

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

**SS Food Mart,**

**Appellant,**

**v.**

**Case Number: C0200931**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that SS Food Mart (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 an authorized food store 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 its 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 FNS.

**CASE CHRONOLOGY**

The USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period of August 30, 2017 through February 22, 2018. The investigative report documented 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 are best described as common nonfood items.

As a result of evidence compiled during this investigation, by letter dated March 23, 2018, Retailer Operations charged the owner with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits was noted in Exhibits B, C, D, and E, and the violations in B, D, and E warrant a disqualification of Appellant 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 owner replied to the Charge letter by telephone and in writing on March 28, 2018. Retailer Operations informed the owner by Determination letter dated April 24, 2018, 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.

Appellant appealed Retailer Operations' determination by letter dated April 26, 2018. The appeal was granted by letter dated May 7, 2018.

### **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 which 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 reads in part: “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**

A report of the investigation was provided to the Appellant as Exhibits with the Charge letter. The investigative report provides details on the results of each compliance visit. The investigation report documents that SNAP violations were recorded during three 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).

### **APPELLANT’S CONTENTIONS**

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

- According to the record, the owner stated that that one of the clerks no longer works there; he was in training on the days of the violations and it didn’t work out.
- This result will affect my business.
- We retrained our employees on ringing up EBT correctly.
- Rest of items did not charge amount of total did not charge because of the total item is not correct.

As evidence of the store’s pricing, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) submitted documents from an unknown vendor, and answered Retailer Operations’ questions verbally. The vendor information was not actual purchase invoices, but was submitted to show the prices that the owner generally paid for items. It is not known if the vendor pages submitted were for Appellant as there was no identifying information of either the vendor or the customer.

### **ANALYSIS AND FINDINGS**

The purpose of this review is to either validate or to invalidate the earlier determination made by Retailer Operations. This review is limited to what circumstances were at the basis of Retailer Operations’ determination at the time such action was taken. Retailer Operation conducted an analysis of incomplete information provided by the owner and determined the prices reported by

the owner did not include substantial evidence such as purchase invoices or cash register receipts. Additionally, a price listed on an item, is not necessarily the amount keyed into the cash register by store staff. The investigator reported that there were no prices indicated on some of the products, so it is possible that the cashier did not key the same prices that the owner reported.

Upon review, the evidence supports that Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations on multiple occasions. Exhibits B, D, and E furnished with the Charge letter warrant a disqualification period of six months. Section 278.6(e)(5) specifies 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 utilizes to handle store business, the owner is accountable for the proper handling of SNAP benefit transactions. 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. The owner was provided multiple and redundant resources through which a thorough knowledge of program rules and requirements could readily be obtained. The regulations stipulate “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 as the sale of common nonfood items due to carelessness and poor supervision by the firm’s ownership or management.”

Ownership contends that a SNAP disqualification will have a negative financial impact on Appellant’s business. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, to allow the owner 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 Act of 2008 and the enforcement efforts of the USDA. Furthermore, 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. .

The vendor statements were not actual purchase invoices, but were submitted to show the prices the owner stated he paid. Retailer Operations found there were no vendor names or store names, no dates of purchases, and no billing information on the statements. Retailer Operations used them as a general guideline and used a given mark-up of 45-50%. The record confirms that Retailer Operations made every effort to ascertain if the owner’s claim had any validity however, the prices reported by the owner did not include any substantial proof, and the costs/prices could not be verified. As such, the owner’s contention was not supported by a preponderance of the evidence.

The owner contends that he provided EBT training to his employees. With regard to this contention, the purpose of this review is to either validate or to invalidate the determination of the Retailer Operations. This review is limited to what circumstances were at the basis of Retailer Operations' determination. It is not the authority of this review to consider what subsequent remedial actions may be undertaken so that the owner might begin to comply with program requirements. There are no provisions in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective actions implemented subsequent to findings of program violations. Therefore, the owner's contention that corrective action such as employee training has been done, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **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 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 was not eligible for a hardship CMP.

### **CONCLUSION**

Based on a review of the evidence, 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) 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 (10) 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 Section 279.7 of the regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. 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

June 13, 2018