

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

One Stop Pantry,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0206177

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a reciprocal three-year disqualification of One Stop Pantry as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) as a result of violations in the Women, Infants and Children (WIC) Program. There is also sufficient evidence to support that the denial of a hardship civil money penalty (CMP) is appropriate and in accordance with the SNAP regulations at 7 CFR § 278.6(f)(1).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(8)(iii) in its administration of the SNAP when it disqualified the Appellant for a reciprocal period of three (3) years and denied a hardship CMP in lieu of disqualification.

AUTHORITY

7 U.S.C. § 2023 and the 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

On February 1, 2018, the Wisconsin Department of Health Services informed the Retailer Operations Division that One Stop Pantry had been disqualified from the WIC Program for three (3) years effective January 29, 2018. The WIC violations consisted of a pattern of claiming reimbursement for the sale of WIC food items that exceeded the store's documented inventory of those foods items in violation of 7 CFR § 246.12(1)(1)(iii)(B). The State agency also informed FNS that the Appellant's WIC Program appeal rights had been exhausted and the decision was final.

In a letter dated February 12, 2018, the Retailer Operations Division notified the Appellant that it was considering a three-year reciprocal disqualification from the SNAP under 7 CFR § 278.6(e)(8) as a result of the three-year WIC disqualification. The letter informed the Appellant that it "may present any information, explanation, or evidence indicating that (1) your firm has not been disqualified from the WIC Program; (2) you were 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 Appellant, through counsel, replied in a letter dated March 1, 2018. The Appellant stated that prior to the scheduled WIC appeal hearing, the parties reached a stipulated settlement agreement with the State agency. As part of the settlement agreement, the parties agreed that the agreement was not to be construed as an admission of any liability by One Stop Pantry, and One Stop Pantry continues to maintain its objections as it pertains to the underlying allegations of the WIC disqualification notice. The Appellant provided a copy of the settlement agreement which shows that the three-year disqualification from the WIC Program was accepted by the Appellant under the terms of the settlement.

After considering the evidence in the case and the Appellant's reply, the Retailer Operations Division informed the Appellant, in a letter dated March 14, 2018, that all opportunities for a review of the WIC disqualification had been exhausted or had expired. Therefore, the three-year disqualification from the SNAP was final and not subject to administrative review as provided by 7 CFR § 278.6(e)(8)(iii). The determination letter also stated that the firm was not eligible for a hardship CMP under 7 CFR § 278.6(f)(1) as there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices. The determination letter noted that a SNAP administrative review was only available regarding the firm's eligibility for a hardship CMP.

In a letter dated March 22, 2018, the Appellant requested an administrative review of the Retailer Operation Division's decision to deny a hardship CMP. The appeal was granted and implementation of the three-year disqualification from the SNAP has been 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 action 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 AND REGULATIONS

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). In particular, 7 CFR § 278.6 establishes the authority upon which FNS may disqualify any authorized retail food store from further participation in the SNAP if the firm fails to comply with the Food Stamp Act including disqualification of a firm from the WIC Program as specified in 7 CFR § 278.6(e)(8).

7 CFR § 278.6(e)(8)(i)(A) reads, in part:

FNS shall disqualify from the Supplemental Nutrition Assistance Program (SNAP) any firm which is disqualified from the WIC Program ... 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 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** [Emphasis added.]

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 this section that such action will not cause a hardship for participating SNAP households.

7 CFR § 278.6(e)(8)(iii) states, in part, that the 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. [Emphasis added.]

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 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 Appellant made the following summarized contentions in its administrative review request, in relevant part:

- The Appellant requests review of the store's eligibility for a hardship CMP.
- One Stop Pantry is the only food dealer in the area that is not a gas station and is open 24 hours a day. Most of the locations listed on the USDA website authorized to accept SNAP have a limited selection of staple food items, some locations were closed, and some are operating without a food dealer license. These conclusions are based on a survey conducted on April 6, 2018 by a paralegal working for the Appellant's counsel.

The preceding may represent only a brief summary of the Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

Reciprocal Disqualification

As noted in the Retailer Operations Division letter dated February 12, 2018, all opportunities for a review of the WIC disqualification have been exhausted or have expired. Therefore, the three- year reciprocal disqualification from the SNAP is final and not subject to administrative review as provided by 7 CFR § 278.6(e)(8)(iii)(C).

The determination letter properly noted that a SNAP administrative review was only available regarding the firm's eligibility for a hardship CMP.

Civil Money Penalty

A review of the case record documents that the Retailer Operations Division considered the Appellant's eligibility for a hardship 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.]

The Retailer Operations Division properly determined that a three-year disqualification of One Stop Pantry, a convenience store, would not cause a hardship to SNAP households, as opposed to a mere inconvenience. The Retailer Operations Division determined that there are 20 SNAP authorized stores within a one-mile radius of the Appellant store. These SNAP authorized stores include two (2) small grocery stores, a medium grocery store, two (2) large grocery stores and a supermarket. The supermarket is located only 0.18 miles from One Stop Pantry. These larger stores in particular carry a greater depth and breadth of stock at likely comparable or better prices than a mere convenience store. In addition, a review of the case record indicates that the Retailer Operations Division conducted a small sample of comparison stores using their most recent store visits and found stores that had a superior depth and breadth of staple food than One Stop Pantry. In conclusion, the Retailer Operations Division decision not to assess a hardship CMP in lieu of a three-year disqualification is sustained as appropriate under 7 CFR § 278.6(f)(1).

CONCLUSION

Based on the analysis above, the decision to deny a hardship CMP in lieu of a three-year reciprocal SNAP disqualification against One Stop Pantry is sustained. In accordance with the Food and Nutrition Act of 2008, and the SNAP regulations, the three-year period of disqualification from the SNAP shall become effective thirty (30) days after receipt of this letter. A new application for SNAP may be submitted by the firm ten days prior to the expiration of this three-year SNAP disqualification period.

In accordance with current regulations at 7 CFR § 278.1(b)(4), at the time of any such new application for participation in the SNAP, the firm would be required to submit a collateral bond or irrevocable letter of credit as a condition for again being authorized to participate in the program.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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.

RONALD C. GWINN
Administrative Review Officer

June 1, 2018