

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

**Fatema Grocery,**

**Appellant,**

**v.**

**Case Number: C0214461**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the 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 Fatema Grocery (hereinafter “Appellant”), shall be disqualified from SNAP for a period of six years due to the firm’s violations in 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 six-year disqualification against Fatema Grocery 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, Fatema Grocery, was initially authorized for SNAP participation as a medium grocery store on January 13, 2012. In a letter dated October 17, 2018, the New York State Department of Health, Bureau of Special Investigations, notified the Appellant that it was being disqualified from the WIC Program for six years due to a pattern of claiming reimbursement for the sale of infant formula which exceeded the store’s documented inventory of that item. These violations took place between February 1, 2017, and January 31,

2018, and was the third mandatory WIC sanction for the firm, resulting in a sanction period of twice the normal length of time (see 7 CFR § 246.12(l)(1)(iii)(B) and § 246.12(l)(1)(vi)). The October 17 letter further stated that the disqualification from WIC “may result in a Supplemental Nutrition Assistance Program (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).

According to New York State Department of Health, Fatema Grocery did not file an appeal of the State’s decision to disqualify the firm from WIC participation, and the six-year WIC disqualification took effect on November 15, 2018.

On November 26, 2018, the New York State Department of Health sent a letter to FNS’s Retailer Operation Division informing it that Fatema Grocery has been disqualified from WIC for a period of six years. Included with the state agency’s letter was a copy of the October 17, 2018, notice of disqualification.

Consequently, in a letter dated December 6, 2018, the Retailer Operations Division informed the Appellant of FNS’s intention to disqualify Fatema Grocery from participation in SNAP for six years as a reciprocal administrative action on the basis of the store’s disqualification from the WIC Program. The letter stated that the firm was also being considered for the imposition of a civil money penalty in lieu of disqualification.

The December 6 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 6 letter, the Appellant submitted two letters of explanation (dated December 10, 2018, and December 17, 2018) along with 57 color photographs of the store’s inventory and a list of merchandise sold at the store, including halal products and meats. In its response, the Appellant argued that the community in which the store is located has grown dependent on the products the store provides and has nowhere else to obtain them. The Appellant argued that the store is a reliable and trusted source for halal meat and other ethnic products and claimed that the community would suffer if the store’s SNAP authorization was revoked.

After further considering the evidence in the case, the Retailer Operations Division determined that a six-year SNAP disqualification as a result of WIC violations was the appropriate penalty in accordance with 7 CFR § 278.6(e)(8)(iii). The Retailer Operations Division also evaluated the Appellant’s eligibility for a hardship civil money penalty in lieu of disqualification in accordance with 7 CFR § 278.6(a) and (f)(1), but determined that this alternative penalty was not an option 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 this determination in a letter dated January 29, 2019. This letter further informed the Appellant that the determination to reciprocally disqualify Fatema Grocery 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 7, 2018, the Appellant requested an administrative review of the Retailer Operations Division's decision. The request was granted and implementation of the SNAP 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 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:

- SNAP households in the community would suffer hardship if Fatema Grocery were to be disqualified. SNAP Recipients have come to know and trust the firm for more than 23 years.
- The firm will also suffer from a disqualification decision. The store has had enough problems already, including the loss of some business to nearby competitors and an overall bad business year. The decrease in customers affects the firm's employees who rely on their jobs for their livelihoods. Without SNAP, it would be impossible to run the business as a majority of the firm's customers are SNAP recipients. Without SNAP, the store may be forced to close.
- The firm is owned by two brothers who are devoted fathers. The store is family owned and operated and its patrons recognize and trust them. The owners are the pioneers of a halal ethnic grocery store in the Jamaica area.
- Many of the stores that stand today are recent and cannot compare to Fatema Grocery in terms of longevity, loyalty to its customers, and excellent service. Those other stores may carry the same products as Fatema Grocery, but they do not know the neighborhood like the Appellant owners. The personal relationship the owners have with their customers would suffer.
- SNAP recipients would be forced to find other locations that carry the same items.
- Appellant acknowledges that errors were made, and it promises that it has learned from

its mistakes and will do its due diligence to not repeat them in the future.

- Appellant is ready to pay any fines that may be required to remain authorized in SNAP.

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 State Department of Health in a letter dated October 17, 2018. A copy of that notice was provided to the Retailer Operations Division on November 26, 2018.

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 Fatema Grocery 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 infant formula which exceeded the store's documented inventory of that item for a specific period of time. Further, the State of New York indicated that this was the third WIC sanction imposed against Fatema Grocery. Pursuant to Federal regulations, such violations warrant a six-year WIC disqualification. The record also shows that Fatema Grocery did not appeal this decision to the State of New York.

With all of these facts clearly in place and because the Retailer Operations Division's decision to reciprocally disqualify the firm from SNAP is wholly in line with regulations, this review has no authority to further review such a determination or to respond to any contentions related to the reciprocal SNAP disqualification. This is pursuant to 7 CFR § 278.6(e)(8)(iii)(C).

Therefore, the only remaining issue for this review to consider is whether or not the Retailer Operations Division took appropriate action by determining that the Appellant was not eligible for a hardship civil money penalty in lieu of a six-year disqualification from SNAP.

#### **Hardship Civil Money Penalty**

The Appellant has made several arguments related to hardship if the disqualification is upheld, including hardship to SNAP customers living in the area and hardship to the firm itself.

As to the Appellant's claims regarding hardship to the firm, there are no provisions in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible

economic hardship to either the ownership personally or to the firm resulting from the imposition of a disqualification.

As to the claim that SNAP households would experience hardship as a result of the firm's disqualification, a review of the agency's case record shows that the Retailer Operations Division properly considered this issue. Under the provisions found in 7 CFR § 278.6(f)(1), FNS may impose a civil money penalty in lieu of disqualification when hardship to SNAP households exists. According to this regulation, hardship to SNAP households is defined as "no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices."

It is the determination of this review that a disqualification of Fatema Grocery, a medium grocery 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 30 similar or larger SNAP-authorized retail stores located within a one-mile radius of Fatema Grocery, including nine supermarkets, six superstores, and at least four grocery stores that specialize in halal products, halal meats, and other similar ethnic merchandise and foods.

It is recognized that some degree of inconvenience to 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 regulation 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. Because such conditions do not exist in this case, a hardship civil money penalty in lieu of disqualification cannot be granted. It is acknowledged that the length of time Fatema Grocery has been in operation and the personal relationships it has established with members of the community are important to the Appellant. However, these factors have no bearing on whether or not hardship to SNAP households, as defined by regulation, is present in this case.

## **CONCLUSION**

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

As for the Retailer Operations Division's determination to deny the imposition of a hardship civil money penalty in lieu of a disqualification against Fatema Grocery, this decision is sustained. A preponderance of the evidence shows that SNAP households will not incur hardship as a result of the firm's disqualification.

In accordance with the Food and Nutrition Act of 2008 and associated regulations, the six-year period of disqualification from SNAP shall become effective 30 days after receipt of this letter. A new application for SNAP may be submitted by the firm no earlier than 10 days prior to the expiration of the six-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 sanction 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.

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

June 13, 2019