

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch
Alexandria, VA 22302**

**The Dollar Store
(DBA Midtown Market),**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0199989

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA) that The Dollar Store (DBA Midtown Market) (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP), and that there is sufficient evidence to support a hardship civil money penalty (CMP) in lieu of a one year disqualification from the SNAP, as imposed by the Retailer Operations Division (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(f)(1) and 7 CFR § 278.6(a) and (e) in its administration of the SNAP, when it imposed a hardship CMP of \$2,196.00 in lieu of a one year period of disqualification against 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

The USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period of June 19, 2017 through July 31, 2017. The investigative report documented that personnel at Appellant accepted SNAP benefits in exchange for

ineligible merchandise on four separate occasions in Exhibits A, B, C, and D. The investigation identified one owner as being a violator during the investigation. Due to owner involvement in the violations, a one year disqualification period is warranted.

As a result of evidence compiled during this investigation, by letter dated September 8, 2017, Retailer Operations charged ownership with violating the terms and conditions of the SNAP regulations at 7 CFR § 278.2(a). The record supports that the owners did not respond to the Charge letter. The Charge letter states that under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification.

Retailer Operations informed the owners by Determination letter dated October 3, 2017, that the violations cited in the Charge letter occurred at the firm and that a one year period of disqualification was warranted. The letter also stated that Appellant was eligible for a hardship CMP as it was selling a substantial variety of staple food items at comparable prices and the firm's disqualification would cause hardship to SNAP households. Thus, a hardship CMP in the amount of \$2,196.00 was imposed in lieu of the one year disqualification.

By letter dated October 10, 2017, one owner appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated October 17, 2017. One owner provided a facsimile dated November 11, 2017.

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 evidence which 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) establish the authority upon which a one year disqualification may be imposed against a retail food store or wholesale food concern.

Section 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."

Section 278.6(e)(4) of the SNAP regulations states: "Disqualify the firm for 1 year if it is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a

shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and the possible consequences of violating the regulations.”

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) states: “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 food stamp 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, the USDA conducted four compliance visits at Appellant. The investigative report was provided to Appellant as Exhibits attached to the Charge letter. Exhibits A through D provide full details on the results of each visit. The investigative report documents that SNAP violations were recorded during four visits and involved the sale of common nonfood items in exchange for SNAP benefits in violation of 7 CFR § 278.2(a). The items sold included: cups, bags, napkins, and skewers. A one year period of disqualification was warranted based on owner’s involvement in the violations.

APPELLANT’S CONTENTIONS

Consideration of all contentions was made whether they are recapitulated here or not.

- Our new Syrian Clerk/Cashier rang up the nonfood as a taxable item but accepted the Food Stamp as a form of payment thinking at the SNAP card would only automatically charge for food items.
- The other mistake was made by my husband, he is usually so careful but sometimes makes frequent errors when ringing up customers because he gets distracted as he is always conversing with customers while ringing them up and his distraction has caused this error.
- He is not a multitasker & focusing on a task has been difficult for him & has not been his strong suit since I have known him. I really think he might have ADHD.
- We are sincerely sorry and we know that this is a serious issue and we would very much appreciate it if you could send someone to check out our Market as it is full of specialty food items/Halal Meats.
- We are the only Halal Market in Reno, Nevada at the present time and over 50 percent of our customers are Syrian Refugees, Congan Refugees & Afghan Refugees.

- This penalty will really hurt us as we are in new territory trying this specialty market in hopes it will do well in the Reno area.
- We would really appreciate a reconsideration of this violation with a penalty fine of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that will financially hurt our business.
- We have converted our Dollar Store into a Mediterranean food market (Midtown Market) over three years ago.
- We are serving a lot of refugees and are the only Halal market in the Reno/Sparks area.

The following documents were provided: one page State of Nevada Sales Tax Permit; four pages from Washoe County Health District dated 6/28/17, 7/1/16, 7/1/15, and 7/1/14; four pages from City of Reno for business licenses, expiration dates 6/30/17, 6/30/16, 6/30/15, and 6/30/18.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination made by Retailer Operations. This review is limited to what circumstances were at the basis of Retailer Operations' determination at the time such action was taken. Upon review, Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations on four chargeable occasions as noted in the Exhibits. When ownership signed the FNS application to become a SNAP authorized retailer, this included a certification and confirmation that the owner(s) would "accept responsibility on behalf of the firm for violations of the SNAP regulations." The violations listed on this certification include accepting SNAP benefits as payment for ineligible items. The SNAP regulations at Section 278.6(e)(4) states that FNS shall disqualify a store for one year if "it is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items normally found in a shopping basket..."

This review encompasses and documents the examination of the primary and relevant information in this case the purpose of which is to determine whether ownership demonstrates by a preponderance of the evidence that the disqualification should be reversed. The owners provided no evidence to support that they did not violate SNAP regulations. To the contrary, the investigative record supports that at least one owner violated the regulations. These violations, per the regulations cited, warrant a one year disqualification.

CIVIL MONEY PENALTY

Retailer Operations rendered a finding that it was appropriate to impose a hardship CMP in lieu of a one year period of disqualification. This finding was referenced in the Determination letter which assessed a hardship civil money penalty of \$2,196.00. Review of the CMP calculation shows that it is correct.

The record supports that in this matter Retailer Operations properly applied the standard for consideration of a CMP for hardship to SNAP recipients. Pursuant to 7 CFR § 278.6(f), Retailer

Operations decided that the disqualification of Appellant would create a hardship to SNAP households in the area, and that a civil money penalty in lieu of disqualification was appropriate.

The CMP must be paid in full by the end of the period for which the firm would have been disqualified. Failure to pay the CMP or to comply with the collateral bond or irrevocable letter of credit requirement will result in Appellant's disqualification as a SNAP retailer for a period of one year or that period corresponding to the unpaid part of the CMP if Appellant does not pay the CMP in full.

CONCLUSION

The charges of violations are based on the findings of a formal USDA investigation. The review finds that the investigative record is specific, thorough, and fully documented with regard to the dates of the violations, the specific ineligible merchandise sold in exchange for SNAP benefits, and in all other critically pertinent detail. The record supports that at least one owner was responsible for the violations of selling ineligible items in exchange for SNAP benefits.

A review of the evidence in this case by a preponderance supports that Retailer Operations' determination to impose a CMP in lieu of a one year disqualification against Appellant was proper. Thus, the CMP amount as imposed, in lieu of the one year disqualification of Appellant from participating as an authorized retailer in the SNAP is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to 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 the owners 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, 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

November 28, 2017