

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

Village Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0210656

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 retail food store in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Village Market (hereinafter Appellant) by FNS' Retailer Operations Division (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it imposed a six-month 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 FNS.

CASE CHRONOLOGY

The USDA conducted an undercover investigation of the compliance of Appellant with Federal SNAP law and regulations from September 6, 2018 through July 18, 2019. In a letter dated September 3, 2019, Retailer Operations charged Appellant with accepting SNAP benefits in exchange for merchandise which included ineligible non-food items in violation of 7 CFR § 278.2(a). These SNAP violations occurred during four out of five compliance visits. The Charge Letter further informed Appellant that the violations warranted a six-month disqualification period as provided in 7 CFR § 278.6(e)(5). Appellant was informed it could respond to the charges within 10 calendar days following delivery of the Charge Letter.

The record shows Appellant responded to the charges by telephone on September 9, 2019, and requested a warning since the employees involved had been fired.

After considering Appellant's response and the evidence in the case, Retailer Operations issued a Determination Letter dated September 10, 2019, informing Appellant that it was disqualified from SNAP for a period of six months in accordance with 7 CFR § 278.6(a) and (e). This letter also stated that Retailer Operations considered Appellant's eligibility for a hardship CMP under 7 CFR § 278.6(f)(1), but determined Appellant was not eligible for the CMP because there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

Appellant requested an administrative review of Retailer Operations' determination by letter dated September 17, 2019. The administrative review was granted by letter dated October 23, 2019. Upon acceptance of the administrative review request, implementation of the six-month disqualification was held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means Appellant has the burden of providing relevant, credible evidence that 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

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 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.

7 CFR § 278.2(a) states, in part: SNAP benefits may be accepted by an authorized retail food store only from eligible households or the household's authorized representative, and 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 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.

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 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...(5) 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 common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

7 CFR § 278.6(f)(1) provides for CMP 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 CMP 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

During an undercover investigation conducted from September 6, 2018, and July 18, 2019, FNS completed five compliance visits at Appellant firm. The case record indicates that the Report of Investigation was provided to Appellant as an attachment to the September 3, 2019, Charge Letter. The Report of Investigation dated August 15, 2019, includes Exhibits A through E, and provides full details on the results of each compliance visit.

The investigation report documents that SNAP violations were recorded during four of the five compliance visits, as documented by Exhibits B, C, D, and E. The chargeable violations involved the exchange of ineligible, nonfood merchandise for SNAP benefits by two store personnel:

- One 10-pack of pencils (*Liqui-Mark* brand), Exhibit B
- One 85-count box of facial tissues (*Kleenex* brand), Exhibit C
- One 10-ounce bottle of laundry detergent (*Tide* brand), Exhibit C
- One copper mesh scrubber (*Chore Boy* brand), Exhibit D
- One 20-count package of 8.875: foam plates (*Hefty* brand), Exhibit D
- One 85-count box of facial tissues (*Kleenex* brand), Exhibit E
- One 30-count package of 8 7/8" foam plates (*Greenbrier* brand), Exhibit E

APPELLANT'S CONTENTIONS

The following contentions, as stated by Appellant, were made in its administrative review request. In reaching a decision, full attention and consideration has been given to all contentions presented, and any not specifically referenced herein:

- The claims made regarding the violation of SNAP at my firm may have been mistaken since I could not find any evidence in further looking into the case.

- The charges made as per the investigative transaction report **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** were done by under training employees who no longer work at our firm.
- The suspension of SNAP for a period of 6 months will have an adverse effect on my business due to majority of sales are made through Food Stamps card.
- About 70% of the customers are already saddened by the fact that they will no longer be able to make purchase through Food Stamp card. We are in a small town with only three gas station and majority of the people use SNAP card as their primary method of purchase.
- I apologize for the violations if made by my employees and would like to request you to investigate the matter and review the charges made against my business.

ANALYSIS AND FINDINGS

Appellant has not provided any information or evidence to counter FNS' investigation report. In fact, Appellant appears to acknowledge that violations may have taken place, stating that the violative transactions were done by employees in training and no longer work at Appellant firm. Because the violations do not appear to be in dispute, it is the determination of this review, through a preponderance of the evidence, that SNAP violations did occur as charged and a penalty is warranted.

Employees in Training/Ownership Responsibility/

Appellant contends that the violations were made by employees who were in training and are no longer employed at Appellant firm and apologizes for the violations if made by his employees.

With regard to these contentions, the record shows that ownership signed the FNS application to become a SNAP authorized retailer which included a certification and confirmation that the owner would "accept responsibility 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." The violations listed on this certification include accepting SNAP benefits for cash and as payment for ineligible items, a violation of SNAP rules and regulations. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations.

Ownership of a SNAP authorized firm is ultimately responsible for the proper training of staff and the monitoring and handling of SNAP benefit transactions. As such, these contentions are not valid reasons to dismiss the charges or modify the penalty in any way.

Hardship to the Business

Ownership contends the suspension of SNAP for a period of six months will have an adverse effect on its business due to the fact that the majority of its sales are from SNAP transactions. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP. However, there is no provision in SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of

possible economic hardship to either the ownership personally or the firm resulting from the imposition of such penalty. To allow stores to be excused from assessed administrative penalties based on a purported economic hardship would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

HARDSHIP CIVIL MONEY PENALTY (CMP)

Retailer Operations determined that Appellant was not eligible for a hardship Civil Money Penalty (CMP) under 7 CFR § 278.6(f)(1). That regulation reads, in part, FNS may impose a CMP as a sanction in lieu of disqualification when 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.

The case record documents that Retailer Operations determined that a six-month disqualification of Appellant firm, would not cause a hardship to SNAP households as there are other comparable or larger SNAP authorized stores in the area. Retailer Operations determined through agency mapping systems that there were four other SNAP authorized retail stores within a one-mile radius of Appellant firm, including a medium grocery store. The grocery store would likely have a greater depth and breadth of staple food at likely comparable or better prices. In addition, there is no evidence that Appellant firm carries any specialty or international foods that cannot be obtained at these other stores.

Based on the analysis above, a six-month disqualification of Appellant firm would not cause a hardship to SNAP recipients in the area, as opposed to a mere inconvenience; therefore, Retailer Operations' decision not to assess a hardship CMP in lieu of a six-month disqualification is sustained as appropriate under 7 CFR § 278.6(f)(1).

CONCLUSION

Based on a review of all information in this case, this administrative review finds through a preponderance of the evidence that program violations of 7 CFR § 278.2(a) did occur at Appellant firm during a USDA investigation. All transactions cited in the Charge Letter 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. Furthermore, Appellant does not dispute the violations occurred and has not offered any compelling evidence that would persuade this review to dismiss or modify the penalty. The record documents that Retailer Operations considered Appellant's eligibility for a hardship CMP according to the terms of 7 CFR § 278.6(f)(1), and properly denied it. Therefore, pursuant to 7 CFR § 278.6(a) and (e)(5), the decision to impose a six-month disqualification against Appellant 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 authorization may be submitted 10 days prior to the expiration of the six-month disqualification period. Please contact

the Retailer Service Center at 877-823-4369 with general questions regarding the SNAP application process. Please contact Bruce Longson at bruce.longson@usda.gov or (312) 489-9268 if you have operations questions on this matter.

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 to the regulations at 7 CFR § 279.7. 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 owner resides or is 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 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.

KIM DAMERON
ADMINISTRATIVE REVIEW OFFICER

June 10, 2020