

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

**Johora Corporation,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0224871**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that Johora Corporation (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain a six month disqualification of Appellant from the SNAP as imposed by the Office of Retailer Operations and Compliance (Retailer Operations).

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action in its administration of the SNAP, consistent with 7 CFR § 278.6(f)(1), 7 CFR § 278.6(a), and 7 CFR § 278.6(e), when it imposed a six month period of disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

**CASE CHRONOLOGY**

The USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period of February 3, 2020 through February 24, 2020. The investigative report dated May 28, 2020, documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple separate occasions. The items sold on multiple dates are best described as common nonfood items.

As a result of evidence compiled during the investigation, by letter dated June 23, 2020, Retailer Operations charged Appellant with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits was noted in Exhibits A, B, C, and D that warrants a disqualification as a SNAP retail food store for a period of six months. The letter also states that under certain conditions FNS may impose a civil money penalty (CMP) in lieu of a disqualification. The record shows the owner responded to the Charge letter July 1, 2020.

Retailer Operations informed Appellant by Determination letter dated July 22, 2020, that the violations cited in the Charge letter occurred at the firm, and that a six month period of disqualification was warranted. The letter also stated that eligibility for a hardship CMP was not applicable as there are other authorized retail food stores in the area selling as large a variety of staple foods at comparable prices.

The owner requested review of the determination by letter dated August 3, 2020. The administrative review was granted by letter dated September 1, 2020, that listed a different case number. Please note that the case number herein is correct.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant, credible 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 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 § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(5) establish the authority upon which a six month disqualification may be imposed against a retail food store.

7 CFR § 278.2(a) states: “Coupons may be accepted by an authorized retail food store only from eligible households or the households’ authorized representative, and only in exchange for eligible food.”

7 CFR § 278.6(e)(5) of the SNAP regulations states 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(a) states: “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.”

7 CFR § 278.6(f)(1) provides for civil money penalty assessments in lieu of disqualification in cases where disqualification would cause hardship to SNAP benefit households because of the unavailability of a comparable participating food store in the area to meet their shopping needs. It states: “FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm’s disqualification would cause hardship to SNAP benefit 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**

A report of the investigation was provided to the Appellant as Exhibits with the Charge letter. The investigative report provides details on the results of each compliance visit. The investigative report documents that SNAP violations were recorded during multiple store visits that warrant a six month disqualification. The SNAP violations of 7 CFR § 278.2(a) involved the sale of sold nonfood items for benefits by different clerks. The nonfood items included: dishwashing liquid, scrub sponge, trash bags, floor cleaner, fabric softener liquid, fabric softener sheets, air freshener, and toilet bowl cleaner.

### **APPELLANT’S CONTENTIONS**

Consideration of all contentions, as presented, was made whether recapitulated here or not.

- We understand the rules and regulations and we are working hard to follow it. We are new in small business. Our day by day experience gives us the perfection to be the best. In our area we serve the healthiest, fresh food. People like our store for cleanliness and best food in the area. To take in consideration in compare with all other stores in the area, our food is the best and the price is reasonable or less.
- As of violation happened here in the store, we already have taken action on it. We removed one employee and trained every one about it again and again.
- In this pandemic period, our sales scaled down to one fourth but our expenses are almost the same. We are struggling to survive. A satisfied amount of sale comes from EBT which helps us to survive in this period.
- Consider and give us one more chance so that, we can survive and at least 4 employees will not be unemployed.
- I receive your letter regarding some transaction that happened in my store. In those transactions, there are few items sold with food stamp, which are not considered as listed items eligible to be sold with food stamp.
- All the transactions happened because of the lack of proper knowledge about the food stamp items to be sold by the food stamp card. The lack of proper knowledge about it just

leads me to be perfect for the future. Our goal is to bring it into a 0 mistake in future. My clerk will be trained more and more to be careful about it from now.

### **ANALYSIS AND FINDINGS**

This review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations' determination at the time it was made. Upon review, the evidence supports that Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations, on multiple occasions. The regulations at 7 CFR § 278.6(e)(5) specify that FNS shall "disqualify the firm 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 nonfood items due to carelessness or poor supervision by the firm's ownership or management." Three violations are considered evidence of carelessness. Therefore, the violations in this case are not too limited to warrant a disqualification period of six months.

The charges of violations are based on the findings of a formal USDA investigation. The documentation in the record supports that the transactions were conducted at Appellant. The owner submitted no evidence to support that the transactions did not occur at Appellant. In fact, the owner admitted that violative transactions did occur because of the lack of proper knowledge about the food stamp items to be sold using the SNAP card. Upon authorization, all retailers are advised of the rules and regulations of the SNAP, as well as the penalties for violating the rules. Retailers are informed upon authorization that it is their responsibility to ensure that all personnel are properly trained regarding the SNAP. The owner is responsible for personnel who conduct SNAP transactions at Appellant. The preponderance of evidence under review supports that Appellant's personnel sold nonfood items on multiple store visits in exchange for SNAP benefits, a program violation that warrants a six month disqualification.

### **CIVIL MONEY PENALTY**

Retailer Operations rendered a finding that it was not appropriate to impose a CMP in lieu of a six month period of disqualification from SNAP. The record documents that there are other authorized stores within a nearby radius of Appellant that stock a variety of comparable staple foods at comparable prices. The evidence does not support that it will cause hardship for SNAP recipients if Appellant is disqualified. Therefore, Appellant is not eligible for a hardship CMP.

### **CONCLUSION**

The preponderance of the evidence in the record supports that the program violations charged did occur at Appellant. The record documents that Retailer Operations considered Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the regulations, and properly denied it. Therefore, the six month disqualification of Appellant from participation

as an authorized retail food store in the SNAP is sustained. This penalty shall become effective thirty (30) days after delivery of this decision.

A new application for participation in the SNAP may be submitted ten days prior to the expiration of the six month period of disqualification. Please contact the Retailer Center at 877-823-4369 with general questions regarding the SNAP application process. Please contact Crushonda Searcy at (404) 562-1989 if you have operations questions about this matter.

### **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023), and to the regulations at 7 CFR § 279.7 with respect to the owners' right to judicial review of this decision. 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 owner resides or is 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 delivery 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.

M. Viens  
ADMINISTRATIVE REVIEW OFFICER

October 16, 2020