

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

Safeland Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0206188

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 Safeland Market (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 Safeland Market.

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, Safeland Market, was initially authorized for SNAP participation as a convenience store on April 19, 2017. Between March 27, 2018, and April 18, 2019, FNS conducted an undercover investigation at the firm to ascertain its compliance with Federal SNAP laws and regulations. The investigation report documented that personnel at Safeland Market accepted SNAP benefits in exchange for ineligible items on four separate occasions. According to the report, the Appellant firm sold paper plates, plastic bowls, bathroom tissue, steel wool pads, paper napkins, and dryer sheets in exchange for SNAP benefits, which benefits may only be used for the purchase of eligible foods.

In a letter dated May 20, 2019, the Retailer Operations Division charged the Appellant with violating SNAP regulations at 7 CFR § 278.2(a). The charge letter stated that the acceptance of SNAP benefits in exchange for ineligible nonfood merchandise warranted a disqualification from SNAP for a period of six months pursuant to 7 CFR § 278.6(e)(5). The letter further stated that under certain conditions and in accordance with § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification.

In a fax dated May 24, 2019, the Appellant responded to the charges, explaining that the store owner was not aware of and did not benefit in any way from the misconduct of his employees. However, the owner claimed full responsibility for the violations since they were committed by his employees. The Appellant explained that all employees were receiving additional training on how to handle SNAP transactions and indicated that any employee who does not follow the regulations would be dismissed from their employment at the firm.

After consider the Appellant's response and further evaluating the evidence in the case, the Retailer Operations Division issued a determination letter dated June 11, 2019. This letter informed the Appellant that it was the determination of the Retailer Operations Division that violations did occur as outlined in the charge letter 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 stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked June 14, 2019, the Appellant appealed the agency's determination by requesting an administrative review. The request was granted and implementation of the disqualification 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 March 27, 2018, and April 18, 2019, the Food and Nutrition Service completed five compliance visits at Safeland Market. The agency record indicates that a report of the investigation was provided to the Appellant as an attachment to the May 20, 2019, charge letter. The investigation report includes Exhibits A through E, and provides full details on the results of each compliance visit. SNAP violations were documented during four of the five visits, specifically the exchange of ineligible nonfood merchandise for SNAP benefits. The report states that the following nonfood items were purchased by an investigator using SNAP benefits:

- One 50-count package of paper plates (*Nature's Own* brand), Exhibit B
- One 12-count package of plastic bowls (*Solo* brand), Exhibit C
- One 451-sheet roll of bathroom tissue (*Charmin* brand), Exhibit C

- One 4-count box of steel wool pads (*S.O.S.* brand), Exhibit D
- One 451-sheet roll of bathroom tissue (*Charmin* brand), Exhibit D
- One 16-count package of paper napkins (*Creative Converting* brand), Exhibit E
- One 40-count box of dryer sheets (*Bounce* brand), Exhibit E

The report indicates that in Exhibit A, the clerk on duty refused to sell a box of plastic spoons to the investigator. In Exhibit E, the clerk refused to allow an exchange of SNAP benefits for cash (i.e. trafficking). The report states that one clerk conducted all four violative transactions.

The charge letter states that the violations that occurred in Exhibits C, D, and E 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 employee that made the mistake has had his employment terminated.
- The owner was not aware of and did not benefit from the misconduct. However, the owner takes full responsibilities “since they are my employees.”
- Appellant has made sure to train each employee and has let them know that if SNAP rules are not followed, they will be dismissed from their position immediately.

In support of its contentions, the Appellant provided a SNAP training document and training acknowledgement signed by both the owner and one of the firm’s employees. The document is dated May 25, 2019.

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 in this document.

ANALYSIS AND FINDINGS

The Appellant has not provided any evidence or documentation to counter FNS’s investigation report. In fact, the Appellant owner appears to acknowledge that violations occurred, taking full responsibility for the actions of his employees and claiming that the employee who committed the violations has been fired. Because the Appellant has not contested the allegations, it is the determination of this review that SNAP violations did occur as charged and that a six-month disqualification is warranted. The balance of this review will address the Appellant’s remaining contentions.

Owner Not Involved in Violations

The Appellant owner states that he was not involved in the violations and did not benefit from them. However, the Appellant acknowledges that the cashiers are his employees, and thus takes responsibility for their actions.

With regard to these claims, the record shows that the Appellant owner signed an application to participate as a SNAP retailer on March 26, 2017. By signing this application, the owner agreed to accept responsibility on behalf of the firm for compliance with all statutory and regulatory requirements associated with participation in SNAP. The record clearly establishes that the Appellant owner agreed to abide by program rules, including taking responsibility for violations committed by any of the firm's employees, whether paid or unpaid, new, full-time or part-time. An owner or manager is not free of responsibility simply because he or she was not in the vicinity at the time the violations occurred or because he or she was uninvolved in the violations.

The Appellant owner is correct to accept responsibility for the actions of his employees. Regardless of which clerks are operating the cash register at a given time or whom firm ownership authorizes to handle store business, the ownership of the firm is ultimately responsible for the proper training of staff and the monitoring and handling of SNAP benefit transactions.

Employee Training Program

The Appellant contends that it has retrained each employee and has let them know that if SNAP rules are not followed, they will be dismissed from their position immediately. In support of this contention, the Appellant provided a SNAP training document and acknowledgement statement dated May 25, 2019, and signed by both the owner and one of the firm's employees.

With regard to this contention, this review concedes that the firm may have an established training program. However, whether or not a training program exists is immaterial to this case. The regulations at 7 CFR § 278.6(e)(5) are clear that a firm is to be disqualified for six months if the evidence shows that personnel of the firm have committed violations such as the sale of common nonfood items due to carelessness or poor supervision. In this case, the evidence plainly shows that on four separate occasions a store clerk permitted ineligible nonfood items to be purchased with SNAP benefits. Such repetitive violations strongly suggest either a willful disregard of program rules or a lack of supervision by the firm's ownership or management. As such, the Appellant's training claims do not provide a valid basis for dismissing the charges or modifying the disqualification penalty.

Remedial Actions Taken

The Appellant contends that the employee who committed the violations has been dismissed from the company. This contention implies that because corrective action has taken place, the disqualification decision should be reconsidered.

With regard to this contention, it must be stated that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. This review is limited to the facts that existed at the time the violations were committed. It is not the authority of this review to consider any subsequent remedial actions that may have been taken or that will take place so that a store may enhance or 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 on the basis of alleged or planned corrective actions implemented after the discovery of program violations.

Civil Money Penalty

Although not requested by the Appellant, this review evaluated the firm's eligibility for a civil money penalty (CMP) in lieu of a six-month disqualification. To address potential difficulties that SNAP households might face when a firm is disqualified, regulations at 7 CFR § 278.6(f)(1) allow for a CMP to be imposed instead of disqualification when the firm's disqualification would cause "hardship" to SNAP households. According to this regulation, hardship occurs when there is "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 Safeland Market, a 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 30 similarly-stocked or larger SNAP-authorized retail stores located within a one-mile radius of Safeland Market including a supermarket directly across the street. There is also no evidence that Safeland Market sells its inventory at unusually low prices in comparison to nearby stores. Because hardship conditions do not exist in this case, a civil money penalty in lieu of disqualification is not an available option.

CONCLUSION

Based on a review of all information in this case, this administrative review finds through a preponderance of the evidence that program violations of 7 CFR § 278.2(a) did occur at Safeland Market 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 appears to be specific and accurate with regard to the dates of the violations, including the exchange of SNAP benefits for ineligible, nonfood merchandise, and in all other critically pertinent details. Therefore, pursuant to 7 CFR § 278.6(a) and (e)(5), the decision to impose a six-month disqualification against the Appellant, Safeland Market, 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 authorization 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

September 17, 2019