

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

Qera Ethiopian Meat Market, LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0218199

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that Qera Ethiopian Meat Market, LLC (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain a six month disqualification of Appellant 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 in its administration of the SNAP, consistent with 7 CFR § 278.6(f)(1), 7 CFR § 278.6(a), and 7 CFR § 278.6(e), when it imposed a six month period of disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

The USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period of November 8, 2017, through September 4, 2018. The investigative report documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple separate occasions. The items sold on multiple dates are best described as common, major nonfood items.

As a result of evidence compiled during the investigation, by letter dated June 10, 2019, Retailer Operations charged the owner with violating the terms and conditions of the SNAP regulations.

Misuse of SNAP benefits was noted on the Charge letter that warrants a disqualification as a SNAP retail food store for a period of six months. The letter also states that under certain conditions FNS may impose a civil money penalty (CMP) in lieu of a disqualification.

The record shows that the owner did not reply to the Charge letter in writing. Retailer Operations informed the owner by Determination letter dated June 25, 2019, that the violations cited in the Charge letter occurred at the firm and that a six month period of disqualification was warranted. The letter also stated that eligibility for a hardship CMP was not applicable as there are other authorized retail food stores in the area selling as large a variety of staple foods at comparable prices.

The owner appealed the determination by letter dated June 27, 2019. The administrative review was granted by letter dated July 17, 2019.

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 credible, 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 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)(5) establish the authority upon which a six month disqualification may be imposed against a retail food store.

7 CFR § 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.”

7 CFR § 278.6(e)(5) of the SNAP regulations states that a firm is to be disqualified for six 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(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) provides for civil money penalty assessments in lieu of disqualification in cases where disqualification would cause hardship to SNAP benefit households because of the

unavailability of a comparable participating food store in the area to meet their shopping needs. It states: “FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm’s disqualification would cause hardship to SNAP benefit 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

A list of the violative investigative passes were listed in the Charge letter. The record includes an investigative report that provides details on the results of each compliance visit. The investigative report documents that SNAP violations were recorded during three store visits that warrant a six month disqualification. The SNAP violations of 7 CFR § 278.2(a) involved the sale of major nonfood items for benefits including a sauce pot and pasta cooker.

APPELLANT’S CONTENTIONS

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

- I am not in any way jeopardizing the countless hours of hard work, toil and sweat, working 7 days a week non-stop, year-round by breaking the rules and regulations of SNAP.
- SNAP is just a fraction of my overall transaction and it doesn’t make any economic sense at all for me to engage myself in such petty and minuscule activities thereby endangering my reputation on the line.
- On a letter dated May 10, 2019, I was informed that the USDA has evidence to establish violations of the SNAP regulations had occurred at my store. On this same letter in addition to the official warning from USDA, an attachment was enclosed that details results of a redacted investigations at two occasions/visits, on June 12, 2018 and August 21, 2018.
- On these two exhibits, it was noted that on June 12, 2018, the investigator purchased ineligible items (packs of candy, bags of chips, and 12 packs of soda) on August 21 , 2018, again the investigator purchased items (pack candy, bag coffee beans, and box cookies/biscuits) using the EBT card in both incidences.
- While I have very little recollection of these transactions, I honestly think this may have occurred mainly because of lack of the full grasp of the scope of eligible and ineligible items permitted for purchase using EBT benefits. These two transactions involve items such as candies, biscuits, chips, soda, and that it is easier to mistake them as “food items.”
- After I received this warning letter, I took the time to review the training material fully and I have also shared the same with one part-time employee. I assure you this is not going to occur again.
- However, I received another letter dated June 10, 2019. On this letter it was stated that my store had violated the SNAP regulations on three occasions, i.e., February 22, 2018, March 22, 2018, and August 16, 2018. This letter alleges that an “unknown female clerk” had accepted EBT in exchange for eligible food items and an ineligible items, on all three occasions.

- I contacted the USDA staffer by phone to dispute this matter and I have not had much lack [sic] in trying to get across my side of the story. I honestly believe the staffer was not cooperative to hear my side of the story.
- Two agents from the FBI showed up at my store and interrogated me assisted by a recording device that such incidence had occurred. I explained that none of the transactions that allege my store had accepted EBT payment in exchange for the sale of items such as a non-stick aluminum sauce pot had occurred. This didn't happen at all under my watch.
- As I noted above based on the initial letter dated May 10, 2019, I took appropriate measures such that similar incidences stated in the letter will not happen again. However, what is alleged in the second letter is something that I dispute to the best of my knowledge.

ANALYSIS AND FINDINGS

This review is to either validate or to invalidate the determination made by Retailer Operations; it is limited to the facts at the basis of Retailer Operations' determination at the time it was made. Upon review, the evidence supports that Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations, on multiple occasions. Three violations are considered evidence of carelessness. Therefore, the violations in this case are not too limited to warrant a disqualification. The regulations at 7 CFR § 278.6(e)(5) specify that FNS shall "disqualify the firm for six 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 nonfood items due to carelessness or poor supervision by the firm's ownership or management."

The record shows that USDA sent the owner a warning letter dated May 10, 2019. Based on review of the two Exhibits to support that letter, no ineligible items were sold in exchange for SNAP benefits. Thus, based review of the record, the warning letter should not have been issued to Appellant.

This review is limited to the circumstances that were at the basis of Retailer Operations' action in June 2019 when it issued a Charge letter based on three sales of major ineligible items as detailed in the Charge letter. It is not the authority of this review to consider what subsequent remedial actions may be undertaken so that an authorized store might begin to comply with program regulations. There are no provisions in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective actions implemented subsequent to findings of program violations. Therefore, Appellant's contentions that corrective actions have been taken based on a warning letter issued apparently in error, do not provide a valid basis for dismissing the charges or the penalty imposed by the Determination letter of June 25, 2019. Regardless of who the store owner utilizes to handle store business, the owner is accountable for the proper handling of SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in SNAP when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf.

The record states that on March 29, 2019, the owner was interviewed by someone from the Federal Bureau of Investigation and another agent, and that the interview was recorded. The record states that as far as the owner knew, she didn't sell ineligibles to anyone paying with SNAP benefits. The owner maintained this posture even though, according to the record, the owner was informed that the investigation was documented during undercover operations.

The charges of violations are based on the findings of a formal USDA investigation by the Office of Inspector General. The 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 sales of major nonfood items, and in all other critically pertinent detail. As such, the preponderance of the evidence supports that Appellant sold nonfood items on multiple store visits in exchange for SNAP benefits, a regulatory violation.

CIVIL MONEY PENALTY

Retailer Operations rendered a finding that it was not appropriate to impose a CMP in lieu of a six month period of disqualification from SNAP. The record documents that there are other authorized stores within a nearby radius of Appellant that stock a variety of comparable staple foods at comparable prices. The evidence does not support that it will cause hardship for SNAP recipients if Appellant is disqualified. Therefore, Appellant is not eligible for a hardship CMP.

CONCLUSION

Based on the review of two Exhibits in the record, the issuance by USDA of the May 2019 warning letter to Appellant appears to have been in error.

This review is of the sanction determination issued against Appellant in June 2019. As regards that determination, the preponderance of the evidence in the record supports that the program violations charged at Appellant did occur. The record includes an OIG investigative report that supports the violations as cited in the Charge letter. Retailer Operations also assessed the transactions of ineligible items, and the record shows that the three violations are documented. While the owner disputes that violations occurred, she provided no evidence to support her position.

The record documents that Retailer Operations considered Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the regulations, and properly denied it. There are other authorized firms nearby that carry as large a variety of staple foods at comparable prices as Appellant. Therefore, the six month disqualification of Appellant from participation as an authorized retail food store in the SNAP is sustained.

RIGHTS AND REMEDIES

This penalty shall become effective thirty (30) days after receipt of this decision. A new application for participation in the SNAP may be submitted ten (10) days prior to the expiration of the six month period of disqualification. Please contact the Retailer Center at 877-823-4369

with general questions regarding the SNAP application process. Please contact Elizabeth Rivas at (213) 330-2441 if you have operations questions.

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023), and to the regulations at 7 CFR § 279.7 with respect to your right to judicial review of this decision. 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 owner resides or is 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

August 20, 2019