

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

**Rihanna Deli Grocery Corp,**

**Appellant,**

**v.**

**Case Number: C0189875**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a six-month disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Rihanna Deli Grocery Corp., (hereinafter "Appellant") by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it imposed a six-month disqualification against Rihanna Deli Grocery Corp.

**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**

FNS records show that the Appellant firm, Rihanna Deli Grocery Corp., was initially authorized for SNAP participation as a convenience store on September 22, 2014. Between May 11, 2017, and May 31, 2017, FNS conducted an undercover investigation at the firm to ascertain its compliance with Federal SNAP laws and regulations. The investigative report documented that personnel at Rihanna Deli Grocery Corp. accepted SNAP benefits in exchange for ineligible merchandise on five separate occasions. According to the report, the Appellant firm sold foam

cups, dishwashing liquid, liquid degreaser, and household cleanser in exchange for SNAP benefits, which benefits may only be exchanged for eligible foods.

In a letter dated August 9, 2017, the Retailer Operations Division charged the Appellant with violating the terms and conditions of the SNAP regulations at 7 CFR § 278.2(a). The charge letter stated that the violation of accepting SNAP benefits in exchange for ineligible nonfood items warrants a disqualification period of six months pursuant to 7 CFR § 278.6(e)(5). The letter further stated that under certain conditions and in accordance with 7 CFR § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification.

In a letter dated August 17, 2017, the Appellant responded to the charge letter, arguing that its staff members did not recall selling any ineligible items for SNAP benefits. The Appellant further contended that its employees were fully trained in SNAP and had not had any prior issues or problems with the Program. The Appellant stated that it would take every precaution to ensure that SNAP violations would never happen at the store. The Appellant further argued that the firm relies on SNAP because it is located in an area where SNAP usage represents the majority of the firm's business. It claimed that a disqualification would put the business in a very difficult financial situation. Finally, the Appellant requested a CMP in lieu of disqualification if FNS concluded that the violations did occur.

It is noted that the Appellant did not provided any documentation or evidence to support its response to the charge letter.

After considering the Appellant's response and further reviewing the evidence in the case, the Retailer Operations Division issued a determination letter dated August 25, 2017. This letter informed the Appellant that it was the determination of the Retailer Operations Division that the violations did occur as outlined in the letter of charges and that a six-month disqualification penalty would be imposed in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that consideration for a hardship CMP was given, but that the Appellant was not eligible for a CMP because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked September 7, 2017, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted and implementation of the sanction has been held in abeyance pending completion of this review.

## **STANDARD OF REVIEW**

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(5) establish the authority upon which a six-month disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food.

7 CFR § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

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.... Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. [Emphasis added.]

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination...

7 CFR § 278.6(e) states, in part:

FNS shall take action as follows against any firm determined to have violated the Act or regulations...The FNS regional office shall:

(5) Disqualify the firm for 6 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(f)(1) states, in part:

FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and 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.

## **INVESTIGATION DETAILS**

During an undercover investigation conducted between May 11, 2017, and May 31, 2017, the USDA completed six compliance visits at Rihanna Deli Grocery Corp. The agency record indicates that a report of the investigation was provided to the Appellant as an attachment to the August 9, 2017, charge letter. The investigation report includes Exhibits A through F, and provides full details on the results of each compliance visit. SNAP violations were documented during five of the six visits, specifically the exchange of ineligible nonfood merchandise for SNAP benefits. The report notes that the following nonfood items were purchased by an investigator using SNAP benefits:

- One package of 16-ounce foam cups (Dart brand), Exhibit B
- One 12.6 fluid ounce bottle of dishwashing liquid (Palmolive brand), Exhibit C
- One 12.6 fluid ounce bottle of super degreaser (Ajax brand), Exhibit D
- One package of 16-ounce foam cups (Dart brand), Exhibit D
- One package of 16-ounce foam cups (Dart brand), Exhibit E
- One can of bleach cleanser (Comet brand), Exhibit F

The report notes that in Exhibit F, the investigator attempted to exchange SNAP benefits for cash (i.e. trafficking), but this attempt was refused by the clerk on duty. No other refusals occurred during the investigation. According to the report, the same clerk conducted all five violative transactions.

The charge letter states that the violations that occurred in Exhibits B, C, D, E, and F warrant a disqualification period of six months pursuant to 7 CFR § 278.6(e)(5).

## **APPELLANT'S CONTENTIONS**

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

- The firm's employees are well-trained and fully capable of processing SNAP transactions. The firm's owner provides staff with routine training sessions to discuss different scenarios for processing EBT transactions. In these sessions, different topics are discussed, including what is and is not eligible for purchase with SNAP.
- The Appellant firm is a law-abiding business and prides itself in running a business that is always in compliance with all programs.
- Appellant assures FNS that it will continue to take steps to prevent any type of violation.

- Appellant counts on every dollar to keep the business open and would like FNS to consider any possible way to allow the store to remain authorized in SNAP. The store is located in an area where SNAP redemptions represent the majority of the firm's income. Not being able to process SNAP for a six-month period would put the business in a very difficult financial situation.
- Should the administrative review officer decide to move forward with a six-month disqualification, Appellant would like to request a CMP in lieu of disqualification.
- Appellant apologizes for the alleged violations and will take every step necessary to prevent these types of violations from occurring.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

### **ANALYSIS AND FINDINGS**

The Appellant has not provided any evidence or documentation to counter FNS's investigation report. Rather, the Appellant appears to acknowledge that the violations may have taken place and offers an apology and its assurance that such violations will not happen in the future. Because the violations themselves do not appear to be in dispute, it is the determination of this review that program violations did occur as charged by the Retailer Operations Division. The balance of this review will address the Appellant's remaining contentions.

#### **Employees Trained in SNAP**

The Appellant contends that its employees are well-trained in SNAP and fully capable of processing such transactions. The Appellant owner claims that she provides routine training to all staff, including discussing what can and cannot be purchased with SNAP benefits. The Appellant further argues that it is a law-abiding business and has always been in compliance with all programs that it administers.

Unfortunately these contentions have no bearing on this case. That the firm's employees may have undergone training activities does not mean that violations did not occur. In fact, this review questions the effectiveness of the alleged training sessions, as every time the investigator attempted to purchase ineligible items with SNAP benefits, the clerk on duty allowed the transaction to take place. There was one instance in which the clerk refused to engage in trafficking, but no other refusals occurred.

It is also important to note that past compliance does not alter the penalty imposed on the firm. SNAP regulations at 7 CFR § 278.6(e)(5) require that when serious violations occur, such as the exchange of common nonfood items for SNAP benefits, a six-month disqualification is the necessary penalty, even on the first occasion, regardless of a firm's prior compliance with program rules.

Therefore, the contention that the Appellant has trained its staff to comply with SNAP rules and regulations or that it has been compliant with rules in the past does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Hardship to Appellant**

The Appellant contends that the firm counts on every dollar to keep the business open. According to the Appellant, the store is located in an area where SNAP redemptions represent the majority of the firm's income. Not being able to process SNAP for a six-month period would put the business in a very difficult financial situation.

With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with Program regulations, but also to those retailers who have been disqualified from the Program in the past for similar violations.

Therefore, the Appellant's contention that the firm or its owner may incur economic hardship based on the assessment of an administrative sanction does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Civil Money Penalty**

The Appellant has requested that if a disqualification is warranted, that a civil money penalty in lieu of disqualification be considered.

After reviewing all evidence in this case, it is the determination of this review that a CMP in lieu of a six-month disqualification is not appropriate. SNAP regulations at 7 CFR § 278.6(f)(1) state that a CMP in lieu of a temporary disqualification is only allowable when the firm's disqualification would cause hardship to SNAP households. According to this regulation, hardship is defined as "no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices."

It is the determination of this review that a disqualification of Rihanna Deli Grocery Corp., an urban convenience store, would not cause hardship to SNAP households because there are many other shopping options in the area. According to agency records, there are at least 50 comparable

or larger SNAP-authorized retail stores located within a half-mile radius of Rihanna Deli Grocery Corp., including two superstores, one supermarket, eight medium grocery stores, 28 small grocery stores, and many convenience stores.

It is recognized that some degree of inconvenience for SNAP households is likely whenever a SNAP-authorized store is disqualified and the households are forced to use their SNAP benefits elsewhere. However, in accordance with regulation cited above, hardship exists only when there are no other authorized stores in the area selling as large a variety of staple foods at comparable prices. Therefore, pursuant to 7 CFR § 278.6(f)(1), a hardship civil money penalty in lieu of disqualification cannot be assessed in this case.

## **CONCLUSION**

Based on a review of the evidence in this case, there is no question that program violations of 7 CFR § 278.2(a) occurred during a USDA investigation. All transactions cited in the letter of charges were either 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 ineligible, nonfood items, and in all other critically pertinent details. Pursuant to 7 CFR § 278.6(a) and (e)(5) the decision to impose a six-month disqualification against the Appellant, Rihanna Deli Grocery Corp., is sustained.

In accordance with the Act and regulations, the disqualification penalty shall become effective 30 days after receipt of this decision. A new application for SNAP participation may be submitted 10 days prior to the expiration of the six-month disqualification period.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON  
Administrative Review Officer

March 21, 2018