

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

Target Stores #1287,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>Case Number: C0191089</b>
	)	
Retailer Operations Division,	)	
	)	
Respondent.	)	
<hr style="width: 40%; margin-left: 0;"/>	)	

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to deny a hardship civil money penalty and impose a one-year disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against Target Stores #1287 (“Appellant”) as a result of WIC program violations.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(e)(8) and 7 CFR §278.6(f), when it denied a civil money penalty in lieu of a one-year disqualification against Appellant on September 22, 2016.

**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**

In a letter dated June 24, 2016, the Retailer Operations Division informed Appellant of the agency's intention to assess one-year disqualification against Appellant. The letter stated the firm was disqualified for one year from the WIC Program for violations of 7 CFR § 278.6(e)(8) of the SNAP regulations. Appellant replied to the allegations in writing.

After considering the evidence, the Retailer Operations Division informed Appellant by letter dated September 22, 2016, that the store was not eligible for imposition of a civil money penalty in lieu of disqualification and would be disqualified from participation as a retail store in SNAP for a period of one year. Appellant was also informed that the determination to disqualify Appellant from SNAP on the basis of the WIC Program disqualification is not subject to administrative review; rather the firm only has appeal rights with regards to its eligibility for a civil money penalty. This is in accord with the Food and Nutrition Act of 2008, as amended, and 7 CFR § 278.6(e)(8) of the SNAP regulations.

On October 3, 2016, Appellant, appealed the Retailer Operations Division's decision to deny assessing a civil money penalty and requested an administrative review of this action. The appeal was granted and implementation of the sanction has been held in abeyance pending completion of this review.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. That means 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 argument asserted is more likely to be true than not true.

## **CONTROLLING LAW**

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 regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) establishes the authority upon which a reciprocal disqualification may be imposed against a firm disqualified from the WIC Program. Part 278.6(f)(1) provides for civil money penalty assessments in lieu of disqualification in cases where disqualification would cause hardship to SNAP households because of the unavailability of a comparable participating food store in the area to meet their shopping needs.

7 CFR § 278.6(e)(8) reads, in part, "FNS shall disqualify from the Supplemental Nutrition Assistance Program (SNAP) any firm which is disqualified from the WIC Program" for particular violations. 7 CFR § 278.6(e)(8)(iii)(A) states that such a disqualification, "shall be for the same length of time as the WIC disqualification." 7 CFR § 278.6(e)(8)(iii)(C) states that such reciprocal SNAP disqualifications shall not be subject to administrative or judicial review.

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'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**

Appellant's contentions regarding this matter are essentially that Appellant offers affordable food to the nearby community and requests a CMP. Appellant provided six store pictures.

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

**ANALYSIS AND  
FINDINGS**

A review of the WIC disqualification documents indicates the firm committed a pattern of violations of 28 Pennsylvania Code § 1107.1(a)(d)(5). When a firm has committed violations resulting in a disqualification from the WIC program, a reciprocal disqualification from SNAP is required for any violation included in 7 CFR § 278.6(e)(8). The evidence does not support that Appellant's WIC violations also violated 7 CFR § 278.6(e)(8).

**CONCLUSION**

Based on the discussion above, the determination by the Retailer Operations Division to deny a hardship civil money penalty and impose a one-year disqualification from participating as an authorized retailer in SNAP against Target Stores #1287 as a result of WIC program violations is reversed. The firm should remain authorized.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

/s/  
RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

October 25, 2016  
DATE