

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

Jax Food Mart #1,

Appellant,

v.

Case Number: C0221124

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 improperly imposed against Jax Food Mart #1 (hereinafter “Jax Food Mart #1” or “Appellant”) by the Retailer Operations Division of FNS.

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 in its administration of the SNAP, when it imposed a six month period of disqualification against Jax Food Mart #1.

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

The Department of Agriculture conducted an investigation of the compliance of Jax Food Mart #1 with Federal SNAP law and regulations during the period November 7, 2019 through December 4, 2019. In a letter dated December 11, 2020, the Retailer Operations Division charged the Appellant with accepting SNAP benefits in exchange for merchandise which included ineligible nonfood items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on three out of four compliance visits. The letter further informed the Appellant that the violations warranted a disqualification period of six months as provided in 7 CFR

§ 278.6(e)(5). The letter also stated that under certain conditions, FNS may impose a hardship civil money penalty (CMP) in lieu of a disqualification as provided in 7 CFR § 278.6(f)(1). The charge letter noted that per SNAP regulations Section 278.6(b), the Appellant has the right to present any information, explanation or evidence regarding the charges and must reply within 10 calendar days of the date of receipt of the charge letter. Per UPS confirmation, the charge letter was delivered to the Appellant at the store address of record on December 15, 2020.

In a written response to the Retailer Operations Division of December 17, 2020, the Appellant replied to the charges therein stating that the owner is not disputing the investigation findings as he is not positive that the employee in question did not commit the SNAP violations. The employee conducted the violations without the owner's knowledge. The responsible employee has been fired and these types of violations will not be tolerated by the owner or the firm. All employees are fully trained not to accept SNAP benefits for ineligible nonfood items. The responsible employee did not traffick SNAP benefits as requested by the investigator. The owner is being penalized for the employee's mistakes. This is the first time that the Appellant has been cited for SNAP violations. The Appellant disagrees with the imposed six month SNAP disqualification and requests that a \$1,000.00 civil money penalty be imposed as the firm has a clean record with USDA.

After giving consideration to the Appellant's response and the evidence of this case, the Retailer Operations Division issued a determination letter dated January 8, 2021. The determination letter informed the Appellant that the firm was disqualified from the SNAP for a period of six months 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 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 January 16, 2021, the Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. FNS granted the Appellant's request for administrative review by letter dated March 1, 2021. 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, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the 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 statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulations 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, inter alia:

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

7 CFR § 271.2 states, inter alia:

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, inter alia:

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)(5) states, inter alia:

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, inter alia:

FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . the firm's disqualification would cause hardship to Food Stamp [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 undercover investigation conducted from November 7, 2019 through December 4, 2019, USDA conducted four compliance visits at Jax Food Mart #1. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated December 11, 2020. 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 three (Exhibits A, B, and C) of the four compliance visits and involved the sale of a variety of items best described in regulatory terms as “common nonfood items”. 5 U.S.C. § 552 (b)(7)(E).

The report indicates that in Exhibit C, the clerk on duty refused to allow an exchange of SNAP benefits for cash (i.e., trafficking). In Exhibit D, the clerk on duty refused to allow the purchase of two ineligible nonfood items and refused to allow an exchange of SNAP benefits for cash (i.e., trafficking). In Exhibit B, the investigator stated that the clerk on duty did not provide him with a receipt for the purchase. In Exhibit C, the investigator stated that the clerk on duty charged more than the total marked purchase price 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The report states that one male clerk conducted the three transactions involving the sale of ineligible items. The charge letter states that the violations that occurred in Exhibits A, B, and C warrant a disqualification period of six months pursuant to 7 CFR § 278.6(e)(5) and the exchange of these ineligible items for SNAP benefits is in violation of 7 CFR § 278.2(a).

APPELLANT’S CONTENTIONS

The following represents a brief summary of the Appellant’s contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the reply to the charge letter and in the administrative review request, the Appellant stated the following summarized contentions, in relevant part:

- The owner is not disputing the investigation findings as he is not positive that the employee in question did not commit the SNAP violations. Although the employee denied any wrong doing, the owner was not able to verify the facts presented because he was notified a year after the incidents occurred. Therefore, he was unable to go back to the firm’s security cameras and verify the incidents.
- The employee conducted the violations without the owner’s knowledge. The owner is being penalized for the employee’s mistakes.
- The owner has been battling cancer since 2018 and has had two surgeries in 2018 and 2020. He was not fully engaged in the operation of the firm for the last two and a half years. The owner is including hospital reports and several business cards for doctors seen for his cancer treatments (Note: No hospital reports or business cards for doctors were provided by the owner).
- Accepting SNAP benefits in exchange for ineligible nonfood items is an unpleasant, abhorrent, disturbing, and horrendous violation.
- These types of SNAP violations will not be tolerated by the owner or the firm.
- The employee did not exchange SNAP benefits for cash.
- The employee in question has been fired because of the violations.
- All employees are fully trained not to accept SNAP benefits for ineligible nonfood items.
- The Appellant has not been cited for any prior SNAP violations since its authorization.

- The Appellant disagrees with the imposed six month SNAP disqualification and requests that a \$1,000.00 civil money penalty be imposed as the firm has a clean record with USDA.

ANALYSIS AND FINDINGS

After a review of all information in this case, this review finds that while the SNAP violations did occur at the Appellant store, Exhibit A cannot be reasonably considered a clearly violative transaction as outlined in SNAP policy. 5 U.S.C. § 552 (b)(7)(E). Consequently, the resulting six month disqualification is not appropriate as the violations noted in the investigation report are too limited to warrant a period of disqualification. The sanction in this case should be reduced to a warning letter.

CONCLUSION

Based on a review of all information in this case, this administrative review finds that the SNAP violations as noted in the investigation report are too limited to warrant a period of disqualification. Therefore, the decision by the Retailer Operations Division to impose a six month SNAP disqualification against the Appellant, Jax Food Mart #1, is reversed.

The Appellant firm shall remain authorized provided that it continues to meet SNAP eligibility requirements.

RELEASE OF INFORMATION

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.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

April 20, 2021