

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

**Former Owners of Moobi & Qasim Corp
T/A A 1 Pizza & Mini Mart #5,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0224920

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 a finding that a Transfer of Ownership Civil Money Penalty (TOCMP) of \$8,928.00 was properly assessed against **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, the former owners of Moobi & Qasim Corp T/A A 1 Pizza & Mini Mart #5 (Appellant), for selling or transferring a store that has been disqualified from the Supplemental Nutrition Assistance Program (SNAP) for three years as a result of WIC Program violations.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(2) in its administration of the SNAP, when it assessed a TOCMP in the amount of \$8,928.00 against Moobi & Qasim Corp T/A A 1 Pizza & Mini Mart #5 on January 9, 2020.

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 case record documents that FNS disqualified Moobi & Qasim Corp T/A A 1 Pizza & Mini Mart #5, under the ownership of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, from the SNAP for three years as a result of WIC Program violations. The effective date of the SNAP disqualification is January 31, 2018. The three year SNAP Disqualification Letter dated January 10, 2018 stated that in the event that the owners sell or transfer ownership of the Appellant firm subsequent to the disqualification, they will be subject to and liable for a CMP as provided by SNAP

regulations Sections 278.6(f)(2), (3), and (4). The amount of this sale or transfer CMP will be calculated based on SNAP regulations 278.6(g).

On or about June 15, 2018, the Appellant sold Moobi & Qasim Corp T/A A 1 Pizza & Mini Mart #5 to a new store owner as agreed upon by both the Seller and the Buyer as documented by a Bill of Sale, a cashier's check for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (dated June 15, 2018), and a Real Estate Lease in the case record. When the new store owner was authorized to participate in the SNAP on December 31, 2019, the Retailer Operations Division discovered that Moobi & Qasim Corp T/A A 1 Pizza & Mini Mart #5 had been sold or otherwise transferred by the former owners/Appellant. As a result, the Retailer Operations Division, in a letter dated January 9, 2020, notified the Appellant that it had assessed a TOCMP in the amount of \$8,928.00 in accordance with the SNAP regulations.

In a letter postmarked January 14, 2020, the Appellant requested an administrative review of the assessment of the TOCMP. FNS granted the Appellant's request for administrative review by letter dated January 27, 2020 and the assessment of the TOCMP was held in abeyance pending completion of this review. In a letter postmarked February 13, 2020, the Appellant submitted additional information in support of its request for administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions 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 matter asserted is more likely to be true than not true.

CONTROLLING STATUTE 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 U.S.C. § 2021(e)(1) states, in part:

In the event any retail food store or wholesale food concern that has been disqualified under subsection (a) of this section is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern shall be subjected to a civil penalty in an amount established by the Secretary through regulations to reflect that portion of the disqualification period that has not yet expired. [Emphasis added.]

7 CFR § 278.6(e)(8) states, in part:

FNS shall disqualify from the Food Stamp Program any firm which is disqualified from the WIC program."

7 CFR § 278.6(e)(8)(i)(E) states, in part:

FNS shall disqualify from the SNAP any firm which is disqualified from the WIC Program ...for any of the following specific program violations: A pattern of charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price ...

7 CFR § 278.6(e)(8)(ii)(A) and (B) state . . . FNS shall disqualify a firm from SNAP on the basis of a WIC disqualification unless:

- (A) Prior to the time prescribed for securing administrative review of the WIC disqualification action, the firm was provided individual and specific notice that it could be disqualified from SNAP based on the WIC violations committed by the firm;
- (B) A signed and dated copy of such notice is provided to FNS by the WIC administering agency.

7 CFR § 278.6(e)(8)(iii)(A) states, in part that such a disqualification:

...shall be for the same length of time as the WIC disqualification.

7 CFR § 278.6(e)(8)(iii)(C) states, in part, that such a disqualification:

Shall not be subject to administrative or judicial review under the Food Stamp Program.

7 CFR § 278.6(f)(2) states, in part:

In the event any retail food store . . . which has been disqualified is sold or the ownership thereof is otherwise transferred . . . the person or other legal entity who sells or otherwise transfers ownership . . . shall be subjected to and liable for a civil money penalty in an amount to reflect that portion of the disqualification period that has not expired, to be calculated using the method found at § 278.6(g) . . .

7 CFR § 278.6(f)(3) states:

At any time after a civil money penalty imposed under paragraph (f)(2) of this section has become final under the provisions of part 279, the Food and Consumer Service may request the Attorney General institute a civil action to collect the penalty from the person or persons subject to the penalty in a district court of the United States for any district in which such person or persons are found, reside, or transact business.

7 CFR § 278.6(f)(4) states:

A bona fide transferee of a retail food store shall not be required to pay a civil money penalty imposed on the firm prior to its transfer. A buyer or transferee (other than a bona fide buyer or transferee) may not be authorized to accept or redeem coupons and may not

accept or redeem coupons until the Secretary receives full payment of any penalty imposed on such store or concern.

7 CFR § 278.6(g) which provides the steps for calculating the TOCMP, states, in part:

- (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) Multiple the average monthly redemption figure by 10 percent.
- (3) Multiply the [average monthly redemption times 10 percent] by the number of months for which the firm would have been disqualified . . .

Notwithstanding the above, there is an agency limit of \$11,000.00 per violation as the maximum TOCMP amount.

APPELLANT'S CONTENTIONS

The following may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration have been given to all contentions presented, including any not fully recapitulated or specifically referenced herein.

In response to the Retailer Operations Division's determination via a request for administrative review and in subsequent correspondence, the Appellant argued that:

- The Appellant was disqualified from the WIC and SNAP programs for three years as a new employee sold sweet cereal that was not an approved WIC food item. As noted in the attached Pennsylvania WIC state agency letter, the state agency claimed the shelf price was \$28.07 and the Appellant redeemed \$33.13. The letter listed it as a mispriced item. The Appellant did not overcharge. The employee gave sweet cereal in lieu of unsweetened cereal. This was negligence in good faith. In addition, the original WIC suspension occurred due to a clerical error which resulted in a penny difference in prices. The owners are aware that they should have disputed this at the time that the incident occurred; however, they did not know the proper process to appeal the original violations. The Appellant requests that the original violations be reviewed to see that the violations did not deserve a suspension. The Appellant does not deserve the imposed CMP in the amount of \$8,928.00 as the WIC Program violations were the result of understandable human error.
- The owners sold the store due to a lack of customers after it had been disqualified from the WIC and SNAP programs.
- The owners were not informed correctly to understand the CMP and how it would be enforced. Having known this beforehand, the owners would not have sold the business.

In support of these contentions, the Appellant submitted a letter dated September 29, 2017 from the Pennsylvania WIC state agency to the Appellant.

ANALYSIS AND FINDINGS

Moobi & Qasim Corp T/A A 1 Pizza & Mini Mart #5, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was disqualified from the SNAP for three years as a result of WIC Program violations. The effective date of the SNAP disqualification is January 31, 2018. Documents in the case file show that the Appellant sold and/or transferred the disqualified store to a new store owner on or about June 15, 2018, and that this was the basis of the Retailer Operations Division's assessment of an \$8,928.00 TOCMP.

WIC Charges

The Appellant contends that the firm was disqualified from the WIC and SNAP programs for three years as a new employee sold sweet cereal that was not an approved WIC food item. As noted in the attached Pennsylvania WIC state agency letter, the state agency claimed the shelf price was \$28.07 and the Appellant redeemed \$33.13. The letter listed it as a mispriced item. The Appellant did not overcharge. The employee gave sweet cereal in lieu of unsweetened cereal. This was negligence in good faith. In addition, the original WIC suspension occurred due to a clerical error which resulted in a penny difference in prices. The owners are aware that they should have disputed this at the time that the incident occurred; however, they did not know the proper process to appeal the original violations. The Appellant requests that the original violations be reviewed to see that the violations did not deserve a suspension. The Appellant does not deserve the imposed CMP in the amount of \$8,928.00 as the WIC Program violations were the result of understandable human error. In support of these contentions, the Appellant provided FNS with the above noted document for review.

With regard to the Appellant's contentions, in accordance with 7 CFR § 278.6(e)(8)(ii)(A) and (B), the Appellant was provided with specific notice that the firm could be disqualified from the SNAP based on the WIC violations committed by the firm. This notice was given to the firm by the Pennsylvania WIC state agency in a letter dated September 29, 2017. A copy of that notice was provided to FNS by the Pennsylvania Department of Health in addition to an email dated November 16, 2017 stating that the timeframe for the store to appeal the WIC disqualification has ended (i.e., the Appellant's appeal rights had been exhausted).

Additionally, in accordance with 7 CFR § 278.6(e)(8), the Appellant was informed by both the Pennsylvania WIC state agency and the FNS Retailer Operations Division that the decision to reciprocally disqualify the Appellant firm from the SNAP on the basis of the WIC disqualification would not be subject to administrative or judicial review. Further, the regulations state that the SNAP disqualification shall be for the same length of time as the WIC disqualification and may begin at a later date than the WIC disqualification.

Consequently, this administrative review has no authority to render an opinion regarding the WIC violations that were uncovered by the state of Pennsylvania. According to the state's records, the Appellant firm engaged in a pattern of charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price. Pursuant to the state's administrative regulations, such a violation warrants a three year WIC disqualification.

The record also shows that the Appellant's appeal rights have been exhausted and the WIC Program disqualification was upheld.

With all of these facts clearly in place and because the Retailer Operations Division's decision to reciprocally disqualify the firm from the SNAP is wholly in line with Federal regulations, this administrative review has no authority to further review such a determination. This is pursuant to 7 CFR § 278.6(e)(8)(iii)(C).

Financial Hardship

The Appellant contends that the owners sold the store due to a lack of customers after it had been disqualified from the WIC and SNAP programs. While FNS is sympathetic to the store owners' circumstances, neither the Food and Nutrition Act of 2008 nor its implementing regulations allow for factoring in individual circumstances such as profitability when determining whether a TOCMP is warranted because of the sale of a business. There is clear indication in the Retailer Operations Division case file that the Appellant, in fact, sold the former business while it was disqualified. As such, it has been determined that there is enough evidence to support the Retailer Operations Division's determination that this does constitute a sale of a business making Moobi & Qasim Corp T/A A 1 Pizza & Mini Mart #5 subject to the TOCMP as outlined in the Federal regulations at 7 CFR § 278.6(f)(2).

Unaware of CMP

The Appellant contends that the owners were not informed correctly to understand the CMP and how it would be enforced. Having known this beforehand, the owners would not have sold the business.

The Appellant was informed by the Pennsylvania WIC state agency in the September 29, 2017 letter discussed above that per 7 CFR § 246.18(b)(1) of the WIC regulations, the disqualification from the WIC Program may result in disqualification as a retailer in the SNAP. Such disqualification is not subject to administrative or judicial review under SNAP. Further, the SNAP regulations state that the SNAP disqualification shall be for the same length of time as the WIC disqualification and may begin at a later date than the WIC disqualification.

In addition, the Appellant was informed by the Retailer Operations Division in the three year SNAP Disqualification Letter dated January 10, 2018 that in the event that the owners sell or transfer ownership of the Appellant firm subsequent to the disqualification, they will be subject to and liable for a CMP as provided by SNAP regulations Sections 278.6(f)(2), (3), and (4). The amount of this sale or transfer CMP will be calculated based on SNAP regulations 278.6(g). Accordingly, the former owners received proper legal notice that a TOCMP would be imposed if the business was sold after the date of disqualification. The Retailer Operations Division determined that a legal sale of the business did occur and this is supported by documents in the case record.

TOCMP Amount

The Appellant contends that it does not deserve the imposed CMP in the amount of \$8,928.00.

This review is to determine whether the Retailer Operations Division's decision to assess a TOCMP against the former owners of a previously disqualified firm was in accordance with applicable regulations. The three year disqualification of the Appellant in 2018 as a SNAP retail food store is not under review. The Appellant was already afforded the opportunity to appeal that determination.

A review of the case record documents that the Retailer Operations Division correctly calculated the amount of the TOCMP under 7 CFR § 278.6(g). That regulation states that the TOCMP is to be calculated on a formula which includes the SNAP redemption volume of the store during the 12 months prior to the firm being notified of the violations that led to the store's disqualification. Modifications to the TOCMP may occur only when there is an error in calculation or the amount exceeds the agency limit.

As mentioned above, the formula for the computation for the TOCMP is specific per 7 CFR §278.6(g) and does not allow for any reductions. However, the regulations do provide that an **installment plan be allowed** for paying the TOCMP over the period of disqualification. The regulations, 7 CFR §278.6(h), state the following:

A firm has 15 days from the date the FNS Retailer Operations Division notifies the firm in writing in which to pay the civil money penalty or to notify the Retailer Operations Division in writing of its intent to **pay in installments** as specified by the Retailer Operations Division ... The civil money penalty must be paid in full by the end of the period for which the firm would have been disqualified (emphasis added). FNS shall:

- (1) Disqualify the firm for the period determined to be appropriate under paragraph (e) of this section if the firm refuses to pay any of the civil money penalty;
- (2) Disqualify the firm for a period corresponding to the unpaid part of the civil money penalty if the firm does not pay the civil money penalty in full or in installments as specified by the FNS Retailer Operations Division ...

The Retailer Operations Division correctly determined that, using the methodology described in 7 CFR § 278.6(g), the calculated amount of the TOCMP was \$8,928.00. This includes **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in credit for the five months the owners owned the firm from the date of the SNAP disqualification (January 2018) to the transfer of ownership date (June 2018).

The FNS Financial Management Accounting Division can be contacted at 1-703-605-0483 to discuss payment options or other related topics.

Summary

The regulations at 7 CFR § 278.6(f) require FNS to assess a TOCMP against the former owner(s) of a disqualified store that has been sold or otherwise transferred to a new owner. Moreover, the

regulations at 7 CFR § 278.6(g) outline how to calculate the amount of the TOCMP utilizing the aforementioned formula. As such, there is no discretion in the calculation of the TOCMP amount.

CONCLUSION

A review of the evidence in this case indicates by a preponderance of the evidence that Moobi & Qasim Corp T/A 1 Pizza & Mini Mart #5, formerly owned by the Appellant, was sold on or about June 15, 2018 after it had been disqualified from the SNAP for three years effective January 31, 2018. Therefore, the SNAP regulations at 7 CFR § 278.6(f)(2) applies to this transfer of ownership. A review of the calculations shows that the amount of the TOCMP assessed by the Retailer Operations Division was correct and proper and the decision in this case is hereby sustained. In accordance with the Food and Nutrition Act of 2008, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of 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 the Appellant resides 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), 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.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

March 9, 2020