

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

**Former Owner of Sam’s Quick Stop #2,**

**Appellant,**

**v.**

**Case Number: C0201181**

**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 there is sufficient evidence to support a finding that a Transfer of Ownership Civil Money Penalty (TOCMP) of \$17,520.00 was properly assessed against **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, the former owner of Sam’s Quick Stop #2 (hereinafter “Sam’s Quick Stop”), for selling or transferring a store that has been permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP).

**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 \$17,520.00 against the Appellant as the former owner of Sam’s Quick Stop.

**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 permanently disqualified Sam’s Quick Stop, under the ownership of the Appellant, from the SNAP effective October 7, 2014 for trafficking in SNAP benefits. The permanent Disqualification Letter dated October 6, 2014 stated that if the

Appellant/owner sold or transferred the store after its disqualification, he would be subject to and liable for a TOCMP as provided by SNAP regulations at 7 CFR § 278.6(f)(2). As noted in the letter, the amount of the TOCMP is calculated based on the SNAP regulations at 7 CFR § 278.6(g).

On or about February 1, 2017, the Appellant sold Sam's Quick Stop to a new store owner for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) including the equipment, inventory, etc. and agreed upon by both the Seller and the Buyer as documented by a Secured Promissory Note, an Agreement for Sale and Purchase of Assets, and a Triple Net Lease in the case record. Per the Secured Promissory Note in the case file dated January 1, 2017, the new store owner agreed to pay the Appellant the principal sum of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in monthly payments of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) commencing on February 1, 2017 and continuing on the first day of each succeeding calendar month until the entire principal is paid off. When the new store owner was authorized to participate in the SNAP on July 5, 2017, the Retailer Operations Division discovered that Sam's Quick Stop had been sold or otherwise transferred by the former owner/Appellant. As a result, the Retailer Operations Division, in a letter dated August 17, 2017, notified the Appellant that it had assessed a TOCMP in the amount of \$17,520.00 in accordance with the SNAP regulations.

In a letter postmarked September 8, 2017, the Appellant, through counsel, requested an administrative review of the assessment of the TOCMP. FNS granted the Appellant's request for administrative review by letter dated September 13, 2017 and the assessment of the TOCMP was held in abeyance pending completion of this 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(f)(2) reads, 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 . . . If the retail food store or wholesale food concern has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period.

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) Multiply 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 postmarked September 8, 2017, the former owner of Sam's Quick Stop, through counsel, contends that:

- The store manager was responsible for the trafficking of SNAP benefits at Sam's Quick Stop during FNS' investigation. The Appellant was not involved in, was not aware of, and did not profit from the violative SNAP transactions that were conducted by the store manager.
- The permanent SNAP disqualification had a drastic financial effect on Sam's Quick Stop resulting in the store operating at a financial loss and forcing the Appellant to sell the store.
- The Appellant is not financially stable and cannot afford to pay a \$17,520.00 TOCMP.
- The Appellant was unaware that he would have to pay a TOCMP if he sold Sam's Quick Stop after it was permanently disqualified from the SNAP.
- Since the Appellant has already been permanently disqualified from participating in the SNAP, he should not have a TOCMP imposed as well.

- USDA's assessment of a TOCMP caught the Appellant off guard as he believed that the matter regarding Sam's Quick Stop ended with a permanent SNAP disqualification that was imposed three years prior to the imposition of the TOCMP.
- The Appellant requests that FNS find him eligible for a 60% reduction in the amount of the TOCMP and be allowed a one-time payment per the 1099 debt forgiveness program offered by USDA. However, if a reduction in the amount of the imposed TOCMP is not warranted, the Appellant requests that FNS agree to a payment deferral and a payment plan.

## **ANALYSIS AND FINDINGS**

Sam's Quick Stop, under the ownership of the Appellant, was permanently disqualified from the SNAP effective October 7, 2014. Documents in the case file show that the Appellant sold and/or transferred the permanently disqualified store to a new store owner on or about February 1, 2017, and that this was the basis of the Retailer Operations Division's assessment of a \$17,520.00 TOCMP.

### **Trafficking Charges**

The Appellant contends that the store manager was responsible for the trafficking of SNAP benefits at Sam's Quick Stop during FNS' investigation. The Appellant was not involved in, was not aware of, and did not profit from the violative SNAP transactions that were conducted by the store manager.

With regard to the Appellant's contention, the record reflects that the Appellant was provided an opportunity to reply to the September 8, 2014 Charge Letter (which the Appellant received on September 9, 2014 per UPS confirmation) issued by the Section Chief of the Retailer Operations Division. The Appellant responded to the violations outlined in the Charge Letter via letters to the Retailer Operations Division dated September 15, 2014 and September 19, 2014. The Appellant was also offered administrative review rights via the Retailer Operations Division's Determination Letter dated October 6, 2014 and received by the Appellant on October 7, 2014 (per UPS confirmation). The Appellant availed himself of the opportunity to request an administrative review by letter postmarked October 17, 2014. A request for administrative review was conducted and completed by FNS on December 8, 2014 (which the Appellant received on December 10, 2014 per UPS confirmation) and the Retailer Operations Division's original determination to permanently disqualify Sam's Quick Stop from the SNAP was sustained by FNS. As such, the permanent disqualification imposed upon the firm constitutes the Agency's final administrative determination and is not subject to further administrative review. Accordingly, as the sanction is beyond the scope of this review, no further decision is rendered regarding this contention.

### **Appellant Forced to Sell Store Due to Financial Loss**

The Appellant contends that the permanent SNAP disqualification had a drastic financial effect on Sam's Quick Stop resulting in the store operating at a financial loss and forcing the Appellant to sell the store. While FNS is sympathetic to the store owner's 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 Sam's Quick Stop subject to the TOCMP as outlined in the Federal regulations at 7 CFR §278.6(f)(2).

### **Appellant Not Financially Stable**

The Appellant contends that he is not financially stable and cannot afford to pay a \$17,520.00 TOCMP. While FNS is sympathetic to the former owner's situation, the SNAP regulations do not allow for such accommodation when assessing or determining the amount of the TOCMP for this type of action. As such, the Administrative Review Officer has no authority to reduce or eliminate the TOCMP based on the former owner's personal or financial situation.

### **Unaware of TOCMP Requirement**

The Appellant contends that he was unaware that he would have to pay a TOCMP if he sold Sam's Quick Stop after it was permanently disqualified from the SNAP. However, the October 6, 2014 Determination Letter from the Retailer Operations Division was addressed to the Appellant at the mailing address provided on the Appellant's retailer application, and was delivered thereto on October 7, 2014 and signed for by "5 U.S.C. § 552 (b)(6) & (b)(7)(C)" per UPS confirmation. On page two of the Determination Letter, the Appellant was informed that "In the event that you sell or transfer ownership of your store subsequent to your disqualification, you will be subject to and liable for a civil money penalty as provided by SNAP regulations Sections 278.6(f)(2), (3), and (4). The amount of this sale or transfer of ownership civil money penalty will be calculated based on SNAP regulations at Section 278.6(g)". Notice of the imposition of a TOCMP for the sale or transfer of a store is also contained in the regulations at 7 CFR § 278.6(f)(2). Therefore, the contention regarding being unaware of the assessment of the TOCMP if the store was sold does not provide a valid basis for mitigating or dismissing the TOCMP assessed by the Retailer Operations Division.

### **Double Penalty**

The Appellant contends that since he has already been permanently disqualified from participating in the SNAP, he should not have a TOCMP imposed as well. The SNAP regulations at 7 CFR § 278.6(e)(1) state, in part, "Disqualify a firm permanently if . . . Personnel of the firm have trafficked as defined in § 271.2" . . . The SNAP regulations at 7 CFR § 278.6(i) also state, in part, "FNS may impose a civil money penalty in lieu of a permanent

disqualification for trafficking as defined in § 271.2 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 . . .”. The Appellant noted in his September 8, 2017 request for administrative review that he requested consideration of a civil money penalty in lieu of a permanent SNAP disqualification. However, the Retailer Operations Division determined that the Appellant did not meet the criteria for the imposition of a trafficking civil money penalty in lieu of a permanent disqualification as outlined in the SNAP regulations. Therefore, a permanent SNAP disqualification was imposed upon Sam’s Quick Stop by the Retailer Operations Division via the October 6, 2014 Determination Letter.

7 CFR § 278.6(f)(2) authorizes FNS to assess a TOCMP against the owner of a disqualified retail food store that has been sold or the ownership is otherwise transferred, stating as follows:

“In the event any retail food store or wholesale food concern which has been disqualified is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or other legal entity who sells or otherwise transfers ownership of the retail food store or wholesale food concern 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). If the retail food store or wholesale food concern has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period. The disqualification shall continue in effect at the disqualified location for the person or other legal entity who transfers ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this paragraph”.

#### **5 U.S.C. § 552 (b)(7)(E)**

As stated on the Secured Promissory Note and additional documents in FNS’ case file, the Appellant sold Sam’s Quick Stop to a new store owner on or about February 1, 2017. Therefore, FNS imposed a TOCMP upon the Appellant because he sold Sam’s Quick Stop subsequent to the permanent disqualification of the firm from the SNAP.

#### **Permanent Disqualification Imposed Three Years Ago**

The Appellant contends that USDA’s assessment of a TOCMP caught him off guard as he believed that the matter regarding Sam’s Quick Stop ended with a permanent SNAP disqualification that was imposed three years prior to the imposition of the TOCMP. As stated above, 7 CFR § 278.6(f)(2) authorizes FNS to assess a TOCMP against the owner of a disqualified retail food store that has been sold or the ownership is otherwise transferred. As stated in the Secured Promissory Note and additional documents in FNS’ case file, the Appellant sold Sam’s Quick Stop to a new store owner on or about February 1, 2017. Therefore, FNS did not impose a TOCMP upon the Appellant for approximately three years because he did not sell Sam’s Quick Stop until February 1, 2017 and because FNS did not receive a SNAP Application from the new store owner to open a new store (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) at the same physical location as the previously disqualified Sam’s Quick Stop until June 22, 2017.

## Request to Lower Imposed TOCMP

The Appellant requests that FNS find him eligible for a 60% reduction in the amount of the TOCMP and be allowed a one-time payment per the 1099 debt forgiveness program offered by USDA. However, if a reduction in the amount of the imposed TOCMP is not warranted, the Appellant requests that FNS agree to a payment deferral and a payment plan. 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 FNS Financial Management Accounting Division can be contacted at 1-703-605-0483 to discuss payment options or other related topics.

The Retailer Operations Division correctly determined that, using the methodology described in 7 CFR § 278.6(g), the initial calculated amount of the TOCMP is \$17,520.00. Per the SNAP regulations, this TOCMP amount is 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. **5 U.S.C. § 552 (b)(7)(E)**

## Summary

The regulations at 7 CFR § 278.6(f) require FNS to assess a TOCMP against the former owner 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 Sam's Quick Stop #2, formerly owned by the Appellant, was sold on or about February 1, 2017 after it had been permanently disqualified effective October 7, 2014. Therefore, the SNAP regulation 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

May 3, 2018