

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

Shop N Quick,

Appellant,

v.

Case Number: C0210248

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that Shop N Quick (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, consistent with 7 CFR § 278.6(f)(1), 7 CFR § 278.6(a), and 7 CFR § 278.6(e), in its administration of the SNAP, 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 September 11, 2018 through December 3, 2018. The investigative report documents that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple separate occasions that warrant a six month disqualification period. The items sold on multiple dates are best described as common nonfood items.

As a result of evidence compiled during the investigation, by letter dated December 19, 2018, Retailer Operations charged the owners with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits was noted in Exhibits A, C, D, and E, 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 an accounting firm replied to the Charge letter on December 20, 2018. Retailer Operations informed the owners by Determination letter dated February 12, 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 accounting firm appealed the determination by letter dated February 14, 2019. The administrative review was granted by letter dated February 28, 2019. An owner provided additional information by letter dated March 5, 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 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

The investigative report was provided to the Appellant as Exhibits with the Charge letter. It provides details on the results of each compliance visit. The investigative report documents that SNAP violations were recorded during four store visits that warrant a six month disqualification. The violations involved the sale of nonfood items for SNAP benefits in violation of 7 CFR § 278.2(a) including: spoons, cutlery, matches, and soap.

APPELLANT’S CONTENTIONS

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

- The issue in question is that cashier clerks wrongly sold the merchandise to the customer.
- The clerks were still on probation and were trainees.
- The supervisor during these incidents was busy in another department and unable to overlook the clerk while purchase was happening.
- The trainees did not know they could not sell merchandise such as spoons, bar soap, etc.
- The owners have conducted a new policy so this does not happen again.
- The owner will list everything that is non-compliant with the SNAP regulations and post on and near the cash register to ensure that the clerks are aware of all SNAP regulations.
- Another step to be taken is to group all products that are ineligible on shelves and labeled with signage for EBT purchases to inform the employees and the customers.
- The store believes that by improving the processes and providing additional training that they will be successful and not misuse the SNAP benefits.
- Temporary staff was not trained.
- New training measures have been implemented so this situation does not happen again. All our employees are using the FNS Training materials guide and training videos found online given by the snap.
- We feel it would be a hardship if we lost our SNAP benefits, we feel this would be 85% of our customers.
- We ask that an HCMP be assessed instead of disqualification.

Training materials and signatures of store personnel certifying their dates of training were provided.

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 a nonfood item as defined by Section 271.2 of the regulations, on multiple occasions. The Exhibits furnished with the Charge letter warrant a disqualification period of six months. 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." Three violations are considered evidence of carelessness. Therefore, the violations in this case are not too limited to warrant a disqualification.

Regardless of who the store owner(s) utilizes to handle store business, the owner(s) is accountable for the proper handling of SNAP benefit transactions. Firm ownership confirmed their understanding and agreement of SNAP retailer requirements to complete the authorization process. When the owner(s) initially applied to become a SNAP retailer, the owner(s) certified by signature, the understanding of and agreement to abide by program rules and regulatory provisions. The certification page states that store ownership is responsible 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. This include violations such as accepting SNAP benefits as payment for ineligible items.

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. There are no provisions in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of claimed, after-the-fact corrective actions, implemented subsequent to findings of program violations. Therefore, the contentions that corrective actions such as training employees on SNAP and grouping products on the shelves, do not provide any valid basis for dismissal of the charges or mitigate the penalty imposed.

It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from SNAP participation. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition 2008 and the enforcement efforts of the USDA.

The preponderance of the evidence supports that Appellant sold nonfood items on multiple store visits in exchange for SNAP benefits, a program violation. The regulations stipulate FNS shall disqualify a 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 the sale of common nonfood items due to carelessness and poor supervision by the firm's ownership or management.

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. 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

The preponderance of the evidence in the record supports that the program violations charged did occur at Appellant. The USDA investigative record is specific, thorough, and fully documented with regard to the dates of the violations, the specific ineligible merchandise sold in exchange for SNAP benefits, and in all other critically pertinent detail. 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. 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 days prior to the expiration of the six month period of disqualification. Please contact the Retailer Center at 877-823-4369 with any questions regarding the SNAP application process.

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 owners reside 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, 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

March 27, 2019