

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

**Yafai 99c Discount,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0234938**

**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 a finding that the permanent disqualification of Yafai 99c Discount (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

**AUTHORITY**

7 USC § 2021 and the 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**

USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period from November 18, 2020, through December 18, 2020. The investigation report documents that personnel at Yafai 99c Discount exchanged cash for SNAP benefits. The buying or selling of SNAP benefits for cash or consideration other than eligible food is trafficking as defined under 7 CFR §271.2.

As a result of evidence compiled from the investigation, the Retailer Operations Division informed Appellant, in a letter dated January 11, 2021, that it was charged with violating the

terms and conditions of the SNAP regulations. Appellant replied to the charge letter on January 21, 2021, and denied the charges.

After considering the retailer's reply and the evidence, the Retailer Operations Division notified Appellant in a letter dated February 2, 2021, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and § 278.6(e)(1) for trafficking violations. This determination letter further stated that Appellant was not eligible for a trafficking CMP because it failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review by letter dated February 9, 2021. The appeal was granted.

### **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, 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 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 USC § 2021(b)(3)(B) states, in part:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 271.2 states, in part, that, 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 § 271.2 defines trafficking, in part, as:

(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

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)(1) reads, in part:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

7 CFR § 278.6(b)(2) states, in part:

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). **This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).** [Emphasis added.]

(iii) **If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.** [Emphasis added.]

## INVESTIGATION DETAILS

A USDA investigator conducted five compliance visits at Yafai 99c Discount from November 18, 2020, through December 18, 2020. The investigation report dated December 31, 2020, was provided to the Appellant as an attachment to the charge letter, and included Exhibits A through E which provide details on the results of each compliance visit. The investigation report documents that SNAP violations were committed during four of the compliance visits.

The investigation reported that personnel exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cash for a total 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits (Exhibit D). Transactions of this nature are referred to in the regulations as “trafficking”.

### APPELLANT’S CONTENTIONS

On April 15, 2021, Appellant, through counsel, e-mailed an affidavit from the store owner and provided the following summarized contentions, in relevant part:

- Appellant requests a warning letter, a six-month disqualification, or a civil money penalty.
- FNS did not send a warning letter and it should have because the violations are too limited to warrant a disqualification as the charge did not exceed 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- This is the first violation of the firm and it was due to improper supervision.
- The employee who conducted the transactions violated the policy of the store.
- The employee has been fired and there will be no more violations.
- There is substantial evidence which demonstrates that the firm had established and implemented an effective compliance program and policy to prevent violations of the program.
- The owner makes clears in his affidavit that he instructs his employees about not exchanging food stamps for cash.
- The fact that the store has had no issue with FNS for more than 20 years is evidence of an effective compliance policy.

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

### ANALYSIS AND FINDINGS

A full review of the case record shows that the charges of violations are based on the findings of a formal USDA investigation. The transactions cited in the letter of charges were conducted by 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 details of the transactions. The documentation presented by the Retailer Operations Division establishes by a preponderance of the evidence that the violations as reported occurred at Appellant.

Trafficking in SNAP benefits is a very serious violation and warrants a permanent disqualification on the first violation. Trafficking is always considered to be extremely serious, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. Both 7 USC § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) mandate that

the penalty for trafficking is a permanent disqualification and does not provide for a lesser period of disqualification or a warning letter.

### **Ownership Involvement**

Appellant states that an employee was responsible for the transactions. Although ownership was allegedly not involved in the violations, it cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. Regardless of whom the ownership of a store may utilize to handle store business, the ownership is accountable 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 persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Ownership signed the FNS application to become a SNAP authorized retailer on January 22, 2014, 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 the 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.

### **Corrective Action**

Appellant states that the employee has been terminated. Regarding this contention, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations Division’s action. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that a store may begin to comply with program requirements.

In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of alleged or planned corrective actions implemented subsequent to findings of program violations. Therefore, Appellant’s contention that corrective action has taken place does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **No Previous Violations**

The owner explains that it has operated the store for many years and this is the first instance of trafficking violations. Regarding this contention, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of the violations upon which they are based. There is no provision in the Act or regulations that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees.

## **Civil Money Penalty**

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter, and that no extension of time could be granted for making the request or for providing the required evidence.

Appellant did not submit a timely request for a CMP and the Retailer Operations Division determined the firm was not eligible for a civil money penalty. Even if a timely request had been submitted, Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## **CONCLUSION**

A review of the evidence in this case, supports by a preponderance that program violations did occur during a USDA investigation. Therefore, the decision to impose a permanent disqualification against Appellant is sustained. The determination that Appellant is not eligible for a CMP is also sustained.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 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 Appellant's 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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

April 20, 2021