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

136 Deli Grocery Corp, **Appellant,** **v.** **Retailer Operations Division,** **Respondent.**	**Case Number: C0234951**

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a six-month disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against 136 Deli Grocery Corp. (hereinafter "Appellant") by FNS's Retailer Operations Division.

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 six-month disqualification against 136 Deli Grocery Corp.

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, 136 Deli Grocery Corp., was initially authorized for SNAP participation as a convenience store on March 30, 2017. Between November 13, 2020 and November 21, 2020, FNS conducted an undercover investigation at the firm to ascertain its compliance with Federal SNAP laws and regulations. The investigation report documented that personnel at 136 Deli Grocery Corp. accepted SNAP benefits in exchange for ineligible merchandise on three separate occasions. According to the report, the Appellant firm sold steel wool pads, aluminum foil, dishwashing liquid, bathroom tissue, trash bags, lip balm, and all-purpose cleaner in exchange for SNAP benefits, which benefits may only be used for the purchase of eligible food.

In a letter dated December 11, 2020, the Retailer Operations Division charged the Appellant with violating SNAP regulations at 7 CFR § 278.2(a). The charge letter stated that the acceptance of SNAP benefits in exchange for ineligible merchandise warranted a disqualification from SNAP for a period of six months pursuant to 7 CFR § 278.6(e)(5). The letter further stated that under certain conditions and in accordance with § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification.

In a letter dated December 21, 2020, the Appellant, through counsel, requested additional time to respond to the charges. This request was granted by the Retailer Operations Division.

On January 27, 2021, the Appellant submitted its formal response to the charge letter. In its reply, the Appellant argued that no violations warranting a six-month disqualification occurred at the store. It also provided a number of additional arguments, including the following:

- The charges in this case were issued after USDA's new rules regarding the Freedom of Information Act (FOIA) went into effect. Specifically, the Appellant argued that without the benefit of a FOIA request (and holding an administrative decision in abeyance pending the FOIA response) it is not afforded full opportunity to evaluate and respond to all of the information being considered by FNS. The Appellant contended that FNS' position is a violation of regulations at 7 CFR § 278.6(b)(1).
- The store is located north of the train tracks and is the only store for seven blocks for SNAP participants who travel from the train back to their homes. The store is relied upon significantly to help feed the local population. Without the store's SNAP participation, the local neighborhood would suffer a hardship.
- The evidence presented by FNS is unsworn to by the investigator and contains no corroborating evidence. During the November 21, 2020 visit by the investigator, the store clerk outright refused to engage in trafficking SNAP benefits.
- Appellant argued that there is no evidence that the alleged violations involving the sale of ineligible items were "due to" carelessness or poor supervision by the firm's ownership or management, as required by 7 CFR § 278.6(e)(5). Six-month disqualifications should be reserved for store owners who never trained their staff or who govern their store on an absentee basis without any ongoing concern for how the store is operating. In this case, however, the store owner maintained a strict set of rules with regard to SNAP, as evidenced by the investigator's first visit, where store personnel refused the sale of ineligible items. To say that the store owner or manager was careless or failed to supervise the employees is without basis.
- Appellant argued that even if the allegations were true, the violations would warrant a warning letter rather than a six-month disqualification, in accordance with 7 CFR § 278.6(e)(7).
- USDA does not have any audio or video recordings that these transactions occurred as described, nor are there any witnesses. USDA's failure to utilize such tools and its choice to rely only upon an effectively unsigned affidavit means that the agency has failed to meet its burden of proof.
- Appellant believes the investigator's affidavit is hearsay because the alleged violations are not corroborated by any other verifying statements or evidence; there is no reasonable

opportunity for the Appellant to subpoena or otherwise depose of witnesses; and as a result of the Appellant's inability to subpoena witnesses, it is impossible to determine the witness's veracity or bias. As such, the investigation report should not be relied upon by USDA in determining whether a violation has occurred.

- If USDA determines that a penalty is necessary, Appellant believes that the firm should be assessed a hardship civil money penalty in lieu of disqualification because of the comparatively low number of large SNAP retailers and high volume of SNAP participants. Additionally, the Appellant store is safer and has better food than other stores in the area, and is therefore important to local SNAP participants. Additionally, in this era of COVID, many households have trouble traveling to larger stores, and a six-month disqualification would be a hardship on local SNAP participants.

In support of its response, the Appellant submitted a 2018 demographic profile of New York Congressional District 5, published by USDA's Food and Nutrition Service.

After considering the Appellant's response and further evaluating the evidence in the case, the Retailer Operations Division issued a determination letter dated February 2, 2021. This letter informed the Appellant that it was the determination of the Retailer Operations Division that violations did occur as outlined in the charge letter and that a six-month disqualification penalty would be imposed in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that consideration for a hardship CMP was given, but that the Appellant was not eligible for a CMP because there were other authorized stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked February 8, 2021, the Appellant, through counsel, appealed the agency's determination by requesting an administrative review. The request was granted and implementation of the disqualification has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, 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)(5) establish the authority upon which a six-month disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, in part:
[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food.

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...

7 CFR § 278.6(a) states, in part:
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.... Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. [Emphasis added.]

7 CFR § 278.6(c) states, in part:
The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination...

7 CFR § 278.6(e) states, in part:
FNS shall take action as follows against any firm determined to have violated the Act or regulations...The FNS regional office shall:
(5) 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, 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.

INVESTIGATION DETAILS

During an undercover investigation conducted between November 13 and November 21, 2020, an FNS-contracted investigator completed four compliance visits at 136 Deli Grocery Corp. The agency's record indicates that a report of the investigation was provided to the Appellant as an attachment to the December 11, 2020 charge letter. The investigation report includes Exhibits A through D, and provides full details on the results of each compliance visit. SNAP violations were documented during three of the four visits; specifically, the exchange of ineligible nonfood merchandise for SNAP benefits. The report states that the firm allowed the investigator to purchase the following nonfood items:

- One 4-count box of steel wool pads (*Brillo* brand), Exhibit A

- One 25-square-foot roll of aluminum foil (*Krasdale* brand), Exhibit A
- One 7-fluid-ounce bottle of dishwashing liquid (*Dawn* brand), Exhibit B
- One 1,000-sheet roll of bathroom tissue (*Sunset* brand), Exhibit B
- One 10-count box of trash bags (*Red & White* brand), Exhibit C
- One 15-fluid ounce bottle of all-purpose cleaner (*Mistolin* brand), Exhibit C
- One 0.15-ounce tube of skin protectant (*ChapStick* brand), Exhibit C

The report indicates that in Exhibit C, the clerk on duty initially told the investigator that the nonfood items could not be paid for with SNAP benefits, and rang up a transaction for eligible food items only. However, when the investigator asked the clerk if they could use the EBT card to purchase the non-food items, the clerk agreed and processed a second transaction for the non-food items. In Exhibit D, the investigator did not attempt to purchase ineligible items, but instead asked the clerk if she would give cash back off the EBT card (i.e. trafficking). But the clerk refused. According to the report, two different clerks conducted the three violative transactions. The charge letter states that the violations that occurred in Exhibits A, B, and C warrant a disqualification from SNAP for six months pursuant to 7 CFR § 278.6(e)(5).

APPELLANT'S CONTENTIONS

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

- Appellant seeks reversal of FNS's decision to impose a six-month disqualification against 136 Deli Grocery Corp., as FNS lacked sufficient evidence upon which to base a six-month disqualification.
- The store is located north of the train tracks and is the only store for seven blocks for SNAP participants who travel from the train back to their homes. The store is relied upon significantly to help feed the local population. Without the store's SNAP participation, the local neighborhood would suffer a hardship.
- The charges in this case were issued after USDA's new rules regarding FOIA went into effect. Without the benefit of a FOIA request (and the subsequent holding of an administrative decision in abeyance pending the FOIA response) the firm has not been given an opportunity to evaluate and respond to all of the information that was considered by FNS. The Appellant contends that FNS' position in this matter is a violation of regulations at 7 CFR § 278.6(b)(1). Appellant references a previous administrative review decision, *Triple E Express v. ROD*, to support this argument.
- USDA does not have any audio or video recordings that these transactions occurred as described, nor are there any witnesses. USDA's failure to utilize such tools and its choice to rely only upon an effectively unsigned affidavit means that the agency has failed to meet its burden of proof.
- Appellant believes the investigator's affidavit is hearsay because the alleged violations are not corroborated by any other verifying statements or evidence; there is no reasonable opportunity for the Appellant to subpoena or otherwise depose of witnesses; and as a result of the Appellant's inability to subpoena witnesses, it is impossible to determine the witness's veracity or bias. As such, the investigation report should not be relied upon by USDA in determining whether a violation has occurred.

- Appellant adamantly denies any violations of SNAP regulations which would warrant a six-month disqualification. The store has a policy of compliance with SNAP regulations, which is demonstrated throughout the investigation report. "Several of the investigator affidavits show clerks denying ineligible items, trafficking and other violative attempts…"
- In order for a six-month disqualification to be appropriate, the evidence must show that carelessness or poor supervision by ownership or management was the reason that the firm sold ineligible items. Appellant contends that there is no evidence of such carelessness or poor supervision, as required by 7 CFR § 278.6(e)(5). Carelessness or neglectfulness are characteristics of store owners who never train their staff or who govern their store on an absentee basis without any ongoing concern for how the store is operating. In this case, it is evident that the store owner maintained a strict set of rules with regard to SNAP, as evidenced by the investigator's first visit, where store personnel refused the sale of ineligible items. During the November 21, 2020 visit by the investigator, the store clerk outright refused to engage in trafficking SNAP benefits. Additionally, the store owner has always worked to correct any problematic activity that occurs within the store, clarify any matters in which employees are confused, and terminate employees who violate the rules. To say that the store owner or manager was careless or failed to supervise the employees is without basis.
- Appellant argues that even if the allegations were true, the violations would warrant a warning letter rather than a six-month disqualification, in accordance with 7 CFR § 278.6(e)(7), and argues that prior administrative review decisions where a warning letter was issued instead of disqualification establishes precedent in this regard.
- A warning letter is appropriate because there were minimal items purchased by the investigator and all were reasonably related to food preparation and/or common household products. "There was a clear misunderstanding on the part of the Store's clerk regarding the difference between eligible [versus] ineligible items, and nothing in the record to indicate that the sales were intentionally violative."
- As the violations were minor in nature, and while USDA is tasked with maintaining compliance with the regulations, it should be reluctant to resort to draconian sanctions where a lesser sanction would be more appropriate and equally effective.
- At worst, Appellant believes that the firm should be assessed a hardship civil money penalty in lieu of disqualification because of the comparatively low number of large SNAP retailers and high volume of SNAP participants in the area. Additionally, the Appellant store is safer and has better food than other stores in the area, and is therefore important to local SNAP participants. Additionally, in this era of COVID, many households have trouble traveling to larger stores, and a six-month disqualification would be a hardship on local SNAP participants.

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

ANALYSIS AND FINDINGS

The Appellant has denied any wrongdoing that would warrant a six-month disqualification. Simultaneously, however, the Appellant appears to acknowledge that violations occurred, stating that they were only minor in nature and claiming that there was a clear misunderstanding by the store clerks with regard to eligible versus ineligible items. It should be noted that the Appellant has not offered any actual evidence that the transactions in question did not occur. Conversely, the Retailer Operations Division has provided ample evidence that they did, including a detailed written account of each visit by the investigator, dated photographs of all items purchased, and EBT receipts for every transaction. It is also noted that the investigation report includes the following certification statement, which was signed by the investigator:

The facts stated in this declaration are true to my knowledge. If I am called to testify as a witness in any proceeding, I am competent to testify to the matters stated herein. Further declarant sayeth not. I declare under penalty of perjury the foregoing is true and correct.

Without any evidence from the Appellant to support its arguments, the preponderance of the evidence in this case favors the Retailer Operations Division. As such, it is the determination of this review that SNAP violations did occur as charged and a penalty is warranted.

Carelessness / Poor Supervision

The Appellant contends that there is no evidence of carelessness or poor supervision by store ownership or management. It argues that in accordance with 7 CFR § 278.6(e)(5), a six-month disqualification is not warranted unless FNS demonstrates that the violations in question were <u>due to</u> carelessness or poor supervision by the firm's ownership or management. The Appellant contends that examples of carelessness or neglectfulness are store owners who never train their staff or who govern their store on an absentee basis without any ongoing concern for how the store is operating. According to the Appellant, the firm has a policy of compliance with SNAP regulations and it claims that the store owner reviews the regulations with each employee until they demonstrate personal knowledge of the rules. It claims that the owner has always worked to correct any problems that occur within the store, including clarifying any matters in which employees are confused, and terminating employees who violate the rules. The Appellant states: "Evidence that such policy and training was in place can be found in the first investigation visit where the store personnel refused the sale of ineligible items on EBT." Finally, the Appellant states that for FNS to say that the store owner or manager was careless or failed to supervise the employees is without basis.

With regard to these contentions, the law is clear that when program violations occur, specifically the exchange of ineligible nonfood items for SNAP benefits due to employee carelessness or poor supervision by the firm's ownership or management, a six-month disqualification is the required penalty, even on the first occasion. In this case, and contrary to the Appellant's claim above, store personnel did not refuse to sell any ineligible items in the investigator's first visit to the store. In the second visit, the clerk again allowed the investigator to purchase ineligible items with SNAP benefits, but refused to allow the purchase of a single cigar. Instead, the clerk gave the cigar to the investigator for free. In the third visit, a different

store clerk initially separated eligible items from ineligible items, but upon request, allowed the investigator to purchase three non-food items (trash bags, all-purpose cleaner, and lip balm) with SNAP benefits. In the fourth visit, the investigator made no attempt to purchase any ineligible items, but was rebuffed in their attempt to traffic.

Based on the actions of the store clerks, it is likely that some training regarding SNAP occurred at the store. However, three consecutive violations at the store committed by two different clerks over a period of less than one week strongly suggests that the violations were due to either employee carelessness or failure on the part of ownership or management to properly train and supervise its employees. If clerks routinely refuse trafficking and the sale of tobacco products, but allow – intentionally or not – the sale of other obvious nonfoods, which appears to be what happened in this case, then it is likely that the SNAP training at the store was inadequate and not as robust as the Appellant claims. It may be worth noting that the Appellant has not offered any evidence of the firm's alleged training activities, so it is unclear how much SNAP training or supervisory oversight, if any, actually occurred.

Accordingly, this review finds that a six-month disqualification penalty is appropriate and is entirely in line with SNAP regulations. This penalty is also consistent with sanctions imposed upon other retailers that have committed similar violations.

Warning Letter

Based on the analysis in the previous section, this review further finds that a warning letter is not appropriate in this case. Regulations at 7 CFR § 278.6(e)(7) state that a warning letter should only be sent if the violations are too limited to warrant a disqualification. As explained earlier, a six-month disqualification is the required penalty for violations involving the exchange of ineligible merchandise for SNAP benefits due to employee carelessness or poor supervision by the firm's ownership or management. In this case, the evidence suggests that the violations meet, in every respect, the regulatory criteria for a disqualification, as noted in § 278.6(e)(5).

The Appellant has cited a previous administrative review decision where a warning letter was issued instead of disqualification and contends that the same should happen in this case. However, the Appellant is imputing precedent where none exists. Each administrative review decision is based solely on the merits of that individual case in relation to the regulations that were in effect at the time the adverse action was taken against the store. A modification in an earlier case from a disqualification to a warning letter has no bearing on the present case and provides no basis for a modification or reversal in this matter.

Hearsay / Deposition of Witnesses

The Appellant contends that the investigator's affidavit is hearsay and unreliable because the alleged violations are not corroborated by any other verifying statements or evidence, and there is no reasonable opportunity for the Appellant to subpoena or otherwise depose of witnesses. The Appellant claims that as a result of its inability to subpoena witnesses, it is impossible to determine the witnesses' veracity or bias.

With regard to this contention, it must be restated that the Retailer Operations Division provided sufficient evidence that the transactions did, in fact, occur (see p. 7, above), and this review can find no evidence to suggest that the transactions did not occur in the manner described by the investigator.

As to subpoenaing or deposing witnesses, such proceedings have never been part of the regulations with regard to a firm's response to a charge letter, and such proceedings are no longer part of an administrative review. In September 2003, revisions to parts 278 and 279 of the SNAP regulations eliminated in-person hearings as part of the administrative review process. Administrative reviews conducted in accordance with regulation are now done in writing. Neither the Food and Nutrition Act of 2008 nor SNAP regulations contemplate formal discovery procedures or an adversary hearing as part of the administrative review process. Thus, there is no provision for confrontation with Department witnesses and cross-examination of any such witnesses during an administrative review. However, due process rights are protected by the provision within the Act which provides for judicial review. Once an administrative review decision has been made, if the Appellant is dissatisfied with the determination, 7 U.S.C. § 2023 provides for the right to a judicial review and a trial de novo.

Changes to FOIA Rules

The Appellant contends that it was deprived of a full opportunity to respond to the charges because of USDA's new rules related to FOIA. Specifically, the new regulation states that FNS will not hold any administrative actions in abeyance based on a firm's request for information made under FOIA. The Appellant argues that this new rule contradicts the existing regulation at 7 CFR § 278.6(b)(1), which states that a firm considered for disqualification shall have full opportunity to submit information, explanation or evidence concerning any instances of noncompliance before a final administrative determination is made. The Appellant contends that without the benefit of FOIA, it has not been given full opportunity to evaluate and respond to all of the information that was considered by FNS. To support its contention, the Appellant has cited language from a previous administrative review decision, *Triple E Express v. ROD*, which found that a FOIA request was not properly handled by FNS, thereby not giving the firm full opportunity to respond to a letter of charges.

With regard to this contention, it is noted that the new FOIA rule referenced by the Appellant became effective on October 26, 2020. The *Triple E Express* decision was made more than three years before the new rule took effect and was made under regulatory standards that were applicable at that time. Additionally, it should be made clear that final agency decisions made in administrative review, including the present case, are not precedent-setting, as they are based solely on the facts and circumstances of the case at hand in accordance with laws and regulations in effect at that time. Section 278.6(b)(1) makes no reference to FOIA as a means of discovery and does not imply that a full explanation or response to a charge letter is unachievable without FOIA. As such, this review finds the *Triple E Express* decision to have no relevance to the present case.

The new regulation at 7 CFR § 278.6(p) states: "A FOIA request or appeal for records shall not delay or prohibit FNS from making a determination regarding disqualification or penalty against

a firm under paragraphs (c) and (d) of this section, or delay the effective date of a disqualification or penalty listed in paragraph (e) of this section." Similarly, Section 279.4(c) states: "…FNS may not grant extensions of time or hold the administrative review process in abeyance solely on the basis of a pending FOIA request or appeal."

Because all actions in this case took place after October 26, 2020, FNS is prohibited from holding disqualification determinations or administrative review decisions in abeyance pending a FOIA request or response. It may be worth repeating that due process rights are protected by the provision within the Food and Nutrition Act of 2008 which provides for judicial review. Once an administrative review decision has been made, if an appellant is dissatisfied with the decision, 7 U.S.C. § 2023 provides for the right to a judicial review and a trial de novo, which includes an opportunity for discovery.

Hardship to SNAP Households / Civil Money Penalty

The Appellant claims that the store is located north of the train tracks and is the only store for seven blocks. According to the Appellant, the store is relied upon significantly to help feed the local population, and without the store's SNAP participation, the local neighborhood will suffer a hardship. The Appellant believe that at worst, the firm should be assessed a hardship CMP in lieu of disqualification because of the comparatively low number of large SNAP retailers and high volume of SNAP participants. Additionally, the Appellant claims that its store is safer and has better food than other stores in the area.

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. To address potential hardship situations that SNAP households might incur when a firm is disqualified, regulations at 7 CFR § 278.6(f) allow, in certain circumstances, for a civil money penalty to be imposed instead of disqualification. Paragraph (f)(1) of this regulation states that this alternative sanction is allowed when a firm's disqualification would cause "hardship" to SNAP households. According to this regulation, hardship 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."

This review agrees with the Retailer Operations Division that a disqualification of 136 Deli Grocery Corp., a convenience store, would not cause hardship to SNAP households because there are many other shopping options in the area. According to agency records, there are more than 40 similarly-stocked or larger SNAP-authorized retail stores located within a one-mile radius of 136 Deli Grocery Corp., including a comparable convenience store at the opposite end of the block (roughly a one or two minute walk), and a full-service supermarket approximately four-tenths of a mile away. 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 CMP in lieu of disqualification is not an available option.

CONCLUSION

Based on a review of all available information in this case, this administrative review finds through a preponderance of the evidence that program violations of 7 CFR § 278.2(a) did occur at 136 Deli Grocery Corp. during a USDA investigation. All transactions cited in the letter of charges were either conducted or supervised by a USDA investigator and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record appears to be specific and accurate with regard to the dates of the violations, including the exchange of SNAP benefits for ineligible, nonfood merchandise, and in all other critically pertinent details. Furthermore, the contentions provided by the Appellant do not persuade this review to dismiss or modify the penalty in any way. Therefore, pursuant to 7 CFR § 278.6(a) and (e)(5), the decision to impose a six-month disqualification against the Appellant, 136 Deli Grocery Corp., is sustained.

In accordance with the Act and regulations, the disqualification penalty shall become effective 30 days after receipt of this decision. A new application for SNAP authorization may be submitted 10 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 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 April 29, 2021
Administrative Review Officer