

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

**Hartford Shell,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0217756**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a six-month disqualification from the Supplemental Nutrition Assistance Program (SNAP) as imposed by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a six-month disqualification against Hartford Shell.

**AUTHORITY**

7 U.S.C. § 2023 and its implementing regulation at 7 CFR § 279.1 provides 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**

The USDA conducted an investigation of the compliance of Hartford Shell with Federal SNAP law and regulations in August 2019. In a letter dated September 19, 2019, the Retailer Operations Division charged the Appellant store with accepting SNAP benefits in exchange for merchandise which included ineligible non-food items in violation of 7 CFR § 278.2(a). These SNAP violations occurred during four (4) out of four (4) compliance visits. The letter further informed the Appellant that the chargeable violations warranted a six-month disqualification period as provided in 7 CFR § 278.6(e)(5). The Appellant was informed it could respond to the charges within ten (10) calendar days following delivery of the charge letter. The charge letter was delivered to the store by UPS on September 23, 2019.

The Appellant, through counsel, responded to the charges in a letter dated October 7, 2019. The Appellant stated, among other contentions, that this was a first time violation and proposed the imposition of a fine in lieu of a six-month disqualification. The Appellant also stated that the store has taken corrective action to ensure that the violations would never happen again.

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated October 21, 2019. The determination letter informed the Appellant it was disqualified from the SNAP for a six-month period in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a hardship civil money penalty (CMP) under 7 CFR § 278.6(f)(1). The Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six-month disqualification because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked October 28, 2019, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. The request for review was granted. Upon acceptance of the administrative review request, implementation of the six-month disqualification was held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might 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 covered in the Food & 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) establish the authority upon which a disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, in part:

Coupons may be accepted by an authorized retail food store only from eligible households ... and only in exchange for eligible food.

7 CFR § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the "Food and Nutrition Act of 2008, as amended, for the purchase of 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....

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 ... (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 non-food items** due to carelessness or poor supervision by the firm's ownership or management. [Emphasis added.]

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'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.

### SUMMARY OF THE CHARGES

During an investigation conducted in August 2019, the USDA conducted four (4) compliance visits at Hartford Shell. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated September 19, 2019. The investigation report included Exhibits A through D which provide full details on the results of each compliance visit.

The investigation report documents that SNAP violations were recorded during four (4) compliance visits as documented by Exhibits A, B, C, and D. The chargeable violations in Exhibits A, B and C involved the sale of five (5) SNAP ineligible non-food items which included plastic cups, sandwich bags, toilet tissue and air freshener and were committed by two different clerks. In Exhibit D, there was a third clerk. There was a single violation involving the sale of plastic cups in Exhibit D, but the clerk also refused to exchange SNAP benefits for other ineligible items and cash.

## APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its initial request for administrative review, and in a supplemental response dated December 30, 2019, in relevant part:

- Hartford Shell requests reconsideration for a hardship CMP in lieu of a six-month disqualification.
- A hardship CMP in lieu of disqualification is appropriate in this case because disqualification would cause hardship to SNAP benefit households in the community due to the unavailability of a comparable participating food stores in the area to meet their shopping needs. Although there are four (4) other stores open 24 hours/seven (7) days a week there are limited transportation options available to impoverished individuals between the hours of 11:30 p.m. and 5 a.m.
- Many local customers who already face hardship and extreme difficulty depend on Hartford Shell to obtain staple food items. There are limited authorized stores within a one-mile radius of Hartford Shell that stock a variety of comparable staple foods, have comparable prices, and are available to sell staple food items to SNAP benefit customers on a 24/7 basis. Thus, the evidence supports a finding that it will cause hardship for SNAP recipients if Hartford Shell is disqualified from the SNAP.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

## ANALYSIS AND FINDINGS

### Investigation Report

The Appellant does not deny that the violations occurred as stated in the investigation report. The investigation report documents that the charges of violations are based on the findings of a formal USDA investigation. The transactions cited in the letter of charges were conducted under the direction of a USDA investigator and are thoroughly documented. A complete review of this documentation has yielded no known error or discrepancy. The investigation report is specific and thorough with regard to the dates of the violations, the specific facts related thereto, and is supported by documentation that confirms specific details of the transactions. The investigation report documents by a preponderance of the evidence that personnel at the store exchanged ineligible items for SNAP benefits.

### Owner Responsibility

A store owner signed the most recent SNAP reauthorization application for Hartford Shell on February 8, 2015. That reauthorization application included a signed certification 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 include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations including accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible non-food items.

### **Violations Warrant a Six-Month Disqualification**

The SNAP regulation at 7 CFR § 278.6(e)(5) states, in part, that “FNS **shall** take action as follows against any firm determined to have violated the Act or regulations ... **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 non-food items due to carelessness or poor supervision** by the firm’s ownership or management.” [Emphasis added.] The investigation report documents that the number of chargeable violations over multiple transactions in this case equate to carelessness or poor supervision by ownership.

Therefore, the Retailer Operations Division correctly determined that the violations warranted a six-month disqualification, the least severe penalty allowed by regulation under these circumstances.

### **HARDSHIP CIVIL MONEY PENALTY**

The Appellant requests reconsideration for a hardship CMP. The Retailer Operations Division determined that the Appellant was not eligible for a hardship CMP under 7 CFR § 278.6(f)(1). That regulation reads, in part, “FNS may impose a civil money penalty as a sanction in lieu of disqualification when...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.” [Emphasis added.]

The case record documents that the Retailer Operations Division determined that a six-month disqualification of Hartford Shell, a convenience store, would not cause a hardship to SNAP households as there are other comparable or larger SNAP authorized stores in the area. The Retailer Operations Division determined through agency mapping systems that there were 40 SNAP authorized traditional retail stores within a one-mile radius of Hartford Shell including 15 small grocery stores, two (2) medium grocery stores, a large grocery store, four (4) supermarkets and a superstore. These larger stores would all have a greater depth and breadth of staple food such as fresh meat/poultry/fish and fresh produce not carried by a convenience store. In addition, there is no evidence that Hartford Shell carries any specialty or international foods that cannot be obtained at these other stores.

The Appellant argues that other than Hartford Shell there are only four (4) stores open 24/7 in the community and transportation options are limited. However, whether or not a store is open 24/7 is not a factor in determining whether a store’s disqualification would cause a hardship, as opposed to a mere inconvenience, especially when there are so many options to obtain staple food at larger stores such as grocery stores, supermarkets and superstores. In any case, the agency’s authorization system documents that there are five (5) other convenience stores open 24/7 within a one-mile radius of Hartford Shell and one of these stores is only 0.25 miles away

from Hartford Shell. A review of the case record documents that the Retailer Operations Division compared that store to Hartford Shell and appropriately determined that it had food stock typical of a convenience store and was basically comparable to Hartford Shell.

Based on the analysis above, a six-month disqualification of Hartford Shell would not cause a hardship to SNAP recipients in the area, as opposed to a mere inconvenience; therefore, the Retailer Operations Division decision not to assess a hardship CMP in lieu of a six-month disqualification is sustained as appropriate under 7 CFR § 278.6(f)(1).

### **CONCLUSION**

It is established that the violations as described in the letter of charges did in fact occur at Hartford Shell warranting a disqualification of six (6) months in accordance with 7 CFR § 278.6(e)(5). That regulation states that FNS **shall** “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 non-food items due to carelessness or poor supervision by the firm’s ownership or management.” Therefore, the decision to impose a six-month disqualification, **the least severe penalty** allowed by regulation, against Hartford Shell, Appellant, is appropriate and the action is **sustained**.

In accordance with the Act and regulations, the six-month period of disqualification shall become effective thirty (30) days after receipt of this letter. The Appellant may submit a new application for SNAP authorization ten (10) days prior to the expiration of the six-month disqualification period.

### **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that 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 you 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 thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is 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.

RONALD C. GWINN  
Administrative Review Officer

March 3, 2020