

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch
Alexandria, VA 22302**

Canal One Stop)	
Appellant,)	
)	
v.)	Case Number: C0178043
)	
Retailer Operations Division,)	
Respondent.)	
_____)	

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 one-year disqualification of Canal One Stop (hereinafter Appellant), from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) as initially imposed by the Retailer Operations Division.

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 the SNAP, when it imposed a one-year disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provides 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

The USDA conducted an investigation of the compliance of Canal One Stop with Federal SNAP law and regulations from June 2015 to March 2016. In a letter dated July 21, 2016, Retailer Operations Division charged the Appellant firm with accepting SNAP benefits in exchange for merchandise which included common ineligible non-food items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on three (3) out of five (5) compliance visits. The letter further informed the Appellant that the violations in Exhibits A, C, and D warranted a disqualification period of 1-year as provided in 7 CFR § 278.6(e)(5) and (6).

The Appellant did not reply to the charges therefore, after reviewing the evidence and non-response from the Appellant, Retailer Operations Division issued a determination letter dated August 8, 2016. The determination letter informed the Appellant it was disqualified from the SNAP for a period of 1-year in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that Retailer Operations Division considered Appellant's eligibility for a hardship CMP under 7 CFR § 278.6(f)(1). Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the one year disqualification because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter dated August 12, 2016, the Appellant requested an administrative review of the Retailer Operations Division' determination. The appeal was accepted and the implementation of the one-year disqualification was held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means 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

The controlling law in this matter is covered in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 as promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e) establish the authority upon which a disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, *inter alia*: "Coupons may be accepted by an authorized retail food store only from eligible households...Only in exchange for eligible food."

7 CFR § 271.2 states, *inter alia*: "Eligible food 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, *inter alia*: "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, *inter alia*: "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, *inter alia*: “Double the appropriate period of disqualification prescribed in paragraphs (e)(2) through (5) of this section 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, *inter alia*: “FNS may impose a civil money penalty as a sanction in lieu of when... the firm’s disqualification would cause hardship to Food Stamp [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. ***FNS may disqualify a store which meets the criteria for a civil money penalty if the store had previously been assigned a sanction***” [emphasis added]

APPELLANT’S CONTENTIONS

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

- Due to a medical emergency, the owner was out of the State for more than two weeks and missed replying to the letter dated July 21, 2016.
- The employees that were mentioned in the letter are no longer employed by Canal One Stop. All employees are clearly instructed to refuse any impermissible items and only ring food items for EBT
- We are a small business out in the country and our customers depend on our acceptance of EBT.

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

FNS initially authorized Canal One Stop as a convenience store on January 31, 2010. During an investigation from June 2015 through March 2016, the USDA conducted five (5) compliance visits at Canal One Stop. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated July 21, 2016. The investigation report included Exhibits A through E which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were committed during three (3) of the five (5) compliance visits and involved the sale of one 60 count package of Parade 2-ply paper towels, two BIC cigarette lighters, two Trojan lubricated condoms, one 44 count roll of Bounty 1-ply paper towels, and one 100 count box of Good Sense plastic sandwich bags. Store personnel refused to sell one roll of paper towels in Exhibit B and one box of plastic sandwich bags in Exhibit E.

The Appellant contends that due to a medical emergency, the owner was out of the State for more than two weeks and missed replying to the letter dated July 21, 2016. With regards to this contention, the Charge letter was addressed to Appellant at the mailing address provided on Appellant’s retailer application, and was delivered thereto and signed for by an employee of the firm. This constitutes proper notice to the firm of the charges against it. However, Appellant has

now been given and has taken the opportunity in the present administrative review to submit whatever evidence and information that could have been previously submitted in support of its position that the Retailer Operations Division' adverse action against it should be reversed. Therefore, evidence and information that Appellant was not able to present before now has been considered in this administrative review in rendering the final administrative agency decision in this case. Therefore, the Appellant's contention does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

The Appellant contends that employees that were mentioned in the letter are no longer employed by Canal One Stop and all employees are clearly instructed to refuse any impermissible items and only ring food items for EBT. With regards to these contentions, as owner of the store, Appellant is liable for all violative transactions handled by store personnel. Regardless of whom the ownership of a store may utilize to handle store business, whether employee or family member helping out, full-time, part-time, paid or unpaid, ownership is accountable for the proper 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 and the enforcement efforts of the USDA.

Additionally, 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' 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.

7 USC 2018 (b)(7)(e)

The Appellant contends that it is a small business out in the country and customers depend on it to accept EBT. With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP.

7 USC 2018 (b)(7)(e). To allow store ownership to be excused from assessed administrative penalties based on a purported economic hardship would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

The documentation presented by Retailer Operations Division provides through a preponderance of the evidence that the violations as reported occurred at the Appellant firm. 7 CFR § 278.6(e)(5) specifies that FNS shall "disqualify the firm 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(e)(6) specifies that FNS is to double the appropriate period of disqualification prescribed in paragraphs (e)(2) through (5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction.

The violations were determined by Retailer Operations Division to represent a subsequent sanction for the firm and evidence carelessness and poor supervision. Therefore, the imposition of a one-year disqualification, the least severe penalty allowed by regulation, is appropriate.

CIVIL MONEY PENALTY

The Retailer Operations Division considered Appellant's eligibility for a hardship CMP under 7 CFR § 278.6(f)(1). The Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the one-year disqualification because it had been previously sanctioned for violations against the SNAP regulations. CFR § 278.6(f)(1) states in part "... FNS may disqualify a store which meets the criteria for a civil money penalty if the store had previously been assigned a sanction."

CONCLUSION

It is therefore established that the violations as described in the letter of charges did in fact occur at the Appellant form warranting a disqualification of 1-year in accordance with 7 CFR § 278.6(e)(6). Based on the discussion herein, the decision to impose a 1-year disqualification against Canal One Stop is appropriate and the action is sustained.

In accordance with the Act and regulations, the one-year period of disqualification shall become effective thirty (30) days after receipt of this letter. The Appellant may submit a new application for SNAP participation ten (10) days prior to the expiration of the one-year disqualification period.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that 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 you reside or are 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If the USDA receives such a request, it will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

/S/

MONIQUE BROOKS
ADMINISTRATIVE REVIEW OFFICER

October 25, 2016
DATE