

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

**Zerega Stop Deli and Grocery Corp,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0210792**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that Zerega Stop Deli and Grocery Corp. (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 imposed by the Office of Retailer Operations and Compliance (Retailer Operations).

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action in its administration of the SNAP, consistent with 7 CFR § 278.6(a)7 CFR § 278.6(e), and 7 CFR § 278.6(f)(1), when it imposed a six month 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 September 17, 2018 through October 19, 2018. The investigative report dated October 31, 2018, documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible common nonfood items on multiple separate dates. As a result of evidence compiled during the investigation, by letter dated November 8, 2018,

Retailer Operations charged Appellant with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits was noted in Exhibits A, B, C, and D, that warrants a disqualification as a SNAP retail food store 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 record shows that by fax dated November 21, 2018, the owner made a FOIA request. The FOIA office provided a reply dated February 5, 2019. The owner appealed the FOIA reply on April 30, 2019. The FOIA office provided a reply to the appeal dated February 2, 2021. The record supports that the owner provided no further reply to the Charge letter.

Retailer Operations informed Appellant by Determination letter dated February 23, 2021, 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. The owner requested review of the determination by letter dated March 4, 2021. The review was granted by letter dated March 23, 2021.

### **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, credible 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)(5) establish the authority upon which a six month disqualification may be imposed against a retail food store.

7 CFR § 278.2(a) states: “SNAP benefits 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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.”

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(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 states: "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**

The investigative report details on the results of each compliance visit, and was provided to the Appellant as Exhibits with the Charge letter. The investigative report documents that SNAP violations were recorded during multiple store visits, that warrant a six month disqualification. The SNAP violations of 7 CFR § 278.2(a) involved the sale by store personnel, of ineligible nonfood items for SNAP benefits. The nonfood items sold for benefits included: sandwich bags, plastic forks, trash bags, plastic cups, scrubbing pad, scrubber sponge, laundry detergent, and fabric softener.

### **APPELLANT'S CONTENTIONS**

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

- Our employees have always been well trained and fully capable of processing SNAP transactions. I provide them with routine training sessions to instruct them on the proper way to process EBT transactions. We always discuss the different items that should or should not be processed, such as hot foods, alcoholic beverages, detergent, etc.
- We count on every dollar to maintain the business operating. I am requesting that you not disqualify my business. EBT redemption represents a good portion of our income.
- I did not participate or authorized any of these alleged violations. Due to the going Covid-19 situation, it has become more difficult to maintain the business operational and losing this vital permit could cause me to loss my business.
- Should you decide to move forward with the six month disqualification, I once again request a CMP be imposed.
- I would like to take this opportunity to apologize for any alleged violations and to state that I will continue to take every step necessary to prevent these types of violations from ever occurring.

### **ANALYSIS AND FINDINGS**

This review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations' determination at the time it was made. The record under review includes the EBT receipts for the total SNAP benefit amounts recorded in the Exhibits as conducted at Appellant. The record also includes photographs of the items exchanged at Appellant, and documentation that confirms that the items as noted in the Exhibits, were donated to local community organizations by the USDA investigator. The investigator declared under penalty of perjury that the report is true and correct. The documentation under review supports that the violative transactions were conducted at Appellant by store personnel, on different dates. The owner submitted no evidence to support that the transactions did not occur at Appellant.

The owner 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, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. 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. Therefore, the contention that the firm may incur economic hardship based on the assessment of an administrative penalty is not a valid basis for dismissing the charges or the resultant regulatory penalty.

Retailers are informed that it is their responsibility to ensure that store personnel are properly trained regarding the SNAP rules. Regardless of whom the owner of a store may utilize to handle store business, the firm's ownership is accountable for the proper training of personnel, and the effective monitoring and handling of SNAP benefit transactions. The preponderance of evidence under review supports that Appellant's personnel sold nonfood items on multiple store visits, in exchange for SNAP benefits. Such repetitive violations are considered evidence of carelessness. The regulations at 7 CFR § 278.6(e)(5) state 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.

### **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 from SNAP. The record documents that there are many other authorized stores within a nearby radius of Appellant that stock a variety of comparable staple foods at comparable prices. Retailer Operations concluded that the evidence does not support that it will cause hardship for SNAP recipients if Appellant is disqualified. Therefore, Appellant was deemed not eligible for a hardship CMP.

## **CONCLUSION**

The preponderance of the evidence in the record supports that Appellant violated the SNAP regulations as charged. The record documents that Retailer Operations properly evaluated Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the regulations. On review, it is decided that Retailer Operations properly denied a CMP. Therefore, the six month disqualification of Appellant from participation as an authorized retail food store in the SNAP is sustained. This penalty shall become effective thirty (30) days after delivery of this decision.

A new application for participation in the SNAP may be submitted ten days prior to the expiration of the six month period of disqualification. Please contact the Retailer Center at 877-823-4369 with general questions regarding the SNAP application process.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

## **RIGHTS AND REMEDIES**

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 the owner's 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 delivery 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

April 21, 2021