

United
States
Department
of
Agriculture



Food
and
Nutrition
Service

August 17, 2021

Administrative
Review
Branch
5th Floor
1320 Braddock
Place
Alexandria,
VA
22314-1649

Mansoor Ansari, Attorney
Ansari Law Firm
2650 Holcomb Bridge Rd.
Suite 110
Alpharetta, GA 30022

Case C0241706

Dear Counselor:

Enclosed is the Final Agency Decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service, in response to your request for administrative review. The USDA has decided that there is insufficient evidence to support the permanent disqualification of

Store from participation as an authorized retail food store in the Supplemental Nutrition Assistance Program. The determination is reversed.

Please contact Dorinda George Lyght at (312) 835-0974 with operations questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Viens".

M. Viens
Administrative Review Officer
Enclosure - Final Agency Decision

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

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0241706

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), that there is insufficient evidence to support that the Retailer Operations Division (Retailer Operations) properly imposed a permanent disqualification for trafficking against _____ Store (Appellant). The permanent disqualification determination, from the participation of Appellant as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP), is reversed.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a), 7 CFR § 278.6(e)(1)(i), and 7 CFR § 278.6(i) in its administration of the SNAP, when it imposed a permanent 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

By Charge letter dated April 14, 2021, Retailer Operations informed Appellant it was charged with violating the terms and conditions of the SNAP regulations as determined by a USDA investigation. Trafficking violations were cited in Exhibits D and F. The sanction for trafficking is permanent disqualification. The investigation was conducted February 21 through February 26, 2021; it is recounted in an investigative report dated March 4, 2021. Counsel replied to the Charge letter by letter dated May 20, 2021.

By Determination letter dated June 3, 2021, Retailer Operations informed Appellant that it was permanently disqualified from participation as a retail food store in the SNAP in accordance with

Section 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter states that the store was not eligible for a trafficking civil money penalty according to the terms of Section 278.6(i). The firm failed to submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter dated June 8, 2021, counsel appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated July 26, 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 credible, 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 (the Act), 7 U.S.C. § 2021, and § 278 of Title 7 of the Code of Federal Regulations (CFR).

7 CFR § 278.6(e)(1)(i) states FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2. 7 CFR § 271.2 trafficking means: “(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;”... (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; (6) Attempting to buy, sell, steal, or otherwise affect 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 signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.”

7 CFR § 278.6(b)(2)(ii) states: “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 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).” 7 CFR § 278.6(i) states: “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.”

SUMMARY OF THE CHARGES

Appellant was charged with conducting trafficking transactions as described in Exhibits D and F, wherein store personnel purchased products originally purchased with SNAP benefits in exchange for cash.

ANALYSIS AND FINDINGS

This review is to either validate or to invalidate the determination made by Retailer Operations. The regulations establish that an authorized retail food store may be disqualified from participating in the SNAP when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. The Exhibits recount two exchanges by store personnel of cash for items purchased with SNAP benefits accessed via an EBT card(s). Upon review, it is decided that there is insufficient evidence to support a permanent disqualification for trafficking as defined by 7 CFR § 271.2 (5). The permanent disqualification determination of Appellant is herein reversed.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Office of Retailer Operations and Compliance. This administrative review decision does not establish policy or supersede federal law or regulations.

CONCLUSION

The record does not support, by a preponderance of the evidence, that the store personnel intentionally purchased products, originally purchased with SNAP benefits, in exchange for cash to meet the applicable definition of trafficking. The permanent disqualification determination of Appellant is therefore reversed.

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

August 17, 2021