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

Super Value Meat Market Corp.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0224034

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that FNS's Retailer Operations Division properly denied the imposition of a hardship civil money penalty (CMP) in lieu of disqualification from the Supplemental Nutrition Assistance Program (SNAP). Therefore Super Value Meat Market Corp. (hereinafter "Appellant"), shall be reciprocally disqualified from SNAP for a period of three years due to the firm's disqualification from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it imposed a three-year disqualification against Super Value Meat Market Corp. and denied the imposition of a hardship CMP in lieu of disqualification.

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

FNS records show that the Appellant firm, Super Value Meat Market Corp., was initially authorized for SNAP participation as a large grocery store on March 13, 2003. In a letter dated June 7, 2019, the New York Department of Health, Bureau of Special Investigations, notified the Appellant that it was being disqualified from the WIC Program due to a pattern of claiming reimbursement for the sale of Enfamil Infant Powder which exceeded the store's documented inventory of that item. These violations resulted in a WIC sanction of three years in accordance

with 7 CFR § 246.12(l)(1)(iii)(B). The June 7 letter further stated that the disqualification from WIC "may result in a [SNAP] reciprocal disqualification without the opportunity for a separate administrative or judicial review under the SNAP." Reciprocal SNAP disqualifications are imposed upon WIC Program violators in accordance with Federal regulations at 7 CFR § 246.12(h)(3)(xxvi). Finally, the State agency's letter indicated that a claim of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was being assessed against Super Value Meat Market Corp. to reimburse the State of New York for the unsubstantiated infant formula sales.

The State agency's letter indicated that the three-year WIC disqualification would begin on June 27, 2019.

On November 20, 2019, the State of New York notified FNS's Retailer Operation Division that Super Value Meat Market Corp. had been disqualified from WIC for program abuse for a period of three years effective November 14, 2019. The letter further stated that Super Value Meat Market Corp. had failed to appeal the State's WIC disqualification decision. Included with the State agency's letter was a copy of the June 7, 2019 notice of disqualification.

Consequently, in a letter dated December 5, 2019, the Retailer Operations Division informed the Appellant of FNS's intention to disqualify Super Value Meat Market Corp. from participation in SNAP for a period of three years as a reciprocal administrative action on the basis of the store's disqualification from WIC. The letter stated that the firm was also being considered for the imposition of a civil money penalty in lieu of disqualification.

The December 5 letter offered the Appellant an opportunity to "present any information, explanation, or evidence indicating that (1) [the] firm has not been disqualified from the WIC Program; (2) [the firm was] not informed of the possibility of Supplemental Nutrition Assistance Program disqualification in response to the WIC disqualification action; and (3) all opportunities for appeal of the WIC State agency action have not been exhausted or expired."

In response to the December 5 letter, the Appellant submitted a one-page reply in which it claimed that the owner has always been a rule-abiding individual and in 17 years, this situation with WIC has been the only issue. The Appellant further stated that all of its employees were well-acquainted with WIC and SNAP rules and regulations. The Appellant stated that the store is located in a large residential area where many households receive some type of assistance, and claimed that the store would not survive a three-year disqualification from both WIC and SNAP. Finally, the Appellant requested a CMP in lieu of disqualification should the decision to disqualify the store be upheld.

After considering the Appellant's response and further evaluating the evidence in the case, the Retailer Operations Division determined that a three-year SNAP disqualification as a result of the firm's WIC violations was the appropriate penalty in accordance with 7 CFR § 278.6(e)(8). The Retailer Operations Division also evaluated the Appellant's eligibility for a hardship CMP in lieu of disqualification in accordance with 7 CFR § 278.6(a) and (f)(1), but determined that this alternative penalty was not appropriate because there were other SNAP-authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

The Appellant was informed of the agency's determination in a letter dated February 12, 2020. This letter further informed the Appellant that the determination to reciprocally disqualify Super Value Meat Market Corp. from SNAP was final and was not subject to administrative review. However, appeal rights were available with regard to the denial of a hardship CMP.

In a letter postmarked February 24, 2020, the Appellant requested an administrative review of the agency's decision. The request was granted and implementation of the SNAP disqualification has been held in abeyance pending completion of this review.

It is noted that simultaneous to its request for administrative review, the Appellant submitted a request for case file information in a request made under the Freedom of Information Act (FOIA). As a result of the FOIA request, this administrative review was held in abeyance pending FNS's response to this additional request. On March 2, 2020, the administrative review officer in this case sent a letter to the Appellant stating that upon receipt of the agency's FOIA response, the Appellant would have 21 days to submit any additional information or documentation to support its request for administrative review.

On August 25, 2021, FNS completed the FOIA process and sent its response to the Appellant via e-mail that same day. The firm then had 21 days to submit any additional information to support its request for administrative review.

On September 8, 2021, the administrative review officer sent the Appellant an e-mail as a reminder that the firm had a deadline of September 17, 2021 to submit any additional data it wanted considered in this matter. Over the next several days, the Appellant, through counsel, submitted three documents, including an affidavit from the store owner; a letter of support from New York City Council Member, Ydanis Rodriguez; and a letter of support from U.S. Congressmember Adriano Espaillat of New York's 13th Congressional District. Both letters of support were dated and submitted after the September 17 deadline.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP or the denial of a civil money penalty in lieu of disqualification, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

The controlling law in this matter is found in the Food and 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)(8) establish the authority upon which FNS may disqualify any authorized retail food store from further participation in SNAP if the firm fails to comply with the provisions of the Act, including reciprocal disqualification from SNAP on the basis of a WIC disqualification. Section 278.6(f)(1) establishes the authority upon which a civil money penalty

may be imposed against a disqualified retail food store when the firm's disqualification would cause hardship to SNAP households.

7 CFR § 278.6(e)(8)(i) reads, in part:

> FNS shall disqualify from SNAP any firm which is disqualified from the WIC Program:
>
> > (i) Based in whole or in part on any act which constitutes a violation of that program's regulation and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:
> >
> > > (A) A pattern of claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time.

7 CFR § 278.6(e)(8)(ii) states:

> 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; and
> >
> > (C) A determination is made in accordance with paragraph (a) of [Section 278.6] that such action will not cause a hardship for participating SNAP households.

7 CFR § 278.6(e)(8)(iii) states:

> Such a SNAP disqualification:
>
> > (A) Shall be for the same length of time as the WIC disqualification;
> >
> > (B) May begin at a later date than the WIC disqualification; and
> >
> > (C) Shall not be subject to administrative or judicial review under SNAP.

7 CFR § 278.6(a) reads, in part:

> ...FNS may, in lieu of a disqualification, subject a firm to a civil money penalty...if FNS determines that a disqualification would cause hardship to participating households....

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 subject to a disqualification is selling a substantial variety of staple food items, and 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....

APPELLANT'S CONTENTIONS

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

- Appellant would like to explain its commitment to compliance with all regulations in order to qualify for a CMP.
- The firm agrees to fully comply with all regulations. The regulations have been the firm's guide to processing EBT transactions since the first day it was authorized to process SNAP benefits. The firm understands that processing EBT transactions is a privilege and that no one should violate any regulations for any reason.
- The store owner will be taking all necessary measures to remedy the current situation.
- The store is located close to New York City housing, and a disqualification could be a hardship for families because the store is open earlier and closes later than most of the other nearby businesses. Many of the firm's customers are single parents or senior citizens that live in nearby shelters.
- The firm is on its way to negotiate with the New York WIC Department. It has sent WIC a letter and is awaiting their response.
- It has never been the firm's intention to violate any rules or regulations set by SNAP.
- Appellant requests a CMP and is willing to fulfill any requirements in order to continue offering EBT to its customers.
- In light of the COVID-19 situation, Super Value Meat Market Corp. is the only store that carries all the same stock levels as the closest supermarket. Many families rely on the store to find essentials during this unknown and novel situation. The store's ability to accept SNAP during this time has helped take the burden off many families.
- Many of the firm's customers visit the store three or four times a day because of its convenient location. This constitutes between 50-150 clients.
- The store offers a large variety of nutritious products and is the only store that accepts EBT within a two or three block radius. The prices at the store are very similar to prices at nearby supermarkets.
- The firm always follows FNS regulations and it has never violated any SNAP rules.

To support its contentions, the Appellant submitted a copy of a March 16, 2020 letter it submitted to its local WIC office. The letter outlined similar contentions as those listed above, specifically requesting reconsideration of the WIC penalty so that it could qualify for a CMP in lieu of the SNAP disqualification. It should be noted that the contentions listed above were submitted in February and March 2020 while the administrative review was in a pending status awaiting the completion of the FOIA process.

After the agency's FOIA response was completed in August 2021, the Appellant submitted two letters of support from elected officials: one from New York City Council Member, Ydanis Rodriguez, and one from U.S. Congressman Adriano Espaillat of New York's 13th Congressional District. Finally, the Appellant submitted a notarized affidavit, dated September 9, 2021, signed by store owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The affidavit addressed the nature of the WIC violation and indicated that the firm paid a fine and acknowledged that its WIC authorization was "cancelled." The affidavit further stated that a disqualification from SNAP would put the store out of business and adversely affect its customers and requested that the firm not be disqualified.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a final decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced in this document.

ANALYSIS AND FINDINGS

In accordance with 7 CFR § 278.6(e)(8)(ii)(A) and (B), the Appellant was provided with specific notice that it could be disqualified from SNAP based on WIC violations committed by the firm. This notice was given to the firm by the New York Department of Health in a letter dated June 7, 2019. A copy of that notice was then provided to FNS's Retailer Operations Division on November 20, 2019.

Additionally, in accordance with 7 CFR § 278.6(e)(8)(iii), the Appellant was informed by both the State agency and the Retailer Operations Division that the decision to reciprocally disqualify Super Value Meat Market Corp. from SNAP on the basis of the WIC disqualification would not be subject to administrative or judicial review. Further, the regulation states 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.

According to State records, the Appellant firm engaged in a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item (infant formula) which exceeded the store's documented inventory of that item for a specific period of time. Regulations at 7 CFR § 246.12(l)(1)(iii) require that the State agency impose a three-year WIC disqualification against the firm for such a violation. The record also shows that Super Value Meat Market Corp.'s appeal options regarding the WIC penalty have been exhausted.

With all of these facts clearly in place, this review finds that the Retailer Operations Division's decision to reciprocally disqualify the firm from SNAP complies with program regulations. As such, the three-year SNAP disqualification stands and this review has no authority to further

review such a determination. This is pursuant to 7 CFR § 278.6(e)(8)(iii)(C). Therefore, the only issue this review may consider is whether or not the Retailer Operations Division took appropriate action by determining that the Appellant was not eligible for a hardship CMP in lieu of disqualification from SNAP.

Hardship Civil Money Penalty

In requesting a CMP, the Appellant contends that disqualifying Super Value Meat Market Corp. from SNAP will create hardship for customers who reside in the area and shop at the store, particularly single parents, seniors, and those who live in subsidized housing. According to the Appellant, the store is open earlier and closes later than most other nearby businesses and is the only store in the area that carries stock levels similar to a supermarket. The Appellant further contends that Super Value Meat Market Corp. is the only store that accepts EBT within a two or three block radius and claims that its prices are similar to nearby supermarkets. The Appellant also argues that many families have relied on the store to find essentials during the COVID-19 pandemic. In support of these contentions, the Appellant provided an affidavit signed by the store owner as well as two letters of support from a New York City Council Member and a Member of the U.S. House of Representatives, both of which provided similar arguments for allowing the store to remain authorized to accept SNAP benefits.

With regard to these contentions, it is recognized that some degree of inconvenience to SNAP recipients is likely whenever a retail food store is disqualified and households are forced to use their benefits elsewhere. But such inconvenience is not considered a "hardship" for purposes of assessing a CMP unless there are no other SNAP-authorized stores in the area at which customers can shop. The regulation at 7 CFR § 278.6(f)(1) states that hardship to SNAP households occurs when 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). In such circumstances, a CMP in lieu of disqualification may be considered.

It is the determination of this review that a disqualification of Super Value Meat Market Corp. would not cause hardship to SNAP households because there are many other shopping options in the area. According to agency records, there are nearly two dozen similarly-stocked or larger SNAP-authorized retail stores located within a one-mile radius of Super Value Meat Market Corp., including two superstores and a supermarket located within a third of a mile of the Appellant store. There is also no evidence that the inventory at other stores in the area is not comparably priced. Because hardship conditions do not exist in this case, a civil money penalty in lieu of disqualification cannot be granted.

As to the messages of support from elected officials, these letters, while compelling, do not outweigh the statutes and regulations that govern SNAP. It should also be noted that potential economic hardship to the firm itself cannot be a consideration in this matter. Likewise, the Appellant's other contentions, such as a commitment to ongoing SNAP compliance and a claim that the firm has always adhered to program rules have no relevance in this decision.

CONCLUSION

Because the conditions found in 7 CFR § 278.6(e)(8)(i) and (ii), have been met in this case, this review has no authority to reconsider the three-year reciprocal SNAP disqualification against Super Value Meat Market Corp., which was imposed on the Appellant on the basis of a WIC disqualification.

As for the agency's denial of a hardship civil money penalty in lieu of disqualification, this determination is sustained. The evidence shows that SNAP households will not incur hardship, as defined by regulation, as a result of the firm's disqualification.

In accordance with the Food and Nutrition Act of 2008 and associated regulations, the Appellant's disqualification from SNAP shall become effective 30 days after receipt of this decision. A new application for SNAP may be submitted no earlier than 10 days prior to the expiration of the three-year disqualification period. In accordance with 7 CFR § 278.1(b)(4), at the time of any new application for participation in SNAP, the firm will be required to submit a collateral bond or irrevocable letter of credit as a condition for again being authorized to participate in the Program. This bond requirement is due to the firm's disqualification of a period longer than six months.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 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 receipt 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.

JON YORGASON
Administrative Review Officer

October 4, 2021