

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

Guimond Farms,

Appellant,

v.

Case Number: C0204029

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 a six-month disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Guimond Farms (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 Guimond Farms.

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, Guimond Farms, was initially authorized for SNAP participation as a convenience store on March 24, 1997. Between April 17, 2018, and May 1, 2018, FNS conducted an undercover investigation at the firm to ascertain its compliance with Federal SNAP laws and regulations. The investigative report documented that personnel at Guimond Farms accepted SNAP benefits in exchange for ineligible merchandise on four separate occasions. According to the report, the Appellant firm sold trash bags, soap, laundry detergent, fabric softener, and bathroom cleaner in exchange for SNAP benefits, which benefits may only be used to purchase eligible foods.

In a letter dated May 16, 2018, the Retailer Operations Division charged the Appellant with violating the terms and conditions of the SNAP regulations at 7 CFR § 278.2(a). The charge letter states that the violation of accepting SNAP benefits in exchange for ineligible nonfood items warrants a disqualification from SNAP for a period of six months pursuant to 7 CFR § 278.6(e)(5). The letter further states that under certain conditions and in accordance with 7 CFR § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification.

In a telephone call on May 18, 2018, and in a letter dated May 21, 2018, the Appellant replied to the charges and acknowledged that the violations occurred, but hoped that USDA would pardon the mistake. The Appellant stated that immediately after receiving the charge letter, the owner began educating all staff members on the guidelines and laws related to SNAP. The Appellant stated that all new employees will be properly trained and indicated that the owner had posted a list next to the cash register detailing what can and cannot be purchased with SNAP benefits. Additionally, the Appellant spent time updating the firm's point-of-sale software so that eligible items are differentiated from ineligible items. The Appellant further stated that losing its SNAP authorization would be a hardship to the firm's customers who rely on the firm to purchase necessary food items. The Appellant insisted that it has learned from its mistake and has taken necessary corrective measures to ensure that violations do not happen again.

After considering the Appellant's response and further evaluating the evidence in the case, the Retailer Operations Division issued a determination letter dated May 29, 2018. This letter informed the Appellant that it was the determination of the Retailer Operations Division that violations did occur as outlined in the letter of charges 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 June 1, 2018, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted and implementation of the sanction has been held in abeyance pending completion of this review. It should be noted that on July 5, 2018, the Appellant submitted an additional letter of explanation outlining its contentions in the case.

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 April 17, 2018, and May 1, 2018, the Food and Nutrition Service completed four compliance visits at Guimond Farms. The agency record indicates that a report of the investigation was provided to the Appellant as an attachment to the May 16, 2018, charge letter. The investigation report includes Exhibits A through D, and provides full details on the results of each compliance visit. SNAP violations were documented during each of the four visits, specifically the exchange of ineligible nonfood merchandise for SNAP benefits. The report states that the following nonfood items were purchased by an investigator using SNAP benefits:

- One 4-ounce package of soap bars (*Lever 2000* brand), Exhibit A
- One 10-count package of trash bags (*Hy-Top* brand), Exhibit B
- One 10-fluid-ounce bottle of laundry detergent (*Gain* brand), Exhibit C
- One 10-fluid-ounce bottle of fabric softener (*Downy* brand), Exhibit C
- One 15-count package of trash bags (*Glad* brand), Exhibit D
- One 22-ounce can of bathroom cleaner (*Scrubbing Bubbles* brand), Exhibit D

The report indicates that in Exhibit D, the investigator attempted to obtain cash in exchange for SNAP benefits, but the request was refused. According to the report, two different cashiers conducted the four violative transactions.

The charge letter states that the violations that occurred in Exhibits A, B, C, and D 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:

- Appellant believes a six month disqualification from SNAP is extreme.
- The store has been providing outstanding customer service to its customers for over 20 years. Its customers are its main priority.
- In its letter to the Retailer Operations Division, the Appellant explained that immediate action was taken to prevent further violations of SNAP, including a companywide training of all employees and the hanging of SNAP posters near each cash register.
- The Retailer Operations Division's determination that the firm was not eligible for a civil money penalty did not take into consideration customers with disabilities that are restricted to a wheelchair or walker that reside adjacent to the store. The nearest SNAP retailer is a gas station located several blocks away, and it carries a limited supply of inventory. Traveling six blocks in a wheelchair or a walker to the nearest supermarket in a very busy commercial area would be a challenge every time they needed to make a purchase.
- Customers with disabilities rely on the firm to purchase the items they need. These customers will be affected the most. Appellant has spoken with a few of them directly and they would be devastated if the decision to disqualify the firm is upheld.

- Appellant requests reconsideration of a CMP so that ultimately, the firm pays for its mistakes and the customers do not suffer.

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 herein.

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, including expressing regret for not implementing a training program sooner to educate its employees on SNAP rules. Because the violations themselves do not appear to be in dispute, it is the determination of this review that program violations did occur as charged by the Retailer Operations Division and a six-month disqualification is warranted. The balance of this review will address the Appellant's remaining contentions.

No Prior Violations

In its response to the charge letter, the Appellant indicated that the firm has been in operation for over 20 years. It claimed that this is the first violation the firm has committed and it would be its last. This contention implies that because of the firm's long history with SNAP and serving its customers, the disqualification penalty should be reconsidered.

With regard to this contention, the law is clear that when serious violations occur, such as the exchange of ineligible nonfood items for SNAP benefits, a six-month disqualification is the appropriate penalty, even on the first occasion, as noted in 7 CFR § 278.6(e)(5). As long as the administrative action taken by the agency fully conforms to SNAP regulations, this review has no authority to dismiss or reduce a period of disqualification. In this case, the sanction imposed by the Retailer Operations Division for this first-time violation is entirely in line with SNAP regulations and is consistent with sanctions imposed upon other retailers that have committed similar violations. As such, the contention that the firm has a history of program compliance and is committed to serving its customers does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Remedial Actions Taken

The Appellant has stated that upon receipt of the charge letter, it took immediate action prevent further violations of SNAP, including a companywide training of all employees, modification of the store's point-of-sale system, and the hanging of SNAP posters near each cash register detailing what can and cannot be purchased with SNAP benefits.

With regard to these steps taken by the Appellant, it should be noted 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 circumstances 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 subsequent to findings of program violations.

Therefore, the Appellant's contention that corrective action has taken place or that further remedial actions are planned does not provide a valid basis for dismissing the charges or for reducing the penalty imposed.

Hardship to SNAP Households / Civil Money Penalty

The Appellant contends that when the Retailer Operations Division made its decision that the firm was not eligible for a civil money penalty, it did not take into consideration customers with disabilities that are restricted to a wheelchair or walker that reside adjacent to the store. The Appellant claims that these customers would be devastated if the disqualification were to be upheld. The Appellant claims that the nearest SNAP retailer is a gas station located several blocks away, and it carries a limited supply of inventory. It further states that the nearest supermarket is six blocks away. The Appellant requests reconsideration of a CMP so that ultimately, it is the firm that pays for its mistakes rather than its customers.

With regard to these contentions, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and households are forced to use their program benefits elsewhere. Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a hardship civil money penalty to be imposed in lieu of disqualification. Paragraph (f)(1) of this regulation states that a CMP in lieu of temporary disqualification is allowable when the firm's disqualification would cause hardship to SNAP households because there are "no other authorized retail food stores in the area selling as large a variety of staple food items at comparable prices."

5 U.S.C. § 552 (b)(7)(E). FNS records show that there are more than two dozen SNAP-authorized stores within a one-mile radius of the Appellant store, including a superstore and three supermarkets, which undoubtedly have larger varieties and quantities of staple foods than what is found at Guimond Farms. Prices in such stores are also generally very comparable, if not lower, than most convenience stores. It should be noted that agency store visit records indicate that Guimond Farms is a standard-sized convenience store with a modest inventory of staple foods as well as large quantities of alcoholic beverages, snack foods, and drinks. By all indications, the staple foods sold at Guimond Farms would be readily available at the vast majority of nearby SNAP-authorized businesses.

In accordance with regulation cited above, hardship exists only when there are no other authorized stores in the area selling as large a variety of staple foods at comparable prices. Because such conditions do not exist in this case, a hardship civil money penalty in lieu of disqualification cannot be assessed.

CONCLUSION

Based on an analysis of all information in this case, this review finds through a preponderance of the evidence that program violations of 7 CFR § 278.2(a) did occur at Guimond Farms 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. Pursuant to 7 CFR § 278.6(a) and (e)(5), the decision to impose a six-month disqualification against the Appellant, Guimond Farms, 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 participation 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 21, 2018