

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

**Star Quick Stop Inc,**

**Appellant,**

**v.**

**Case Number: C0203168**

**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 a six-month disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Star Quick Stop Inc., (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 Star Quick Stop Inc.

**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, Star Quick Stop Inc., was initially authorized for SNAP participation as a convenience store on December 15, 2014. Between October 24, 2017, and October 27, 2017, FNS conducted an undercover investigation at the firm to ascertain its compliance with Federal SNAP laws and regulations. The investigative report documented that personnel at Star Quick Stop Inc. accepted SNAP benefits in exchange for ineligible merchandise on five separate occasions. According to the report, the Appellant firm sold sponges, dishwashing liquid, plastic cutlery, toothpaste, sandwich bags, bath tissue, bars of soap, plastic cups, foam plates, plastic snack bags, and facial tissues in exchange for SNAP benefits, which benefits may only be used to purchase eligible foods. The report also indicated that on

three occasions the Appellant firm allowed SNAP benefits to be exchanged for hot food items, which are not eligible for purchase with SNAP benefits.

In a letter dated February 1, 2018, the Retailer Operations Division charged the Appellant with violating the terms and conditions of the SNAP regulations at 7 CFR § 278.2(a). The charge letter states that the violation of accepting SNAP benefits in exchange for ineligible nonfood items warrants a disqualification from SNAP for a period of six months pursuant to 7 CFR § 278.6(e)(5). The letter further states that under certain conditions and in accordance with 7 CFR § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification.

In a letter faxed on February 19, 2018, the Appellant, through counsel, replied to the charges. In its response, the Appellant acknowledged that SNAP violations may have occurred, but insisted that they were not the fault of the firm's management. According to the Appellant, the clerk on duty was there only temporarily while the firm's owner was away visiting family. The Appellant further stated that the firm has always complied with SNAP rules and regulations and that employees are properly trained upon hire. The Appellant claimed that employee policies and procedures relating to SNAP were in place at the time of the alleged violations. In lieu of disqualification, the Appellant requested the imposition of a civil money penalty based on, among other things, prior compliance with program rules and hardship that SNAP households would experience if the firm was disqualified.

In support of these contentions, the Appellant provided a copy of the firm's policies and procedures, a price list of the items mentioned in the investigation report, and a few photos taken inside the store.

After considering the Appellant's response and further evaluating the evidence in the case, the Retailer Operations Division issued a determination letter dated March 15, 2018. This letter informed the Appellant that it was the determination of the Retailer Operations Division that the violations did occur as outlined in the letter of charges 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 March 28, 2018, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted and implementation of the sanction 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 October 24, 2017, and October 27, 2017, the Food and Nutrition Service completed five compliance visits at Star Quick Stop Inc. The agency record indicates that a report of the investigation was provided to the Appellant as an attachment to the February 1, 2018, 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 each of the five visits, specifically the exchange of ineligible nonfood and hot food merchandise for SNAP benefits. The report states that the following ineligible items were purchased by a confidential informant using SNAP benefits:

- One package of sponges (*Best Choice* brand), Exhibit A
- One 12.6-ounce bottle of dish liquid (*Ajax* brand), Exhibit A
- One 48-piece box of plastic cutlery (*Best Choice* brand), Exhibit B
- One 2.7-ounce tube of toothpaste (*Crest* brand), Exhibit B
- One 80-count box of sandwich bags (*Good Sense* brand), Exhibit B
- One roll of bath tissue (*POM* brand), Exhibit C
- One 48-piece box of plastic cutlery (*Best Choice* brand), Exhibit C
- One two-count pack of soap bars (*Irish Spring* brand), Exhibit C
- One 30-count package of plastic cups (*Hefty* brand), Exhibit C
- Two hot, prepared burritos, Exhibit C
- One 50-count package of foam plates (*Hefty* brand), Exhibit D
- One roll of bath tissue (*POM* brand), Exhibit D
- One 22-count box of snack bags (*Glad* brand), Exhibit D
- Two hot, prepared corn dogs, Exhibit D
- One 174-count box of facial tissues (*Kleenex* brand), Exhibit E
- Two hot, prepared corn dogs, Exhibit E

The report indicates that when the confidential informant attempted to exchange SNAP benefits for cash, the clerk refused. According to the report, the same clerk conducted all five violative transactions. The charge letter states that the violations that occurred in Exhibits A, B, 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:

- Appellant has never had any previous violations; not even a warning notice.

- The mistakes were made by a friend who was managing the store while the firm's owner was in the hospital having a nose and throat surgery. It was an emergency situation, so the owner had two choices: shut the store down for a few days, or ask a friend to watch the store. If the owner had known what a mess the friend would make for the store, he would have temporarily closed the store instead.
- Appellant owner knows that this is all his fault, or just bad luck that the investigator happened to show up during these circumstances.
- The store is located in a poor area where families depend on SNAP.
- The Appellant and his family have to pay the price for the errors made by the owner's friend. The business will suffer once the SNAP customers are gone. It will kill the store and the owner's whole life.
- Appellant requests that this first-time offense be forgiven and that the firm be given another chance.

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 herein.

### **ANALYSIS AND FINDINGS**

The Appellant has not provided any evidence or documentation to counter FNS's investigation report. In fact, the Appellant appears to acknowledge that the violations occurred, though it contends that they were the fault of a temporary employee. Because the violations themselves do not appear to be in dispute, it is the determination of this review that program violations did occur as charged by the Retailer Operations Division and a six-month disqualification is warranted. The balance of this review will address the Appellant's remaining contentions.

#### **Violations Committed by Temporary Employee**

The Appellant contends that the violations were committed by a temporary employee while the owner was away from the store. (In its initial response to the charges, the Appellant stated that the violations occurred while the owner was away visiting family, and then in its request for administrative review, the Appellant stated that the violations occurred while the owner was in the hospital having surgery; so it is unclear what the actual circumstances were.) This contention implies that because the owner was not at fault for the violations that were committed, the disqualification penalty should be reversed.

With regard to this contention, the record shows that the Appellant owner signed an application to participate as a retailer in SNAP on November 25, 2014. 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. 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. To allow store ownership to disclaim accountability for the acts of its employees would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of USDA.

Therefore, the Appellant's claim that the violations were the fault of a temporary employee does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

### **No Prior Violations**

The Appellant argues that the firm has never had any prior violations; not even a warning letter. As such, the Appellant requests that this first-time offense be forgiven and that the firm be given another chance.

With regard to this contention, SNAP regulations at 7 CFR § 278.6(e)(5) require that when serious violations occur, such as the exchange of common nonfood items for SNAP benefits, a six-month disqualification is the necessary penalty, even on the first occasion, regardless of a firm's prior compliance with program rules. The purpose of this administrative review is to determine whether or not the Retailer Operations Division took appropriate action, consistent with SNAP regulations, in its imposition of a six-month sanction against Star Quick Stop Inc. As long as the administrative action taken by the agency fully conforms to SNAP regulations, this review has no authority to dismiss or reduce a period of disqualification.

In this case, the sanction imposed by the Retailer Operations Division for this first-time violation is entirely in line with SNAP regulations and is consistent with sanctions imposed upon other retailers that have committed similar violations. As such, the firm's compliance history does not provide a valid basis for this review to consider reversing or reducing the agency's disqualification action.

### **Hardship to Appellant**

The Appellant has stated that a six-month disqualification will cause hardship to the Appellant owner and his family. It claims that the loss of SNAP customers will kill the store and the owner's whole life.

With regard to these contentions, it is recognized that some degree of financial or economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there are no provisions in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, 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 requirements, but also to those retailers who have been disqualified from the program in the past for similar violations.

Therefore, the Appellant's contention that the firm may incur economic hardship as a result of its six-month disqualification from SNAP does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Hardship to SNAP Households / Civil Money Penalty**

The Appellant contends that the store is located in a poor area of Oklahoma City where families depend on SNAP. In its reply to the charge letter, the Appellant stated that "families within walking distance to Star Quick Stop would experience hardship and extreme inconvenience if [it] is not capable of accepting SNAP benefits."

With regard to this contention, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and households are forced to use their benefits elsewhere. Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification. Paragraph (f)(1) of this regulation states that a CMP in lieu of temporary disqualification is allowable when the firm's disqualification would cause hardship to SNAP households because there are "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 Star Quick Stop Inc., a convenience store, would not cause hardship to SNAP households because there are other shopping options in the area. According to agency records, there are at least 10 comparable or larger SNAP-authorized retail stores located within a one-mile radius of Star Quick Stop Inc., including two medium grocery stores, two combination grocery/other stores, and six convenience stores.

In accordance with regulation cited above, hardship exists only when there are no other authorized stores in the area selling as large a variety of staple foods at comparable prices. Therefore, pursuant to 7 CFR § 278.6(f)(1), a hardship civil money penalty in lieu of disqualification cannot be assessed in this case.

### **CONCLUSION**

Based on an analysis of all information in this case, this review finds, through a preponderance of the evidence, that program violations of 7 CFR § 278.2(a) did occur at Star Quick Stop Inc. 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. Pursuant to 7 CFR § 278.6(a) and (e)(5), the decision to impose a six-month disqualification against the Appellant, Star Quick Stop Inc., 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 participation 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 6, 2018