

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

Hanna Deli & Grocery Corp.,	)	
	)	
Appellant,	)	
	)	
v.	)	Case Number: C0185656
	)	
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 six-month disqualification of Hanna Deli & Grocery Corp., (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 six-month 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 Hanna Deli & Grocery Corp., with Federal SNAP law and regulations from March 29, 2016, through April 5, 2016. In a letter dated May 19, 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 warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5).

The Appellant replied to the charges in a faxed letter dated May 24, 2016. The Appellant generally stated that the allegations against the store are completely false and ownership always abided by the EBT guide book. Appellant also stated that it never sold anything other than food or drinks to its customers and posted a sign that restricts the sale of hot food. Appellant indicated that such a complaint against the store is most likely from a customer as a way to get revenge. Ownership stated that he never sold French Fries in the deli because the store has no fryer. Additionally, the description of the owner and his son are incorrect and the son is never in the deli because he goes to school.

After reviewing the evidence and the response from the Appellant, Retailer Operations Division issued a determination letter dated August 4, 2016. The determination letter informed the Appellant it was disqualified from the SNAP for a period of six months 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 six-month 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 5, 2016, the Appellant requested an administrative review of the Retailer Operations Division' determination. The appeal was accepted and the implementation of the six-month 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, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e) establish the authority upon which a period of 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(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.”

### **APPELLANT’S CONTENTIONS**

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

- I have refuted the claim and asked for proof of the false allegations and none was provided.
- It is clear that some of the items that are on the accusatory letter are not even sold in my deli. There is no fryer in my deli and therefore I cannot sell French fries.
- The person that made the false claim was not an inspector but a person who constantly harassed me to sell him items other than food on the EBT machine.
- The physical description of me, my wife and son are not accurate and in fact my son just visits once in a while before heading off to college so he’s never on the cash register.

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 Hanna Deli & Grocery Corp., as a convenience store on May 9, 2012. During an investigation from March 29, 2016 through April 5, 2016, the USDA conducted five (5) compliance visits at Appellant’s store. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated May 19, 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 three separate hot food items (French fries, hamburger and an egg and cheese roll), one 48 count box of spoons, one 15 count of plastic plates, one 120 count of Krasdale brand napkins and one two quart bottle of Krasdale brand bleach. Store personnel refused to exchange an undisclosed amount of cash for SNAP benefits during Exhibit E.

The Appellant refutes the allegations and indicated that proof of the false allegations was not provided. Appellant also contends that it is clear that some of the items that are on the accusatory letter are not sold in the deli and there is no fryer therefore, it cannot sell French fries. With regards to these contentions, Appellant was provided with a copy of the investigative report which was appended to the Charge letter dated May 19, 2016. The charges of violations are based on the findings of a formal Department of Agriculture investigation; all transactions cited were conducted under the direct supervision of a Department Investigator. All such transactions are fully documented and a review of this documentation has yielded no indication of substantial error or discrepancy in the reported findings; the investigative record is specific and thorough with regard to the dates and other specifics of the violations and in all other critically pertinent detail.

Additionally, investigative results are routinely supported by documentation in the record that confirms items purchased at a retail firm in the course of an investigation are donated to and signed for by a charitable organization following the transactions. Such documentation includes the signature and title of the official of the charitable organization accepting the donated item, the name and address of the organization, the date the donation was made and the official's initials next to the items donated. The purchase costs of each of the transactions involved in the investigation are documented on SNAP terminal receipts obtained during each transaction. Moreover, the record reflects that photographs taken during a store visit, conducted on June 30, 2016, by an FNS contractor, indicate that signage on the outside of the store advertises the sale of hot foods and contrary to Appellant's claim, there is a fryer preset in the cooking section of the store (see photograph below).



The Appellant contends that the person that made the false claim was not an inspector but a person who constantly harassed the store to sell him items other than food on the EBT machine; and the physical descriptions are not accurate. It is important to note that the charges of violations are based on the findings of a USDA investigation, conducted by a trained USDA official. The investigative report has been carefully reviewed and does not include any evidence of inconsistencies or errors. The report clearly recounts activities wherein personnel at Hanna Deli & Grocery Corp., exchanged SNAP benefits for ineligible items. Furthermore, the descriptions of the clerks involved in the transactions are based on the Investigator's perception and may not perfectly match the clerk's actual height and weight. The investigative report also indicates that the clerks were standing on a step or platform and therefore, gave the clerks an appearance of being taller than they may have been.

Based on the analysis above and the evidence presented in this case, it appears that the violations cited in the Charge letter and the Investigative report were conducted at Appellant's store and

therefore, Appellant's contentions do not provide valid grounds for dismissal of the current charges or for mitigating the impact of those charges.

### **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 six-month disqualification because there were at least 20 or more authorized retail stores, within a one-mile radius of Appellant, which included other convenience stores, selling as large a variety of staple foods at comparable prices.

### **CONCLUSION**

The documentation presented by Retailer Operations Division provides through a preponderance of the evidence that the violations as reported occurred at the Appellant's store. 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.

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

It is therefore established that the violations as described in the letter of charges did in fact occur at the Appellant firm warranting a disqualification of six months in accordance with 7 CFR § 278.6(e)(5). Based on the discussion herein, the decision to impose a six-month disqualification against Hanna Deli & Grocery Corp. is appropriate and the action is sustained.

In accordance with the Act and regulations, the six-month 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 six-month 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 4, 2016  
DATE