

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

**El Toro Loco Meat Market,**

**Appellant,**

**v.**

**Case Number: C0210839**

**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 the record supports that El Toro Loco Meat Market (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain the hardship civil money penalty (CMP) in lieu of a six-month disqualification of Appellant from SNAP as a retail food store, as imposed by the Retailer Operations Division (Retailer Operations).

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), 7 CFR § 278.6(e)(5), and 7 CFR § 278.6(f)(1), in its administration of SNAP when it imposed a hardship CMP in lieu of a six-month disqualification period 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 FNS.

**CASE CHRONOLOGY**

USDA conducted an undercover investigation of the compliance of Appellant with Federal SNAP law and regulations from May 28, 2019 through September 23, 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 are best described as common nonfood items.

As a result of evidence compiled during this investigation, by letter dated November 7, 2019, Retailer Operations charged ownership with violating the terms and conditions of 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 stated that under certain conditions FNS may impose a CMP in lieu of a disqualification. The Charge Letter further stated that if you wish to present any information, explanation, or evidence regarding these charges, you must reply within 10 calendar days of the date you receive this letter. The retailer failed to respond.

Retailer Operations informed ownership by Determination Letter dated November 27, 2020, that Appellant's disqualification would cause hardship for SNAP households. Therefore, in accordance with 7 CFR § 278.6(f)(1) of the SNAP regulations, Retailer Operation's imposed a hardship CMP in the amount of \$1,578.00 in lieu of a six-month period of disqualification.

Appellant's ownership appealed the determination by letter dated December 9, 2019. The administrative review was granted by letter dated December 20, 2019.

### **STANDARD OF REVIEW**

In an appeal of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means 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 matter 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 § 278 of 7 CFR § 278.6(a) and (e)(5) which establishes the authority upon which a six-month disqualification may be imposed against a retail food store.

7 CFR § 278.2(a) states, in part: SNAP benefits may be accepted by an authorized retail food store only from eligible households or the household's authorized representative, and only in exchange for eligible food.

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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system. Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for 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.

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(f)(1) provides for CMP 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 CMP 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**

The Report of Investigation dated September 26, 2019, which included Exhibits A through D, was provided to Appellant's ownership as an attachment to the Charge Letter. The Report of Investigation documents SNAP violations were recorded on all four of the compliance visits and involved the sale of ineligible non-food items, which warrant a six-month disqualification. The violations of 7 CFR § 278.2(a) involved the repeated sale of nonfood items for SNAP benefits including: plastic utensils, bath soap, toilet paper, and foam plates.

### **APPELLANT'S CONTENTIONS**

Consideration was given to all contentions presented, including any not specifically referenced:

- Request a one-time relief and waiver of the hardship CMP of \$1,578.00 and one time waiver of the six-month disqualification period. We are a small business and this type of fine imposed would create a hardship on our business.
- The mentioned instances of infraction have been taken very seriously and we have conducted training and removing of employees in lieu of not properly following store policies. We have also taken on new procedures including but not limited to additional training of food types, color coding store items, and weekly and monthly meetings to prevent this type of situation in the future.
- As a local store with many regular customers, we do not want to have any suspension of services as it could create a hardship for SNAP households.

### **ANALYSIS AND FINDINGS**

The purpose of this review is to either validate or to invalidate the earlier determination made by Retailer Operations and is limited to the facts at the basis of Retailer Operations' determination at the time such action was taken. Upon review, the evidence supports that Appellant established a record of selling nonfood items as defined by § 271.2 of the regulations on multiple occasions. The Exhibits A, B, C, and D furnished with the Charge Letter warrant a disqualification period of six months.

The acceptance of SNAP benefits for ineligible items is a violation of SNAP rules and regulations. 7 CFR § 278.6(e)(5) specifies 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.

### **Corrective Action**

Appellant's ownership contends the infractions have been taken very seriously and it has conducted training, removed employees not properly following store policies, and established new procedures to prevent this type of situation in the future.

The record shows that ownership signed the FNS application to become a SNAP authorized retailer which included a certification and confirmation that the owner 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 include accepting SNAP benefits for cash and as payment for ineligible items, a violation of SNAP rules and regulations. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations.

Ownership of a SNAP authorized firm is ultimately responsible for the proper training of staff and the monitoring and handling of SNAP benefit transactions. As such, these contentions are not valid reasons to dismiss the charges or modify the penalty in any way.

### **Hardship to Business**

Ownership requests a one-time waiver of the fine and six-month disqualification. Ownership contends Appellant is a small business and a fine or six-month disqualification would create a hardship on its business.

It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP. However, there is no provision in SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to either the ownership personally or the firm resulting from the imposition of such penalty. To allow stores to be excused from assessed administrative penalties based on a purported economic hardship would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

### **CIVIL MONEY PENALTY**

Ownership contends Appellant is a local store with many regular customers, and any suspension of services could create a hardship for SNAP households.

Retailer Operations rendered a finding that it was appropriate to impose a hardship CMP in lieu of a six-month period of disqualification on Appellant. It assessed a CMP because Appellant appears to be a specialty store, unique to the area, selling a substantial variety of ethnic staple

food items, and the firm's disqualification would cause hardship to SNAP households. A hardship CMP in the amount of \$1,578.00 was imposed. Review was made of Retailer Operations' calculation of the CMP, and the amount is deemed to have been correctly stated.

### **CONCLUSION**

Based on a review of the evidence, the record by a preponderance of the evidence supports that the program violations charged did occur at Appellant. The USDA investigative record is specific, thorough, and fully documented 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.

The record documents that Retailer Operations properly considered Appellant's eligibility for a hardship CMP according to the terms of § 278.6(f)(1) and (g). Retailer Operations granted a hardship CMP in lieu of the six-month disqualification of Appellant from participation as an authorized retailer in the SNAP. This determination is sustained.

Please review the November 27, 2020, Determination Letter and Bill for Collection (Bill Number: C0210839) for payment information previously provided to you by Retailer Operations. Please take action as described. If you choose not to, or you are unable to pay the hardship CMP for the total amount of \$1,578.00, Appellant will be disqualified for a period of six months. Ownership should promptly contact Richard O'Toole at (609) 259-5118, if it chooses to have the six-month period of disqualification imposed rather than pay the total amount of the CMP.

### **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 to the regulations at 7 CFR § 279.7. 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 owners reside or are 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 30 days of receipt of this Decision. Please note that the judicial filing timeframe is mandated in the Act, and this office cannot grant an extension.

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.

KIM DAMERON  
ADMINISTRATIVE REVIEW OFFICER

July 10, 2020