

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

Moo-Moos Food Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0213506

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division (“ROD”) to impose a one-year disqualification against Moo-Moos Food Mart (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The purpose of this review is to determine whether the ROD took appropriate action, consistent with Title 7 of Code of Federal Regulations (CFR) § 278.6(e)(4) in its administration of SNAP when it imposed a one-year period of disqualification against Appellant on April 9, 2019.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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 March 14, 2019, the ROD charged Appellant with permitting credit accounts to be paid with SNAP benefits. This letter of charges states, “The acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulation 278.2(f).”

Appellant, through counsel, responded orally to the charges. After giving consideration to the evidence and the firm’s reply, the Retailer Operations Division notified Appellant in a letter

dated April 9, 2019 that the firm was being disqualified for one year from participation as an authorized retailer in SNAP for maintaining credit accounts. This determination letter also states that Appellant's eligibility for a hardship civil money penalty (CMP) according to the terms of Section 278.6(f)(1) of the SNAP regulations was considered. However, the letter stated to Appellant that "... you are not eligible for the CMP because there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices."

On April 15, 2019, Appellant appealed the ROD's decision to impose a one-year disqualification, and requested an administrative review of the action. The appeal was granted and implementation of the sanction has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant 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 untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(4) establish the authority upon which a one-year disqualification may be imposed against a retail food store or wholesale food concern.

Section 278.6(e)(4) of the SNAP regulations states, in part, when a firm is to be disqualified for one year:

The firm has accepted SNAP benefits in payment for items sold to a household on credit.

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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- Appellant allowed a customer to pay for SNAP eligible items.
- Disqualification would pose a hardship to customers who rely on the firm.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

ANALYSIS AND FINDINGS

Appellant insists it allowed a customer to pay for SNAP eligible items. It is unclear whether Appellant is arguing that it did not allow the payment of credit accounts with SNAP benefits, or if it allowed SNAP benefits to pay for a credit account that had been used only for SNAP-eligible foods. SNAP benefits cannot be used to pay credit balances, even if the credit was extended only for SNAP-eligible foods. The evidence indicates the Office of Inspector General, Texas Health and Human Services (OIG – Texas HHS) documented that a household used SNAP benefits to pay for credit accounts at Appellant. The recording made by OIG – Texas HHS confirms that when they interviewed Appellant's store manager, the manager admitted to allowing the customer to use SNAP benefits to pay for credit account balances.

When ownership signed the FNS application to become an authorized SNAP 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, 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 document include maintaining credit accounts. Regardless of whom the ownership of a store may choose to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions.

CIVIL MONEY PENALTY

A CMP as an optional penalty in lieu of a one-year disqualification was considered in this case. Such a finding is appropriate only if: 1) a store sells a substantial variety of staple food items, and; 2) its disqualification would create a 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.

In this regard, some degree of inconvenience to SNAP benefit users is inherent in the disqualification from the SNAP of any participating food store, since the normal shopping pattern of such SNAP benefit holders may temporarily be altered during that period. In this case, however, the ROD has rendered a finding pursuant to 7 CFR § 278.6(f) that it would not be appropriate to impose a CMP in lieu of a period of disqualification. The ROD has determined that Appellant is not the only authorized retail food store in the area "selling as large a variety of staple food items at comparable prices." In addition, the ROD notes that the subject store is classified in the FNS SNAP retailer database as a convenience store. That database also shows a

supermarket located within a one-mile radius. This store is easily accessible to customers and offers a variety and quality of staple foods comparable to, or better than, those offered by Appellant. Appellant does not carry any unique items or foods that cannot be found at other stores. Therefore, the earlier determination that Appellant's disqualification would not create a hardship to customers, as differentiated from potential inconvenience, is sustained, and a CMP in lieu of disqualification is not appropriate in this case.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to impose a disqualification of one year against Moo-Moos Food Mart from participating as an authorized retailer in SNAP is sustained.

In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter. A new application for participation in SNAP may be submitted ten (10) days prior to the expiration of the one-year disqualification period.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

RICH PROULX
ADMINISTRATIVE REVIEW OFFICER

June 10, 2019