

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

**Mualla Deli Corp.,
Appellant,**

V.

**Retailer Operations Division,
Respondent.**

Case Number: C0244669

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to support the determination by the Retailer Operations Division to impose a six-month disqualification against Mualla Deli Corp. (Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). The decision is reversed.

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 the 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 Mualla Deli Corp., with Federal SNAP law and regulations from October 4, 2021, through October 15, 2021. In a letter dated November 16, 2021, 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 four (4) 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).

In email correspondence dated November 23, 2021, Appellant, through counsel, responded to the charge letter and generally stated that the USDA has wrongfully concluded, that the firm

engaged in accepting SNAP benefits in exchange for merchandise, which in addition to eligible foods, included common ineligible non-food items and that ownership vehemently denies that they personally engaged in any type of illegal activity and were unaware, until receipt of the letter charges, that anyone else in their store or employed by them in this business is alleged to have engaged in such activities. A review of the charge letter reveal the inadequacies and insufficiencies of the investigation conducted by the Food and Nutrition Service and lack of evidence requiring dismissal of these charges.

I further submit that the violations which are alleged to have occurred and which are totally denied by this owner are the sale of a common ineligible non-food item which in itself are in such insignificant amounts that it raises a question about the appropriateness and credibility of the investigation. Should the FNS determine that this firm and owner violated Section 278.2(a) of the SNAP regulations, then and in that event, pursuant to Section 278.6(f)(1) the FNS should impose a civil money penalty as a sanction in lieu of disqualification. Appellant, through counsel, submitted a Freedom of Information Act (FOIA) request.

After reviewing the evidence of the case and the Appellant's response, through counsel, Retailer Operations Division issued a determination letter dated December 29, 2021. 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 email correspondence dated December 29, 2021, Appellant, through counsel, requested an administrative review of the Retailer Operations Division's 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 statute in this matter is contained 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 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 1977, 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.”

ANALYSIS AND FINDINGS

A review of the evidence does not support the Retailer Operation Division’s determination in this case. Accordingly, it is unnecessary to address Appellant’s contentions in this matter. This administrative review decision is based on the specific circumstances of this case as documented by the investigative record, materials provided by Appellant, and the Retailer Operations Division. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to impose a six-month disqualification against Mualla Deli Corp. from participating as an authorized retailer in SNAP is reversed.

RIGHTS AND REMEDIES

Under the Freedom of Information Act (FOIA), 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.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

December 21, 2022