

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

**Milford Mobil Corp,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0157615**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Milford Mobil Corp (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

**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 permanent disqualification against Appellant in a letter dated April 27, 2020.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provides 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 in the month of March 2012. The investigation report documents that on March 28, 2012, personnel working at Appellant committed SNAP violations where store personnel exchanged SNAP benefits for cash. The buying or selling of SNAP benefits for cash or consideration other than eligible food is trafficking as defined under 7 CFR § 271.2. As a result of evidence compiled from this investigation, the Retailer Operations Division informed

the Appellant, in a letter dated July 16, 2015, that it was charged with violating the terms and conditions of the SNAP regulations. The letter stated, in relevant part, that:

Your firm is charged with trafficking, as defined in Section 271.2 of the SNAP regulations. As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for the trafficking violation(s) ... is permanent disqualification.

The charge letter also stated that:

Under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000.00 in lieu of permanent disqualification of a firm for trafficking. The SNAP regulations, Section 278.6(i), list the criteria that you must meet in order to be considered for a CMP. If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter.

In a July 16, 2015, facsimile, Appellant submitted a Freedom of Information Act (FOIA) request for a copy of the investigative report and stated that it had no recollection of the events from over three years ago.

### **FOIA Request**

A FOIA request was received and processed on July 22, 2015. The record reflects that in correspondence dated October 7, 2015, Appellant received the requested documentation. The record also reflects that no FOIA appeal was submitted. Retailer Operations Division was notified in February 2020 that appellant received the requested FOIA documentation and that the OIG FOIA request had been closed.

The record reflects that Retailer Operations Division sent Appellant a 10-day notification letter on March 9, 2020. In correspondence dated March 12, 2020, Appellant again replied to the charge letter, after receiving the requested FOIA documentation, and stated that the information that was provided to Retailer Operations Division was inaccurate and that it had no knowledge of what was provided. Appellant requested direct contact via telephone to discuss the matter further.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a revised determination letter dated April 27, 2020. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked May 1, 2020, the Appellant requested an administrative review of the Retailer Operations Division's determination. The appeal was granted.

### STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions 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

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). In particular, 7 CFR § 278.6(a) and (e)(1)(i) establishes the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, inter alia: "... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ..."

7 CFR § 271.2 states, inter alia: "Trafficking means "the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;..."

7 CFR § 278.6(e)(1)(i) states, in relevant part, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2."

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*..." [Emphasis added]

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 [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... A civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a permanent disqualification."

7 CFR § 278.6(b)(2)(ii) states, inter alia: "Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit

to FNS information and evidence ... that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1)."

7 CFR § 278.6(i) states, inter alia: "FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program."

### **SUMMARY OF THE CHARGES**

During an on-site investigation the USDA conducted a compliance visit at Appellant. The investigation report documents the following:

1. On March 28, 2012, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) completed a transaction in which 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits was accepted in exchange for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash.

### **APPELLANT'S CONTENTIONS**

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

1. We first received notice of being in violation of the program on March 9th and followed instruction to send a reply requesting information on the nature of the violation. We heard nothing back for over a month and then received a letter in the mail that said our reply was never received and that we were permanently disqualified from the program.
2. Unfortunately, because of the amount of time that has passed since the violation in question, we are unable to provide admissible evidence of our innocence.
3. We would never knowingly take advantage of the assistance provided to the needy in our community.
4. We ask that you take into consideration the upcoming hardships brought on by the National Pandemic.

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**

Appellant contends that because of the amount of time that has passed since the violation in question it is unable to provide admissible evidence of its innocence and that it would never

knowingly take advantage of the assistance provided to the needy in the community. With regard to Appellant's contentions, Appellant was notified of the outcome of the onsite investigation in a charge letter dated July 16, 2015. Appellant submitted a FOIA request for the investigative report and the record reflects that Appellant received the requested documentation in correspondence dated October 7, 2015. Appellant was afforded an opportunity to reply to the July 16, 2015, charge letter once it was notified that Appellant received the requested FOIA documentation.

It is acknowledged that a lengthy period of time elapsed between the documented trafficking violations and the issuance of the investigation report by the USDA's Office of Inspector General, which conducted the investigation. The investigative report was issued to FNS in July 2015 the file does not reflect the date that the SNAP Office received the investigative report though OIG reports are routinely routed through the financial management division in headquarters prior to being distributed to the SNAP Offices and/or Regional Offices. The SNAP Office issued the Charge Letter on July 16, 2015, the same month after receiving OIG's investigative report. There is no provision in the statute, regulations or agency policy allowing documented violations to be dismissed due to the time elapsed since such violations occurred; SNAP Offices have no latitude to disregard OIG investigative reports on the basis of time elapsed between the occurrence of violations and OIG's issuance of an investigative report. The SNAP Office is required to take action on evidence of violations irrespective of the dates involved.

In the present case, the investigation was conducted by departmental investigators and processed through the normal channels within which such matters are handled. The charges of violations are based on the findings of a formal Department of Agriculture investigation; the transaction cited in the Charge Letter was conducted under the direct supervision of a Department Investigator. All such transactions are fully documented and a review of this documentation has yielded no indication of error or discrepancy in the reported findings. The investigative record is specific and thorough with regard to the dates of the violations, the specific facts related to the trafficking incident and in all other critically pertinent detail. No further evidence or detail is required by the agency in order for the SNAP Office to issue a Charge Letter. As such, the record reflects no procedural failure on the part of the SNAP Office in its issuance of the Charge or Determination Letters.

Additionally, there is no statute of limitations with regards to an administrative action against a firm, although the agency does strive to take such actions as soon as they are able. It is important to note that when the Retailer Operations Division charges a firm for violations uncovered during a covert investigation it is dependent primarily on when the investigative agency releases their report and gives approval for USDA to pursue administrative action. There are a number of reasons an administrative action could be delayed. For example, an investigation may be escalated from the administrative level to the criminal level, and after some time a decision may be made not to pursue the criminal investigation after all; this could take a couple of years. In addition, investigations often involve a number of different stores, and no arrests or charges are made until after all store investigations have been completed. In the interim, no administrative actions are taken until after any civil and criminal actions against firms have been pursued. Prosecutors may also accept a case referral, and then months later

decide to decline the case for prosecution. In the present case, the investigation report was completed on March 28, 2012, submitted to Retailer Operations Division in July 2015 and the charge letter was issued to Appellant on July 16, 2015. The time elapsed between the violations and the charge letter does not have any effect on the potency or validity of the charges.

“The SNAP regulations also provide that, under certain conditions, FNS may instead impose a civil money penalty (CMP) in lieu of a disqualification of a firm for trafficking. The SNAP regulations, Section 278.6(i), list the criteria that you must meet in order to be considered for a CMP. **If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter.** If you do not request consideration for a CMP or are determined to be ineligible for a CMP, the permanent disqualification of your firm shall be effective on the date of receipt of the letter informing you of our final decision (SNAP regulations Section 278.6(c).”

Additionally, as owners of the store, Appellants are liable for all volatile transactions handled by store personnel. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food Stamp Act and the enforcement efforts of the USDA.

### **CIVIL MONEY PENALTY**

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy to prevent SNAP violations. Appellant was advised of this provision in the charge letter of April 24, 2015, which also advised that documentation of eligibility for that alternative sanction had to be provided within a specific time limit. Such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented **prior** to the occurrence of violations.

Therefore, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

### **CONCLUSION**

As previously stated, 7 CFR § 278.6(e)(1)(i) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.” The law and regulations do not provide for a lesser period of disqualification for this violation.

Based on a review of the evidence in this case, there is no question that program violations did occur during a USDA investigation. All transactions cited in the letter of charges were 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 is specific and accurate with regard to the dates of the violations, including the exchange of SNAP benefits for cash, and in all other critically pertinent details. The decision to impose a permanent disqualification against Milford Mobil Corp is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 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 (FOIA), 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.

Monique Brooks  
ADMINISTRATIVE REVIEW OFFICER

September 1, 2020