

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch  
Alexandria, VA 22302**

**Middle Eastern Grocery Corp,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0196001**

**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 Middle Eastern Grocery Corp. 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 Middle Eastern Grocery Corp. on May 9, 2018.

**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 Middle Eastern Grocery Corp. with Federal SNAP law and regulations during the period January 3, 2018 through March 14, 2018. In a letter dated April 10, 2018, 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 five 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 written correspondence to the Retailer Operations Division dated April 16, 2018, the Appellant, through counsel, replied to the charges therein noting that corrective actions will be taken to ensure that these types of SNAP violations do not occur in the future. The Appellant also requested that a hardship civil money penalty (CMP) be imposed in lieu of a six month SNAP disqualification claiming that Middle Eastern Grocery Corp. is the only retail food store in the area that stocks a substantial variety of Middle Eastern foods catering to SNAP households originally from North Egypt, specifically Alexandria province.

After considering the Appellant's reply and the evidence of this case, the Retailer Operations Division issued a Determination Letter dated May 9, 2018. 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 (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 other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked May 15, 2018, 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 May 22, 2018. 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**

During an investigation conducted from January 3, 2018 through March 14, 2018, USDA conducted five compliance visits at Middle Eastern Grocery Corp. A report of the investigation was provided to the Appellant as an attachment to the Charge Letter dated April 10, 2018. The investigation report included Exhibits A through E which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were recorded during five of the five compliance visits and involved the sale of a variety of items best described in regulatory terms as "common nonfood items". The exchange of these ineligible items for SNAP benefits is in violation of 7 CFR § 278.2(a).

### **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 Appellant's reply to the Charge Letter and in the administrative review request postmarked May 15, 2018, the Appellant stated the following summarized contentions, in relevant part:

- To ensure that these types of SNAP violations do not occur in the future, the Appellant will implement hard measures to ensure that no misuse of SNAP benefits occurs at the subject store in violation of the SNAP regulations and management will implement stronger supervision.
- The Appellant requests that FNS impose a hardship civil money penalty in lieu of a six month SNAP disqualification as Middle Eastern Grocery Corp. is the only retail food store in the area that stocks a substantial variety of Middle Eastern foods catering to SNAP households originally from North Egypt, specifically Alexandria province. Further, the store's staple food prices are more competitive as it buys bigger quantities of that specific region's staple food items allowing it to sell them at more competitive prices.

In support of the Appellant's contentions, the following documents were submitted to FNS:

- Copies of 10 vendor invoices/receipts showing purchases of typical Middle Eastern foods for the subject store; and
- 13 Photos showing Middle Eastern foods stocked at the subject store.

## **ANALYSIS AND FINDINGS**

### **Corrective Actions Implemented**

The Appellant contends that in order to ensure that these types of SNAP violations do not occur in the future, it will implement hard measures to ensure that no misuse of SNAP benefits occurs at the subject store in violation of the SNAP regulations and management will implement stronger supervision.

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/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.

### **CIVIL MONEY PENALTY**

The Appellant requests that FNS impose a hardship civil money penalty in lieu of a six month SNAP disqualification as Middle Eastern Grocery Corp. is the only retail food store in the area that stocks a substantial variety of Middle Eastern foods catering to SNAP households originally from North Egypt, specifically Alexandria province. Further, the store's staple food prices are

more competitive as it buys bigger quantities of that specific region's staple food items allowing it to sell them at more competitive prices. In support of its contentions, the Appellant provided FNS with copies of ten vendor invoices/receipts showing purchases of typical Middle Eastern foods for the subject store and thirteen photos showing Middle Eastern foods stocked at the subject store.

The Retailer Operations Division determined that the Appellant was not eligible for a hardship civil money penalty 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 Middle Eastern Grocery Corp. 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 Middle Eastern Grocery Corp. 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 Middle Eastern Grocery Corp., 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

August 14, 2018