procedures in place to prevent SNAP violations on the part of its' clerks. The Store has consistently been in compliance with SNAP since authorized in 2010 and has never even received a warning letter. Accordingly, good compliance history should be given some weight when determining whether a six month disqualification is the appropriate sanction in this matter;
- In light of the short duration in which the violations took place coupled with the clear training and compliance programs of the Store, as evidenced by clerk's refusal in the fourth investigation, it is more likely that the first three investigations demonstrated a short-lived misunderstanding on the part of clerks concerning the difference between ineligible and eligible items, rather than a practice of selling ineligible items. Additionally, with respect to the standing charges issued by the Department, the ineligible items were all common household items, including plastic sandwich bags, plastic spoons, plastic bowls, plastic cups, and toilet tissue, all of which would normally be expected to be found in a standard grocery shopping trip;
- Regulations indicate that the circumstances must show carelessness by management. The

store has training, as it had in the past, and was under the belief and impression that its personnel were operating the register pursuant to Store policies. As such, management acted responsibly prior to the violations. Thus, the question then becomes one of whether management acted carelessly during and after the transactions. The store's manager is not expected to directly oversee every EBT transaction. Furthermore, the store was not required to have a computerized POS system to track the transactions. No review, other than a detailed audit, would have showed anything amiss on the surface of the transactions thus the management and owner cannot be considered careless in reviewing the transactions. After being made aware of the violations, the Store's owners took reasonable and appropriate steps to properly educate clerks on eligible/ineligible items and retrained all store personnel on all SNAP regulations and procedures. There are no other reasonable steps that Appellants could have taken under the circumstances. Therefore, the Store's management and owners cannot be categorized broadly as careless;

- The issue of whether or not poor supervision existed is the next point of consideration. Standard supervision would include training staff, a broad review of transactions, the investigation of alleged violations, and the occasional spot checks of employees. None of these are fool proof as human error is a fact of life, but all were taken into consideration. It is not as though the store was forewarned that such violations were occurring and then failed to take steps to protect itself. In fact, given the long-term compliance with the regulations, and the short duration of time in which the alleged violations occurred, the Store had little reason to believe that there was anything wrong with the way that the transactions were being run. Therefore, despite the ultimate failure of the Store's attempts to prevent violations resulting from human error, it is not fair to say that the Store did not properly oversee its' personnel. Simply put, there were just no warning signs that management or ownership could have noticed;
- The firm's owners maintain a strict set of rules for the operation to be run in compliance with SNAP regulations and have reviewed the regulations and have personal knowledge of the rules. Furthermore, the Store owners attempt to correct any violative activity that occurs within the Store;
- As previously stated, to qualify for a six month disqualification, the regulations indicate that the circumstances and evidence must show carelessness or poor supervision by ownership or management, resulting in the sale of ineligible items. See Minhas v. Vilsack, No. 2:11-CV-03200-GEB, 2011 WL 6396626, at *2 (E.D. Cal. Dec. 20, 2011) (finding that the Plaintiff was likely to succeed on the merits of its case regarding its six-month disqualification as FNS failed to provide facts to support "its conclusion that the violations were the result of carelessness or poor supervision" on the part of the firm's ownership as required by 7 CFR § 278.6(e)(5).). Here, it cannot be found that the Store's management acted with the requisite carelessness and/or poor supervision to support the issuance of a six month disqualification. Therefore, the six month disqualification of the Appellants is improper and as such, should be withdrawn;
- Pursuant to 7 CFR §278.6(e)(7), where the violations are "too limited to warrant a disqualification," a warning letter should be issued. Appellants ask that a warning letter be issued in lieu of a six (6) month disqualification. There were minimal ineligible items purchased by the investigator, all of which are categorized as "common ineligible non-food items". There was a clear misunderstanding on the part of the Store's clerks regarding the difference between eligible verse ineligible items. Furthermore, the clerk in

the fourth investigation refused to traffick SNAP benefits, clearly evidencing the training effectuated by the Store;

- It is inherently difficult to prove a negative – especially one where what evidence is available for review and cross examination is that that which the Department chooses to disclose. For purposes of credibility, the FNS standard operating procedures require the investigator to document the transactions in such a way to ensure that corroborating evidence exists, aside from simple statements. Here, the name of the investigator is not disclosed so there can be no meaningful evaluation of bias on the part of the investigator or an opportunity to check the allegations against a surveillance tape (should one exist). It is the Department's obligation to prove by a preponderance of the evidence that the investigator and/or confidential informant's allegations are correct and that the store violated SNAP regulations. Furthermore, the Department must show that such violations were the result of carelessness or poor supervision, neither of which appears to have taken place in this case. Accordingly, Appellants argue that the Department has not met its burden in proving by a preponderance of the evidence that SNAP violations occurred nor that such violations were the result of management's carelessness or poor supervision;
- The Store serves an urban area where the local SNAP participants have a limited amount of opportunities to purchase regular staple groceries. The Appellants' Store serves the needs of the local SNAP population. If the Store were to be disqualified from participating in SNAP for six (6) months, the participants would be severely burdened and endure grave hardship. While it would not be impossible for the participants to shop elsewhere, it would be of such inconvenience to them that it would ultimately be a burden. These participants depend on the Store for canned goods, meats, and other regular staples; and,
- For the foregoing reasons, Appellant requests a warning letter be issued and the charging letter be rescinded. The store and its management have acted reasonably under the circumstances and are not properly described as failing to oversee the operations or otherwise acting carelessly. Instead these transactions are the result of the human error of the store's clerks who had been properly trained, but as a result of confusion, operated the transactions improperly. In the alternative, Appellant requests a hardship CMP. The store stocks a considerable amount of staple items to provide for the needs of the local SNAP population who walk or bike to the store. Without access to these foods at the Appellant's store, the participants would be unduly burdened.

Appellant submitted the FNS Profile of SNAP Households for California Congressional District 19 and copies of the firm's training documents in support of these contentions.

NOTE: the U.S. House of Representatives Find your Representative web page shows the firm is actually located in the 18th Congressional District, not the 19th.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action

was made. It is not within the authority of this review to consider what subsequent remedial actions may have been taken or will be taken in the future so that a store may begin to comply with program requirements. There is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of corrective actions implemented subsequent to investigative findings of program violations. Therefore, while the firm has stated that periodic training will be provided to employees, that ownership has developed an EBT guide that will be placed next to the cash registers, and that the firm will be purchasing new POS terminals next fiscal years that will automatically identify EBT items are positive steps, they do not provide any valid basis for dismissing the charges, or for mitigating the penalty imposed. While store ownership may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, that ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. Both the FNS SNAP retailer application and retailer reauthorization application contain a certification page whereby applicants must confirm their understanding of and agreement with SNAP retailer requirements in order to complete the application/reauthorization process. Store ownership did certify its understanding and agreement to abide by program rules and regulatory provisions when it initially applied to become a SNAP retailer and again when it applied for reauthorization. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time regardless of the amount of time the owners are present at the subject firm.

Store ownership does not dispute that store personnel accepted SNAP benefits in exchange for ineligible merchandise on four occasions. The FNS charge letter with a copy of the Report of Positive Investigation was received by the Appellant firm on December 6, 2018, and in a reply sent via fax on January 10, 2019, ownership not only does not dispute the charges, but apologizes for some of its part-time and inexperienced employees negligently making mistakes. Ownership also states it has taken steps to remedy these sorts of incidents in the future. These steps include the creation of an EBT guide that is placed by the checkout area, providing periodic EBT training for employees, and installing a new POS system the next fiscal year. The fact that store ownership clearly and of its own volition admits and apologizes for the sale of ineligible items in exchange for SNAP benefits contradicts many of the contentions raised by counsel. While a clerk did refuse to exchange SNAP benefits for ineligible items on one occasion, this same clerk also permitted SNAP benefits to be used to purchase toilet tissue, plastic bowls, and plastic cups during the same transaction.

Appellant provided no explanation or basis as to how the contentions regarding the firm's location and size as well as demographic information based on the FNS report for California's 19th Congressional District have a bearing on the matter under review. It is noted, however, that the U.S. House of Representatives Find your Representative web site function shows the firm is actually located in California's 18th Congressional District, not the 19th District.

The FNS investigative report shows that three employees working at the Appellant firm transacted SNAP benefits for ineligible items on four separate occasions over a nearly four month period indicating an ongoing pattern of SNAP violations as defined by Section 271.2 of the SNAP regulations. The report shows that the nature and scope of the violations under review

do violate SNAP regulations, and the transaction amounts cited in the Report also match FNS transaction records for the dates in question. Additionally, a review of the Report shows no errors or discrepancies. There is no regulatory threshold for the dollar value of the ineligible items purchased or for the timeframe in which they were purchased. The acceptance of SNAP benefits for ineligible items is a violation of SNAP rules and regulations. The ineligible items sold were obvious nonfood items and would not readily be confused with eligible edible food items. SNAP regulations explicitly state that FNS shall disqualify a store for a six month period 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 the sale of common nonfood items in exchange for SNAP benefits due to carelessness or poor supervision by the firm's ownership or management. While a firm that has previously received warnings of possible violations or that has been sanctioned before could receive a more severe penalty, SNAP regulations do not provide any grounds for dismissing or reducing penalties for those firms that have not received warnings or previously been sanctioned. The record shows no evidence that the Appellant firm received any prior warnings or has been sanctioned and there is no evidence that the firm's ownership or management intentionally violated SNAP regulations. Had ownership intentionally violated SNAP regulations, this would have resulted in a more severe administrative penalty. Based on this discussion, the decision by the Retailer Operations Division to disqualify the firm for a six month period is the appropriate penalty; the issuance of a warning letter would not have been proper in this situation.

SNAP benefits, in general, are only authorized to be used for the purchase of foods for the household to eat as well as seeds and plants which produce food for the household to eat. The common nonfood items purchased (sandwich bags, plastic spoons, plastic bowls, plastic cups, and toilet tissue) are clearly not edible foods and are not plants or seeds, so one has to question the level of training these employees received by store ownership and/or management. The basic concept of "if you can't eat it, you can't buy it using SNAP" is not a difficult one for employees to grasp, yet these employees allowed the purchase of multiple ineligible items using SNAP benefits on four separate occasions. That these three, allegedly well trained employees, were confused over the sale of similar nonfood items is also unbelievable. Had an effective compliance policy and program truly been in effect at the firm as alleged by Appellant, it is unlikely that these employees would have made such obvious mistakes. The more likely explanation is that store ownership and/or management failed to properly train and subsequently supervise these employees. Additionally, had store ownership and/or management been supervising these employees through occasionally monitoring them using videotape, if available, or in person, they would have readily noticed that they were allowing the sale of ineligible nonfood items in exchange for SNAP benefits. It also would have been immediately evident to store ownership and/or management that these employees were deficient in their knowledge of SNAP rules and regulations had they periodically spot checked their knowledge and abilities by asking questions about SNAP eligible/ineligible items. Either of these basic supervisory techniques would have provided a no cost method for store ownership and/or management to ensure that store employees were not putting the store's SNAP license at risk. These are clear signs of poor or no supervision by store ownership and/or management. There was no indication of involvement by the firm's ownership or management in the violative transactions. Poor or no supervision is further evidenced by store ownership's statement in the January 10, 2019, response to the charges in which he states that he had been travelling over the past months and

was not able to fully attend to his business matters as being why the violative transactions occurred.

Contrary to Appellant's contention, the three criteria in SNAP regulations at section 278.6(d) listed below are not bases to be met in order for a firm to be disqualified, but are those areas that FNS considers in determining the appropriate level of sanction for firms that have violated SNAP regulations. The level of sanction could include temporary or permanent disqualification.

1) The nature and scope of the violations committed by personnel of the firm,
2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and
3) Any other evidence that shows the firm's intent to violate the regulations.

Appellant is correct that the firm has no previous history of SNAP program violations or warnings. However, this does not necessarily mean that the firm has not been conducting violative transactions. Neither FNS nor Appellant has sufficient data to conclusively prove that the firm was or was not conducting violative transactions prior to the start of the undercover investigation. However, the matter under review is the first time that the firm has been investigated by FNS and the results of the investigation showed SNAP violations in each of the four visits to the firm. While it is not definitive, it can be readily inferred that violative transactions were more likely than not occurring in previous months based on these four visits.

The evidence does not support that the Appellant firm had an effective employee training program in effect prior to the violative transactions as claimed by Appellant. Store ownership's January 10, 2019, response following receipt of the charge letter states that the firm has developed steps to prevent future violations that consist of providing periodic training on EBT for employees and that the owners created an EBT guide for employees that will be affixed next to the cash registers. Ownership's response makes no statements to the effect that store employees had been previously trained on SNAP rules and regulations or were retrained, and no evidence was submitted to document the existence of a training program prior to the violations. This directly contradicts the May 17, 2019, correspondence from Appellant's counsel that states all employees were "retrained" after the violations and also provides evidence of a pre-existing training program by including "a copy of the SNAP Pocket Guidelines which is hung in the store for the clerks, and a copy of the SNAP training walkthrough guidelines which are given to new employees and must be completed prior to the commencement of their employment at the Store". Based on an examination of the two responses, it is more likely than not, that no training program was in effect at the Appellant firm prior to the violative transactions and that the owners' were promising to provide training after being informed of the violations. There is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of corrective actions implemented subsequent to investigative findings of program violations.

It is highly improbable, based on the willingness of these three employees to exchange SNAP benefits for ineligible nonfood items, that the only instances of SNAP violations were those three identified as part of the FNS undercover investigation. Common sense dictates that their actions more likely than not represented an ongoing pattern of SNAP violations at the Appellant firm.

Appellant offered no evidence in support of its claim that this was a "short-lived misunderstanding". As previously stated, store ownership is responsible for all SNAP transactions at the firm and therefore a certain minimal level of oversight and training on the part of ownership to ensure employees, especially new employees, are not violating SNAP laws or regulations is expected. It would be unusual and irresponsible for store ownership to not have a program of ongoing supervision of employee performance and conduct by periodically monitoring store transactions, including those involving SNAP, and reviewing daily balance sheets to ensure store employees were not stealing from the firm or conducting other activities that would jeopardize the licenses and income that the firm is dependent upon. Under SNAP regulations, the penalty for allowing the purchase of ineligible nonfood items using SNAP benefits as the result of poor supervision by ownership or management is a six month disqualification. The regulations do allow SNAP retailers to pay a hardship CMP as explained in the next section.

Based on the discussion above, there is not any valid basis for dismissing the charges or for mitigating the penalty imposed.

Regarding Appellant's references to case law, considerations of legal precedent through case law, or the lack thereof in relation to the present case, are beyond the scope of this review; this review relies upon the statute, regulations and agency policy governing the SNAP and evaluates whether the decision of the SNAP Office to impose a six month disqualification from authorization as a SNAP retailer was in accordance with same and sustainable by a preponderance of the evidence. It is further noted that Minhas v. Vilsack was voluntarily dismissed with prejudice before a decision could be issued and so has no bearing on the matter under review.

CIVIL MONEY PENALTY

Appellant is not eligible for a trafficking CMP as these only apply in cases of permanent disqualifications.

A hardship CMP as an optional penalty in lieu of a six month disqualification was considered in this case. Such a finding is appropriate only if a store sells a substantial variety of staple food items and its disqualification would create a 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. FNS records show there are 11 other comparably sized or larger SNAP retail stores located within a 1.00 mile radius of the Appellant firm that includes one super store, two supermarkets, and two medium grocery stores in addition to six comparably sized stores. There is a better stocked 5 U.S.C. § 552 (b)(6) & (b)(7)(C) convenience store located next door in the same strip mall and there also is a medium grocery store and super store located 0.62/0.79 miles away, thereby minimizing any impact on SNAP recipient shopping patterns. All of the comparable or larger stores stock adequate varieties of food in all four staple food categories and in perishables as required by FNS.

While Appellant claims the firm carries a variety of grocery products, a review of the most recent FNS store visit shows that it is a convenience store with a limited quantity and variety of

staple foods. Specifically, the firm offers no fresh or frozen unprocessed meats or seafood, has an extremely limited selection of processed meats or seafood, has no fresh or frozen produce other than a small container of approximately six lemons, and only offers single serving size milk drinks.

The nearby stores appear readily accessible to SNAP recipients and offer a variety of staple foods comparable to, or better than, those offered by Appellant. It is recognized that some degree of inconvenience to SNAP benefit users is inherent in the disqualification from SNAP of any participating food store as the normal shopping pattern of such SNAP benefit holders may be altered. Inconvenience, however, does not rise to the level of hardship required by the regulations.

CONCLUSION

A review of the evidence in this case supports that the program violations at issue did occur as charged and as admitted to by store ownership. As noted previously, the charges of violations are based on the findings of a formal USDA investigation. All transactions cited in the letter of charges were conducted by a USDA investigator and signed under penalty of perjury. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record is specific and accurate 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. Accordingly, the determination by the Retailer Operations Division to impose a disqualification of six months against the Appellant firm from participating as an authorized retailer in SNAP is sustained. Furthermore, the Retailer Operations Division properly determined that Appellant was not eligible for a hardship CMP according to the terms of Section 278.6(f)(1) of the SNAP regulations as there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this decision. A new application for SNAP participation may be submitted ten (10) days prior to the expiration of the six month disqualification period. When eligible, Appellant may reapply for SNAP authorization using the application instructions contained on the FNS web site. Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

ROBERT T. DEEGAN June 10, 2019
ADMINISTRATIVE REVIEW OFFICER