

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

**Daily Buy Mini Mart #426,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0230821**

**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 Office of Retailer Operations and Compliance to impose a permanent disqualification against Daily Buy Mini Mart #426 (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of Code of Federal Regulations (CFR) § 278.6(e)(1)(i) in its administration of SNAP when it imposed a permanent disqualification against Appellant on March 31, 2021.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its 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**

The USDA conducted an investigation Appellant’s compliance with federal SNAP law and regulations during the period of July 23, 2020 through August 3, 2020. The investigation reported that personnel at Appellant accepted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits in exchange for cash (trafficking) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on one occasion

and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on another occasion. The investigation revealed that one unidentified clerk was involved in the impermissible transactions.

As a result of evidence compiled from this investigation, the Office of Retailer Operations and Compliance informed Appellant, in a letter dated January 8, 2021, that its firm was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.6(e)(1). This letter stated, in part, “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking . . . is permanent disqualification.” The letter also states that “under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant replied to the charges in a subsequent letter to the Office of Retailer Operations and Compliance. The record reflects that the Office of Retailer Operations and Compliance received and considered this information prior to making a determination.

The Office of Retailer Operations and Compliance notified Appellant in a letter dated March 31, 2021 that the firm was being permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6 (c) and 278.6(e)(1) for trafficking violations. This determination letter also stated that Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated to Appellant that “. . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program.”

On April 5, 2021, Appellant appealed the Office of Retailer Operations and Compliance’s assessment and requested an administrative review of this action. The appeal was granted.

### **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 Part 278. In particular, 7 CFR § 278.6(e)(1)(i) establishes the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking of SNAP benefits.

7 CFR § 278.6(e)(1)(i) reads, in part:

FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2.

Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of [SNAP benefits] or other benefit instruments for cash or consideration other than eligible food.”

### **APPELLANT’S CONTENTIONS**

Appellant’s responses regarding this matter are essentially as follows:

- The name of the clerk was not indicated.
- The owners were not involved in the trafficking. The description in the investigative report do not match either of the owners. The owners are not familiar with anyone described as the clerk in the investigative report.
- Appellant was not provided with proof Red Bull was purchased with SNAP benefits or other evidence in support of the investigative report.
- That the clerk paid 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is inconsistent with the earlier statement that the clerk would pay 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per case.
- There is no proof that the clerk knowingly purchased Red Bull that had been previously purchased with SNAP benefits.
- The owners were unaware of the alleged violations prior the receipt of the charge letter.
- The investigative report is confusing.
- The charge letter is vague. As a result, the determination was made without due process.
- Appellant was not given the opportunity to cross examine the investigator.

These explanations may represent only a brief summary of Appellant’s contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

### **ANALYSIS AND FINDINGS**

As to Appellant’s denial of violations, this review examines the relevant information regarding the determination. Once the Office of Retailer Operations and Compliance establishes a violation occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that that the permanent disqualification should be reversed. If this is not demonstrated, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Appellant contends the owners were not involved in the trafficking and were unaware of the alleged violations prior the receipt of the charge letter. When ownership signed the FNS

application to become an authorized SNAP retailer, this included a certification and confirmation that the owner(s) 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.” The violations listed on this certification document include trafficking. Regardless of whom the ownership of a store may utilize to operate the cash register and handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons chosen to handle store business would render the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of the USDA virtually meaningless.

Appellant is correct that the description in the investigative report does not match either of the owners. The investigative report fails to indicate how the investigator determined the clerk was an owner.

Appellant asserts that the description of the clerk in the investigative report does not accurately describe a firm employee. Appellant did not provide any evidence in support of this contention. In this regard, the matter of descriptions is often subjective in nature and may involve descriptive features that are relative with respect to the point of view of the observer.

Appellant contends the charge letter is vague, and consequently the determination was made without due process. Appellant also contends that the investigative report is confusing. Contrary to Appellant’s contentions, the charge letter clearly stated the basis for the charge. Appellant was also provided a copy of the investigation report, redacted to protect the identity of the investigative operative, which details each occasion during which violations occurred, their dates, the amount of cash provided in exchange for SNAP benefits, and the descriptions and any comments of the clerk involved. The investigative report is clear and straightforward.

Appellant contends there is no proof that the clerk knowingly purchased Red Bull that had been previously purchased with SNAP benefits. The investigative report indicates that the clerk knowingly purchased Red Bull that had been previously purchased with SNAP benefits.

Appellant contends that the clerk paid 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is inconsistent with the earlier statement that the clerk would pay 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per case. Appellant is correct that the payment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is inconsistent with the price 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per case that was previously established.

Appellant is correct that it was not given the opportunity to cross examine the investigator.

Appellant is correct that it was not provided with proof Red Bull was purchased with SNAP benefits or other evidence in support of the investigative report. Appellant made a FOIA request for this information. The record does include proof that the Red Bull was purchased with SNAP benefits.

#### **CIVIL MONEY PENALTY**

For a firm to have the opportunity to be considered for a civil money penalty (CMP), it must request that FNS consider a CMP in lieu of permanent disqualification and submit supporting documentation within ten days of receipt of the charge letter. Appellant was advised of these provisions in the charge letter of January 8, 2021. The regulations specify that such supporting documentation must demonstrate that the firm had established and implemented an effective SNAP compliance policy and training program prior to the occurrence of violations. A review of the administrative record indicates Appellant did not, at any time, request a CMP. Appellant also did not submit any documentation to support its eligibility for this alternative sanction, before or after the deadline.

In the absence of a request for a CMP and any supporting documentation, a CMP was not assessed by the Office of Retailer Operations and Compliance. According to the requirements stated in 7 CFR § 278.6(b)(1), § 278.6(b)(2)(ii and iii), and § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The determination by the Office of Retailer Operations and Compliance to deny Appellant a civil money penalty is sustained.

### **CONCLUSION**

Based on a review of the evidence, it appears that the program violations at issue did, in fact, occur as charged. 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 under the supervision of a USDA investigator and all are fully documented. 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 exchanges of SNAP benefits for cash, and in all other critically pertinent detail. The name of the clerk is not included as customers do not typically request the name of the clerk serving them when purchasing groceries. Such behavior might seem suspicious and interfere with the investigation.

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Daily Buy Mini Mart #426 from participating as an authorized retailer in SNAP is sustained.

### **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 Appellant desires a judicial review, 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.

RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

June 1, 2021