

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

**Los Morochos Grocery Store Inc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0204071**

**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 finding that a six month disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Los Morochos Grocery Store Inc. (Appellant) by the Retailer Operations Division of FNS.

**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 period of disqualification against Los Morochos Grocery Store Inc. on November 25, 2019.

**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**

The Department of Agriculture conducted an investigation of the compliance of Los Morochos Grocery Store Inc. with Federal SNAP law and regulations during the period November 30, 2017 through August 27, 2019. In a letter dated October 17, 2019, the Retailer Operations Division charged the Appellant with accepting SNAP benefits in exchange for merchandise which included ineligible nonfood items in violation of 7 CFR § 278.2(a). These SNAP violations

occurred on four out of five 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 a response to the Retailer Operations Division of November 4, 2019, the Appellant replied to the charges therein stating that both individuals listed on the investigation report have been well trained and are very well aware of the rules and regulations of the SNAP. The owner personally trains store employees showing them what items are eligible and not eligible to be purchased with SNAP benefits. The owner gave them a copy of the handbook to further ensure that they understand and follow the SNAP rules and regulations. The owner certifies that he did not in any way approve of any of these alleged illegal activities. The owner trusts that store employees will abide by the rules and would not in any manner put his business at risk of losing any of its most important business licenses. As indicated in the investigation report, every time the investigator requested to exchange SNAP benefits for cash (Exhibits D and E), the investigator was denied. The Appellant apologizes for the alleged violations and confirms that he will continue to take steps to prevent these types of violations from occurring in the future. The Appellant fully understands the importance of the SNAP rules and how their goal is to safeguard the integrity of the program whose main goal is to provide families in need with nutrition and food assistance. The owner abides by the rules and takes pride in running a business that is always in compliance with all the programs the business participates in. The Appellant requests that a civil money penalty be imposed in lieu of a six month SNAP disqualification. A six month SNAP disqualification will put the business in financial hardship. The owner submitted signed SNAP Program Training Lesson records for July 15, 2018, February 18, 2019, and August 22, 2019.

After considering the Appellant's reply and the evidence of this case, the Retailer Operations Division issued a Determination Letter dated November 25, 2019. The Determination Letter informed the Appellant that 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 the Retailer Operations Division considered the Appellant's eligibility for a hardship civil money penalty 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 other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked December 9, 2019, the Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. FNS granted the Appellant's request for administrative review by letter dated December 23, 2019. Upon acceptance of the administrative review request, implementation of the six month disqualification was held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a

whole, might 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 statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulations under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e) establish the authority upon which a 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 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, inter alia:

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.

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 disqualification 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.

### **SUMMARY OF THE CHARGES**

**5 U.S.C. § 552 (b)(7)(E).**

## **APPELLANT'S CONTENTIONS**

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the reply to the Charge Letter and in the administrative review request, the Appellant stated the following summarized contentions, in relevant part:

- Both individuals listed on the investigation report have been well trained and are very well aware of the rules and regulations of the SNAP. The owner personally trains store employees showing them what items are eligible and not eligible to be purchased with SNAP benefits. The owner gave them a copy of the handbook to further ensure that they understand and follow the SNAP rules and regulations. The owner and employees watch the SNAP training video and discussions are held with regard to situations that may occur with clients during the normal course of business. These training classes are provided twice a year. The owner certifies that he did not in any way approve of any of these alleged illegal activities. The owner trusts that store employees will abide by the rules and would not in any manner put his business at risk of losing any of its most important business licenses. As indicated in the investigation report, every time the investigator requested to exchange SNAP benefits for cash (Exhibits D and E), the investigator was denied.
- The Appellant apologizes for the alleged violations and confirms that he will continue to take steps to prevent these types of violations from occurring in the future. The Appellant fully understands the importance of the SNAP rules and how their goal is to safeguard the integrity of the program whose main goal is to provide families in need with nutrition and food assistance. The owner abides by the rules and takes pride in running a business that is always in compliance with all the programs the business participates in.
- A six month SNAP disqualification will put the business in financial hardship.
- The Appellant requests that a civil money penalty be imposed in lieu of a six month SNAP disqualification.

In support of these contentions, the Appellant submitted signed SNAP Program Training Lesson records for July 15, 2018, February 18, 2019, and August 22, 2019.

## **ANALYSIS AND FINDINGS**

### **SNAP Violations**

The Appellant contends that both individuals listed on the investigation report have been well trained and are very well aware of the rules and regulations of the SNAP. The owner personally trains store employees showing them what items are eligible and not eligible to be purchased with SNAP benefits. The owner gave them a copy of the handbook to further ensure that they understand and follow the SNAP rules and regulations. The owner and employees watch the

SNAP training video and discussions are held with regard to situations that may occur with clients during the normal course of business. These training classes are provided twice a year. The owner certifies that he did not in any way approve of any of these alleged illegal activities. The owner trusts that store employees will abide by the rules and would not in any manner put his business at risk of losing any of its most important business licenses. As indicated in the investigation report, every time the investigator requested to exchange SNAP benefits for cash (Exhibits D and E), the investigator was denied.

This review is to either validate or to invalidate the determination made by the Retailer Operations Divisions; it is limited to the facts at the basis of the Retailer Operations Division's determination at the time it was made. Upon review, the evidence supports that the Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations, on four of the five compliance visits conducted at the store. **5 U.S.C. § 552 (b)(7)(E)**. Therefore, the violations in this case are not too limited to warrant a disqualification. The Exhibits furnished with the Charge Letter warrant a disqualification period of six months. The regulations at 7 CFR 7 CFR § 278.6(e)(5) specify 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 nonfood items due to carelessness or poor supervision by the firm's ownership or management".

The Appellant contends that the owner certifies that he did not in any way approve of any of these alleged illegal activities. In addition, SNAP training has been given to employees and submitted signed SNAP Program Training Lesson records for July 15, 2018, February 18, 2019, and August 22, 2019 in support thereof. However, regardless of who the store owner utilizes to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. The regulations stipulate 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 and poor supervision by the firm's ownership or management.

### **Corrective Action**

The Appellant contends that it apologizes for the alleged violations and confirms that he will continue to take steps to prevent these types of violations from occurring in the future. The Appellant fully understands the importance of the SNAP rules and how their goal is to safeguard the integrity of the program whose main goal is to provide families in need with nutrition and food assistance. The owner abides by the rules and takes pride in running a business that is always in compliance with all the programs the business participates in.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions

may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Financial Hardship**

The Appellant contends that a six month SNAP disqualification will put the business in financial hardship. However, there is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **CIVIL MONEY PENALTY**

The Appellant requests that a civil money penalty be imposed in lieu of a six month SNAP disqualification.

The Retailer Operations Division determined that the Appellant was not eligible for a hardship civil money penalty (CMP) under 7 CFR § 278.6(f)(1). That regulation reads, in part, "FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . 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." [Emphasis added]. **5 U.S.C. § 552 (b)(7)(E).**

Based on the evidence, the disqualification of Los Morochos Grocery Store Inc. would not cause a hardship to SNAP recipients in the area, as opposed to a mere inconvenience; therefore, the Retailer Operations Division's decision not to assess a hardship CMP in lieu of a six month disqualification is sustained as appropriate under 7 CFR § 278.6(f)(1).

### **CONCLUSION**

It is therefore established that the violations as described in the letter of charges did in fact occur at Los Morochos Grocery Store Inc. warranting a disqualification of six months in accordance

with 7 CFR § 278.6(e)(5). That regulation states that FNS shall “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”. Therefore, the decision to impose a six month disqualification, the least severe penalty allowed by regulation, against Los Morochos Grocery Store Inc., the Appellant firm, is appropriate and the action is sustained.

In accordance with the Food and Nutrition Act of 2008 and the regulations there under, the six month period of disqualification shall become effective thirty (30) days after receipt of this letter. A new application for participation may be submitted by the firm ten (10) days prior to the expiration of this six month period.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (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, FNS is 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.

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

February 6, 2020