

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

Spratlins Grocerry,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0218050

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 the Retailer Operations Division’s assessment of a **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** hardship civil money penalty (CMP) against Spratlins Grocerry in lieu of a six month disqualification 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(e)(5), 7 CFR § 278.6(f)(1), and 7 CFR § 278.6(g) in its administration of the SNAP, when it imposed a hardship CMP of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in lieu of a six month disqualification against Spratlins Grocerry.

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 Department of Agriculture conducted an investigation of the compliance of Spratlins Grocerry with Federal SNAP law and regulations during the period May 29, 2019 through August 7, 2019. In a letter dated September 11, 2019, the Retailer Operations Division charged the Appellant with accepting SNAP benefits in exchange for merchandise which included ineligible nonfood items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on three out of five compliance visits. The letter further informed the Appellant that the violations warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5). The

Charge Letter states that under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of disqualification.

In a response to the Retailer Operations Division of September 13, 2019, the Appellant replied to the charges therein stating that none of the individuals who exchanged SNAP benefits for ineligible nonfood items are still employed at the Appellant firm. The only individual currently working at the store is the one who refused to traffic SNAP benefits.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated September 17, 2019 informing the Appellant that the violations cited in the Charge Letter occurred at the firm and that a six month period of disqualification was warranted. The Determination Letter also stated that the Appellant was eligible for a hardship CMP as Spratlins Grocery was selling a substantial variety of staple food items and the firm's disqualification would cause hardship to SNAP households. Thus, a hardship CMP in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was imposed in lieu of the six month SNAP disqualification.

In a letter postmarked September 19, 2019, the Appellant requested an administrative review of the Retailer Operations Division's decision to impose a hardship CMP in lieu of a six month disqualification of Spratlins Grocery from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated October 7, 2019 and implementation of the hardship CMP 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, might 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 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) establish the authority upon which a one year disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2 (a) states, in part: "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 § 271.2 states that the definition of "coupon" includes: ... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part: (1) 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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system...”

7 CFR § 278.6(e)(5) states, in part: “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 food stamp 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.”

7 CFR § 278.6(g) states, in part: “Amount of civil money penalties for hardship and transfer of ownership. FNS shall determine the amount of the civil money penalty as follows:

- (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 product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section”

Notwithstanding the above, there is an agency limit of \$11,000 per violation as the maximum CMP amount.

APPELLANT’S CONTENTIONS

In the reply to the Charge Letter and in the request for administrative review, the Appellant made the following summarized contentions, in relevant part:

- None of the individuals who exchanged SNAP benefits for ineligible nonfood items are still employed at the Appellant firm. The only individual currently working at the store is the one who refused to traffic SNAP benefits.
- The Appellant truly values the relationship with USDA and sees SNAP as a way to enhance the lives of the people in the surrounding rural community.

- The Appellant continues to seek ways to improve its training and impress upon its employees the high importance of following the regulations set forth by USDA. The Appellant is increasing its training regimen and accountability measures with its current staffing.
- The Appellant realizes that ineligible nonfood items were allowed to be purchased with SNAP benefits. However, the nature of the products erroneously purchased with SNAP benefits is similar in use to those that are eligible. The breakdown is primarily a weakness in the Appellant's training and the staff's understanding of product eligibility. The Appellant is now requiring each employee to view the 17 minute introduction video guide and having them review the eligible food items listings on a regular, ongoing basis along with deploying other training tools, including discussion reviews and handouts for employees. The Appellant is also taking steps to improve the scanning tools at its point-of-sale to reduce errors.

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

ANALYSIS AND FINDINGS

During an investigation conducted from May 29, 2019 through August 7, 2019, USDA conducted five compliance visits at Spratlins Grocerry. A report of the investigation was provided to the Appellant as an attachment to the Charge Letter dated September 11, 2019. The investigation report included Exhibits A through E which provide full details on the results of each compliance visit.

The investigation report documents that SNAP violations were recorded during three of the five compliance visits. The chargeable violations involved the sale of ineligible nonfood items in exchange for SNAP benefits in violation of 7 CFR § 278.2(a). The Retailer Operations Division determined that the assessment of a hardship CMP of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in lieu of a six month disqualification was the appropriate penalty for these violations. A preponderance of the evidence supports the decision of the Retailer Operations Division.

Corrective Action

The Appellant contends that none of the individuals who exchanged SNAP benefits for ineligible nonfood items are still employed at the Appellant firm. The only individual currently working at the store is the one who refused to traffic SNAP benefits. The Appellant truly values the relationship with USDA and sees SNAP as a way to enhance the lives of the people in the surrounding rural community. The Appellant continues to seek ways to improve its training and impress upon its employees the high importance of following the regulations set forth by USDA. The Appellant is increasing its training regimen and accountability measures with its current staffing. The Appellant realizes that ineligible nonfood items were allowed to be purchased with SNAP benefits. However, the nature of the products erroneously purchased with SNAP benefits is similar in use to those that are eligible. The breakdown is primarily a weakness in the

Appellant's training and the staff's understanding of product eligibility. The Appellant is now requiring each employee to view the 17 minute introduction video guide and having them review the eligible food items listings on a regular, ongoing basis along with deploying other training tools, including discussion reviews and handouts for employees. The Appellant is also taking steps to improve the scanning tools at its point-of-sale to reduce errors.

With regard to the Appellant's contentions, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contentions that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

The Appellant contends that it would like for a hardship civil money penalty to be assessed in lieu of a six month SNAP disqualification.

The Retailer Operations Division correctly concluded that the Appellant was eligible for a hardship CMP in lieu of a six month SNAP disqualification as Spratlins Grocerry was selling a substantial variety of staple food items and the firm's disqualification would cause hardship to SNAP households. Thus, a hardship CMP in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was imposed in lieu of the six month SNAP disqualification.

The case record documents that the Retailer Operations Division correctly calculated the amount of the hardship CMP under 7 CFR § 278.6(g). That regulation states that the hardship CMP is to be calculated on a formula which includes the SNAP redemption volume of the store during the twelve months prior to the firm being notified of the violations. Modifications to the hardship CMP may occur only when there is an error in calculation or the amount exceeds the agency limit. The Retailer Operations Division correctly determined, using the methodology described in 7 CFR § 278.6(g), that the initial calculated amount of the hardship CMP was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). That calculation is shown below:

5 U.S.C. § 552 (b)(7)(E).

The calculation of the hardship CMP outlined in the above table correctly indicates that the amount of the imposed hardship CMP should be 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The SNAP regulations at 7 CFR § 278.6(g) prescribes how to calculate the amount of the hardship CMP utilizing a mandated formula. As such, there is no discretion in the calculation of the hardship CMP amount and a reduced hardship CMP cannot be granted.

The FNS Financial Management Accounting Division can be contacted at 1-703-605-0483 to discuss payment options or other related topics.

CONCLUSION

The charges of violations are based on the findings of a formal USDA investigation. The transactions cited in the letter of charges were conducted under the direction of a USDA investigator and are thoroughly documented. A complete review of this documentation has yielded no error or discrepancy. The investigation report is specific and thorough with regard to the dates of the violations, the specific facts related thereto, and is supported by documentation that confirms specific details of the transactions.

A review of the evidence in this case documents that personnel at Spratlins Grocerry exchanged SNAP benefits for ineligible nonfood items during three out of five compliance visits. However, the Retailer Operations Division determined that a six month disqualification of Spratlins Grocerry would create a hardship for SNAP households as there is no other authorized retail food store in the area selling a substantial variety of staple food items. Therefore, in lieu of a six month disqualification, the Retailer Operations Division assessed a hardship CMP against the Appellant of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A review of the calculations shows that the amount of the CMP was correct and proper and the decision in this case is hereby sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to 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 you 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, 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

November 18, 2019