

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

**Quick Stop,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0236715**

**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 the permanent disqualification of Quick Stop (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate. However, the decision is modified to remove the fiscal claim of \$129.44.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

**AUTHORITY**

7 USC § 2021 and the 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**

USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period from October 4, 2020, through October 11, 2020. The investigation report documents that personnel at Quick Stop exchanged cash for merchandise purchased with SNAP benefits. Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food is trafficking as defined under 7 CFR §271.2. It was also reported that during the course of the investigation the Appellant firm violated SNAP rules by allowing ineligible non-food items to be purchased with SNAP benefits on three separate occasions.

As a result of evidence compiled from the investigation, the Retailer Operations Division informed Appellant, in a letter dated November 12, 2020, that it was charged with violating the terms and conditions of the SNAP regulations. Appellant, through counsel, replied to the charge letter on December 7, 2020. Appellant explained that the violations were conducted by an employee who has since been terminated and involved entrapment. Appellant requested a civil money penalty (CMP).

After considering the retailer's reply and the evidence, the Retailer Operations Division notified Appellant in a letter dated January 4, 2021, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and § 278.6(e)(1) for trafficking violations. This determination letter further stated that Appellant was not eligible for a trafficking CMP because it 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.

Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review by letter dated January 15, 2021. The appeal was granted.

### **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 LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 USC § 2021(b)(3)(B) states, in part:

... 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 § 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...

7 CFR § 278.6(e)(1) reads, in part:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 defines trafficking, in part, as:

- (1) 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.
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

7 CFR § 278.6(i) states, in part:

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.

7 CFR § 278.6(b)(2) states, in part:

(ii) 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 as specified in § 278.6(i), 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).** [Emphasis added.]

(iii) **If a firm fails to request consideration for a civil money penalty** in lieu of a permanent disqualification for trafficking **and submit documentation and evidence** of its eligibility **within the 10 days** specified in § 278.6(b)(1), **the firm shall not be eligible** for such a penalty. [Emphasis added.]

7 CFR § 278.7(a) states:

FNS may establish and pursue claims against firms or other entities which have accepted or redeemed coupons in violation of the Food and Nutrition Act of 2008 or this part regardless of whether the firms or entities are authorized to accept food stamps. If a firm fails to pay a claim, FNS may collect the claim by offsetting against amounts due the firm on redemption of other coupons or by deducting the amounts due from bonds posted by firms in compliance with the provisions of § 278.1(b)(4). FNS shall deny an application for authorization or reauthorization by a firm which has failed to pay a claim.

## INVESTIGATION DETAILS

A USDA investigator conducted five compliance visits at Quick Stop from October 4, 2020, through October 11, 2020. The investigation report dated October 23, 2020, was provided to the Appellant as an attachment to the charge letter, and included Exhibits A through F which provide details on the results of each compliance visit. The investigation report documents that SNAP violations were committed during two of the compliance visits.

The investigation reported that personnel exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cash for five cases of Red Bull that was purchased with 5 U.S.C. § 552 (b)(6) & (b)(7)(C) SNAP benefits (Exhibit B). Transactions of this nature are referred to in the regulations as “trafficking”. The investigator’s narrative documents that the clerk was made aware that the beverages were purchased with SNAP benefits at another store.

## APPELLANT’S CONTENTIONS

In its January 15, 2021, administrative review request, Appellant, through counsel, provided the following summarized contentions, in relevant part:

- Appellant request the CMP in lieu of permanent disqualification.
- Appellant did not conduct any violations during the last two visits.
- The employee that purchased five cases of Red Bull on October 5, 2020, using SNAP benefits and violated the regulations was not a permanent employee.
- This employee has been terminated.
- Appellant established its compliance policy on May 15, 2020, and training was held on May 20, 2020.
- The investigator originated the idea of trafficking and induced the shopkeeper to do it.
- The owner was not present when the investigator proposed the SNAP violations.
- Counsel refers to several court cases including: *Sorrells v. United States*, 287 U.S. 435; *Keaton v. State*, 253 Ga. 70; *United States v. Sistrunk*, 622 F.3d 1328 (11<sup>th</sup> Cir. 2010); *Jeter v. McNeil*, No. 5:08 cv101/SPM/MD, 2009 U.S. Dist. LEXIS 69911 (N.D. Fla. July 10, 2009); and *Yousef v. United States*, 647 F. Supp. 127, 131 (M.D. Fla.1986).
- The employee was induced by the investigator to violate the SNAP regulations and Appellant is not predisposed to violating the SNAP.
- Appellant has developed a policy to prevent SNAP violations and this was provided to the violating employee including terminating the employee who violates the SNAP regulations; procedures in place to implement corrective action when there are program complaints; a process for internal; and a review of the firms’ employees’ compliance with SNAP regulations.
- The compliance policy and program was in place prior to the violations.
- Appellant organized an effective training on November 20, 2020 for all employees.
- The owner was not aware of, did not approve of, and was not in any way involved in the conduct of the approval of trafficking violations.
- The documents were not submitted within ten days because counsel was not hired until after the ten days had expired.

- Appellant established an amended policy to be qualified for a CMP and to prevent any violations of the SNAP regulations.

With its administrative review request, Appellant provided the following documents:

- Three payroll stubs for the employee;
- Affidavit of the store owner;
- Employee affidavit;
- Quick Stop's Amended Policy to Prevent SNAP Violations from Occurring; and
- Quick Stop Compliance Training Attestation of Statement

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

### **ANALYSIS AND FINDINGS**

A full review of the case record shows that the charges of violations are based on the findings of a formal USDA investigation. A complete review of this documentation has yielded no error or discrepancy. The documentation presented by the Retailer Operations Division establishes by a preponderance of the evidence that the violations as reported occurred at Appellant. A preponderance of the evidence indicates that the violation described in Exhibits B of the investigation report meet the definition of trafficking. Trafficking in SNAP benefits is an extremely serious violation and both 7 USC §2021(b)(3)(B) and 7 CFR §278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification.

#### **Ownership Involvement**

Appellant states that a temporary employee was responsible for the trafficking violations. Although ownership was allegedly not involved in the violations, it cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. Regardless of whom the ownership of a store may utilize to handle store business, the ownership is accountable for the proper training of staff and the monitoring and 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 and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Ownership signed the FNS application to become a SNAP authorized retailer on April 3, 2020, which included a certification and confirmation that the owner 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."

## **No Previous Violations**

Counsel contends that a permanent disqualification is an unfair penalty given that it is Appellant's first program violation. A record of participation in the SNAP with no previously documented instance of violations does constitute grounds for dismissal of the current charges of violations for mitigating the impact of the violations upon which they are based. There is no provision in the Act or regulations that reverses or reduced a sanction based upon a lack of prior violations by a firm and its owners.

## **Corrective Action**

Appellant states that the employee has been terminated and Appellant will implement a more formal training program. Regarding this contention, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations Division's action. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that a store may begin to comply with program requirements.

In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of alleged or planned corrective actions implemented subsequent to findings of program violations. Therefore, Appellant's contention that corrective action has taken place does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

## **Civil Money Penalty**

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter, and that no extension of time could be granted for making the request or for providing the required evidence.

On November 20, 2020, counsel requested an extension regarding the ten calendar day time period to respond to the November 12, 2020, charge letter. The Retailer Operations Division granted this extension by letter dated November 20, 2020. However, this letter clearly states that *the time to request a civil money penalty in lieu of a permanent disqualification and to provide the documentation to support such a request cannot be extended*. The Retailer Operations Division determined that Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i).

In support of its administrative review, Appellant, through counsel, submitted several documents as evidence of the firm's SNAP training program. However, there is no authority to extend the time to provide evidence of an effective training beyond the original ten days. Therefore, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

## **CONCLUSION**

A review of the evidence in this case, supports by a preponderance that program violations did occur during a USDA investigation. Therefore, the decision to impose a permanent disqualification against Appellant is sustained. The determination that Appellant is not eligible for a CMP is also sustained. However, the determination is modified to remove the fiscal claim of \$129.44.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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's 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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

May 3, 2021