

United States  
Department of  
Agriculture



Food and  
Nutrition  
Service

Supplemental  
Nutrition  
Assistance  
Program

Retailer Policy  
Division

Administrative  
and Judicial  
Review Branch

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May 28, 2024

Mansoor Ansari, J.D., LL.M.  
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RE: [REDACTED]

Dear Counselor:

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 December 5, 2022.

The USDA, FNS finds that there is insufficient evidence to support the six-month disqualification determination by the Retailer Operations Division against [REDACTED]. The determination is modified. A warning letter is warranted.

Sincerely,

A handwritten signature in blue ink that reads "David A. Shively".

DAVID A. SHIVELY  
Administrative Review Officer

Enclosure

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



**Appellant,**


**v.**

**Case Number: C0255563**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the United States Department of Agriculture (USDA) that there is insufficient evidence to support a finding that a six-month disqualification of  (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate. The determination is modified. A warning letter is warranted.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(1) and 7 CFR § 278.6(a) and (e)(5) in its administration of the SNAP, when it imposed a six-month period of disqualification against Appellant.

**AUTHORITY**

7 USC § 2023 and the 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**

The USDA investigated the compliance of Appellant with federal SNAP law and regulations during the period of September 7, 2022, through September 28, 2022. The investigative report documented personnel at Appellant’s firm accepted SNAP benefits in exchange for ineligible merchandise on three separate occasions. As a result of evidence compiled during this investigation, by letter dated October 13, 2022, the Retailer Operations Division charged ownership with violating the terms and conditions of the SNAP regulations at 7 CFR § 278.2(a) and noted the violations warranted a six-month disqualification period. The letter also stated that

under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification. Additionally, Appellant was given 10 days from receipt of the letter to provide a response. On October 19, 2022, Appellant, through counsel, submitted a response to the charge letter.

After considering the evidence and Appellant's response, the Retailer Operations Division notified Appellant in a letter dated December 2, 2022, that the violations cited in the charge letter occurred at the firm and that a six-month period of disqualification was warranted. The letter stated that eligibility for a hardship CMP was not applicable as there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

By email dated December 5, 2022, Appellant requested an administrative review of the Retailer Operations Division's determination. The appeal was granted, and implementation of the disqualification has been held in abeyance pending completion of this review. On April 10, 2024, this appeal was reassigned to Administrative Review Officer David Shively.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the 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 statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 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 § 278.6(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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system . . .

Section 278.6(e)(5) of the SNAP regulations states, in part, that a firm is to be disqualified for six months:

[I]f 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.

In addition, 7 CFR § 278.6(f)(1) provides for civil money penalty (CMP) assessments in lieu of disqualification in cases where disqualification would cause “hardship” to SNAP households benefit because of the unavailability of a comparable participating food store in the area to meet their shopping needs. It reads:

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 benefit because there is no other authorized retail food store in the area selling as large a variety of staple food items.

### **APPELLANT’S CONTENTIONS**

Appellant, through counsel, made the following summarized contention in its administrative review request dated October 24, 2022, in relevant part:

- The owner has been in business since 2019 and an EBT vendor since 2020. He has never violated any laws related to Section 271.2 and 278.6(e)(1);
- Under 271.2(d), ownership and/or its employees have not violated SNAP law. Their transactions are based on the sale of qualified merchandise;
- Ownership wishes to prove that it implemented an effective compliance program to prevent SNAP violations under Section 271.2 and meets the CMP eligibility under Section 278.6(e)(1);
- The firm had an effective compliance policy in place;
- The firm had developed and instituted an effective personnel training program;
- Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations;
- This is the first time Appellant has received a letter of violation from USDA.
- Appellant employee not only knew that exchanging EBT for cash is not allowed but also knew that selling non-food items is not allowed.
- Appellant-owner terminated the employee.
- The loss to the local community would be significant if USDA temporarily disqualifies Appellant.
- USDA may be better served by approving a CMP.

The preceding may represent only a summary of the Appellant’s contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced. Appellant also submitted the following exhibits: Owner affidavit; employee affidavit; customer affidavit; store photos; and a credit log.

### **ANALYSIS AND FINDINGS**

This review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations Division’s determination at the time it was made. Appellant was investigated by the USDA for compliance with SNAP laws and regulations. On review, it is decided that there is insufficient evidence to support the six-month

disqualification of Appellant. The determination is modified. The violations warrant a warning letter per 7 CFR §278.6(e)(7).

### **CONCLUSION**

The preponderance of the evidence in the record supports that Appellant warrants a warning letter for violations too limited to warrant a disqualification.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7CFR § 279.7. 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's 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 delivery 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.

David A. Shively  
Administrative Review Officer

May 28, 2024