

United States  
Department of  
Agriculture



Food and  
Nutrition  
Service

July 22, 2024

Retailer and  
Issuance Policy  
and Innovation  
Division

Mansoor Ansari, Esq.  
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Administrative  
and Judicial  
Review Branch

RE: [REDACTED]

1320 Braddock  
Place, Room 5042  
Alexandria, VA  
22314

Phone:  
(510) 542-4142

Dear Representative,

rich.proulx  
@usda.gov

Enclosed is the Final Agency Decision of the U.S. Department of Agriculture, Food and Nutrition Service in response to your December 21, 2022 request for administrative review.

The U.S. Department of Agriculture, Food and Nutrition Service finds that there is insufficient evidence to support the determination by the Office of Retailer Operations and Compliance to impose a six-month disqualification against [REDACTED] from participating as an authorized retailer in the Supplemental Nutrition Assistance Program.

Sincerely,

A handwritten signature in black ink that reads "Rich Proulx". The signature is written in a cursive, slightly slanted style.

RICH PROULX  
Administrative Review Officer

Enclosure: Final Agency Decision

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

**Appellant,**

v.

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0257052**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to support the determination by the Office of Retailer Operations and Compliance to impose a six-month disqualification against [REDACTED] (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of Code of Federal Regulations (CFR) § 278.6(e)(5) in its administration of SNAP when it imposed a six-month period of disqualification against Appellant on December 14, 2022.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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**

USDA conducted an investigation of Appellant’s compliance with federal SNAP law and regulations during the period of August 26, 2022 through September 1, 2022. The investigation reported that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on three separate occasions. These items sold during these impermissible transactions are best described in regulatory terms as “common nonfood items.” As a result of evidence compiled from this investigation, the Office of Retailer Operations and Compliance informed Appellant, in a letter dated October 4, 2022, that the firm was charged with violating

the terms and conditions of the SNAP regulations, 7 CFR § 278.2(a). The letter states, in part, that the violations “. . . warrant a disqualification period of six months (Section 278.6(e)(5)). Under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification (Section 278.6(f)(1)).”

Appellant replied to the Office of Retailer Operations and Compliance’s charges in writing. The record reflects that the Office of Retailer Operations and Compliance received and considered the information provided prior to making a determination.

The Office of Retailer Operations and Compliance notified Appellant in a letter dated December 14, 2022 that the firm was being disqualified for six months from participation as an authorized retailer in SNAP. This determination letter also stated that Appellant’s eligibility for a hardship civil money penalty (CMP) according to the terms of Section 278.6(f)(1) of the SNAP regulations was considered. However, the letter stated to Appellant that “. . . you are not eligible for the CMP because there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.”

On December 21, 2022, Appellant appealed the Office of Retailer Operations and Compliance’s decision to impose a six-month disqualification and requested an administrative review of the action. The appeal was granted and implementation of the sanction has been on hold 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 evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that 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 untrue.

### **CONTROLLING LAW**

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(5) establish the authority upon which a six-month disqualification may be imposed against a retail food store or wholesale food concern.

Section 278.6(e)(5) of the SNAP regulations states, in part, when a firm is to be disqualified 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 or poor supervision by the firm's ownership or management.

7 CFR § 278.6(a) states, in part:

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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system . . . .

### **ANALYSIS AND FINDINGS**

A review of the evidence does not support the Office of Retailer Operations and Compliance’s determination in this case. Accordingly, it is unnecessary to address Appellant’s contentions in this matter.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Office of Retailer Operations and Compliance. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

### **CONCLUSION**

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to withdraw the authorization of [REDACTED] to participate as a retailer in SNAP is reversed.

### **RIGHTS AND REMEDIES**

Under the Freedom of Information Act, we are 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.

RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

July 22, 2024