

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

**Lowell General Store,**

**Appellant,**

**v.**

**Case Number: C0211929**

**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 there is sufficient evidence to support the assessment of a \$2,232.00 hardship civil money penalty (CMP) against Lowell General Store in lieu of a one-year disqualification from the Supplemental Nutrition Assistance Program (SNAP). In addition, the Appellant is properly subject to a collateral bond or irrevocable letter of credit in the amount of \$1,000.00 as a condition of continued authorization.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(1) and 7 CFR § 278.6(g), when it assessed a hardship CMP in the amount of \$2,232.00 against the Appellant.

**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**

In a letter dated October 25, 2018, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of April 2018 through September 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided

by 7 CFR § 278.6(e)(1). The charge letter was delivered to the Appellant via UPS on October 29, 2018.

The Appellant responded to the charges during an initial telephone call and an e-mail on October 30, 2018 and a follow up phone conversation on November 1, 2018. The Appellant denied trafficking in SNAP benefits and stated that the store was allowing children to come in and take snacks and sodas after getting off the school bus and then would have the parents come in later to pay what was owed. The Appellant also stated that one of the accounts that showed up in the charge letter belonged to the store owners' daughter who used most of her benefits at the store.

After reviewing the Appellant's response and the evidence in the case, the Retailer Operations Division concluded that the Appellant's response was sufficient to refute the trafficking charges. However, because the Appellant admitted to accepting SNAP benefits as repayments on credit accounts, the Retailer Operations Division issued a determination letter dated December 13, 2018 informing the Appellant it was assessed with a \$2,232.00 hardship CMP in lieu of a one-year disqualification. The Retailer Operations Division determined that the Appellant was eligible for a hardship CMP in lieu of a one-year disqualification under 7 CFR § 278.6(f)(1) because the store was selling a substantial variety of staple food items and the firm's disqualification would cause a hardship to SNAP households. The Appellant was also informed that failure to pay the hardship CMP would result in a one-year disqualification.

In a letter dated December 20, 2018, the Appellant requested an administrative review of the Retailer Operations Division's determination. The request for review was granted and the assessment of the hardship CMP 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 action 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 statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and Section 278 of Title 7 of the Code of Federal Regulations (CFR).

7 CFR § 278.2(a) states, in part:

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 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: (1) 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)(4) states, in part:

**Penalties.** FNS shall take action as follows against any firm determined to have violated the Act or regulations ....

Disqualify the firm for 1 year if ... (ii) The firm has accepted SNAP benefits in payment for items sold to a household on credit.

7 CFR § 278.1(b)(4) in part:

**The submission of collateral bonds or irrevocable letters of credit for firms with previous sanctions.**

- (i) If the applicant firm has been sanctioned for violations of this part, by withdrawal, or disqualification for a period of more than six months, **or by a civil money penalty in lieu of a disqualification period of more than six months ...** FNS shall, as a condition of future authorization, require the applicant to present a collateral bond or irrevocable letter of credit .... [Emphasis added.]
- (ii)(D) The collateral bond or irrevocable letter of credit must have a face value of \$1,000 or an amount equal to ten percent of the average monthly SNAP benefit redemption volume of the applicant for the immediate twelve months prior to the effective date of the most recent sanction which necessitated the collateral bond or irrevocable letter of credit, whichever amount is greater

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.

7 CFR § 278.6(g) states, in part:

Amount of civil money penalties for hardship and transfer of ownership. FNS shall determine the amount of the civil money penalty as follows:

- (1) Determine the firm's average monthly redemptions ... for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.
- (2) Multiply the average monthly redemption figure by 10 percent.
- (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 ....

Notwithstanding the above, there is an agency limit of \$11,000 per violation as the maximum TOCMP amount.

### **APPELLANT'S CONTENTIONS**

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The store has been in operation for over 20 years without any prior SNAP violations.
- The store is being fined for not allowing children under the age of 12 to use their parents' SNAP cards until their parents came in to pay off the credit later.
- The store did not intend to violate any SNAP regulations and did not know it was violating any rules.
- The store may have to go out of business if it is assessed either the one-year disqualification or a hardship CMP.
- The Appellant requests leniency and asks that the CMP and the bond/letter of credit requirement be waived or reduced.

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**

The Appellant notes that this is the firm's first violation after many years in the SNAP. Regarding this contention, the SNAP regulation at 7 CFR § 278.6(e)(4)(ii) states, that FNS **shall** disqualify a firm if it has accepted SNAP benefits in payment for items sold to a household on credit. So even a first time violation would be subject to a one-year disqualification. This violation also does not require an element of intent upon the violator. So the allegation that the violations were not intentional is not relevant.

As noted, the violation of accepting SNAP benefits as repayment on credit accounts would normally warrant a one-year disqualification. However, the Retailer Operations Division determined that the assessment of a hardship CMP of \$2,232.00 in lieu of a one-year disqualification was appropriate in this case because the store was selling a substantial variety of staple food items and the firm's disqualification would cause a hardship to SNAP households. A preponderance of the evidence supports the decision of the Retailer Operations Division.

### **Owner Responsibility**

The Appellant states that it did not know it was violating any rules. However, on February 27, 2015, a store owner signed the SNAP reauthorization application for Lowell General Store and acknowledged that the owners were aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owners 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 such as **accepting SNAP benefits as repayment on credit accounts** or in exchange for ineligible items.

### **Hardship CMP**

The Appellant asks for leniency by dropping the CMP or reducing the amount of the CMP as the firm is a small family owned business in an impoverished rural area. Regarding this contention, the SNAP regulations at 7 CFR § 278.6(g) prescribes how to calculate the amount of the hardship CMP utilizing a mandated formula. As such, there is no discretion granted to the Retailer Operations Division, or to the Administrative Review Officer, in the calculation of the hardship CMP. Therefore, a waived or reduced hardship CMP cannot be granted.

7 CFR § 278.6(g) states that the hardship CMP is to be calculated on a formula which includes the SNAP redemption volume of the store during the twelve (12) months prior to the firm being charged with violations. Modifications to the hardship CMP may occur only when there is an error in calculation or the amount exceeds the agency limit of \$11,000 per violation. Using the methodology described in 7 CFR § 278.6(g), Retailer Operations Division correctly calculated the amount of the hardship CMP under 7 CFR § 278.6(g) as \$2,232.00. That calculation is shown below:

**5 U.S.C. § 552 (b)(7)(E).**

In addition, 7 CFR § 278.1(b)(4)(i)(D) requires that the Appellant be subject to a collateral bond or letter of credit as a condition for continued authorization. This SNAP regulation prescribes how to calculate the amount of the bond or letter of credit. As such, there is no discretion granted to the Retailer Operations Division, or to the Administrative Review Officer, in the calculation of

the bond/letter of credit. A review of the case record confirms that the Retailer Operations Division properly determined that the bond or letter of credit be in the amount of \$1,000.

### **CONCLUSION**

A review of the evidence in this case documents that personnel at Lowell General Store accepted SNAP as repayment on credit accounts and was subject to a one-year disqualification. However, the Retailer Operations Division determined that a one-year disqualification of Lowell General Store would create a hardship for SNAP households as there is no other authorized retail food store in the area selling a comparable or larger variety of staple food. Therefore, in lieu of a one-year disqualification, the Retailer Operations Division properly assessed a hardship CMP against the Appellant of \$2,232.00. The decision in this case is hereby sustained.

### **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 25, 2019