

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

East Church Food Mart,)	
)	
Appellant,)	
)	
v.)	Case Number: C0182807
)	
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 from 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 East Church Food Mart.

AUTHORITY

7 U.S.C. § 2023 and its implementing regulation 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 East Church Food Mart with Federal SNAP law and regulations from July 2015 through October 2015. In a letter dated August 4, 2016, the Retailer Operations Division charged the Appellant store with accepting SNAP benefits in exchange for merchandise which included ineligible nonfood items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on five (5) 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 letter dated August 17, 2016. The Appellant indicated that corrective action had been taken so that violations would not happen again in the future.

After reviewing the evidence and the Appellant's reply, the Retailer Operations Division issued a determination letter dated August 23, 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 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 other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter dated August 29, 2016, the Appellant requested an administrative review of the Retailer Operations Division's determination. The request for review was granted. Upon acceptance of the administrative review request, 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, might 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 covered in the Food & 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 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 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, *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 disqualification 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.

SUMMARY OF THE CHARGES

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

APPELLANT'S CONTENTIONS

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

- A six-month disqualification is extreme for the violations cited.
- The store has taken measures to ensure that the violations do not occur again.

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

The Appellant does not dispute the facts as described in the investigation report. A review of the case record shows that the charges of violations are based on the findings of a formal USDA investigation. The transactions cited in the letter of charges were conducted under the direction of a USDA investigator and are thoroughly documented. A complete review of this documentation has yielded no error or discrepancy. The investigation report is specific and thorough with regard to the dates of the violations, the specific facts related thereto, and is supported by documentation that confirms specific details of the transactions. The documentation presented by the Retailer Operations Division establishes by a preponderance of the evidence that the violations as reported occurred at the Appellant store.

Six-month Disqualification is too Extreme

The Appellant claims that a six-month disqualification is too extreme. However, the Retailer Operations Division correctly determined that the appropriate sanction in this case is a six-month disqualification from the SNAP. 7 CFR § 278.6(e)(5) specifies that FNS shall “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 nonfood items** due to **carelessness or poor supervision** by the firm’s ownership or management.” [Emphasis added.]

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

Corrective Action

The Appellant contends it has taken action to prevent these violations from occurring in the future. The store has discussed the violations with the clerk described in the investigation report. The employee apologized for his negligence in selling the ineligible non-food items along with eligible food items; but none were major ineligibles and he refused the phone card and cash. The employee has agreed to be more diligent to avoid future violations. To assist all sales clerks, the store has installed a new point-of-sale system that clearly distinguishes between eligible and ineligible non-food items to eliminate confusion or any future violations.

With regard to this contention, 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’s action. It is not the authority of this review to consider what subsequent remedial actions have been taken so that a store may begin to comply with program requirements.

In addition, there are no provisions in the SNAP regulations or internal agency policy directives for a waiver or reduction of an administrative penalty assessment on the basis of alleged or planned after-the-fact corrective actions implemented subsequent to investigative findings of program violations. Therefore, Appellant’s contention that corrective action has taken place or that further remedial actions are planned does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

The Retailer Operations Division determined that the Appellant was not eligible for a hardship CMP under 7 CFR § 278.6(f)(1). That regulation reads, in part, “FNS may impose a civil money penalty as a sanction in lieu of disqualification when...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.” [Emphasis added.] **7 USC 2018 (b)(7)(e)**

Based on this evidence, the disqualification of East Church Food Mart would not cause a hardship to SNAP recipients in the area, as opposed to a mere inconvenience; therefore, the Retailer Operations Division decision not to assess a hardship CMP in lieu of a six-month

disqualification is sustained as appropriate under 7 CFR § 278.6(f)(1).

CONCLUSION

It is therefore established that the violations as described in the letter of charges did in fact occur at East Church Food Mart warranting a disqualification of six months in accordance with 7 CFR § 278.6(e)(5). That regulation states that FNS shall “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.” Therefore, the decision to impose a six-month disqualification, the least severe penalty allowed by regulation, against East Church Food Mart, Appellant, 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 authorization ten (10) days prior to the expiration of the six-month disqualification period.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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 we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

/S/

RONALD C. GWINN
ADMINISTRATIVE REVIEW OFFICER

October 11, 2016

DATE