

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

Grassysouls LLC/12th Street Market,

Appellant,

v.

Case Number: C0208011

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The USDA, Food and Nutrition Service (FNS) finds that the decision of the Retailer Operations Division (Retailer Operations) to impose a three year disqualification of Grassysouls LLC/12th Street Market (Appellant) from the Supplemental Nutrition Assistance Program (SNAP) as a result of Women, Infants, and Children (WIC) Program violations was proper. There is also sufficient evidence to support a finding that the denial of a hardship civil money penalty (CMP) is appropriate and in accordance with Section 278.6(f)(1) of the SNAP regulations.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(e)(8) in its administration of the SNAP when it disqualified Appellant as a SNAP retailer for a period of three years, and denied assessing a hardship civil money penalty in lieu of disqualification.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may file a written request for review of the administrative action with FNS.

CASE CHRONOLOGY

The record indicates that as a result of WIC violations at Appellant, the Pennsylvania WIC State Agency issued a letter to Appellant dated December 22, 2017, that the firm was disqualified from participation in the WIC Program for three years due to violations of program rules and

regulations. The letter advised you that disqualification from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), could result in disqualification from the SNAP. The State notice also informed the owner of the right to appeal the WIC disqualification.

By Charge letter dated May 8, 2018, Retailer Operations notified your firm that in accordance with 7 CFR § 278.6(e)(8), it was being considered for disqualification from the SNAP for three years or for the imposition of a civil money penalty (CMP) in lieu of disqualification. One of the violations described in the WIC letter is also a violation of the SNAP regulations Section 278.6(e)(8). Such a disqualification is not subject to SNAP administrative review.

The record supports that on May 10, 2018, the owner responded to Retailer Operations by telephone call. By Determination letter dated May 30, 2018, Retailer Operations informed Appellant that in accordance with Section 278.6(f)(1) of the regulations, it determined that Appellant's disqualification would not cause hardship to SNAP households since there are other authorized retail stores in the area selling a variety of staple foods at comparable prices. This letter also stated that the disqualification determination was final and not subject to administrative review, but that appeal rights were available regarding the firm's eligibility for a hardship CMP.

By letter dated June 6, 2018, Appellant appealed Retailer Operations' decision. The appeal was granted by letter dated June 21, 2018. By email dated July 6, 2018, counsel made a FOIA request. The agency FOIA reply to counsel is dated August 6, 2018. Counsel provided a brief to this office by email dated August 27, 2018. This new information was reviewed by Retailer Operations.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and Section 278 of Title 7 of the Code of Federal Regulations (CFR).

7 U.S.C. § 2021(a)(1) states: "An approved retail food store that violates a provision of this Act or a regulation under this Act may be: (A) disqualified for a specified 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: “FNS shall disqualify from the Supplemental Nutrition Assistance Program any firm which is disqualified from the WIC Program.” Stipulations are added to this regulation requiring that 1) the firm was provided individual and specific notice that it could be disqualified from the SNAP based on the WIC violations committed by the firm, 2) a signed and dated copy of such notice is provided to FNS by the WIC administering agency, and 3) a determination is made which ensures that such disqualification action will not cause a hardship for participating SNAP households.”

7 CFR § 278.6(e)(8)(iii) states that FNS shall disqualify any firm from the SNAP which is disqualified from the WIC Program: “(A) Shall be for the same length of time as the WIC disqualification; (B) May begin at a later date than the WIC disqualification.”

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

7 CFR § 278.6(f)(1) states: “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.”

APPELLANT’S CONTENTIONS

The following may represent a summary of the contentions however, in reaching a decision consideration has been given to all contentions, including any not specifically referenced here.

- According to the Department’s website, there are 23 authorized retailers with a one mile radius of Appellant. None of the stores are comparable to the location of Appellant, the operational hours, nor are they comparable as to specialized produce and Spanish foods.
- All 23 retailers located within a one mile radius are located on the north or south side of Northampton Street, a major street with a minimum of four lanes of traffick.
- The store is the only authorized SNAP retailer on the north side of Northampton Street buried within side streets, away from the dangerous main street of Northampton.
- The dangerous location of these stores would cause significant hardship on SNAP participants if forced to shop there.
- Southampton is a major street, congested with traffic. This would create unnecessary hardship on SNAP households who have limited modes of transportation and generally have no choice but to walk with their groceries, and for those who require a safer access route to the grocery store, avoiding the main streets and/or intersections, due to age, small children, and/or disabilities.
- The Store is the only authorized SNAP retailer located on the north side of Southampton Street within a one mile radius, within the residential side streets, is a critical store to the surrounding SNAP households.
- The Store provides a much more ideal location for said SNAP households.

- None of the stores in Appellant’s surrounding area that accept EBT benefits offer even a remotely comparable amount of inventory, both in quantity and quality as Appellant. Nor do any of the surrounding SNAP stores participate in the Double SNAP program.
- There are no convenience stores within a one mile radius to the store that have comparable inventory, specializing as a produce market, as well as offering the same quantity and quality of Spanish foods, participates in the Double SNAP program, and operates 24/7.

ANALYSIS AND FINDINGS

The record confirms that the State disqualified Appellant from the WIC Program for a period of three years by letter dated December 22, 2017. The State WIC disqualification letter properly noticed Appellant of its right to a hearing and stated that a formal appeal regarding the disqualification had to be received no later than 30 days from receipt of the disqualification letter.

Per Retailer Operation’s Charge letter, the WIC disqualification is not subject to administrative review. Likewise, the reciprocal disqualification from SNAP for three years is not subject to administrative review. The sole appealable issue and matter under consideration in this review is if Retailer Operations properly considered Appellant’s eligibility for a civil money penalty.

CIVIL MONEY PENALTY

The record documents that Retailer Operations properly considered Appellant’s eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the SNAP regulations. The evidence supports that authorized firms selling as large a variety of staple food items at comparable prices as Appellant are located within proximity of Appellant. Thus, while it may cause inconvenience for SNAP customers if Appellant is disqualified, inconvenience does not rise to the level of hardship as required for a CMP.

CONCLUSION

The WIC disqualification is not subject to this review. The sole matter for consideration in this review is the civil money penalty. The evidence under review supports Retailer Operations’ decision to deny the imposition of a hardship civil money penalty. The three year SNAP disqualification against Appellant is herein sustained.

RIGHTS AND REMEDIES

A new application for participation as a SNAP retailer may be submitted by the firm ten days prior to the expiration of this three year disqualification period. In accordance with 7 CFR § 278.1(b)(4), at the time of any new application for SNAP participation, and if the firm meets

eligibility requirements stated in the regulations for such authorization, the firm would be required, as a previously sanctioned store, to submit a collateral bond or irrevocable letter of credit as a condition for being authorized to participate in the SNAP.

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, (7 U.S.C. § 2023) and to the Regulations at 7 CFR § 279.7 with respect to applicable rights 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 the Appellant's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (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.

M. Viens
Administrative Review Officer

September 11, 2018