

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

**Grocery Centro America Inc.,**

**Appellant,**

**v.**

**Case Number: C0193819**

**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 there is sufficient evidence to support a six-month disqualification of Grocery Centro America Inc. (hereinafter Appellant), from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) as initially imposed by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a six-month disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provides 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**

The USDA conducted an investigation of the compliance of Grocery Centro America Inc., with Federal SNAP law and regulations from April 5, 2018 through April 29, 2018. In a letter dated May 31, 2018, Retailer Operations Division charged the Appellant firm with accepting SNAP benefits in exchange for merchandise which included common ineligible non-food items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on six (6) out of six (6) compliance visits. The letter further informed the Appellant that the violations warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5).

In correspondence dated June 10, 2018, Appellant, through representation, replied to the charge letter and generally stated that my client was away in the Dominican Republic and did not know about all these issues in the business because he left one of the employees in charge while he was away. He understands that everyone in the business has to know how to handle and keep the business running in the proper way. He is aware of all these issues and it has been corrected accordingly.

After reviewing the evidence and the response from the Appellant, Retailer Operations Division issued a determination letter dated June 19, 2018. The determination letter informed the Appellant it was disqualified from the SNAP for a period of six months in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that Retailer Operations Division considered Appellant's eligibility for a hardship CMP under 7 CFR § 278.6(f)(1). Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six-month disqualification because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter dated June 25, 2018, the Appellant requested an administrative review of the Retailer Operations Division's determination. The appeal was accepted and the implementation of the six-month disqualification was held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means 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**

The controlling statute in this matter is contained in the Food & 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) establish the authority upon which a period of disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, inter alia: "Coupons may be accepted by an authorized retail food store only from eligible households.... Only in exchange for eligible food"

7 CFR § 271.2 states, inter alia: "Eligible food 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, inter alia: "FNS may disqualify any authorized retail food store... if the firm fails to comply with the Food and Nutrition Act of 1977, 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..."

7 CFR § 278.6(e)(5) states, inter alia: “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, inter alia: “FNS may impose a civil money penalty as a sanction in lieu of when... the firm’s disqualification would cause hardship to Food Stamp [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, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

1. The day that this incident occurred, I happened to be on vacation and I left an employee in charge of the cash register.
2. In the past seven years of managing and supervising my grocery store I have been in full compliance with the rules and regulations and have not received any penalties in the past.
3. I have taken this matter seriously and have retrained all my cashiers so that this won’t happen again.

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

### **ANALYSIS AND FINDINGS**

FNS initially authorized Grocery Centro America Inc. as a convenience store on October 26, 2011. During an investigation from April 5, 2018 through April 29, 2018, the USDA conducted six (6) compliance visits at Appellant’s store. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated May 31, 2018. The investigation report included Exhibits A through F which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were committed during six (6) of the six (6) compliance visits and involved the sale of one (1) 80 count box of Kleenex, three (3) 15 count boxes of Handi-Bag Good ’N Tuff tall kitchen bags, one (1) 140 sheet roll of Red & White paper towels, one (1) 16 count sleeve of Best Choice 16 ounce plastic cups. One (1) 12 count package of House Dishware plastic spoons, one (1) 85 count box of Kleenex, one (1) 12 count package of Win Sone plastic forks, one (1) 120 count package of Red & White napkins, one (1) 20 count sleeve of Sunset 16 ounce party cups, one (1) 26 count box of Glad Force Flex 8 gallon quick tie bags, one (1) 100 count package of White Dove jumbo cotton balls and one (1) round aluminum baking pan. The clerk refused the exchange of an undisclosed amount of SNAP benefits for cash in exhibits E and F.

Appellant contends that the day that this incident occurred, I happened to be on vacation and I left an employee in charge of the cash register. With regard to this contention, it is important to note that as owner of the store, Appellant is liable for all violative transactions handled by either paid or unpaid store personnel. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food Stamp Act and the enforcement efforts of the USDA.

Appellant contends that in the past seven years of managing and supervising my grocery store I have been in full compliance with the rules and regulations and have not received any penalties in the past. With regards to this contention, a record of participation in 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. It is noted that FNS may send a warning letter in lieu of a disqualification only under specific circumstances. SNAP regulations at 7 CFR §278.6(e)(7) states that FNS should “send the firm a warning letter if violations are too limited to warrant a disqualification.” Further Agency guidance to the regulations states to “send the firm a warning letter if the investigation discloses only one or two sales of common ineligible items.” As previously noted, the investigation report documents the exchange of 14 common ineligible items during six visits. Therefore, under agency guidelines, these violations do not meet the definition of “violations that are too limited to warrant a disqualification” and are evidence of carelessness on the part of ownership or management.

Appellant contends that I have taken this matter seriously and have retrained all my cashiers so that this won’t happen again. With regard to this contention, it is important to clarify for the record that the purpose of this review is to determine if the earlier decision of the Retailer Operations Division, to disqualify Appellant from participation in the SNAP for a period of six months, was in fact a correct one. It is not within the scope of this review to consider what subsequent actions Appellant may have taken so that its store may begin to comply with program requirements.

Based on a review of the evidence in this case, there is no question that program violations did occur. Three separate clerks working at Appellant sold common ineligible items to an FNS investigator on six separate investigative visits. The investigative record is specific and accurate with regard to the dates of the violations, the exchange of SNAP benefits for ineligible items, and in all other critically pertinent detail. As such, the contentions presented do not constitute valid grounds for dismissal of the current charges of violations, or for mitigating the impact of those charges.

#### **CIVIL MONEY PENALTY**

The Retailer Operations Division considered Appellant’s eligibility for a hardship CMP under 7 CFR §278.6(f)(1). The Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six-month disqualification because there were at least 28 other SNAP authorized retail stores, within a one-mile radius of Appellant, including

small grocery stores, medium grocery stores, a large grocery store, supermarkets and superstores selling as large a variety of staple foods at comparable prices.

## **CONCLUSION**

The documentation presented by Retailer Operations Division provides through a preponderance of the evidence that the violations as reported occurred at the Appellant firm. 7 CFR § 278.6(e)(5) specifies that FNS shall “disqualify the firm for six 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.

The violations were determined by Retailer Operations Division to represent the first sanction for the firm and evidence carelessness and poor supervision. Therefore, the imposition of a six-month disqualification, the least severe penalty allowed by regulation, is appropriate.

It is therefore established that the violations as described in the letter of charges did in fact occur at the Appellant firm warranting a disqualification of six months in accordance with 7 CFR § 278.6(e)(5). Based on the discussion herein, the decision to impose a six-month disqualification against Grocery Centro America Inc. is appropriate and the action is sustained.

In accordance with the Act and regulations, the six-month period of disqualification shall become effective thirty (30) days after receipt of this letter. The Appellant may submit a new application for SNAP participation ten (10) days prior to the expiration of the six-month disqualification period.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks  
Administrative Review Officer

September 24, 2018