

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

Meekland Minimart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0219517

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 Meekland Minimart (hereinafter “Appellant”) by FNS’s 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 Meekland Minimart.

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, Meekland Minimart, was initially authorized for SNAP participation as a convenience store on September 18, 2018. Between September 25, 2019 and December 23, 2019, FNS conducted an undercover investigation at the firm to ascertain its compliance with Federal SNAP laws and regulations. The investigation report documented that personnel at Meekland Minimart accepted SNAP benefits in exchange for ineligible items on four separate occasions. According to the report, the Appellant firm sold paper plates, plastic sandwich bags, plastic cups, and plastic bowls in exchange for SNAP benefits, which benefits may only be used for the purchase of eligible food.

In a letter dated January 29, 2020, the Retailer Operations Division charged the Appellant with violating SNAP regulations at 7 CFR § 278.2(a). The charge letter stated that the acceptance of SNAP benefits in exchange for ineligible merchandise warranted a disqualification from SNAP for a period of six months pursuant to 7 CFR § 278.6(e)(5). The letter further stated that under certain conditions and in accordance with § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification.

In an e-mail dated January 30, 2020, the Appellant responded to the charges, stating that it was not sure what had happened during the transactions in question, but acknowledging that the violations should not have occurred. The Appellant further stated that it tries its best to do the right things and follow the guidelines and would not dare to do anything that would jeopardize the store. The Appellant claimed that it would make sure that accidents like this do not happen again, stating that it would ensure that its employees review the EBT process. The Appellant stated that it did not want to lose its customers or have its EBT authorization revoked. Finally, the Appellant stated that cashiers do not identify EBT purchases right away. Instead, they begin ringing up merchandise on the cash register. Once the customer pulls out the EBT card, the cashier then has to remove the ineligible items from the transaction.

After considering the Appellant's response and further evaluating the evidence in the case, the Retailer Operations Division issued a determination letter dated February 6, 2020. This letter informed the Appellant that it was the determination of the Retailer Operations Division that violations did occur as outlined in the charge letter 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 February 14, 2020, the Appellant appealed the agency's determination by requesting an administrative review. The request was granted and implementation of the disqualification has been held in abeyance pending completion of this review.

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 September 25, 2019, and December 23, 2019, FNS completed six compliance visits at Meekland Minimart. The agency's record indicates that a report of the investigation was provided to the Appellant as an attachment to the January 29, 2020, charge letter. The investigation report includes Exhibits A through F, and provides full details on the results of each compliance visit. SNAP violations were documented during four of the six 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 15-count package of white dinner plates (*Chinet* brand), Exhibit B
- One 180-count box of plastic sandwich bags (*Glad* brand), Exhibit B
- One 20-count package of plastic cups (*Solo* brand), Exhibit C
- One 12-count package of plastic bowls (*Solo* brand), Exhibit C
- One 180-count box of plastic sandwich bags (*Glad* brand), Exhibit D
- One 40-count package of paper plates (*Parade* brand), Exhibit F
- One 180-count box of plastic sandwich bags (*Glad* brand), Exhibit F

The report indicates that in Exhibit A, the investigator did not attempt to purchase any ineligible items. In Exhibit D, the clerk on duty refused to allow one ineligible item (paper plates) to be purchased with SNAP benefits, but did allow an ineligible box of sandwich bags. In Exhibit E, the clerk on duty refused to allow any ineligible items to be purchased with SNAP benefits. In Exhibit F, the clerk refused to allow an exchange of SNAP benefits for cash (i.e. trafficking). The report states that three different clerks conducted the four violative transactions. The charge letter states that the violations that occurred in Exhibits B, C, and F 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 would like FNS to reconsider the disqualification determination.
- Appellant owner has been working at the store for 10 years, and is not sure what happened, but believes that it was an honest mistake.
- Appellant has taken precautions and has reviewed SNAP procedures with the employees to make sure this does not happen again. Appellant will ensure that all employees review the EBT process.
- Appellant does not want the customers to lose their shopping privileges at the store. There are other stores in the area, but they are a long way from Meekland Minimart, especially for those who have to walk.
- Appellant owner is trying to work hard and take care of his family, and would not dare do anything that would jeopardize the store.
- Appellant does not want to lose its customers that use EBT and requests that FNS not take EBT away from the store. Appellant requests another option that does not involve losing SNAP authorization.

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 in this document.

ANALYSIS AND FINDINGS

The Appellant has not provided any information or evidence to counter FNS's investigation report. In fact, the Appellant appears to acknowledge that violations took place, stating that while it does not know exactly what happened, the violations were likely honest mistakes. Because the violations do not appear to be in dispute, it is the determination of this review, through a preponderance of the evidence, that SNAP violations did occur as charged and a penalty is warranted.

Honest Mistakes

The Appellant states that it is not sure what went wrong, but believes that the violations were honest mistakes. This contention implies that the sanction in this case should be waived or reduced because the violations were not intentional.

With regard to this contention, the law is clear that when program violations occur, specifically the exchange of ineligible nonfood items for SNAP benefits due to carelessness or poor supervision by the firm's ownership or management, a six-month disqualification is the required penalty.

In the Appellant's original response to the charge letter, it stated that store clerks do not know when an EBT card is going to be used to make a purchase. So the clerks simply begin ringing up items into the register. It is only when the customer pulls out the EBT card that the clerk becomes aware of the use of SNAP benefits. At that point, the clerk has to separate eligible items from ineligible items and ring them up separately. After reviewing the investigator's report, this review finds that the Appellant's system of identifying ineligible items clearly does not work. On three occasions (Exhibits B, C, and F), there appeared to be no effort by the clerk to remove any ineligible items from the transaction. In Exhibit D, the clerk did seem to take this action, removing one ineligible item. Unfortunately, that clerk allowed a different ineligible to go through. It should be noted that the Appellant's EBT processing situation is not unique. Meekland Minimart is one of thousands of stores across the country that do not have sophisticated cash register systems that automatically separate SNAP-eligible items from ineligible items. In such situations, it is incumbent upon store ownership and management to fully train employees to ensure that anyone who runs the cash register is familiar with and abides by SNAP rules.

The actions by the clerks in this case strongly suggest that the violations were due to either employee carelessness or failure on the part of ownership or management to properly train and supervise its employees. Accordingly, a six-month disqualification penalty is appropriate and is entirely in line with SNAP regulations. This penalty is also consistent with sanctions imposed upon other retailers that have committed similar violations. As such, a modification to the penalty is not appropriate.

Remedial Actions Taken

The Appellant states that it has taken precautions, including reviewing SNAP procedures with its employees to make sure program violations do not happen again.

With regard to this contention, it must be made clear that this review is limited to the facts that existed at the time the violations were committed. This review has no authority 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 after the discovery of program violations.

Hardship to Appellant

The Appellant argues that the store owner is trying to work hard and take care of his family, and would not dare do anything that would jeopardize the store. The Appellant further states that it does not want to lose its customers that use EBT and requests that FNS consider another penalty option that does not involve removal of the firm's SNAP authorization.

With regard to these contentions, SNAP regulations do not permit this review to consider a waiver or modification of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm itself. To allow an exemption from penalties based on a purported economic hardship to the firm or its ownership would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program requirements, but also to those retailers who have been disqualified from the program for similar violations.

Hardship to Households / Civil Money Penalty

The Appellant argues that it does not want its SNAP customers to lose their shopping privileges at the store. According to the Appellant, there are other stores in the area, but they are a long way from Meekland Minimart, especially for those who have to walk. This contention implies that SNAP customers will experience hardship if the firm's disqualification is upheld.

With regard to this contention, it is recognized that some degree of inconvenience to SNAP recipients is likely whenever a retail food store is disqualified and households are forced to use their benefits elsewhere. To address potential hardship situations that SNAP households might incur when a firm is disqualified, regulations at 7 CFR § 278.6(f) allow, in certain circumstances, for a civil money penalty to be imposed instead of disqualification. Paragraph (f)(1) of this regulation states that this alternative sanction is allowed when a firm's disqualification would cause "hardship" to SNAP households. According to this regulation, hardship occurs when there is "no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices."

It is the determination of this review that a disqualification of Meekland Minimart would not cause hardship to SNAP households because there are many other shopping options in the area. According to agency records, there are at least two dozen similarly-stocked or larger SNAP-authorized retail stores located within a one-mile radius of Meekland Minimart, including five superstores. There is also no evidence that the Appellant sells its inventory at unusually low prices in comparison to nearby stores.

Because hardship conditions do not exist in this case, a civil money penalty in lieu of disqualification is not an available option.

CONCLUSION

Based on a review of all information in this case, this administrative review finds through a preponderance of the evidence that program violations of 7 CFR § 278.2(a) did occur at Meekland Minimart 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. Furthermore, the Appellant has not offered any compelling evidence that would persuade this review to dismiss or modify the penalty. Therefore, pursuant to 7 CFR § 278.6(a) and (e)(5), the decision to impose a six-month disqualification against the Appellant, Meekland Minimart, 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 authorization 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. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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

May 13, 2020