

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

Winsted Deli & Grocery,

Appellant,

v.

Case Number: C0213360

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The record supports by a preponderance of the evidence that Winsted Deli & Grocery (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. It is the decision of the U.S. Department of Agriculture (USDA) that there is sufficient evidence to sustain a one year disqualification of Appellant as an authorized retail food store 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), and 7 CFR § 278.6(a), and (e)(5) and (6) in its administration of the SNAP, when it imposed a one year 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 October 23, 2018 through November 7, 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.

By letter dated March 11, 2019, as a result of evidence compiled during the investigation, Retailer Operations charged the owner with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits was noted in Exhibits A, B, D, and E that warrants a disqualification as a SNAP retail food store for a period of one year. The letter also states that under certain conditions FNS may impose a civil money penalty (CMP) in lieu of a disqualification.

The record states that no one replied to the Charge letter by letter. Retailer Operations informed the owner by Determination letter dated March 28, 2019, that the violations cited in the Charge letter occurred at the firm and that a one year 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 owner appealed the determination by a letter dated April 4, 2019, written by another individual he gave permission to represent him. The administrative review was granted by letter dated April 9, 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)(6) establish the authority upon which a one year disqualification may be imposed against a retail food store or wholesale food concern.

Section 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(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.”

7 CFR § 278.6(e)(5) states: “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(e)(6) states: “Double the appropriate period of disqualification prescribed in paragraphs (e) (2) through (5) of this sections as warranted by the evidence of violations if the same firm has once before been assigned a sanction.”

7 CFR §278.6(f)(1) states: “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.”

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 four store visits transacted by the owner. The violations involved the sale of nonfood items for SNAP benefits including: plastic cups, soap, sandwich bags, fabric softener sheets, and duct tape, in violation of the regulations at 7 CFR § 278.2(a). The record shows Appellant's owner participated in the violations, and thus the penalty of a one year disqualification was charged.

APPELLANT'S CONTENTIONS

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

- The person in question did not understand household items could not be purchased through EBT.
- He thought things not allowed were only tobacco and lottery.
- I have gone over these things with him since.

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 the owner established a record of selling nonfood items as defined by Section 271.2 of the regulations, on multiple occasions. Exhibits A, B, D, and E furnished with the Charge letter warrant a disqualification period of one year.

CIVIL MONEY PENALTY

Retailer Operations rendered a finding that it was not appropriate to impose a CMP in lieu of a one year 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 preponderance of 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, as 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 one year 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 period of disqualification. Please contact the Retailer Center at 877-823-4369 with any questions regarding the SNAP application process. Please contact Elizabeth Rivas at (213) 330-2441 with operational questions.

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 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 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

May 9, 2019