

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

Jia Sheng Grocery Inc.,

Appellant,

v.

Case Number: C0216300

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 Jia Sheng Grocery Inc. (hereinafter “Appellant”), shall be disqualified from SNAP for a period of three 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 three-year disqualification against Jia Sheng Grocery Inc. 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, Jia Sheng Grocery Inc., was initially authorized for SNAP participation as a convenience store on September 28, 2017. In a letter dated January 30, 2019 (revised February 8, 2019), the New York State Department of Health, Bureau of Special Investigations, notified the Appellant that it was being disqualified from the WIC Program for three 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 WIC program violations took

place between July 1, 2017, and June 30, 2018, resulting in a WIC sanction of three years in accordance with 7 CFR § 246.12(l)(1)(iii)(B). The January 30 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 the New York State Department of Health, Jia Sheng Grocery Inc. did not file an appeal of the State’s decision to disqualify the firm from WIC, and the three-year WIC disqualification took effect on February 22, 2019.

On March 13, 2019, the New York State Department of Health sent a letter to FNS’s Retailer Operation Division informing it that Jia Sheng Grocery Inc. has been disqualified from WIC for a period of three years. Included with the state agency’s letter was a copy of the January 30 notice of disqualification.

Consequently, in a letter dated March 26, 2019, the Retailer Operations Division informed the Appellant of FNS’s intention to disqualify Jia Sheng Grocery Inc. from participation in SNAP for three 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 March 26 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.” The letter stated that any response must be submitted within 10 days of receipt of the letter.

Agency records show that the Appellant received the March 26 letter the following day, on March 27, 2019, but there is no evidence that the Appellant submitted any kind of response.

After further considering the evidence in the case, the Retailer Operations Division determined that a three-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 notified of this determination in a letter dated April 24, 2019. This letter further informed the Appellant that the determination to reciprocally disqualify Jia Sheng Grocery Inc. 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 April 30, 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:

- Appellant owner is a new business owner with limited experience and does not communicate well in English. The owner did not fully understand the requirements of SNAP for WIC.
- Appellant was not aware that it could only make WIC purchases with authorized dealers. It made the necessary purchases for WIC, but purchased from other dealers who were more convenient.
- Appellant made full payment to WIC immediately after receiving the bill for the mistake.
- Currently, 80 to 90 percent of the firm's business comes from SNAP programs, so it does not know if it can survive a disqualification.
- Appellant is grateful for reconsideration of the disqualification decision and promises to do its best to follow SNAP regulations once it is allowed to continuously participate in SNAP programs.

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 Appellant by the New York State Department of Health in a letter dated January 30, 2019. A copy of the notice was provided to the Retailer Operations Division.

Pursuant to paragraph (iii) of this same section, the Appellant was informed by both the State of New York and FNS's Retailer Operations Division that the decision to reciprocally disqualify Jia Sheng Grocery Inc. 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 will be for the same length of time as the WIC disqualification and may begin at a later date.

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. Such a violation warrants a three-year disqualification from WIC. The record also shows that Jia Sheng Grocery Inc. did not appeal this decision to the State of New York.

With all of these facts clearly established and because the reciprocal SNAP disqualification conforms to regulations, this review has no authority to further review the agency's determination or to respond to any contentions related to the reciprocal SNAP disqualification. This is in accordance with 7 CFR § 278.6(e)(8)(iii)(C). Therefore, the only 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 three-year disqualification from SNAP.

Hardship Civil Money Penalty

The Appellant's only argument related to hardship is a claim that 80 to 90 percent of the firm's business comes from SNAP, so it does not know if it can survive a SNAP disqualification.

With regard to this contention, it must be noted that hardship consideration is limited to the impact a disqualification has on SNAP recipients. 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 itself as a result of a disqualification.

A review of the agency's case record shows that the Retailer Operations Division properly considered whether or not SNAP households would experience hardship as a result of the Appellant's disqualification. The regulation at 7 CFR § 278.6(f)(1) states that "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."

It is the finding of this review that a disqualification of Jia Sheng Grocery Inc., 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 dozens of comparable or larger SNAP-authorized retail stores located within a one-mile radius of Jia Sheng Grocery Inc., including several stores that specialize in Asian products. There is also no evidence that Jia Sheng Grocery Inc. sells its inventory at unusually low prices in comparison to nearby stores.

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, because hardship conditions, as defined by regulation, do not exist in this case, a civil money penalty in lieu of disqualification is not an available option.

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 three-year reciprocal SNAP disqualification, which was assessed against the Appellant on the basis of a WIC disqualification.

As for the agency's denial of a hardship civil money penalty in lieu of a disqualification against Jia Sheng Grocery Inc., 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 three-year 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 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

August 13, 2019