

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

**Fast Trac Food Mart,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0203968**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a six-month disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Fast Trac Food Mart (hereinafter “Appellant”) by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it imposed a six-month disqualification against Fast Trac Food Mart.

**AUTHORITY**

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[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**

FNS records show that the Appellant firm, Fast Trac Food Mart, was initially authorized for SNAP participation as a convenience store on June 29, 2015. Between March 13, 2019, and May 2, 2019, FNS conducted an undercover investigation at the firm to ascertain its compliance with Federal SNAP laws and regulations. The investigation report documented that personnel at Fast Trac Food Mart accepted SNAP benefits in exchange for ineligible items on four separate occasions. According to the report, the Appellant firm sold foam cups, foam plates, and plastic cups in exchange for SNAP benefits, which benefits may only be used for the purchase of eligible foods.

In a letter dated July 12, 2019, the Retailer Operations Division charged the Appellant with violating SNAP regulations at 7 CFR § 278.2(a). The charge letter stated that the acceptance of SNAP benefits in exchange for ineligible nonfood merchandise warranted a disqualification from SNAP for a period of six months pursuant to 7 CFR § 278.6(e)(5). The letter further stated that under certain conditions and in accordance with § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification.

In a letter faxed on July 21, 2019, the Appellant responded to the charges, explaining that the violations were the result of an improperly programmed point-of-sale system, which automatically separates eligible items from ineligible items. According to the Appellant, the POS system was only recently installed (in approximately January 2019), and somehow paper and foam products were incorrectly categorized in the system, which caused the violations. The Appellant requested that the violations be waived this time and stated that the inventory list has been updated in the POS system to properly reflect the eligibility or ineligibility of an item.

After considering the Appellant's response and further evaluating the evidence in the case, the Retailer Operations Division issued a determination letter dated July 25, 2019. This letter informed the Appellant that it was the determination of the Retailer Operations Division that violations did occur as outlined in the charge letter and that a six-month disqualification penalty would be imposed in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that consideration for a hardship CMP was given, but that the Appellant was not eligible for a CMP because there were other authorized stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked July 29, 2019, the Appellant appealed the agency's determination by requesting an administrative review. The request was granted and implementation of the disqualification has been held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence which 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 not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 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 § 278.2(a) states, in part:  
[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food.

7 CFR § 271.2 states, in part:

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 § 278.6(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.... **Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction;** for [a] 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. [Emphasis added.]

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination...

7 CFR § 278.6(e) states, in part:

FNS shall take action as follows against any firm determined to have violated the Act or regulations...The FNS regional office shall:

(5) Disqualify 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(f)(1) states, in part:

FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and 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.

## INVESTIGATION DETAILS

During an undercover investigation conducted between March 13, 2019, and May 2, 2019, the Food and Nutrition Service completed six compliance visits at Fast Trac Food Mart. The agency record indicates that a report of the investigation was provided to the Appellant as an attachment to the July 12, 2019, charge letter. The investigation report includes Exhibits A through F, and provides full details on the results of each compliance visit. SNAP violations were documented during four of the six visits, specifically the exchange of ineligible nonfood merchandise for SNAP benefits. The report states that the following nonfood items were purchased by a confidential informant using SNAP benefits:

- One 16-count package of foam cups (*Partytime* brand), Exhibit B
- One 22-count package of foam plates (*Good Time* brand), Exhibit B

- One 15-count package of plastic cups (*Alamo* brand), Exhibit C
- One 22-count package of foam plates (*Good Time* brand), Exhibit C
- One 15-count package of plastic cups (*Alamo* brand), Exhibit D
- One 22-count package of foam plates (*Good Time* brand), Exhibit D
- One 15-count package of plastic cups (*Alamo* brand), Exhibit F
- One 22-count package of foam plates (*Good Time* brand), Exhibit F

The report indicates that in Exhibit A, no transaction occurred as the clerk on duty stated that the firm's EBT machine was not working. In Exhibit E, the clerk from Exhibits B, C, and D appeared to be proceeding with a sale of ineligible items including Styrofoam cups and paper towels, but when the confidential informant requested an exchange of SNAP benefits for cash (i.e. trafficking), a second clerk stepped in and refused the sale – both the cash and the ineligible items. In Exhibit F, the clerk on duty again refused to engage in trafficking. The report states that the same clerk conducted all four violative transactions.

The charge letter states that the violations that occurred in Exhibits B, C, D, and F warrant a disqualification period of six months pursuant to 7 CFR § 278.6(e)(5).

### **APPELLANT'S CONTENTIONS**

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The firm's point-of sale system, which had been installed in approximately January 2019, was neglected and was not up-to-date.
- The POS system alerts employees when an EBT card is used and automatically separates eligible items from ineligible items as long as the inventory was entered and categorized appropriately.
- Somehow, some of the paper and foam products were not entered into the system correctly, which caused the violations to occur.
- Having new employees on staff who did not know much about EBT only made the situation worse.
- Appellant requests that the violations be waived this time and offers its assurance that this will never be repeated again.
- Appellant has made sure that the inventory list has been updated in the POS system to properly reflect the eligibility or ineligibility of an item. The Appellant has also made sure that all new employees are clear with the information regarding SNAP rules and regulations.
- The store helps a lot with EBT customers.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced in this document.

## **ANALYSIS AND FINDINGS**

The Appellant has not provided any evidence or documentation to counter FNS's investigation report. In fact, the Appellant appears to acknowledge that violations occurred, blaming them on ineligible items being incorrectly categorized in the firm's point-of-sale system. The Appellant further stated that its new employees did not know much information about EBT. Because the violations do not appear to be in dispute, it is the determination of this review that SNAP violations did occur as charged and a six-month disqualification is warranted.

### **Improperly Programmed POS System**

The Appellant contends that the violations were primarily due to ineligible items being incorrectly categorized in the firm's new point-of-sale system. According to the Appellant, when SNAP benefits are used as payment, the system automatically separates eligible items from ineligible items. But in this instance, the system was not up to date and was permitting foam and plastic products to be sold to customers using SNAP benefits.

Unfortunately, the Appellant's explanation does not provide a valid basis for this review to reverse the agency's disqualification determination. While it is certainly possible that the POS system was improperly programmed, it is still up to the firm's ownership or management to ensure that the clerks on duty are fully trained on how to conduct SNAP transactions and are properly supervised. If a clerk – newly hired or not – cannot recognize when the POS system is improperly allowing ineligible non-food items to be purchased with SNAP benefits, it is clear that additional supervision is necessary.

It is notable that in Exhibit E, a second clerk stepped in and prevented the first clerk from conducting a potentially violative transaction. However, the next time the confidential informant arrived at the store, the same clerk who had previously been stopped allowed yet another violation to occur. Such repetitive violations strongly suggest either a willful disregard of program rules or a lack of training and supervision by the firm's ownership or management. Blaming the violations on the POS system or even on new employees is not a valid reason for this review to dismiss the charges or modify the disqualification penalty.

### **Remedial Actions Taken**

The Appellant contends that the violations that occurred during this investigation will never happen again. The Appellant states that the POS system has been updated so that it properly reflects the eligibility or ineligibility of an item, and claims that all new employees have been trained on SNAP rules and regulations.

With regard to this contention, it must be stated that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. This review is limited to the facts that existed at the time the violations were committed. It is not the authority of this review to consider any subsequent remedial actions that may have been taken or that will take place so that a store may enhance or begin to comply with program requirements. In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an

administrative penalty on the basis of alleged or planned corrective actions implemented after the discovery of program violations.

Accordingly, the remedial actions taken by the Appellant do not provide a valid basis for reversing the agency's disqualification determination.

### **Hardship to SNAP Households / Civil Money Penalty**

The Appellant contends that Fast Trac Food Mart helps a lot with EBT customers. This contention implies that SNAP households will experience hardship if the firm's disqualification penalty is upheld.

To address potential difficulties that SNAP households might face when a firm is disqualified, regulations at 7 CFR § 278.6(f)(1) allow for a civil money penalty to be imposed instead of disqualification when the firm's disqualification would cause "hardship" to SNAP households. According to this regulation, hardship occurs when there is "no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices."

It is the determination of this review that a disqualification of Fast Trac Food Mart, a standard convenience store/gas station, would not cause hardship to SNAP households because there are many other shopping options in the area. According to agency records, there are at least a dozen similarly-stocked or larger SNAP-authorized retail stores located within a one-mile radius of Fast Trac Food Mart, including both a supermarket and a superstore. There is also no evidence that Fast Trac Food Mart sells its inventory at unusually low prices in comparison to nearby stores. Because hardship conditions do not exist in this case, a civil money penalty in lieu of disqualification is not an available option.

### **CONCLUSION**

Based on a review of all information in this case, this administrative review finds through a preponderance of the evidence that program violations of 7 CFR § 278.2(a) did occur at Fast Trac Food Mart during a USDA investigation. All transactions cited in the letter of charges were either conducted or supervised by a USDA investigator and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record appears to be specific and accurate with regard to the dates of the violations, including the exchange of SNAP benefits for ineligible, nonfood merchandise, and in all other critically pertinent details. Therefore, pursuant to 7 CFR § 278.6(a) and (e)(5), the decision to impose a six-month disqualification against the Appellant, Fast Trac Food Mart, is sustained.

In accordance with the Act and regulations, the disqualification penalty shall become effective 30 days after receipt of this decision. A new application for SNAP authorization may be submitted 10 days prior to the expiration of the six-month disqualification period.

## **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 in Section 279.7 of the SNAP regulations. 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 Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON  
Administrative Review Officer

November 6, 2019