

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

**Olympic Liquor And Food,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0244802**

**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 finding that the denial of a hardship civil money penalty, in lieu of a three (3) year disqualification from the Supplemental Nutrition Assistance Program (SNAP) as a result of WIC Program violations, was properly rendered by the Retailer Operations Division against Olympic Liquor And Food (hereinafter “Olympic Liquor And Food” or “Appellant”).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(1) in its administration of the SNAP, when it denied assessing a civil money penalty in lieu of a three year disqualification against Olympic Liquor And Food.

**AUTHORITY**

7 U.S.C. 2023 and its 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**

In a letter dated April 8, 2021, the Retailer Operations Division informed the Appellant of the agency’s intention to impose a three year disqualification against the Appellant firm from participating as an authorized retailer in the SNAP. The firm was disqualified for three years from the WIC Program for violations that included, pursuant to 7 CFR § 278.6(e)(8)(i)(A) of the SNAP regulations, “A pattern of claiming reimbursement for the sale of an amount of a specific food item that exceeds the store’s documented inventory of that food item for a specific period”.

FNS was advised by the Wisconsin Department of Health Services, Office of the Inspector General, WIC Vendor and Integrity Unit (Wisconsin WIC State Agency) that the Appellant was being disqualified from the WIC Program for three years effective March 8, 2021 and that the Appellant's appeal rights had been exhausted. The Wisconsin WIC State Agency provided FNS with a copy of a letter dated December 17, 2020 that it had sent to the Appellant advising it that Olympic Liquor And Food could be disqualified from the SNAP based on the WIC Program violations that occurred at the firm. The letter also informed the Appellant of its appeal rights regarding the WIC Program disqualification. The Wisconsin WIC State Agency informed FNS that Olympic Liquor and Food had exhausted all of its appeal rights with regard to the three year WIC disqualification.

In a response to the Retailer Operations Division of April 19, 2021, the Appellant, through counsel, replied to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division informed the Appellant, by letter dated May 10, 2021, that Olympic Liquor And Food was not eligible for imposition of a hardship civil money penalty in lieu of disqualification and would be disqualified from participation as a retail store in the SNAP for a period of three years. The Appellant was also informed that the determination to disqualify Olympic Liquor And Food from the SNAP on the basis of the WIC Program disqualification is not subject to administrative review; rather, the firm only has appeal rights with regards to its eligibility for a civil money penalty. This is in accord with the Food and Nutrition Act of 2008, as amended, and 7 CFR § 278.6(e)(8) of the SNAP regulations.

In a letter postmarked May 18, 2021, the Appellant, through counsel, appealed the Retailer Operations Division's decision to deny assessing a civil money penalty in lieu of a three year SNAP disqualification and requested an administrative review of this action. FNS granted the Appellant's request for administrative review by letter dated June 21, 2021 and implementation of the sanction has been on hold pending completion of this review. In an email correspondence of July 12, 2021, the Appellant, through counsel, submitted additional information in support of the request for administrative 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, might 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 U.S.C. § 2023 and Section 278 of Title 7 of the Code of Federal Regulations (CFR).

Section 12 [7 U.S.C § 2021] (a)(1) states, in part, "An approved retail food store or wholesale food concern that violates a provision of this Act or a regulation under this Act may be: (A) disqualified for a specific period of time from further participation in the supplemental nutrition assistance program; (B) assessed a civil penalty of up to \$100,000 for each violation; or (C) both."

7 CFR § 278.6(e)(8) states, in part, “FNS shall disqualify from the Food Stamp Program any firm which is disqualified from the WIC program.”

7 CFR § 278.6(e)(8)(i)(A) states, in part, “FNS shall disqualify from the SNAP any firm which is disqualified from the WIC Program ...for any of the following specific program violations: A pattern of claiming reimbursement for the sale of an amount of a specific food item that exceeds the store’s documented inventory of that food item for a specified period of time...”

7 CFR § 278.6(e)(8)(ii)(A) and (B) state “FNS shall not disqualify a firm from SNAP on the basis of a WIC disqualification unless: (A) Prior to the time prescribed for securing administrative review of the WIC disqualification action, the firm was provided individual and specific notice that it could be disqualified from SNAP based on the WIC violations committed by the firm; (B) A signed and dated copy of such notice is provided to FNS by the WIC administering agency”.

7 CFR § 278.6(e)(8)(iii)(A) states, in part, that such a disqualification: “...shall be for the same length of time as the WIC disqualification.”

7 CFR § 278.6(e)(8)(iii)(C) states, in part, that such a disqualification: “Shall not be subject to administrative or judicial review under the Food Stamp Program.”

7 CFR § 278.6(f)(1) states, in part, “FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm’s disqualification would cause hardship to food stamp 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.”

7 CFR § 278.1(b)(4)(i) states, in part, “If the applicant firm has been sanctioned for violations of this part, by withdrawal or disqualification for a period of more than six months, or by a civil money penalty in lieu of a disqualification period of more than six months, or if the applicant firm has been previously sanctioned for violations and incurs a subsequent sanction, regardless of the disqualification period, FNS shall, as a condition of future authorization, require the applicant to present a collateral bond or irrevocable letter of credit...”

7 CFR § 278.1(b)(4)(D) states, in part, “The collateral bond or irrevocable letter of credit must have a face value of \$1,000 or an amount equal to ten percent of the average monthly SNAP redemption volume of the applicant firm for the immediate twelve months prior to the effective date of the most recent sanction which necessitated the collateral bond or irrevocable letter of credit, whichever amount is greater.”

### **APPELLANT’S CONTENTIONS**

The following represents a brief summary of the Appellant’s contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the reply to the charge letter, in the administrative review request, and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant has participated as an authorized SNAP vendor since 2006 and in the previous 15 years of participation as a WIC vendor the business had never once been cited, accused, or even warned regarding any possible violations.
- One of the store owners is primarily responsible for the management and operations of the business. He is extremely careful and diligent with respect to adhering to the required practices and responsibilities of vendors participating in the WIC program. Neither store owner had any intent to violate the WIC regulations.
- The owner lost or failed to retain some receipts documenting his purchases of certain items of inventory during the six month audit program conducted by the WIC state agency. He was not missing many receipts. In fact, he retained and was able to produce receipts documenting his purchases of inventory from all wholesale suppliers. He was missing several receipts (more than three) from the six month audit period that resulted from unscheduled purchases he occasionally made from nearby large supermarket grocery stores like Walmart. He has discovered that the receipts for these occasional few purchases are the receipts that were missing from the six month WIC audit period.
- Pursuant to Wisconsin WIC regulations, three or more incidents of “claiming reimbursement for the sale of a specific authorized food in an amount that exceeds the vendor’s documented inventory of that food for the same period of time” requires a mandatory three year WIC program disqualification.
- However, a three year disqualification from the SNAP is not mandatory and under the circumstance not called for. Pursuant to 7 CFR § 278.6(c) and (d), the evidence in this situation must be reviewed and consideration must be given to: (1) The nature and scope of the violations committed by personnel of the firm; (2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring; and (3) Any other evidence that shows the firm’s intent to violate the regulations.
- In this case there is clearly not “a pattern of claiming reimbursement for the sale of an amount of a specific food item that exceeds the store’s documented inventory of that food item for a specific period”. There is definitely not “a pattern” as required by 7 CFR § 278.6(e)(8)(i)(A).
- The Appellant requests the imposition of a civil money penalty in lieu of SNAP disqualification.
- The Appellant fulfills the criteria set forth in Section 278.6(f)(1) of the SNAP regulations to qualify for a civil money penalty. The store sells a substantial variety of staple food items and its disqualification would cause hardship to SNAP households because there is no other SNAP authorized retail food store in the area selling as large a variety of staple food items at comparable prices.
- There are other small “convenience stores” in the area but none of these stores come close to the variety, quality and quantity of staple food items found at the Appellant. The Appellant has butchers on staff who personally cut and slice much of the fresh meat sold at the store. The store has a “deli cooler” containing freshly cut meats and cheeses for sale to customers and a selection of fruits and vegetables.
- There are two SNAP authorized supermarket food stores in the area which sell as large a variety of staple foods at comparable prices as the Appellant but one is located 1.9 miles from the Appellant and the other is located 2.4 miles from the Appellant.

In support of these contentions, the Appellant, through counsel, submitted the following documents for review:

- State of Wisconsin, Department of Administration, Division of Hearings and Appeals “Stipulated Settlement Agreement” for Appellant;
- 16 photos of food stock at Appellant firm; and
- Petitions of support signed by numerous SNAP customers (10 pages total).

## **ANALYSIS AND FINDINGS**

### **WIC Program Violations**

With regard to the Appellant’s contentions with respect to the WIC disqualification, in accordance with 7 CFR § 278.6(e)(8)(ii)(A) and (B), the Appellant was provided with specific notice that Olympic Liquor And Food could be disqualified from the SNAP based on the WIC violations committed by the firm. This notice was given to the firm by the Wisconsin WIC State Agency in a letter dated December 17, 2020. A copy of that notice was provided to FNS by the Wisconsin Department of Health Services, Office of the Inspector General, WIC Vendor and Integrity Unit (Wisconsin WIC State Agency) and FNS was notified that the Appellant’s appeal rights had been exhausted.

Additionally, in accordance with 7 CFR § 278.6(e)(8), the Appellant was informed by both the Wisconsin WIC State Agency and the FNS Retailer Operations Division that the decision to reciprocally disqualify Olympic Liquor And Food from the SNAP on the basis of the WIC disqualification would not be subject to administrative or judicial review. Further, the regulations state that the SNAP disqualification shall be for the same length of time as the WIC disqualification and may begin at a later date than the WIC disqualification.

Consequently, this administrative review has no authority to render an opinion regarding the WIC violations that were uncovered by the state of Wisconsin. According to the state’s records, the Appellant firm engaged in a pattern of claiming reimbursement for the sale of an amount of a specific food item that exceeds the store’s documented inventory of that food item for a specific period. Pursuant to the state’s administrative regulations, such a violation warrants a three year WIC disqualification. The record also shows that the Appellant’s appeal rights have been exhausted.

The Appellant contends that in this case there is clearly not “a pattern of claiming reimbursement for the sale of an amount of a specific food item that exceeds the store’s documented inventory of that food item for a specific period” as required by 7 CFR § 278.6(e)(8)(i)(A).

However, 7 CFR 278.6(e)(8)(iii)(C) states that the SNAP reciprocal disqualification shall not be subject to administrative or judicial review. The determination letter of May 10, 2021 properly noted that a SNAP administrative review was only available regarding the firm’s eligibility for a hardship civil money penalty. Therefore, the three year reciprocal disqualification from the SNAP is wholly in line with Federal regulations and is final and not subject to review.

### **First Time Violator**

With regard to the Appellant’s contentions that the firm has been participating in the SNAP since 2006 without being cited for, accused of, or warned about any SNAP 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 those charges.

### **Hardship Civil Money Penalty**

The Appellant contends that it fulfills the criteria set forth in Section 278.6(f)(1) of the SNAP regulations to qualify for a civil money penalty and requests such a penalty in lieu of SNAP disqualification. The store sells a substantial variety of staple food items and its disqualification would cause hardship to SNAP households because there is no other SNAP authorized retail food store in the area selling as large a variety of staple food items at comparable prices.

A review of the agency's case record shows that the Retailer Operations Division properly considered whether or not SNAP recipients would experience hardship as a result of the firm's disqualification. Under the provisions found in 7 CFR § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification when hardship to SNAP households exists. However, according to this regulation, hardship is defined as "no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices." [Emphasis added.] **5 U.S.C. § 552 (b)(7)(E).**

It is recognized that some degree of inconvenience for SNAP households is likely whenever a SNAP authorized store is disqualified and the household is forced to use its SNAP benefits elsewhere. However, in accordance with the regulations cited above, hardship exists only when there are no other authorized stores in the area selling as large a variety of staple foods at comparable prices. Therefore, the earlier determination that Olympic Liquor And Food's disqualification would not create a hardship to customers, as differentiated from potential inconvenience, is sustained and a CMP in lieu of SNAP disqualification is not appropriate in this case.

### **CONCLUSION**

Based on the discussion above, the determination by the Retailer Operations Division to deny Olympic Liquor And Food a hardship civil money penalty in lieu of a three (3) year disqualification from the SNAP as a result of WIC Program violations is sustained.

In accordance with the Food and Nutrition Act of 2008, and the regulations thereunder, this period of disqualification shall become effective thirty (30) days after receipt of this letter. A new application for participation may be submitted by the firm ten (10) days prior to the expiration of this three year period. In accordance with 7 CFR § 278.1(b)(4), at the time of any such new application for program participation, the firm would be advised by the office receiving such an application of the necessity, as a store previously sanctioned for program violations, also to post a collateral bond or irrevocable letter of credit as a condition for again being authorized to participate in the program.

### **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 Section 279.7 of the Regulations (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, FNS is 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.

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

August 2, 2021