

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

**Glenside Food Market Inc. /  
Super Saver Food Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0191334**

**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 assess a hardship civil money penalty (CMP) against Glenside Food Market Inc. /Super Saver Food Market in lieu of a six-month disqualification 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 hardship CMP in lieu of a six month period of disqualification against Appellant on August 30, 2017.

**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**

USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period April 24, 2017, through April 27, 2017. The investigation

determined that personnel at Appellant's store accepted SNAP benefits in exchange for 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 and included items such as laundry detergent, dishwashing liquid, bleach, batteries, aluminum foil, insecticide, trash bags, cleanser, and steel wool pads. The investigative report indicates that these violative transactions were handled by one unidentified clerk. The investigative report also noted that the business 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 July 18, 2017, 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)).”

Appellant responded to the charges in a letter dated August 1, 2017, explaining that the violations were due to a misunderstanding by store employees of the term “SNAP benefits” and requesting a hardship CMP. After giving consideration to the evidence, the Retailer Operations Division notified Appellant in a letter dated August 30, 2017, that it determined that violations had occurred at the establishment, and that an assessment of a hardship CMP in the amount of \$44,000.00 in lieu of a six-month SNAP disqualification was an appropriate penalty for the violations committed and in accordance with Section 278.6(f)(1). This determination was based on Appellant's disqualification causing hardship to SNAP households as there were no other authorized retail stores in the area selling a similar variety of staple foods at comparable prices.

By letter dated September 8, 2017, Appellant, through counsel, 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. No subsequent correspondence has been received from Appellant.

## **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), 278.6(e)(5), and 278.6(f)(1) establish the authority upon which a

hardship CMP may be assessed against a retail food store or wholesale food concern in lieu of a six month disqualification.

7 CFR § 271.2 states in part 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) specifies in relevant part, “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 . . . or for any other nonfood use.”

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 . . . .” (Emphasis added.)

7 CFR § 278.6(e)(5) states, in part, 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) states, in part, “(1) 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 food stamp 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 civil money penalty if the store had previously been assigned a sanction. A civil money penalty for hardship to food stamp households may not be imposed in lieu of a permanent disqualification.”

### **APPELLANT’S CONTENTIONS**

In the response to the letter of charges and in the request for administrative review, Appellant has stated as its position in the matter the following:

- The store owner disagrees that her staff committed any willful violation of SNAP benefits, also formerly known as the “Food Stamp Program”;
- The owner interviewed the cashier involved and also viewed the video surveillance of each transaction. The cashier stated that on April 24, 2017, she separated the non-eligible items and asked the investigator for a separate form of payment for them. The investigator told her he only had SNAP benefits. The cashier became confused as she was only familiar with the term Food Stamps and not SNAP. The cashier also knew the EBT card identified as the “Access Card” contains both Cash Assistance benefits and Food Stamp benefits. Not being familiar with the term SNAP benefits, the cashier rang-

up the Food Stamp items and non-Food Stamp items together on the cash receipt. She assumed the EBT/Access Card with SNAP benefits that was given to her was going to be used by the Cash Assistance side to pay for the purchases;

- On the following days, the cashier recognized the investigator and based on her misunderstanding of the investigator's use of the term SNAP benefits instead of the term Food Stamp benefits rang-up the transaction assuming the EBT/Access Card Cash Assistance benefits side would be used to pay for the purchases. Unfortunately, the cashier was not familiar with the term SNAP benefits as the store uses the term Food Stamp benefits in training the cashiers regarding the differences between eligible and non-eligible items;
- Adding to the confusion is the fact that the EBT card label is the same as an Access card and can contain both Food Stamp dollar eligibility and Cash Assistance eligibility. This makes transactions very confusing at grocery store checkouts;
- The business takes its Food Stamp License very seriously. The business relies 95% on Food Stamps as it is located in the second poorest city in the country. The cashiers are trained to separate Food Stamp items from Non-Food Stamp items and also to use the Food Stamp Key on the register. The Food Stamp Key helps the cashier to separate the items when paying with the Access card whether it is a Food Stamp benefit or a Cash benefit sale;
- The business also takes great pride in offering its customers the lowest prices in the Commonwealth of Pennsylvania in meats, produce, and delicatessen items. It would be a great hardship to the residents of the City of Reading to disqualify the store from SNAP benefits. This was simply a misunderstanding in the terminology used by the investigator during the transaction with the cashier. The owner never tells or allows the cashiers to perform any illegal acts with the Food Stamp License and regularly conducts her own investigations with the cashiers to be certain they are performing their jobs properly and legitimately. The business has been in the SNAP and WIC programs since March 2013 and has never been penalized or disqualified. It is requested that instead of a six month disqualification, that a CMP is imposed;
- Appellant has reviewed the imposition of the \$44,000.00 CMP and this large amount will effectively close the store as the owner does not have sufficient working capital to pay the CMP as well as to pay her costs of operation, labor, and the purchase of additional inventory. This most assuredly would create a hardship to the SNAP households that rely on the store on a daily basis;
- The imposition of such a large CMP is not warranted. As previously stated by the store owner, her employees were confused by the terminology used by the investigator in referring to the purchased items as SNAP benefits – a term unfamiliar to the owner's unskilled, uneducated cashiers. This terminology was not recognized by the owner's employees who were diligently trained by the owner in what is and what is not allowed to be paid for using "food stamps";
- Further adding to the confusion is the fact that the Access EBT card contains both cash assistance and food stamp benefits; and,
- To reiterate, the store employees were confused and made understandable mistakes based on the investigator's use of the term "SNAP" benefits. This reference is unknown to the people that deal with "food stamp" transactions. Furthermore, the store owner did not intend to willfully violate the rules, it was an inadvertent mistake facilitated by the

investigator's reference to SNAP benefits and the dual benefits available on the EBT card.

Appellant submitted no documentation or evidence in support of these contentions.

The preceding may represent a brief 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.

## **ANALYSIS AND FINDINGS**

Appellant admits that the sale of ineligible items using SNAP EBT benefits occurred on the dates cited in the report of investigation and contends that they were the result of confusion by the cashier over the term "SNAP benefits". The cashier stated that on April 24, 2017, she separated the non-eligible items and asked the investigator for a separate form of payment for them. The investigator told her he only had SNAP benefits. The cashier became confused as she was only familiar with the term Food Stamps and not SNAP. The cashier also knew the EBT card identified as the "Access Card" contains both Cash Assistance benefits and Food Stamp benefits. Not being familiar with the term SNAP benefits, the cashier rang-up the Food Stamp items and non-Food Stamp items together on the cash receipt. She assumed the EBT/Access Card with SNAP benefits that was given to her was going to be used by the Cash Assistance side to pay for the purchases. The reference to SNAP was unknown to employees that deal with "food stamp" transactions.

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. 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, the ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time. Ownership is also responsible for all SNAP transactions at the firm regardless of the amount of time the owner is present at the subject firm.

The FNS retailer application contains a certification page whereby applicants must confirm their understanding of and agreement with SNAP retailer requirements in order to complete the application or reauthorization process. Store ownership did certify its understanding and agreement to abide by program rules and regulatory provisions when it initially applied for authorization as a SNAP retailer. The owner agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or

unpaid, new, full-time or part-time. The “SNAP Training Guide for Retailers” is provided to all retail store owners upon their authorization/reauthorization and also clearly states that store owners or operators are legally responsible for their own actions as well as the actions of everyone working in their store whether paid or unpaid, new, full-time or part-time and that violations may include being disqualified from SNAP. This guide and the video accompanying it provide detailed information for SNAP retailers regarding compliance with SNAP rules and regulations; both are available in English and Spanish and are also online at the FNS retailer web site. The FNS web site cautions applicants about their responsibilities for training and overseeing store employees.

“You must read the SNAP Retailer Training Guide and watch the instructional video. Store owners accept responsibility for the actions of their employees. You are responsible for the actions of your employees. All of your employees must read the SNAP Retailer Training Guide and watch the instructional video . . . to ensure compliance with SNAP rules and regulations.”

As of October 1, 2008, the Supplemental Nutrition Assistance Program or “SNAP” became the new name for the federal Food Stamp Program. The training materials for SNAP retailers and their employees mentioned above all use the term “SNAP” and “SNAP benefits”. The SNAP license as well as all of the SNAP posters (welcome SNAP customers, anti-fraud, using SNAP benefits, reporting trafficking, etc.) use the term “SNAP” so this term should not have been confusing to cashiers. That Appellant admits store employees were not familiar with the term “SNAP” and that they were trained by the store owner in what is and what is not allowed to be paid for using “food stamps” and that the reference to SNAP was unknown to people that deal with “food stamp” transactions is evidence that Appellant failed to properly train store employees on SNAP regulations and requirements.

The investigative report shows that one clerk- working at the Appellant business during the period under review transacted SNAP benefits for ineligible items on four separate occasions indicating an ongoing pattern of SNAP violations as defined by Section 271.2 of the SNAP regulations. The acceptance of SNAP benefits for ineligible items is a violation of the SNAP rules and regulations. Section 278.6(e)(5) of the SNAP regulations states, in part, 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.” There is no indication of involvement by the firm’s management or ownership. Therefore, there is not any valid basis for dismissing the charges or for mitigating the penalty imposed. The assessment of a hardship CMP is discussed in the next section.

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

hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, ownership's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **CIVIL MONEY PENALTY**

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

The Retailer Operations Division determined that the Appellant firm is selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to SNAP household because there is no other store in the area selling as large a variety of staple food items. Thus, pursuant to 7 CFR § 278.6(f), it is the decision of USDA that the six-month disqualification would create a hardship to SNAP recipients, and that a CMP in lieu of disqualification is appropriate in this case.

Appellant contends that the hardship CMP of \$44,000.00 is excessive and requests that the CMP be lowered or removed. However, the Appellant's request cannot be granted because neither the Retailer Operations Division nor this administrative review has the authority to modify the hardship CMP formula mandated by SNAP regulations at 7 CFR § 278.6(g). There is also no provision in the Act or regulations to reverse or reduce a sanction based upon a lack of prior SNAP violations.

The regulations are specific with regard to the formula used in calculating a CMP. The CMP is calculated on the basis of the SNAP redemption volume of the store during the 12 months prior to the firm being charged with the violations that led to the store's six-month disqualification. Modifications to the CMP may occur only when there is an error in calculation, or the penalty amount exceeds the statutory limit. 7 CFR § 278.6(g) provides, in relevant part, ". . . FNS shall determine the amount of the CMP as follows:

- Step 1: Determine the firm's average monthly redemptions of coupons for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.
- Step 2: Multiply the average monthly redemption figure by 10 percent.
- Step 3: Multiply the product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section.

The civil money penalty may not exceed an amount specified in § 3.91(b)(3)(i) of this title for each violation which reads in relevant part: "(3) Food and Nutrition Service (i) Civil penalty for hardship fine in lieu of disqualification, codified at 7 U.S.C. 2021(a), has a maximum of \$11,000 per violation."

**5 U.S.C. § 552 (b)(7)(E).**

There were four qualifying SNAP violations in this matter leading to a statutory limit of \$44,000.00. Thus, the appropriate CMP is \$44,000.00.

## **CONCLUSION**

A review of the evidence in this case supports that the program violations at issue did 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 by a USDA special agent 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 assess a hardship CMP in the amount of \$44,000.00 in lieu of a six-month disqualification from participating as an authorized retailer in SNAP is sustained. Based on the discussion above, the amount of the hardship CMP was properly computed by Retailer Operations. Please note that if the penalty is not paid, the six-month SNAP disqualification will be imposed.

In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter. In the event a six-month disqualification is imposed for failure to pay the CMP, or some lesser disqualification period reflecting the unpaid portion of the CMP, Appellant may reapply for authorization to participate in the SNAP up to 10 days prior to the end of the disqualification period. When eligible, Appellant may reapply for SNAP authorization using the application instructions contained on the FNS web site at [www.fns.usda.gov/snap/retailer-apply](http://www.fns.usda.gov/snap/retailer-apply).

## **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  
Administrative Review Officer

January 11, 2018