

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

Whittier Ranch Market, )  
Appellant, )  
 )  
 )  
 v. )  
 )  
 )  
 Respondent, )  
Retailer Operations Division. )

**Case Number: C0192198**

**FINAL AGENCY DECISION**

The USDA, Food and Nutrition Service (FNS) finds that the decision of the Retailer Operations Division (Retailer Operations) to impose a three year disqualification from the Supplemental Nutrition Assistance Program (SNAP) as a result of Women, Infants, and Children (WIC) Program violations, was properly rendered against Whittier Ranch Market (Appellant). There is also sufficient evidence to support a finding that the denial of a hardship Civil Money Penalty (CMP) is appropriate and in accordance with Section 278.6(f)(1) of the SNAP regulations.

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(e)(8)(iii) in its administration of the SNAP when it disqualified Appellant as a SNAP retailer for a period of three years, and denied assessing a hardship civil money penalty 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**

By Charge letter dated August 3, 2016, Retailer Operations informed ownership that in accordance with 7 CFR § 278.6(e)(8), it was considering a three year SNAP reciprocal disqualification of Appellant. This was as the result of the September 25, 2015 California

WIC State Agency's Notice of Disqualification for violations of WIC Program rules and regulations. The WIC disqualification period was stated as October 26, 2015 through October 25, 2018. The letter properly advised that disqualification from the WIC Program could result in SNAP disqualification and was not subject to administrative review. The notice also informed ownership of the right to appeal the disqualification. USDA, FNS was notified by letter dated July 29, 2016, from the California Department of Public Health that Appellant was WIC disqualified for a period of three years.

The record notes that owner 7 U.S.C. 2018 (b)(6) & (b)(7)(c), replied to the Charge letter in writing on August 12, 2016. By letter dated August 18, 2016, Retailer Operations informed ownership that in accordance with Section 278.6(f)(1) of the regulations, it determined that Appellant's disqualification would not cause hardship to SNAP households since there are other authorized retail stores in the area selling a variety of staple foods at comparable prices. This letter also stated that the disqualification determination was final and not subject to administrative review, but that appeal rights were available regarding the firm's eligibility for a hardship CMP.

By letter dated August 28, 2016, Appellant appealed Retailer Operations' decision. The appeal was granted by letter dated September 8, 2016. Owner 7 U.S.C. 2018 (b)(6) & (b)(7)(c) provided additional information by letter dated September 23, 2016.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means the 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 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 Section 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021(a)(1) states, in part: "An approved retail food store or wholesale food concern that violates a provision of this Act or a regulation under this Act may be: (A) disqualified for a specified period of time from further participation in the Supplemental Nutrition Assistance Program; (B) assessed a civil penalty of up to \$100,000 for each violation; or (C) both."

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 paragraph (e)(8). 7 CFR § 278.6(e)(8) establishes, among other things, the kind of violations that warrant a reciprocal disqualification.

7 CFR § 278.6(e)(8) reads, “FNS shall disqualify from the Supplemental Nutrition Assistance Program any firm which is disqualified from the WIC Program.” Stipulations are added to this regulation requiring that 1) the firm was provided individual and specific notice that it could be disqualified from the SNAP based on the WIC violations committed by the firm, 2) a signed and dated copy of such notice is provided to FNS by the WIC administering agency, and 3) a determination is made which ensures that such disqualification action will not cause a hardship for participating SNAP households.

7 CFR § 278.6(e)(8)(iii) states, in part, that FNS shall disqualify any firm from the SNAP which is disqualified from the WIC Program “(A) Shall be for the same length of time as the WIC disqualification; (B) May begin at a later date than the WIC disqualification.”

7 CFR § 278.6(e)(8)(iii)(C) states, that such a disqualification: “Shall not be subject to administrative or judicial review under the SNAP.”

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.”

7 USC 2018 (b)(7)(e):

7 USC 2018 (b)(7)(e).

and

7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e)

1. 7 USC 2018 (b)(7)(e).
2. 7 USC 2018 (b)(7)(e).

## APPELLANT'S CONTENTIONS

The following may represent a brief summary of the contentions in this matter however, in reaching a decision, attention has been given to all contentions presented, including any not specifically recapitulated or reference herein. The contentions are essentially:

- Around the vicinity the other locations that accept SNAP includes gas station, liquor store [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], and beer/wine mini store.
- The surrounding stores only sell beer, wine, liquor and beverages.
- [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], 2.2 miles away, [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], 2.0 miles, and [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], 2.2 miles.
- A majority of our customers live within walking distance to our store.
- Our customers advise that for them to go to other locations would not be convenient.
- These customers stated they would have to take the bus to another location which would take a longer time.
- Please consider our store for a CMP.
- We have had many customer express inconvenience of not accepting SNAP benefits.
- From 9/13-9/22 we have collected 59 statements from customers that utilize SNAP benefits. Customers express multiple inconveniences due to the distance and time to travel to other locations accepting SNAP.

Appellant advanced four pages of Google maps, four pages of photos, a one page card processing statement, and signed and dated SNAP customer statements as referenced above.

## ANALYSIS AND FINDINGS

The record indicates that the California Department of Public Health, the WIC State Agency, served Appellant a three year Notice of Disqualification letter dated September 25, 2015, as a result of WIC violations. The State letter of the violations properly gave notice to the owners of their right to request an administrative hearing and states that the disqualification from WIC may result in disqualification in the SNAP. The record shows that the State Agency noticed the USDA by letter dated July 29, 2016, of Appellant's WIC disqualification for a three year period.

This review is limited to what circumstances were at the basis of Retailer Operations' action at the time such action was made. The disqualification from SNAP for three years is not subject to administrative review. The sole appealable issue in this matter is if Retailer Operations properly considered t Appellant's eligibility for a CMP. The record documents that there are ten convenience stores, and one medium authorized store that offers ethnic foods, within a one mile radius of Appellant. Appellant is a convenience store. [7 USC 2018 (b)(7)(e)]

The record documents that Retailer Operations properly considered Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the SNAP regulations. It is deemed that authorized comparable firms selling as large a variety of staple food items

at comparable prices as Appellant are located within proximity of Appellant. Thus, given all the evidence under review, the decision to deny the imposition of a hardship civil money penalty in lieu of a three year SNAP disqualification against Appellant is sustained.

A new application for participation as a SNAP retailer may be submitted by the firm ten days prior to the expiration of this three year disqualification period. In accordance with 7 CFR §278.1(b)(4), at the time of any such new application for participation in the SNAP, and if the firm meets all other eligibility requirements stated in the SNAP regulations for such authorization, the firm would be required, as a store previously sanctioned for program violations, to submit a collateral bond or irrevocable letter of credit as a condition for being authorized to participate in the program.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, (7 U.S.C. § 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to applicable rights 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 the Appellant's owners 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

/s/

MADELINE VIENS  
ADMINISTRATIVE REVIEW OFFICER

October 5, 2016  
DATE