

United States
Department of
Agriculture



Food and
Nutrition
Service

Supplemental
Nutrition
Assistance
Program

Retailer and
Issuance Policy
and Innovation
Division

Administrative
Review Branch

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August 25, 2023

Mansoor Ansari, Attorney
Nexus Tax Defense
2650 Holcomb Bridge Road
Suite 110
Alpharetta, GA 30022

RE: [REDACTED] Retail Owner
[REDACTED]
[REDACTED]

Re: Case Number C0255496

Dear Store Owner:

Enclosed is the Final Agency Decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) in response to your request for an administrative review dated January 3, 2023. Also included therein is a statement regarding your rights to a judicial review.

It is the decision of the USDA that there is insufficient evidence to support the determination by FNS's Retailer Operations Division to permanently disqualify Bonnieville Mini Mart from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). However, due to SNAP violations, there are sufficient grounds to issue a six-month disqualification from participation as an authorized retailer in SNAP.

In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the disqualification penalty shall become effective 30 days after receipt of this letter. A new application for SNAP participation may not be submitted until 10 days prior to the expiration of the six-month disqualification period.

Sincerely,

A handwritten signature in cursive script that reads "Mya Dupree".

MYA DUPREE
Administrative Review Officer

Enclosure

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


Appellant,


v.

Retailer Operations Division,

Respondent.

Case Number: C0255496

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is insufficient evidence to support the determination by FNS's Retailer Operations Division to permanently disqualify  (hereinafter "Appellant") from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). As such, the permanent disqualification is reversed. Due to SNAP violations, there are sufficient grounds to issue a six-month disqualification from participation as an authorized retailer in SNAP. Therefore, the permanent disqualification action is modified to a six-month disqualification.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it imposed a permanent disqualification against Bonnieville Mini Mart.

AUTHORITY

7 U.S.C. § 2023 and its 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

FNS records show that the Appellant firm, Bonnieville Mini Mart, was initially authorized for SNAP participation as a convenience store on November 5, 2020. Between August 17, 2022, and September 13, 2022, an FNS contractor conducted an undercover investigation at the firm to ascertain its compliance with Federal SNAP laws and regulations. The investigation report documented Bonnieville Mini Mart personnel accepted SNAP benefits in exchange for ineligible

merchandise on four separate occasions. According to the report, the Appellant firm sold batteries, ant killer bait, detergent, sponges, and synthetic motor oil in exchange for SNAP benefits, which benefits may only be used for the purchase of eligible food. The firm also reportedly committed a trafficking violation by allowing an exchange of SNAP benefits for cash.

In a letter dated October 28, 2022, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations. The charge letter informed the Appellant that the trafficking violation warranted permanent disqualification from SNAP as provided in 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking but noted that such a request must be made within 10 days of receipt of the letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated November 4, 2022, Appellant acknowledged that during the investigation, some employees were negligent in their responsibilities. The Appellant further argued that the violations were not intentional and stated that it would do everything in its power to prevent this from happening again. Finally, the Appellant argued that the investigator told the clerks sob stories to induce them to violate the policies.

After evaluating the Appellant's response and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated December 21, 2022. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In an email dated January 3, 2023, the Appellant appealed the agency's determination by requesting an administrative review. The request was granted and the case was assigned to an administrative review officer.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular,

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 or wholesale food concern.

7 CFR § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...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 [a] 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. [Emphasis added.]

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 regional 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...The FNS regional office shall:

(5) 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(f)(1) states, in part:

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.

INVESTIGATION DETAILS

During an undercover investigation conducted between August 17, 2022, and September 13, 2022, an FNS contractor completed seven compliance visits at Bonnieville Mini Mart. The agency's record indicates that a report of the investigation was provided to the Appellant as an attachment to the October 28, 2022, charge letter. The investigation report includes Exhibits A through G, and provides full details on the results of each compliance visit. A trafficking violation was documented in Exhibit F, and the sale of ineligible items was documented in Exhibits A, D, F and G. The report documented two instances in which the clerk on duty refused to sell ineligible items (see Exhibits B and E) and the report documented one instance of which the clerk refused to allow an exchange of SNAP benefits for cash (see Exhibits G).

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- Appellant implemented a compliance program to meet the eligibility requirements for a CMP.
 - The firm had an effective compliance policy in place. Appellant had a compliance booklet that was given to each employee and Appellant addressed any questions or issues that arise.
 - The compliance policy was in effect prior to the violation. For example, one of the staff members declined to sell ineligible items showing the staff was trained on the rules.
 - The firm instituted an effective personnel training program. Appellant reviewed the FNS Handbook with each new employee and instructed staff to call the USDA or store owner if they have any questions.
- The investigator baited the employee into trafficking by begging and invoking sympathy. The investigator guided the employee through trafficking.
- The firm is located in an area containing several low-income families.

The preceding may represent only a summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions submitted, including any not specifically summarized or explicitly referenced in this document.

ANALYSIS AND FINDINGS

Trafficking

The type of trafficking alleged to have taken place in this case is described in the definition of *Trafficking* as found in 7 CFR § 271.2, paragraph 5, which states that trafficking includes “intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.” After analyzing the Retailer Operations Division’s case file this review finds that a determination of trafficking is not supported by the evidence. Accordingly, the determination to impose a permanent disqualification against A & R Mini Market Inc. for trafficking is reversed.

Six Month Disqualification

The investigative report identified four violative transactions of ineligible transactions that occurred during the investigation. After reviewing the investigation report and the evidence in the case, this review finds, through a preponderance of the evidence, that these violations likely did occur as outlined in the report. In accordance with SNAP regulations at 7 CFR § 278.6(e)(7), an official warning is the appropriate penalty for these violations, as they are too limited to warrant a period of disqualification. If the Appellant is again found to be in violation of the regulations, it may lose its authorization to participate in SNAP. Every precaution should be taken to ensure sure that all employees know and follow SNAP rules.

CONCLUSION

Based on a review of all available information in this case, this administrative review finds that there is insufficient evidence to support a permanent disqualification against the Appellant, Bonnieville Mini Mart. Accordingly, the permanent disqualification determination is reversed.

However, the evidence in the case record does establish that SNAP violations likely occurred during the investigation, and the Appellant has not offered any compelling evidence to refute the investigator’s claim.

The evidence does support that SNAP violations did occur at Appellant as described in the Exhibits A, D, F and G, that involved the sale nonfood items in exchange for SNAP benefits. These violations warrant a six-month disqualification of Appellant from the SNAP. Bonnieville Mini Mart shall be credited for the “time served” from the original effective date of the permanent disqualification. Appellant must submit a new application to determine its eligibility for authorization.

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 in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

MYA DUPREE
Administrative Review Officer

August 25, 2023