

**United States
Department of
Agriculture**



Food and
Nutrition
Service

January 4, 2022

Retailer and
Issuance Policy
and Innovation
Division

Saleh M Abdullah
251 Sunshine Deli Grocery Corp
251 W. 231st St.
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Administrative
Review Branch

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Dear Owner:

Enclosed is the Final Agency Decision of the U.S. Department of Agriculture, Food and Nutrition Service in response to the August 31, 2021 request for administrative review. Also included is a statement regarding applicable rights to a judicial review.

The U.S. Department of Agriculture, Food and Nutrition Service finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to assess a fine against 251 Sunshine Deli Grocery Corp in the amount of \$8,385 for unauthorized acceptance of Supplemental Nutrition Assistance Program benefits.

Sincerely,

A handwritten signature in dark 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**

251 Sunshine Deli Grocery Corp,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0247489

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to assess a fine against SAA Beauty Supply (“Appellant”) in the amount of \$8,385 for unauthorized acceptance of Supplemental Nutrition Assistance Program (SNAP) benefits.

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 the Code of Federal Regulations (CFR) § 278.6(m), when it assessed a fine in the amount of \$8,385 for unauthorized acceptance of SNAP benefits against Appellant on August 24, 2021.

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 the compliance of Appellant with federal SNAP law and regulations during the period May 8, 2021 through May 11, 2021. The investigation reported that personnel at Appellant accepted SNAP benefits despite Appellant not being an authorized SNAP retailer. As a result of evidence compiled from this investigation, the Office of Retailer Operations and Compliance informed Appellant, in a letter dated August 8, 2021, that the firm was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.6(m). The letter states, in part, that the violations “. . . warrant assessment of a fine in the amount of

\$8,385 for the unauthorized acceptance SNAP benefits as provided in Section 278.6(m) of the SNAP regulations.” Appellant responded to the charges in writing.

The ROD informed Appellant, by letter dated August 24, 2021, that it determined that violations had occurred at the store and that a fine in the amount of \$8,385 was warranted.

On August 31, 2021, Appellant appealed the ROD’s decision to impose a fine, and requested an administrative review of the 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 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(m) establishes the authority upon which a fine may be assessed against a firm that accepts SNAP benefits without authorization.

7 CFR § 278.6(m) reads, in part:

Fines for unauthorized third parties that accept food stamps. FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem food coupons for any violation of the provisions of the Food and Nutrition Act of 2008, as amended, or the program regulations, including violations involving the acceptance of coupons. The fine shall be \$1,000 for each violation plus an amount equal to three times the face value of the illegally accepted food coupons. The fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. FNS may withdraw the authorization of any firm that is under the same ownership as an unauthorized firm that has failed to pay such a fine, as specified under § 278.1(k). FNS may deny authorization to any firm that has failed to pay such a fine, as specified under § 278.1(j).

APPELLANT’S CONTENTIONS

Appellant’s responses regarding this matter are essentially as follows:

- The transactions were made by a new employee.
- The transactions were made in error. When the owner noticed the charges the owner informed all staff to stop accepting SNAP benefits.
- Appellant questions why the transactions were accepted for processing if Appellant was not allowed to make these transactions. Other owners stated that when they were not SNAP-authorized, they were not allowed to process transactions.
- Appellant requests a waiver of the penalty.

These explanations 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 others that have not been specifically listed here.

ANALYSIS AND FINDINGS

Appellant contends that the transactions were made in error by a new employee. When ownership signed the FNS application to become a SNAP authorized retailer, this included a certification and confirmation that Appellant would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." Regardless of whom the ownership of a store may use to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions.

Appellant requests a waiver of the penalty and questions why FNS did not block Appellant's ability to conduct SNAP transactions as other businesses that were not SNAP-authorized were not allowed to process transactions. Appellant did not provide details regarding the circumstances of the other retailers. Once a firm receives a letter informing them of a sanction, FNS must manually update its computer system to prevent the processing of further SNAP transactions by that retailer. For a firm that is permanently disqualified, the effective date of the sanction is the date the permanent disqualification letter is received. For a firm who has received a lesser penalty, FNS treats the effective date of the sanction as the date the retailer's computerized records are updated. On Friday, May 7, 2021, a permanent disqualification letter was received by Appellant. This letter stated that Appellant should immediately cease accepting SNAP benefits or be subject to unauthorized acceptance penalties. Appellant continued to accept SNAP benefits from May 8 to May 11, 2021. Therefore, the evidence supports the determination of the Office of Retailer Operations and Compliance to assess a fine of \$8,385 against Appellant for unauthorized acceptance of SNAP benefits.

CONCLUSION

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to assess a fine of \$8,385 against 251 Sunshine Deli Grocery Corp for unauthorized acceptance of SNAP benefits is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

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

January 4, 2022