

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

**Los Rodriguez Deli & Grocery Co.,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0234530**

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**FINAL AGENCY DECISION**

It is the decision of the USDA that there is sufficient evidence to support a finding that a six-month disqualification of Los Rodriguez Deli & Grocery Co. (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

**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 conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period of January 5, 2021, through January 18, 2021. The investigative report documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on three separate occasions. As a result of evidence compiled during this investigation, by letter dated March 10, 2021, 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

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under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification.

Appellant, through counsel, replied to the charges by letter dated March 22, 2021. Appellant request a CMP and explains that it is the firm's first offense. After considering the evidence, the Retailer Operations Division notified Appellant in a letter dated May 6, 2021, 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 letter dated May 13, 2021, 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.

### **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.

7 CFR § 271.2 states in part:

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.

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.

### **SUMMARY OF CHARGES**

During an investigation conducted between January 5, 2021, 2021, and January 18, 2021, an investigator conducted four compliance visits at Appellant. A report of the investigation dated January 27, 2021, was provided to Appellant as an attachment to the charge letter. The investigation report included Exhibits A through D which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were recorded during three of the compliance visits and involved the sale of sponges, plastic forks.. Upon review, the evidence indicates that Appellant established a record of selling non-food items, as defined by Section 271.2 of the regulations, on multiple occasions as noted in Exhibits A, B, and C, furnished with the charge letter.

### **APPELLANT’S CONTENTIONS**

Appellant made the following summarized contentions in its administrative review request dated May 13, 2021, in relevant part:

- Appellant requests reconsideration for a CMP or a two-month period of suspension.
- It is the firm’s first offense, and it was merely guilty of accepting SNAP benefits for items worth less than \$5.00.
- The person who conducted the transaction is not the owner and did not work for the firm.

The preceding may represent only a brief 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.

## ANALYSIS AND FINDINGS

The investigation report documents that the charges of violations are based on the findings of a formal investigation. The transactions cited in the letter of charges 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 provides through a preponderance of the evidence that the violations as reported occurred at the Appellant firm.

Appellant requests a lesser penalty. 7 CFR § 278.6(e)(5) states, as noted above, that FNS shall disqualify a 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 and poor supervision by the firm's ownership or management.

### **Ownership Involvement**

Appellant states that the transactions were conducted by somebody that was helping out and is not an employee. Regardless of whom the ownership of a store may utilize to handle store business, the ownership is accountable for the proper training of staff and the monitoring and 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 of 2008 and the enforcement efforts of the USDA.

Ownership signed the FNS reauthorization application for SNAP retailers on December 20, 2018, which included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits for cash and as payment for ineligible items, a violation of the SNAP rules and regulations. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations.

### **No Previous Violations**

Appellant reports that it has not had any previous violations. A record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of the violations upon which they are based. There is no provision in the Act or regulations that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees.

## **Civil Money Penalty**

Appellant requests a CMP. A CMP is allowed in lieu of a six-month disqualification when households would experience hardship if the retailer is disqualified. 7 CFR § 278.6(f)(1) 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.” The Retailer Operations Division determined that there are 16 authorized super stores or supermarkets located within a one-mile radius of Appellant. Thus, in its letter dated May 6, 2021, the Retailer Operations Division determined that a hardship CMP would not be appropriate, as there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices. Some degree of inconvenience to SNAP customers is inherent whenever any SNAP authorized retailer is disqualified. For example, the normal shopping pattern of SNAP customers may be temporarily altered during the period of disqualification. The determination of the Retailer Operations Division that the six-month disqualification of Appellant from the SNAP would not create a hardship to customers, as differentiated from potential inconvenience, is sustained and a civil money penalty in lieu of disqualification is not appropriate in this case.

## **CONCLUSION**

The determination by the Retailer Operations Division to impose a six-month disqualification against Los Rodriguez Deli & Grocery Co. from participating as an authorized retailer in SNAP is sustained. In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective 30 days after receipt of this letter. A new application for participation in SNAP may be submitted ten days prior to the expiration of the six-month disqualification period.

## **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 any Complaint is filed, it must be filed within thirty days of receipt of this Decision.

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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

September 29, 2021