

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

Coventry Food Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0217085

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that Coventry Food Mart (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain a one year disqualification of Appellant 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 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 one year 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 May 6, 2019 through May 21, 2019. 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 on multiple dates are best described as common nonfood items.

As a result of evidence compiled during the investigation, by letter dated June 19, 2019, Retailer Operations charged the owner with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits was noted in Exhibits A, B, 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.

The record shows the owner responded to Retailer Operations by telephone on June 20, 2019. According to the record, the owner stated he didn't understand how he did it. He indicated he was always very careful with this stuff; that he never do[sic] that kind of stuff. He stated it was a genuine mistake, and that he did "it myself." The record also includes a written reply by the owner to the Charge letter dated June 25, 2019.

Retailer Operations rescinded its Charge letter by letter dated July 10, 2019. A new Charge letter dated July 10, 2019, noted that since an owner was identified as having participated in the violation(s), per Section 278.6(e)(4) of the regulations, the disqualification period was changed to one (1) year. The record shows that the owner replied by telephone to this Charge letter on July 12, 2019. According to the record, the owner did not refute his personal involvement in the violations.

By Determination letter dated August 13, 2019, Retailer Operations notified the owner that the violations cited in the Charge letter occurred at the firm, and that a one year period of disqualification was warranted in accordance with Sections 278.6 (a) and (e) of the SNAP regulations. 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.

The owner appealed the determination by letter dated August 16, 2019. The administrative review was granted by letter dated September 6, 2019. Two emails with the same message were sent to this office on September 22, 2019 regarding this matter.

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(e)(4) of the regulations states: “Disqualify the firm for 1 year if it is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and the possible consequences of violating the regulations.”

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 four of four store visits that warrant a disqualification. The SNAP violations of 7 CFR § 278.2(a) involved the sale of nonfood items for benefits including: plastic cups, razors, deodorant, paper plates, and aluminum foil.

APPELLANT’S CONTENTIONS

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

- I talked with you and sent another email regarding my mistake asking that you may wave it. It was a simple human error and was purely incidental.
- I understand the problem and how you are going with the rules and following them and I also know that I'm at fault, but I still feel like I deserve one more chance.
- I agree to pay a bond and I will maintain all the letters continuously for the next five years. I ask that you can help me out with this situation and make life easier for the both of us.
- My previous store employee made a human error. We've never had any problems previously, not even tobacco product problems or lottery issues in the past 18 years.
- This is the 1st time it has happened so I dearly request that you may wave this case and violation allowing one more chance for me and my employees. Out of three employees, one has been suspended with another being fired. I still hope you wave this case behalf upon my request because it was simply just a human error.
- In a telephone call, the owner stated that he has never had a problem since he bought the store in 2002. The record shows: "I always ask "EBT cash or food." I don't understand how I did it. I'm always very careful with this stuff. "I never do that kind of stuff. Genuine mistake, I did it myself. I don't want to lose my license. I help my community. They don't have cars...mostly walk. They like my store. I'm requesting to forgive me this one time."
- I agree with the current situation and how I violated rules; I made an innocent mistake in the investigation. The investigator knew I had made a mistake and I know it's my fault, but most of the time we ask the customers before transaction for EBT cash cards or EBT food stamp.
- Most of our customers separate the non-food items and the food items and know how to differentiate between the two. Our customers don't want any problems for the store and don't want to violate any rules of regulation because they deeply care for our store and understand the importance of it in the community.
- If you guys are able to wave this violation it will be a tremendous help for the customers and for me. If you may give us one more chance, I promise to not let you down and be careful of this violation and will abide by the rules.

The record shows that on July 12, 2019, owner called in response to the amended Charge letter. He reiterated that the SNAP violations were not intentional. He believes that disqualification will upset the community. He stated that mistakes will not happen again.

ANALYSIS AND FINDINGS

This review is to either validate or to invalidate the determination made by Retailer Operations; it is limited to the facts at the basis of Retailer Operations' determination at the time it was made. 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.

Regardless of who the store owner(s) utilizes to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in SNAP when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. The regulations stipulate that FNS 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 as the sale of common nonfood items due to carelessness and poor supervision by the firm's ownership or management.

Based on the response of the owner by telephone on June 20, 2019, and an email dated June 25, 2019, Retailer Operations rescinded its initial six month Charge letter, and issued a new Charge letter for a one year disqualification period. This was based on the owner's admission of direct involvement in the violations per 7 CFR § 278.6(e)(4) of the regulations. According to the record, the owner replied to the new Charge letter by telephone July 12, 2019, and did not refute his personal involvement in the violations.

The charges of violations are based on the findings of a formal U.S. Department of Agriculture investigation. All such transactions are fully documented and a review of this documentation has yielded no indication of error or discrepancy in the reported findings. The investigative record is specific and thorough with regard to the dates of the violations, the specific facts related to the sales of nonfood items, and in all other critically pertinent detail. The preponderance of the evidence supports that Appellant, with owner involvement, sold nonfood items on multiple store visits in exchange for SNAP benefits, a program violation.

CIVIL MONEY PENALTY

Retailer Operations rendered a finding that it was not appropriate to impose a CMP in lieu of a one year period of disqualification from SNAP. The record documents that there are other authorized stores within a 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 owner did not dispute that violations occurred. 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 one year disqualification of Appellant from participation as an authorized retail food store 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 one year period of disqualification. Please contact the Retailer Center at 877-823-4369 with general questions regarding the SNAP application process. Please contact Eric Marshall at (312) 582-7805 if you have operations questions.

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 your 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 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

October 7, 2019